



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

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**Location:** Citizens Clean Elections Commission

1110 W. Washington, Suite 250

Phoenix, Arizona 85007

**Date:** Thursday, December 15, 2022

**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 December 15, 2022. This meeting will be held at 9:30 a.m. **This meeting will be held virtually.** 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](mailto: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 will attend by telephone, video, or internet conferencing.

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**<https://us02web.zoom.us/j/81604218149>**

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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 (dial in only option is available but you will not be able to use the Zoom raise hand feature, meeting administrator will assist phone attendees). Please keep yourself muted unless you are prompted to speak. The Commission allows time for public comment on any item on the agenda. Council 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 Council 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.

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Meeting Minutes for October 27, 2022.
- III. Discussion and Possible Action on Executive Director's Report, Enforcement and Regulatory Updates and Legislative Update.
- IV. Discussion and Possible Action on Overview of Proposition 211 From Campaign Legal Center Action.
- V. Discussion and Possible Action on Staff Recommendation of Conciliation Agreement MUR 22-01 Freedom's Future Fund.
- VI. Discussion and Possible Action on Adoption of Rule Amendments to AAC R2-20-211, R2-20-220, R2-20-223 relating to Compliance and Enforcement Procedures.
- VII. Discussion and Possible Action on Annual Budgetary Calculations and 2023 Spending Plan.
- VIII. 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
- IX. 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 13<sup>th</sup> day of December, 2022

Citizens Clean Elections Commission

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 STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING

Phoenix, Arizona

October 27, 2022

9:30 a.m.

COASH & COASH, INC.  
Court Reporting, Video & Videoconferencing  
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By: Kathryn A. Blackwelder, RPR  
Certified Reporter  
Certificate No. 50666

**CERTIFIED  
TRANSCRIPT**

<p>1                   VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS 2 CLEAN ELECTIONS COMMISSION convened at 9:30 a.m. on 3 October 27, 2022, at the State of Arizona, Clean 4 Elections Commission, 1110 West Washington, Conference 5 Room, Phoenix, Arizona, in the presence of the 6 following Board Members: 7                   Mr. Damien Meyer, Chairman 8                   Mr. Mark Kimble 9                   Ms. Amy Chan 10                  Mr. Steve Titla 11 12 OTHERS PRESENT: 13                  Thomas M. Collins, Executive Director 14                  Paula Thomas, Executive Officer 15                  Mike Becker, Policy Director 16                  Gina Roberts, Voter Education Director 17                  Avery Xola, Voter Education Manager 18                  Kara Karlson, Assistant Attorney General 19                  Jeanne Galvin, Assistant Attorney General 20                  Mary O'Grady, Osborn Maledon 21                  Bill Richards, Richards &amp; Moskowitz 22                  Natalya Ter-Grigoryan, Richards &amp; Moskowitz 23                  Jon Weiss, Papetti Samuels Weiss McKirgan 24                  Timothy LaSota, Attorney 25                  Elliot Stratton, Tiffany &amp; Bosco                   Bob Branch, TPOF                   Gianna George, Riester                   Christina Stone                   Cathy Herring, Staff                   Rivko Knox, Member of the Public                   Nathan Madden, Member of the Public</p>	<p>1                   CHAIRMAN MEYER: Good morning. My name is 2 Damien Meyer. It is 9:30 a.m., October 27, 2022, and 3 I'm going to call this meeting of the Citizens Clean 4 Elections commission to order. 5                   I'd like to ask the audience members to 6 please keep their microphones on mute. 7                   And with that, we'll take attendance. 8 Commissioners, please identify yourselves for the 9 record. 10                  COMMISSIONER CHAN: This is Commissioner 11 Amy Chan. 12                  COMMISSIONER KIMBLE: And this is 13 commissioner Mark Kimble. 14                  CHAIRMAN MEYER: And I don't believe we have 15 anyone else this morning. We have a quorum of three of 16 five, so we will proceed. 17                  Agenda Item No. II is discussion and possible 18 action on Executive Director's Report, enforcement and 19 regulatory updates, and legislative update. 20                  And just sort of for the good of the order, 21 so everyone kind of knows how this is going to proceed 22 today, I have a hard stop at 11:00 today. So in order 23 to get through the business, we're going to go slightly 24 out of order on the Agenda. After Item III, which is 25 the minutes, we're going to jump to Item VI and then V,</p>
<p>1 the drop box issue, and then Item IV, which are the 2 debates. So, again, the order of business is going to 3 be Item II, III, and then VI, V, and IV. Okay. So 4 apologies for that, but it's just the way it is today. 5                  With that, we move to Item II, discussion and 6 possible action on the Executive Director's Report. 7 Tom, please go ahead. 8                  MR. COLLINS: Sure. I apologize for being a 9 little late to log on. We have a building that is not 10 exactly upgraded to the 21st century, although it was 11 built in the 21st century. 12                  The general election is on Tuesday, 13 November 8th. So by the time we see you again, the 14 election itself will be over. Friday of next -- Friday 15 of this week is the last day to request a ballot by 16 mail. The last day to vote early in person is 17 November 4th. And then emergency voting occurs on 18 Friday through Monday. 19                  We've had a number of -- a whole panoply of 20 voter education activities over the last month, 21 including the candidate event for the candidates for 22 the Central Arizona Water Conservation District. We've 23 gotten a number of compliments on that, both from polls 24 and publicly, and that availability on our website I 25 think has gotten some good utilization. Gina and other</p>	<p>1 election officials appeared on a morning seminar with 2 the Capitol Times. And we are -- and Commissioner 3 Kimble and I went to a town hall with the Pima County 4 Recorder and the Pima County Election Director and the 5 Daily Star in Tucson last week on election security and 6 trusting our elections in conjunction with the Arizona 7 Democracy Resilience Network and some other groups, so 8 that was great. You can see Avery has continued to be 9 working with the community in general and a number of 10 specific groups, including, you know, doing a ballot 11 education section with the ASU Civic Engagement 12 Coalition. We are continuing with our audits of the 13 general -- or, the primary election. 14                  And then I think that that's -- that's really 15 the bulk of it. You know, there is a -- I'll mention, 16 and it will ultimately come -- tie in a bit with the 17 Agenda item related to the voter confusion and the drop 18 boxes, but there are now two lawsuits filed against a 19 number of people and organizations related to this 20 so-called monitoring of drop boxes in Maricopa County 21 specifically, at least at this point, at the downtown 22 -- downtown headquarters of the County Recorder and 23 Election Department and then in Mesa at the County 24 facility there on Javelina. 25                  So I'm sure I've missed something, but I do</p>

<p>1 want to be cognizant of everybody's time, so that 2 really, I think, concludes at least the highlights of 3 the Executive Director's Report, though. Thank you 4 very much, Mr. Chairman. 5 CHAIRMAN MEYER: Thank you, Tom. 6 Any discussion or comments, questions from 7 the Commissioners? 8 (No response.) 9 CHAIRMAN MEYER: All right. Seeing -- 10 COMMISSIONER TITLA: Yeah, Chairman. 11 Chairman. 12 CHAIRMAN MEYER: Oh, Commissioner Titla, has 13 joined, for the record. 14 Okay. Commissioner Titla, go ahead. 15 COMMISSIONER TITLA: Yeah. Yeah, I just -- 16 just to let you know, I signed in a while ago while the 17 Director was speaking. Thank you. 18 CHAIRMAN MEYER: Thank you. Good to have 19 you. Go ahead, or is that -- is that it? 20 COMMISSIONER TITLA: That's it. 21 CHAIRMAN MEYER: Okay. 22 COMMISSIONER TITLA: Yeah, that's it. Thank 23 you. 24 CHAIRMAN MEYER: All right. We're going to 25 move on to Item III, which is discussion and possible</p>	<p>1 action on meeting minutes for September 29 of 2022. 2 Any discussion? And if not, do I have a motion to 3 approve the minutes? 4 COMMISSIONER CHAN: Mr. Chairman, I move that 5 we approve the minutes. 6 COMMISSIONER TITLA: Chairman, I second. 7 CHAIRMAN MEYER: All right. We have a motion 8 to approve the minutes. We're going to go ahead and 9 vote, call the roll. I'm going to start with 10 Commissioner Chan. 11 COMMISSIONER CHAN: I vote aye. 12 CHAIRMAN MEYER: Commissioner Kimble. 13 COMMISSIONER KIMBLE: Aye. 14 CHAIRMAN MEYER: Commissioner Titla. 15 COMMISSIONER TITLA: Aye. 16 CHAIRMAN MEYER: And this is Commissioner 17 Meyer and I vote aye as well. So the meetings -- 18 meeting minutes are approved by a vote of 4 to zero. 19 We are now going to move ahead to Agenda 20 Item VI, which is discussion and possible action on 21 The Power of Fives, Dr. Bob Branch, MUR 21-01, 22 including discussion and possible action on The Power 23 of Fives' response and objection to the Commission's 24 subpoena issued to The Power of Fives on September 1 of 25 2021 -- 2022.</p>
<p>1 So just -- just to give some more background 2 here, the Executive Director, Tom, issued a subpoena in 3 September of this year. TPOF filed a motion to quash 4 under R2-20-213. So we're going to proceed -- is Will 5 Fischbach -- Mr. Fischbach is counsel for TPOF. I'm 6 going to give each counsel 10 minutes on this motion. 7 So Mr. Fischbach is going to have 10 minutes, if he's 8 on the line, or if there's another representative of 9 TPOF, and then we'll give Mr. Weiss, who is the 10 Commission's counsel, an additional 10 minutes to 11 respond. 12 So with that, is there anyone here for TPOF? 13 MR. LaSOTA: Yes, Mr. Chairman. This is 14 Timothy LaSota on behalf of TPF. 15 MS. KARLSON: Commissioner Meyer, I apologize 16 for interrupting. 17 CHAIRMAN MEYER: Sure. 18 MS. KARLSON: I just want to make the record 19 clear that for the -- for this matter, Attorney -- the 20 representative for the Commission is going to be 21 Jeanne Galvin, and Jon Weiss is -- is going to be 22 presenting, you know, the response. But I just want it 23 to be clear that Jeanne Galvin is independent advisory 24 counsel for this matter. 25 CHAIRMAN MEYER: Thank you, Ms. Karlson.</p>	<p>1 And good to have you, Ms. Galvin. Thank you. 2 MS. GALVIN: Good morning. 3 CHAIRMAN MEYER: So, Mr. LaSota, I have a 4 letter from September 20th that's drafted by William 5 Fischbach. Are you counsel of record for The Party of 6 Five as well or -- 7 MR. LaSOTA: Yes, Mr. Chairman, and I've -- 8 I've appeared for The Party of Fives previously. 9 CHAIRMAN MEYER: Okay. You have. All right. 10 Go ahead. Like I said, I'll give you 10 minutes, and 11 then we'll take it from there. 12 MR. LaSOTA: Okay. First of all, I'd like to 13 ask, can I -- can I reserve half of my time for 14 rebuttal? 15 CHAIRMAN MEYER: Sure. 16 MR. LaSOTA: Okay. All right. And I know -- 17 hopefully everybody has read the letter already, so 18 I'll -- I'll try not to regurgitate it. But, you know, 19 I did want to initially cover the fact that we have 20 objected completely to the Commission's jurisdiction 21 over The Power of Fives. The Power of Fives is not a 22 political candidate, it's not a political committee; 23 it's a vendor. It's -- frankly, it's no different than 24 me. I mean, people call me up and they ask me for help 25 on -- on campaigns and I say -- I mean, if it works</p>

<p>1 out, I say yes. I fear that I'm going to be the next 2 target of a Clean Elections Commission subpoena. 3 I think it's a very bad precedent. I 4 understand the Commission has made a decision on this, 5 apparently, but for the record, I want it to be very 6 clear that one of the reasons you should quash this 7 subpoena is you do not have jurisdiction. And I hope 8 the Commission is not asserting the type of general 9 subpoena power that the Arizona Legislature or perhaps 10 some other entities have. For example, they have just 11 general subpoena power. If they want to investigate 12 something, they have that power. Your power, clearly 13 under the statutes and the rules, is limited to matters 14 before you and people you have jurisdiction over, which 15 does not include vendors. 16 So I think that's the first reason you should 17 quash this is you simply lack jurisdiction over this 18 matter altogether, and I think you've gone down a bad 19 path by now we're going to be looking at vendors. I 20 think anybody could be next. 21 And, you know, the question I asked, and it 22 was over a year ago, was, you know, what do you think 23 the penalty is? You know, what can you do to a vendor? 24 And I put that in my legal memo. And everything in the 25 Clean Elections Commission -- almost everything in the</p>	<p>1 Clean Elections Act, I should say, is geared towards 2 candidates, and that's -- you know, you've got 3 participating, you've got nonparticipating. There are 4 a few provisions that the Commission might argue are a 5 little broader, but by and large your penalty 6 provisions are limited to the -- essentially what's -- 7 the candidates. 8 You know, we didn't sign any letter saying 9 we're going to take Clean Elections money and we agree 10 to adhere to Clean Elections rules. We didn't do 11 anything like that. I'll give one example of the folly 12 of this thinking, and that is, for example, the 13 Commission or Executive Director, I'm not sure which at 14 this point, but -- or, whether -- exactly what the 15 proper characterization of the posture is, but, you 16 know, there continues to be an allegation that we 17 violated the provision on sending out a solicitation 18 for -- for \$5 contributions. And as I've explained 19 before, the statute says if you -- if a \$5 contribution 20 is not gathered legally as per the statute, it is not a 21 valid \$5 contribution and that's it. I mean, there's 22 none of this violation business. It's either -- it 23 either counts towards a participating candidate's \$5 or 24 it doesn't. 25 You know, most of the other things sort of</p>
<p>1 lack a -- actually, I think all of them lack a remedy. 2 And I think that's a question the Commission should 3 have asked itself: Well, if I don't really have a 4 remedy, then was it really the intention that I have 5 jurisdiction at all? I think that's an easy no. 6 So, anyway, you know, we've outlined the over 7 breadth of the subpoena. Frankly, it's just a fishing 8 expedition and it -- you know, it's another -- it's 9 just sort of the next step in -- in the path the 10 Commission is charting to basically just start 11 targeting everybody involved with the political 12 process. And, you know, it's -- it's just -- it makes 13 me nervous because now I'm going to be a political 14 committee. If Power of Fives is a political committee, 15 I don't see any reason why -- why an argument couldn't 16 be made that anybody involved could be a political 17 committee. 18 So in terms of the specifics, the -- and I 19 know we covered our overall arguments altogether, but, 20 I mean, just the sheer -- the sheer breadth of the -- 21 of the subpoena. Now, for example, Commission -- 22 documents that will enable the Commission to ascertain 23 the identities of all members of The Power of Fives and 24 each member's ownership interest. Why? What's that 25 for? What -- what business is that of the Commission?</p>	<p>1 If the Commission wants to try to take action against 2 The Power of Fives, it's free to. It's free to try 3 anyway. We obviously have our objections that we'll 4 preserve in court, but what -- where are we going with 5 that? 6 You know, the employees, agents, and 7 independent contractors of Power of Fives. I mean, 8 these are just a few examples. There's -- there's a 9 lengthy, lengthy list of requests and -- 10 CHAIRMAN MEYER: Mr. LaSota, apologize for 11 the interrupt. That's 5 minutes. Do you want to -- 12 MR. LaSOTA: Okay. 13 CHAIRMAN MEYER: -- continue or do you want 14 to -- 15 MR. LaSOTA: Yeah, I'll wait until the end. 16 Yes. Thank you, Mr. Chairman, for that heads up. 17 CHAIRMAN MEYER: No problem. 18 Okay. So now we're -- we'll hear from 19 Mr. Weiss. And I guess, Mr. Weiss, I'd ask that you 20 address a couple of issues that were raised, and that 21 is: Sort of this jurisdictional issue as to vendors; 22 the penalty -- the penalty issue, like what is our 23 remedy; the argument that anyone could be considered a 24 political committee; and sort of this argument that the 25 subpoena is overbroad. So I guess there's four points</p>

<p>1 I'd like to hear from, and then I'll give all the 2 Commissioners a chance to ask questions as well. But 3 the floor is yours, Mr. Weiss. 4 MR. WEISS: Sure. Thank you, Mr. Chairman. 5 Mr. Chairman, Members of the Commission, let 6 me start with this legal point. Under the law, under 7 the statutes, the regulations, the Commission has been 8 given broad authority to enforce the Clean Elections 9 Act. The Commission has been given broad authority to 10 conduct investigations in furtherance of its 11 enforcement powers. And even more to the point here, 12 under the controlling statutes and the rules, the 13 Commission has been given specific authority to issue 14 subpoenas requiring the production of documents in 15 connection with an investigation that it's undertaking. 16 The Legislature has recognized that the Commission 17 needs to be able to conduct fulsome investigations, and 18 it's given the Commission the power and the authority 19 to do so. 20 Now, the specific issues that Mr. LaSota has 21 just raised -- let me first say, none of that is in the 22 motion to quash that they filed, so that's all new here 23 right now. And that's actually not appropriate under 24 the rule, because the rule authorizing them to file a 25 motion to quash says that they have to file the motion</p>	<p>1 to quash within five days of receiving the subpoena, 2 and the motion itself has to list the reasons why 3 they're seeking to quash. You can't sort of come in 4 later with new reasons, and that's what we're hearing 5 now. So -- 6 But let me just briefly address, though, what 7 Mr. LaSota raised. He said, you know, there's no 8 jurisdiction, there have been no violations of the law. 9 That's all just a distraction from what we're actually 10 here for right now. You have already heard all of 11 those arguments. When Mr. Collins filed the initial 12 complaint, this Committee held two lengthy hearings. 13 At those hearings Mr. LaSota made all of those 14 arguments that he's just said about the jurisdiction, 15 about what the law is. 16 And after hearing those arguments, you 17 authorized further investigation, and that's what we're 18 here for. You asked lots of questions. At the end you 19 took a vote. You concluded that there are reasons to 20 believe that The Power of Fives violated the Act. You 21 authorized the Executive Director to move forward with 22 the investigation, and that's what we're here for right 23 now. So the issue before you right now is really 24 just -- not whether we could serve a subpoena, but the 25 scope of the subpoena and whether the subpoena is</p>
<p>1 overbroad and outside the scope of the investigation. 2 So what -- what they raised in their papers, 3 what they said is that this investigation is just about 4 The Power of Fives' and Dr. Branch's relationship with 5 the Eric Sloan campaign and that we're seeking more 6 information than that in the subpoena. But their 7 characterization of the investigation just isn't 8 accurate. The Commission is investigating The Power of 9 Fives and Dr. Branch in connection with their 10 campaign-related work for any candidate, not just a 11 single candidate, not just Eric Sloan, and the record 12 that's been developed in this matter over the last two 13 years makes that really clear. 14 And we've laid that out in our -- in our 15 letter that you have. It's the six-page letter dated 16 October 24th. And like Mr. LaSota, I'm not going to go 17 through and repeat everything that's already in that 18 letter, because you have it, but let me just hit some 19 of the highlights where you could see that this 20 investigation has never just been limited to Mr. Sloan. 21 In the initial complaint of the Executive 22 Director back in September of 2021, he talks about -- 23 well, let me back up even further. The way The Power 24 of Fives came to the Commission's attention in the 25 first place is because The Power of Fives was doing</p>	<p>1 business with a candidate, Eric Sloan. The Power of 2 Fives then filed a complaint relating to Mr. Sloan. 3 The Commission investigated that complaint, and that's 4 how we learned about The Power of Fives. And in 5 connection with that investigation, we learned that The 6 Power of Fives itself appeared to be violating the Act 7 in a variety of ways. 8 The Executive Director issued a complaint. 9 In that complaint he talked about the fact that here is 10 the information we have about the Sloan campaign, and 11 that's the only specific information we have right now, 12 but we know that The Power of Fives is using an 13 identical service agreement with 23 other candidates. 14 There's no reason to talk about that in the complaint 15 unless we're trying to investigate what The Power of 16 Fives is doing with those 23 other candidates using 17 this very same service agreement that the Commission 18 has concluded there's reason to believe violates the 19 Act. 20 And there was even more specific stuff in the 21 complaint. The complaint talks about evidence relating 22 to The Power of Fives providing valuable services in 23 connection with the Sloan campaign, but then the 24 complaint says, additionally, to the extent identical 25 agreements were made with 22 other candidates,</p>

<p>1 additional undisclosed and/or excess contributions may 2 have been made. In other words, we don't yet know the 3 specifics of what they're doing with all these other 22 4 candidates other than we -- we know, because The Power 5 of Fives has said, they're using this same service 6 agreement. But we don't know the specifics, so we need 7 to investigate. We need to serve a subpoena.</p> <p>8 The complaint talks about how The Power of 9 Fives' service agreement contemplates expenditures of 10 campaign funds before they were in the candidate's 11 account, in violation of the Act. And it says, because 12 The Power of Fives claims it used identical service 13 agreements for all of its candidates, it's likely that 14 this violation occurred repeatedly. Again, saying we 15 don't yet have the details, but we need to investigate. 16 We need to find out what they're doing with all of 17 these other candidates.</p> <p>18 You have in your materials the subsequent 19 statement of reasons of the Executive Director that he 20 issued in October of 2021. In that statement of 21 reasons, he specifically asked the Commission for 22 authority to issue a subpoena to obtain all of The 23 Power of Fives' records documenting disbursements, 24 debts, obligations through the present. The requested 25 authorization wasn't just to subpoena records relating</p>	<p>1 to Mr. Sloan; it was to seek records for all -- all of 2 their activities through today. And again, when the 3 Committee later held two public meetings, voted for the 4 investigation to go forward, they were authorizing what 5 Mr. Collins asked for in -- in that statement of 6 reasons.</p> <p>7 The Commission subsequently issued an order 8 to The Power of Fives, an order requiring compliance. 9 In that order, that was just in April of this year, 10 that order says the Commission has found reason to 11 believe that The Power of Fives made expenditures on 12 behalf of Eric Sloan and 22 other candidates when it 13 entered -- and so on. But then it says, to achieve 14 compliance with the Act, The Power of Fives must report 15 accurately its expenditures on behalf of those 23 16 candidates. In that same order it says, to achieve 17 compliance with the Act, Power of Fives must report 18 accurately how many e-mails and other direct 19 solicitations it made on behalf of all 23 Power of 20 Fives candidates.</p> <p>21 From the get-go, throughout this record, we 22 could see this investigation has always been about what 23 are they doing on behalf of all candidates, not just 24 the Sloan candidate -- not just Eric Sloan. We only 25 have the evidence relating to Sloan, for the most part,</p>
<p>1 because that's what the initial investigation was when 2 there was a complaint against Sloan. Now we're 3 investigating --</p> <p>4 CHAIRMAN MEYER: Mr. Weiss, I'm with you on 5 the scope. I understand where you're going. And 6 apologize for interrupting, but we're --</p> <p>7 MR. WEISS: Sure.</p> <p>8 CHAIRMAN MEYER: -- getting towards the end 9 of your 10 minutes. Can you address the penalty issue? 10 What's this -- where does this end as far as, you know, 11 what the Clean Elections can do as far as a penalty to 12 The Party of Five?</p> <p>13 MR. WEISS: Yeah. So at the end of the day, 14 I mean, once we complete the investigation and you're 15 provided with further information, the Committee will 16 have the authority to issue civil penalties against 17 The Power of Fives. This investigation may -- may not, 18 but may -- reveal information relating to other 19 individuals who may have violated the Act, and we may 20 come back to you and seek certain authorization with 21 respect to those individuals and whether they should 22 or -- you know, whether there should be penalties 23 imposed relating to those individuals. But again, 24 until we've conducted the investigation, we don't know 25 what the ultimate end point will be. We have to</p>	<p>1 investigate first.</p> <p>2 And, you know, the one specific item that 3 Mr. LaSota raised about us trying to find out who the 4 members of The Power of Fives are and who its employees 5 are and so on, part of the broad-ranging authority to 6 investigate that we have is the investigate -- the 7 power to interview folks and the power to subpoena 8 folks who might have information. Well, we don't know 9 who else is associated with The Power of Fives, so 10 that's what we're asking them to tell us. Who else is 11 associated with you? Who are the other owners? Who 12 are the other employees? Because we mean -- we may 13 need to contact them to get additional information. So 14 that's why we included that within the subpoena.</p> <p>15 CHAIRMAN MEYER: All right. So thank you, 16 Mr. Weiss. That's a little over your 10 minutes, so 17 here is what I'm going to do. I'm going to give 18 Mr. LaSota, you know, 5 to 7 minutes to rebut, and then 19 I'm going to allow any Commissioner to ask any 20 questions that they want to ask and give Mr. LaSota and 21 Mr. Weiss an opportunity to answer any of those 22 questions. But we're going to, you know, keep it -- 23 keep it -- keep it on task, I'll just say that.</p> <p>24 So, Mr. LaSota, let's go back to you for your 25 rebuttal.</p>

<p>1 MR. LaSOTA: Thank you, Mr. Chairman.</p> <p>2 So I'd like to start with the -- with the</p> <p>3 first point about, well, we didn't raise this overall</p> <p>4 issue in our subpoena. So I'm going to read from the</p> <p>5 letter from Mr. McKirgan, who just -- check that. It's</p> <p>6 Mr. Weiss. I'm having trouble keeping track of all the</p> <p>7 attorneys involved here. But this was a letter signed</p> <p>8 by Mr. Weiss and Mr. McKirgan, who is Mr. Weiss' law</p> <p>9 partner, I believe.</p> <p>10 It says, "Much" -- "much of your letter" --</p> <p>11 and this is -- this is talking about our -- our motion</p> <p>12 to quash the subpoena. But this is -- this is from</p> <p>13 Mr. Weiss and Mr. McKirgan on behalf of the Commission</p> <p>14 or the Director. It says, "Much of your letter focuses</p> <p>15 on arguments as to why TPOF parties disagree with the</p> <p>16 Executive Director's position regarding their</p> <p>17 violations of the Act. Supported by a recitation of</p> <p>18 the history of a private arbitration," blah, blah,</p> <p>19 blah, "the Commission carefully considered TPOF</p> <p>20 parties' arguments, were not persuaded, and voted to</p> <p>21 move forward with its investigation. We will not</p> <p>22 rehash our disagreements with your position regarding</p> <p>23 the lawfulness of TPOF parties' conduct."</p> <p>24 So, in other words, we did raise these</p> <p>25 issues, and we were chided by Mr. Weiss. Oh, no, no,</p>	<p>1 no. You know, you're talking about something that's</p> <p>2 already been decided and you shouldn't be talking about</p> <p>3 that here. The Commission decided it already. You did</p> <p>4 talk about it, but that's the improper place. Issue is</p> <p>5 decided. And now, here today, he tells us that we</p> <p>6 didn't raise that issue. So I would encourage you to</p> <p>7 read his own letter. It's at the bottom of Page 2, top</p> <p>8 of Page 3.</p> <p>9 Now, in -- and we spent five pages in our</p> <p>10 objection, the first five and a half pages, talking</p> <p>11 about all the reasons we didn't think the Commission</p> <p>12 was correct initially. And then we go on to our</p> <p>13 partial objection to the subpoena requests, in other</p> <p>14 words, the above is a full objection. Below, starting</p> <p>15 Page 6, that's partial objection.</p> <p>16 So in terms of -- you know, Mr. Chairman, you</p> <p>17 asked a very good, very pointed question, and that is:</p> <p>18 What about the penalty? And you heard Mr. Weiss:</p> <p>19 Yeah, we can impose civil penalties. What statute? I</p> <p>20 would love to hear what statute he's talking about.</p> <p>21 You'll notice he didn't mention a statute. So, you</p> <p>22 know, that would be a good place to start is, what</p> <p>23 statute gives them the authority to just impose civil</p> <p>24 penalties on people who are not, A, participating</p> <p>25 candidates, B, nonparticipating candidates, or some --</p>
<p>1 you know, something like that, or anybody who they can</p> <p>2 just impose a penalty on.</p> <p>3 In terms of, you know, this -- the -- I think</p> <p>4 Mr. Weiss and Mr. McKirgan also misunderstand -- I</p> <p>5 mean, I don't know if they're -- they think that they</p> <p>6 can hold individual members of Power of Fives liable</p> <p>7 for -- for the conduct of Power of Fives. That would</p> <p>8 turn corporate and LLC law in Arizona on its head.</p> <p>9 That's not the case.</p> <p>10 I guess what we heard from them is, you know,</p> <p>11 we've -- essentially, in my mind, they've conducted --</p> <p>12 or, they've issued an extraordinarily broad subpoena</p> <p>13 for all kinds of materials that are not relevant to</p> <p>14 anything, shouldn't have issued it anyway because, as</p> <p>15 we've said, there is no jurisdiction. And, oh, we need</p> <p>16 to know all these people's names and we need to know</p> <p>17 all this information so we can -- we can broaden this</p> <p>18 already overly, overly broad investigation further.</p> <p>19 So, you know, I think the Commission -- I</p> <p>20 think you just -- I think you really have to examine,</p> <p>21 is this the direction we want to go. It -- you know,</p> <p>22 I've always thought that the Clean Elections -- and I</p> <p>23 didn't -- I didn't vote for it. I voted no. I came to</p> <p>24 -- I came to appreciate the value in the Act; not</p> <p>25 everybody does. And I think that -- I think that to</p>	<p>1 the extent we're now going to be asserting this</p> <p>2 massively, massively broad, invasive fishing expedition</p> <p>3 subpoena power, I think that -- I think that's just --</p> <p>4 I think that's bad for people like me, it's bad for</p> <p>5 The Power of Fives for sure, and I think it's bad for</p> <p>6 the Commission. I think it's going to take you a place</p> <p>7 that will be very problematic and will sort of open you</p> <p>8 up to basically criticism, which I think will be</p> <p>9 entirely just.</p> <p>10 I can't think of any other -- I can't think</p> <p>11 of the Commission doing anything like this in the past.</p> <p>12 Now, I haven't followed it the way, obviously,</p> <p>13 Mr. Collins has, but I cannot think of any precedent</p> <p>14 for what the Commission is doing now.</p> <p>15 So we would ask that our motion to quash be</p> <p>16 upheld by this Commission. Thank you for your time. I</p> <p>17 think I'm a little bit early. Mr. Chairman, I know you</p> <p>18 have to get on to other business, so thank you. Happy</p> <p>19 to answer any questions.</p> <p>20 CHAIRMAN MEYER: Thank you, Mr. LaSota.</p> <p>21 Any Commissioners have any questions for</p> <p>22 Mr. Weiss or Mr. LaSota?</p> <p>23 COMMISSIONER CHAN: Mr. Chairman.</p> <p>24 CHAIRMAN MEYER: Go ahead, Commissioner Chan.</p> <p>25 COMMISSIONER CHAN: I just -- I actually just</p>

<p>1 have a comment. You know, I remember this very well 2 when the complaint came before us involving TPOF and 3 Mr. Sloan before, and it's bringing back a little bit 4 of trauma around it, to be honest. I mean, it's the 5 same arguments, I think, that we heard back then, that 6 this was something we'd never done before. But I 7 really feel strongly that -- a couple things. 8 One, you know, if this is something we've 9 never done before, we've never seen a business model 10 like this before. And I think in any entrepreneurial 11 sense, people are always going to try to invent new 12 ways of providing services to people and earning money, 13 right. And I think this is a method that this company 14 has developed that we had a concern about, and that's 15 why we authorized the investigation to go forward in 16 the first place. 17 I recognize that the language in the 18 subpoena, I think it's broad, but I think that's 19 typical. I'm not an expert, but I have seen a little 20 more of this just because of my experiences, you know, 21 seeing some of the litigation that's pending right now 22 about elections. So I think subpoenas tend to be broad 23 because you have to be able to get all the information, 24 just what Mr. Weiss pointed out. They don't know who 25 to talk to to get information, you know.</p>	<p>1 And so I -- I guess those are my thoughts at 2 the moment. I think Mr. LaSota is doing an excellent 3 job advocating for his client; I disagree with his 4 arguments. And I just wanted to kind of throw that out 5 there, and I'll -- I'll let somebody else have some 6 time because, again, I know we're short on time. 7 CHAIRMAN MEYER: Thank you, Commissioner 8 Chan. 9 Commissioner Kimble, Commissioner Titla, do 10 you have any questions? 11 COMMISSIONER KIMBLE: Yes, Mr. Chairman. 12 CHAIRMAN MEYER: Go ahead, Commissioner 13 Kimble. 14 COMMISSIONER KIMBLE: Two points. First of 15 all, I want to remain focused on the issue of the 16 subpoena. And I'm kind of trying to set aside all the 17 arguments about the Commission has no authority to do 18 this, which -- which I think has been -- has been 19 discussed and has been voted on and I don't want to get 20 into it. I just want to talk about the subpoena. 21 And second of all, Mr. Weiss, I wonder if you 22 could respond to Mr. LaSota who asked what authority 23 there is for the Commission to consider fines in a case 24 like this. Is there something in the statute that you 25 can cite?</p>
<p>1 MR. WEISS: Well, the general rule giving the 2 Commission authority to issue civil penalties is, I 3 believe -- yeah, it's R2-20-222, which says, if the 4 Commission has reason to believe, by a preponderance of 5 the evidence, that a candidate is not in compliance 6 with the Act or Commission rules, then, in addition to 7 other penalties under law, the Commission may, so on 8 and so on, and it includes a civil -- a civil penalty. 9 And then it goes on in Part B to say, if the Commission 10 has reason to believe that, by a preponderance of the 11 evidence, that a person other than a participating 12 candidate is not in compliance with the Act, and it 13 goes on, it may issue a civil penalty. 14 So the Commission's authority to issue civil 15 penalties under the rule applies both to candidates 16 themselves and others, who are not participating 17 candidates, but who do violate the Act. 18 COMMISSIONER KIMBLE: Okay. Thank you, 19 Mr. Weiss. 20 CHAIRMAN MEYER: Thank you, Commissioner 21 Kimble. That's a question I had as well. 22 Commissioner Titla, do you have any questions 23 or comments? 24 COMMISSIONER TITLA: No, thank you. Thank 25 you.</p>	<p>1 CHAIRMAN MEYER: Okay. So I guess now we'll 2 ask the Commissioners, is there any motion to deny the 3 application, quash the subpoena, or modify the subpoena 4 from any Commissioners? 5 (No response.) 6 CHAIRMAN MEYER: I guess on the table -- so 7 there's options we have here. We can -- we can uphold 8 the subpoena and order that The Party of Five respond 9 to it; we can decide to quash the subpoena, which would 10 be a ruling in favor of The Party of Five and require 11 that they not turn over any documents; or, three, we 12 can modify the subpoena in some ways by eliminating 13 some of the requests and maintaining others. I kind of 14 put my lawyer hat on there for a second, so if 15 Ms. Karlson or Ms. Galvin disagree with those options, 16 please let us know. But I think we're looking for a 17 motion on any one of those three options. 18 MS. GALVIN: Mr. Chairman, I would just add, 19 I agree with those three options that you laid out. 20 You would also have the authority to take no action and 21 maybe delay action on the motion to quash pending 22 perhaps a decision from the Superior Court or -- if you 23 think that that's relevant to the motion to quash, then 24 I would think that that could be an option as well. 25 But I do agree with your assessment on the first three</p>

