



**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, February 23, 2023

**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 February 23, 2023. 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 [cccec@azcleanelections.gov](mailto:cccec@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.

**Join Zoom Meeting**

<https://us02web.zoom.us/j/83049534974>

*Meeting ID: 830 4953 4974*

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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 January 19, 2023.
- III. Discussion and Possible Action on Executive Director’s Report, Enforcement and Regulatory Updates and Legislative Update.
- IV. Discussion and Possible Action on Final Approval Proposed Amendments to Ariz. Admin. Code Title 2, Chapter 20, Article 3, Standard of Conduct for Commissioners and Employees § § R2-20-305 (Reporting suspected violations) & R2-20-306 (Disciplinary and other remedial actions).
- V. Discussion and Possible Action on 2023 Voter Education Plan.
- VI. Discussion and Possible Action on Proposition 211, Voters’ Right to Know Act, including litigation and staff research.
- VII. Discussion and Possible Action on 2023 Chairperson.
- VIII. Discussion and Possible Action on Proposed Meeting Dates, March – August, 2023.
- IX. 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
- X. 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 21<sup>st</sup> day of February, 2023  
Citizens Clean Elections Commission  
Thomas M. Collins, Executive Director

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.

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THE STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING

Phoenix, Arizona  
January 19, 2023  
9:30 a.m.

By: Kathryn A. Blackwelder, RPR  
Certified Reporter  
Certificate No. 50666



<p>1 VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS 2 CLEAN ELECTIONS COMMISSION convened at 9:30 a.m. on 3 January 19, 2023, 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. Mark Kimble, Acting Chairman Ms. Amy Chan 8 Mr. Galen Paton Mr. Steve Titla 9 10 OTHERS PRESENT: 11 Thomas M. Collins, Executive Director Paula Thomas, Executive Officer 12 Mike Becker, Policy Director Gina Roberts, Voter Education Director 13 Avery Xola, Voter Education Manager Kara Karlson, Assistant Attorney General 14 Mary O'Grady, Osborn Maledon Cathy Herring, Staff 15 Rivko Knox, Member of the Public Nick Myers, Member of the Public 16 17 18 19 20 21 22 23 24 25</p>	<p>1 ACTING CHAIRMAN KIMBLE: Thank you. My name 2 is Mark Kimble. Chairman Meyer is unable to be with us 3 today, so I will be acting temporarily in his absence. 4 Agenda Item No. I is the call to order. It's 5 9:30 a.m. on January 19th, 2023. I call this meeting 6 of the Citizens Clean Elections Commission to order. 7 I'd like to ask all audience members to 8 please keep their microphones on mute, please. 9 And with that, we will take attendance. 10 Commissioners, please identify yourselves for the 11 record. 12 COMMISSIONER PATON: Commissioner Paton. 13 COMMISSIONER CHAN: Commissioner Chan. 14 ACTING CHAIRMAN KIMBLE: Commissioner Titla, 15 are you here? Commissioner Titla, you appear to be on 16 mute. 17 COMMISSIONER TITLA: Yeah, I'm here. Thank 18 you. Good morning. 19 ACTING CHAIRMAN KIMBLE: Okay. Thank you. 20 And I'm Commissioner Kimble. We have a 21 quorum. 22 Item No. II, discussion and possible action 23 on meeting minutes for December 15th, 2022. Is there 24 any discussion? 25 COMMISSIONER CHAN: Mr. Chairman, I move that</p>
<p>1 we approve the minutes as written. 2 ACTING CHAIRMAN KIMBLE: Thank you, 3 Commissioner Chan. 4 Is there a second? 5 COMMISSIONER PATON: This is Commissioner 6 Paton. I'll second it. 7 ACTING CHAIRMAN KIMBLE: Thank you. 8 We'll do a roll call on this. Commissioner 9 Chan. 10 COMMISSIONER CHAN: I vote aye. 11 ACTING CHAIRMAN KIMBLE: Commissioner Paton. 12 COMMISSIONER PATON: Aye. 13 ACTING CHAIRMAN KIMBLE: Commissioner Titla. 14 COMMISSIONER TITLA: Aye. 15 ACTING CHAIRMAN KIMBLE: And Commissioner 16 Kimble, I vote aye. The minutes are approved. 17 With that, we'll move to Item III, discussion 18 and possible action on the Executive Director's Report. 19 Tom. 20 MR. COLLINS: Yes. Thank you, Chairman and 21 Commissioners. And happy new year, although I 22 understand that's already -- according to Larry David, 23 it's too late to say happy new year. But nevertheless, 24 happy new year. 25 You know, before we start the Executive</p>	<p>1 Director's Report in earnest, I wanted to ask Avery, 2 if he could, to read an acknowledgment he wrote about 3 Mel Hannah, who was a colleague of Avery's. And I'll 4 just -- I would like to go ahead and, with your 5 permission, Mr. Chairman, have Avery do that, please. 6 ACTING CHAIRMAN KIMBLE: Of course. Avery. 7 MR. XOLA: Chairman, Commissioners, yeah, I 8 just want to take this moment to acknowledge the 9 passing of our colleague in public service, the 10 Honorable Mel J. Hannah. He was committed to serving 11 the public, which was evident from the many positions 12 he held in civic leadership. Mel Hannah became the 13 first African American elected to City Council in 14 Flagstaff and also to serve on the Coconino County 15 Board of Supervisors. He championed civil and voting 16 rights throughout his career. Mel will be remembered 17 for his devotion to Arizona, community involvement, his 18 pleasant personality, and ability to break barriers. 19 Although his absence is real and a tangible loss, his 20 legacy will live on through the many individuals he 21 inspired to become civically engaged, including myself. 22 If you would like to know more information 23 about Mr. Hannah, you could actually go to our website, 24 azcleelections.gov, and look at our civic 25 storytelling, where he basically told his</p>

<p>1 autobiography. And it was a privilege to work with 2 him. Thank you. 3           ACTING CHAIRMAN KIMBLE: Thank you, Avery. 4 Very, very touching comments. 5           Tom. 6           MR. COLLINS: Yes. Thank you, Mr. Chairman. 7 Thank you, Avery. 8           You know, just a real quick update. 9 Obviously, we did complete the recounts in the -- in 10 the three races that had recounts. As noted in the 11 election -- in the litigation section, there's still an 12 appeal related to Kari Lake's election contest and 13 there is a -- a kind of a motion for rehearing pending 14 in Mohave County related to the -- Abe Hamadeh and his 15 election contest. 16           That said, we are on to the next consolidated 17 election date in March, the principal. And by the time 18 we next meet, the voter registration deadline for that 19 will pass. And for -- you know, for -- the biggest 20 race there is the City of Phoenix has a runoff election 21 for two City Council seats. So Phoenix being the 22 biggest city in the state, that's a -- a pretty big 23 deal. 24           Notwithstanding the holidays, you know, the 25 voter education staff continued to work on the website</p>	<p>1 and we -- and we've done some additional subject matter 2 expert videos, which is something we've been doing over 3 the course of the last year or so, so those will be 4 debuting soon. We have one, for example, on sort of 5 lobbying 101 that we think will be helpful to folks. 6 And then we'll be working on our voter education 7 strategy for this year next coming up here with -- in 8 this month. 9           We've continued to do a lot of outreach. 10 Gina will be attending the National Association of 11 Election Directors conference next month, which is 12 exciting. That will be the second time she's been 13 there. I think the -- so that's a good thing. 14           We're continuing to work on getting the 15 office where I'm currently sitting up to some kind -- 16 up to a place where we can use it better. 17           And then we have audits on this Agenda. 18           A couple quick things on the -- on the legal 19 front. We'll talk about the Legacy Foundation case and 20 the Center for Arizona Policy case later in the Agenda. 21 The Court of Appeals issued an opinion yesterday 22 affirming -- excuse me -- vote by mail against a 23 constitutional challenge. 24           And then a couple of other quick things I 25 would like to mention. The Maricopa County Recorder,</p>
<p>1 Stephen Richer, released a plan for election reform 2 last week. It's got a couple of interesting ideas. 3 It's kind of couched as a discussion document in the 4 sense that I'm not sure that it -- I wouldn't 5 necessarily describe it as pinning down a specific 6 policy that he -- it's sort of written in a sort of 7 like list of options, if you will, and the tradeoffs 8 within those options. 9           So, for example, on the speeding up the vote 10 count, you know, the issue there, and has been forever, 11 is so-called late earlies, that is to say, people who 12 got mail ballots and dropped them off on the day of the 13 election. So the range of options there go everywhere 14 from essentially, you know, essentially stopping that 15 to a variety of different, you know, ways of making 16 that more practical. Because those envelopes -- 17 affidavit envelopes then need to get signature checked, 18 and then those ballots get counted, and so that's -- 19 that's a big part of that. 20           There's also some discussion of adjudication 21 of voter intent. This is an interesting aspect of it. 22 If a voter has -- let's say, spills coffee on their 23 ballot and it's -- and the ballot is not clear as to 24 what it says. Certainly in Maricopa County, and 25 generally speaking, there's an obligation to try to</p>	<p>1 determine the voter's intent for that ballot. Now, in 2 other states, as the Recorder's report points out, 3 that's simply not done except under very narrow 4 circumstances. And so, again, that's -- that would be 5 a -- you know, he's laying out a range of options, some 6 of which would be significant changes. And he also, 7 you know, points out that in his view there's not 8 standardization between counties on how those kind of 9 voter intent issues are resolved. 10           I'm not really here to sort of talk about the 11 merits of his ideas as much just to make sure that 12 everyone is sort of aware that these are discussion 13 points he wants brought forward, and this relates to a 14 couple of other things. 15           I think a couple other interesting things 16 were -- and these two are the key for Clean Elections 17 purposes. One, he thinks there maybe ought to be a new 18 entity with auditing power to enforce campaign finance 19 law. Obviously, he didn't mention Clean Elections in 20 that -- his discussion of campaign finance law. I'm 21 not sure if that's out of -- so we may have some 22 education to do with him in terms of what we do and the 23 range of laws that we do enforce and the scope of that 24 authority. But it was interesting to see that noted. 25           And then the other one is moving the primary</p>

<p>1 date up. For many, many years politicians on both 2 sides of the aisle have wanted the primary date up -- 3 moved up. The primary date moving up is a very, very 4 important thing for Clean Elections because it is tied 5 directly to the value, over time, of the money that 6 Clean candidates receive. So if you were to move the 7 primary date up very far, you might change that -- you 8 know, change the time frame to collect and get your 9 signatures in and you might change how that money is 10 necessarily supposed to last.</p> <p>11 On the other hand, you know, maybe it would 12 benefit Clean candidates to the extent that, you know, 13 we now have -- we have a court opinion that says that 14 party-coordinated communications with Clean candidates 15 are A-okay. The parties have not, for some reason, 16 taken advantage of that. You saw that critically, 17 frankly, in the Superintendent's race this year. The 18 Democratic party did not do coordinated communications 19 with Superintendent Hoffman for some reason. So --</p> <p>20 But that exists, so maybe it's -- maybe 21 there's a balance there. But it's important we keep 22 our eye on it, because it moves all of our timelines up 23 and does have an impact potentially on the dollars.</p> <p>24 Additionally, on the election proposal front, 25 the Governor, Governor Hobbs, announced an executive</p>	<p>1 order creating the Governor's Bipartisan Election Task 2 Force. That study will make recommendations to 3 strengthen election laws, policies, and procedures in 4 the state of Arizona. It incorporates certain 5 requirements on the membership, including the Secretary 6 of State or his designee, allows for the appoint -- the 7 nomination by the Senate President, House Speaker of 8 Recorders they might be interested in, and it calls for 9 a person who's involved in -- who knows -- who knows 10 campaign finance, and then -- which I think is notable 11 for Commission perspective.</p> <p>12 And then the other thing I think that's 13 notable is that one of the goals is promoting 14 transparency, public confidence, and engagement in the 15 electoral process, which, you know, I mean -- I mean, 16 if you -- there's a -- I'm certain the people that 17 drafted it didn't have this in mind, per se, but, you 18 know, that's pretty much what the charter of the Clean 19 Elections Act says. So -- so we'll see how that -- how 20 that goes.</p> <p>21 I did want to note that Secretary of State 22 Fontes has announced that Colleen Connor, who was the 23 first Executive Director of the Clean Elections 24 Commission, has been appointed as Election Director.</p> <p>25 I think I can also say, because it's been</p>
<p>1 reported now, that Commissioner Chan will be staying 2 with the Secretary of State's Office. And so -- so 3 this -- I mean, you know, that's -- that's a good 4 thing, certainly not a bad thing.</p> <p>5 COMMISSIONER CHAN: Thanks, Tom.</p> <p>6 MR. COLLINS: And that's sort of -- sort of 7 where we are at this -- so there's a lot -- there's a 8 lot going on, despite the fact that, you know, in 9 theory, between December and now in some kind of way 10 things slowed down, but in many ways they did not slow 11 down. So there's a lot of information we'll be -- 12 we'll be covering and a lot of activity.</p> <p>13 And then on top of that, I almost forgot to 14 mention somehow, the Legislature is in session. 15 Attached to the Report is the County Association's 16 legislative principles for this year that includes 17 their election-related principles. We haven't yet seen 18 the bill draft for -- usually the County brings forth 19 an omnibus election bill, and I expect that will happen 20 again this year, but we haven't seen -- or, I haven't 21 seen the text of that bill yet and I don't think it's 22 been introduced.</p> <p>23 So, sorry, that was a little bit lengthier of 24 a -- of a report, but I don't know if -- of course, 25 obviously, Mr. Chairman, Commissioners, if you have any</p>	<p>1 questions.</p> <p>2 ACTING CHAIRMAN KIMBLE: Are there any 3 discussion or questions from the Commissioners?</p> <p>4 COMMISSIONER CHAN: Mr. Chairman, I wanted to 5 comment --</p> <p>6 ACTING CHAIRMAN KIMBLE: Commissioner Chan.</p> <p>7 COMMISSIONER CHAN: Thank you. I wanted to 8 comment on Recorder Richer's proposal. You know, Tom 9 flagged for us that there's a section on campaign 10 finance reform, and frankly, it's just not even a page 11 long. But just a quote, the very first sentence says, 12 "Our current campaign finance system is weak," and it 13 goes on to detail why Recorder Richer believes it's 14 weak, and I agree with him.</p> <p>15 And I do think that was an oversight not to 16 include Clean Elections. I know Recorder Richer is a 17 local election official, and so -- but I think, you 18 know, to the extent that his proposal gets legs and 19 there might be legislation to address some of the 20 issues he is trying to draw light to, maybe Clean 21 Elections could be a part of that.</p> <p>22 I think, from a Commission perspective, it 23 makes a lot of sense, because we already have some 24 enforcement authority and, frankly, have the staff and 25 resources to do investigations, if that's what the</p>

<p>1 legislature decides to enable -- and I -- I know I may 2 be getting ahead of things, but, you know, just having 3 worked with the campaign finance laws, it's -- we have 4 them and they should be meaningful, but it is 5 difficult, as a filing office, I think, for anybody 6 local or at the Secretary's Office to be aware of 7 everything and -- unless somebody files something with 8 you, your office.</p> <p>9 So I think, you know, the proposals laid out 10 by Recorder Richer are important to consider, but I 11 think that that was an oversight that probably 12 should -- you know, the Commission should be a part of 13 that conversation.</p> <p>14 ACTING CHAIRMAN KIMBLE: Commissioner Chan, I 15 totally agree with what you say and those are very good 16 points.</p> <p>17 And kind of along the same lines, I was going 18 to ask you, Tom, on the Governor's task force you say 19 the order includes certain requirements on members and 20 allows certain officials to make nominations. How can 21 we get also involved in this task force?</p> <p>22 MR. COLLINS: Mr. Chairman, that's a good 23 question. Our sort of staff view on this is -- is kind 24 of to wait and see. We are very interested in if the 25 task force, for example, were to decide to, which it</p>	<p>1 could decide -- the Governor could decide to subject it 2 to the open meeting law, it's not mandatory, you know, 3 we would obviously attend and be very curious what they 4 are going to do.</p> <p>5 It's not super clear, outside of the specific 6 nominations that are called for by the order, which are 7 basically Speaker, President, and I think -- I think 8 there's a place for an organization recommended by a 9 member of the -- or, an organization associated with 10 the disability community are the big three in terms of 11 getting an actual nomination. It's not super clear 12 what that process is going to be.</p> <p>13 We've been -- you know, we're -- it's sort of 14 one of these things where my experience tells us that 15 if we're going to be asked to participate, we're going 16 to be asked to participate. And if we're not going to 17 be asked to participate, we're not -- asking to 18 participate is not going to change that outcome and it 19 might be seen as annoying. That's sort of our -- 20 that's sort of our analysis.</p> <p>21 There are ways this could go that would work 22 that would be great. There are ways that it could 23 be -- you know, you never know. I mean, you know, so I 24 guess my point is that we're -- our current staff 25 viewpoint is -- is monitor. You know, if -- you know,</p>
<p>1 if a Commissioner -- especially if a Commissioner, 2 which is different than a staff member, obviously, 3 wanted to be involved in it, that's a -- that's a 4 conversation we can -- you know, I'm happy to have with 5 anybody who wants to -- who wants to be connected with 6 that. You know, obviously at any moment it wouldn't 7 shock me if the Governor's Office were to call up and 8 say, please send us someone. But, again, it's --</p> <p>9 You know, the other issue with the approach, 10 and this is just my own -- this is sort of -- it is -- 11 the transition is still an ongoing process and evolving 12 and it's not super clear -- I mean, I'll just put it 13 this way. You know, I've reached out to a number of 14 different election officials and people involved in 15 elections through the nonprofit world, and there's not 16 been -- there's not -- no one has a lot of information 17 to go on as far as, you know, what the intended 18 membership of this will be, so...</p> <p>19 ACTING CHAIRMAN KIMBLE: Okay. Thank you.</p> <p>20 Any other discussion or possible -- excuse me 21 -- or questions from Commissioners on Tom's Executive 22 Report?</p> <p>23 (No response.)</p> <p>24 ACTING CHAIRMAN KIMBLE: Hearing none, we'll 25 move on to Item IV, discussion and possible action on</p>	<p>1 the Arizona Supreme Court's supplemental briefing order 2 in Legacy Foundation Action Fund versus Clean 3 Elections, CV-22-0041-PR.</p> <p>4 This item is to update us on a long-standing 5 case, and I would add long. This is the second time 6 Legacy Action Fund versus Clean Elections has been at 7 the Arizona Supreme Court. And following the November 8 oral argument, this week the court issued an order for 9 supplemental briefing on a particular issue that 10 appeared to come up in oral argument.</p> <p>11 Tom is going to give us some additional 12 background. Mary O'Grady, as you can see, is available 13 if we have questions or if we know -- if we want to go 14 into executive session or need to.</p> <p>15 Tom.</p> <p>16 MR. COLLINS: Yes, Mr. Chairman, 17 Commissioners. So, yes, just by -- by way of further 18 background, the Legacy Foundation Action Fund matter 19 arose initially in a 2014 complaint, which I believe 20 only -- only Commissioner Titla was on the Commission 21 at the time of that particular -- and given all of your 22 long tenure, that's remarkable. The matter concerns 23 whether or not express -- a particular advertisement 24 was expressly advocated for or against the defeat of a 25 specific clearly identified candidate.</p>

<p>1 Now, the issue has gone through the appellate 2 process -- has gone through the judicial process three 3 times, has gone through the appellate -- all the way 4 through the appellate process twice, principally 5 because Legacy Foundation Action Fund, when the 6 Commission issued its order against them, failed to 7 abide by the statutory timeline to appeal that order to 8 the Superior Court. They were -- that's undisputed and 9 never has been in dispute. They -- that went all the 10 way up to the Supreme Court on a direct appeal from our 11 motion to dismiss the case on account of that.</p> <p>12 Following that, when we went to enforce our 13 order in court, they filed essentially a counterclaim 14 in the form of a special action that said, no, no, no, 15 the Commission lacks subject matter jurisdiction, which 16 is, you know, a legal term of art essentially meaning 17 this issue is outside of the conceivable jurisdiction 18 or power of the Commission to have a role and that that 19 issue -- it doesn't matter when you bring it, you don't 20 have to follow timelines, you can just bring it when 21 you want to bring it.</p> <p>22 That issue went up through -- you know, we 23 won at the -- we were successful at the Superior Court. 24 Went to the Court of Appeals, were successful there. 25 Petition for review, we had the oral argument.</p>	<p>1 The issue at this point that was presented to 2 the Supreme Court was whether or not a section of the 3 restatement -- so the restatement -- a restatement, 4 especially for, you know, Commissioner Kimble and 5 Commissioner Paton and anybody who is watching, is an 6 effort by a bunch of lawyers and law professors to get 7 together and write what the law ought to be. And then 8 state courts especially around the country then adopt 9 these principles, which come through the common law as 10 the rules of the road for the -- for the state. And 11 so, you know, you have a restatement of contracts, you 12 have a restatement of torts, and those sort of changes 13 tend to standardize the practice in certain areas of 14 law across the nation.</p> <p>15 So the question presented to the Supreme 16 Court was whether or not a specific restatement having 17 to do with judgments, that is to say, in this case, the 18 Commission's order to this group to file their reports 19 and pay a fine, should apply or not, you know, should 20 the court adopt that. Well, at oral argument sort of a 21 different question came up around whether or not there 22 was some issue in the administrative adjudication 23 itself that interacted with the restatement in a kind 24 of way and might -- and might be outcome determinative. 25 And that's essentially what the court order</p>
<p>1 said. The court's order said, you know, an event may 2 have occurred in this adjudication. We're not -- we're 3 not sure how, if that event occurred, it would affect 4 our analysis under this restatement section, so please 5 provide us additional briefing on that.</p> <p>6 They also -- and this is part of the reason 7 we made this an Agenda item instead of just an 8 Executive Director Report note. They invited further 9 amici, so, you know, further folks, to file new briefs 10 in -- on this issue, and they invited the Attorney 11 General's Office to file a brief itself. They 12 expressly invited the Attorney General's Office to 13 weigh in here, which is sort of semi -- sort of 14 standard practice at the U.S. Supreme Court, but is not 15 standard practice at the Arizona Supreme Court, and 16 it's less -- in supplemental briefing orders, after 17 oral arguments, are not --</p> <p>18 I mean, again, just to put this in context, 19 this doesn't happen very often, and including a 20 specific invitation to the Attorney General sort of 21 raises it to a level of seriousness that, you know, we 22 felt it was important to -- you know, we're not in a 23 position to prognosticate about it. We are in the 24 process of drafting our briefs and working with, you 25 know, folks to make sure we have a response ready, but</p>	<p>1 we want to make sure that, because it involves so many 2 different moving and complicated pieces, that you -- 3 you were aware of it.</p> <p>4 Mary, I don't know if I've -- if that was 5 sufficiently -- if there's anything I need to take 6 back, first, please let me know. But then second, 7 obviously, Mary, I don't if there's -- how else -- what 8 else we want to add.</p> <p>9 ACTING CHAIRMAN KIMBLE: Mary.</p> <p>10 MS. O'GRADY: Thank you. I don't really have 11 anything to add, unless there are questions. I guess 12 I'll add, the brief is due next Friday, and -- all 13 briefs, amici and the Commission's brief. And then 14 there's an opportunity for the parties to respond to 15 any amicus briefs, and that's -- they have a week to do 16 that, February 3rd. And so after that, then it's back 17 to the court to get a decision, because we've had 18 argument and -- and so we're happy to answer any 19 questions.</p> <p>20 ACTING CHAIRMAN KIMBLE: Do any Commissioners 21 have any questions for either Tom or Mary on this 22 issue?</p> <p>23 (No response.)</p> <p>24 ACTING CHAIRMAN KIMBLE: Tom, I'm a little 25 unclear. What -- do you need a motion from us or</p>