<p>1 options.</p> <p>2 COMMISSIONER KIMBLE: Mr. Chairman.</p> <p>3 CHAIRMAN MEYER: Yes, Commissioner Kimble.</p> <p>4 COMMISSIONER KIMBLE: I would move that we</p> <p>5 uphold the subpoena as it was issued.</p> <p>6 CHAIRMAN MEYER: And just for the record, is</p> <p>7 that a motion to deny -- deny the motion to quash,</p> <p>8 correct?</p> <p>9 COMMISSIONER KIMBLE: That's correct. That's</p> <p>10 correct. Thank you, Mr. Chairman.</p> <p>11 CHAIRMAN MEYER: So the motion is -- just to</p> <p>12 clean up the record, there's a motion essentially from</p> <p>13 Commissioner Kimble to deny the motion to quash and</p> <p>14 uphold the subpoena as issued. Is there a second to</p> <p>15 that motion?</p> <p>16 COMMISSIONER CHAN: I second the motion.</p> <p>17 CHAIRMAN MEYER: Okay. We have a motion</p> <p>18 that's been seconded. We will now take our vote on the</p> <p>19 motion to deny The Party of Fives' motion to quash and</p> <p>20 to uphold the subpoena as issued. I will call the roll</p> <p>21 to vote here. Commissioner Chan.</p> <p>22 COMMISSIONER CHAN: I vote aye.</p> <p>23 CHAIRMAN MEYER: Commissioner Kimble.</p> <p>24 COMMISSIONER KIMBLE: Aye.</p> <p>25 CHAIRMAN MEYER: Commissioner Titla.</p>	<p>1 COMMISSIONER TITLA: Aye.</p> <p>2 CHAIRMAN MEYER: And Commissioner Meyer, I</p> <p>3 vote aye as well. So the motion carries 4 to zero. So</p> <p>4 the motion to quash the subpoena is denied and The</p> <p>5 Party of Fives is -- needs to respond to that subpoena.</p> <p>6 Do we want to discuss a new deadline for them</p> <p>7 to respond?</p> <p>8 MS. GALVIN: I believe that would be most</p> <p>9 appropriate, given that the deadline, I believe, has</p> <p>10 passed.</p> <p>11 CHAIRMAN MEYER: Yes.</p> <p>12 So, Mr. LaSota and Mr. Weiss, I'll hear from</p> <p>13 you first as far as -- I would think -- I'm just going</p> <p>14 to throw out there, you know, three weeks to respond,</p> <p>15 is that sufficient time? And I guess I put that on the</p> <p>16 floor to the Commissioners as well. Is three weeks</p> <p>17 sufficient time to respond to the subpoena? Is that</p> <p>18 too much time?</p> <p>19 COMMISSIONER KIMBLE: Mr. Chairman.</p> <p>20 CHAIRMAN MEYER: Go ahead. I'm sorry. Who</p> <p>21 was that?</p> <p>22 COMMISSIONER KIMBLE: Commissioner Kimble.</p> <p>23 CHAIRMAN MEYER: Go ahead.</p> <p>24 COMMISSIONER KIMBLE: So the initial deadline</p> <p>25 was five days, is that correct?</p>
<p>1 CHAIRMAN MEYER: Not to produce the</p> <p>2 documents, I don't believe.</p> <p>3 COMMISSIONER KIMBLE: No? What was the</p> <p>4 initial deadline?</p> <p>5 CHAIRMAN MEYER: Tom, can you --</p> <p>6 MS. GALVIN: I believe it was the 22nd. So</p> <p>7 it was issued on the 21st -- or, the 1st of September,</p> <p>8 and I believe the date for compliance was the 22nd.</p> <p>9 CHAIRMAN MEYER: I have September 23 at</p> <p>10 4:00 p.m. So that's from Mr. Fischbach's letter in our</p> <p>11 materials of September 20th. So --</p> <p>12 MS. GALVIN: Correct, the 23rd.</p> <p>13 COMMISSIONER KIMBLE: Well, Mr. Chairman,</p> <p>14 given that, I think your three-week -- your three-week</p> <p>15 deadline makes a lot of sense.</p> <p>16 CHAIRMAN MEYER: And I know we have the</p> <p>17 election coming up on the 8th. I don't see any reason</p> <p>18 why we need this -- do we need this before then? Tom,</p> <p>19 this is a separate, distinction issue, isn't it?</p> <p>20 MR. COLLINS: No, we don't need this before</p> <p>21 the election. No, we do not.</p> <p>22 CHAIRMAN MEYER: Okay. Commissioner Chan,</p> <p>23 Commissioner Titla, do you have any comments on that</p> <p>24 time frame?</p> <p>25 COMMISSIONER CHAN: I don't. We should</p>	<p>1 probably make it a specific date and time, though,</p> <p>2 correct?</p> <p>3 CHAIRMAN MEYER: Three weeks from today would</p> <p>4 be November 17th on my calendar.</p> <p>5 COMMISSIONER CHAN: Okay.</p> <p>6 CHAIRMAN MEYER: Mr. LaSota, Mr. Weiss, do</p> <p>7 you have any comment on the three-week deadline? I'll</p> <p>8 allow you to make a record on that, but -- I'm trying</p> <p>9 to be reasonable, give you time to put these things</p> <p>10 together.</p> <p>11 MR. LaSOTA: Well, I'd say it would be too</p> <p>12 soon, but, I mean, frankly, I doubt we're going to be</p> <p>13 turning over anything. So, you know, you could set the</p> <p>14 date for three weeks, but I don't want anybody to view</p> <p>15 that as a -- as a waiver of any kind of our objections</p> <p>16 or -- you know, I doubt we're going to be submitting</p> <p>17 anything. So I think you're -- so I think that's where</p> <p>18 it's going to leave us.</p> <p>19 CHAIRMAN MEYER: Mr. Weiss.</p> <p>20 MR. WEISS: Mr. Chairman, from my</p> <p>21 perspective, three weeks is certainly appropriate if</p> <p>22 they intend to respond and give us documents. If their</p> <p>23 position is, we're not giving you any documents, then I</p> <p>24 don't think we need to wait three weeks to get a</p> <p>25 response that says we're not giving you any documents.</p>

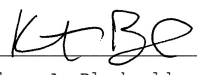
<p>1 Because if they do refuse to give us documents, there 2 are additional procedural steps that we would then 3 take, and there's no reason to wait three weeks to take 4 those steps.</p> <p>5 So perhaps, you know -- and I understand 6 Mr. LaSota certainly needs to confer with his client. 7 But perhaps you can set an earlier deadline, if they 8 don't intend to produce documents, they need to let us 9 know by some earlier date. If they're going to produce 10 documents, then three weeks is certainly fine.</p> <p>11 CHAIRMAN MEYER: I'm sorry. What -- if we 12 set the earlier deadline to let us know if they're 13 going to produce anything, I mean, do we have authority 14 to do that? I don't know if that's something we can 15 actually do.</p> <p>16 MR. COLLINS: Mr. Chairman, I'm not sure if 17 that question is to us on the advocacy side or to 18 Ms. Galvin. My view would be, I don't have any problem 19 with giving them the three weeks to figure out what 20 they're going to do. This is not worth spending 21 another minute on.</p> <p>22 CHAIRMAN MEYER: Yeah. Okay. All right. 23 Well, given that, do we need to have a motion to agree 24 that the deadline is November 17th to respond to the 25 subpoena?</p>	<p>1 MS. GALVIN: I would appreciate that.</p> <p>2 CHAIRMAN MEYER: Okay, Ms. Galvin.</p> <p>3 I'm going to go ahead and move that we issue 4 an order that The Party of Fives respond in full to the 5 subpoena on or before 4:00 p.m. on November 17th of 6 2022.</p> <p>7 COMMISSIONER KIMBLE: This is Commissioner 8 Kimble. I second that.</p> <p>9 CHAIRMAN MEYER: All right. We have a 10 motion, it's been seconded. We'll call the roll on 11 that motion. Commissioner Chan.</p> <p>12 COMMISSIONER CHAN: I vote aye.</p> <p>13 CHAIRMAN MEYER: Commissioner Kimble.</p> <p>14 COMMISSIONER KIMBLE: Aye.</p> <p>15 CHAIRMAN MEYER: Commissioner Titla.</p> <p>16 COMMISSIONER TITLA: Aye.</p> <p>17 CHAIRMAN MEYER: I vote aye as well. The 18 motion carries 4 to zero.</p> <p>19 All right. Moving on to Agenda Item No. V, 20 discussion and possible action on Clean Elections' 21 interest in protesting against voter confusion and 22 other issues related to drop boxes in Maricopa County.</p> <p>23 This arises from a group of people calling 24 themselves "Clean Elections USA" and being involved in 25 what has been called monitoring -- again, monitoring --</p>
<p>1 of drop boxes.</p> <p>2 Tom, if you'd give us a brief overview. And 3 then Mary O'Grady, our counsel for this matter, is also 4 available for questions. Tom, please go ahead.</p> <p>5 MR. COLLINS: Yes, Mr. Chairman. Thank you 6 for that introduction.</p> <p>7 So we had a, within the last week, I think 8 the last six days, a group that appears to at least be 9 based out of state, came into Arizona or started 10 operating in Arizona with the moniker Clean Elections 11 USA. Their activities appear to include, at a minimum, 12 recruiting people in Arizona to, quote, unquote, 13 monitor drop boxes. And there is some evidence, at 14 least that I have read, that suggests that, in fact, 15 members of this group or folks recruited by the group 16 have been, in fact, monitoring these drop boxes, and 17 some of those activities may include being -- you know, 18 wearing a certain amount of military-type gear and 19 carrying military -- or, I mean, I'm not a gun expert, 20 but guns that look intimidating to me as a non-gun guy 21 and a reasonable person, as well as filming the 22 activities of people who are returning their ballots to 23 the designated -- legally designated places that 24 Maricopa County set up on County property for the 25 return of ballots.</p>	<p>1 So, why is this a problem for us? Well, it's 2 an acute problem because we're -- in this election 3 cycle voters are -- know in Arizona that Clean 4 Elections is an -- we hope know, and I think we now 5 know, Clean Elections is an agency of the state. Our 6 Voter Education Guide is on the doorsteps of the voters 7 and has been for the last several weeks. Our debates 8 are currently, you know, available online and in the 9 process have been completed.</p> <p>10 So as a practical matter, we have strong a 11 interest in ensuring that voters are not confused by 12 this activity related to the drop boxes, that they know 13 that Clean Elections in Arizona is the State agency 14 responsible for educating voters in campaign finance 15 enforcement, and specifically so that they know that 16 the information coming from Clean Elections is not 17 partisan and promotes participation in the electoral 18 process, which I think it's reasonable to say the 19 activities of this group do not promote participation 20 in the electoral process.</p> <p>21 I can also say, we've gotten some phone calls 22 and e-mails from folks who have -- were quite upset 23 with, well, us for our, quote, unquote, activity, which 24 is to say they are clearly confusing Clean Elections 25 USA with Clean Elections.</p>

<p>1           You know, the analogy I think that is apt in</p> <p>2 a way is, you know, you cannot -- and I certainly would</p> <p>3 hope that the Department of Revenue or whoever would be</p> <p>4 in a -- would find it problematic if somebody started a</p> <p>5 tax preparing service that was called Department of</p> <p>6 Revenue Arizona instead of Arizona Department of</p> <p>7 Revenue, right?</p> <p>8           I mean, this is a clear instance where the</p> <p>9 voters are going to get essentially false information</p> <p>10 or very -- very much information that's not consistent</p> <p>11 with what the Clean Elections agency does through this.</p> <p>12 And it's an acute problem and we have an acute interest</p> <p>13 here on account of the time frame.</p> <p>14           So Mary sent out a cease and desist letter</p> <p>15 the other day, which you all have a copy of, and we are</p> <p>16 seeking to see where we go from there. So that kind of</p> <p>17 concludes my summary, Mr. Chairman.</p> <p>18           CHAIRMAN MEYER: Thank you, Tom. Do we have</p> <p>19 any questions for the Commissioners -- or, from the</p> <p>20 Commissioners? Go ahead, Commissioner Chan.</p> <p>21           COMMISSIONER CHAN: Mr. Chairman.</p> <p>22           CHAIRMAN MEYER: Go ahead.</p> <p>23           COMMISSIONER CHAN: I just want to know what</p> <p>24 are our next steps and how quickly can we get this</p> <p>25 addressed. I really appreciate the fact that we were</p>	<p>1 able to send a cease and desist letter so quickly. I</p> <p>2 feel outraged that our good name is being used to</p> <p>3 basically bully people who are trying to deposit</p> <p>4 their ballots in a secure ballot drop box. I just find</p> <p>5 it sad that some people think that's a productive use</p> <p>6 of their time or a necessary use of their time. But</p> <p>7 the fact that our name is being used -- and frankly,</p> <p>8 when I saw our name, even though it was the Clean</p> <p>9 Elections USA group, I was confused. So this is very</p> <p>10 serious. As Tom said, it's acute. And I just want to</p> <p>11 know what our next steps are and how we can get there</p> <p>12 quickly.</p> <p>13           CHAIRMAN MEYER: Any other Commissioners have</p> <p>14 any comments?</p> <p>15           COMMISSIONER KIMBLE: Mr. Chairman.</p> <p>16           CHAIRMAN MEYER: Go ahead, Commissioner</p> <p>17 Kimble.</p> <p>18           COMMISSIONER KIMBLE: I completely agree with</p> <p>19 Commissioner Chan. I was just reading a story in</p> <p>20 today's newspaper that just, on second reference,</p> <p>21 referred to them throughout as Clean Elections, and</p> <p>22 it's -- it's horribly confusing.</p> <p>23           And Mary, I don't know if you have any</p> <p>24 insight as to if they're going to respond or tell us no</p> <p>25 or anything.</p>
<p>1           MS. O'GRADY: Thank you.</p> <p>2           CHAIRMAN MEYER: Go ahead, Mary.</p> <p>3           MS. O'GRADY: Yeah. Mr. Chair,</p> <p>4 Commissioners, we set the deadline for today for a</p> <p>5 response, you know, and we may well not hear anything.</p> <p>6 And so if we don't, I think the next step may well be</p> <p>7 litigation and a request for a TRO or that sort of</p> <p>8 process. We would have to, you know, weigh that and</p> <p>9 move quickly, but I think that that would be the next</p> <p>10 step. And without getting ahead of Mr. Collins, if we</p> <p>11 need the Commission's authorization to take that action</p> <p>12 if there is no response, that would be the next step.</p> <p>13           CHAIRMAN MEYER: And if we need an executive</p> <p>14 session on this for legal advice, we can certainly do</p> <p>15 that, but I'll pose that. I don't -- I don't see the</p> <p>16 need for that. I agree with what Commissioner Chan and</p> <p>17 Commissioner Kimble said. I mean, this is clearly</p> <p>18 creating confusion and needs to be dealt with quickly.</p> <p>19           Commissioner Titla, do you have any comments</p> <p>20 on this?</p> <p>21           COMMISSIONER TITLA: Yeah. I agree with the</p> <p>22 rest of the Commission. We cannot have confusion on</p> <p>23 this kind of issue, especially as we're getting close</p> <p>24 to the election here. The intimidation of voters is</p> <p>25 not something that needs to be done by people. They</p>	<p>1 should let people vote. After all, our Commission is</p> <p>2 tasked for having the -- making it people -- easier for</p> <p>3 people to vote in the four corners of the state of</p> <p>4 Arizona, and intimidation is something that I totally</p> <p>5 am against and we need to act on this as soon as</p> <p>6 possible. Thank you.</p> <p>7           CHAIRMAN MEYER: So do we -- do we need a</p> <p>8 motion for this, Tom?</p> <p>9           MR. COLLINS: So I think that -- I mean, I</p> <p>10 think that if -- I think we would -- we'd need a motion</p> <p>11 if -- and I hate to put Mary on the spot, but if</p> <p>12 there's some reason why we think that it would be an</p> <p>13 issue that someone would raise in a TRO proceeding that</p> <p>14 we don't have one, we should have one.</p> <p>15           CHAIRMAN MEYER: Yeah, I agree.</p> <p>16           MR. COLLINS: That's the -- that's the</p> <p>17 answer.</p> <p>18           CHAIRMAN MEYER: Let's just make a motion</p> <p>19 then. Does anyone have -- well, I'll make a motion</p> <p>20 that we direct our outside legal counsel, Osborn</p> <p>21 Maledon, to move forward as they deem appropriate in</p> <p>22 protecting the Arizona Citizens Clean Elections</p> <p>23 Commission from infringement by Clean Elections USA, if</p> <p>24 that works. Is there a second to that motion?</p> <p>25           COMMISSIONER CHAN: I second the motion,</p>

<p>1 Mr. Chairman.</p> <p>2 CHAIRMAN MEYER: All right. We have a motion</p> <p>3 and we have a second. We'll go ahead and call the</p> <p>4 roll. Commissioner Chan.</p> <p>5 COMMISSIONER CHAN: I vote aye.</p> <p>6 CHAIRMAN MEYER: Commissioner Kimble.</p> <p>7 COMMISSIONER KIMBLE: Aye.</p> <p>8 CHAIRMAN MEYER: Commissioner Titla.</p> <p>9 COMMISSIONER TITLA: Aye.</p> <p>10 CHAIRMAN MEYER: I vote aye as well. So that</p> <p>11 motion carries 4 to zero.</p> <p>12 And I guess, Mary, if there's any -- if you</p> <p>13 have any questions on direction that we provided to</p> <p>14 you, you know, please raise those with Tom. And if we</p> <p>15 need to -- and we can address those. If we need to get</p> <p>16 together on the phone on an emergency basis, I can be</p> <p>17 available.</p> <p>18 MS. O'GRADY: Thank you.</p> <p>19 CHAIRMAN MEYER: Tom, do we need to discuss</p> <p>20 that any more? I mean, I think we've all been pretty</p> <p>21 clear that we need to extricate this.</p> <p>22 I have seen some of this in the media. I</p> <p>23 don't know if there's a way to reinforce --</p> <p>24 MR. COLLINS: So, yeah --</p> <p>25 CHAIRMAN MEYER: -- the distinctions between</p>	<p>1 us and this --</p> <p>2 MR. COLLINS: Sure. Right.</p> <p>3 CHAIRMAN MEYER: -- frankly deplorable group</p> <p>4 that's intimidating voters.</p> <p>5 Go ahead.</p> <p>6 MR. COLLINS: Mr. Chairman, yes, so we will</p> <p>7 be working on -- we've done some affirmative</p> <p>8 communication with the media on this; we're going to</p> <p>9 follow that up. Especially, I think, in light of what</p> <p>10 Commissioner Kimble has observed in the coverage, that</p> <p>11 kind of second reference, switching to Clean Elections,</p> <p>12 is precisely the kind of thing that is going to</p> <p>13 engender confusion.</p> <p>14 I know there are some folks from the press</p> <p>15 who are watching this meeting. I really would</p> <p>16 encourage you, as much as possible, I know space is</p> <p>17 tight, I know Tweets are 280 characters, but we need</p> <p>18 you to make clear that this is not Clean Elections</p> <p>19 state agency. I know a lot of you have, and I really</p> <p>20 appreciate that. Again, probably some of you are</p> <p>21 listening.</p> <p>22 But, yeah, we'll follow up on that. It's --</p> <p>23 I think that's exactly the problem, you know, apart</p> <p>24 from, obviously, as I think we've all noted, that this</p> <p>25 activity is not consistent with what the Clean</p>
<p>1 Elections Act calls for, in terms of promoting just the</p> <p>2 opposite of it. The reality is that we need to -- we</p> <p>3 need to keep that reference as clean as possible,</p> <p>4 because it's -- it engenders confusion and it's going</p> <p>5 to -- and we think that we've done a -- you know,</p> <p>6 that's going to be an issue.</p> <p>7 So we're going to work on that. You know,</p> <p>8 for the most part, I mean, I've been trying to say,</p> <p>9 most of the folks I've seen have really done a good job</p> <p>10 of saying Clean Elections USA to make that distinction.</p> <p>11 But, again -- but we do want to follow-up with everyone</p> <p>12 more broadly to make sure that we're -- that we're</p> <p>13 doing that. We will be doing that.</p> <p>14 CHAIRMAN MEYER: Thank you, Tom.</p> <p>15 So we can move to Agenda Item IV now --</p> <p>16 MR. COLLINS: Yes, Mr. Chairman.</p> <p>17 CHAIRMAN MEYER: -- which is discussion and</p> <p>18 possible action on Clean Elections debate series 2022.</p> <p>19 We will discuss now, you know, the Clean Elections</p> <p>20 debate series for 2022. As all of you know, we have</p> <p>21 completed our debate series this week with the airing</p> <p>22 of our gubernatorial event. We just wanted a brief,</p> <p>23 you know, kind of update from Gina.</p> <p>24 Gina, the floor is yours.</p> <p>25 MS. ROBERTS: Thank you, Mr. Chairman,</p>	<p>1 Commissioners. Yes, we have wrapped up our debate</p> <p>2 season for both the primary and the general election,</p> <p>3 so we are very happy that those events have come to a</p> <p>4 conclusion and are available for voters.</p> <p>5 Voting is still underway. We're still in the</p> <p>6 early voting period right now, so all of our debates</p> <p>7 are available for voters to access while they fill out</p> <p>8 our ballot on our website. And I would say that so</p> <p>9 far -- we don't have all of our numbers yet in terms of</p> <p>10 metrics, but it seems to be on track with</p> <p>11 ever-increasing engagement from voters, especially</p> <p>12 since we've done all of our legislative debates</p> <p>13 virtually. So so far the numbers look good in terms of</p> <p>14 the voter participation in viewing those debates, as</p> <p>15 well as submitting their questions. We had a lot of</p> <p>16 voter questions come in ranging from our legislative</p> <p>17 debates to our statewide.</p> <p>18 So this year we had our 30 legislative</p> <p>19 districts that we sponsor debates in, and then we had</p> <p>20 all of these statewide offices that were on the ballot</p> <p>21 that we had our debates in and our events, and then we</p> <p>22 also sponsored the U.S. Senate debate as well too. And</p> <p>23 I would say, in addition to the voter engagement, at</p> <p>24 least in my experience, I have not seen the amount of</p> <p>25 media that have been covering these debates in previous</p>

<p>1 years before. So that, I think, is really great. We</p> <p>2 had a lot of exposure on these events, which helps</p> <p>3 increase voter awareness about them.</p> <p>4 So all of our debates, you know, I think were</p> <p>5 held in exactly -- in accordance with our standards.</p> <p>6 As you are aware, we did have our gubernatorial event</p> <p>7 where we just wrapped that up this Sunday where it</p> <p>8 aired for voters. And we had a new partner for that.</p> <p>9 We worked with AZTV7. And, you know, I just want to</p> <p>10 comment that I think that they pulled off a tremendous</p> <p>11 effort in working basically within a week's time frame</p> <p>12 to pull together a production that normally takes us</p> <p>13 months to a year to plan. So we're very grateful for</p> <p>14 their partnership. And the coverage that we have seen</p> <p>15 regarding that event I think has been positive.</p> <p>16 And I think, you know, just to clarify, going</p> <p>17 back to -- we had a partnership with Arizona PBS for</p> <p>18 all of our statewide debates. We worked with them</p> <p>19 through the primary election and then through the</p> <p>20 general election, and then we had a separation with</p> <p>21 them when it came to the gubernatorial event. That's</p> <p>22 why we proceeded with AZTV7.</p> <p>23 And, you know, there was that hiccup there,</p> <p>24 but I think at the end of the day the numbers are</p> <p>25 showing that there was not a negative impact in regards</p>	<p>1 to the awareness and the accessibility of that event</p> <p>2 for voters. We were able to, as I mentioned, within a</p> <p>3 week pull together this production and we had Spanish</p> <p>4 captions for it, we also had American Sign Language for</p> <p>5 it, and it was available on broadcast and digital</p> <p>6 efforts.</p> <p>7 So I just wanted to share that update with</p> <p>8 the Commissioners that we were able to, again, pull off</p> <p>9 a very successful debate season when it comes to</p> <p>10 providing these events for voters, but also in terms of</p> <p>11 the accessibility. So that's just a brief overview of</p> <p>12 where we are. Again, debates are wrapped, they're</p> <p>13 available for voters to view on demand. And if there's</p> <p>14 any questions from the Commissioners, I'd be happy to</p> <p>15 address those.</p> <p>16 CHAIRMAN MEYER: Thank you, Gina. Something</p> <p>17 from my perspective, and I'm sure from the other</p> <p>18 Commissioners, I just want to thank you so much for all</p> <p>19 your hard work in this, you, your fellow staff members,</p> <p>20 Tom. Thank you for all the time and effort, which I'm</p> <p>21 sure we only know a fraction of the time, effort, and</p> <p>22 stress you had to deal with. So from all of us and the</p> <p>23 voters of Arizona, thank you so much.</p> <p>24 So with that, I'll leave it to the other</p> <p>25 Commissioners.</p>
<p>1 COMMISSIONER KIMBLE: Mr. Chairman.</p> <p>2 CHAIRMAN MEYER: Go ahead, Commissioner</p> <p>3 Kimble.</p> <p>4 COMMISSIONER KIMBLE: Yeah, I echo what you</p> <p>5 say. This has been an extraordinarily difficult</p> <p>6 season, particularly as it wound down. And the way</p> <p>7 that Gina and Tom have handled this is -- is very</p> <p>8 laudable. And at some point, I'm not sure we're at the</p> <p>9 point yet, we're going to have to start talking about</p> <p>10 what do we do going forward to try to find a partner</p> <p>11 that we can work with that is more forthcoming with us</p> <p>12 and that we can -- we can get a better working</p> <p>13 relationship than we did in the past month. Thank you.</p> <p>14 CHAIRMAN MEYER: Any other Commissioners want</p> <p>15 to comment?</p> <p>16 COMMISSIONER CHAN: Mr. Chairman, I just want</p> <p>17 to say thank you to the staff for all of their hard</p> <p>18 work. I know it's probably been absolutely exhausting.</p> <p>19 And congratulations, you made it through. Excellent</p> <p>20 work.</p> <p>21 CHAIRMAN MEYER: Thank you, Commissioner</p> <p>22 Chan.</p> <p>23 Commissioner Titla, are you still with us?</p> <p>24 COMMISSIONER TITLA: Yes. Yes. Thank you,</p> <p>25 Chairman. I also would like to commend Gina for all</p>	<p>1 her hard work and for pulling off almost like a miracle</p> <p>2 at the last second. This is like a football game where</p> <p>3 you throw a hail mary and you score a touchdown. So</p> <p>4 Gina has done it for us. I commend her for that. And</p> <p>5 the rest of the people on the Commission, the staff,</p> <p>6 they've all done a good job. I commend them for it. I</p> <p>7 don't know what happened with PBS in the background,</p> <p>8 but we just need to keep going forward and make sure we</p> <p>9 are successful in future elections. Thank you.</p> <p>10 CHAIRMAN MEYER: Thank you to all my</p> <p>11 Commissioners.</p> <p>12 And Tom, do you have any further comment on</p> <p>13 the debates, anyone else?</p> <p>14 MR. COLLINS: Mr. Chairman, I would just</p> <p>15 briefly say, obviously I think that -- I think that</p> <p>16 Gina and Paula did a tremendous amount of work to get</p> <p>17 us -- get this put together quickly, and then the</p> <p>18 entire staff from -- including, you know, Mike and Alec</p> <p>19 and Avery, were on hand to make sure we pushed this</p> <p>20 over the finish line. I -- you know, we got assistance</p> <p>21 from the State Procurement Office that was timely and</p> <p>22 helpful. We had very helpful advice from Bill Richards</p> <p>23 and Natalya Ter-Grigoryan who helped us deal with</p> <p>24 some -- you know, a number of different kind of, you</p> <p>25 know, time-sensitive legal issues that arose during</p>

<p>1 that process.</p> <p>2 So, you know, it was -- I don't want to sound</p> <p>3 precisely like I'm just doing some kind of Oscar</p> <p>4 speech, but I do think, you know, that, you know, as</p> <p>5 Gina said earlier, I mean, we just -- we felt like we</p> <p>6 did a lot of work very quickly. And I think the two</p> <p>7 things that I think are good out of this are, one, I</p> <p>8 think we maintained our standards and we maintained our</p> <p>9 -- and at the same time, we maintained our commitment</p> <p>10 to doing this business in a transparent way where</p> <p>11 people could track the decisions we were making in all</p> <p>12 but realtime and could assess them for their -- for</p> <p>13 their fairness. And I think that -- again, I just</p> <p>14 thank everyone for their -- their help with that.</p> <p>15 CHAIRMAN MEYER: Thank you, Tom.</p> <p>16 And at this point, we are on Item No. VII,</p> <p>17 Agenda Item No. VII. This is the time for</p> <p>18 consideration of comments and suggestions from the</p> <p>19 public. Action taken as a result of public comment</p> <p>20 will be limited to directing staff to study the matter</p> <p>21 or rescheduling the matter for further consideration,</p> <p>22 decision at a later date, or responding to criticism.</p> <p>23 Please limit your comment to no more than 2</p> <p>24 minutes. Does any member of the public wish to make</p> <p>25 comments at this time? You may also send comments to</p>	<p>1 the Commission by e-mail or mail. And the e-mail</p> <p>2 address is ccec@azcleanelections.gov.</p> <p>3 All right. I see Ms. Rivko Knox has raised</p> <p>4 her hand. Ms. Knox, the floor is yours.</p> <p>5 MS. KNOX: Yes. Chairman Meyer and</p> <p>6 Commission Members and staff, I found this to be a</p> <p>7 fascinating meeting. I was able to participate even</p> <p>8 though my middle grandson is here, but that's a</p> <p>9 different story.</p> <p>10 I am very impressed with everything that the</p> <p>11 Commission is doing. I'm not a social media person, so</p> <p>12 I don't know how much you're on social media, but I</p> <p>13 presume a lot. But the documents that -- you know, the</p> <p>14 pamphlets that you put out and the debates are very,</p> <p>15 very, very important, and I continue to -- and I think</p> <p>16 your reaction to the change in sponsorship of the last</p> <p>17 debate was very timely.</p> <p>18 And I'm extremely -- finally, I'll be very</p> <p>19 brief, I'm extremely glad that you are taking immediate</p> <p>20 action and I presume that the media will follow up on</p> <p>21 this confusion with this Clean Elections USA, which</p> <p>22 clearly was an attempt, choosing that name, to confuse</p> <p>23 the public. And I find that pretty reprehensible,</p> <p>24 but I'm so glad that you're taking immediate action,</p> <p>25 and I have a -- I have great faith that the media will</p>
<p>1 follow up on it very quickly and try to clarify it.</p> <p>2 So keep on keeping on and thank you all for</p> <p>3 lots and lots and lots of hard work during a very hard</p> <p>4 season. And I know it's not over, because audits are</p> <p>5 continuing, and clearly the actions you take today --</p> <p>6 took today will result in more work.</p> <p>7 But I'll keep following you. And I do share</p> <p>8 my notes about the Commission's actions and so on with</p> <p>9 a number of people I know who are quite interested, and</p> <p>10 I usually get thanks for that. So, again, thanks a</p> <p>11 lot, and I hope to be there next month.</p> <p>12 CHAIRMAN MEYER: Thank you, Ms. Knox. We</p> <p>13 always appreciate hearing from you.</p> <p>14 Any other members of the public have any</p> <p>15 comments at this time?</p> <p>16 All right. It looks like we have -- Nathan</p> <p>17 Madden has raised his hand. Mr. Madden, the floor is</p> <p>18 yours.</p> <p>19 MR. MADDEN: Yes. I just want to say,</p> <p>20 Mr. Chairman, Commissioners, and staff, I do appreciate</p> <p>21 everything that's been going on in this -- this past</p> <p>22 cycle; however, as I brought up in the chat, we have</p> <p>23 three Commissioners serving fairly far out of term.</p> <p>24 And while I did read the 38-295, I would ask that staff</p> <p>25 possibly look into finding replacements, because one</p>	<p>1 Commissioner is serving grossly out of term, as he was</p> <p>2 appointed in 2013. Thank you.</p> <p>3 MR. COLLINS: Kara, can I make a -- on behalf</p> <p>4 of the Commission, may I make a quick response</p> <p>5 consistent with the open meeting law?</p> <p>6 MS. KARLSON: Yes.</p> <p>7 MR. COLLINS: Yeah. Mr. Madden, I appreciate</p> <p>8 your commenting. You know, we are not responsible for</p> <p>9 those appointments. The Governor's Office and the</p> <p>10 Secretary of State's Office are responsible for those.</p> <p>11 The statute is clear, and so I just want to</p> <p>12 make clear that we are operating within the boundaries</p> <p>13 of the law and will continue to do so. I just wanted</p> <p>14 to make that record very quickly. Thank you for being</p> <p>15 here.</p> <p>16 CHAIRMAN MEYER: Thank you, Mr. Madden.</p> <p>17 Any other members of the public wish to make</p> <p>18 any comment?</p> <p>19 (No response.)</p> <p>20 CHAIRMAN MEYER: All right. Seeing none --</p> <p>21 COMMISSIONER KIMBLE: Mr. Chairman.</p> <p>22 CHAIRMAN MEYER: Oh, go ahead, Commissioner</p> <p>23 Kimble.</p> <p>24 COMMISSIONER KIMBLE: Looks like Ms. Knox has</p> <p>25 raised her hand again.</p>

<p>1 CHAIRMAN MEYER: Oh, Ms. Knox.</p> <p>2 MS. KNOX: Yes. Thank you again, Chairman</p> <p>3 Meyer and Members of the Commission and staff. I</p> <p>4 appreciate Mr. Madden's point. I just wanted to point</p> <p>5 out that for the last three, four, five years the</p> <p>6 League of Women Voters, which is a nonpartisan</p> <p>7 organization, very involved in helping to create the</p> <p>8 Clean Elections Commission in terms of the -- writing</p> <p>9 the initiative and then helping to get it passed, and</p> <p>10 at one time I was representing the League as an</p> <p>11 observer to the Commission, has sent several letters to</p> <p>12 the Governor's Office and the Secretary of State making</p> <p>13 the exact same point that you're making, Mr. Madden.</p> <p>14 And clearly we are towards the end of a term of office</p> <p>15 for both the Secretary or whoever will be the next</p> <p>16 highest person in one party versus another. But it is</p> <p>17 a very important issue, and I just wanted to have the</p> <p>18 record note that the League has been aware of this and</p> <p>19 has tried very hard to get some action, with absolutely</p> <p>20 no response of -- this is a very bipartisan or</p> <p>21 nonpartisan state.</p> <p>22 CHAIRMAN MEYER: Thank you, Ms. Knox.</p> <p>23 I guess I'll just make this analogy. When I</p> <p>24 was in high school, we'd have open gym that would be</p> <p>25 volunteer to show up to open gym and practice after</p>	<p>1 hours, and I always got a kick out of the coach</p> <p>2 complaining to the people that showed up about the</p> <p>3 people who didn't. So all of us have showed up and</p> <p>4 volunteered to do our jobs and we're here, so</p> <p>5 complaints about not replacing us shouldn't be directed</p> <p>6 to this Commission. So that's all I'll say on that.</p> <p>7 And at this point, we are onto Agenda Item</p> <p>8 No. VIII, and I will entertain a motion to adjourn.</p> <p>9 COMMISSIONER KIMBLE: Mr. Chairman.</p> <p>10 COMMISSIONER CHAN: Mr. Chairman.</p> <p>11 COMMISSIONER TITLA: Motion.</p> <p>12 CHAIRMAN MEYER: Go ahead --</p> <p>13 COMMISSIONER TITLA: Mr. Chairman, motion.</p> <p>14 CHAIRMAN MEYER: All right. Commissioner</p> <p>15 Titla has moved to adjourn. Is there a second?</p> <p>16 COMMISSIONER KIMBLE: Commissioner Kimble,</p> <p>17 second.</p> <p>18 CHAIRMAN MEYER: All right. We have a</p> <p>19 motion, it's been seconded. We'll go ahead and call</p> <p>20 the roll. Commissioner Chan.</p> <p>21 COMMISSIONER CHAN: I vote aye.</p> <p>22 CHAIRMAN MEYER: Commissioner Kimble.</p> <p>23 COMMISSIONER KIMBLE: Aye.</p> <p>24 CHAIRMAN MEYER: Commissioner Titla.</p> <p>25 COMMISSIONER TITLA: Aye.</p>
<p>1 CHAIRMAN MEYER: And I vote aye as well.</p> <p>2 Pleasure seeing all of you. This meeting is</p> <p>3 adjourned. Oh, everyone, go vote. Meeting adjourned.</p> <p>4 Thank you so much.</p> <p>5 (The proceedings concluded at 10:48 a.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 STATE OF ARIZONA )</p> <p>2 ) ss.</p> <p>3 COUNTY OF MARICOPA )</p> <p>4</p> <p>5 BE IT KNOWN that the foregoing proceedings</p> <p>6 were taken by me; that I was then and there a Certified</p> <p>7 Reporter of the State of Arizona; that the proceedings</p> <p>8 were taken down by me in shorthand and thereafter</p> <p>9 transcribed into typewriting under my direction; that</p> <p>10 the foregoing pages are a full, true, and accurate</p> <p>11 transcript of all proceedings had and adduced upon the</p> <p>12 taking of said proceedings, all to the best of my skill</p> <p>13 and ability.</p> <p>14</p> <p>15 I FURTHER CERTIFY that I am in no way related</p> <p>16 to nor employed by any of the parties hereto nor am I</p> <p>17 in any way interested in the outcome hereof.</p> <p>18</p> <p>19 DATED at Tempe, Arizona, this 31st day of</p> <p>20 October, 2022.</p> <p>21</p> <p>22 </p> <p>23 Kathryn A. Blackwelder, RPR</p> <p>24 Certified Reporter #50666</p> <p>25</p>

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**CITIZENS CLEAN ELECTIONS COMMISSION  
EXECUTIVE DIRECTOR REPORT  
December 15, 2022**

**Announcements:**

- The statewide election results were canvassed December 5. Arizona law requires an automatic recount when there is a margin equal to or less than one half of one percent. Two statewide offices, Attorney General and Superintendent of Public Instruction, along with Legislative District 13 – State Representative, meet the requirements for an automatic recount.
  - Upon completion of the canvass, the Secretary of State sought a court order to begin the recount.
  - The same tabulation machines used in the general election will be used for the recount. The counties will re-program the equipment to only tabulate the recounted races and then perform a logic and accuracy test.
  - A hand count (2%) must also be performed again by the political parties for the recounted ballots
  - The Secretary of State will provide the court with sealed results from the recount, and the court will certify the results. The court hearing is scheduled for December 22nd.
- The inauguration ceremony is scheduled for January 5, 2023.
- The first day of the legislative session is January 9, 2023.