<p>1 something or this is just informational? 2 MR. COLLINS: This is really informational in 3 the sense that -- but, you know, because it involves 4 such a -- it involves a case that -- again, not a lot 5 of you were here for the initial aspect of it. It 6 involves a case that, because of the invitation to the 7 Attorney General's Office, has a -- has a bit more 8 seriousness to it. You know, my principal concern in 9 making it an Agenda item was to say, look, if something 10 spins out of this that is unexpected, I want to make 11 sure that you -- that everybody understands who all the 12 players who have been invited to be involved in this 13 process are and that, you know -- you know, whether or 14 not this will have -- 15 And then the other reason is to be aware 16 that, you know, we work -- as you all know, we work 17 very hard to keep our enforcement actions sort of, you 18 know, in context of our ex parte rules and ensure 19 that -- so there's many, many things that we may or may 20 not do in enforcements that we may or may not ever 21 brief you about. That's part of the issue that's in 22 this case, and so it's important, again, to just 23 highlight that the way we do things, at least at Clean 24 Elections, in our view, is consistent with the issue 25 that we are dealing with in this case, which has to do</p>	<p>1 with whether or not -- the specific issue and the order 2 of thread it was, did the Commission somehow have an 3 unnecessarily advocative role in the adjudication 4 itself and -- you know, as you all know and I -- you 5 know, when we do hearings in front of you, then we 6 follow these ex parte rules, we have -- we have -- the 7 other side has, you know, has lawyers, we have separate 8 counsel from the AG's Office that comes in to advise 9 you on -- on your role, you know, we take all those 10 steps in view of the due process issue that this order 11 asks to be briefed. 12 And so it's also just an opportunity to 13 reiterate that, you know, we are, at least as staff 14 members and certainly you all as Commissioners, are -- 15 you know, are pretty -- you know, are -- stuff that 16 sort of happens without us having much of a discussion 17 about it, because it's just how the rules work and how 18 we have the -- how it's organized. You know, this is 19 sort of highlighting one of those -- those kind of 20 things. 21 ACTING CHAIRMAN KIMBLE: Okay. Absent any 22 other comments or questions from Commissioners, we will 23 move on. 24 (No response.) 25 ACTING CHAIRMAN KIMBLE: Item V, discussion</p>
<p>1 and possible action on Center for Arizona Policy versus 2 Hobbs in her Secretary of State role, CV2022-016564, 3 Superior Court for Maricopa County, challenge to the 4 Voters' Right To Know Act, and the Commission's legal 5 positions and filings. 6 This item relates to a lawsuit challenging 7 the recently enacted Voters' Right To Know Act on state 8 constitutional grounds. You have in your materials the 9 complaint and motion for preliminary injunction. Tom 10 and Mary are here, as you know, to give us an overview 11 of the litigation. We may want to go into executive 12 session at some point. 13 Mary and Tom, if we reach that point, would 14 you recommend -- would you let us know if we should go 15 into executive session, please. 16 Tom. 17 MR. COLLINS: Sure. Yes, Mr. Chairman, 18 Commissioners. So in December the Goldwater Institute 19 filed, on behalf of the Center for Arizona Policy, the 20 Free Enterprise Club, and two anonymous plaintiffs, a 21 state constitutional law challenge in state court to 22 the Voters' Right To Know Act, which became effective 23 on the date of ambits. 24 The upshot of the complaint is that there 25 is a state constitutional right to free speech that</p>	<p>1 this, the Voters' Right To Know Act, on its face 2 violates by requiring, in certain cases under certain 3 spending circumstances, people to disclose the original 4 source of funds that funded a campaign ad. 5 It also argues that, under the state 6 constitutional right to privacy, that information 7 related to, for example, in the case of the two 8 identified plaintiffs, information concerning their 9 donors, and I guess -- I guess they're sort of standing 10 in the shoes of their donors, their donor's 11 information -- they have a privacy right to how they -- 12 how they spend their money on politics that is driven 13 by the vehicle with which they use -- to whom they give 14 that money. 15 And then I think finally, the third big one 16 is sort of a -- sort of an argument that says that the 17 voters cannot delegate to an administrative agency any 18 authority to make rules, and maybe the Legislature 19 can't either. But it's a pretty -- that's a pretty, I 20 think, pretty broad -- it's a pretty broad sort of 21 statement saying, you know, essentially that these 22 are -- these are legislative decisions and they cannot 23 be given -- the decisions involved in implementing this 24 Act are not decisions that can be left to an 25 administrative agency. So those are the, I think, the</p>

<p>1 big claims.</p> <p>2 We have, I believe, a briefing schedule set.</p> <p>3 We have been -- staff has been working with Mary on --</p> <p>4 on a substantive response. In other words, under the</p> <p>5 Act, at least it's my view, and I think that the</p> <p>6 expectation is, given this passed with 70 percent of</p> <p>7 the vote, that it ought to be defended by someone, and</p> <p>8 the Commission is probably the best party to do that.</p> <p>9 So we have been working, along those lines, towards --</p> <p>10 towards filing a responsive -- some responsive</p> <p>11 document, but we have not -- but that timeline hasn't</p> <p>12 lapsed yet.</p> <p>13 There is also going to be, at a minimum, an</p> <p>14 intervention by the political action committee that</p> <p>15 sponsored this measure at the ballot. And then, you</p> <p>16 know, we don't know -- you know, sort of outside of</p> <p>17 that, there may be other -- there may be other folks.</p> <p>18 As you can see, as Chairman Kimble noted in</p> <p>19 the caption, you know, the Secretary of State's Office</p> <p>20 was named, and so we'll also see -- you know, the</p> <p>21 Secretary of State's Office has an option to be</p> <p>22 involved or not involved as they -- as they see fit.</p> <p>23 The only other, I guess, thing of note is,</p> <p>24 it's a little bit -- you might call this a</p> <p>25 belt-and-suspenders approach. They sued the Commission</p>	<p>1 and they sued the Officers of the Commission in their</p> <p>2 official capacity, so all of your names are in the</p> <p>3 caption of the lawsuit. You know, we kind of don't</p> <p>4 think that's really necessary, but -- or particularly</p> <p>5 meaningful given that the Commission really acts as a</p> <p>6 body, especially in state court.</p> <p>7 So that's where we are. You know, I think --</p> <p>8 I mean, that's kind of -- I think that, to the extent</p> <p>9 that -- you know, Mary, if you want -- I don't --</p> <p>10 Mr. Chairman, Mary, I don't know if we want to talk a</p> <p>11 little bit about how we're responding and in what</p> <p>12 context you want to do that.</p> <p>13 MS. O'GRADY: I just wanted to make one note,</p> <p>14 if I may, Chair Kimble, Members.</p> <p>15 ACTING CHAIRMAN KIMBLE: Yes.</p> <p>16 MS. O'GRADY: We don't have a schedule set</p> <p>17 yet. We have a status conference with the judge</p> <p>18 tomorrow morning and anticipate discussing a schedule</p> <p>19 at that point. And the key scheduling issues are:</p> <p>20 Their motion for preliminary injunction, a time to</p> <p>21 answer or move to dismiss, and then their motion to</p> <p>22 have these anonymous plaintiffs.</p> <p>23 I'll also note that yesterday Attorney Tom</p> <p>24 Ryan entered a formal appearance for the Secretary of</p> <p>25 State, so they -- they do have counsel in this matter.</p>
<p>1 And then -- so that's in terms of what's on</p> <p>2 the -- on the -- on the playing field here. And then</p> <p>3 if there -- if you're interested in further discussion,</p> <p>4 I'd recommend executive session for that.</p> <p>5 ACTING CHAIRMAN KIMBLE: Okay. Mary, Tom, do</p> <p>6 you feel there's more matters we need to discuss in</p> <p>7 executive session?</p> <p>8 MR. COLLINS: Mr. Chairman, I mean, my</p> <p>9 feeling is this. You know, I think that if</p> <p>10 Commissioners have concerns about what our role here is</p> <p>11 as a legal matter that are part of the question that</p> <p>12 are baked into discussing the strategic and tactical</p> <p>13 decisions that Mary and I are considering, I think that</p> <p>14 that would warrant an executive session. In other</p> <p>15 words, I don't want to -- you know, we're -- we are</p> <p>16 proceeding on a certain track because of the timing of</p> <p>17 when the lawsuit was filed versus when our meetings</p> <p>18 occurred versus all the other different conflicting</p> <p>19 issues.</p> <p>20 So what I want to make sure that you all have</p> <p>21 the opportunity to do is to, if you have questions</p> <p>22 around the strategic and tactical approach that we are</p> <p>23 currently going to undertake that would be covered</p> <p>24 by -- you know, would essentially be privileged</p> <p>25 information, I think that that would be -- you know, if</p>	<p>1 you don't, then understand that we are, in fact,</p> <p>2 proceeding along the lines that I've -- that I've</p> <p>3 broadly -- that Mary and I broadly identified.</p> <p>4 ACTING CHAIRMAN KIMBLE: Okay. Any comments</p> <p>5 from Commissioners?</p> <p>6 COMMISSIONER CHAN: Mr. Chairman, I don't --</p> <p>7 ACTING CHAIRMAN KIMBLE: Commissioner Chan.</p> <p>8 COMMISSIONER CHAN: -- see a need to go into</p> <p>9 executive session at this time, especially since</p> <p>10 they're -- they still have to do a status conference</p> <p>11 and get a time frame.</p> <p>12 MR. COLLINS: Mr. Chairman, if I may,</p> <p>13 Commissioner Chan, just to that point, we are -- maybe</p> <p>14 I should be clearer. We are going into that status</p> <p>15 conference with the idea we will be filing a response</p> <p>16 in opposition to the preliminary injunction.</p> <p>17 ACTING CHAIRMAN KIMBLE: Okay.</p> <p>18 COMMISSIONER CHAN: Mr. Chairman, I think</p> <p>19 that's consistent with my understanding of what --</p> <p>20 MR. COLLINS: Okay.</p> <p>21 COMMISSIONER CHAN: -- you know, the</p> <p>22 Commission's --</p> <p>23 MR. COLLINS: I just wanted to make sure the</p> <p>24 record is clear.</p> <p>25 COMMISSIONER CHAN: -- position is.</p>

<p>1 MR. COLLINS: Yeah. No, I apologize. I 2 didn't mean to talk over you. I apologize. 3 COMMISSIONER CHAN: It's okay. 4 ACTING CHAIRMAN KIMBLE: Okay. Any other 5 Commissioners want to comment on this or feel we need 6 to go into executive session, Commissioner Paton, 7 Commissioner Titla? 8 (No response.) 9 ACTING CHAIRMAN KIMBLE: Okay. Not hearing 10 any overwhelming call to go into executive session, we 11 won't. 12 So we'll move on to Item VI, discussion and 13 possible action on administrative, rulemaking, and 14 technological issues in the implementation of the 15 Voters' Right To Know Act, Proposition 211. Item VI, 16 the purpose of this item is to give us a basic timeline 17 for rulemaking and other steps aimed at implementing 18 Proposition 211 by 2024. 19 Tom. 20 MR. COLLINS: Thank you, Mr. Chairman. So I 21 thought about trying to put together a memo and then I 22 thought about trying to put together a PowerPoint and 23 then I ultimately decided I would just talk. 24 But the -- so there's basically -- there's 25 really a couple of tracks. Number one, you know, we're</p>	<p>1 going to have to make some rules. The areas we've 2 identified already where we're going to need to make 3 some rules are disclaimers, that is to say, those 4 little things that go on mailers and the thing that's 5 read at the end of the television ad that says who paid 6 for this ad. That's a directive in the Act. We're 7 going to have to do some -- have to have some kind of 8 rule on that. 9 There's some, you know, some definitional 10 tension between Title 16-901 and -- Section 901 and our 11 definition section on election cycle, those kinds of 12 technical terms that we're going to want to look at. 13 We're also going to want to look at, you 14 know, obviously, you know, the procedures for enforcing 15 this Act. The substance of it -- I mean, this new Act 16 is very comprehensive on the -- essentially the guts of 17 it, right, what needs to be disclosed and by whom. And 18 we may not have a ton of -- I mean, we may here, but we 19 may not have a ton of necessary rulemaking there. But 20 we will have to give some thought to how the -- that 21 process is going to work, and it may not be identical 22 to what we have on the Clean Elections Act side and it 23 may be. And then we may also, finally, want to make 24 sure that the Clean Elections side and the Voter Right 25 To Know Act side on the enforcement piece, to the</p>
<p>1 extent there can be improvements on the Clean Elections 2 Act side through this, you know, we may want them to 3 match. 4 So what I -- so what we -- so what we intend 5 to do is over the -- as staff, over the course of the 6 next -- I would say the next two months is really try 7 to drill down on these issues, research them. We 8 will -- we will be needing some -- we'll have some 9 legal assistance on that. We'll be doing some outreach 10 to folks that are -- that are involved in these issues 11 to try to get some feedback on -- on what they think 12 would work, what they think won't work. 13 Then, if we're -- if we do that correctly, by 14 the second quarter we hope to have some language 15 along -- at least on the most critical issues in front 16 of you with the idea that we would have -- you know, 17 we're operating under the assumption that we do the 18 60-day public comment like we did in the pre-2018 days, 19 except we don't have to go to GRRRC, which cuts our 20 timeline down significantly, so -- but we want to kind 21 of think through. 60 days is two months. 120 days, 22 you know, is -- is four months. So we kind of need to 23 just kind of keep in the back of our minds that we need 24 to leave at least 120 days of time for public comment 25 because I think --</p>	<p>1 My experience with this, we've done some more 2 elaborate rule makings in the -- our recent rule 3 makings have all been pretty not -- you know, not 4 terribly -- they're a lot of cleanup, a lot of 5 clarification, but not a lot of interest in the -- in 6 the broader regulated community on what we're doing. 7 These -- this, hard to say, maybe not -- maybe not so, 8 much maybe more interest than before, and so we -- and 9 in those situations where we've had intensive work, you 10 know, response, particularly from the regulated 11 community, you know, we've -- we've always tried to 12 extend as much process time as possible to make sure we 13 get a good product. And in those cases we have often 14 come to a consensus that, I mean, you know, 75 percent 15 of the working lawyers, for example, can live with, and 16 25 percent of them can't live with the existence of the 17 Act. So it's -- it's sort of -- and I'm hopeful we can 18 get there again, you know. 19 So that -- so that takes us -- the idea being 20 that by -- hopefully by November, you know, at the 21 latest we have a good sense of what -- the regulated 22 community has a good sense of what to expect. And 23 then, you know, in the event that, you know, for 24 example, we were not unanimous or the Commission chose 25 to set a date for an act -- for effectiveness on</p>

<p>1 January 1, that would be in place. So that's the -- 2 that's the -- that's the year in front of us. 3       On the technology front, you know -- you 4 know, Secretary Fontes was quoted in a newsletter 5 called the Arizona Agenda yesterday talking about the 6 desire to have the See The Money version whatever be 7 more effective than the prior versions of See The 8 Money. I am optimistic about that. The Act, you know, 9 essentially directs the Secretary to make filing under 10 this available, and it also provides that the 11 Commission and the funding that comes through the new 12 Act is to -- is to -- is to pay for that. So, now, all 13 of us have been through that before, a couple times in 14 the last eight years, so -- 15       But I really think that at this point, you 16 know, Prop 211 has -- and we've already engaged a 17 little bit with the cities on this. Prop 211 has 18 implications for both -- for cities and the Commission 19 and for filers. And so if there wasn't critical mass 20 over the last 10 years that -- where -- during which 21 some Secretary of State was supposed to have built a 22 system that was available to all filers in state, we're 23 hopeful the critical mass is finally there. 24       Because the alternative is, the cities will 25 have to deal with Prop 211 issues that they don't want</p>	<p>1 to deal with, the Commission will have a harder time 2 dealing with its enforcement responsibilities. And the 3 Secretary of State's Office, you know, has a real 4 opportunity here to, I think, start fresh. And there's 5 a fresh opportunity to make sure that, you know, the 6 fiscal concerns that are always going to be part of any 7 Secretary's decision making are alleviated and we sort 8 of start fresh with that. 9       So that's my hope. I have not -- the one 10 thing I have not yet done, and partially because I'm 11 not yet certain how this -- how the Secretary of State 12 will want to orient his relationship with us on 13 technology issues and through what channels, but, you 14 know, I think, you know, we'll have to -- we'll 15 hopefully get a meeting together at a minimum with me 16 and Mike and whoever the Secretary's Office designates 17 to lead on that to -- to get -- to get to where we need 18 to get. 19       You know, I think that, you know, it's great 20 that Prop 211 is on the -- is effective now. I mean, 21 there's a certain -- there's a certain -- you know, 22 that's helpful in a sense that you may as well make it 23 so. But as a practical matter, you know, the -- the 24 rules are not going to be -- are not substantive -- 25 substantive in the sense of creating laws that don't</p>
<p>1 exist. They're about implementing the law that's been 2 set forth by the voters and creating a system that 3 allows the Commission and the parties who appear before 4 the Commission to have their claims heard and 5 adjudicated, right. 6       It's not -- we're not talking about making -- 7 we're not talking about making substantive law. That's 8 not really our role; it really never has been. It's 9 always been about trying to create some, you know -- 10 you know, there's some gap filling we do. And in the 11 case of the disclaimer, we will have to do some gap 12 filling, right, because we're directed to do that. But 13 the principal driver of our rules has always been 14 process. 15       And then at the same time -- you know, but 16 the technology piece is very important because, at the 17 end of the day, if folks can't file or have difficulty 18 filing, then -- then it doesn't -- it doesn't go. I 19 mean, that's just a real -- real problem from a -- for 20 example, if you say -- if you say to someone, look, you 21 spent X number of dollars on a -- on a public media 22 communication about a clearly identified candidate, but 23 you can't file it anywhere, you know, that's going to 24 be a real issue. And I'm not sure we'll get as much -- 25 you know, we've done -- in the past we've -- you know,</p>	<p>1 we've managed to like sort of like work around that 2 when the system maybe didn't work so well with kind of 3 a PDF form and kind of -- but this is not really that 4 -- that's not what the voters are asking here. The 5 voters are asking to be able to look at this stuff and 6 understand how elections are being influenced within, 7 you know, the boundaries of, you know, the statute and 8 the constitution. So that's sort of the timeline. 9       ACTING CHAIRMAN KIMBLE: Okay. I think it's 10 safe to say that Proposition 211 is going to have a 11 major impact on -- on Clean Elections, whether it's the 12 five of us or the five who are in office when this 13 happens in a number of months. Who knows. 14       But any questions from my colleagues on -- on 15 Item VI, Proposition 211? 16       (No response.) 17       ACTING CHAIRMAN KIMBLE: Okay. Thank you. 18       Item VII, discussion and possible action on 19 the following 2022 primary election candidate audits. 20 Mike is going to make some general comments on this 21 item. 22       Mike. 23       MR. BECKER: Thank you, Mr. Chairman, 24 Commissioners. Before you are the -- are 10 of the 11 25 primary audits. There's one outstanding that will be</p>

<p>1 on the next Agenda. The reason for that is simply we 2 wanted to give the candidate a little more time. They 3 had some things pop up right after the election, during 4 the holidays, so we're just trying to accommodate them. 5 But these audits turned out very well. There 6 were some minor issues that were found, such as 7 entering a contribution twice, entering the wrong 8 amount for an expenditure, such as they entered \$19 and 9 it should have been \$190, simple things like that. 10 Those issues have been corrected and are being 11 corrected as we speak. 12 I also want to say thank you to Fester &amp; 13 Chapman, our auditing firm. They're exceptional to 14 work with, great group of people. They do a fantastic 15 job. And it is such an easy, easy time when we're 16 doing audits with them, because they've been working 17 with us so long that we just know exactly what to do 18 and how to do it. 19 And I also want to say thank you to our 20 candidates. They worked very well with our auditing 21 firm. Any time they had questions or concerns, we were 22 able to get them resolved quickly and easily. 23 Again, primary audits turned out very well. 24 We're very happy with them. It shows that our 25 workshops are working and our -- and the way the staff</p>	<p>1 handles things, in terms of being available with 2 e-mail, phone calls from the candidates, helps 3 alleviate a lot of the concern and issues that are 4 raised and so the -- the audits and the campaign 5 finance reports for that turn out well, and we're very 6 happy for that. 7 And with that, happy to answer any questions. 8 And as always, as you've done in the past, if you 9 decide you're going to approve them, you can do it as 10 one block, A through J, if you'd like. 11 ACTING CHAIRMAN KIMBLE: Okay. Thank you, 12 Mike. 13 Any questions or comments from Members of the 14 Commission? 15 COMMISSIONER PATON: Commissioner Paton. 16 ACTING CHAIRMAN KIMBLE: Commissioner Paton, 17 yes. 18 COMMISSIONER PATON: I'm just happy that we 19 have no issues, you know, considering what we've had in 20 the past. I mean, obviously we are educating them 21 well. I'm happy that the staff is doing such a good 22 job, and that's -- we've had to spend a lot of time on, 23 you know, just when we did random audits and whatever. 24 And I'm just glad we're auditing everybody and we have 25 such a good result.</p>
<p>1 ACTING CHAIRMAN KIMBLE: Good -- very good 2 point, Commissioner Paton. We have had problems in the 3 past, and I think a large -- a big reason for fewer 4 problems is the education program that we go through 5 with the -- with the candidates. So thank you for 6 those comments. 7 Any other comments or questions from Members 8 of the Commission? 9 (No response.) 10 ACTING CHAIRMAN KIMBLE: Are there any 11 comments from anyone in the audience on this item? If 12 so, raise your hand or signal the moderator in some 13 way. 14 (No response.) 15 ACTING CHAIRMAN KIMBLE: Seeing none, I would 16 entertain a motion to approve the audits identified in 17 Item VII of the Agenda. 18 COMMISSIONER CHAN: Mr. Chairman, I move that 19 we approve the audits identified in Item VII on the 20 Agenda. 21 ACTING CHAIRMAN KIMBLE: Is there a second to 22 Commissioner Chan's motion? 23 COMMISSIONER PATON: This is Commissioner 24 Paton. I second the motion. 25 ACTING CHAIRMAN KIMBLE: Thank you.</p>	<p>1 We'll do a roll call on Item VII, 2 discussion -- excuse me -- approval of the audits 3 identified in Item VII of the Agenda. Commissioner 4 Paton. 5 COMMISSIONER PATON: Aye. 6 ACTING CHAIRMAN KIMBLE: Commissioner Chan. 7 COMMISSIONER CHAN: Aye. 8 ACTING CHAIRMAN KIMBLE: Commissioner Titla. 9 COMMISSIONER TITLA: Aye. 10 ACTING CHAIRMAN KIMBLE: And Commissioner 11 Kimble also votes aye. The motion is approved 4 to 12 nothing. 13 Thank you, Mike. 14 MR. BECKER: Thank you. 15 ACTING CHAIRMAN KIMBLE: Item VIII, 16 discussion and possible action on 2023 Chairperson of 17 the Commission. Since we don't have Commissioner Meyer 18 here, I hope that it's okay with my colleagues if we 19 put this off until next month. Any discussion on that? 20 COMMISSIONER CHAN: No. 21 ACTING CHAIRMAN KIMBLE: Okay. My pages are 22 stuck together here. 23 Item IX, discussion and possible action on 24 Commission meeting schedule, format, and venue. 25 Item IX is about whether we keep the current meeting</p>