**Voter Education:**

- Voter education videos are being filmed this week with subject matter experts on the following topics: economic update, what happens after the election, how to engage your elected officials, voting local: the role of cities and towns, and an update on Arizona's political landscape and demographics.
- Tom spoke with reporters on the recount process.
- Tom and Gina filmed voter education videos on the tabulation, canvass and recount process.
- Staff is working on an audit, analysis, user testing, and redesign of the website for a better user experience.

**Outreach:**

- Avery gave a presentation on the Midterm Elections to the faculty of the Read Better Be Better organization.
- Avery continues his participation on the Secretary of State's Voter Outreach Advisory Council, African American Legislative Committee, Maryvale Youth Provider Network Community committee, Mesa Community College Civic Engagement Team, and Native Vote Communication meetings with ITCA

- Avery gave a series of classroom presentations on Election resources and Civic Participation at the Western School of Science and Technology
- Avery collaborated with the Greater Phoenix Urban League to hold a workshop on Voting on Election Day.
- Avery lead a workshop on How to Connect with your Public Administrators and Elected Officials to Maryvale students at the Watts Family Maryvale YMCA
- Avery served as a judge for the Regional We The People competition at Corona Del Sol High School

## **Administration**

- **New Office Remaining Tenant Improvements**  
Mike and Paula continue to work with the GSD Project Manager, various contractors and state contracted vendors to wrap up completion of the new office and boardroom. Tentative completion dates for tenant improvement for remaining office areas is February possibly longer depending on backordered equipment.
- **2022 Candidates**  
Total Number of Clean Elections General Candidates: 21  
Legislative Clean Elections General Candidates: 16  
Statewide Clean Elections General Candidates: 5

## **Audits**

Audits have begun for the general election legislative Clean Elections candidates as well as all statewide Clean Elections candidates. The primary candidate audits will be completed in the next month or so.

## **Legal**

- Legacy Foundation Action Fund v. Clean Elections
  - The Arizona Supreme Court held oral argument on this case Nov. 15. It will issue an opinion likely before Summer.
- The Power of Fives, LLC v. Clean Elections, CV2021-015826, Superior Court for Maricopa County
  - The Commission filed a motion for summary judgment. The response is due December 27.
- Citizens Clean Elections Commission v. Jennings, CV2022-014553, Superior Court for Maricopa County.
  - The Court entered a stipulated judgement and permanent injunction on Dec. 8. This bars Defendant from using certain marks of Clean Elections.
- Post Election lawsuits:  
Lake v. Hobbs, CV2022-095403, Superior Court for Maricopa County.  
Finchem v. Fontes, CV2022-053927, Superior Court for Maricopa County.

- Kentch v. Mayes, Superior Court for Mohave County.
- Litigation challenging HB2492 and HB2243, as well as SB1260 is ongoing.

### **Appointments**

- No additional information at this time

### **Enforcement**

- MUR 21-01, TPOF, pending.
- MUR 22-01, Freedom's Future Fund, this agenda.
- MUR 22-02, Orth, closed, no violation
- MUR 22-03, Young, closed, no violation
- MUR 22-04, Van Steenwyk, closed, no violation
- MUR 22-05, Sun, closed, no violation
- MUR 22-06, Andrade, closed, no violation
- MUR 22-07, Thompson, closed, no violation

### **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 as required by A.R.S. § 41-1021.02:

- Notice of Docket Opening:
  - R2-20-211. R2-20-220, R2-20-223- clarify roles of executive director and other representatives of the commission in enforcement proceedings.

October 28, 2022

- Notice of Proposed Rulemaking:
  - R2-20-211. R2-20-220, R2-20-223- clarify roles of executive director and other representatives of the commission in enforcement proceedings.

October 28, 2022

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

We anticipate filing notices in R2-20-305 and R2-20-306 no later than next week.





November 29, 2022

## **Arizona's Voters' Right to Know Act to End Secret Spending in Arizona Elections**

Arizona's Voters' Right to Know Act, which was on the ballot as Proposition 211, was passed by Arizona voters on Election Day 2022. Proposition 211 revises state law to ensure that voters in Arizona have full knowledge of the original source of money used to pay for big campaign expenditures that seek to influence Arizona elections. These revisions promote First Amendment interests by providing the information necessary for the people to engage in true self-government and to hold their elected representatives accountable once in office. The law's new provisions are clearly constitutional.

Proposition 211 focuses on persons who make big campaign expenditures in Arizona elections — more than \$50,000 in statewide elections or more than \$25,000 for other elections. The original sources of large contributions used to pay for these big expenditures will no longer be kept secret. Instead, when persons make these big campaign expenditures, they must disclose the sources of “original monies” exceeding \$5,000 received in that election cycle, as well as any intermediaries who have passed along more than \$5,000 of these big contributions to the spenders. “Original monies” generally means the personal funds of individuals or the direct business income of organizations.

The initiative also establishes a notice and opt-out system, requiring each big campaign spender to notify their donors that the donations may be used for campaign media spending in Arizona and allowing the donors to opt out of having their donations spent for such political purposes. This provision enables donors to control whether their donations will be spent on campaign media and disclosed to the public in connection with such spending. However, if donors receive notice that their donations may be used for campaign media spending and do not opt out within

twenty-one days, their donations become “traceable monies” subject to Proposition 211’s disclosure and reporting requirements.

Proposition 211 will improve transparency in Arizona elections and put an end to secret campaign spending, sometimes called dark money. Wealthy special interests will no longer be able to hide behind shell corporations, super PACs, and other intermediaries to shield the original source of money spent to influence Arizona elections.

**I. Consistent with the First Amendment to the U.S. Constitution, the disclosure of dark money gives voters the information they need to engage in true self-government.**

Proposition 211 recognizes that voters have the right to certain information about the political messages they receive — including information about who pays for them. Knowing who is funding a campaign or influencing government decision-making helps voters determine who supports which positions and why. As the Supreme Court has repeatedly recognized in decades of decisions upholding campaign finance disclosure provisions:

[D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches.”<sup>1</sup>

Requiring disclosure of the sources of funding for election-related speech has been a feature of American campaign finance law for more than a century,<sup>2</sup> and Proposition 211 permanently protects the voters’ right to this information. The Supreme Court has consistently rejected challenges to electoral transparency laws, repeatedly emphasizing their constitutional validity.<sup>3</sup>

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<sup>1</sup> *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (per curiam) (internal quotation marks and footnote omitted). In *Buckley*, the Supreme Court articulated the constitutional standard for disclosure laws and upheld federal disclosure requirements, explaining that disclosure served three important purposes: “providing the electorate with information, deterring actual corruption and avoiding its appearance, and gathering data necessary to enforce more substantive electioneering restrictions.” *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (listing the “important state interests” identified in *Buckley*), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010). The first of these, the public’s informational interest, is “alone sufficient to justify” disclosure laws. *Citizens United*, 558 U.S. at 369.

<sup>2</sup> See Publicity of Political Contributions Act, Pub. L. No. 61-274, §§ 5-8, 36 Stat. 822, 822-24 (1910).

<sup>3</sup> See *Buckley*, 424 U.S. at 64-68 (upholding Federal Election Campaign Act disclosure requirements); *McConnell*, 540 U.S. at 194-99 (upholding McCain-Feingold Act’s federal disclosure requirements);

Specifically, effective disclosure helps prevent wealthy special interests from secretly “hiding behind dubious and misleading names” to disguise who they are and mask the source of their funding.<sup>4</sup> For example, as the Supreme Court has noted, some of these groups have acknowledged that it can be “much more effective to run an ad by the ‘Coalition to Make Our Voices Heard’ than it is to say paid for by ‘the men and women of the AFL-CIO.’”<sup>5</sup> But this sort of camouflage impairs democratic debate and decision-making. As the Court has explained, “[t]he right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”<sup>6</sup>

In fact, the Supreme Court has recognized that disclosure does not meaningfully inhibit First Amendment interests; rather, disclosure *advances* those interests.<sup>7</sup> One of the primary purposes of the First Amendment is to preserve “uninhibited, robust, and wide-open” public debate.<sup>8</sup> Disclosure equips voters with information about who is supporting the messages, candidates, and ballot measures in an election, enabling people to participate in the kind of public debate that is necessary for effective self-governance. This is why, time and again, the Supreme Court has upheld election-related financial disclosure regimes as constitutional,<sup>9</sup> noting that disclosure requirements “‘impose no ceiling on campaign-related activities’ and ‘do not prevent anyone from speaking.’”<sup>10</sup>

By ensuring voters have the information needed to hold elected officials accountable, disclosure also ensures that officeholders remain responsive to the public. As the Supreme Court has observed, “prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations

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*Citizens United*, 558 U.S. at 366-71 (same); see also *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 299-300 (1981) (expressing approval of disclosure in the ballot initiative context); *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 792 & n.32 (1978) (striking down corporate expenditure ban in part because disclosure sufficed to enable “the people . . . to evaluate the arguments to which they are being subjected”).

<sup>4</sup> *McConnell*, 540 U.S. at 197.

<sup>5</sup> *Id.* at 128 n.23 (citation omitted).

<sup>6</sup> *Citizens United*, 558 U.S. at 339.

<sup>7</sup> See *id.*

<sup>8</sup> *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

<sup>9</sup> See *Citizens United*, 558 U.S. at 366-71; *McConnell*, 540 U.S. at 194-99; *id.* at 321-22 (Kennedy, J., concurring in the judgment in part and dissenting in part). Because disclosure does not prevent speech, the Court has consistently applied a less demanding standard of scrutiny to disclosure laws than it has to other forms of campaign finance regulation. *Citizens United*, 558 U.S. at 366.

<sup>10</sup> *Id.* at 366 (citation omitted).

and elected officials accountable for their positions and supporters.”<sup>11</sup> Indeed, the Court has long recognized the importance of transparency in a variety of contexts, including ballot initiatives and lobbying.<sup>12</sup> Thus, the Court has broadly recognized that ensuring the accountability of public officials and enabling self-governance are core First Amendment interests, which are furthered by robust disclosure regimes.<sup>13</sup>

The Supreme Court’s recent decision in *Americans for Prosperity Foundation v. Bonta* does not undermine these well-established precedents. The law at issue there had nothing to do with election spending or disclosure of information to voters. Rather, the invalidated law broadly required all charitable organizations soliciting funds in California to report confidentially a list of their major donors to the state Attorney General.<sup>14</sup> While the Supreme Court clarified that all disclosure laws must be “narrowly tailored,” the Court distinguished and approvingly cited precedents *upholding* electoral disclosure requirements.<sup>15</sup> Lower courts have subsequently continued to uphold narrowly tailored electoral disclosure laws.<sup>16</sup> Indeed, as the U.S. Court of Appeals for the First Circuit recently noted in upholding an electoral disclosure law, “a well-informed electorate is as vital to the survival of a democracy as air is to the survival of human life ... .”<sup>17</sup>

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<sup>11</sup> *Id.* at 370; *see also Buckley*, 424 U.S. at 67 (“A public armed with information about a candidate’s most generous supporters is better able to detect any post-election special favors that may be given in return.”).

<sup>12</sup> *See, e.g., Bellotti*, 435 U.S. at 792 n.32 (ballot initiative); *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 203 (1999) (“Through the disclosure requirements . . . voters are informed of the source and amount of money spent . . . [and] will be told ‘who has proposed [a measure],’ and ‘who has provided funds for its circulation.’” (second alteration in original)); *Citizens Against Rent Control*, 454 U.S. at 299 (“The integrity of the political system will be adequately protected if [ballot measure] contributors are identified . . . .”); *United States v. Harriss*, 347 U.S. 612, 625 (1954) (upholding federal lobbying disclosure statute).

<sup>13</sup> *See Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 308 (2012) (“Our cases have often noted the close connection between our Nation’s commitment to self-government and the rights protected by the First Amendment.”); *see also Chula Vista Citizens for Jobs & Fair Competition v. Norris*, 782 F.3d 520, 533 (9th Cir. 2015) (en banc) (“[T]he initiative system is, at its core, a mechanism to ensure that the people, rather than corporations or special interests, maintain control of their government.”).

<sup>14</sup> *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2389 (2021).

<sup>15</sup> *Id.* at 2383-85 (citing *Buckley*, 424 U.S. at 64-68; *Citizens United*, 558 U.S. at 366-367; *Davis v. FEC*, 554 U.S. 724, 744 (2008); *Doe v. Reed*, 561 U.S. 186, 198-99, 201 (2010)).

<sup>16</sup> *See Gaspee Project v. Mederos*, 13 F.4th 79, 86-89 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 2647 (2022); *see also Smith v. Helzer*, No. 3:22-CV-00077-SLG, 2022 WL 2757421, at \*4 (D. Alaska July 14, 2022); *San Franciscans Supporting Prop B v. Chiu*, No. 22-CV-02785-CRB, 2022 WL 1786573, at \*4 (N.D. Cal. June 1, 2022).

<sup>17</sup> *Gaspee Project*, 13 F.4th at 95-96.

Finally, the Supreme Court has long recognized that laws cannot constitutionally discriminate against the poor.<sup>18</sup> This principle is especially critical in the context of elections and voting rights.<sup>19</sup> Political power and influence should not be allocated based on wealth, and while *Citizens United* protects wealthy interests' right to spend unlimited amounts to influence elections, disclosure laws protect the countervailing right of the electorate to assess the credibility and merits of the messages paid for by that spending.<sup>20</sup>

In sum, as the finding in Section 2(A) of Proposition 211 notes, the “People of Arizona have the right to know the original source of all major contributions used to pay, in whole or in part, for campaign media spending” through “prompt, accessible, comprehensible and public disclosure of all donors who give more than \$5,000 to fund campaign media spending in an election cycle and the source of those monies.” This right is “guaranteed by the First Amendment of the United States Constitution and also protected by the Arizona constitution, to promote self-government and ensure responsive officeholders, to prevent corruption and to assist Arizona voters in making informed election decisions by securing their right to know the source of monies used to influence Arizona elections.”

## **II. Proposition 211’s transparency requirements are consistent with longstanding legislative measures designed to prevent the evasion of disclosure laws and court rulings upholding those measures.**

Laws that shine light on the money behind election ads have always sought to inform the public of the original source of funding for electioneering campaigns. But as the Supreme Court has noted, “[d]espite years of enforcement of the [campaign finance laws], substantial evidence demonstrates how candidates, donors, and parties test the limits of the current law. . . .”<sup>21</sup>

Here, the temptation to “test the limits” has been greatly exacerbated since the Supreme Court’s decision in *Citizens United*. That decision not only opened the door to unlimited corporate independent expenditures, but also led to the creation of “super PACs” — i.e., political committees that can receive unlimited contributions,

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<sup>18</sup> See, e.g., *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) (finding unconstitutional a state statute requiring payment of court fees in order to appeal termination of one’s parental rights); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (finding unconstitutional a state law restricting the right to divorce based on the ability to pay court fees and costs).

<sup>19</sup> See, e.g., *Bullock v. Carter*, 405 U.S. 134, 144 (1972) (striking down a filing fee requirement as a condition for a candidate to have his name placed on the ballot, and explaining, “we would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status”); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (striking down a state statute requiring payment of a poll tax as a voter qualification).

<sup>20</sup> See *Citizens United*, 558 U.S. at 365-69.

<sup>21</sup> *FEC v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 457 (2001).

including unlimited contributions from corporations, as long as they make no direct contributions to, and do not coordinate with, candidates or political parties.<sup>22</sup>

In other words, before the Supreme Court's decision in *Citizens United* and the D.C. Circuit Court of Appeals' decision in *SpeechNow.org v. FEC*, federal law limited contributions to political committees, including those that only make independent expenditures, to \$5,000 per year, and prohibited all corporations from making independent expenditures from general treasury funds. But after those court decisions, corporations have increasingly provided an attractive vehicle to direct unlimited funds to such groups, while concealing the true sources of such funds. Indeed, during the 2020 election cycle, dark money groups reported spending more than \$1 billion on campaign-related activities, but revealed little about their donors.<sup>23</sup> Thus, contrary to the assumption in *Citizens United* that "prompt disclosure of expenditures [would] provide shareholders and citizens with the information needed to hold corporations and elected officials accountable,"<sup>24</sup> huge amounts of campaign spending come with no such information.

Notwithstanding the enormous secret spending since *Citizens United*, campaign finance laws have long recognized the potential to evade proper transparency, and the courts have upheld legislation designed to minimize that evasion.<sup>25</sup> For example, the Federal Election Campaign Act (FECA) bars giving a contribution in the name of another person.<sup>26</sup> This restriction not only helps prevent evasion of the contribution limits, but also helps ensure that persons do not hide their contributions by using someone else as an intermediary or front group. The Third Circuit has explained why this restriction is constitutional:

*Buckley* carefully considered the danger posed by compelled disclosure. It held that the state interests promoted by the FECA's reporting and disclosure requirements justified the indirect burden imposed on First Amendment interests, and that the compelled disclosure requirements were constitutional in the absence of a

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<sup>22</sup> The D.C. Circuit's decision in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc) directly gave rise to super PACs by striking down the contribution limits applicable to political committees that make only independent expenditures.

<sup>23</sup> OpenSecrets, *'Dark money' topped \$1 billion in 2020, largely boosting Democrats* (March 17, 2021), available at <https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/>.

<sup>24</sup> 558 U.S. at 370.

<sup>25</sup> Indeed, despite striking down the limits on corporate independent expenditures, *Citizens United* extolled the virtues of disclosure in promoting First Amendment interests: "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." 558 U.S. at 371.

<sup>26</sup> 52 U.S.C. § 30122.

“reasonable probability” that disclosures would subject their contributors to “threats, harassment, or reprisals.” [424 U.S.] at 74. *Proscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core of the Court’s analysis. In light of Buckley, we reject [plaintiffs’] argument that [52 U.S.C. § 30122] fails to advance a compelling state interest.*<sup>27</sup>

Similarly, FECA contains an anti-earmarking provision, 52 U.S.C. § 30116(a)(8), which states that a contribution made “directly or indirectly” and “earmarked or otherwise directed through an intermediary” must be treated the same as a direct contribution; moreover, the intermediary must report the “original source” to both the Federal Election Commission and the “intended recipient.” Unfortunately, as the Supreme Court has recognized, this earmarking provision can be easily evaded; thus, the Court has explicitly recognized the provision’s limited effectiveness and held that this kind of measure is not the constitutional limit of legislative power:

[T]he earmarking provision . . . would reach only the most clumsy attempts to pass contributions through to candidates. To treat the earmarking provision as the outer limit of acceptable tailoring would disarm any serious effort to limit the corrosive effects of . . . “‘understandings’ regarding what donors give what amounts to the party, which candidates are to receive what funds from the party, and what interests particular donors are seeking to promote.”<sup>28</sup>

Viewed in the broader context of disclosure provisions and measures to prevent their evasion, Proposition 211 sits at the core, not the “outer limit,” of what legislatures can do to ensure that the original sources of campaign expenditures are made transparent to the people. The initiative’s focus is both simple and narrowly tailored: it requires disclosure of the original source of large campaign contributions used in “campaign media spending”<sup>29</sup> supporting or opposing candidates for office or ballot initiatives in Arizona.

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<sup>27</sup> *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (en banc) (emphasis added).

<sup>28</sup> *Colorado Republican*, 533 U.S. at 462 (citation omitted); see also 52 U.S.C. § 30104(i)(3) (Under federal law, certain kinds of “bundled” contributions — i.e., contributions collected and forwarded by lobbyist intermediaries to candidates or political parties — must be disclosed in reports to the Federal Election Commission.)

<sup>29</sup> “Campaign media spending” in Proposition 211 covers the full range of election-influencing spending, including but not limited to public communications that expressly advocate for or against the nomination or election of a candidate; public communications that promote, support, attack, or oppose a candidate within the six months preceding an election involving that candidate; public communications that promote, support, attack, or oppose the qualification or approval of an

Proposition 211 requires any person<sup>30</sup> who spends more than \$50,000 on statewide elections or more than \$25,000 on other elections in Arizona on campaign media spending in an election cycle (a “covered person”) to keep track of the large donations it receives and disclose where this money came from.<sup>31</sup> After reaching the initial threshold and filing an initial disclosure report, covered persons must file subsequent disclosure reports for every additional \$25,000 spent for statewide elections or \$15,000 spent for other elections on campaign media spending.<sup>32</sup>

These disclosures include the identity of each person who contributed more than \$5,000, directly or indirectly, of “original monies” – the personal funds of individuals or the direct business income of organizations – to the covered person during the election cycle, along with the dates and amounts contributed.<sup>33</sup> Covered persons must also identify any intermediaries who previously transferred more than \$5,000 of the contributions received. Proposition 211 will thus inform the public whenever a series of big money transfers is used to hide the original sources of big special interest spending on electioneering.<sup>34</sup>

Proposition 211 places no obligation on big election spenders who finance election ads in their own names without attempting to hide behind other persons, corporations, or front groups. Individuals who pay for campaign media spending with only their own personal money, as well as businesses that spend only their own business income, will not be required to file *any* reports under the initiative.<sup>35</sup>

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initiative or referendum; public communications referring to a candidate in the candidate’s electoral district in the period beginning ninety days before a primary through the general election; activities or public communications supporting the election or defeat of candidates of an identified political party, including partisan voter registration or “get out the vote” activity; and research, design, production, polling, data analytics, mailing, or social media list acquisition in preparation for or in conjunction with any other campaign media spending activities. *See* Section 16-971(2).

<sup>30</sup> “Person” includes both natural persons and entities such as corporations, limited liability companies, labor organizations, partnerships, or associations. *See* Section 16-971(13).

<sup>31</sup> *See* Sections 16-971(7), 16-973(A).

<sup>32</sup> *See* Section 16-973(B).

<sup>33</sup> *See* Section 16-973(A)(6). In-kind contributions used to enable campaign media spending by covered persons, and the funds used to pay for those contributions, are also “traceable monies” and subject to the reporting requirements of Proposition 211. *See* Sections 16-971(18), 16-973. In that case, persons providing the in-kind contribution — i.e., making a direct payment for or contributing goods or services for campaign media spending — are choosing to spend their money directly on campaign media in coordination with a covered person.

<sup>34</sup> *See* Sections 16-972(D) and (E), 16-173(E). More generally, Proposition 211 prohibits “structured transactions,” i.e., any attempt to structure any “solicitation, contribution, donation, expenditure, disbursement, or other transaction” in order to evade the requirements of the initiative. *See* Section 16-975.

<sup>35</sup> *See* Section 16-971(7)(b).

Additionally, PACs and political parties that receive no more than \$20,000 from any one person in an election cycle, as well as candidate committees, will not be “covered persons” required to report any additional information.<sup>36</sup> In other words, political committees that comply with reasonable contribution limits, rather than accepting and spending unlimited funds from wealthy special interests, will have no additional reporting obligations.

For PACs and political parties that are covered persons, Proposition 211 allows them to comply with the new disclosure requirements by including that information in the periodic campaign reports already required by law.<sup>37</sup> If one of these groups makes major expenditures in the twenty days before an election, however, the initiative requires additional reports within three days to ensure voters are not left in the dark before the election about the sources of this last-minute spending.<sup>38</sup> Proposition 211 thus imposes minimal additional reporting requirements for these entities while still enabling voters to obtain key information.

To facilitate the disclosure of original sources of election spending, while empowering donors who may not want their money spent on election campaigns, Proposition 211 establishes a notice and opt-out system. Under this system, a covered person must provide notice to donors that their money may be spent on campaign media in Arizona before spending donors’ money on such activities. A covered person also must notify donors that certain donor information may be reported to the government, and the covered person must give donors twenty-one days to opt out of having their money spent on campaign media in Arizona.<sup>39</sup> A covered person can choose whether to provide this notice when first soliciting donations or after a donation has been received, but the donation cannot be used for campaign media spending until the date of receipt of the donor’s written consent (which can be provided at any time) or twenty-one days after the notice has been provided, whichever is earlier.<sup>40</sup> Donors who opt out will not be reported in a covered person’s disclosure reports or named in an advertisement’s disclaimer.<sup>41</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> See Section 16-973(I). PACs and political parties are currently required by statute to submit detailed public reports on a quarterly basis, with an additional preelection report due ten days prior to election day. See A.R.S. § 16-927(A). Reports must include all receipts and disbursements made during the reporting period, including itemized reports of all contributions from in-state individuals exceeding \$100 in aggregate for the election cycle, all out of state contributions, and all contributions from candidate committees, PACs, political parties, partnerships, corporations, and LLCs, along with an itemized list of all disbursements in excess of \$250. See A.R.S. § 16-926(B).

<sup>38</sup> See Section 16-973(J).

<sup>39</sup> See Sections 16-972(B), (C), and (D).

<sup>40</sup> *Id.*

<sup>41</sup> Covered persons may accept funds from donors who have opted out, but such funds cannot be used for campaign media spending.

To ensure that covered persons have the information necessary to complete their disclosure reports, Proposition 211 requires donors who give more than \$5,000 in traceable monies to a covered person to identify to the covered person, upon request, both the sources of original money of more than \$2,500 constituting the contribution and any intermediaries that previously transferred more than \$2,500 of the contribution.<sup>42</sup> The covered person may rely on this information to make the required reports, unless the covered person has reason to know the information is false or unreliable.<sup>43</sup> Donors do not have to provide the original sources of all the funds in their possession, but instead need only inform the covered person of the original sources of the specific funds being contributed. These provisions make Proposition 211 especially narrowly tailored because donors will always be in a better position than the covered person to know the original source of the funds being contributed and because donors need not disclose anything about their own contributors whose money is not being donated to the covered person.

On the rare occasions when donors or their families would be subject to a serious risk of physical harm if their identity were publicly disclosed, Proposition 211 provides a procedure for their protection.<sup>44</sup> Consistent with existing constitutional protections,<sup>45</sup> donors who meet this condition may petition the Citizens Clean Election Commission to remain anonymous. The appropriately high “serious risk of physical harm” standard ensures that those who would face actual danger for their support of particular campaigns may be protected, while safeguarding the public’s right to information necessary to protect their First Amendment right to self-government through the disclosure reports.

Finally, Proposition 211 empowers the non-partisan Arizona Citizens Clean Elections Commission and the people of Arizona to effectuate these important transparency requirements. The initiative empowers the Commission to implement

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<sup>42</sup> See Sections 16-972(D) and (E), 16-173(E).

<sup>43</sup> See Section 16-173(D).

<sup>44</sup> See Section 16-173(F).

<sup>45</sup> See *McConnell*, 540 U.S. at 197–99 (“Buckley rejected the contention that FECA’s disclosure requirements could not constitutionally be applied to minor parties and independent candidates because the Government’s interest in obtaining information from such parties was minimal and the danger of infringing their rights substantial. In *Buckley* . . . we found no evidence that any party had been exposed to economic reprisals or physical threats as a result of the compelled disclosures”) discussing *Buckley*, 424 U.S. at 74. See also, *Citizens United*, 558 U.S. at 370 (Requirements to disclose the identity of a group’s donors could be “unconstitutional as applied to an organization if there were a reasonable probability that the group’s members would face threats, harassment, or reprisals if their names were disclosed. . . *Citizens United*, however, has offered no evidence that its members may face similar threats or reprisals. To the contrary, *Citizens United* has been disclosing its donors for years and has identified no instance of harassment or retaliation”) (internal citations omitted).

and enforce its provisions, including the authority to adopt rules, conduct fact-finding hearings and investigations, initiate enforcement actions, and impose civil penalties or seek relief in court, among other powers.<sup>46</sup> In particular, the Commission must adopt rules for on-ad disclaimers for political ads run by covered persons, including that such disclaimers must generally identify the top three sources of original monies to the covered person.<sup>47</sup> The initiative also provides a complaint process, in which any qualified Arizona voter may file a verified complaint with the Commission against a person who fails to comply with the Voters' Right to Know Act or related regulations.<sup>48</sup> If the Commission fails to take substantive enforcement action within ninety days or dismisses the complaint, the complainant also has the ability to bring a civil action against the Commission in Arizona courts.<sup>49</sup> This system is similar to FECA's citizen suit provisions, ensuring ongoing public oversight of enforcement measures under the initiative.<sup>50</sup>

In sum, Proposition 211 follows a long, constitutional tradition of ensuring disclosure to the public of critical election information. The initiative responds directly and appropriately to court rulings that have opened the door to new kinds of election spending and new opportunities to evade longstanding disclosure requirements, and it is narrowly tailored to end secret spending in Arizona elections. The initiative fits comfortably within the kinds of pro-transparency measures that the Supreme Court has consistently upheld.

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<sup>46</sup> See Section 16-974.

<sup>47</sup> See Section 16-974(C).

<sup>48</sup> See Section 16-977(A).

<sup>49</sup> See Section 16-977(C).

<sup>50</sup> See 52 U.S.C. § 30109(a)(8).

# THE VOTERS' RIGHT TO KNOW ACT - FREQUENTLY ASKED QUESTIONS

## WHY DO WE NEED THE VOTERS' RIGHT TO KNOW ACT?

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- To ensure that our democracy lives up to the promise of self-government, voters must have the information they need to evaluate candidates for public office and to keep them accountable once they're elected. In fact, the Founders gave us the First Amendment to ensure that "we the people" have the information we need to engage in robust debate when choosing who will represent us, and in holding their feet to the fire once they're in office.
- But when wealthy special interests outspend everyone else to elect the candidates of their choice and hide what they're doing behind shell corporations and innocent-sounding organizations, the promise of the First Amendment is gone. Unfortunately, ever since the Supreme Court opened the door in *Citizens United* to unlimited corporate campaign spending, the use of secret spending or "dark money" to pay for campaign ads has increased dramatically — with less and less critical information flowing to ordinary voters.
- Under existing law, when people or corporations honestly buy campaign ads, they must put their own name on their ads. But when wealthy special interests play games and transfer their money to other entities that in turn buy the ads, they can usually avoid disclosing what they're up to.

- This initiative would put an end to this kind of deception, restore balance to the system, and give the people the information they need to make informed choices. This is a disclosure law. It creates transparency; it doesn't pick winners and losers or limit what people can spend.

## **WHAT DOES THE VOTERS' RIGHT TO KNOW ACT DO?**

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- The law would reveal the true source of the big money behind election ads, for both candidate elections and ballot measures. It does this by requiring anyone who spends more than \$50,000 in statewide campaigns (or \$25,000 on other campaigns) on media advertising and related spending to keep track of the large donations it receives and disclose where this money came from — including information about persons who act as conduits between the original source of the money and the spender.
- The focus of The Voters' Right to Know Act is on big money that is trying to hide where it's coming from. If people or businesses just want to spend their own money on election ads, this initiative would neither limit their spending nor make them file any reports.
- But, if big money is passed on from one organization to another before it is spent, the law will trace these transfers back to their original source.
- The law doesn't limit anyone's spending, but it would protect donors who don't want their money spent on election ads from having it spent against their wishes.

## **WHAT EXTRA INFORMATION WOULD THE LAW PROVIDE THE PUBLIC?**

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- Major election spenders will be required to share more detailed information about how big money has been transferred to the spender and where that money originally

came from. This information will be reported to the government for disclosure to the public, showing every link in the chain from the original source of the money to the spender who buys the ad.

- When an ad is run by a major election spender, often an outside group or a “super PAC,” it will state the three largest contributors of original money to the spender.

## WHAT IS THE BASIC STRUCTURE OF THE VOTERS’ RIGHT TO KNOW ACT?

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- Any person or group who spends more than \$50,000 in an election cycle on “campaign media spending” (CMS) in statewide campaigns, or \$25,000 or more for non-statewide campaigns, is a “covered person” subject to certain recordkeeping and reporting requirements. (When covered persons accept in-kind contributions for CMS, the contributions are treated as if the covered persons spent the money themselves.)
- A covered person must create and maintain “transfer records” to keep track of the original source of the money received and how it was transferred to the covered person. A separate bank account is *not* required, but the transfer records must keep track of how big donations are passed along to the spender.
- The goal is to trace election spending back to its original source. So, there’s an important exception to the general rule: Individuals who spend only their own personal monies, and organizations that spend only their own business income, do not need to maintain any transfer records because they’re not acting as a conduit for other spenders.
- Campaign media spending encompasses a broad range of independent spending designed to influence Arizona voters at the ballot box. It includes ads and communications to the public that: expressly advocate for or against the nomination or election of a candidate; promote or oppose a candidate within the six months preceding an election involving that candidate; promote or oppose the qualification or approval of an initiative or referendum; and promote or oppose the election or defeat of candidates of a particular political party,

as well as partisan voter registration or “get out the vote” activity.

- Once a covered person has received contributions from others and spends \$50,000 on CMS in statewide campaigns, or \$25,000 in other races, it must file a report for disclosure to the public and must file similar reports each time it spends another \$25,000 in statewide campaigns, or \$15,000 in non-statewide campaigns. The reports must reveal, among other things, donors who gave more than \$5,000 for election purposes, and people who receive more than \$10,000 from the covered person.
- Monies to be spent on campaign media spending are known as “traceable monies.” Donations can be so designated if they were received in response to a solicitation that provided certain notice to potential donors — i.e., notice that their money might be spent on election ads in Arizona. Covered persons can also notify donors after the donation was received but must either receive a response allowing the donation to be used for CMS or wait twenty-one days after the notice is sent, whichever is sooner, before the donation may be used for CMS. Donors can opt out of having their donations spent on CMS.
- The focus of the initiative is on bringing transparency to money that is transferred from one group or person to another before it is spent on election ads. So, whenever someone donates \$5,000 or more to a covered person, that major donor must disclose to the recipient the sources of original monies for each person who gave more than \$2,500 of the money being donated. And if that money was passed on through intermediaries, the major donor must identify those persons too.

## **WHAT KIND OF NOTICE DOES A SPENDER NEED TO GIVE ITS DONORS IF IT WANTS TO USE THE MONEY IT RECEIVES FOR CAMPAIGN ADS?**

- When a spender raises money to be spent on campaign media spending, it needs to notify its potential donors of three

things:

- that the donations it receives may be used for campaign media spending in Arizona;
- that information about donors may have to be reported to the Secretary of State for disclosure to the public; and
- that donors have the right to opt out of having their money used for campaign media spending in Arizona.

## **WHAT IF A SPENDER RAISES MONEY WITHOUT HAVING INCLUDED THE REQUIRED NOTICE TO ITS DONORS, BUT THEN LATER DECIDES IT WANTS TO RUN ELECTION ADS WITH THAT MONEY?**

- If the notice described above (see question 5) was not provided when the spender initially raised the money, the spender can still use that money for campaign media spending by doing the following:
  - Provide the relevant donors the notice they had not previously received in writing, and also inform the donors that they can opt out of having their used for campaign media spending.
  - The donors then have twenty-one days to inform the spender in writing that they do not want their donations used for campaign spending. If the donors do not opt out, then the spender is free to designate the donations it had previously received as traceable monies and use them for campaign media spending. Donors can provide permission in writing at any time, regardless of the twenty-one day timeline.

## **WHAT DOES A BUSINESS HAVE TO DO IF IT WANTS TO USE ITS PROFITS TO GIVE TO A GROUP THAT MAKES SOME CAMPAIGN EXPENDITURES?**

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- If a business wants to donate its own profits to a covered person (often a super PAC or an organization, such as a corporation organized under section 501(c)(4) of the Internal Revenue Code) to help pay for election ads, it does not need to create or maintain transfer records, or to file any reports with the government. The covered person's reports to the government, however, may include information about the business's contribution, and such spenders may also include the business as a top three donor on their disclaimers, depending upon the size of the contribution it has made.

## **IF AN INDIVIDUAL WANTS TO GIVE \$100,000 OF HIS OR HER OWN MONEY TO A COVERED PERSON, WILL THAT INDIVIDUAL HAVE TO CREATE TRANSFER RECORDS AND FILE REPORTS?**

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- If an individual uses his or her own personal monies (e.g., income from salary or investments) when making the contribution, then that person will be treated the same way as a corporation that uses only its own business income to make contributions. (See previous Q & A.) In other words, that person need not file any reports or create transfer records.

# HOW DO THE VOTERS' RIGHT TO KNOW ACT'S TRACING REQUIREMENTS ACTUALLY WORK?

- Here's an example: Americans for Security, a section 501(c)(4) organization, receives \$1 million in traceable monies, and \$50,000 in non-traceable monies. When it solicits this money, it notifies potential donors that their donations may be used for campaign media spending unless they opt out. The monies come from the following sources:

Direct donors to Americans for Security	Donation amount	Type of donor	Source of donors' funds
Moms for America	\$300,000	501(c)(4) corporation	Susan Martinez contributed 70% of Moms for America's monies.
Draylock	\$200,000	LLC	Crainlock, an LLC, contributed 90% of Draylock's monies. William Blalock, an individual, gave Crainlock 80% of its monies. (Blalock used personal monies.)
Dads for America	\$170,000	501(c)(4) corporation	All of its donors, except one, each gave less than \$2,500. One of its donors, Joan Verdini, gave \$30,000.
Acme, Inc.	\$130,000	For-profit corporation	Contribution came from Acme's business profits
Our Best Days Ahead	\$100,000	Numerous individuals	Monies of donors who each gave less than \$5,000 each
Maeve Murphy	\$25,000	Foreign national (Ireland)	Personal monies
Louis Garland	\$25,000	American citizen	He opted out of his donation being used for campaign spending.
<b>Total contributions designated for campaign spending</b>	<b>\$1,000,000</b>		(excludes donations from foreign national and opt-out individual)

- Acme is donating its own business income, so it does not need to maintain transfer records or file any reports with the government. It merely has to tell Americans for Security that the source of its donation is its own business income.

- Similarly, the individual donors (whose collective giving totaled \$100,000) each gave less than \$5,000, so they don't need to provide Americans for Security with any information about the source of their donations.
- The money from Moms for America, Draylock, Dads for America, and Our Best Days Ahead all came from other original sources, and these entities are all major donors, i.e., have given over \$5,000 each. These entities don't need to file any reports with the government, but they all need to tell Americans for Security the original sources of their contributions, and any intermediaries who transferred the money before it got to them.
- The contribution from Maeve Murphy cannot be designated as traceable monies because she is a foreign national and is therefore prohibited under federal law from making a donation in connection with a federal, state, or local election.
- The contribution from Louis Garland cannot be designated as traceable monies because he opted out of having his money used for campaign media spending. As a result, Louis Garland's donation will not be used for campaign media spending in Arizona, and he accordingly will not be identified in Americans for Security's reports required by The Voters' Right to Know Act.

## **BESIDES THE TRACING REQUIREMENTS, WHAT KIND OF GENERAL REPORTING IS REQUIRED?**

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- After Americans for Security first spends \$50,000 on campaign media spending about a statewide campaign (or \$25,000 about another campaign) in Arizona during this election cycle, it must file a disclosure report within five days that states the following:
  - General information about who controls Americans for Security's traceable monies and transfer records, and the total amount of its traceable monies.
  - The total amount of traceable monies owned or controlled by Americans for Security on the date the report is made.

- Each donor of original monies who contributed, directly or indirectly, more than \$5,000 in traceable monies, along with the date and amount of their contributions during the election cycle.
- The identity of each person who acted as an intermediary by passing on original monies of more than \$5,000 and the dates and amounts transferred.
- Each person who received \$10,000 or more from Americans for Security during the election cycle and the purpose of the disbursement, including each candidate or ballot proposition that was supported, opposed, or referenced.
- The identity of any person whose total contribution of traceable monies made up more than half of the traceable monies possessed by Americans for Security at the start of the election cycle.
- Once Americans for Security has filed its initial report, it must file subsequent reports with similar information within three days after each time it disburses another \$25,000 or more on campaign media spending in statewide campaigns, or \$15,000 or more in non-statewide campaigns.

## **HOW ARE PACS AND POLITICAL PARTIES TREATED UNDER THE VOTERS' RIGHT TO KNOW ACT?**

- If a PAC or political party does not receive more than \$20,000 from any one person during an election cycle, then it is not considered a “covered person” and will have no additional reporting requirements under The Voters’ Right to Know Act. If these entities do not abide by this limit, then they will be covered persons who must create transfer records and report the original sources of their large contributions.
- However, because PACs and political parties are already subject to regular reporting requirements under Arizona law, The Voters’ Right to Know Act allows them to include the additional disclosure information in the regular reports they already routinely file. But if a PAC or political party spends monies or accepts in-kind contributions within 20 days of an

election that would otherwise require a report under The Voters' Right to Know Act, it must file that report within three days.

## **WHAT IF PEOPLE TRY TO FIND WAYS AROUND THESE NEW DISCLOSURE RULES?**

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- The Voters' Right to Know Act includes a catch-all provision prohibiting “structured transactions” — similar to what currently exists in some of our banking laws. The initiative will make it unlawful to try to evade the initiative's reporting requirements by structuring, or attempting to structure, any solicitation, contribution, expenditure, disbursement, or other transaction to avoid the initiative's requirements.

## **CAN A BIG DONOR HIDE ITS ROLE BY SPREADING ITS MONEY AROUND THROUGH NUMEROUS INTERMEDIARIES?**

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- No. Any deliberate attempt to structure transactions to avoid the disclosure rules would itself be a violation under the catch-all provision described above.
- In any event, the disclosure rules are designed to prevent that kind of evasion. Here is an example:
  - Suppose that Sprite Industries creates ten limited liability corporations and gives them each \$100,000 from its corporate profits. In turn, these LLCs pass on the money to three different 501(c)(4) organizations, who then pass on the money to Freedom Bounty, another 501(c)(4) organization. Freedom Bounty then buys election ads with the \$1,000,000 that came indirectly from Sprite Industries. Under the disclosure rules, the three intermediary 501(c)(4) organizations will be major donors to Freedom Bounty, and they will therefore have to reveal that the monies they

are passing on came from Sprite Industries via the ten LLCs. In turn, Freedom Bounty will have to report Sprite Industries as the original source of the \$1,000,000 as well as the intermediaries who passed along the monies. Assuming that \$1,000,000 makes Sprite Industries one of Freedom Bounty's top three donors, it will be included on Freedom Bounty's disclaimers when it runs election ads.

## **WHERE DID THE “PROMOTES, SUPPORTS, ATTACKS, OR OPPOSES” STANDARD COME FROM? IS IT CONSTITUTIONALLY DEFENSIBLE?**

- Congress included this standard in the Bipartisan Campaign Reform Act of 2002 (BCRA, also known as the “McCain-Feingold” amendments to the Federal Election Campaign Act) as one type of “Federal election activity” subject to the ban on “soft money” applicable to the electioneering activities of political parties at all levels of government. The Supreme Court upheld this standard as having a plain meaning that can be reasonably applied and understood, and similar standards in state laws have been upheld by federal courts across the country, including the 9th Circuit in *Yamada v. Snipes* in 2015. [1] The adoption of this standard will ensure that political spenders cannot avoid disclosure simply by refraining from using particular “magic words” or their equivalent in their political advertisements.

## **WHY ARE MEMBERSHIP AND UNION DUES CAPPED AT \$5,000 ANNUALLY IN ORDER TO BE TREATED AS A TYPE OF BUSINESS INCOME RATHER THAN EITHER (A)**

## **EXCLUDED ENTIRELY FROM THAT DEFINITION OR (B) INCLUDED WITHIN IT REGARDLESS OF THEIR SIZE?**

- The tracing back of monies to businesses or individuals who paid legitimate membership dues does not provide voters the most useful information in identifying the source of the message being funded. In those instances, identifying the membership organization or union as the true source of the monies will provide the most useful information to voters. But allowing organizations to count very high amounts of money received as membership dues without any cap invites evasion of the trace-back disclosure system: Without a cap, dark money groups or membership organizations catering to wealthy special interests could try to relabel the large contributions they receive from wealthy special interests as “membership dues” and continue their political operations without disclosing the true source of their funding. The \$5,000 cap is therefore necessary to prevent evasion of disclosure requirements.

## **WHY DOES THE VOTERS’ RIGHT TO KNOW ACT SPECIFICALLY COVER IN-KIND CONTRIBUTIONS THAT ENABLE CAMPAIGN MEDIA SPENDING?**

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- The goal of this initiative is to ensure the original sources of big money spent to influence elections are disclosed, regardless of the schemes used to try to evade disclosure. Requiring the disclosure of the original sources of monies used to provide in-kind contributions that enable campaign media spending addresses one potential evasion tactic.
  - Let’s say an environmentalist billionaire pays \$1 million to a consulting firm to support environment-friendly laws and candidates. While some of that money will be paid to the consulting firm as fees for its services, the remainder will be used by the consulting firm to support the billionaire’s

goals. So if the consulting firm spends \$100,000 of that money on a clean air ballot measure of interest to the billionaire, that original source should be disclosed. But the firm might try to evade the transparency requirement by contributing the money to the political committee supporting the measure rather than independently purchasing ads supporting the ballot measure. As part of this scheme, the consulting firm would coordinate with the political committee to create the ads in favor of the ballot measure and would then directly pay the bills for \$100,000 of the production and broadcasting costs incurred by the political committee for the ads.

- In this scenario, the political committee running the ads is the “covered person” that will need to file reports identifying the original sources and intermediaries of monies received. But because the consulting firm did not transfer any *money* to the political committee, the political committee may contend that the in-kind contributions from the consulting firm are not “monies” given to the political committee and, therefore, not “traceable monies” for which the original sources must be identified. By specifying that “in-kind contributions that enable campaign media spending” are “traceable monies” and that the monies used to pay for such in-kind contributions are subject to the same original source reporting requirements as money transferred to a covered person, the initiative ensures the political committee in this example will be required to report the billionaire as the original source of the \$100,000 spent on the ballot measure. To enable this reporting, the consulting firm will be required to inform the political committee that the billionaire is the donor of the original monies.
- Note that, for the purposes of the notice and opt-out provisions, the initiative treats these in-kind contributions somewhat differently from monetary contributions. Because anyone who makes an in-kind contribution to enable campaign media spending knows exactly how the money will be used, the covered person who accepts the in-kind contribution does not have to put the donor on notice of how the money will be spent, and the donor can’t opt out of having the contribution traced back and reported. Also, the donor making the in-kind contribution must inform the covered person of the original sources of monies used to make the contribution at the time the in-kind contribution is made.

# HOW DOES THE VOTERS' RIGHT TO KNOW ACT INTERACT WITH THE CITIZENS CLEAN ELECTIONS COMMISSION AND LOCAL GOVERNMENTS?

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- While campaign media spending reports are submitted to the Arizona Secretary of State, the non-partisan Citizens Clean Elections Commission will be responsible for implementing and enforcing The Voters' Right to Know Act. This includes the authority to adopt administrative rules, conduct fact-finding hearings and investigations, initiate enforcement actions, and impose civil penalties or seek relief in court, among other powers.
- **The Voters' Right to Know Act** also directs the Commission to develop and adopt rules for on-ad disclaimers for political ads run by covered persons. These disclaimers must identify the top three sources of original monies in the covered person's traceable monies, so that Arizona voters can understand who is funding efforts to influence their ballots.
- **The Voters' Right to Know Act** creates a complaint process where any Arizona voter can file a verified complaint with the Commission against a person who fails to comply with the Voters' Right to Know Act or related regulations. If the Commission fails to take substantive enforcement action within ninety days or dismisses the complaint, the complaining voter has the ability to bring a civil action against the Commission in Arizona courts.



**STATE OF ARIZONA**  
**CITIZENS CLEAN ELECTIONS COMMISSION**

In the Matter of:

Freedom's Future Fund, Respondent

MUR No. 22-01

**CONCILIATION AGREEMENT**

Pursuant to A.R.S. § 16-957(A), the Citizens Clean Elections Commission (the "Commission"), Freedom's Future Fund ("Respondent"), a Delaware Company, enter this Conciliation Agreement (the "Conciliation Agreement") in the manner described below:

- A. Freedom's Future Fund did not file certain reports required by Arizona law arising from spending on behalf of a candidate for the Republican nomination for the office of governor.
- B. A.R.S. § 16-941(D) states that "any person who makes independent expenditures related to a particular office" in excess of certain amounts must report such expenditures. A.R.S. §§ 16-905 & -926 require that certain entities file regular reports of spending on candidate elections. A.R.S. § 16-956(A)(7) provides that the Commission has authority to enforce the Act and Rules, including monitoring reports filed pursuant to Chapter 6 of Title 16 and the assessment of penalties that apply due to failure to file reports required by Chapter 6 of Title 16.
- C. The Commission received a Complaint regarding Respondent's failure to file reports required by law. Respondent filed a response. Additional correspondence between the Commission staff and the Respondent took place.

1 D. The Executive Director prepared a report outlining why there was reason  
2 to believe a violation of the Act and Rules had occurred. That report is  
3 attached to this Agreement as Exhibit 1 and incorporated by reference.

4 E. At the August 25, 2022 meeting of the Arizona Clean Elections  
5 Commission, the Executive Director and Respondent presented  
6 arguments through counsel. The Commission voted in favor of a  
7 determination there was reason to believe a violation of the Clean  
8 Elections Act and Rules had occurred. A determination of reason to  
9 believe is not a final administrative action and not an appealable agency  
10 action. It merely represents a determination that sufficient evidence has  
11 been presented to warrant further investigation. A transcript of the  
12 proceedings is attached as Exhibit 2. Three affirmative votes are  
13 required for the Commission to find reason to believe a violation  
14 occurred.

15 F. This Conciliation Agreement concludes the Commission's enforcement  
16 proceeding respecting the Complaint based on the conditions below and  
17 constitutes a waiver of the Respondent's right to appeal.

18 WHEREFORE, the Commission enters the following orders in lieu of any other action  
19 regarding this matter:

- 20 1. The Commission has jurisdiction over persons subject to A.R.S. § 16-  
21 957.
- 22 2. Pursuant to A.R.S. §§ 16-941(D) and -958, any person who makes an  
23 independent expenditure above the threshold(s) set forth in the Clean  
24 Elections Act must file reports required by the person. A.R.S. § 16-  
25 942(B) provides that the statutory penalty for any reporting violation on  
26 behalf of a statewide candidate is up to \$490 per day up to twice the  
value of the unreported amount. The penalty imposed shall be doubled

under certain circumstances if the amount not reported for a particular election cycle exceeds an amount set forth in the Act.

3. Respondent agrees to settle this matter for \$45,000, in addition to the other provisions herein.
4. To satisfy the debt amount acknowledged above, Respondent shall pay to the Commission the amount specified in Paragraph 3 no later than one week from the approval of this Agreement by the Commission.
5. Respondent shall file Independent Expenditure Reports by December 31, 2022. These reports shall disclose all spending related to Arizona candidate for Governor Kari Lake and follow the format provided by the Arizona Secretary of State's Beacon system and be entered into that system through the creation of an account and the appropriate filings designated by the system.
6. Respondent avows that it received no donations from any:
  - a. Candidate for governor in Arizona in 2022.
  - b. Family members of a Candidate for governor in Arizona. Family member means parent, grandparent, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members, regardless of whether the relation is established by marriage or adoption.
  - c. Entity controlled by person included in Paragraph 7(a) or (b).
  - d. Agent of a person included in included in Paragraph 7(a) or (b).
  - e. Affiliate of a person included in included in Paragraph 7(a) or (b)
7. Respondent avows that the spending here was not in coordination with any candidate's campaign pursuant to A.R.S. § 16-922, assuming that the spending subject to this Matter were expenditures as defined in Arizona law.

- 1           8.     Respondent shall follow IRS statutes and rules including filing any forms  
2                 required by federal law and adhere to any and all restrictions on political  
3                 campaign activities applicable to Social Welfare Organizations.  
4                 Respondent and Commission agree Respondent may wind down  
5                 immediately after the execution and completion of the obligations  
6                 imposed by this Agreement.
- 7           9.     Respondent and its agents avow that no funds obtained or expended by  
8                 Respondent are from any person or entity prohibited from campaign  
9                 financial activity by 11 C.F.R. § 110.20.
- 10          10.    Respondent agrees that the Commission and its staff reasonably relied  
11                 upon all information provided by Respondent's agents to any party  
12                 regarding its advertisements and other activities, including all  
13                 correspondence, the representations and avowals in this Agreement,  
14                 and other information that are part of this Matter.
- 15          11.    Respondent agrees not to engage in "political activity" as defined by the  
16                 Internal Revenue Code in Arizona in the future.
- 17          12.    All payments shall be made by check or money order payable to the  
18                 Citizens Clean Elections Fund and delivered to the Citizens Clean  
19                 Elections Commission, 1616 West Adams, Suite 110, Phoenix, Arizona,  
20                 85007.
- 21          13.    The Commission shall not commence any legal action against  
22                 Respondent to collect the claims so long as they are not in default.
- 23          14.    Respondent shall be in default of this Agreement upon the occurrence of  
24                 any of the following:
- 25                 a.   Respondent fails to make any payment required hereunder within five  
26                         (5) working days following the date due;

- b. Respondent files a petition under the bankruptcy laws, or any creditor of the Respondent files any petition under said laws against the Respondent;
- c. Any creditor of Respondent commences a foreclosure action to foreclose (by suit or trustee sale) on real property of the Respondent, or commences garnishment, attachment, levy or execution against the Respondent's property;
- d. Respondent provided false information to the Commission; or
- e. Respondent fails to abide by any provision of this agreement.
15. In the event of default hereunder, at the option of the Commission, all unpaid amounts hereunder shall be immediately due and payable and the Commission may pursue additional penalties mitigated by this agreement. In addition, interest shall accrue on the unpaid balance from the date that the payments become due and payable. Interest shall accrue at the statutory rate of ten percent (10%) pursuant to A.R.S. § 44-1201(A).
16. Nothing contained in this Agreement shall be construed to prevent any state agency which issues licenses for any profession from requiring that the debt in issue be paid in full before said agency will issue Respondent a new license.
17. The Commission may waive any condition of default without waiving any other condition of default and without waiving its rights to full, timely future performance of the conditions waived.
18. In the event legal action is necessary to enforce collection hereunder, Respondent shall additionally pay all costs and expenses of collection, including without limitation, reasonable attorneys' fees in an amount equal to thirty-five percent (35%) of monies recovered.

- 1        19.    Respondent acknowledges that all obligations payable pursuant to this  
2           Agreement constitute a fine, penalty, or forfeiture payable to and for the  
3           benefit of a governmental unit, not compensation for actual pecuniary  
4           loss, and that pursuant to 11 U.S.C. § 523 such obligations are not  
5           subject to discharge in bankruptcy.
- 6        20.    This Agreement shall be construed under the laws of the State of  
7           Arizona.
- 8        21.    In the event that any paragraph or provision hereof shall be ruled  
9           unenforceable, all other provisions hereof shall be unaffected thereby.
- 10      22.    This Agreement shall constitute the entire agreement between the  
11           parties regarding the subject matter. This Agreement shall not be  
12           modified or amended except in a writing signed by all parties hereto.
- 13      23.    This Agreement shall not be subject to assignment.
- 14      24.    No delay, omission or failure by the Commission to exercise any right or  
15           power hereunder shall be construed to be a waiver or consent of any  
16           breach of any of the terms of this Agreement by the Respondent.
- 17      25.    By entering into this Agreement, the Respondent does not waive any  
18           rights, claims, defenses or arguments in any subsequent proceeding  
19           before the Commission or any agency, court or other tribunal.
- 20      26.    Respondent has obtained independent legal advice in connection with  
21           the execution of this Agreement or have freely chosen not to do so. Any  
22           rule construing this Agreement against the drafter is inapplicable and is  
23           waived.
- 24      27.    This Agreement shall be void unless executed by the Respondent and  
25           delivered to the Commission not later than one week after approval by  
26           the Commission.

28. All proceedings commenced by the Commission in this matter will be terminated and the matter closed upon receipt of the final payment of the civil penalty and compliance with the other terms set forth in this Agreement.

Dated this \_\_\_\_ day \_\_\_\_, 2022.

By: \_\_\_\_\_  
Thomas M. Collins, Executive Director  
Citizens Clean Elections Commission

By: \_\_\_\_\_  
Charles Gantt, Treasurer  
Freedom's Future Fund, Respondent

# Exhibit 1

**STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION**

MUR 22-01

Freedom's Future Fund

**STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR**

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On behalf of the Citizens Clean Elections Commission (“Commission”), the Executive Director hereby provides the following Statement of Reasons why there may be reason to believe that a violation of the Citizens Clean Elections Act and Commission rules (collectively, the “Act”) may have occurred.

**Summary of Recommendation**

Arizona law requires entities to report their political spending when the spending reaches certain threshold amounts. Freedom's Future Fund is a Delaware entity formed in January 2022. In February, it commenced a spending campaign aimed at Kari Lake, then a candidate for the Republican gubernatorial nomination. The advertisements constitute “express advocacy” because, when objectively evaluated as a whole, they have no reasonable meaning other than to advocate for the defeat of Lake at the polls. Because Freedom's Future Fund filed no reports at all related to its spending, there is reason to believe a violation of the Citizens Clean Elections act may have occurred.

State law provides entities that engage in political spending may be exempt from some reports of expenditures and donations. If an entity has taken steps to earn recognition from the Internal Revenue Service as a tax-exempt organization it generally will not have to file these more extensive reports. Freedom's Future Fund

did not complete the steps necessary to obtain this status, nor does it offer sufficient evidence to suggest it should not have filed these reports at this stage. As a consequence, there is reason to believe a violation of the Citizens Clean Elections Act may have occurred.

## **I. Procedural Background**

Tim La Sota, a lawyer for Kari Lake’s campaign for governor, filed a complaint against an entity called Freedom’s Future Fund (Respondent) in February 2022. The Complaint alleged, among other things, that Respondent made expenditures expressly advocating for the defeat of Kari Lake, then seeking the nomination to represent the Republican Party as its candidate for Governor. Exhibit 1.

The Complaint alleged that because the advertisement included “express advocacy” against Lake’s nomination, Respondent was required to file reports with the State, specifically reports required of political action committees. Exhibit 1, Complaint at 1-2, *see* A.R.S. § 16-926 (detailing contents of reports), *see also* A.R.S. § 16-942(B) (authorizing penalties “[i]n addition to any other penalties imposed by law, the civil penalty for a violation by or on behalf of any candidate *of any reporting requirement imposed by this chapter* [of]. . . [\$490] per day for candidates for statewide office.”). Because the Complaint substantially complied with the Commission’s rules, a Response was requested.

Respondent filed a response in March. Exhibit 2. The Response argued principally that the communications related to Kari Lake were not express advocacy and that Respondent itself was a social welfare organization and thus not required to file reports pursuant to the chapter as a political committee making expenditures in a candidate election. *Id.*

In June 2022, Complainant filed an additional letter claiming that the advertisements had continued. Exhibit 3. Indeed, filings required by the FCC indicated that substantially the same advertisements had continued to run during the spring. The Executive Director requested an additional response. Exhibit 4. The request explained that the Clean Elections Act requires additional reports of express advocacy communications and requested an explanation as to why the advertisements were not required under Arizona law. *Id.* The request also asked Respondent to explain basis for its view that it was permitted to avoid other reporting requirements under Chapter 6 of Title 16, Arizona Revised Statutes, pursuant to the Internal Revenue Code and IRS procedures related to social welfare organizations. *Id.*

Respondent answered the request. Exhibit 5. It argued that Ninth Circuit case law, in its view, did not make its expenditures express advocacy. It also argued that a notice filed with the IRS was sufficient to trigger the exemption for social welfare agencies under Arizona law. *See A.R.S. § 16-905.* Complainant filed one additional communication, which Respondent filed a response to. Exhibits 6-7.

## **II. Alleged Violations**

### **A. Express Advocacy**

#### **i. The Clean Elections Act**

The Complaint turns on whether Respondent's advertisements are express advocacy under Arizona law. If the advertisements expressly advocate for the election or defeat of a candidate, then reporting requirements attach. If not, then the reporting requirements do not arise. At this preliminary stage in Commission proceedings, the Commission need only determine that there may be reason to believe that the Respondent has committed a violation of the Act or Rules. Ariz. Admin. Code R2-20-208(A).

The Clean Elections Act defines "expressly advocates," in relevant part, as an advertisement:

[1.] Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer

[2.] referring to one or more clearly identified candidates and

[3.] targeted to the electorate of that candidate(s)

[4.] that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the

communication or the inclusion of statements of the candidate(s) or opponents.

A.R.S. § 16-901.01(A)(2). Such a communication “shall not be considered as one that expressly advocates merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party or a person who is coordinating with a candidate or candidate's agent.” *Id.* § 16-901.01(B).

The controlling case for reporting under this standard in Arizona is *Committee for Justice in Fairness v. Arizona Secretary of State’s Office (CJF)*, 235 Ariz. 347 (App. 2014). There, the Court held that an advertisement during the campaign, targeted at the general electorate of a candidate, criticizing the candidate’s past actions, while not explicitly identifying the candidacy itself, was express advocacy. *Id.* at 354-55.

## **ii. The Advertising Campaign**

Lake registered a political committee with the Arizona Secretary of State seeking the office of governor on June 2, 2021. A.R.S. § 16-901(7) (“‘Candidate’ means an individual who receives contributions or makes expenditures or who gives consent to another person to receive contributions or make expenditures on behalf of that individual in connection with the candidate's nomination, election or retention for any public office.”).

Respondent corporation was created on January 19, 2022 and began running advertisements featuring Lake in Arizona in February 2022. Complaint at 1-2, 7-8 (Respondent's articles of incorporation). For example, on February 9, Respondent placed a \$12,000 order with KPNX Channel 12. Order Receipt KPNX Television, *available at* <https://publicfiles.fcc.gov/api/manager/download/e6bd282b-ff2c-9728-e98e-b7b378c283a1/a7a98d63-9ba9-4f3e-a732-1bb94bbfc60a.pdf>

Over the course of the next few months Freedom's Future Fund spent money on Lake-related advertisements throughout Arizona, the target electorate for the Republican Primary. *See* Appendix 1.

An advertisement launched on youtube.com on February 2, 2022 [https://www.youtube.com/watch?v=2ZJ2O\\_0Klgo](https://www.youtube.com/watch?v=2ZJ2O_0Klgo) demonstrates the format Respondent followed:

Text on screen	Narrator
<p>Our border is in crisis</p> <p>[Image of people, presumably immigrants, walking in the desert near vehicles and barricades]</p>	<p>Our border is in crisis</p>
<p>Rolled back Obama and Biden's disastrous open border policies</p> <p>[Image of Trump in front of border wall with construction workers.</p> <p>[Image of Biden and Obama at a political event]</p>	<p>President Trump fought to build a wall rolled back Obama and Biden's disastrous open border policies</p>
<p>But where was Kari Lake</p> <p>[No image, just text]</p>	<p>But where was Kari Lake?</p>
<p>Kari Lake donated to Obama</p> <ul style="list-style-type: none"> <li>- Opensecrets.org, 6/28/08</li> </ul> <p>[Image of Lake and Obama together, Obama campaign FEC forms]</p>	<p>Donating to Obama.</p> <p>She helped elect the Obama Biden administration</p>
<p>Kari Lake enabled open border policies</p> <p>[Image of border patrol officer watching immigrants at wall]</p>	<p>and enabled their open border policies</p>
<p>[Financial numbers scroll down to zero]</p> <p>But doing nothing to help President Trump</p> <p>[Image of Trump alone gazing out window]</p>	<p>but gave nothing to President Trump.</p>
<p>Arizona mayor says city is "Overwhelmed" with border crisis.</p> <ul style="list-style-type: none"> <li>- Fox News 1/4/22</li> </ul> <p>[Image of two apparent immigrants attempting to scale a wall]</p>	<p>Arizona is under attack.</p>

When she supported open border politicians?  [Image split screen of black and white photos of Lake with Obama and Biden]	How can we trust Kari Lake when she supported open border politicians?
Contact Kari Lake at karilakefacts.com tell her we must secure the border.  Paid for by Freedom's Future Fund.  [Image same black and white photo of Lake]	Contact Lake tell her it's time to secure our border.   Paid for by Freedom's Future Fund.

Other advertisements are similar. For example, a political file supplement filed June 2, 2022 and available for public inspection in KPNX Channel 12 files indicates advertisements ran regarding:

- "Secure borders Candidate mentioned: Kari Lake, AZ Governor,"
- "Candidate AZ Governor Kari Lake – favors amnesty for illegals ISS [sic] is in favor of border security,"
- "Ad attacks candidate Kari Lake for AZ Governor on border security and Constitutional rights."

KPNX Political File Copy Supplement for National Issue Advertisements:

Freedom's Future Fund, available at <https://publicfiles.fcc.gov/tv-profile/kpnx/political-files/2022/non-candidate-issue-ads/freedoms-future-fund-2022/copy-supplement/8f3801da-1f6a-ff64-4e4c-a241a407b71f>.

Similarly, Respondent disclosed that it purchased advertisements in June that stated "Radical Liberals want to open borders, taking away 2nd Amendment right[s], supporting amnesty for illegals. Call to action to tell Kari Lake to secure Arizona border and protect the constitution." Fox Television Stations National Issue and/or Federal Candidate Reference Advertisement Public File Disclosure Form June 2,

2022, available at <https://publicfiles.fcc.gov/tv-profile/ksaz-tv/political-files/2022/non-candidate-issue-ads/freedoms-future-fund-pac/coversheets/7b62ded0-c4d0-64a8-28c0-b8677d21f1c4><sup>1</sup> See also Fox Television Stations National Issue and/or Federal Candidate Reference Advertisement Public File Disclosure Form February 23, 2022, available at <https://publicfiles.fcc.gov/api/manager/download/7b62ded0-c4d0-64a8-28c0-b8677d21f1c4/8136984d-2b2b-43e7-bdff-a175837102ed.pdf> (“Amnesty for illegal immigrants. Call to action to tell Kari Lake no amnesty for illegals.”); Fox Television Stations National Issue and/or Federal Candidate Reference Advertisement Public File Disclosure Form February 4, 2022, available at <https://publicfiles.fcc.gov/api/manager/download/7b62ded0-c4d0-64a8-28c0-b8677d21f1c4/74f6a02d-4378-43e2-9cbc-0d357d6d9486.pdf> (Securing open borders).

### **iii. Analysis**

Section 16-901.01(A)(2) asks whether advertisements can have other reasonable meanings, “in context.” The objective context here is that the advertisements began after Lake announced her candidacy for governor, just as the 2022 election year began, and ran throughout the spring. The advertisement also discussed Lake’s donation history for specific politicians, which would weigh

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<sup>1</sup> Advertisements have run on television and radio. While there may be some differences in the script, text, and images (where applicable) of the advertisements are, Respondent’s argument regarding express advocacy does not turn on these incidental differences.

toward presenting Lake in a specific light to Republican voters, as would the images Respondent included to illustrate its claim Lake supported Democrats and not President Trump. In short, the advertisements' timing and citation to Lake's donation history create a context in which the only reasonable interpretation of the advertisement is that it was intended to encourage voting against Lake.

The controlling case for the reporting standard for express advocacy under Arizona law is *Committee for Justice and Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347 (App. 2014) ("*CJF*"). There, the Court held that an advertisement, targeted at the general electorate of a candidate and criticizing that candidate's prior actions, was express advocacy for the defeat of that candidate. *Id.* at 354-55. This was true even though the advertisement did not identify the office being sought by the targeted candidate. The Court explained that multiple factors confirmed "reasonable minds could not differ as to whether [the] advertisement encouraged a vote against [the candidate]." *Id.* at 355.

While *CJF* remains controlling in Arizona, § 16-901.01(A) uses language from *Federal Election Commission v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), which was the controlling precedent in Arizona when the citizens enacted § 16-901.01(A) in 1998. In that case, the Ninth Circuit held that to be considered express advocacy speech "must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." 807 F.2d at 864. The Ninth Circuit explained,

however, that no “magic words” are required to trigger disclosure, noting that. “[a] test requiring the magic words “elect,” “support,” etc., or their nearly perfect synonyms for a finding of express advocacy would preserve the First Amendment right of unfettered expression only at the expense of eviscerating [disclosure].” *Id.* at 863. Indeed, the advertisement in *Furgatch* included an exhortation that did not include a reference to any election whatever, but rather a call to action that was vague, but unambiguous. *Id.* at 864-65 (“There is vagueness in Furgatch's message, but no ambiguity.”). The test is objective, not subjective. *Id.* at 863. The text of the *Furgatch* ad is in the second appendix.

The analysis from *CJF* and *Furgatch* supports the conclusion the advertisements here are express advocacy. As in those cases, based on a review of the text, video, voice-over, and timing of the YouTube advertisement, as well as, the indicia from other advertisements disclosed by Respondent for FCC purposes, there is reason to believe the advertisements are express advocacy, that is that the ads had no reasonable meaning other than to advocate for the defeat of Lake in her campaign for governor.

For example, in the YouTube advertisement, the plain language (text, video, and voice over) states that Lake is closely associated with the Democratic President and the former Democratic President, and that Lake supports “open border” policies that many Republican primary voters object to. The advertisement presents Lake in a series images interspersed with Biden, Obama, and illustrations of the

advertisement claims is illegal immigration, as well as images and text stating President Trump was unsupported. Before the call to action the advertisement implores viewers “How can we trust Kari Lake when she supported open border politicians?” *See Furgatch*, 807 P.2d at 858-59 (advertisement stating candidate record with phrase “Don’t let him do it” was express advocacy). Although it does not use specific words such as “Vote against Lake,” it objectively urges viewers to vote against Lake for governor by criticizing Lake’s past conduct and associations.

In context, the advertisement has no other reasonable meaning other than to advocate for Lake’s defeat. Lake announced her candidacy for Governor in 2021 and filed paper work with the Secretary of State’s Office creating a campaign committee in June 2021. The advertisements commenced in February 2022, as candidates were seeking signatures for access to the ballot and continued until at least June 9, 2022.