<p>1 schedule and format. We have a meeting in February 2 already set up. Staff's thought here was that after 3 three years we may want to discuss if we stay remote, 4 what our schedule should be going forward, similar 5 issues. We know, from the Executive Director's Report, 6 the boardroom at the main office is still a work in 7 progress.</p> <p>8 Do any of my fellow Commissioners have 9 thoughts on how we should proceed with future meetings? 10 Do we want to wait for Damien to be -- excuse me -- to 11 be available? Any discussion on this?</p> <p>12 COMMISSIONER PATON: This is Commissioner 13 Paton.</p> <p>14 ACTING CHAIRMAN KIMBLE: Commissioner Paton, 15 yes.</p> <p>16 COMMISSIONER PATON: I mean, I think it would 17 be good to go back meeting face to face, maybe not 18 for -- you know, until the boardroom gets fixed up. I 19 mean, I'm the one -- you and I are the ones that travel 20 the farthest probably, but I think -- you know, I miss, 21 you know, seeing people face to face, and I guess I'm a 22 little bit old school in that. But maybe in a few 23 months, maybe if we could meet as a group when the 24 thing -- the room is fixed up.</p> <p>25 ACTING CHAIRMAN KIMBLE: I just want to say,</p>	<p>1 Commissioner Paton, I agree with you. I much prefer 2 the in-person meetings. I think it's a little 3 frustrating that it's taking longer to complete this 4 room than it took to build the pyramids, I think. And 5 I think at some point, when we have a place to meet, it 6 would be nice to meet in person.</p> <p>7 Commissioner Chan, any thoughts on this?</p> <p>8 COMMISSIONER CHAN: Sure. Well, I think you 9 all know, I mean, I don't mind meeting in person. It's 10 been really convenient for me to be able to meet 11 remotely. But if the will of the Commission is to 12 start meeting in person, especially once our, you know, 13 meeting room is ready, I'm happy to do that.</p> <p>14 Regarding the timing of meetings or schedule 15 of meetings, if we don't need to meet every month or if 16 we meet on a quarterly basis in the off-election years, 17 depending on what staff recommends, I'm happy to do 18 that as well. I don't know if that's on the table. 19 But I think, you know, just making the best use of our 20 and the staff's time, if that's a consideration, I'm 21 happy to adjust our schedule as well. So that's all I 22 have to say.</p> <p>23 ACTING CHAIRMAN KIMBLE: Commissioner Chan, I 24 think -- I can't speak for Commissioner Paton, but it 25 seems to me that if we do meet in person, wherever,</p>
<p>1 we're going to have the option of audience members and 2 Commissioners who are unable or would prefer to connect 3 remotely would still be able to. I don't think that 4 we're ever going to go -- we're doing away with that.</p> <p>5 COMMISSIONER CHAN: Okay. Sure. I 6 appreciate that very much, that consideration. And 7 frankly, I've been downtown a lot more recently with 8 the transition, you know, just kind of being there with 9 the new team, and so it's definitely something that, 10 you know, would probably fit better into my schedule 11 now, but -- and I'm happy to come down. If everybody 12 is going to be there in person, I'd be happy to be in 13 person.</p> <p>14 And I do recognize there's a difference. I 15 mean, for me remote works well, but there is a 16 difference when you get to see people in person and be 17 there in the same room, so...</p> <p>18 ACTING CHAIRMAN KIMBLE: Thank you, 19 Commissioner Chan.</p> <p>20 Commissioner Titla, do you have any comments 21 on this matter?</p> <p>22 COMMISSIONER TITLA: Yeah, I agree with all 23 your comments. I think it would be good to meet in 24 person again. Thank you.</p> <p>25 ACTING CHAIRMAN KIMBLE: Okay. Thank you,</p>	<p>1 Commissioner Titla.</p> <p>2 Tom, is that of any help, those comments?</p> <p>3 MR. COLLINS: Well, I take from those that, 4 you know, when we get the building up and running we 5 should -- we'll be taking a look at -- at in-person. 6 And then, you know, I -- you know, like I said, 7 everyone is absolutely right. I mean, even the -- I 8 think the -- we have a wonderful representative from 9 the General Service Administration who I think is 10 pushing folks to get stuff done, but it's -- and 11 obviously Paula has been on top of it completely, but 12 it's -- you know, it just is -- it's everything from 13 supply chain issues to, you know, whatever. But, yeah, 14 no, I think that's the direction.</p> <p>15 And then I think -- I think on the -- on the 16 timeliness of the meetings, you know, in terms of that, 17 I mean, I think that whether it's quarterly or whether 18 we just go every other month or something like that, I 19 mean, I think that our plan from here will be at the 20 February meeting -- and if Paula is still there, 21 interrupt me if I'm wrong -- but I think that our plan 22 from this conversation will be to try to lay out some 23 proposed dates maybe even through the rest of the year, 24 instead of just the six months at a time, that try to 25 capture what we're talking about in terms of, you know,</p>

<p>1 whether -- and maybe we -- and it might be -- it might 2 be a little bit more of a range, like if we met every 3 month or if we met every other month or if we met 4 quarterly, and then with the expectation that at some 5 point in there we'll tie in the in-person process. So 6 that's kind of how I -- that's what I'm hearing as the 7 Director.</p> <p>8 ACTING CHAIRMAN KIMBLE: Yeah. And I think 9 people are generally saying that they -- they support 10 monthly meetings unless there's no reason to have a 11 meeting, which is --</p> <p>12 MR. COLLINS: Yeah. Yeah. We have -- 13 Mr. Chairman, you're correct. I mean, that's been 14 our -- we've never felt uncomfortable canceling a 15 meeting when we don't have anything to present. So, I 16 mean --</p> <p>17 ACTING CHAIRMAN KIMBLE: So at this point you 18 have no indication whether the facilities will be ready 19 for the February meeting or not?</p> <p>20 MS. THOMAS: Tom, if you don't mind, this 21 is -- if you don't mind, this is Paula, Chairman 22 Commissioners. Mike and I are -- Tom is correct about 23 supply and demand and chain issues, but we're supposed 24 to get trained on February 1st. So if Mike and I feel 25 comfortable enough that everything works, including</p>	<p>1 having the technology to live stream, which is 2 important for us and also for folks that still may need 3 to attend remotely -- we want all capabilities. If 4 it's a go after our training, we will have an in-person 5 meeting in February, but that's based on those caveats. 6 Otherwise, I could -- if not February, I think March is 7 very doable.</p> <p>8 COMMISSIONER PATON: Mr. Chairman. 9 ACTING CHAIRMAN KIMBLE: Mr. Paton, 10 Commissioner Paton.</p> <p>11 COMMISSIONER PATON: Yes. I would feel more 12 comfortable maybe, because I'm kind of involved in some 13 things right now with my business, maybe doing it in 14 March. That would give me time to make sure that I 15 could get up there and so on.</p> <p>16 ACTING CHAIRMAN KIMBLE: Okay. Thank you. 17 And thank you, Paula.</p> <p>18 We have a question from Ms. Knox, Tom, asking 19 what's the date for the February meeting.</p> <p>20 MR. COLLINS: February 20- -- Mr. Chairman, 21 Ms. Knox, it's February 23rd.</p> <p>22 MS. THOMAS: That's correct. 23 ACTING CHAIRMAN KIMBLE: Okay. Thank you. 24 Any more comments on Item IX? 25 MS. THOMAS: Sorry, Chairman, Commissioners,</p>
<p>1 this is Paula again.</p> <p>2 ACTING CHAIRMAN KIMBLE: Yes, Paula.</p> <p>3 MS. THOMAS: I'm almost -- with what 4 Commissioner Paton said, March more than likely puts us 5 in a better place to be well prepared and trained and 6 everything, because the technology is what's important 7 and testing it. We'd rather make sure everything works 8 than to just do a quick run and nothing works for us. 9 Really the live stream is what's key for us. So March, 10 I think, is very doable, because it's enough time to 11 make sure all the bells and whistles work.</p> <p>12 ACTING CHAIRMAN KIMBLE: Okay. Okay. That 13 sounds good. And we'll set the -- in February we'll 14 set the meeting dates for March and going forward.</p> <p>15 MS. KARLSON: Excuse me, Mr. Chairman.</p> <p>16 ACTING CHAIRMAN KIMBLE: Yes.</p> <p>17 MS. KARLSON: Sorry. Just so the record is 18 clear, the February meeting will be held over Zoom, and 19 then the March and going forward we'll be looking at 20 in-person, correct?</p> <p>21 ACTING CHAIRMAN KIMBLE: That's the current 22 plan, yes.</p> <p>23 MS. THOMAS: Yes. I just wanted to summarize 24 that so if someone was looking through the minutes they 25 could find it in one section.</p>	<p>1 ACTING CHAIRMAN KIMBLE: Thank you. Thank 2 you for making that clear.</p> <p>3 Okay. Item X, this is the time for 4 consideration of comments and suggestions from the 5 public. Action taken as a result of public comment 6 will be limited to directing staff to study the matter 7 or rescheduling the matter for further consideration 8 and decision at a later date or responding to 9 criticism. Please limit your comments to no more than 10 two minutes.</p> <p>11 Does any member of the public wish to make 12 comments at this time?</p> <p>13 Let me just also point out, you can send 14 comments to the Commission by mail or e-mail at 15 ccec@azcleanelections.gov.</p> <p>16 Anyone from the public want to make comments? 17 Ms. Knox, I see you raised your hand.</p> <p>18 MS. KNOX: Yes. Good morning. Oh, good, I'm 19 not muted, right? Good morning, Chairman -- or, Acting 20 Chairman Kimble and Members of the Commission and 21 Mr. Collins and other staff members. I'm glad to be 22 back in 2023. I have mixed feelings about seeing all 23 of you, meaning I think it would be great if there were 24 new Commissioners appointed, not because you all are 25 not doing an amazing job, but because I think that the</p>

<p>1 idea was that being a Commissioner was not a lifetime 2 commitment. So I do hope that the new -- newly elected 3 appropriate officers will be eventually, maybe sooner, 4 moving to nominate new people.</p> <p>5 I also just wanted to say that I personally, 6 in reading through the brief, and I'm not an attorney, 7 as you all know, but I was quite troubled when I read 8 through the brief that is challenging Proposition -- I 9 still call it Proposition 211, the Voters' Right To 10 Know law, because it seemed to me that a goodly portion 11 of it was really challenging literally the existence of 12 the Citizens Clean Elections Commission.</p> <p>13 And I found that very troubling both 14 personally, as well as on behalf of some organizations, 15 although I'm not here representing anybody but myself. 16 But I know that various organizations, as you all know, 17 were very actively involved in creating the Citizens 18 Clean Elections Commission, and I found that whole 19 argument extremely troubling. And so I guess all I'm 20 going to say is that I will continue to follow what is 21 going on, and once more information is available about 22 the process that this lawsuit will take, as you said, 23 Mr. Collins, about -- Executive Director Collins, about 24 the dates and so on, I will try to bring this to the 25 attention of some organizations I know, because I do</p>	<p>1 think it is an issue that really seriously needs to be 2 challenged.</p> <p>3 This idea that legislatures rule, period, I 4 think is a troubling one on many levels. I don't want 5 to get into this -- not a political argument -- a 6 philosophical argument really about what is democracy 7 and what are the roles of different entities within 8 democracy. But, I mean, Citizens Clean Elections 9 Commission was created by the voters with all of its 10 powers, and I think the intent has always been very 11 clear as to what its role is supposed to be separate 12 from the Legislature.</p> <p>13 So with that, I will just say have a good 14 day. And I will -- my plan is to Zoom in with you guys 15 in February. And thank you for explaining the date so 16 I can get it on my calendar. And that is all and thank 17 you for the opportunity to speak.</p> <p>18 ACTING CHAIRMAN KIMBLE: Thank you, Ms. Knox. 19 It's always helpful to hear from you with your very 20 long connection to the Commission. Thanks for your 21 comments.</p> <p>22 Is there anyone else who wants to make 23 comments? 24 (No response.) 25 ACTING CHAIRMAN KIMBLE: Okay. Item XI,</p>
<p>1 motion to adjourn. Does anyone want to make a motion 2 that we adjourn?</p> <p>3 COMMISSIONER PATON: This is Commissioner 4 Paton. I make a motion that we adjourn this meeting.</p> <p>5 ACTING CHAIRMAN KIMBLE: Thank you, 6 Commissioner Paton.</p> <p>7 Is there a second?</p> <p>8 COMMISSIONER CHAN: I second.</p> <p>9 COMMISSIONER TITLA: I second that motion.</p> <p>10 ACTING CHAIRMAN KIMBLE: Okay. I first heard 11 from -- Commissioner Chan second it, so we'll call 12 roll.</p> <p>13 Commissioner Paton. 14 COMMISSIONER PATON: Aye. 15 ACTING CHAIRMAN KIMBLE: Commissioner Chan. 16 COMMISSIONER CHAN: Aye. 17 ACTING CHAIRMAN KIMBLE: Commissioner Titla. 18 COMMISSIONER TITLA: Aye. 19 ACTING CHAIRMAN KIMBLE: And Commissioner 20 Kimble votes aye. We are adjourned until February. 21 Thank you. 22 (The meeting concluded at 10:40 a.m.) 23 24 25</p>	<p>1 STATE OF ARIZONA )  ) ss. 2 COUNTY OF MARICOPA ) 3 4 BE IT KNOWN that the foregoing proceedings 5 were taken by me; that I was then and there a Certified 6 Reporter of the State of Arizona; that the proceedings 7 were taken down by me in shorthand and thereafter 8 transcribed into typewriting under my direction; that 9 the foregoing pages are a full, true, and accurate 10 transcript of all proceedings had and adduced upon the 11 taking of said proceedings, all to the best of my skill 12 and ability.</p> <p>13 14 I FURTHER CERTIFY that I am in no way related 15 to nor employed by any of the parties hereto nor am I 16 in any way interested in the outcome hereof. 17 18 DATED at Tempe, Arizona, this 23rd day of 19 January, 2023. 20 21 22  23 Kathryn A. Blackwelder, RPR Certified Reporter #50666 24 25</p>