#### **iv. Respondent’s arguments**

Respondent raises several arguments to support its view these advertisements are not express advocacy. None are availing at this stage of the proceedings.

First, Respondent argues that *CJF* is distinguishable because while the candidate in *CJF* was a public official, Lake is not. However, the issue is whether Lake is a candidate, not a public official, and whether there is express advocacy for her election or defeat, not whether she is currently in office. Respondent argues that Lake was not a candidate until she filed her nomination petitions. This is not so. Lake was a candidate since at least June 2021, having created a campaign committee

and announced her candidacy around that time. Moreover, as in *CJF*, Lake is identified by name and likeness and had been “clearly identified to the general populace as” a candidate for governor.” *CJF*, 235 Ariz. at 354 (“It was unnecessary for the advertisement to further identify the position [s]he sought.”).

Next, Respondent argues that there was no controversial issue in the underlying ad in *CJF*, while “our client’s ad educates the public on the very hot button issues of gun control and border security.” It is not clear why an ad about a controversial issue would be subject to a different set of disclosure requirements than one about a non-controversial issue. But as noted above, the ads do not by their very terms educate the public about those issues. The gravamen of the ads is to inform the public that Lake has donated money to the former Democratic president’s campaign and expressed support for other issues, while failing to support President Trump. The donations occurred in 2008, according to the ad. *See id.* at 354-55. (Noting that where advertisement focused on candidate’s prior role that they would soon vacate, message supported conclusion of express advocacy.).

Respondent has also argued that the light in which the candidate is portrayed is subjective and therefore cannot be determined to have a single meaning. This misunderstands the nature of the test. The test is whether, taken in context, an advertisement could reasonably be interpreted as having another meaning other than advocating for the election or defeat of a candidate. The message of this advertisement unequivocally focuses on Lake, and her actions or statements, while

making claims about her support for President Trump. The advertisements ask “How can we trust Kari Lake when she supported open border politicians?” The only reasonable interpretation of this rhetorical proposition is that the speaker asks the viewer not to trust Lake to be the GOP nominee. Thus the only reasonable interpretation of such a message is to portray Lake in a specific light, using the issue of borders to influence how she is viewed, which in turn impacts whether people vote for her.

Respondent argues that *Furgatch* compels the conclusion the advertisement is not express advocacy. It is not clear what Respondent means. *Furgatch* interpreted a provision of the Federal Election Campaign Act in light of U.S. Supreme Court precedent. This case is about state law. Second, the test Respondent highlights from *Furgatch* is in fact the same test under A.R.S. § 16-901.01 and *CJF*. Finally, *Furgatch*, as explained above, compels the very analysis used in *CJF*.

Respondent explains that “The ad does feature Ms. Lake, who is not only a candidate, but also a prominent former television news journalist in the state—who Arizonans trust to deliver non-biased information regarding issues that affect their daily lives. It is widely known that public figures like Ms. Lake have the ability to influence policy outcomes by using their platforms to discuss public policy issues.”. Lake has not been a television anchor while the ads were running and is a candidate campaigning for governor. The call to action doesn’t even suggest that viewers contact Lake directly. Instead it directs viewers and listeners to Respondent’s own

website, karilakefacts.com, not facts about issues. The website, in turn, provides viewers with similar information to the advertisement provided by Respondent and encourages viewers to contact Lake's gubernatorial campaign, [contact@karilake.com](mailto:contact@karilake.com).

Finally, Respondent argued when the complaint was initially filed that the ads in question were too far away from the primary to be express advocacy. First, the advertisements were timed to coming during the period Lake was collecting signatures to appear on the ballot and their message was directed at the electorate that was then contemplating support for, including voting for Lake—the Republican primary voter. Moreover, as the ads have continued closer and closer to primary voting, however, this proximity further demonstrates that the purposes of the advertisements was to urge a vote against Lake.

For the forgoing reasons there is reason to believe that the advertisements are express advocacy under Arizona law.

## **B. Reporting**

### **i. A.R.S. §§ 16-941(D), -958.**

If an advertisement is express advocacy, A.R.S. §§ 16-941(D) and -958 require periodic reports of the spending once the amount in question reaches \$800. The Act lays out a schedule beginning prior to the primary and running through the entire remaining election period. A.R.S. § 16-958(B):

B. Any person who must file an original report pursuant to section 16-941, subsection D or who must file a supplemental report for previously unreported amounts pursuant to subsection A of this section shall file as follows:

1. Before the beginning of the primary election period, the person shall file a report on the first of each month, unless the person has not reached the dollar amount for filing an original or supplemental report on that date.
2. Thereafter, except as stated in paragraph 3 of this subsection, the person shall file a report on any Tuesday by which the person has reached the dollar amount for filing an original or supplemental report.
3. During the last two weeks before the primary election and the last two weeks before the general election, the person shall file a report within one business day of reaching the dollar amount for filing an original or supplemental report.

Because there is reason to believe that Respondent engaged in express advocacy and no reports have been filed, there is reason to believe that reports were due in March, April, May, June 1, June 7 and June 14, at a minimum that were not filed.

**ii. A.R.S. § 16-926**

Entities that have a primary purpose of influencing the results of Arizona elections must file periodic reports of contributions and expenditures once those contributions or expenditures reach \$1,300 in a calendar year and its primary.

A.R.S. § 16-905(C). Respondent made more than \$1,300 in expenditures.

Arizona follows a paperwork test in determining whether or not an entity is required to make the filings required A.R.S. §§ 16-905 and 16-926. Thus, the statute exempts “an entity that claims tax exempt status under section 501(a) of the internal revenue code and that remains in good standing with the [IRS]” from registering as a political action committee or disclosing information about donors, among other things. A.R.S. § 16-905(E). A filing officer or enforcement officer, “shall make a rebuttable presumption that an entity is organized for the primary purpose of influencing the result of an election if the entity . . . tax exempt status but had not filed form 1023 or form 1024 with the internal revenue service, or the equivalent successor form designated by the internal revenue service, before making a contribution or expenditure.” The presumption, unrebutted, would mean the entity was a political action committee and required to file more extensive reports. There is no dispute here that entity did not file a Form 1023 or Form 1024. So, the issue is whether the form it did file is a successor form.

Respondent argues that by filing a notice to operate under section 501(c)(4) of the Internal Revenue Code it is entitled to the exemption. Respondent argues

that Form 8976, which it filed, is a successor to Form 1024. However, “[s]ubmission of the Form 8976 does not constitute a request for a Determination Letter that recognizes the organization as a section 501(c)(4) organization.” Internal Revenue Service, Rev. Proc. 2016-41, available at <https://www.irs.gov/pub/irs-drop/rp-16-41.pdf>. Form 8976 is merely a notice, not as extensive as Form 1024. Moreover, the federal law which gave the IRS the necessary authority to promulgate Form 8976 existed at the time the test in A.R.S. § 16-905 was created. It is not, therefore, a successor to Form 1024. Respondent does not claim to have filed a 1024, nor any other form that might exempt it from reporting under state law before making expenditures.

Attempting to rebut the presumption that filing officers and enforcement officers are required to make that an entity’s primary purpose is something other than to influence the result of Arizona elections, Respondent claims its primary purpose is social welfare. It makes this claim based on its articles of incorporation that state that social welfare is its purpose and its claim that it engages in other activity. However, under Arizona law primary purpose is determined by an entity’s predominant purpose, that is, its main purpose. A.R.S. § 16-901(43) Here, no evidence publicly available contradicts that there is at least reason to believe *at this juncture* that Respondent’s predominant purpose is purchasing these advertisements.

Chapter 6 of Title 16 requires entities that have a primary purpose of influencing Arizona elections to file reports periodic reports of expenses and contributions. Respondent has not made such filings. Filings were due for the first and second quarter in April and July respectively. There is reason to believe these filings should have been made and were not. A.R.S. § 16-942(B) (providing for fines for failure to file reports required by Chapter 6).

## **Recommendation**

If the Commission determines there is a reason to believe that a violation of a statute or rule over which the Commission has jurisdiction may have occurred, the Commission shall then conduct an investigation. Ariz. Admin. Code R2-20-209(A). The Commission may authorize the Executive Director to subpoena all of the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit.

Upon expiration of fourteen (14) days, if the Commission finds that the alleged violator remains out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with A.R.S. § 16-942, unless the Commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. A.R.S. § 16-957(B).

After fourteen (14) days and upon completion of the investigation, the Executive Director will recommend whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred. Ariz. Admin. Code R2-20-214(A). Upon a finding of probable cause that the alleged violator remains out of compliance, by an affirmative vote of at least three (3) of its members, the Commission may issue an

order and assess civil penalties pursuant to A.R.S. § 16-957(B). Ariz. Admin. Code R2-20-217.

Dated this 15th day of August 2022.

S/Thomas M. Collins  
Thomas M. Collins, Executive Director

# 1 Appendix of FCC Public Files for Freedom's Future Fund

KPNX	<a href="https://publicfiles.fcc.gov/tv-profile/kpnx/political-files/2022/non-candidate-issue-ads/freedoms-future-fund-2022/orders/e6bd282b-ff2c-9728-e98e-b7b378c283a1">https://publicfiles.fcc.gov/tv-profile/kpnx/political-files/2022/non-candidate-issue-ads/freedoms-future-fund-2022/orders/e6bd282b-ff2c-9728-e98e-b7b378c283a1</a>
KPHO	<a href="https://publicfiles.fcc.gov/tv-profile/kpho-tv/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/47491d03-7380-b954-d092-3408925f5af5">https://publicfiles.fcc.gov/tv-profile/kpho-tv/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/47491d03-7380-b954-d092-3408925f5af5</a>
KTVK	<a href="https://publicfiles.fcc.gov/tv-profile/KTVK/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/d166a3de-1800-fe51-39de-a5d32a386e28">https://publicfiles.fcc.gov/tv-profile/KTVK/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/d166a3de-1800-fe51-39de-a5d32a386e28</a>
KSAZ	<a href="https://publicfiles.fcc.gov/tv-profile/ksaz-tv/political-files/2022/non-">https://publicfiles.fcc.gov/tv-profile/ksaz-tv/political-files/2022/non-</a>

	<a href="https://publicfiles.fcc.gov/tv-profile/kanxv-tv/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/d5a62f4e-61f7-5d8b-58ed-1eb3bfb30dfc">candidate-issue-ads/freedoms-future-fund-pac/d5a62f4e-61f7-5d8b-58ed-1eb3bfb30dfc</a>
KNXV	<a href="https://publicfiles.fcc.gov/tv-profile/kanxv-tv/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/89084fd3-9118-9cd0-5243-271bec27704a">https://publicfiles.fcc.gov/tv-profile/kanxv-tv/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/89084fd3-9118-9cd0-5243-271bec27704a</a>
KASW	<a href="https://publicfiles.fcc.gov/tv-profile/kasw/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/f3ecb40e-e666-d21b-0e66-f25be8ec757e">https://publicfiles.fcc.gov/tv-profile/kasw/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/f3ecb40e-e666-d21b-0e66-f25be8ec757e</a>
KAZT	<a href="https://publicfiles.fcc.gov/tv-profile/kazt-tv/political-files/2022/non-candidate-issue-ads/freedom-future-fund/89084fd3-9118-9cd0-5243-271bec27704a">https://publicfiles.fcc.gov/tv-profile/kazt-tv/political-files/2022/non-candidate-issue-ads/freedom-future-</a>

	<a href="https://publicfiles.fcc.gov/tv-profile/kutp/political-files/2022/non-candidate-issue-ads/freedom-future-fund-pac/coversheets/e66459a8-f46d-cdbb-bb9e-7225ce6e4b74">fund/b3da35d9-74be-47bd-cfb7-92d106c294af</a>
KUTP	<a href="https://publicfiles.fcc.gov/tv-profile/kutp/political-files/2022/non-candidate-issue-ads/freedom-future-fund-pac/coversheets/e66459a8-f46d-cdbb-bb9e-7225ce6e4b74">https://publicfiles.fcc.gov/tv-profile/kutp/political-files/2022/non-candidate-issue-ads/freedom-future-fund-pac/coversheets/e66459a8-f46d-cdbb-bb9e-7225ce6e4b74</a>
KVOA	<a href="https://publicfiles.fcc.gov/tv-profile/kvoa/political-files/2022/non-candidate-issue-ads/freedoms-future-fund-7660/aecb35ce-8549-0fc8-5083-737b32c94510">https://publicfiles.fcc.gov/tv-profile/kvoa/political-files/2022/non-candidate-issue-ads/freedoms-future-fund-7660/aecb35ce-8549-0fc8-5083-737b32c94510</a>
KOLD	<a href="https://publicfiles.fcc.gov/tv-profile/kold-tv/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/fb852c41-2c64-7b7d-c506-bc9d3fc499eb">https://publicfiles.fcc.gov/tv-profile/kold-tv/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/fb852c41-2c64-7b7d-c506-bc9d3fc499eb</a>

KGUN	<a href="https://publicfiles.fcc.gov/tv-profile/kgun-tv/political-files/2022/non-candidate-issue-ads/freedom-future-fund/1518d1eb-90b8-8c56-cdf0-5326762a5c61">https://publicfiles.fcc.gov/tv-profile/kgun-tv/political-files/2022/non-candidate-issue-ads/freedom-future-fund/1518d1eb-90b8-8c56-cdf0-5326762a5c61</a>
KFYI	<a href="https://publicfiles.fcc.gov/am-profile/kfyi/political-files/2022/non-candidate-issue-ads/e7bd0bde-ef42-3a4d-5670-71ae6c6c3df8">https://publicfiles.fcc.gov/am-profile/kfyi/political-files/2022/non-candidate-issue-ads/e7bd0bde-ef42-3a4d-5670-71ae6c6c3df8</a>

## 2 Appendix of Furgatch Advertisement Text

From the Ninth Circuit Opinion:

On October 28, 1980, one week prior to the 1980 presidential election, the *New York Times* published a full page advertisement captioned "Don't let him do it," placed and paid for by Harvey Furgatch. The advertisement read:

DON'T LET HIM DO IT.

The President of the United States continues degrading the electoral process and lessening the prestige of the office.

It was evident months ago when his running mate outrageously suggested Ted Kennedy was unpatriotic. The President remained silent.

*And we let him.*

It continued when the President himself accused Ronald Reagan of being unpatriotic.

*And we let him do it again.*

In recent weeks, Carter has tried to buy entire cities, the steel industry, the auto industry, and others with public funds.

*We are letting him do it.*

He continues to cultivate the fears, not the hopes, of the voting public by suggesting the choice is between "peace and war," "black or white," "north or south," and "Jew vs. Christian." His meanness of spirit is divisive and reckless McCarthyism at its worst. And from a man who once asked, "Why Not the Best?"

It is an attempt to hide his own record, or lack of it. If he succeeds the country will be burdened with four more years of incoherencies, ineptness and illusion, as he leaves a legacy of low-level campaigning.

DON'T LET HIM DO IT.

## Exhibit 1

## **ITEM IV - EXHIBITS**

*Timothy A. La Sota, PLLC*  
2198 East Camelback Road, Suite 305  
Phoenix, Arizona 85016  
602-515-2649  
[tim@timlasota.com](mailto:tim@timlasota.com)

February 16, 2022

**Via email/mail to:**

Thomas M. Collins  
Executive Director  
Arizona Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, Arizona 85007

**Re: Illegal campaign ads funded by "Freedom's Future Fund"**

Dear Mr. Collins:

This firm represents the Kari Lake for Arizona campaign committee and Kari Lake ("Kari Lake"). I write today to file a formal request for an investigation of "Freedom's Future Fund", an east coast dark money group. Freedom's Future Fund has not registered as a political committee with the Secretary of State's Office and under Arizona law, Freedom's Future Fund is now presumed to have acted illegally by failing to register. I explain this in detail below. The ad may be viewed here:

<https://mms.tvcs.com/PlaybackPortal.aspx?SavedEditID=a4972e34-7ab8-416c-90b4-8df1bd567b75>

Arizona law requires that "An entity shall register as a political action committee if both of the following apply:

1. The entity is organized for the primary purpose of influencing the result of an election.
2. The entity knowingly receives contributions or makes expenditures, in any combination, of at least one thousand dollars in connection with any election during a calendar year."

Arizona Revised Statutes § 16-905(C).

Freedom's Future Fund, whoever they are, meets these two prongs.

Mr. Collins  
February 16, 2022

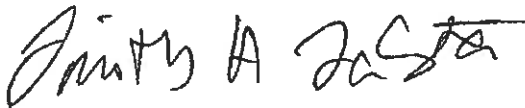
### Conclusion

I urge you to take action with regard to these ads. Unless Freedom's Future Fund can make the requisite demonstration under Arizona law, it is in violation of Arizona law. And simply pointing to irrelevant provisions of federal law in a manner that displays an obvious lack of knowledge of Arizona law is not sufficient.

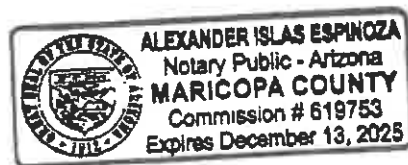
Given the strong position that Ms. Lake enjoys as the front runner in the Governor's race, it is no wonder she is under attack. But those who engage in such activity must comply with the law.

Very truly yours,

**TIMOTHY A. LA SOTA PLC**



Timothy A. La Sota



STATE OF ARIZONA       )  
                                      ) ss.:  
County of Maricopa       )

Subscribed and sworn (or affirmed) before me this 16<sup>th</sup> day of February, 2022 by  
Timothy A. La Sota.

  
\_\_\_\_\_  
Notary Public



INTERNATIONAL SQUARE  
1825 EYE STREET, NW, SUITE 900  
WASHINGTON, DC 20006-5468  
TELEPHONE: 202-457-0160  
FACSIMILE: 844-670-6009  
<http://www.dickinsonwright.com>

CHARLES R. SPIES  
CSpies@dickinsonwright.com  
202-466-5964

Re: Timothy A. La Sota's Letter

To Whom It May Concern,

We are counsel to Freedom's Future Fund, Inc. a non-profit corporation exempt from taxation under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"). Freedom's Future Fund is a national non-profit corporation dedicated to promoting conservative values and policies.

We are writing in response to an at times incoherent screed you received from Timothy A. La Sota regarding our client's ad, which fully complies with all laws. In his letter, Mr. La Sota first argues that our client should be registered as a political action committee ("PAC") under Arizona law. He correctly states the legal standard for triggering PAC status: "An entity shall register as a political action committee if *both* of the of the following apply: 1. The entity is organized for the primary purpose of influencing the result of an election. 2. The entity knowingly receives contributions or makes expenditures, in any combination of at least one thousand dollars in connection with any election during a calendar year." Ariz. Rev. Stat. § 16-905(C). [emphasis added].

As previously mentioned, Freedom's Future Fund is operated as a Section 501(c)(4) non-profit corporation. To qualify for tax exemption under Section 501(c)(4) of the Code, an organization's *primary purpose* must be social welfare.<sup>1</sup> Mr. La Sota's assumption fails because Freedom's Future Fund is organized for the primary purpose of promoting social welfare and *not* for the primary purpose of influencing an election. This is evidenced in article 3 of the corporation's certificate of incorporation, attached hereto.

Mr. La Sota's letter goes on to correctly identify an exception to the PAC trigger, which allows bona fide groups organized under Section 501(a) (includes 501(c)(4) organizations) in good standing with the Internal Revenue Service (the "IRS") to not register as a PAC. We can assure you that Freedom's Future Fund is both a qualified 501(c)(4) organization and that it is in good standing with the IRS. But don't take our word for it, attached you will find a copy of the corporation's certificate of incorporation and a notice from the IRS showing it has accepted the corporation's Form 8976 – Notice of Intent to Operate under Section 501(c)(4) of the Code. This is clear evidence that Freedom's Future Fund is a non-profit corporation operating under Section 501(c)(4) of the Code and in good standing with the IRS.

Mr. La Sota clearly drafted his letter in haste (misspellings, omitted words and grammatical errors) and likewise failed to investigate even basic facts about Freedom's Future Fund. His false claims that Freedom's Future Fund is the "darkest of dark money groups," "meets these two prongs," (triggering PAC

<sup>1</sup> "To be tax-exempt as a social welfare organization described in Internal Revenue Code (IRC) section 501(c)(4), an organization must not be organized for profit and must be operated exclusively to promote social welfare." Social Welfare Organizations, Internal Revenue Service, <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations>.

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELANARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT  
COPY OF THE CERTIFICATE OF INCORPORATION OF "FREEDOM'S FUTURE  
FUND, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF  
JANUARY, A.D. 2022, AT 3:46 O'CLOCK P.M.



6555017 8100  
SR# 20220177157

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 202440575  
Date: 01-20-22



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities  
P.O. Box 2508, Room 4024  
Cincinnati, OH 45021

**Date:** February 01, 2022  
**Person to Contact:** Customer Services  
**Contact telephone number:** 877-829-5500

Freedoms Future Fund, Inc.  
C/O Bulldog Compliance  
138 Conant Street  
2nd Floor  
Beverly, Massachusetts 01915

We received your Form 8976, *Notice of Intent to Operate Under 501(c)(4)*, you filed on January 26, 2022. This acknowledgement is not a determination by the IRS that you qualify as tax-exempt under Internal Revenue Code (Code) Section 501(a) as an organization described in Code Section 501(c)(4).

For important information about your responsibilities, including recordkeeping, reporting, and disclosure requirements, go to [www.irs.gov/charities](http://www.irs.gov/charities).

If you have questions, you can call Customer Services at 1-877-829-5500.

Letter 5822 (11-2016)  
Catalog Number 68839V

## Exhibit 2



INTERNATIONAL SQUARE  
1825 EYE STREET, NW, SUITE 900  
WASHINGTON, DC 20006-5468  
TELEPHONE: 202-457-0160  
FACSIMILE: 844-670-6009  
<http://www.dickinsonwright.com>

CHARLES R. SPIES  
[CSpies@dickinsonwright.com](mailto:CSpies@dickinsonwright.com)  
202-466-5964

Thomas M. Collins  
Executive Director  
Arizona Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, AZ 85007

VIA EMAIL: [thomas.collins@azcleanelections.gov](mailto:thomas.collins@azcleanelections.gov)

Re: CCEC MUR No. 22-01

March 16, 2022

Mr. Collins,

We are counsel to Freedom's Future Fund, Inc., the respondent in CCEC MUR No. 22-01. Freedom's Future Fund, Inc. is a non-profit corporation incorporated in Delaware. It is operated consistent with section 501(c)(4) of the Internal Revenue Code of 1986, as amended. We are writing in response to the complaint filed by Mr. Timothy La Sota alleging our client violated provisions of the Arizona Revised Statutes for failure to register as a political committee and failure to include a proper disclaimer on its advertisements. Mr. La Sota sent a similar complaint to several TV stations running our client's ads. We similarly responded to those complaints and the station managers agreed that our client has not violated an provisions of Arizona law and continues to run the ads. We believe you will find our arguments compelling as well.

**I. Freedom's Future Fund, Inc. is not PAC under Arizona law.**

In his complaint, Mr. La Sota first asserts that our client should be registered as a political action committee ("PAC") under Arizona law. He correctly states the legal standard for triggering PAC status: "An entity shall register as a political action committee if *both* of the of the following apply: 1. The entity is organized for the primary purpose of influencing the result of an election. 2. The entity knowingly receives contributions or makes expenditures, in any combination of at least one thousand dollars in connection with any election during a calendar year." Ariz. Rev. Stat. § 16-905(C). [emphasis added]. Mr. La Sota then concludes—without *any* evidence, that our client "meets these two prongs."

Mr. La Sota argues that our client is not a 501(c)(4) organization because it has not filed a form 1024 with the Internal Revenue Service. He argues we must now rebut the presumption (which he created) that our client is not organized for the primary purpose of influencing elections. But he has overlooked a very crucial part of the statute he cites, Ariz. Rev. Stat. § 16-

The ad does feature Ms. Lake, who is not only a candidate, but also a prominent former television news journalist in the state—who Arizonans trust to deliver non-biased information regarding issues that affect their daily lives. It is widely known that public figures like Ms. Lake have the ability to influence policy outcomes by using their platforms to discuss public policy issues.

The ads in question are clearly issue advertisements. The subject of the ads in question is the current border crisis and gun control—issues especially relevant in Arizona, a border state. The purpose of the ads is to urge viewers to contact Kari Lake regarding the border crisis and gun control and help encourage Ms. Lake to stop supporting open border policies that exacerbate the border crisis in an effort to influence public policy outcomes. The ad even provides a means for viewers to contact Lake: “Contact Kari Lake At KariLakeFacts.com.” Upon visiting KariLakeFacts.com, users can directly email Lake to express their concerns about the border. As previously mentioned, Freedom’s Future Fund is dedicated to promoting conservative values and policies like border security and 2<sup>nd</sup> Amendment rights—these ads further that purpose by urging the public to take action on the issue.

We expect the information provided herein will clarify any concerns you may have regarding our client’s ad. Should you have any questions, please do not hesitate to reach out to me directly at [cspies@dickinsonwright.com](mailto:cspies@dickinsonwright.com) or 202-466-5964.

Sincerely,



Charlie Spies  
*Counsel to Freedom's Future Fund, Inc.*

## Exhibit 3

8/14/22, 3:55 PM

State of Arizona Mail - complaint



Thomas Collins <thomas.collins@azcleaselections.gov>

---

## complaint

1 message

---

tim timlasota.com <tim@timlasota.com>

Fri, Jun 24, 2022 at 9:31 AM

To: Thomas Collins <thomas.collins@azcleaselections.gov>

Tom, I sent in the attached complaint months ago and never heard back. Now these people are running ads urging people to "contact" Kari Lake on policy issues, which is interesting because Ms. Lake does not hold public office. Screen shot attached. Can you update me on where this is?

---

### 2 attachments



Screenshot (72).png  
2964K

 CCECitr.2.16.22.pdf  
1465K

## Exhibit 4

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Damien R. Meyer**  
Chair

**Steve M. Titla**  
**Mark S. Kimble**  
**Galen D. Paton**  
**Amy B. Chan**  
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.azcleanelections.gov](http://www.azcleanelections.gov)

June 24, 2022

**Via E- Mail**

Charles Spies  
Jessica G. Brouckaert  
Dickenson Wright  
[cspies@dickinsonwright.com](mailto:cspies@dickinsonwright.com)  
International Square  
1825 Eye Street N.W.  
Suite 900  
Washington, D.C. 20006

**Re: MUR 22-01**

Dear Mr. Spies:

This letter is in reference to the Complaint filed by Tim La Sota and seeks a further response based on additional facts provided by Mr. La Sota today.

According to Mr. La Sota's supplemental correspondence, Freedom's Future Fund has continued to spend money on advertisements, which are the same or substantially the same, as the advertisements at issue in the Complaint in terms of their messaging and format.

These advertisements are currently running in Arizona. FCC filings with local television stations I have reviewed indicate that Freedom's Future Fund has made considerable expenditures on advertising. E.g., <https://publicfiles.fcc.gov/tv-profile/kpho-tv/political-files/2022/non-candidate-issue-ads/freedoms-future-fund/47491d03-7380-b954-d092-3408925f5af5>, <https://publicfiles.fcc.gov/tv-profile/kpnx/political-files/2022/non-candidate-issue-ads/freedoms-future-fund-2022/554f7e30-62cd-7284-ac7d-67f2ded06f1c>, <https://publicfiles.fcc.gov/am-profile/kfvi/political-files/2022/non-candidate-issue-ads/e7bd0bde-ef42-3a4d-5670-71ae6c6c3df8>.

Specifically, the Fund's response states:

The enactment of Code section 506 placed a notification requirement upon 501(c)(4) organizations. Following the enactment of Section 506, 501(c)(4) organizations are no longer required to file IRS form 1024 to be considered tax-exempt under Section 501(c)(4). Form 8976 was created to alleviate the large workloads the IRS exempt determinations department experienced. A form 8976 is now the commonly used IRS form for demonstrating tax-exempt status under Section 506.

Response at 2.

The IRS guidance, however, indicates that:

In addition to submitting Form 8976, organizations operating as 501(c)(4) organizations may also choose to file Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code, to request recognition of tax-exempt status. *Submission of a Form 1024-A does not relieve an organization of the requirement to submit Form 8976.* (emphasis added).

See, e.g., Electronically Submit Your Form 8976, Notice of Intent to Operate Under Section 501(c)(4), available at <https://www.irs.gov/charities-non-profits/electronically-submit-your-form-8976-notice-of-intent-to-operate-under-section-501c4>

Section 16-905(D)(1) states that: "Except for a religious organization, assembly or institution, claims tax exempt status but had not filed form 1023 or form 1024 with the internal revenue service, or the equivalent successor form designated by the internal revenue service, before making a contribution or expenditure."

**Please explain why Form 8976 is a successor form to form 1023 or 1024.**

**Is the Freedom Future's Fund an organization in good standing as a 501(c) entity with the IRS? If so, please provide documents supporting this statement.**

A response to this supplemental request is required by close of business Mountain Standard Time July 1, 2022.

Please contact us if you have any other questions at (602) 364-3477 or (602) 397-6362 or by e-mail at [thomas.collins@azcanelections.gov](mailto:thomas.collins@azcanelections.gov).

Sincerely,  
S/Thomas M. Collins  
Executive Director  
Attachments

## Exhibit 5



INTERNATIONAL SQUARE  
1825 EYE STREET, NW, SUITE 900  
WASHINGTON, DC 20006-5468  
TELEPHONE: 202-457-0160  
FACSIMILE: 844-670-6009  
<http://www.dickinsonwright.com>

CHARLES R. SPIES  
CSpies@dickinsonwright.com  
202-466-5964

Thomas M. Collins  
Executive Director  
Arizona Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, AZ 85007

VIA EMAIL: [thomas.collins@azcleelections.gov](mailto:thomas.collins@azcleelections.gov)

Re: CCEC MUR No. 22-01

July 1, 2022

Mr. Collins,

We are counsel to Freedom's Future Fund, Inc., the respondent in CCEC MUR No. 22-01. We are writing in response to your letter dated June 24, 2022 requesting additional information related to the matter under review. We have responded to each of the three inquiries contained in your letter below.

**I. Please provide a response explaining why, in your client's view, Freedom's Future Fund should or should not have to report spending related to candidate Kari Lake pursuant to these statutes.**

As we have described in previous correspondence to you, the ad in question is an *issue* ad and does not constitute express advocacy because it can be reasonably interpreted to have a purpose other than advocating for the election or defeat of a candidate. Response at 2-3.

In your correspondence you reference the case *Committee for Justice in Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347 (App. 2014) which we believe is entirely distinguished from Freedom's Future Fund's ad because of material differences. In contrast to that ad:

**1. Kari Lake is not a public official. She is a well-known television news journalist.**

In *Committee for Justice in Fairness*, the candidate targeted was a superintendent of Public Instruction running for Attorney General. Here, while Lake is a candidate, she is not a public official, rather she is a prominent television news journalist who viewers trust to present non-biased information regarding issues that affect their daily lives. Public figures like Ms. Lake have the ability to influence policy outcomes by using their platforms to discuss policy issues.

Our client's ads are best interpreted as encouraging viewers to contact a prominent news reporter and advocate for a more conservative view on border security and gun control. Of course, some may disagree with this policy approach but what is not open for interpretation is that the call to action clearly is *not* an exhortation to vote for or against a candidate.

**II. Please explain why Form 8976 is a successor form to form 1023 or 1024. Is the Freedom Future's Fund an organization in good standing as a 501(c) entity with the IRS? If so, please provide documents supporting this statement.**

Form 8976 is not a successor to form 1023. Form 1023 is used by organizations who apply for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. 501(c)(3) organizations do not have the option of filing form 8976.

Form 8976 is a successor to form 1024. Section 405(a) of the Protecting Americans Against Tax Hikes Act of 2015 (PATH Act), enacted by Congress on December 18, 2015 created a new filing requirement for organizations which are tax-exempt under Section 501(c)(4) of the Code by adding section 506 to the Code. The enactment of Code section 506 placed a notification requirement upon 501(c)(4) organizations. Following the enactment of Section 506, 501(c)(4) organizations are no longer required to file IRS form 1024 to be considered tax-exempt under Section 501(c)(4). Form 8976 replaces form 1024 in order to alleviate the large workloads the IRS exempt determinations department experienced. A form 8976 is now the commonly used IRS form for demonstrating tax-exempt status under Section 506.

The IRS provides 501(c)(4)s the option to request an official determination via form 1024A, however 501(c)(4) organizations are not required to file this form to be considered in "good standing." The form 8976 is the only form required to be filed to be in "good standing" with the IRS until the annual form 990 is due.

Freedom's Future Fund is a 501(c) entity in good standing with the IRS. It is incorporated as an exempt corporation in the state of Delaware, a copy of its certificate of incorporation has been provided to this Commission. It applied for and received a federal employer identification number from the IRS and timely filed IRS form 8976 (the 8976 notice was also provided to this Commission). These are the steps required to establish a 501(c)(4) organization. Freedom's Future Fund has not filed a tax return because it was formed in 2022. Freedom's Future Fund's first tax return will be due May 15, 2023 and it intends to fully comply with its filing obligations.

Sincerely,



Charlie Spies  
Counsel to Freedom's Future Fund, Inc.

## Exhibit 6



Thomas Collins &lt;thomas.collins@azcleaselections.gov&gt;

**Fwd: EXTERNAL: MUR 22-01 Request for additional response**

1 message

Thomas Collins &lt;thomas.collins@azcleaselections.gov&gt;

Thu, Jul 7, 2022 at 10:29 AM

To: "Jessica G. Brouckaert" &lt;JBrouckaert@dickinson-wright.com&gt;, "Charles R. Spies" &lt;CSpies@dickinson-wright.com&gt;

Ms. Brouckaert &amp; Mr. Spies:

We received the email below yesterday.

Thank you  
Tom Collins

----- Forwarded message -----

From: tim [timlasota.com](mailto:tim@timlasota.com) <tim@timlasota.com>

Date: Wednesday, July 6, 2022

Subject: RE: EXTERNAL: MUR 22-01 Request for additional response

To: Thomas Collins &lt;thomas.collins@azcleaselections.gov&gt;

Thanks Tom. For one thing he's wrong about Kari Lake's candidacy. It started, officially, June 1, 2021 or thereabouts. The Secretary of State would have the date the statement of interest was filed, but that's not online anymore. There are some other things that are simply wrong in that letter, I will provide some information from the IRS.

Sent from my iPhone

On Jul 1, 2022, at 12:59 PM, Thomas Collins &lt;thomas.collins@azcleaselections.gov&gt; wrote:

Per your request

----- Forwarded message -----

From: Jessica G. Brouckaert &lt;JBrouckaert@dickinson-wright.com&gt;

Date: Friday, July 1, 2022

Subject: RE: EXTERNAL: MUR 22-01 Request for additional response

To: Thomas Collins &lt;thomas.collins@azcleaselections.gov&gt;, "Charles R. Spies" &lt;CSpies@dickinson-wright.com&gt;

Mr. Collins,

Attached is a response to your request for additional information on behalf of our client, Freedom's Future Fund. Kindly confirm receipt and happy 4<sup>th</sup>!

-Jessica

From: Thomas Collins &lt;thomas.collins@azcleaselections.gov&gt;

Sent: Friday, June 24, 2022 4:57 PM

To: Charles R. Spies &lt;CSpies@dickinson-wright.com&gt;; Jessica G. Brouckaert

8/14/22, 4:09 PM

State of Arizona Mail - Fwd: EXTERNAL: MUR 22-01 Request for additional response

Thomas M. Collins  
Executive Director  
Arizona Citizens Clean Elections Commission  
[www.azcleanelections.gov](http://www.azcleanelections.gov)  
602-364-3477  
--> 602-397-6362 <--

--  
Thomas M. Collins  
Executive Director  
Arizona Citizens Clean Elections Commission  
[www.azcleanelections.gov](http://www.azcleanelections.gov)  
602-364-3477  
--> 602-397-6362 <--

7 attachments

 **image74285d.JPG**  
6K

 **image78c6dd.JPG**  
6K

 **imagefd9692.JPG**  
15K

 **image74285d.JPG**  
6K

 **image78c6dd.JPG**  
6K

 **imagefd9692.JPG**  
15K

 **CCEC MUR 22-01 Response 07.01.2022.pdf**  
352K

## Exhibit 7

8/14/22, 4:10 PM

State of Arizona Mail - RE: EXTERNAL: MUR 22-01 Request for additional response



Thomas Collins <[thomas.collins@azcleelections.gov](mailto:thomas.collins@azcleelections.gov)>

---

**RE: EXTERNAL: MUR 22-01 Request for additional response**

1 message

---

**Jessica Brouckaert Bartlett** <[JBartlett@dickinson-wright.com](mailto:JBartlett@dickinson-wright.com)>

Wed, Jul 13, 2022 at 2:47 PM

To: Thomas Collins <[thomas.collins@azcleelections.gov](mailto:thomas.collins@azcleelections.gov)>, "Charles R. Spies" <[CSpies@dickinson-wright.com](mailto:CSpies@dickinson-wright.com)>

Good Afternoon Mr. Collins,

Attached is Ms. Lake's nomination paper, dated March 7, 2022. Please don't hesitate to reach out to us with any additional questions. We are happy to fact check information.

-Jessica

---

**From:** Thomas Collins <[thomas.collins@azcleelections.gov](mailto:thomas.collins@azcleelections.gov)>

**Sent:** Thursday, July 7, 2022 1:30 PM

**To:** Jessica G. Brouckaert <[JBrouckaert@dickinson-wright.com](mailto:JBrouckaert@dickinson-wright.com)>; Charles R. Spies <[CSpies@dickinson-wright.com](mailto:CSpies@dickinson-wright.com)>

**Subject:** Fwd: EXTERNAL: MUR 22-01 Request for additional response

Ms. Brouckaert & Mr. Spies:

We received the email below yesterday.

Thank you

Tom Collins

---

**Jessica Brouckaert Bartlett Attorney**

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8/14/22, 4:10 PM

State of Arizona Mail - RE: EXTERNAL: MUR 22-01 Request for additional response

--

Thomas M. Collins  
Executive Director  
Arizona Citizens Clean Elections Commission  
[www.azcleelections.gov](http://www.azcleelections.gov)  
602-364-3477  
--> 602-397-6362 <--

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--

Thomas M. Collins  
Executive Director  
Arizona Citizens Clean Elections Commission  
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**STATE OF ARIZONA  
Statewide Candidate  
NOMINATION PAPER  
DECLARATION OF QUALIFICATION  
A.R.S. § 16-311**

You are hereby notified that I, the undersigned, a qualified elector, am a candidate for the office of **Governor** seeking the nomination of the **Republican Party**, at the **2022 Primary Election** to be held on **Tuesday, August 2, 2022**, and at the **2022 General Election** to be held on **Tuesday, November 8, 2022**, should I be nominated.

I will have been a citizen of the United States for **52** years before my election and will have been a citizen of Arizona for **27** years before my election, and I will meet the Constitutional and/or statutory age requirement for taking said office. I have resided in **Maricopa** County for **27** years before my election.

Residential Address:  
**5225 N. 31st Place Phoenix AZ 85016**

Post Office Address:  
**None supplied.**

Name in the exact manner you wish it to appear on the ballot:

**Lake**  
\_\_\_\_\_  
LAST NAME

**Kari**  
\_\_\_\_\_  
FIRST NAME

I declare, under penalty of perjury, that the information in this Nomination Paper and Declaration of Qualification is true and correct, and that at the time of filing I am a resident of the State of Arizona, that I have no final, outstanding judgments against me of an aggregate of \$1,000 or more that arose from failure to comply with or enforcement of campaign finance law, and as to all other qualifications, I will be qualified at the time of election to hold the office that I seek.

**Monday, March 7, 2022  
/S/ Kari Lake**

# Exhibit 2

THE STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

August 25, 2022

9:30 a.m.

**Miller Certified Reporting, LLC**  
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Reported By:  
Angela Furniss Miller, RPR  
Certified Reporter (AZ 50127)

1 PUBLIC MEETING, BEFORE THE CITIZENS CLEAN ELECTIONS  
2 COMMISSION, convened at 9:30 a.m. on August 25, 2022, at  
3 1400 West Washington Street, Conference Rooms 1-1102A and B,  
4 in the presence of the following Board members:

5 Mr. Damien Meyer, Chairman (virtual)  
6 Mr. Mark S. Kimble  
7 Mr. Steve Titla (virtual)  
8 Ms. Amy Chan

9 OTHERS PRESENT:

10 Thomas M. Collins, Executive Director  
11 Paula Thomas, Executive Officer  
12 Mike Becker, Policy Director  
13 Gina Roberts, Voter Education Director  
14 Avery Xola, Voter Education Specialist (virtual)  
15 Alec Shaffer, Web Content Manager (virtual)  
16 Kara Karlson, Assistant Attorney General (virtual)  
17 Natalya Ter-Grigoryan, Richards and Moskowitz  
18 (virtual)  
19 Bill Richards, Richards and Moskowitz (virtual)  
20 Charles Spies, Dickinson-Wright (virtual)  
21 Jessica Brouckaert Bartlett, Dickinson-Wright  
22 (virtual)  
23 Cathy Herring, KCA  
24 Rivko Knox, Member of the Public  
25

P R O C E E D I N G

CHAIRMAN MEYER: Good morning. I'm Damien Meyer, Chair of the Citizens Clean Elections Commission for this year.

Agenda Item Number I is call to order. It is 9:30 a.m. on August 25th, 2022, and I call this meeting of the Citizens Clean Elections Commission to order.

I'd like the -- I'd like to ask the audience members to please keep their microphones on mute.

And with that, we will take attendance. Commissioners, please identify yourselves for the record.

COMMISSIONER KIMBLE: Commissioner Mark Kimble; I'm present.

COMMISSIONER CHAN: Commissioner Amy Chan; here.

CHAIRMAN MEYER: And then Commissioner -- Commissioners Paton and Titla are not -- not attending today, correct, Tom?

MR. COLLINS: That --

COMMISSIONER TITLA: I'm on the line.

MR. COLLINS: Oh.

COMMISSIONER CHAN: Oh.

CHAIRMAN MEYER: Sorry.

COMMISSIONER TITLA: This is Steve Titla. I'm on the line.

1                   CHAIRMAN MEYER:   Excellent.   Okay.   Commissioner  
2   Titla is here.

3                   Is Commissioner Paton on the phone?

4                   MS. THOMAS:   No.

5                   CHAIRMAN MEYER:   Okay.   So just to clean up that  
6   record, we have four of us are present:   Commissioners Chan,  
7   Kimble, Titla, and then me, Damien Meyer.

8                   Second item on the agenda is discussion and  
9   possible action on minutes for the July 28, 2022, meeting.

10                  Does anyone have any comments or correction to the  
11   minutes?

12                  COMMISSIONER CHAN:   Mr. Chairman?

13                  CHAIRMAN MEYER:   Yes, Commissioner Chan.

14                  COMMISSIONER CHAN:   I move that we approve the  
15   minutes as written.

16                  CHAIRMAN MEYER:   We have a motion to approve.   Is  
17   there a second?

18                  COMMISSIONER KIMBLE:   This is a Commissioner  
19   Kimble, I second.

20                  CHAIRMAN MEYER:   We have a motion to approve the  
21   minutes.   I'm going to -- we'll vote on that.   I'm going to  
22   call the roll.

23                  I'll start with Commissioner Titla, how do you  
24   vote?

25                  COMMISSIONER TITLA:   Aye.

1           CHAIRMAN MEYER: Commissioner Chan.

2           COMMISSIONER CHAN: Aye.

3           CHAIRMAN MEYER: Commissioner Kimble.

4           COMMISSIONER KIMBLE: Aye.

5           CHAIRMAN MEYER: And Commissioner Meyer, and I vote  
6 aye as well.

7           So the minutes have been approved unanimously.

8           Next we'll move right along to Item Number III on  
9 the agenda, discussion and possible action on Executive  
10 Director's report, enforcement and regulatory updates, and  
11 legislative updates.

12           Tom, please -- the floor is yours, please let us  
13 know what's happening.

14           MR. COLLINS: Okay. Thank you.

15           Mr. Chairman, Commissioners, thanks for being here,  
16 all of you. We have obviously Commissioner Chan and  
17 Commissioner Kimble here in our -- in this hearing room,  
18 which is great. First time we've all been here for this  
19 since I think 2020, February, something like that. So  
20 that's pretty cool.

21           The -- so just to go through the Executive  
22 Director's report then. We have -- the primary election was  
23 canvassed on the 22nd; the turnout was 34.92 percent, which  
24 is pretty high for a primary I think. Right?

25           Yeah.

1           Is that record high? That is a record high for a  
2 midterm primary, so that was exciting.

3           And we'll be coming in in the next, you know, few  
4 weeks on the voter registration deadline on early voting for  
5 the general election.

6           Our legislative debates kick off this week and our  
7 statewide debates will begin in September. We have a  
8 schedule posted online.

9           You know, a couple of things we're working on  
10 there. Friday we have a deadline for some candidates to  
11 RSVP to us for the debate. So we will be hoping to hear  
12 from them. That will give us some sense of where we are on  
13 the statewide debates.

14           One issue we do want to -- we do want to kind of  
15 note briefly is, you know, we're working on -- been looking  
16 at the issue of scheduling, and in working through the  
17 schedule we did end up, our gubernatorial debate is  
18 currently scheduled to be on Yom Kippur. Now, we have had a  
19 discussion internally with our -- the folks we've been  
20 working with at PBS, the broadcast association, newspapers  
21 association. We -- the debate itself is going to begin  
22 right around sundown and then there's a lot more  
23 rebroadcasting and streaming opportunities and online  
24 opportunities than there have been in the past. So as -- as  
25 of this point we have not -- we're not going to -- we're

1 not -- at this point we're not moving -- we have not moved  
2 the date.

3 However, you know, obviously there's some  
4 considerations there and I want to make sure that you all  
5 are aware of where we are on that today.

6 And we can return to that as well if anybody wants  
7 to talk about it, you know, as part of this report.

8 You know, we have -- as you can see, Avery and Gina  
9 have been continuing to do a lot of outreach activities, you  
10 know, and I think that -- you know, I just want to say that,  
11 you know, with -- with the debates, the voter education  
12 guide, I should have noted was -- we are finalizing, you  
13 know, Avery and Gina and Alec, and -- and Mike and Paula  
14 have all been really -- been very busy and -- and -- but  
15 continuing to be accessible to people around the state when  
16 they have questions and when they are -- need information on  
17 voting and the like.

18 So, you know, but it -- this is -- you know,  
19 basically June and August are kind of crunch time for -- for  
20 our work, which is a little bit different than maybe the  
21 rest of the election community, but certainly it's a busy  
22 time of year.

23 We are -- Mike Hollar (phonetic) is continuing to  
24 work on our -- getting us installed in our new offices which  
25 are down the street from here. If anybody ever wants to

1 visit, they're the -- in what we used to think of as the  
2 DEQ, I think they now call the Natural Resources Building.  
3 It's 1110 West Washington.

4 And I've been in there pretty much, I don't know,  
5 three -- three days a week for the last few weeks and it's  
6 been -- it's been great. It's a -- it's a nice facility; it  
7 really is.

8 You can see the candidates -- Clean candidates who  
9 have moved on to the general election there and as well as  
10 the participating candidate numbers, and we've begun the  
11 auditing.

12 Couple of quick other notes, so -- and -- and I  
13 don't mean to go on so long, but we are still waiting as of  
14 this -- so as noted there, this Legacy Foundation Action  
15 Fund case which is an enforcement matter that has been  
16 around since 2014, is now at the State Supreme Court. They  
17 had a conference on the 23rd, the results of that conference  
18 have not entirely been published as of an hour ago, and I  
19 haven't gotten a chance to go back.

20 So we don't know if -- that -- that is Legacy  
21 Foundation's petition for review and we filed a response  
22 back in May; and so, you know, this week happens to be the  
23 State Supreme Court's very long agenda, they come back from  
24 the summer break, they do rules, they do a ton of motions;  
25 the petitions calendar is very long, so taking a couple days

1 to get that out is not that -- it's not extremely  
2 extraordinary. But if we find out in the course of this  
3 meeting, I -- we'll -- we'll let you know.

4 We did have a story in the Republic recently I  
5 think many of you ended up quoted on -- I think all of you  
6 ended up quoted on regarding the appointment process for the  
7 Commission.

8 We are -- the ballot initiatives we know now -- now  
9 know that it appears that the Voters Rights of No Initiative  
10 will be on the ballot; the Predatory Debt Collection  
11 Protection Act I believe will be on the ballot; I think  
12 there's still not clear -- there's still court action  
13 remaining on the Arizonans For Free and Fair Elections.  
14 Then I think that's kind of it.

15 And the regulatory agenda -305 and -306 are on this  
16 agenda for public -- for potentially initiate public  
17 comment.

18 So I think that kind of covers it.

19 Gina, Mike, Paula, is there anything else we want  
20 to make sure we...

21 MS. THOMAS: I think we're good.

22 MR. COLLINS: Kara, anything else we need to...

23 MS. KARLSON: Not for me, Tom.

24 MR. COLLINS: Okay.

25 Well, Commissioner Chairman, I would -- if you all

1 have any questions, that sort of completes our report.

2 CHAIRMAN MEYER: Thank you.

3 Tom, I had a question on the primary turnout. I  
4 know that was a record high, it's still sort of  
5 disappointing to see only, you know, essentially a third of  
6 registered voters vote in that primary.

7 Do we know, do Clean candidates tend to do well in  
8 their elections? Have we ever looked at that, like, what  
9 their percent -- record percentage is?

10 MR. COLLINS: Sure. Mr. Chairman, Commissioners,  
11 you know, in this particular election we had Clean  
12 candidates for, you know, one of the -- I mean, one of the  
13 first times I think in recent past beat either incumbents or  
14 sort of what you might call -- or officeholders moving from  
15 the House to the Senate and the Senate to the House in a  
16 primary. That is something that I think relates to in part  
17 the tactical decisions that those candidates are making.  
18 Really -- really that's the main driver of this, right?

19 So the candidates who are running successful  
20 campaigns in the public financing program in a primary,  
21 they're tending to use tactics that are focused I think -- I  
22 say this anecdotally -- that are more focused on grassroots  
23 canvassing perhaps than, you know, sort of the mailer-driven  
24 campaigns that might be more -- more popular with some  
25 incumbents or -- essentially incumbent legislators.

1           So we don't -- I don't think we have a precise  
2           number. I could do -- we could do a -- I think we could do  
3           a run through on -- on that; but I will say that it is -- it  
4           is -- the -- the conventional wisdom about the public  
5           financing program is that it does not provide sufficient  
6           funding to allow a person who is an outsider essentially to  
7           take on an incumbent who has that fundraising advantage and  
8           that -- and in so doing, you know, diminishes the --  
9           obviously the anticorruption impact of the -- of the  
10          program.

11           This session -- this election, this primary season,  
12          especially on the Democratic side, that proved to be not a  
13          rule and I -- and so I think that that may allow for some  
14          review there.

15           So we have a little bit of data I guess -- so to  
16          directly answer your question, we have a little bit of data  
17          from this election. That data looks different than what  
18          we've seen in the past, but we could do I think a -- you  
19          know, a more -- a broader look at that over time.

20           CHAIRMAN MEYER: 'Cause I think that can be useful  
21          data as a way to -- I mean, as an education piece for  
22          candidates; and maybe, you know, people who may want to run  
23          for office that think I can't, you know, raise the money to  
24          do it and I can't win if I run Clean. If they see, you  
25          know, that Clean candidates are doing well and fair well,

1           that that may promote more people to run. So I think that  
2           could be useful information.

3                   Then the other question I had on the primary  
4           turnout was, we do a ton of education, voter education work,  
5           and one of the things that we did this year that I observed  
6           and tried to Retweet and promote was, you know, letting  
7           those Independent voters know that they can vote in a  
8           primary if they request the ballot.

9                   Do we know of the, you know, approximately 1.5  
10          million voters, do we know how many of them were  
11          Independents and what our percentage of Independent  
12          registered voters were?

13                   And this might be more available on the Recorder's  
14          Office, I was just curious to see if that's something we've  
15          looked at to see how effective our education piece on that  
16          is.

17                   MR. COLLINS: Sure. Mr. Chairman, I think I would  
18          kind of refer to Gina, if...

19                   MS. THOMAS: One moment.

20                   MS. ROBERTS: Where?

21                   MS. THOMAS: To the right of Commissioner Chan.

22                   MS. ROBERTS: Oh, okay.

23                   CHAIRMAN MEYER: If we don't have this, I mean it's  
24          fine to sort of put this on next month's meeting agenda. I  
25          just think it's interesting for us to know internally some

1 of this stuff.

2 MS. ROBERTS: Sure. Mr. Chairman, Commissioners, I  
3 don't know the numbers for the full state, but I can tell  
4 you for Maricopa County Independent voter turnout was about  
5 14 percent, which is about average. So that --

6 CHAIRMAN MEYER: It is average. Okay.

7 MS. ROBERTS: Yes. It is on -- on par.

8 And, again, Independent voters, you know, they are  
9 right up there as part of one of our main voting blocs in  
10 terms of numbers of registered voters. But, again, I don't  
11 have that total statewide, we do have to take a look at each  
12 county and look at the number of partisan ballots that were  
13 requested by Independents; but for Maricopa County, it was  
14 about 14 percent.

15 CHAIRMAN MEYER: Thank you.

16 Any of the other Commissioners have questions?

17 COMMISSIONER KIMBLE: Mr. Chairman?

18 CHAIRMAN MEYER: Commissioner Kimble.

19 COMMISSIONER KIMBLE: To that last point, I -- I  
20 was going to bring that up, too.

21 I worked as a poll worker in the election, and from  
22 my experience there and from numerous letters to the editor  
23 I've read in -- in various publications, there's still so  
24 much confusion about Independents.

25 At the poll I was working I had, I don't know, more

1       than a dozen Independents who came in, said you have to  
2       choose a Democrat, Republican, Libertarian ballot -- no, not  
3       a Libertarian, Democrat or Republican; they said "I don't  
4       want to do that, I want an Independent ballot." And it's --  
5       I don't know, I found it surprising that this is still so  
6       widely misunderstood.

7               And I think there's a still perception that if I am  
8       an Independent I cannot vote or if I do I go in and ask for  
9       a Republican or Democratic ballot, then my registration is  
10      changed. And it's just a continuing source of confusion. I  
11      don't have any suggestion, but it's -- as an Independent, I  
12      find it frustrating.

13             Second point, on a different matter. The  
14      gubernatorial debate, I'm somewhat concerned that we're at  
15      this point scheduling it on Yom Kippur. It seems like if --  
16      if there's any possible way of changing it, seems like we  
17      should. Because it seems likely to -- to lead to some  
18      negative publicity or some controversy that I think the  
19      debate would -- would detract from the substance of the --  
20      of the debate.

21             And I don't know anything about the complexities of  
22      changing it to another date or the possibilities or the  
23      logistics but, if at all possible, I think it would be a  
24      good idea.

25             CHAIRMAN MEYER: Commissioner Chan, you had...

1 COMMISSIONER CHAN: Oh. Yes.

2 CHAIRMAN MEYER: I think you were --

3 COMMISSIONER CHAN: Thank you, Mr. Chairman. I was  
4 waiting to see if you were going to say something --

5 CHAIRMAN MEYER: Okay.

6 COMMISSIONER CHAN: -- and I didn't realize I was  
7 up.

8 CHAIRMAN MEYER: I -- I appreciate  
9 Commissioner Kimble's comments. I think it makes sense, of  
10 course.

11 COMMISSIONER CHAN: Thank you, Mr. Chairman.

12 I -- I agree. I think probably if possible it  
13 would be wise to try to reschedule that if at all possible.  
14 And as Commissioner Kimble alluded to, I'm not certain what  
15 the complexities might be, but maybe Tom can work on that  
16 with -- I know he's got a lot with all of the debates.

17 MR. COLLINS: No, I...

18 COMMISSIONER CHAN: Okay. I -- I wanted to just  
19 make a couple of comments -- well, maybe just one.

20 The Republic article featuring quotes from all of  
21 us. I just wanted to clarify because my quote was -- it  
22 was -- I -- what I stated in the article which was reflected  
23 was -- that this was a burden. And I -- I just wanted to  
24 make clear to the Commissioners and the staff and the public  
25 that there was context to that and there's some nuance to

1       that. Because the context, of course, was the point of the  
2       article which is that we're all serving expired terms, and I  
3       think all of us would not be here if -- if we didn't believe  
4       in the service that we are, you know, participating in and  
5       believe in the mission of this Commission.

6               And I -- I just wanted to make sure that you all  
7       know, because I care what you think, I don't want anybody  
8       here to think that I simply view this as a burden.

9               I think we all recognize that, you know, having a  
10      meeting once a month isn't a huge burden, but -- it is. I  
11      mean, it's -- it's a time commitment. And, frankly, in that  
12      context, I -- I appreciate seeing you all here today, but I  
13      think in the future I would -- with all due respect to  
14      Commissioner Kimble, I really appreciate being able to  
15      participate virtually. I think it helps, particularly  
16      considering the fact that we all have expired terms and --  
17      and have lives to conduct outside of this office.

18              So I just wanted to make it clear that the Clean  
19      Elections Commission's work and mission is still of utmost  
20      importance to me on a personal and a professional level, and  
21      I just didn't want any confusion about what my quote might  
22      have meant for anyone here. And if anybody has questions  
23      about that, please feel free to ask me.

24              So, thank you.

25              CHAIRMAN MEYER: Thank you, Commissioner Chan.

1 Appreciate that.

2 Commissioner Titla, do you have any comments or  
3 questions on the Executive Director's report or any other  
4 comments we've had or made?

5 COMMISSIONER TITLA: No. Thank you, everyone.  
6 Yeah, thank you; no.

7 CHAIRMAN MEYER: And then before we move on, I just  
8 want to -- Commissioner Chan, I -- I understand why you  
9 wanted to make those comments. I know -- I certainly don't  
10 doubt your commitment to this Commission. So -- so I  
11 appreciate you saying that --

12 COMMISSIONER CHAN: Thank you, Mr. Chairman.

13 CHAIRMAN MEYER: -- and thank you.

14 Okay. Tom, do you have any follow-up information  
15 after any of the questions or comments from the  
16 Commissioners or are you ready to move on to the next agenda  
17 item?

18 MR. COLLINS: Mr. Chairman, thanks. I mean I  
19 suppose I should just say, we -- you know, we don't have the  
20 debate set up as an action item, but I -- we can take -- you  
21 know, we take the comments of the Commissioners, you know,  
22 with seriousness and we'll -- you know, we'll be looking at  
23 that. We will -- as I mentioned, we'll have the RSVP for  
24 some of these on Friday, so that will give a little better  
25 sense of where we are and we'll try -- we'll try to mitigate

1           that the best we can.

2                   CHAIRMAN MEYER:   Great.

3                   Okay.   So we'll move on to Agenda Item Number IV,  
4           which is discussion and possible action on MUR 2022-01,  
5           Freedom's Future Fund.

6                   COMMISSIONER CHAN:   Mr. Chair?

7                   CHAIRMAN MEYER:   Yes, Commissioner Chan.

8                   COMMISSIONER CHAN:   If I could just ask a quick  
9           question about this item.

10                   My understanding is that this involves the  
11           Governor's race, and in my other job for items that involve  
12           the Governor's race because of the fact that the person that  
13           I ultimately work for is running for Governor, our office  
14           over there has not been -- has been referring these matters  
15           out.   And so I just wanted to bring that up because I  
16           think -- even though I know I could be impartial, I just  
17           would like to, out of abundance of caution, avoid any  
18           appearance of impropriety or potential conflict of interest.

19                   And so I wanted to throw that out there, I was  
20           thinking I should recuse myself from considering this  
21           matter.

22                   CHAIRMAN MEYER:   Sure.   Thank you, Commissioner  
23           Chan.   And I -- and I think that was already my  
24           understanding going in, 'cause we have talked about those  
25           issues and I certainly understand why you're taking that

1 position.

2 So thank you for those comments, but -- so moving  
3 forward with that, Tom, we have a reason to believe  
4 recommendation from you in your capacity as our Executive  
5 Director on this matter; Commissioner Chan is not going to  
6 be participating, but we do have three other Commission  
7 members here so we still have a quorum; and I'd like, Tom,  
8 for you to introduce the item, give us an overview, and  
9 then, you know, of course if we have questions, we'll let  
10 you know.

11 And then I also see Mr. Spirs -- or, I'm sorry, is  
12 it Spies -- Spees (phonetic)?

13 MR. SPIES: Spees (phonetic), but close enough.

14 CHAIRMAN MEYER: Thank you. I apologize,  
15 Mr. Spies. And Ms. -- Ms. -- is Ms. Bartlett on the line?

16 MR. SPIES: She is in the office with me, but I'll  
17 be speaking.

18 CHAIRMAN MEYER: Okay, and they are the attorneys  
19 for the Freedom's Future Fund; some of Mr. Spies'  
20 correspondence is in our packet.

21 So that was sort of kind of the order we take these  
22 items in.

23 So we're going to start with Tom. So, Tom, the  
24 floor is yours. Please go ahead.

25 MR. COLLINS: Thank you, Mr. Chair.

1           And, you know, by -- by way of introduction I want  
2           to -- you know, this concerns some advertisements that were  
3           run in the -- throughout the spring -- well, the winter,  
4           spring, and summer.

5           I want to first make a quick record of, as you can  
6           see in the recommendation there are two parts, there is a  
7           part one which deals with the expressed advocacy question  
8           and a part two that deals with reporting. Part two deals  
9           with two different kinds of reports, it deals with reports  
10          under 16-941(B) and 16-958, and reports under 16-926.

11          For purposes of, you know, today based on, you  
12          know, representations that Ms. Bartlett has made to me about  
13          other expenditures -- or I shouldn't say "expenditures,"  
14          other spending that Freedom's Future Fund has made, I'm not  
15          going to ask at this time -- or to move forward on reason to  
16          believe on the -926 primary purpose part of this  
17          recommendation.

18          So I just wanted to say that up front because it's  
19          something that I think is important and I wanted to make  
20          sure you all know that, you know, if -- if that, you know,  
21          changes or what have you, we'll come back to it. But at  
22          this point, you know, we have some representations from --  
23          from Freedom's Future Fund regarding their purpose and their  
24          spending that make me -- that I want to make clear I am not  
25          asking for -- for there to be any determination on reason to

1 believe about the primary purpose of Freedom's Future Fund  
2 today.

3 CHAIRMAN MEYER: And, Tom, just so make sure we're  
4 on the same page. When you say "primary purpose," you're  
5 talking about the organization, Freedom's Future Fund, in  
6 and of itself, and we are not talking about the primary  
7 purpose of the ad.

8 MR. COLLINS: Correct.

9 CHAIRMAN MEYER: We're talking about the  
10 organization, correct?

11 MR. COLLINS: Mr. Chairman, that is correct.

12 CHAIRMAN MEYER: Okay. Thank you.

13 MR. COLLINS: So this would be -- so on this would  
14 be part two of part two of the memo essentially, 16-926 and  
15 the primary purpose analysis, we're not asking to make a  
16 determination on reason to believe today.

17 CHAIRMAN MEYER: 'Kay.

18 MR. COLLINS: And Mr. Spies may have further record  
19 he wants to make on that, I'm not purporting to foreclose  
20 that. It's just -- it's just my agreement with -- with  
21 them, I think.

22 So, if you all have had the opportunity to review  
23 the memo, you know, our -- the issue here is, you know,  
24 principally focused on advertisements that identify Kari  
25 Lake -- although not per se as a candidate for Governor,

1       although we think that it's established, you know, by the  
2       case law and -- and as it works out, that Kari Lake was a  
3       clearly identified candidate for Governor in the  
4       advertisements; that the advertisements are express advocacy  
5       because when objectively evaluated as a whole, the  
6       advertisements we -- the advertisement we reviewed, which is  
7       in the materials at the YouTube link, and the evidence of  
8       other advertisements that we were able to glean from the FCC  
9       filings, together creates -- allows us to determine that  
10      there is reason to believe a violation may have occurred  
11      here.

12             The violation is that if you have an express  
13      advocacy piece of literature/advertising, and you -- under  
14      16-941(B) and 16-958, once that spending reaches a threshold  
15      with regard to a particular candidate, a filing is due, and  
16      those filings have not been made.

17             You know, we've looked, reviewed the case law here.  
18      Primarily the Committee for Fairness and Justice, which is a  
19      2014 Arizona Court of Appeals case concerning similar facts;  
20      and then a case called *Furgatch v. Federal Election*  
21      *Commission*, which is a 1987 -- or '86 -- Ninth Circuit Court  
22      of Appeals case that concerned the constitutional  
23      application of a -- of the federal election campaign --  
24      campaign act.

25             And the language, the test that *Furgatch*

1 articulates, at least in our -- our view, is -- is the test  
2 that's in Arizona statute and the test that's applied in  
3 Committee for Fairness and Justice. And essentially that  
4 means you have a -- does that advertisement have meaning  
5 such that no reasonable person could differ that its -- that  
6 its purpose was to advocate for or against -- for the defeat  
7 of or in favor of the election of a candidate, a clearly  
8 identified candidate.

9 That's sort of the summary of -- of our position.

10 Obviously, you know, because Mr. Spies is here,  
11 we -- you know, I -- and then we -- you know, I -- I think  
12 that would -- that's all I have at this point unless the  
13 Commission has questions of me.

14 CHAIRMAN MEYER: Any Commissioners have any  
15 questions at this point?

16 'Kay. Let's go ahead and I'll turn this over to  
17 Mr. Spies.

18 MR. SPIES: Thank you, Mr. Chairman, and thank you  
19 to the Commission for the opportunity to speak today.

20 As noted, I'm Charlie Spies. My colleague Jessica  
21 Bartlett is here in the office with me; and I also  
22 appreciate the assistance of my colleagues from our Phoenix  
23 office on the Arizona statutory interpretation points.

24 We represent Freedom's Future Fund and vigorously  
25 disagree with the reason to believe recommendation that's

1       before you today.

2               Before I go into why we disagree with that, I want  
3       to let you know how much -- how professional your staff has  
4       been to deal with. So they've done a good job and have been  
5       professional and responsive throughout this; and if you make  
6       a decision that I will disagree with and find reason to  
7       believe, we nonetheless will continue to work with them in a  
8       conciliation process. So please don't take the strenuous  
9       nature of the argument I'm about to make as anything  
10      disrespectful to the Commission or your staff because they  
11      have been, you know, very good to deal with.

12              That said, we strongly disagree with the  
13      recommendation regarding express advocacy.

14              A little bit of background here is that Freedom's  
15      Future Fund is a non-stock, non-for-profit corporation,  
16      domestic in Delaware. Our focus is on -- the group's focus  
17      is on public policy advocacy on a variety of conservative  
18      policies focused on the West. It has primarily focused on  
19      border security and on Second Amendment rights. And I would  
20      note that this calendar year alone, they've spent over  
21      \$600,000 on policy -- pure policy advocacy that did not  
22      mention candidates at all. So could not -- you know, it  
23      isn't even open for contention for express advocacy; it's  
24      just pure policy work and no candidates mentioned.

25              So we believe it clearly has a primary purpose of

1       social welfare, and that the advertisements run in Arizona  
2       and being contested here are consistent with that purpose of  
3       educating people in the West especially, about the  
4       importance of border security policies.

5               I would note that the ads in question here  
6       highlighted Kari Lake's position on a variety of issues  
7       including amnesty, border security, and gun control. Each  
8       one of the advertisements run by the organization had a call  
9       to action in it, which directed the viewer to contact Kari  
10      Lake directly regarding her position on these issues; and  
11      the purpose was to persuade her to take a stronger position,  
12      especially on border security issues where she in the past  
13      was very supportive of -- of then-President Obama and Vice  
14      President Biden's policies on amnesty and what  
15      President Trump described as open borders. And we have been  
16      trying to push Candidate Lake and broad -- and Public Figure  
17      Lake to adopt stronger positions towards the border.

18             Some of these ads may have won her support among  
19      the supporters. You know when we educate the public on her  
20      positions on border security, that may help her in terms of  
21      some moderate voters who like the Biden-Obama policies, and  
22      when they learn that she was supportive of them, that might  
23      actually help her; and it might hurt her with some of the  
24      more harder line Trump supporters when they realized that  
25      she was not aligned with their policies.

1           Either way, our goal -- what the group's goal was  
2           to push her to adopt harder line policies on the border.

3           This is important when we get to the legal analysis  
4           in front of you. And if you -- there's a couple things we  
5           have to look at, the first is the Arizona statute, the  
6           second is Arizona case law, and the third is constitutional  
7           precedent, which is in the Ninth -- is most relevant here  
8           with the Ninth Circuit and the *Furgatch* decision.

9           Before I briefly walk through this, I want to  
10          remind you ahead of time what my conclusion is going to be,  
11          and that's going to be the language in *Furgatch*, the Ninth  
12          Circuit opinion from 1987 that has guided the statutory  
13          construct in Arizona and controls what you can and can't do;  
14          and *Furgatch* concludes that if there -- if any reasonable  
15          alternative can be sugges- -- if any reasonable alternative  
16          can be suggested, then the communications cannot be treated  
17          as express advocacy.

18          I remind you that doesn't mean it has to be the  
19          best interpretation, it's just any reasonable  
20          interpretation.

21          So starting with Arizona's Clean Election Act,  
22          which I know you clearly are very familiar with, and it  
23          has -- both outlines the magic words, so to speak, that come  
24          from *Buckley v. Valeo* and their footnote 52 which outlines  
25          what -- what is considered to be express advocacy, and those

1 phrases about voting for, electing, re-electing, supporting,  
2 there's no argument that we have never included any of those  
3 in any of our communications. So that's not in question  
4 here.

5 The question is the second part of the Arizona  
6 test, which says that in context the advertisement can have  
7 no reasonable meaning other than to advocate the election or  
8 defeat of the candidate. And that's where we vigorously  
9 disagree on the idea that there can be no reasonable  
10 interpretation of policy adverti- -- advocacy from our  
11 advertisements.

12 And I walked through before the facts in terms of  
13 the content of the ads and the purpose of them, and I just,  
14 I don't -- I think that is a very reasonable and happens to  
15 be accurate explanation of what the purpose of it is.

16 The staff -- your staff in their reason to believe  
17 recommendation rely heavily on the language of Committee for  
18 Justice and Fairness, CJ- -- the C (technical disruption)  
19 decision, and they use that to try to push you towards a  
20 more holistic view that wants you to sort of push in favor  
21 of regulation. And I would urge you to dis- -- first of  
22 all, I don't agree with their conclusion there because I  
23 believe it still constrained by the "any reasonable  
24 alternative" language found in *Furgatch*; but aside from  
25 that, CJF is not a good example here because it can be

1 distinguished in terms of the content of the ads.

2 In CJF what you had was a call to action that said:  
3 "Tell Superintendent Horne to protect children, not people  
4 who harm them." And the ad claimed that when Horne was in  
5 the state legislature, he voted against tougher penalties  
6 for statutory rape; and when he was on the Board of  
7 Education, he voted to allow back into the classroom a  
8 teacher who was caught by students looking at child  
9 pornography on a school computer.

10 That case was a clear mudslinging attack on a  
11 candidate, which illuminated the uncontroversial issue,  
12 which I hope and believe that the general public all agrees,  
13 protecting children from sexual predators is important.  
14 There weren't two sides to the issue and it wasn't really a  
15 policy issue, it was just a character attack on the  
16 candidate.

17 Unlike that ad in CJF, our client's ad educates the  
18 public on the hot-button issues of gun control and border  
19 security and whose public policy solutions are better, and  
20 urges people to urge Kari Lake to support a more strict  
21 position on border security.