<p style="text-align: center;"><b>\$</b></p> <p><b>\$19</b> 38:8</p> <p><b>\$190</b> 38:9</p> <hr/> <p style="text-align: center;"><b>1</b></p> <p><b>1</b> 34:1</p> <p><b>10</b> 34:20 37:24</p> <p><b>101</b> 7:5</p> <p><b>10:40</b> 52:22</p> <p><b>11</b> 37:24</p> <p><b>120</b> 32:21,24</p> <p><b>15th</b> 3:23</p> <p><b>16-901</b> 31:10</p> <p><b>19th</b> 3:5</p> <p><b>1st</b> 46:24</p> <hr/> <p style="text-align: center;"><b>2</b></p> <p><b>20-</b> 47:20</p> <p><b>2014</b> 17:19</p> <p><b>2022</b> 3:23 37:19</p> <p><b>2023</b> 3:5 41:16 49:22</p> <p><b>2024</b> 30:18</p> <p><b>211</b> 30:15,18 34:16,17, 25 35:20 37:10,15 50:9</p> <p><b>23rd</b> 47:21</p> <p><b>25</b> 33:16</p> <hr/> <p style="text-align: center;"><b>3</b></p> <p><b>3rd</b> 21:16</p> <hr/> <p style="text-align: center;"><b>4</b></p> <p><b>4</b> 41:11</p> <hr/> <p style="text-align: center;"><b>6</b></p> <p><b>60</b> 32:21</p> <p><b>60-day</b> 32:18</p>	<p style="text-align: center;"><b>7</b></p> <p><b>70</b> 26:6</p> <p><b>75</b> 33:14</p> <hr/> <p style="text-align: center;"><b>9</b></p> <p><b>901</b> 31:10</p> <p><b>9:30</b> 3:5</p> <hr/> <p style="text-align: center;"><b>A</b></p> <p><b>A-OKAY</b> 10:15</p> <p><b>a.m.</b> 3:5 52:22</p> <p><b>Abe</b> 6:14</p> <p><b>abide</b> 18:7</p> <p><b>ability</b> 5:18</p> <p><b>absence</b> 3:3 5:19</p> <p><b>Absent</b> 23:21</p> <p><b>absolutely</b> 45:7</p> <p><b>accommodate</b> 38:4</p> <p><b>account</b> 18:11</p> <p><b>acknowledge</b> 5:8</p> <p><b>acknowledgment</b> 5:2</p> <p><b>act</b> 11:19 24:4,7,22 25:1,24 26:5 30:15 31:6,15,22,25 32:2 33:17,25 34:8,12</p> <p><b>acting</b> 3:1,3,14,19 4:2, 7,11,13,15 5:6 6:3 13:2, 6 14:14 16:19,24 21:9, 20,24 23:21,25 27:15 28:5 29:4,7,17 30:4,9 37:9,17 39:11,16 40:1, 10,15,21,25 41:6,8,10, 15,21 42:14,25 43:23 44:18,25 46:8,17 47:9, 16,23 48:2,12,16,21 49:1,19 51:18,25 52:5, 10,15,17,19</p> <p><b>action</b> 3:22 4:18 16:25 17:2,6,18 18:5,14 24:1 26:14 30:13 37:18 41:16,23 49:5</p>	<p><b>actions</b> 22:17</p> <p><b>actively</b> 50:17</p> <p><b>activity</b> 12:12</p> <p><b>acts</b> 27:5</p> <p><b>actual</b> 15:11</p> <p><b>ad</b> 25:4 31:5,6</p> <p><b>add</b> 17:5 21:8,11,12</p> <p><b>additional</b> 7:1 17:11 20:5</p> <p><b>Additionally</b> 10:24</p> <p><b>address</b> 13:19</p> <p><b>adjourn</b> 52:1,2,4</p> <p><b>adjourned</b> 52:20</p> <p><b>adjudicated</b> 36:5</p> <p><b>adjudication</b> 8:20 19:22 20:2 23:3</p> <p><b>adjust</b> 43:21</p> <p><b>Administration</b> 45:9</p> <p><b>administrative</b> 19:22 25:17,25 30:13</p> <p><b>adopt</b> 19:8,20</p> <p><b>advantage</b> 10:16</p> <p><b>advertisement</b> 17:23</p> <p><b>advise</b> 23:8</p> <p><b>advocated</b> 17:24</p> <p><b>advocative</b> 23:3</p> <p><b>affect</b> 20:3</p> <p><b>affidavit</b> 8:17</p> <p><b>affirming</b> 7:22</p> <p><b>African</b> 5:13</p> <p><b>AG's</b> 23:8</p> <p><b>agency</b> 25:17,25</p> <p><b>Agenda</b> 3:4 7:17,20 20:7 22:9 34:5 38:1 40:17,20 41:3</p> <p><b>agree</b> 13:14 14:15 43:1 44:22</p> <p><b>ahead</b> 5:4 14:2</p>	<p><b>aimed</b> 30:17</p> <p><b>aisle</b> 10:2</p> <p><b>alleviate</b> 39:3</p> <p><b>alleviated</b> 35:7</p> <p><b>alternative</b> 34:24</p> <p><b>amazing</b> 49:25</p> <p><b>ambits</b> 24:23</p> <p><b>American</b> 5:13</p> <p><b>amici</b> 20:9 21:13</p> <p><b>amicus</b> 21:15</p> <p><b>amount</b> 38:8</p> <p><b>analysis</b> 15:20 20:4</p> <p><b>announced</b> 10:25 11:22</p> <p><b>annoying</b> 15:19</p> <p><b>anonymous</b> 24:20 27:22</p> <p><b>anticipate</b> 27:18</p> <p><b>apologize</b> 30:1,2</p> <p><b>appeal</b> 6:12 18:7,10</p> <p><b>Appeals</b> 7:21 18:24</p> <p><b>appearance</b> 27:24</p> <p><b>appeared</b> 17:10</p> <p><b>appellate</b> 18:1,3,4</p> <p><b>apply</b> 19:19</p> <p><b>appoint</b> 11:6</p> <p><b>appointed</b> 11:24 49:24</p> <p><b>approach</b> 16:9 26:25 28:22</p> <p><b>approval</b> 41:2</p> <p><b>approve</b> 4:1 39:9 40:16,19</p> <p><b>approved</b> 4:16 41:11</p> <p><b>areas</b> 19:13 31:1</p> <p><b>argues</b> 25:5</p> <p><b>argument</b> 17:8,10 18:25 19:20 21:18 25:16 50:19 51:5,6</p>
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<b>vote</b> 4:10,16 7:22 8:9 26:7	<b>world</b> 16:15	
<b>voter</b> 6:18,25 7:6 8:21, 22 9:9 31:24	<b>write</b> 19:7	
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<b>voters</b> 25:17 36:2 37:4, 5 51:9	<b>wrong</b> 38:7 45:21	
<b>Voters'</b> 24:4,7,22 25:1 30:15 50:9	<b>wrote</b> 5:2	
<b>votes</b> 41:11 52:20		<b>X</b>
<b>voting</b> 5:15	<b>XI</b> 51:25	
	<b>XOLA</b> 5:7	

**CITIZENS CLEAN ELECTIONS COMMISSION  
EXECUTIVE DIRECTOR REPORT  
February 23, 2023**

**Announcements:**

The next consolidated election is on March 14, 2023. The only jurisdiction conducting an election is the City of Phoenix. A runoff election is required in Districts 6 and 8 as no candidate received a majority of the votes cast in the November 8, 2022 election. Details on the election, including how to vote and candidate profiles, are available on the Clean Elections website. Early Voting Began: February 15, 2023

**Voter Education:**

- The Voter Education Team has been working with Riester on the Voter Education Plan for 2023. See this agenda.

**Outreach:**

- Avery and Gina continue to collaborate with the Arizona Civics Coalition
- Avery participates in Arizona Commission of African American Affairs committee meetings, Arizona African American Legislative Council and the Mesa Community College Civic Action Council
- Met with Rachel Humphries with the Bill of Rights Institute to discuss upcoming events.
- Avery presented to high school students at the African American Legislative Day Conference's Youth Day at the Capitol
- Attended Mesa Community College's Arizona Statehood event to inform and educate students.
- Gina attended the National Association of State Election Directors winter conference in D.C.
- Gina, Tom and Avery met with the Arizona Civics Coalition to discuss civic related legislation.
- Tom attended the ASU Cronkite School's focus group and panel discussion "The Big Truth" featuring Georgia Secretary of State Raffensperger, Maricopa County Supervisor Bill Gates and others. The focus group was led by Frank Luntz. The program is available online: <https://www.cbsnews.com/video/022023-red-and-blue/>.
- Tom attended Secretary Fontes, Recorder Richer and ABC Data Journalist Garrett Archer's discussion on election reform in downtown Phoenix.

**ITEM III**

## **Administration**

- **New Office Remaining Tenant Improvements**

Mike and Paula continue to work with the GSD Project Manager & contracted reps to wrap up completion of the new office, minimal tenant improvement projects are remaining. Installation of the new board room AV system, testing & staff training was recently completed. Staff is looking forward to our first in person CEC meeting at our new office location in March.

## **2022 Election Cycle – Candidate Info**

### ***Legislative***

207 total candidates

21 Clean Elections candidates

10% of the candidates used Clean Elections

### ***Statewide***

23 total candidates

7 Clean Elections candidates

30% of the candidates used Clean Elections

### ***Total***

230 total number of candidates

28 clean candidates

12% of the candidates used Clean Elections

## **Audits**

General elections audits are being finalized and will be on the March agenda. In addition, one final primary audit will also be on the March agenda. Overall, the audits have been very good and the candidates have all been excellent to work with.

## **Legal**

- Legacy Foundation Action Fund v. Clean Elections
  - Supplemental briefs were filed late last month and early this month, including an Amicus Brief by the Arizona Attorney General's office,
- Center for Arizona Policy v. Fontes
  - Suit challenging Prop. 211, the Voters Right to Know Act, on state constitutional grounds. More discussion this agenda.
- The Power of Fives, LLC v. Clean Elections, CV2021-015826, Superior Court for Maricopa County & Clean Elections v. The Power of Fives, LLC et al. CV2022-053917, Superior Court For Arizona. Various motions pending or soon to be pending.

- Lake v. Hobbs, No. 1 CA-CV 22-0779  
No. 1 CA-SA 22-0237, Ariz. Ct. App. February 16, 2023. The Court affirmed the trial court's rejection of Candidate Lake's election contest. <https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2023/1%20CA-CV%2022-0779%20and%201%20CA-SA%2022-0237.pdf>

Kentch v. Mayes, Superior Court for Mohave County, a Rule 60 motion is pending.

For ongoing updates on post-election filings, please check out the reported blog AZ Law at <https://arizonaslaw.blogspot.com/>.

- Litigation challenging HB2492 and HB2243, as well as SB1260 is ongoing.