22 Some people may agree, some people may disagree,  
23 but that was the focus and it's very different than the CJF  
24 example.

25 Then CJF in the Arizona cases are -- are both

1       educated by and constrained by the Ninth second -- Ninth  
2       Circuit's *Furgatch* opinion. And as a reminder, under the  
3       *Furgatch* -- the *Furgatch* standard "speech, quote, when read  
4       as a whole and with limited references to external events  
5       must be susceptible of no other reasonable interpretation  
6       but an as exhortation to vote for or against a specific  
7       candidate."

8               That's what *Furgatch* says and that's at page 864.

9               And the Court writes the component to that standard  
10       into three different parts. It talks about, first of all,  
11       even if it is not presented in the clearest, most explicit  
12       language, speech is expressed for present purposes if its  
13       message is unmistakable and unambiguous, suggestive of only  
14       one plausible reading.

15              Second they say: "Speech must only be termed  
16       advocacy if it presents a clear plea for action, and thus  
17       speech that is merely informative is not covered."

18              And the third factor is "it must be clear what  
19       action is advocated. Speech cannot be express advocacy of  
20       the election or defeat of a clearly identified candidate  
21       when reasonable minds could differ as to whether it  
22       encourages a vote for or against a candidate or encourages  
23       the voter to take some other kind of action."

24              And that -- I'm reading that language from 864 of  
25       the opinion.

1           So we do -- our ads do not with those factors of  
2           unambiguously suggestive of only one plausible reading --  
3           read -- meaning and having a clear plea to action to vote,  
4           we do not meet those standards and, therefore, our ad does  
5           not meet the constitutional standard in the Ninth Circuit.

6           I'm (verbatim) start out by saying I've been  
7           respectful of the staff's recommendation here, and to be  
8           blunt, you may think that their interpretation is the best  
9           interpretation. So you may read through the reason to  
10          believe finding and be compelled that the best  
11          interpretation of Freedom's Future Fund's ads is they're  
12          intended or that they do advocate against Kari Lake; you  
13          could think that's the best interpretation. But, remember,  
14          that's not the legal standard here.

15          The legal standard is, is there a plausible  
16          argument? Is there any reasonable argument that the ads are  
17          about border security and about policy issues; and if there  
18          are -- if there are those plausible arguments, then under  
19          the standards that you're constrained by, this cannot be  
20          considered to be express advocacy.

21          I appreciate your giving me the time to address  
22          you.

23                 CHAIRMAN MEYER: Thank you, Mr. Spies.

24                 And I just want to say your comments at the  
25          beginning are in these times a breath of fresh air and very

1 much appreciated, your compliments to our staff, your, you  
2 know, ability to see that reasonable minds can disagree on  
3 something, I appreciate that.

4 I do have a couple of questions for you and then  
5 I'll turn it over to my fellow Commissioners as well.

6 And can I ask, Mr. Spies, are you lead counsel on  
7 this matter for the -- for the Freedom's Future Fund?  
8 You're the principal?

9 MR. SPIES: Yes, sir.

10 CHAIRMAN MEYER: Okay. And then is there any  
11 counsel in Arizona that's helping you with this at the  
12 Dickinson-Wright office?

13 MR. SPIES: Yes.

14 CHAIRMAN MEYER: Okay. So where -- where do you  
15 live, sir?

16 MR. SPIES: Washington, D.C.

17 CHAIRMAN MEYER: And -- and do you think the fact  
18 you live in Washington, D.C., does that impact your ability  
19 to determine whether or not an ad like this in Arizona may  
20 or may not be, you know, express advocacy?

21 MR. SPIES: I would respectfully say no because  
22 this is dealing with cons- -- U.S. constitutional  
23 principles; and, you know, in my time working at the Federal  
24 Election Commission, we were dealing with these nationally  
25 and you've got *Buckley v. Valeo* federal standards and the

1 Ninth Circuit, all of which extends beyond Arizona. So I  
2 would respectfully say no.

3 CHAIRMAN MEYER: Well, would you agree with me that  
4 someone who lives in Arizona and watches -- for example,  
5 watches this YouTube ad -- that I would like to play if we  
6 could at the Commission meeting. I -- I can play it on my  
7 screen if -- I don't know if we can play it there.

8 But would you agree with me that someone who lives  
9 in Arizona may view this ad and have a different  
10 interpretation of it than you who lives in Washington, D.C.?

11 It may impact them much differently as a resident  
12 of Arizona than it does someone who lives in D.C.?

13 MR. SPIES: Mr. Chairman, I -- absolutely; but I  
14 would also respectfully say that that proves my point, which  
15 is that different viewers -- when you're talking about  
16 policy advocacy ads, they may be good to some people, bad to  
17 other people and they may see them through different lenses,  
18 and that can't be the constitutional standard for express  
19 advocacy.

20 CHAIRMAN MEYER: Okay. And I guess, you know, I --  
21 I read in one of your letters -- and maybe this is on the --  
22 a different issue of public figure/public official. And are  
23 we going to get into that later or we going to get into  
24 that -- is that on the table presently?

25 MR. SPIES: On the table presently.

1           CHAIRMAN MEYER: Okay. So I think in one of the  
2 letters it states that you're viewing Ms. Lake as a TV  
3 journalist and -- and not as a -- as a candidate. I guess  
4 to me that strains credibility. She hasn't been on the news  
5 for several years, two or three years to my knowledge, and  
6 she has been running for Governor here in the state of  
7 Arizona -- and every native Arizonan knows that -- for at  
8 least two years.

9           So I guess what is -- I guess, what is the basis to  
10 argue that this ad is to try to influence a TV journalist  
11 and not a candidate?

12          MR. SPIES: Mr. Chairman, I think your comment is  
13 fair. That's probably right that people now view her as a  
14 candidate, but in terms of the legal analyst -- and this is  
15 why I didn't focus on that argument -- it's not really  
16 relevant. The point is that she's an influential public  
17 figure who at least in the past has been wrong on border  
18 security issues, and my client would like to push her to  
19 take a stronger position.

20          CHAIRMAN MEYER: Well, when you say she's been  
21 wrong on border security issues, I think you mean she's  
22 taken a position that your organization, Freedom's Future  
23 Fund, disagrees with.

24          MR. SPIES: Absolutely.

25          CHAIRMAN MEYER: Okay.

1 MR. SPIES: Sorry for not being more precise.

2 CHAIRMAN MEYER: No, that's okay.

3 Does Freedom's Future Fund have an office in  
4 Arizona?

5 Do they have any employees in Arizona?

6 MR. SPIES: No.

7 CHAIRMAN MEYER: Okay.

8 Okay. I don't have any other questions right now  
9 but, do we know, do we have the ability to play that  
10 YouTube lab -- or YouTube ad during this meeting?

11 MS. THOMAS: Yes.

12 MS. HERRING: Yes. We can pull that up.

13 MR. COLLINS: Do you --

14 CHAIRMAN MEYER: I would like to play that so we  
15 can all just see what we're talking about.

16 MR. COLLINS: Mr. Chairman, if I -- if I may just  
17 real quick -- wait.

18 MS. HERRING: Would you like to play it now?

19 MR. COLLINS: Okay.

20 (Whereupon the ad was played.)

21

22 CHAIRMAN MEYER: Okay. Thank you for showing that.

23 My fellow Commissioners, you have any questions for  
24 Mr. Spies?

25 COMMISSIONER KIMBLE: Mr. Chairman?

1                   CHAIRMAN MEYER: Mr. Kimble.

2                   COMMISSIONER KIMBLE: Mr. Spies, Chairman Meyers  
3                   (verbatim) hit on a point that -- that I was -- that I was  
4                   going to make. It seems like your main point that you're  
5                   making is that she's not a candidate -- or she is a  
6                   candidate, but that's not what you're -- you're involved  
7                   with, you're -- you're delivering this information because  
8                   she's a widely known public figure who has the ability to  
9                   influence policy outcomes and who just happens to be a  
10                  candidate.

11                 And I'm wondering if you can tell me, first of all,  
12                 am I accurate in my understanding of your position; and,  
13                 second of all, how many other campaigns -- television  
14                 campaigns have you undertaken nationwide against former  
15                 television journalists who have not been on the air as  
16                 television journalists for several years, just to say these  
17                 people are giving you bad information as television  
18                 journalists several years ago?

19                 MR. SPIES: So thank you for the question because I  
20                 think it's important to clarify that one component of the  
21                 arguments we made in our rather lengthy responses was that  
22                 we are trying to influence her positions on issues and even  
23                 before she ran for office she was an influential public  
24                 figure, and so that's where that fits into the argument.

25                 However, in terms of the legal decision the

1 Commission has in front of you today and determining whether  
2 the advertisement is express advocacy, that does not depend  
3 on the status of the person that is mentioned in the  
4 advertisement, it depends on the communication in the  
5 advertisement. And, again, the question you have in front  
6 of you is respectfully to determine: Is there any  
7 reasonable alternative reason that Freedom's Future Fund  
8 might have been running advertisements than to promote or  
9 oppose a candidate?

10 And even if you watch the ad and you want to -- you  
11 have a different takeaway from it, I would urge you to look  
12 at the -- in your packet is the exact script and language of  
13 the advertisement that just ran and the closing line of the  
14 advertisement, which is "Contact Kari Lake and tell her its  
15 time to secure our border"; and that is with contact  
16 information on the screen.

17 So if that is a plausible or reasonable  
18 interpretation, than this cannot be considered to be express  
19 advocacy under the constitutional construction --  
20 restrictions thrown out in *Furgatch*.

21 COMMISSIONER KIMBLE: I -- I understand that and I  
22 don't know that I -- I'm straining to see if there's another  
23 plausible explanation other than the fact she's running for  
24 Governor or another reasonable explanation other than the  
25 fact she's running for Governor, and -- and at this point

1 I'm not sure I see one.

2 It -- it seems -- despite the fact that you don't  
3 say "vote against Kari Lake," it seems clear from the  
4 context of the entire ad, not just the tag line about  
5 contact her at this website, that -- that the intent is --  
6 is directed at as you once -- as you called her during your  
7 presentation "Candidate Lake," not "Former Television  
8 Journalist Lake."

9 MR. SPIES: May I respectfully just note that the  
10 question before the Commission is not what the intent of the  
11 advertisement was, because that would force you to then look  
12 into the minds of different people engaging in free speech  
13 in the state. So intent is not the issue. The issue is:  
14 Can the content of the advertisement be reasonably  
15 interpreted to have any plausible reas- -- meaning other  
16 than to vote for or vote against her?

17 And, you know, that if plausibly this could be  
18 considered to try to persuade her to take a harder line on  
19 border issues -- which, in fact, is what it's doing -- then  
20 even if you think there's a better explanation, it's still  
21 not express advocacy.

22 COMMISSIONER KIMBLE: Okay. Thank you, Mr. Spies.

23 CHAIRMAN MEYER: Commissioner Chan and then also I  
24 don't want to forget about Commissioner Titla who is on --  
25 on the line.

1                   But, Commissioner Chan, do you have any questions  
2                   for Mr. Spies?

3                   COMMISSIONER CHAN: Mr. Chairman, I'm not  
4                   participating.

5                   CHAIRMAN MEYER: Oh. I'm sorry. Forgive me.

6                   COMMISSIONER CHAN: That's all right.

7                   CHAIRMAN MEYER: Commissioner Titla --

8                   COMMISSIONER CHAN: Thank you for your  
9                   consideration.

10                  CHAIRMAN MEYER: Yes.

11                  Commissioner Titla, do you have any questions for  
12                  Mr. Spies?

13                  COMMISSIONER TITLA: Yeah. I -- I just got on -- I  
14                  was on the phone and I just got on the Zoom now, and is it  
15                  possible to replay this -- this ad so I can see it?

16                  CHAIRMAN MEYER: I think we can manage that.

17                  COMMISSIONER TITLA: Okay. Thank you.

18                  CHAIRMAN MEYER: Can we please replay the ad?

19                  MS. THOMAS: Yes. One moment.

20                  (Whereupon the ad was played.)

21

22                  CHAIRMAN MEYER: Commissioner Titla?

23                  COMMISSIONER TITLA: Yeah, thank you. Yeah, I saw  
24                  the ad.

25                  So Freedom's Future is saying that this is not

1           expressed advocacy for Kari Lake?

2                   CHAIRMAN MEYER: That's correct -- or, actually, I  
3 think it would be expressed advocacy against Kari Lake I  
4 think is -- is...

5                   But go ahead.

6                   COMMISSIONER TITLA: What they're saying?

7                   CHAIRMAN MEYER: I'll let Mr. Spies state their  
8 position.

9                   My understanding is that Mr. Spies is arguing,  
10 quite well in my opinion, that this ad does not constitute  
11 express advocacy regarding Ms. Lake.

12                   But Mr. Spies, I'll let you answer  
13 Commissioner Titla's question.

14                   MR. SPIES: Yes. Commissioner, thank you for  
15 taking the time to view it mult- -- you know, and look at  
16 it, but to be clear, yes, Freedom's Future Fund believed  
17 that this is an advertisement our position is to push Kari  
18 Lake to take a stronger position on border security issues.

19                   And I should also note, I don't think I've  
20 mentioned, that Freedom's Future Fund has spent six figures  
21 on advertisements on border security that do not mention any  
22 candidates at all. So -- that was in July of this year. So  
23 this is consistent with the policy advocacy purpose of the  
24 organization to encourage strong border security policies.

25                   CHAIRMAN MEYER: But Mr. Spies, doesn't that --

1       doesn't that fact almost work against you here? Because,  
2       you know, it sounds to me -- is \$6 million the majority of  
3       the spending on border issues?

4               You know, you just say you spent \$6 million on  
5       ads --

6               MR. SPIES: I -- I --

7               CHAIRMAN MEYER: -- that don't mention candidates,  
8       which obviously would not be expressed advocacy against a  
9       candidate or pro or -- pro or against a candidate because  
10      there's no candidates mentioned, but the ad we're looking at  
11      is obviously distinguished because it's -- it does mention a  
12      candidate. And not only does it mention that candidate,  
13      it -- it provides facts that are -- have nothing to do with  
14      border security.

15              For example, how does pointing out that Ms. Lake  
16      donated money to Obama and did not donate to former  
17      President Trump, how does that fact attempt to influence  
18      someone on border measures?

19              To me I look at that and that's just a play --  
20      that's just an advertisement to try to portray her in a  
21      negative light and -- for the Republican party and to impact  
22      her candidacy, and I don't see another way -- another  
23      reasonable way to view that. But that's how I see it right  
24      now.

25              MR. SPIES: A couple points, Mr. Chairman. First

1 of all, if I said 6 million then I apologize, I meant to say  
2 six figures, so.

3 CHAIRMAN MEYER: Oh. You did say six figures. I  
4 think I -- that's my fault.

5 MR. SPIES: Sadly we don't, the group doesn't have  
6 6 million to spend, but...

7 CHAIRMAN MEYER: Nor do I, Mr. Spies, so. So go  
8 ahead.

9 MR. SPIES: But to -- to ask your -- to answer your  
10 question about why that's relevant or does that cut against  
11 us, I think it goes to the policy advocacy purpose of the  
12 organization.

13 And, remember, the standard you as Commissioners  
14 are voting on today is, is it rea- -- is there a reasonable  
15 interpretation of the advertisement that it is meant to  
16 advocate for stronger border security policies and to push  
17 Kari Lake to take stronger border security policies.

18 So, again, that doesn't have to be the best  
19 interpretation, you may not even agree with that  
20 interpretation, your only question is: Is that a reasonable  
21 interpretation? And if it is, then under *Furgatch* this  
22 cannot be considered to be express advocacy.

23 CHAIRMAN MEYER: Okay. Do any other Commissioners  
24 have any further questions for Mr. Spies?

25 Okay. Hearing none, Tom, do you have any

1 additional comments or -- for the -- for the Commissioners?

2 MR. COLLINS: Mr. Chairman, just briefly -- and I  
3 will be brief. I first I want to just rehighlight that  
4 we're not asking for -- and I think, you know, because of,  
5 you know, Mr. Spies just mentioned that other spending, you  
6 know, I think that's part of the reason, you know, we are  
7 asking for anything on the primary purpose at all. That's  
8 an important fact that Mr. Spies pointed out for the primary  
9 purpose issue and I just want to highlight that so that --

10 CHAIRMAN MEYER: And, again, that's the primary  
11 purpose of the organization.

12 MR. COLLINS: Correct, yeah. I just want to make  
13 sure that the record is crystal clear about that.

14 With respect to the advertisements at issue, you  
15 know, Committee for Justice and Fairness is good law in  
16 Arizona. In fact, as an administrative agency, I think it's  
17 the controlling case for us. The advertisement in that case  
18 said -- ran, you know, when the candidate was still  
19 superintendent of public instruction and it -- you know, it  
20 claimed that when the -- the personnel running for Attorney  
21 General -- or was running for Attorney General, as a state  
22 legislator he voted against tougher penalties for statutory  
23 rape; and then he when he was on the Board of Ed, he voted  
24 to allow a classroom teacher who had been caught looking at  
25 child pornography back in; and then the advertisement urged

1 people to tell the superintendent to protect children, not  
2 people who harmed them, displayed photographs of the  
3 candidate, and then provided his office number, telephone  
4 number as superintendent of public instruction.

5 I think that that advertisement here is -- is --  
6 is -- the advertisement that we've looked at here today  
7 is -- is all but identical. I think -- and I do think that,  
8 you know, and that there is therefore under the case law  
9 and -- and our analysis, there's no reasonable alternative  
10 meaning.

11 It's not -- you know, occasionally we've heard go  
12 back and forth between "plausible" and "reasonable." The  
13 test is really "reasonable." And so you take the language,  
14 the images together, I think that specific language that I  
15 think that are -- that I think that is indicative and, in  
16 fact, confirms that this is not subject to any reasonable  
17 alternative is the languages -- is the language "How can we  
18 trust Kari Lake?"

19 The context here is instructive and limited. But  
20 trust Kari Lake to do what? And the answer has to be to be  
21 a nominee for Governor. It tips -- the entire language  
22 does, but I think that's an example of something that just  
23 confirms that that's the correct analysis.

24 Additionally the timing. This had to be done in  
25 the primary because this kind of advertisement would simply

1 not be effective in the general. I think that the timing  
2 matters in that respect here and, again, confirms that, you  
3 know, taken together with the statute, the case law, the  
4 advertising language, this analysis that, you know, that --  
5 you know, reasonable had to include the circumstances, it is  
6 limited, and it's looking at outside events.

7 I would note and, you know, Mr. Spies brought up,  
8 that this -- rather than directing you to contact Kari Lake  
9 directly as the -- as the CJF did with then-Superintendent  
10 Horne, this one actually urges you to go to  
11 KariLakefacts.com, which is not affiliated with Kari Lake  
12 but is, in fact, another website, a website that belongs to  
13 Freedom's Future Fund, where you receive information that  
14 reiterates essentially the message of the advertisement.

15 So the call to action rather than in the case of  
16 CJF where it was "call Mr. Horne" who was then in office  
17 where there was a plausible argument, at least plausible --  
18 there was a plausible argument which is not up to the court,  
19 but a plausible argument that that urged him to take action  
20 he presently might take, this calls action in contract,  
21 specifically calls on you to go to a website belonging to  
22 Freedom's Futures -- Freedom's Future Fund for the purpose  
23 of receiving more information about Kari Lake.

24 So I think taken together, the test is one of  
25 reasonableness. I -- I don't think that -- I think

1           therefore that when, you know, credulity is a strained to  
2           the point of unreasonableness, that we know that this is  
3           express advocacy. I think case law, CJF and *Furgatch*, both  
4           confirm that.

5                     For those reasons we would ask with respect to the  
6           16-941(B) and 16-958, that the Commission find that there's  
7           reason to believe a violation may have occurred for failure  
8           to file those independent expenditure reports.

9                     That's all I have unless Commissioners have  
10          questions.

11                    CHAIRMAN MEYER: Thank you, Tom.

12                    I guess I just have a comment to let kind of folks  
13          know where I'm at, and that is, you know, I look at this ad,  
14          and Mr. Spies has done an excellent job of setting forth the  
15          case law and argument, but I -- I look at this ad and I see  
16          this as an ad that is -- is express advocacy; and then this  
17          last comment, you know, in the last three seconds of the ad  
18          is sort of an effort -- you know, "contact Kari Lake." I  
19          think that's an effort to try to end run around this express  
20          advocacy, you know, requirement that we have, threshold that  
21          we have; and that -- it just -- that's -- that's an effort  
22          to end run that statute and it just -- it doesn't work.  
23          This is -- my initial impressions and we'll look at more of  
24          this 'cause this is just a reason to believe, that this is  
25          an express advocacy ad.

1           So that's -- that's where I sit and I'll be voting  
2           to -- voting to find there's a reason to believe when this  
3           comes to a vote.

4           So if any other Commissioner wants to comment on  
5           this, I welcome them.

6           And Commissioner Titla, you are -- your camera is  
7           now working. Looks like your -- yeah, all right. All  
8           right.

9           COMMISSIONER TITLA: Yeah, this is -- this is  
10          Commissioner Titla. Thank you.

11          You know, what I'm going to say is not for either  
12          party, it doesn't support either party in the election.  
13          It -- I don't support Kari Lake.

14          But with regard to what the attorney said and  
15          watching the -- watching the ad here, I think it's  
16          reasonable to interrupt that it is not express advocacy  
17          right now. That's my initial impression right now. And,  
18          but once we go to a vote and I hear your opinions, then --  
19          then of course I could be persuaded otherwise.

20          But my initial impression is that, you know, is --  
21          is what I said. That there's reasonable -- reasonable  
22          explanation that it is not.

23          So that's my inclination right now. Thank you.

24          COMMISSIONER KIMBLE: I think Chairman Meyer is on  
25          mute.

1 CHAIRMAN MEYER: I'm sorry, I was on mute.

2 Commissioner Kimble, do you have any comments or...

3 COMMISSIONER KIMBLE: Mr. Chairman, your comments  
4 reflect my views exactly. I do not think there's a -- a  
5 reasonable alternative explanation for -- for this  
6 advertising. I think it -- it -- you would really have to  
7 strain to find something to support that this is anything  
8 but an ad to urge voters to vote against Kari Lake.

9 CHAIRMAN MEYER: Okay. So Tom, you need a motion  
10 for us, correct, to -- to find a reason to believe?

11 MR. COLLINS: Mr. Chairman, the procedures which  
12 are outlined in the memo, you know, are that, you know, if  
13 the Commission were to find -- if there were three votes of  
14 the Commission to find reason to believe, then there would  
15 be a reason to believe determination. If there -- if there  
16 were not, then we would not have that determination, so.

17 But we would, yes, need a motion to proceed.

18 CHAIRMAN MEYER: Okay. So we have a quorum of  
19 three members. Do we need a majority of the quorum or do we  
20 need a majority of the Commission?

21 MR. COLLINS: The rule is three votes for reason to  
22 believe.

23 CHAIRMAN MEYER: 'Kay.

24 Okay. Well, does anyone have -- does anyone want  
25 to make a motion on this issue of whether there is or is not

1 a reason to believe a violation may have occurred?

2 COMMISSIONER KIMBLE: Mr. Chairman, I'll try. I  
3 don't know if I have the wording right.

4 But I would move that the Commission determine  
5 there is a reason to believe a violation of 16-941(B) and  
6 16-948 has occurred, and that we authorize our Executive  
7 Director to conduct an investigation.

8 CHAIRMAN MEYER: 'Kay.

9 And Tom, before we take a vote, did -- did -- I  
10 just want to make sure Commissioner Kimble correctly  
11 identified the authorities that you're -- you're asking us  
12 to -- to move under here.

13 MR. COLLINS: Yeah, it's 16-941 and 16-958.

14 COMMISSIONER KIMBLE: I'm sorry, I misspoke. I  
15 said 16-948.

16 MR. COLLINS: Yeah.

17 COMMISSIONER KIMBLE: So it's 16-941 and 16-958 I  
18 believe. I would move the Commission determines that a  
19 reason to believe that a violation of those two statutes  
20 over which the Commission has jurisdiction may have  
21 occurred, and that we direct the Executive Director to  
22 conduct an investigation.

23 CHAIRMAN MEYER: 'Kay. All right. We have a  
24 motion pending from Commissioner Kimble.

25 Is there a second to that motion?

1           COMMISSIONER TITLA: Chairman, this is Steve Titla,  
2           Commissioner Titla, and I second that motion because I think  
3           that this should be looked into further.

4           My inclination is -- is not to agree with the  
5           underlying principle, but I think that we should look into  
6           this further and this investigation will do that I think.  
7           So I second the motion.

8           CHAIRMAN MEYER: Okay. So we have a -- we have a  
9           motion, it's been seconded. So now we will vote.

10          I will call the roll.

11          Commissioner Kimble, how do you vote?

12          COMMISSIONER KIMBLE: I vote aye.

13          CHAIRMAN MEYER: Commissioner Titla.

14          COMMISSIONER TITLA: Aye.

15          CHAIRMAN MEYER: 'Kay, Commissioner Chan is  
16          abstaining.

17          Commissioner Meyer, and I vote aye as well.

18          Commissioner Paton is not present.

19          So the motion carries 3 to 0.

20          And I just want to for the record state that, you  
21          know, my comments today are based upon where we are at in  
22          the -- in the investigation. There's just a reason to  
23          believe finding right now, there's no final decisions; and  
24          pending further investigation, I -- you know, I will  
25          continue to review this and -- and be open minded on what

1       our investigation finds.

2               So given that, I want to thank Mr. Spies for  
3       appearing. But Mr. -- or Tom, is there anything further we  
4       need to do on Agenda Item IV?

5               MR. COLLINS: Mr. Chairman, not from our  
6       perspective. I don't know if Mr. Spies needs -- has any  
7       other record he wants to make. Obviously we -- I don't have  
8       any.

9               CHAIRMAN MEYER: I'll certainly give Mr. Spies that  
10      opportunity, if there's anything further you want to put on  
11      the record, Mr. Spies.

12              MR. SPIES: No, sir. Thank you for your  
13      consideration.

14              CHAIRMAN MEYER: Okay. Thank you, Mr. Spies.

15              Okay. So we will move on to Agenda Item Number V,  
16      which is the discussion and possible action on proposed  
17      amendments to the Arizona Administrative Code Title 2,  
18      Chapter 20, Article 3, standard of conduct for Commissioners  
19      and employees; Sections R2-20-305, reporting suspected  
20      violations and R2-20-306, disciplinary and other remedial  
21      actions.

22              Last month we had lengthy discussions on how to  
23      improve our ethics rules to ensure transparency in the event  
24      of any conflicts would arise at the Commission. We directed  
25      the Executive Director to develop a rule amendment to

1 capture that discussion, so today we are reviewing  
2 amendments to the rules to ensure more transparency. Staff  
3 is asking for a vote to forward these amendments for public  
4 comments.

5 Tom, you have a summary of the proposed amendments?

6 MR. COLLINS: Yes.

7 CHAIRMAN MEYER: It's within our packet.

8 MR. COLLINS: Yes, Mr. Chairman. And Natalya  
9 Ter-Grigoryan with Richards and Moskowitz is here, she has  
10 been working with me on developing this -- along with Bill,  
11 on developing this -- yeah, this amendment if you have any  
12 questions for her.

13 We -- essentially what we did is we took the issues  
14 we talked about last month and kind of put some -- put them  
15 into a, you know, a rule format. What essentially these  
16 amendments will do is say, you know, if there's particular  
17 information about a Commission ethical issue of some kind or  
18 conflict issue principally, you know, it would allow our --  
19 the Chairman and the Executive Director to process that, and  
20 then allow the Commission to come together to discuss it  
21 and -- and have a, you know, a kind of -- a collective  
22 decision that would be enforceable under our rules to the  
23 extent that, you know, we have -- to the extent that you --  
24 you can.

25 In other words, obviously there are certain

1 limitations as to what a Commission can do to a Commissioner  
2 that are statutory, but we tried to, you know, come up with  
3 something that would have -- would create a public process,  
4 be transparent, and allow the Commission to weigh in.

5 The -- the issue that we identified through this  
6 process was that really our rules did not really deal -- it  
7 had a process laid out for how to deal with an employee  
8 issue, but really didn't have a kind of a regulatory place  
9 for -- for the Commission to talk amongst itself about  
10 Commissioners, so we wanted to create that.

11 And so we're asking for approval of this to  
12 circulate it for public comment and then we will return it  
13 with whatever comments we get and within the next couple --  
14 several months, probably next two or three months.

15 I don't know if -- and -- and obviously,  
16 Mr. Chairman, with your permission I just want to make sure,  
17 I don't know if Natalya has anything she wants to make sure  
18 we tell ya.

19 MS. TER-GRIGORYAN: Natalya Ter-Grigoryan and I  
20 have Bill Richard here with me as well, and we believe that  
21 Mr. Collins summarized the proposed amendments pretty  
22 thoroughly. So essentially changes the current rules from  
23 being exclusively to employees to being more generalized and  
24 provides a process for addressing complaints.

25 CHAIRMAN MEYER: Thank you.

1           I -- I had two comments on R2-20-305, and that  
2           is -- I guess the first one is a question and the second one  
3           is a comment.

4           The first question is that Subsection (B) of this  
5           rule gives the Chair of the Commission authority to decline  
6           to require a response and then -- and statewide, this is  
7           meritless; there should not be an issue. And I just -- and  
8           I just want to confirm, does the Chair -- that's more  
9           author- -- you're kind of giving the Chair unilateral  
10          authority to make a decision there.

11          Is that -- is there a source that -- I just want to  
12          make sure that that's something that's allowed under the --  
13          the statutory scheme/administrative code that we have. So  
14          that was my first question.

15          MR. COLLINS: I mean, I'm happy to take a stab at  
16          that or Natalya or Bill you want to go, you know, whichever.  
17          However you want to -- I don't have a preference really.

18          MR. RICHARDS: Well, Tom, I'd be happy to address  
19          it just briefly and then obviously you can add your comments  
20          and elaborate on that.

21          I believe that the structure here is intended to  
22          allow the Chairman to exercise what is essentially kind of a  
23          not jurisdictional function to ensure that where you have a  
24          clearly unmerited allegation. I mean, for example, someone  
25          came in and said that: I saw, you know, Commissioner X in

1 the grocery store and they looked at me funny and,  
2 therefore, I believe that, you know, they are -- they have a  
3 conflict of interest here. That you could simply say:  
4 Well, we're not going to hear that; we're not going to put  
5 that on the agenda.

6 It's almost really an agenda-setting exercise. It  
7 isn't intended to allow you to kind of make these final up  
8 or down nuance decisions where there's a, you know, at least  
9 a facially arguably allegation of a conflict. It may be  
10 that, you know, more precise language is needed to make that  
11 absolutely clear, but that is the intention behind them I  
12 believe.

13 COMMISSIONER CHAN: Mr. Chairman, I have a question  
14 about that, too. Could I ask real quick?

15 CHAIRMAN MEYER: Sure. Go ahead.

16 COMMISSIONER CHAN: The Chair or Executive  
17 Director. If it's the Chair, who has -- who is the subject  
18 of the claim, do we need to have an alternative listed in  
19 there, like the next most senior member of the Commission?

20 We don't have a vice chair.

21 I just -- I don't know I'm seeing an issue where  
22 there is none, I just wondered if we needed an alternative  
23 in case the Chairman is the person who's the subject of the  
24 complaint.

25 MR. COLLINS: Mr. Chair, I guess --

1                   CHAIRMAN MEYER: Can I respond to that quickly?

2                   I think, you know, we can write rules 'til we're  
3 all old and gray if we try to anticipate every thing that's  
4 going to come up.

5                   I think in that instance, you know, it's going to  
6 be on the Executive Director's shoulders, and I would not  
7 try to write that into the rule. That's just how I would  
8 see it. And I don't -- I welcome our counsel and Tom's  
9 thoughts on that, but that's just my initial reaction I  
10 wanted to share.

11                  MR. COLLINS: I mean, Mr. Chairman, I mean, I think  
12 that -- I mean I think that the idea is that, you know,  
13 that, yeah, if -- that it would sort of devolve to the  
14 Executive Director from the Chair. There's a little bit  
15 of -- I think both -- both the questions Commissioner Chan  
16 and Chairman, your earlier question, I mean they get at an  
17 issue that is a real concern. And I think that the issue is  
18 just that we live -- I mean, just to harken back to some of  
19 your comments earlier today, Mr. Chairman.

20                  I mean, not to put too fine a point on it, but the  
21 reality is is that we are all living in a universe in which  
22 any authorization is -- it can be assumed to be taken to its  
23 maximum place beyond what the intent of anyone was when they  
24 imposed it. That is the world that we live in today; we've  
25 seen that again and again and again, especially in

1 elections.

2 And -- and so -- but as the Chairman noted, that is  
3 hard to account for because when we're -- because we now  
4 live in the real world, right, where political decisions,  
5 government decisions were -- where the policy is clear, are  
6 now subject to a political influence that is just beyond I  
7 think what any of us really believed was true sometime ago.

8 And so, you know, we want to be conscious of that,  
9 but -- but also, you know, this body has had a -- you know,  
10 all of you in your long service -- your endless service --  
11 to the Commission, you know, have recognized the values that  
12 we have and -- and have created a culture that we hope will  
13 ensure that those folks who come after us all will -- will  
14 follow these as they're -- in the spirit they're intended.

15 So, you know, those are hard, nuanced decisions.  
16 Bill, I think, identified correctly, I think clearly we  
17 tried to say -- we tried to take we want this to not -- not  
18 be the marginal case but the extraordinary case where it is  
19 something that's just off the wall.

20 And -- and, you know, I mean I think that we can  
21 see if folks will make -- I mean, I'm comfor- -- I guess  
22 what I'm trying to say, if you ask me, obviously we're  
23 comfortable for these draft -- this draft for purposes of  
24 public comment.

25 As we go along if we get comments that say, look,

1       you need to tighten this up or it's going to potentially  
2       ratchet up things with the -- you know, with the Chair or  
3       the Executive Director, you know, that's a -- that's a --  
4       that's certainly a consideration.

5               But I do think that both of your comments and  
6       questions are -- are important things to be aware of in the  
7       context we are all now working in.

8               COMMISSIONER CHAN: May I ask --

9               CHAIRMAN MEYER: And -- oh. Go ahead, Commissioner  
10      Chan.

11              COMMISSIONER CHAN: The only other item that I  
12      noticed was the response shall be due five days. And on one  
13      hand five days is -- is not a tiny amount of time, but I  
14      just wondered if -- if we should consider making it ten  
15      days. I don't know where we came up with the five days, if  
16      there was -- I just was curious about that.

17              Again, I'm not sure that it's an insufficient  
18      amount of time, it just seems like depending on how  
19      voluminous something might be. I tend to think of things  
20      and think the worst-case scenario, so I just wanted to throw  
21      that out there regarding the five days.

22              MR. COLLINS: Mr. Chairman, I do have an answer for  
23      that, why the five days.

24              CHAIRMAN MEYER: Sure.

25              MR. COLLINS: It's not a good -- it's not a -- it's

1 not a particularly thoughtful answer, it's just that's what  
2 we require for response to complaints when they come in  
3 against candidates and -- and IEs and stuff.

4 COMMISSIONER CHAN: Well then that seems fair.  
5 Thank you.

6 CHAIRMAN MEYER: I was going to make the same  
7 comment that I thought five days seemed tight and suggest we  
8 make it ten days. Just, I mean, that's my suggestion.

9 This is a -- you know, many of us have full-time  
10 other jobs we're working and it can be not a good situation  
11 to have to do that in five days; could be challenging. If  
12 there's -- if there's a reason, a compelling reason to have  
13 it be five days, and I'm not sure I heard one there with the  
14 candidates having to respond in five days 'cause it's just a  
15 different issue, but I would suggest we make that ten days.

16 COMMISSIONER KIMBLE: Mr. Chairman?

17 CHAIRMAN MEYER: Yes, Commissioner Kimble.

18 COMMISSIONER KIMBLE: Speaking as someone who is  
19 already old and gray, I'll not try to take offense at your  
20 comment on that.

21 CHAIRMAN MEYER: Well, I won't even have that  
22 opportunity to go gray, so just relish that.

23 COMMISSIONER KIMBLE: I -- I think your initial  
24 point was should the Chair be involved in this process at  
25 all. And it just -- I just don't understand why the Chair.

1       It seems like it ought to be just the Executive Director,  
2       and I don't understand "the Chair or Executive Director,"  
3       how we would decide who's going to do it. Why not just make  
4       it the Executive Director?

5               CHAIRMAN MEYER: 'Kay. I don't feel strongly one  
6       way or the other, frankly.

7               Tom, was there a reason why the Chair was included?

8               The way -- this -- the way I see this playing out,  
9       if it's just the Executive Director is you get one of these  
10      complaints, you're going to probably call the Chair and say,  
11      "Hey, this came in, let's talk about this," and then you'd  
12      make a decision.

13              But I don't feel strongly about it, so I'm open to  
14      be convinced why I should or should not.

15              MR. COLLINS: Mr. Chairman, Commissioner Kimble, I  
16      mean -- I mean, I don't -- it doesn't -- I think the -- the  
17      only thing -- I mean I think that Chairman Meyer's right, at  
18      least how we -- and all of you have been Chair, when we do  
19      things that how we would do it is call you and say, "Hey,  
20      you know, what do you want to do about this?"

21              Beyond that, I don't -- I don't think there's a  
22      lot. I don't have any -- I'm not married to this language  
23      in any serious way.

24              Bill, Natalya, I don't think we have any strong...

25              COMMISSIONER KIMBLE: Well, I'm not opposed to

1        putting this language that we have out for public comment  
2        and then we could --

3                MR. COLLINS:    Sure --

4                CHAIRMAN MEYER:    And -- and I think -- I'm sorry to  
5        interrupt.    But I think this is almost, you know, when we  
6        start looking at the next rule, you know, and the Chair and  
7        Executive Director are kind of running with the  
8        investigation as I read this, you know, that's -- that same  
9        issue gets brought in to Rule -306 as well.

10               So I -- I'm saying we should have this discussion  
11        as to both rules and not have it twice regarding this issue  
12        of the Chair and the Executive Director, so.

13               But go ahead.

14               MR. RICHARDS:    Mr. Chairman, if I could add one  
15        point, and that that is also to Commissioner Chan's point  
16        earlier, I think that the language here anticipates that the  
17        Chair, if the Chair was the subject of the allegation, the  
18        Chair would probably recuse themselves from making any  
19        decision at that point in time just as a matter of form, but  
20        also 'cause that's what the rest of the rule suggests that  
21        they should do probably.    And so this just makes its clear  
22        that, you know, in that sort of circumstances, the Executive  
23        Director can also make that sort of decision and gives that  
24        flexibility.

25               COMMISSIONER CHAN:    Thank you.

1           CHAIRMAN MEYER:   Okay.   Does anyone have any  
2           further comments on the rule -- rules suggestions here to  
3           put out to comment?

4           I'll note on -306 paragraph (D) there's a typo.  
5           The second sentence, the first word needs to be capitalized  
6           after; but that's simple.

7           But any other comments on these rules?

8           And then if not, I -- I assume you need a vote from  
9           us, Tom, to put these out for public comment?

10          MR. COLLINS:   Mr. Chairman, yes.   So what I would  
11          recommend by way of the record here would be, you know,  
12          motion to approve the draft rules or the -- I'm sorry, the  
13          amendment for public comment; and then I think to make the  
14          record clear, to the extent that you want to, you know, if  
15          there's any specific changes that you want to make, you  
16          know, it might be helpful to try to articulate them, you  
17          know, in -- in that motion if that's something people want  
18          to do.

19          The advantage of doing that now is that -- is  
20          just -- you know, at some -- you got to get into the  
21          language at some point, and -- and if we think that's going  
22          to be a thing, you know, I think that -- I -- again, I don't  
23          want to press -- whatever we do is fine, I just think that,  
24          you know, it's easier to -- it's easier to -- from a pure  
25          paperwork perspective in terms of the Arizona administrative

1 record, it's just easier to if you want it to be a certain  
2 way, make it that way the first time, than it is to go back  
3 in and change it once we get the ball rolling. 'Cause then  
4 we got to get into analysis and if it's substantive and all  
5 this other stuff that -- that -- you know, that we don't  
6 have to do if anybody wants it to be, for example, where it  
7 says "Chairman or Executive Director," have it just say  
8 "Executive Director" for example.

9 That would be the kind of change where if you're  
10 comfortable with with changing that now, go ahead and do  
11 that.

12 CHAIRMAN MEYER: And I -- I forgot I had one  
13 another question on -306 --

14 MR. COLLINS: Yeah.

15 CHAIRMAN MEYER: -- (E)(1). What do we mean by  
16 "voluntary remedial action"? Does that mean recusal? Do we  
17 need to -- does that mean resigning from the Commission?

18 What is that -- I mean, what does that mean?

19 MR. RICHARDS: I think actually, Mr. Chair, I think  
20 that that could take all of those forms.

21 CHAIRMAN MEYER: 'Kay.

22 MR. RICHARDS: What we're talking about there is  
23 just an expression of opinion to inform the Commissioner  
24 about whom the complaint has been made what the majority of  
25 Commissioners think they should do, would be most

1 appropriate thing for them to do; and I think that most  
2 likely would take the form of, you know, "we believe you  
3 should recuse yourself from X, Y, or Z decisions."

4 But I suppose in a case where if the conflict  
5 created a problem for issues across the board, then the rest  
6 of the Commission could legitimately reasonably say "we  
7 think you should resign from one position or the other to  
8 end the conflict."

9 CHAIRMAN MEYER: And what weight would that  
10 decision have by the majority of the Commission?

11 'Cause, I mean, like Tom said, taking this  
12 authority to the ultimate extreme, you know, we got five  
13 Commissioners, we got three Commissioners that don't like  
14 someone, they could find something and then vote that guy  
15 out or -- or woman out, you know. So that's just sort of  
16 the stuff we need to be thinking about.

17 MR. RICHARDS: Mr. Chairman, the way I would read  
18 this particular provision is, is that option number one is  
19 simply in the public expression of opinion by the majority  
20 of Commissioners that this particular charge or allegation  
21 of conflict, you know, appears to be legitimate and that we  
22 believe that Commissioner X should take the following  
23 actions.

24 That actually does not require or mandate usually  
25 that that Commissioner take those actions. However, if, you

1 know, later on or a party to a proceeding were to sue and  
2 ask that the Court enforce the conflict rules, it would be  
3 strong evidence certainly in favor of that -- that sort of  
4 legal complaint.

5 The second option is a disqualification vote, which  
6 is going to be case by case. It's going to be proceeding by  
7 proceeding, and I guess suppose ultimately the result of the  
8 Commission on saying I want every single action before the  
9 Commission that you're disqualified to be a Commissioner,  
10 but it is not a wholesale vote to, you know, remove them  
11 from office.

12 Which I -- which I think would be a problem for the  
13 Commission. I'm not sure that the Commission's authority  
14 would extend to that. I certainly do believe it would  
15 extend to disqualifying a Commissioner from individual  
16 votes.

17 CHAIRMAN MEYER: Okay. Well, thank you for your  
18 explanations. That answers my questions.

19 Does any other Commissioner have any other  
20 questions? If not, I am -- does anyone want to make a  
21 motion?

22 COMMISSIONER CHAN: Mr. Chairman?

23 CHAIRMAN MEYER: Yes, Commissioner Chan.

24 COMMISSIONER CHAN: Just a final comment before we  
25 make a motion. I think if I understood our conversation,

1       that that the main thing that we might be changing before we  
2       put this out for public comment is just in -305(B) changing  
3       the five days to ten days. I don't know that I heard a  
4       consensus about removing the Chair from the process of  
5       declining in either one of the sections.

6               I just want to clarify.

7               CHAIRMAN MEYER: I heard -- I heard Commissioner  
8       Kimble say that he's putting it out for public comment in  
9       the --

10              COMMISSIONER KIMBLE: As is, yes.

11              CHAIRMAN MEYER: -- the way it is.

12              Okay.

13              COMMISSIONER KIMBLE: Yes.

14              COMMISSIONER CHAN: Oh. Did you?

15              CHAIRMAN MEYER: Commissioner Titla, did you have  
16       any comments on this before we hopefully get a motion to  
17       vote on this?

18              COMMISSIONER TITLA: (No audible response.)

19              CHAIRMAN MEYER: Okay. Anyone want to make a  
20       motion?

21              COMMISSIONER CHAN: Mr. Chairman, I would move that  
22       we approve the amendments for public comment as written.

23              Do I need to move them in separately?

24              COMMISSIONER KIMBLE: The ten days.

25              CHAIRMAN MEYER: Do you want to --

1 COMMISSIONER CHAN: Oh. I'm sorry. I  
2 misunderstood. I thought we were -- forgive me. Let me  
3 remove -- like withdraw my motion and make a new one.

4 Tom, do I need to do these separately?

5 MR. COLLINS: I --

6 COMMISSIONER CHAN: Kara?

7 MR. COLLINS: Sure.

8 COMMISSIONER CHAN: Okay. So Mr. Chairman -- thank  
9 you and I'm sorry to put you on the spot.

10 MR. COLLINS: No, no. I should know the answer to  
11 that.

12 COMMISSIONER CHAN: No, no. That's okay.

13 MR. COLLINS: I think the answer is yes.

14 COMMISSIONER CHAN: It's probably best to be clear.

15 MR. COLLINS: The answer is "or."

16 COMMISSIONER CHAN: Okay. So Mr. Chairman, I'd  
17 like to make a motion that we approve -- or approve the  
18 amendment to section R2-20-305 with the only change to  
19 Subsection (B) making that ten days rather than five days.

20 CHAIRMAN MEYER: And that it be issued for public  
21 comment, correct?

22 COMMISSIONER CHAN: And that it be issued for  
23 public comment. Thank you, Mr. Chairman.

24 CHAIRMAN MEYER: Okay. You're very welcome.

25 Is there a second to that motion?

1 COMMISSIONER KIMBLE: I will second that.

2 CHAIRMAN MEYER: All right. We have a motion and a  
3 second.

4 All right. We're going to call the roll on the  
5 motion.

6 I'm going to start with Commissioner Chan.

7 COMMISSIONER CHAN: I vote aye.

8 CHAIRMAN MEYER: Commissioner Kimble.

9 COMMISSIONER KIMBLE: Aye.

10 CHAIRMAN MEYER: Commissioner Titla.

11 COMMISSIONER TITLA: Aye.

12 CHAIRMAN MEYER: And Commissioner Meyer, I vote aye  
13 as well.

14 So that motion carries unanimously as to -305.

15 Is there a motion for R2-20-306?

16 COMMISSIONER CHAN: Mr. Chairman, this is  
17 Commissioner Chan, I move that we approve the amendment to  
18 R2-20-306 for public comment as written.

19 COMMISSIONER KIMBLE: I will second that.

20 CHAIRMAN MEYER: 'Kay. I have a motion and a  
21 second.

22 Again, we will call the roll on the vote here.  
23 Commissioner Chan.

24 COMMISSIONER CHAN: I vote aye.

25 CHAIRMAN MEYER: Commissioner Kimble.

1 COMMISSIONER KIMBLE: Aye.

2 CHAIRMAN MEYER: Commissioner Titla.

3 COMMISSIONER TITLA: Aye.

4 CHAIRMAN MEYER: And Commissioner Meyer, I vote aye  
5 as well.

6 So that motion carries 4-0.

7 And I'm assuming it won't be a problem to correct  
8 that typo. Is that -- we don't need to have a motion on  
9 that, correct?

10 MR. COLLINS: Yes, that's good.

11 CHAIRMAN MEYER: Okay. So that wraps up Agenda  
12 Item V.

13 Thank you, Mr. Richards and Ms. -- I don't want to  
14 butcher your last name, but thank you -- what was your name  
15 for the record? I want to get it right.

16 MS. TER-GRIGORYAN: Ter-Grigoryan.

17 CHAIRMAN MEYER: I'm sorry. What was it?

18 MS. TER-GRIGORYAN: Ter Gri-gor-ee-an (phonetic).

19 CHAIRMAN MEYER: All right. Thank you very much.  
20 I appreciate it.

21 All right. So now we'll move on to Agenda Item  
22 Number VI, which is discussion and possible action of  
23 proposed meetings dates for September through December of  
24 2022.

25 I know Paula had circulated dates. Anyone have any

1           questions or comments -- comments on those dates?

2                   And I know I had put one comment in -- okay. That  
3           was taken out -- okay.

4                   Does anyone have any comments or can we have a  
5           motion to approve these meeting dates?

6                   COMMISSIONER CHAN: Mr. Chairman, I move that we  
7           approve the meeting dates.

8                   CHAIRMAN MEYER: Is there a second?

9                   COMMISSIONER KIMBLE: I second.

10                  CHAIRMAN MEYER: All right. Motion to approve  
11           meeting dates. We're going to vote.

12                  Call the roll.

13                  Commissioner Chan.

14                  COMMISSIONER CHAN: I vote aye.

15                  CHAIRMAN MEYER: Commissioner Kimble.

16                  COMMISSIONER KIMBLE: Aye.

17                  CHAIRMAN MEYER: Commissioner Titla.

18                  COMMISSIONER TITLA: Aye.

19                  CHAIRMAN MEYER: And Commissioner Meyer, I vote aye  
20           as well.

21                  We are safe and secure for our future meeting  
22           dates.

23                  On to Item Number VII, which is public comment.  
24           This is the time for consideration of comments and  
25           suggestions from the public.

1           Action taken as a result of public comment will be  
2           limited to directing staff to study the matter or  
3           rescheduling the matter for further consideration and  
4           decision at a later date or responding to criticism.

5           Does any member of the public wish to make comments  
6           at this time?

7           MR. COLLINS: We do have a --

8           CHAIRMAN MEYER: Is any --

9           MR. COLLINS: We do have one -- we have one member  
10          of public but I don't think she needs -- she wants to  
11          comment. I don't know.

12          That's fine. So I think we're good.

13          CHAIRMAN MEYER: No comment.

14          And then anyone...

15          MR. COLLINS: You're like -- you know, it's like a  
16          standing offer.

17          COMMISSIONER CHAN: Mr. Chairman, just to make --

18          MS. KNOX: My name -- my name is Rivko Knox. Where  
19          do I have to go?

20          COMMISSIONER CHAN: Oh. I'm sorry.

21          CHAIRMAN MEYER: I had a sneaking suspicion that  
22          that was Ms. Knox.

23          MS. KNOX: Where do I go?

24          MS. THOMAS: To the right of Commissioner Kimble.

25          CHAIRMAN MEYER: Good morning, Ms. Knox.

1 MS. KNOX: I am Rivko Knox. I'm a long-time  
2 resident of the state of Arizona, a long-time voter, and  
3 I've been following the actions of the Citizens Clean  
4 Elections Commission for, I don't know, about 10 or  
5 12 years.

6 And I just appreciate very much the commitment of  
7 all the Commissioners and of the staff. I was very -- this  
8 is the first obviously public meeting I've attended in quite  
9 a while, so it's -- I had a hard time finding the building  
10 which is why I came in late. That's beside the point,  
11 that's not a policy issue.

12 I just did want to say, like I say, I think the  
13 professionalism of staff are just overwhelming. I continue  
14 to be massively impressed. I continue to mention Clean  
15 Elections as a source of infor- -- invaluable source of  
16 objective information that you have wherever I possibly can.

17 And finally I was very pleased actually to see the  
18 Mary Jo Pitzl article. I actually sent her an e-mail and  
19 thanked her for highlighting the issue of the ongoing terms  
20 of all of the Commissioners, and I thank you all for  
21 unbelievable commitment and service to an organization -- or  
22 a state agency, which technically you are, that is really  
23 a -- it's such a critical component of our democratic  
24 system.

25 And I appreciate the opportunity to speak and to

1 continue to participate in meetings, whether it's through  
2 Zoom or in person.

3 So thank you very much.

4 CHAIRMAN MEYER: Thank you, Ms. Knox.

5 Is there any -- any -- there's no other comment in  
6 -- in the room there, correct?

7 COMMISSIONER KIMBLE: Correct.

8 CHAIRMAN MEYER: And then anyone online? I'm not  
9 sure if there's anyone there.

10 You may also send comments to the Commission by  
11 mail or e-mail to CCEC@azcleelections.gov.

12 That brings us to Agenda IX -- excuse me, Agenda  
13 Item Number VIII, which is adjournment.

14 Do we have a motion to adjourn?

15 COMMISSIONER CHAN: Mr. Chairman, before I make the  
16 motion to adjourn, I just want to acknowledge that I think  
17 Commissioner Titla, if this was an employee position or an  
18 elected official position, I think he almost would have  
19 vested in the state retirement system by now he's been  
20 serving so long. So I just thought -- I wanted to recognize  
21 him for that that is -- you know, of all of us, he's  
22 definitely had the most perseverance.

23 So I just wanted to thank him for still being with  
24 us, 'cause as time marches on I'm sure -- I'm sure we all  
25 feel that a little bit.

1                   And with that, I -- I would move that we adjourn  
2                   this meeting.

3                   COMMISSIONER KIMBLE: I would second that.

4                   CHAIRMAN MEYER: Okay. And I -- you know, I want  
5                   to say Commissioner Chan I agree. Thank you, Commissioner  
6                   Titla. It's always great to -- it's great to have you. And  
7                   you have me by one year, yeah, on the Commission, so.

8                   Okay. So we have the motion to adjourn. I'll call  
9                   the roll.

10                  Commissioner Chan.

11                  COMMISSIONER CHAN: I vote aye.

12                  CHAIRMAN MEYER: Commissioner Kimble.

13                  COMMISSIONER KIMBLE: Aye.

14                  CHAIRMAN MEYER: Commissioner Titla.

15                  COMMISSIONER TITLA: Aye. And thank you for your  
16                  comments, appreciate it.

17                  CHAIRMAN MEYER: You're welcome.

18                  And Commissioner Meyer, I vote aye.

19                  We are adjourned. Our next meeting is  
20                  September 29th.

21                  Thank you.

22                  (Whereupon the meeting concludes at 11:11 a.m.).

23

24

25


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 30th of August, 2022.

  
\_\_\_\_\_  
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 30th of August, 2022.

  
\_\_\_\_\_  
Miller Certified Reporting, LLC  
Arizona RRF No. R1058

## NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemaking.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R22-236]

#### PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**  
 R2-20-211  
 R2-20-220  
 R2-20-223
 

<b><u>Rulemaking Action</u></b>
Amend
Amend
Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
 Authorizing statute: A.R.S. §§ 16-956(A)(6) and (A)(7)  
 Implementing statute: A.R.S. § 16-948(C)
3. **Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rules:**  
 Notice of Rulemaking Docket Opening: 28 A.A.R. 3489, October 28, 2022 (*in this issue*)
4. **The agency's contact person who can answer questions about the rulemaking:**  
 Name: Tom Collins, Executive Director  
 Address: Citizens Clean Elections Commission  
 1802 W. Jackson St.  
 Phoenix, AZ 85007  
 Telephone: (602) 364-3477  
 Email: [ccec@azcleelections.gov](mailto:ccec@azcleelections.gov)  
 Website: [www.azcleelections.gov](http://www.azcleelections.gov)
5. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**  
 The Commission needs to amend its rules to clarify how the Commission may issue subpoenas, take depositions, prevent ex parte communications, and draft notices of appealable agency actions. Such clarification will ensure the rules are clear, concise, and consistent and the public is aware of how the Commission ensures compliance with clean elections rules and statutes.
6. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material.**  
 None
7. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**  
 Not applicable
8. **The preliminary summary of the economic, small business, and consumer impact:**  
 There is little to no economic, small business, or consumer impact, other than the cost to the Commission to prepare the rule package, because the rulemaking simply clarifies statutory requirements and processes that already exist. Thus, the economic impact is minimized.

**9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Tom Collins, Executive Director  
 Address: Citizens Clean Elections Commission  
 1802 W. Jackson St.  
 Phoenix, AZ 85007  
 Telephone: (602) 364-3477  
 Email: [ccec@azcleelections.gov](mailto:ccec@azcleelections.gov)  
 Website: [www.azcleelections.gov](http://www.azcleelections.gov)

**10. The time, place, and nature of the proceedings for to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request and oral proceedings on the proposed rule:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: December 15, 2022  
 Time: 9:30 a.m.  
 Location: Citizens Clean Elections Commission  
 1802 W. Jackson St.  
 Phoenix, AZ 85007  
 Or virtually  
<https://us02web.zoom.us/j/81604218149>  
 Meeting ID: 816 0421 8149  
 One tap mobile  
 +13462487799,,81604218149# US (Houston)  
 +16694449171,,81604218149# US

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

- a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**  
 Not applicable
- b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:**  
 Not applicable
- c. **Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states:**  
 No analysis was submitted.

**12. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION  
 CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**

**ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES**

Section	
R2-20-211.	Subpoenas and Subpoenas Duces Tecum; Depositions
R2-20-220.	Ex Parte Communications
R2-20-223.	Notice of Appealable Agency Action

**ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES**

**R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions**

- A. The Commission may authorize its Executive Director ~~or Assistant Attorney General~~ to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise. The Executive Director may delegate the authority to issue subpoenas to any person authorized to provide legal services. The Executive Director's delegate may delegate this authority to any person authorized to provide legal services as the Executive Director's delegate deems necessary.
- B. If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Executive Director to take a deposition and have the power to administer oaths. The Executive Director may delegate the authority to take depositions to any person authorized to provide legal services. The Executive Director's delegate may delegate this authority to any person authorized to provide legal services as the Executive Director's delegate deems necessary.

C. The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

#### **R2-20-220. Ex Parte Communications**

- A. In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commission staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.
- B. This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.
- C. Nothing in this Section shall be construed to prohibit contact between a respondent or respondent's attorney and any staff member or other authorized representative of the Commission or the Commission staff attorney or the Administrative Counsel or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission representative attorney or staff member shall bind or estop the Commission.

#### **R2-20-223. Notice of Appealable Agency Action**

If the Commission makes a probable cause finding pursuant to R2-20-215 or decides to initiate an enforcement proceeding pursuant to R2-20-217, ~~the any person authorized to provide legal services on behalf of the Commission Assistant Attorney General (AAG)~~ shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated and specific facts constituting the violation;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

## **NOTICE OF PROPOSED RULEMAKING**

### **TITLE 4. PROFESSIONS AND OCCUPATIONS**

#### **CHAPTER 16. ARIZONA MEDICAL BOARD**

[R22-245]

#### **PREAMBLE**

1. **Article, Part, or Section Affected (as applicable)**      **Rulemaking Action**  
R4-16-401      Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 32-1404(D)  
Implementing statute: A.R.S. § 32-1456(D)
3. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**  
Notice of Rulemaking Docket Opening: 28 A.A.R. 3489, October 28, 2022 (*in this issue*)
4. **The agency's contact person who can answer questions about the rulemaking:**  
Name: Patricia McSorley, Executive Director  
Address: Arizona Medical Board  
1740 W. Adams St., Suite 4000  
Phoenix, AZ 85007  
Telephone: (480) 551-2700  
Fax: (480) 551-2704  
Email: patricia.mcsorley@azmd.gov  
Website: www.azmd.gov
5. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**  
Under Laws 2021, Chapter 259, the legislature amended A.R.S. § 32-1456 to require the Board to make a rule providing for a medical assistant training program designed and offered by a physician. The Board fulfills the statutory requirement in this rulemaking. An exemption from Executive Order 2022-01 for this rulemaking was provided by Brian Norman, of the Governor's Office, in an email dated September 29, 2022.
6. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
The Board does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

Doug Ducey  
Governor

Thomas M. Collins  
Executive Director



Damien R. Meyer  
Chair

Mark S. Kimble  
Steve M. Titla  
Galen D. Paton  
Amy B. Chan  
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.azcanelections.gov](http://www.azcanelections.gov)

**MEMORANDUM**

**To: Commissioners**

**From: Thomas Collins, Executive Director and Mike Becker, Policy Director**

**Date: December 15, 2023**

**Subject: Proposed 2023 Calendar Year Budget**

The Commission operates under system of caps that operate on a calendar year basis. We are asking the Commission to approve:

1. the 2023 expenditure cap (\$); \$23,948,344
2. the 2023 administration and enforcement expenditure cap (\$); \$2,394,834
3. the 2023 public education (paid media) expenditure cap (\$); \$2,394,834
4. the projection of 2023 candidate funding disbursements (\$); 0
5. the projection of no excess funds in the Clean Elections Fund in 2023.

**Expenditure Cap on Total Expenses**

In compliance with A.R.S. § 16-949, the Commission projects an expenditure cap for each calendar year for all expenses under the Act, including candidate funding. *Id.* That expenditure cap, in turn, may be exceeded during a four-year period so long as the difference is made up by a cap reduction in a subsequent year. *Id.*

**The Commission's projected expenditure cap for 2023 is \$23,948,344**

**Specific Categories of Expenses**

The Commission categorizes operating expenses using four categories under the expenditure cap: Administration/Enforcement, Public Education, Voter Education and Candidate Funding. Our overhead costs are apportioned by a 50/50 split between Administration/Enforcement and Voter Education. Personal Services and Employee Related Expenses are apportioned by allocated staff-time between administration/enforcement and voter education responsibilities.

**Administrative/Enforcement**

*The Clean Elections Act ("Act") permits the Commission to spend up to 10 percent of the calendar year expenditure cap for administrative and enforcement costs (A.R.S. §16-949 (B)).* Administrative and Enforcement expenditures are projected at 60% of the expenditure cap at \$1,450,200.

**Public Education**

*The Commission may apply up to ten percent of the yearly expenditure cap for reasonable and necessary expense associated with public education, including participation and the purposes of the Act. A.R.S. §16-949 (C).* Public education expenditures are projected at \$2,000,000.

**Voter Education and Implementation of the Act**

*The Commission may make reasonable and necessary expenditures to implement the Act, including expenditures for voter education pursuant to A.R.S. 16-956(A). A.R.S. § 16-949(D) These expenditures are not subject to any cap. Id.* Voter Education and Implementation Expenditures are projected at \$1,839,000.

**Candidate Funding**

Section 16-954(c) provides that the Commission annually project the “amount of clean elections funding for which all candidates will have qualified. . . for the following calendar year.”

There will be \$0 in candidate funding in calendar year 2023.

**Other Projections**

The Act provides that the Commission make two projections each year relating to the balance of and availability of funds in the Clean Elections Fund.

Section 16-954(B) provides that the Commission shall project the amount of money that will be collected in the fund over the next four years and the availability of those funds. The statute instructs the Commission to compare that projection to projected expenditures “under the assumption that expected expenses will be at the expenditure limit in § 16-949, subsection A” to determine whether there are “excess monies” in the fund.

This year, staff recommends that the Commission determine that there are no excess monies in the fund based on the chart below.

<b>Calendar Year</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>
Projected Revenue	\$5,503,000	\$5,564,000	\$5,503,000	\$5,602,000
Projected Expenses (Assuming at expenditure limit)	\$23,948,344	\$23,948,344	\$23,948,344	\$23,948,344
Difference	\$(18,445,344)	\$(18,384,344)	\$(18,445,344)	\$(18,346,344)

Section 16-954(C) also provides that the Commission shall annually “announce whether the amount that the [C]ommission plans to spend the following year pursuant to § 16-949[A] . . . exceeds the projected amount of clean elections funding.” The statute continues by stating that if the Commission “determines that the fund contains insufficient monies or the spending cap would be exceeded were all candidates’ accounts fully funded,” then the commission may take steps to adjust the funding available to candidates.

Staff believes that the fund contains sufficient monies to fully fund participating candidates in 2024 without exceeding the expenditure cap, as adjusted for carryover funds as described above. Therefore, staff does not recommend that the Commission take steps to adjust candidate funding.

	2022 Actuals (as of Nov 9)	2023 Projections
<i>Expenses</i>		
Personal Services	\$ 282,575	\$ 500,000
ERE	106,831	190,000
<i>Total Personal &amp; ERE</i>	389,406	690,000
Professional & Outside Services		
Attorney General Legal Services	63,057	80,000
External Legal Services	60,164	130,000
Temperary Agency Services	52,891	80,000
Other Professional Outside Services	9,047	250,000
<i>Total Professional &amp; Outside Services</i>	185,159	540,000
Travel-In State	447	3,000
Travel Out-of-State	577	3,500
<i>Total Travel</i>	1024	6,500
Other Operating Expenditures		
Risk Management Charges	1,450	2,000
DOA Finance Divison	401	2,500
Other External Data Processing	1,068	3,500
External Telecomm Charges	7,178	10,000
Other External Telecom Service	-	2,000
AFIS Usage and Development	1,300	1,500
Rent Charges to State Agency	47,950	75,000
Rental of Other Machinery & Equip	-	500
Miscellaneous Rent	-	1,000
Internal Acct/Budg/Financial Services	2,125	5,000
Repair & Maintenance - Other Equip	1,002	2,000
Other Repair & Maintenance	-	2,000
Software Support and Maintenance	-	1,500
Office Supplies	697	2,500
Other Operating Supplies	112	500
Conference, Education & Training Reg.	175	4,000
Advertising	-	2,500
External Printing	-	2,500
Postage & Delivery	1,203	2,500
Awards	-	8,000
Dues	601	1,200
Books Subscriptions & Publications	4,642	8,000
Other Miscellaneous Operating	88	500
<i>Total Other Operating Expendtiures</i>	69,992	140,700
Aid to Individua/Organization	8,027	13,000
Capital Equipment	-	-
Non-Capital Equipment	7,727	25,000
Transfers (other state agencies)	29,852	35,000

***Total Expenses*** **\$ 691,187 | 1,450,200**

	2022 Actuals (as of Nov.7)	2023 Projections
<i>Expenses</i>		
Personal Services	\$ 257,930	\$ 500,000
ERE	91,981	190,000
<i>Total Personal &amp; ERE</i>	<u>349,911</u>	<u>690,000</u>
Professional & Outside Services		
Public Ed- Paid Media, Social Media, etc	902,669	2,000,000
Reister PO #ECA20004(debates)	587,127	-
Attorney General Legal Services	55,607	80,000
Temporary Agency Services	90,406	150,000
Other Professional Outside Services	410,174	500,000
<i>Total Professional &amp; Outside Services</i>	<u>2,045,983</u>	<u>2,730,000</u>
Travel-In State	553	3,500
Travel Out-of-State	2,116	8,500
<i>Total Travel</i>	<u>2,669</u>	<u>12,000</u>
Other Operating Expenditures		
DOA Financial Division	401	1500
Risk Management Charges	1,450	1,500
Other External Data Processing	5,407	8,000
AFIS Usage and Development	1,301	1,500
External Telecom Charges	7,242	10,000
Other External Telecom Service	3,305	6,500
Rent Charges to State Agency	47,950	75,000
Rental of Info Tech Equipment	-	900
Rental of Other Machinery and Equipment	-	2,000
Miscellaneous Rent	2,078	10,000
Internal Acct/Budg/Financial Services	2,125	4,500
Repair & Maintenance - Info Tech PCLAN	-	500
Repair & Maintenance - Buildings		500
Repair & Maintenance - Other Equip	1,002	3,500
Other Repair & Maintenance	1,349	2,000
Software Support and Maintenance	583	2,000
Uniforms	-	500
Office Supplies	1,430	2,500
Computer Supplies	112	500
Other Operating Supplies	107	5,000
Conference Education & Training Reg.	295	12,000
Advertising		4,000
Employee Tuition and Training		2,500
External Printing	804,763	25,000
Postage & Delivery	588,554	6,000
Awards	-	
Entertainment & Promo Items	-	20,000

Other Miscellaneous Operating	-	5,000
Dues	200	500
Books, Subscriptions & Publications	<u>269</u>	<u>2,500</u>
<i>Total Other Operating Expenditures</i>	<u>1,469,522</u>	<u>227,900</u>
Capital Equipment		
Non-Capital Equipment	9,791	40,000
Transfers (other state agencies)	<u>29,852</u>	<u>35,000</u>
<b><i>Total Expenses</i></b>	<b><u>\$ 3,908,129</u></b>	<b><u>3,734,900</u></b>



	2022 Actuals	2023	2024	2025	2026
<i>Revenues</i>					
Court Assessments	\$ 5,610,628	\$ 5,500,000	\$ 5,500,000	\$ 5,500,000	\$ 5,500,000
Commission Assessments	2,301	1,000	2,000	1,000	2,000
\$5 Tax Donations	-	-	-	-	-
\$5 Candidate Qualifying Contributions	79,495	-	50,000	-	80,000
Miscellaneous	23,205	2,000	12,000	2,000	20,000
<b>Total Revenues</b>	<b>\$ 5,715,629</b>	<b>\$ 5,503,000</b>	<b>\$ 5,564,000</b>	<b>\$ 5,503,000</b>	<b>\$ 5,602,000</b>

Expenditure Cap	Amount
Total Expenditure Cap	\$23,948,344
Public Ed Paid Media	\$2,394,834
Admin & Enforcement	\$2,394,834

2022 Tax Filers	Spending Limit Coefficient
3,421,192	\$7

Calendar Year	Beginning Fund					Ending Fund
	Balance	Revenues	Expenditure	Cap	Balance	
2019	\$ 32,076,354	\$ 7,108,700	\$ 20,932,604	\$	18,252,450	
2020	\$ 18,252,450	\$ 5,961,264	\$ 21,704,634	\$	2,509,080	
2021	\$ 2,509,080	\$ 5,795,967	\$ 22,974,427	\$	(14,669,380)	
2022	\$ (14,669,380)	\$ 5,610,628	\$23,919,756	\$	(32,978,508)	
2023	\$ (32,978,508)	\$5,503,000	\$23,948,344	\$	(51,423,852)	

Calendar Year	Beginning Fund Balance	Projected Revenues	Projected Expenditure Cap	Ending Fund Balance
2023	\$26,928,906	\$5,503,000	\$23,948,344	\$8,483,562
2024	\$8,483,562	\$5,640,000	\$23,948,344	(\$9,824,782)
2025	(\$9,824,782)	\$5,503,000	\$23,948,344	(\$28,270,126)
2026	(\$28,270,126)	\$5,602,000	\$23,948,344	(\$46,616,470)

Calendar Year	Beginning Fund Balance	Projected Revenues	Projected Expenditures	Ending Fund Balance
2022	\$29,799,051	\$4,780,525	\$6,442,730	\$27,639,846
2023	\$27,639,846	\$5,503,000	\$6,000,000	\$27,142,846
2024	\$27,142,846	\$5,564,000	\$10,000,000	\$22,706,846
2025	\$22,706,846	\$5,503,000	\$6,000,000	\$22,209,846

<i>Calendar Year</i>	2019	2020	2021	2022	<b>2023 Projection</b>
<i>Candidate Funding</i>	\$0	\$2,883,648	\$0	2,400,608	<b>\$0</b>

2023 Primary Funding Projections				2023 General Funding Projections			
Office	Participating Candidates	Primary Funding Amt.	Funding Total	Office	Participating Candidates	General Funding Amt.	Funding Total
Governor		\$ -	\$ -	Governor			\$ -
Secretary of State		\$ -	\$ -	Secretary of State			\$ -
Attorney General		\$ -	\$ -	Attorney General			\$ -
Sup. of Public Instr.		\$ -	\$ -	Sup. of Public Instr,			\$ -
Treasurer		\$ -	\$ -	Treasurer			\$ -
Mine Inspector		\$ -	\$ -	Mine Inspector			\$ -
Corp. Comm. (2 seats)		\$ -	\$ -	Corp. Comm (2 seats)			\$ -
Legislature		\$ -	\$ -	Legislature			\$ -
<i>Total Primary Funding for Statewide and Legislature</i>			\$ -	<i>Total General Funding for Statewide and Legislature</i>			\$ -
<b>Total Candidate Funding for 2023 Election</b>			<b>\$ -</b>				