### **Election officials**

- Arizona Attorney General Kris Mayes announced she will be refocusing the election integrity unit on defending elections. More here: <https://www.nytimes.com/2023/01/23/us/politics/arizona-voter-fraud-attorney-general.html>.

### **Appointments**

- No additional information at this time

### **Enforcement**

- MUR 21-01, TPOF, pending.

### **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
  - R2-20-305 & R2-20-306- enhance and clarify process for resolving ethics claims for clarify roles of executive director and other representatives of the commission in enforcement proceedings.  
January 20, 2023

- 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
  - R2-20-305 & R2-20-306- enhance and clarify process for resolving ethics claims for clarify roles of executive director and other representatives of the commission in enforcement proceedings.  
January 20, 2023
- Federal funds for proposed rulemaking: **None**
- Review of existing rules: **None pending**
- Notice of Final Rulemaking: **TBD** R2-20-211, R2-20-220, and R2-20-223 have been submitted to GRRC.
- Rulemakings terminated: **None**
- Privatization option or nontraditional regulatory approach considered: **None Applicable**

# Tracking List: 2023 Bills

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## HB2017 - Public officers; residency requirements

### Sponsor

Rep. Timothy M. Dunn (R)

### Summary

The deputy or assistant of an elected officer of Arizona is not required to be an Arizona resident, but is required to be a U.S. citizen.

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## HB2072 - Voter registration; same day

### Sponsor

Rep. Laura Terech (D)

### Summary

A person who is otherwise qualified to register to vote may register during the 28 days immediately preceding an election and is eligible to vote in that election if the person has been a resident of the county and the precinct in which the person resides for at least 29 days immediately preceding the election. A person who is otherwise qualified to register to vote may register on election day by appearing at the polling place, completing a registration form, and providing proof of residence. Registration under these circumstances does not qualify a person to vote in a partisan primary election.

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## HB2073 - Automatic voter registration

### Sponsor

Rep. Laura Terech (D)

### Summary

Every person who is applying for a driver license or renewal, including a nonoperating identification license or renewal, or who is making changes to drive license information and who is otherwise qualified to register to vote must be registered to vote automatically on completion of the license application unless the applicant declines to register. A person who is not qualified to register to vote and who unknowingly registers under this provision is not guilty of false registration or false swearing. Effective January 1, 2024.

---

## HB2078 - Counties; elections; state audits

### Sponsor

Rep. Lupe Diaz (R)

### Summary

An "eligible person" (defined as a candidate in the election, a county political party chairperson, or the chairperson of a political committee that supports or opposes a ballot measure that was on the ballot

in the election) is authorized to make a written request to the county recorder or other officer in charge of elections for an explanation and supporting documentation regarding an action taken by an election officer that appears to violate statute, irregularities in precinct or voting center results, and/or inadequacy of or irregularity in documentation required to be maintained by statute. The county recorder or other officer in charge of elections is required to provide the requested explanation and supporting documentation within 20 days after the request. If the eligible person is not satisfied, the person is authorized to request an additional explanation and supporting documentation, which the county recorder or other officer in charge of elections must provide within 10 days. If the eligible person is not satisfied with the additional explanation, the person is authorized to submit a written request to the Secretary of State regarding the requests. The Secretary of State is required to review the matters in question and may request additional information from the county recorder or other officer in charge of elections, which must be responded to within 30 days. If not satisfied with the response, the Secretary of State is authorized to conduct an audit of the claimed actions, irregularities, or inadequacies of the county recorder or other officer in charge of elections. The county recorder or other officer in charge of elections is required to remedy matters specified in the Secretary of State's findings within 30 days. The Secretary of State is authorized to assess a civil penalty of no more than \$500 for each unresolved finding against the county recorder or other officer in charge of elections.

#### **Action Taken**

Passed House Municipal Oversight & Elections 6-4

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## **HB2096 - Early ballots; Friday deadline**

#### **Sponsor**

Rep. Selina Bliss (R)

#### **Summary**

Early ballots are no longer allowed to be deposited at any polling place on election day, and instead are required to be delivered in person to the office of the county recorder or to a polling place or other voting location by 5:00 PM on the Friday before election day. Repeals statutes governing on-site tabulation of early ballots.

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## **HB2116 - Election laws; revisions; appropriation**

#### **Sponsor**

Rep. Athena Salman (D)

#### **Summary**

Numerous changes to statutes relating to election law. A conviction for a felony no longer suspends the person's right to vote. For an early ballot issued at an early voting location, if the voter presents proper identification, the county recorder is allowed to tabulate the voter's ballot without conducting signature verification on the ballot affidavit. The hours for on-site early voting are extended through 5:00PM on the Monday preceding the election, instead of 5:00PM on the Friday preceding the election, and emergency voting during that time period is eliminated. If a county recorder determines that a provisional ballot voter is not properly registered to vote, the county recorder is required to use the information from the provisional ballot to register the person to vote for subsequent elections. An electronic pollbook used in Arizona is required to comply with the requirements in the election instructions and procedures manual adopted by the Secretary of State. Appropriates \$100,000 from the general fund in each of FY2023-24 and FY2024-25 to the Secretary of State to provide risk-limiting audit grants to officers in charge of elections to conduct risk-limiting audits for the 2024

general election instead of a hand count audit. The Secretary of State is required to report any findings and recommendations related to the use of risk-limiting audits to the Legislature by March 31, 2025.

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## **HB2124 - Ballot measure amendments**

### **Sponsor**

Rep. Athena Salman (D)

### **Summary**

Various changes to statutes relating to initiative and referendum measures. Repeals statute requiring constitutional and statutory requirements for statewide initiative measures to be strictly construed and requiring persons using the initiative process to strictly comply with those constitutional and statutory requirements. At any time before a person or organization submits an application for initiative petition or referendum petition, a political committee that intends to file that application is allowed to submit the proposed description of the principal provisions of the measure to the Attorney General for a determination of whether the description is lawful and sufficient. The Attorney General is required to approve or reject the description within ten days after submittal. If rejected, the Attorney General must state the reasons for the rejection. If approved, any challenge to the description must be filed in the superior court within ten days after the Attorney General's approval. Repeals statute allowing a political committee that intends to support or oppose an initiative or referendum measure to submit a copy of the text of the proposed law, referral or constitutional amendment to the director of the Legislative Council to prepare recommendations to improve the text of the proposed measure. Contains a legislative intent clause.

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## **HB2133 - Candidates; missed filings; termination**

### **Sponsor**

Rep. Athena Salman (D)

### **Summary**

If a candidate committee fails to file a timely and complete campaign finance report within five days after the filing deadline, the candidate's candidacy is terminated by operation of law, is prohibited from making any further expenditures, and the candidate is no longer eligible to be a candidate for the office for which the candidate committee is established.

### **Effect on CCEC**

Could lead the Commission to require funding to be returned, require new rules to determine how much must be returned, timeframe of the return, etc. Could lead to confusion with the pamphlet and debates regarding who is attending, why the candidate is not in the pamphlet, etc.

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## **HB2134 - Campaign finance; caregiving expenditures**

### **Sponsor**

Rep. Athena Salman (D)

### **Summary**

Declares that a candidate committee's payment for direct care, protection and supervision of a child or other individual for whom the candidate has direct caregiving responsibilities is a lawful expenditure of

candidate committee monies. A legislative intent section states that this change is clarifying and not substantive.

**Effect on CCEC**

Would require updating eligible uses of the CCEC funding.

---

**HB2143 - Rulemaking review; time frame**

**Sponsor**

Rep. Timothy M. Dunn (R)

**Summary**

When the Legislature has granted a one-time rulemaking exemption to an agency, the agency is required to review any rule adopted under the exemption within six months after the rule was adopted, reduced from one year, to determine whether it should be amended or repealed.

**Action taken**

Passed House Government 9-0

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**HB2144 - Open meetings; capacity; posting; violation**

**Sponsor**

Rep. Timothy M. Dunn (R)

**Summary**

All public bodies are required to provide for an amount of seating sufficient to accommodate the reasonably anticipated attendance of all persons desiring to attend the deliberations and proceedings, when feasible. The agenda for a public meeting is required to include notice of the time that the public will have physical access to the meeting place. A head of a public body that violates this requirement is liable for a civil penalty as provided in statute for open meeting law violations.

**Effect on CCEC**

Already provide numerous seats for the public both in person and virtually.

**Action Taken**

Passed House Government 6-3

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**HB2155 - Middle school students; civics; instruction.**

**Sponsor**

Rep. David Livingston (R)

**Summary**

Establishes the Arizona Civics Education and Leadership Development Program within the Arizona Department of Education (ADE) to provide civics education and leadership development training to

middle school students who are enrolled in a school district, charter school, or private school in Arizona. ADE is required to develop procedures for eligible nonprofit organizations to apply to be instructional service providers for the Program, and eligibility requirements are listed. By November 1 of each year, each service provider is required to report specified information on the Program to ADE, and ADE is required to compile the reports and submit them to the Governor and the Legislature. Appropriates \$300,000 from the general fund in FY2023-24 to the newly established Arizona Civics Education and Leadership Development Fund for the Program.

**Effect on CCEC**

Would be an opportunity to use CCEC civics program that has already been developed.

---

**HB2229 - Legislative intent; secrecy; mail voting**

**Sponsor**

Rep. Liz Harris (R)

**Summary**

Voting by mail is banned in Arizona. Persons who are unable to go to the polls will be provided alternate means of voting that ensure secrecy in voting to the greatest extent possible. Does not apply to persons covered by the Uniformed and Overseas Citizens Absentee Voting Act and Arizona citizens who are temporarily residing out of state. The Legislature is required to put in place additional measures to ensure as much secrecy as possible for these voters, including confirming that the person is an Arizona resident and registered voter, ensuring that the mailed ballot is sent to the correct address, and having a certified witness attest that the voter voted in the absence of others and that the voter did not show any other person the voted ballot before placing it in the envelope. Contains a legislative intent section.

---

**HB2305 - Ballots; signature verification; observers**

**Sponsor**

Rep. Cory McGarr (R)

**Summary**

The county recorder and county officer in charge of elections are required to allow representatives of the two largest political parties entitled to continued representation on the ballot to observe each stage of the signature verification process for early, provisional and conditional provisional ballots.

**Action Take**

Passed House Municipal Oversight & Elections 6-4

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**HB2306 - Ballot custody; verification; observers**

**Sponsor**

Rep. Cory McGarr (R)

**Summary**

The county recorder and the county officer in charge of elections are required to maintain an accurate log of the chain of custody for unvoted and voted ballots. The chain of custody log must begin when

unvoted ballots are received by the county recorder and county officer in charge of elections from the ballot printer and continue until completion of the canvass. Representatives of the two largest political parties entitled to continued representation on the ballot are required to observe and verify each transfer of custody.

---

## **HB2308 - Secretary of state; election; recusal**

### **Sponsor**

Rep. Rachel Jones (R)

### **Summary**

The Secretary of State is prohibited from taking any action with respect to the portion of an election in which the Secretary of State is a candidate, and is required to announce publicly the person in the Secretary of State's office who will perform those duties.

### **Action Taken**

Passed House Municipal Oversight & Elections 7-3

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## **HB2319 - Elections; rule of construction**

### **Sponsor**

Rep. Alexander Kolodin (R)

### **Summary**

The Legislature declares that the purpose of statutes regulating the conduct of elections is to provide the people of Arizona with a transparent system for conducting elections. If there are two competing interpretations of statutes regulating the conduct of elections, the provisions are required to be aggressively construed in favor of the reading that provides greater transparency. The Legislature declares that existing court opinions relating to statutes regulating the conduct of elections do not have precedential force or effect if the opinions conflict with the rule of construction prescribed in this legislation.

### **Action Taken**

Passed House Municipal Oversight & Elections 6-4

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## **HB2322 - Early ballots; signatures; guidelines; challenges**

### **Sponsor**

Rep. Alexander Kolodin (R)

### **Summary**

The Secretary of State's July 2020 signature verification guide constitutes the minimum requirements for comparison of signatures. Challengers to the verification of questioned ballots must be allowed to be present and to make challenges during the verification of signatures without regard to whether a challenge is made at a polling place, voting center, or early election board or other counting facility. A legislative intent section states that these are clarifying changes to confirm existing law.

**Action Taken**

Passed House Municipal Oversight & Elections 6-4

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**HB2334 - Permanent early voting list****Sponsor**

Rep. Seth Blattman (D)

**Summary**

The active early voting list is renamed the permanent early voting list. The county recorder is no longer required to remove a voter from the list if the voter fails to vote using an early ballot in all elections for two consecutive election cycles.

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**HB2364 - Lobbyists; gift ban exemption****Sponsor**

Rep. Leezah Elsa Sun (D)

**Summary**

The maximum value of a gift that a lobbyist may give to a member of the Legislature is increased to \$20, from \$10.

---

**HB2377 - Public officers; lobbying; prohibition****Sponsor**

Rep. Leo Biasiucci (R)

**Summary**

A public officer is prohibited from representing another person for compensation before any public agency.

**Action Taken**

Passed House Regulatory Affairs 7-0

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**HB2378 - Officials; political action committee prohibition****Sponsor**

Rep. Leo Biasiucci (R)

**Summary**

An individual who is an election officer or employee or who oversees any significant aspect of election operations is prohibited from being a chairperson, treasurer or other member of a political action committee. Does not apply to an individual's membership in a candidate committee for that individual's own candidacy.

**Action Taken**

Passed House Municipal Oversight & Elections 10-0

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**HB2415 - Active early voting lists; removal****Sponsor**

Rep. Leo Biasiucci (R)

**Summary**

The county recorder is required to remove a voter from the active early voting list if the voter fails to vote an early ballot in all elections for one election cycle, instead of two consecutive election cycles.

**Action Taken**

Passed House Municipal Oversight & Elections 6-4

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**HB2477 - Electoral college; support****Sponsor**

Rep. Steve Montenegro (R)

**Summary**

The Legislature affirms the importance of the electoral college for presidential elections in this country for a list of specified reasons.

**Action Taken**

Passed House Municipal Oversight & Elections 6-4

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**HB2552 - Voting; elections; tally; prohibition****Sponsor**

Rep. Austin Smith (R)

**Summary**

For every election held in Arizona, the person who receives the highest number of legal votes is required to be declared elected. The state, counties, municipalities, or political subdivisions are prohibited from using a voting method in an election or nomination process for any state, city, town, county, or federal office that allows voters to select or rank, designate or otherwise indicate approval or preference for more candidates than are eligible to be declared elected for any office; that allows ballots cast to be tabulated in any manner that involves the elimination of candidates through multiple rounds of tabulation or the transfer or redistribution of votes between or among candidates; or that requires the ranking of every candidate for an office as a condition of a voter's vote being counted in the final tally.

**Action Taken**

Passed House Municipal Oversight & Elections 6-4

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## **HCR2004 - Legislators; minimum age of eighteen**

### **Sponsor**

Rep. Matt Gress (R)

### **Summary**

The 2024 general election ballot is to carry the question of whether to amend the state Constitution to lower the minimum age to qualify to be a member of the Legislature to 18, from 25, and to require the person to be a resident of Arizona for at least three consecutive years at the time of election and of the district from which s/he is elected for at least one consecutive year at the time of election. Previously the person was required to be a resident of Arizona for at least three years and a resident of the county from which s/he is elected for at least one year.

### **Effect on CCEC**

Increases the value of the Commission's current involvement with schools

---

## **SB1011 - Municipalities; partisan elections**

### **Sponsor**

Sen. John Kavanagh (R)

### **Summary**

Municipal elections may be held with the candidate's political party registration indicated on the ballot. Applies to municipal elections held on or after January 1, 2024.

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## **SB1020 - Open meetings; capacity; posting**

### **Sponsor**

Sen. John Kavanagh (R)

### **Summary**

All public bodies are required to provide for an amount of seating sufficient to accommodate the reasonably anticipated attendance of all persons desiring to attend the deliberations and proceedings, when feasible. The agenda for a public meeting is required to include notice of the time that the public will have physical access to the meeting place.

### **Effect on CCEC**

Already provide numerous seats for the public both in person and virtually

---

## **SB1048 - Campaign finance; reporting threshold; lobbyists**

### **Sponsor**

Sen. John Kavanagh (R)

### **Summary**

The list of receipts that must be itemized in campaign finance reports is modified to require itemization of contributions from in-state individuals whose contributions exceed \$200 for that election cycle,

increased from \$100, and to require itemization of contributions from individuals who are registered lobbyists.

**Effect on CCEC**

Current individual contribution limit for CCEC candidates is \$180. No reporting would be required at that level. (The individual contribution limit for CCEC candidates will increase for 2024 based on inflation.)

**Action Taken**

Passed Senate Government 5-3

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**SB1054 - Middle school students; civics; instruction**

**Sponsor**

Sen. David Gowan (R)

**Summary**

Establishes the Arizona Civics Education and Leadership Development Program within the Arizona Department of Education (ADE) to provide civics education and leadership development training to middle school students who are enrolled in a school district, charter school, or private school in Arizona. ADE is required to develop procedures for eligible nonprofit organizations to apply to be instructional service providers for the Program, and eligibility requirements are listed. By November 1 of each year, each service provider is required to report specified information on the Program to ADE, and ADE is required to compile the reports and submit them to the Governor and the Legislature. Appropriates \$300,000 from the general fund in FY2023-24 to the newly established Arizona Civics Education and Leadership Development Fund for the Program.

**Effect on CCEC**

Would be an opportunity to use CCEC civics program that has already been developed.

**Action Taken**

Passed Senate Education 5-2

Passed Senate Appropriations 8-2

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**SB1105 - Early ballots; election day tabulation**

**Sponsor**

Sen. Frank Carroll (R)

**Summary**

County recorders or other officers in charge of elections are required, instead of allowed, to provide for a qualified voter who appears at their designated polling place or at a voting center on elected day with their voted early ballot to have their ballot tabulated.

**Action Taken**

Passed Senate Elections 5-3

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## **SB1170 - Ballot drop boxes; prohibition**

### **Sponsor**

Sen. Jake Hoffman (R)

### **Summary**

A county recorder or other officer in charge of elections is prohibited from using an unmonitored drop box for receipt of voted early ballots. Does not apply to a ballot drop box located inside a polling place, voting center, county recorder's office, or other location at which election staff is present and monitoring the drop box.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1213 - Legislative council; procedures manual**

### **Sponsor**

Sen. Anthony Kern (R)

### **Summary**

The Legislative Council replaces the Secretary of State for the purposes of issuing an official elections instructions and procedures manual.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1217 - Election procedures manual; submittals**

### **Sponsor**

Sen. Thomas "T.J." Shope (R)

### **Summary**

The Secretary of State is required to post the draft Election Instructions and Procedures Manual (Manual) on the Secretary of State's website, provide an opportunity for submitting public comment on the draft manual and post those comments on the Secretary of State's website. If the Governor and/or the Attorney General fail to approve the draft Manual by December 31 of the year before the general election or the Secretary of State does not submit a draft Manual for approval, the most recently approved Manual remains in effect. Beginning in January of the even-numbered year, if a new Manual is not issued and approved, the Secretary of State is required to provide an annotated version of the previous official Manual that reflects any new or revised laws and applicable court decisions. The Secretary of State shall continue to provide an annotated version of the previous official Manual each year until a new Manual is approved.

---

## **SCR1002 - Constitutional amendments; sixty percent approval**

### **Sponsor**

Sen. Anthony Kern (R)

### **Summary**

The 2024 general election ballot is to carry the question of whether to amend the state Constitution to require approval by 60 percent of the votes cast on the measure for an initiative or referendum measure that amends the state Constitution to become law, instead of a majority of the votes cast.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB 1330 - Voting; absence from employment**

### **Sponsor**

Sen. Ken Bennett (R)

### **Summary**

Allows for registered voters to be absent from their place of employment for up to 5 hours either at the beginning or end of their designated work shift in order to vote without a loss of pay or use of personal time. The employee must notify their employer prior to election day.

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## **SB1265 - Voting; elections; tally; prohibition.**

### **Sponsor**

Sen. Anthony Kern (R)

### **Summary**

For every election held in Arizona, the person who receives the highest number of legal votes is required to be declared elected. The state, counties, municipalities, or political subdivisions are prohibited from using a voting method in an election or nomination process for any state, city, town, county, or federal office that allows voters to select or rank, designate or otherwise indicate approval of or preference for more candidates than are eligible to be declared elected for any office; that allows ballots cast to be tabulated in any manner that involves the elimination of candidates through multiple rounds of tabulation or the transfer or redistribution of votes between or among candidates; or that requires the ranking of every candidate for an office as a condition of a voter's vote being counted in the final tally.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1270 - Open meetings; capacity**

### **Sponsor**

Sen. John Kavanagh (R)

### **Summary**

Schools, school boards, executive boards, and municipalities are required to provide for an amount of seating sufficient to accommodate the reasonably anticipated attendance of all persons desiring to attend the deliberations and proceedings, when feasible. The agenda for a public meeting is required to include notice of the time that the public will have physical access to the meeting place.

### **Effect on CCEC**

Already provide numerous seats for the public both in person and virtually

### **Action Taken**

Passed Senate Government 5-2

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## **SB1287 - Election returns; canvass; review**

### **Sponsor**

Sen. Steve Kaiser (R)

### **Summary**

If returns from any polling place in the election district where polls were opened and an election held are found to be "in question," the canvass of the election is required to be postponed from day to day until the governing body holding the election has to its satisfaction examined all the returns and ascertained the facts which the returns disclose or until six postponements have been had.

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## **SB1296 - Voter registration; same day.**

### **Sponsor**

Sen. Christine Marsh (D)

### **Summary**

A person who is otherwise qualified to register to vote may register during the 28 days immediately preceding an election and is eligible to vote in that election if the person has been a resident of the county and the precinct in which the person resides for at least 29 days immediately preceding the election. A person who is otherwise qualified to register to vote may register on election day by appearing at the polling place, completing a registration form, and providing proof of residence. Registration under these circumstances does not qualify a person to vote in a partisan primary election.

---

## **SB1299 - Governor; inauguration expenses; reporting**

### **Sponsor**

Sen. Wendy Rogers (R)

### **Summary**

For any ceremonial event to commemorate the inauguration of a Governor, the Office of the Governor is required to publicly post on the Office of the Governor's website a list of specified information about persons or entities that organized or funded the event. The Office is required to publicly post the information within 15 days after the date of the event.

### **Action Taken**

Passed Senate Government 8-0

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## **SB1303 - Campaign finance; contributions; reporting**

### **Sponsor**

Sen. J.D. Mesnard (R)

### **Summary**

If an in-state individual has made prior campaign contributions that total less than \$100 during an election cycle, only those contributions that when added to the prior contributions total more than \$100 and all subsequent contributions are required to be reported on a campaign finance report.

### **Effect on CCEC**

Keeps the threshold for reporting contributions lower than the current \$180 limit CCEC candidates may raise thus all contributions will need to be reported.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1324 - Images; voter lists; records; contest**

### **Sponsor**

Sen. Ken Bennett (R)

### **Summary**

No later than ten days before each election, the county recorder or other officer in charge of elections is required to publish and post online a list of all voters who are registered to vote in the election, including persons who are on the inactive voter list. After the primary and general election and no later than 48 hours after the delivery of the official county canvass, the county recorder or other officer in charge of elections is required to submit to the Secretary of State, who shall immediately post online in a convenient downloadable format, a list of all persons who voted in the election, all ballot images used in the tabulation of the election, and the "cast vote record" (defined) in a sortable format. It is a class 1 (highest) misdemeanor to alter the contents of an image or a cast vote record from the database. The county recorder or other officer in charge of elections is required to ensure that paper ballots are stored in a manner that allows for convenient retrieval.

**Action Taken**

Passed Senate Elections 5-3

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**SB1066 - Election mailings; third-party disclosures****Sponsor**

Sen. John Kavanaugh (R)

**Summary**

Any nongovernmental person or entity that mails an official election-related document or a document that resembles an official election-related document from the county recorder, county officer in charge of elections, or the Secretary of State, including a voter registration application or an early ballot request, is required to include the words "not from a government agency" in boldfaced, clearly legible print on the outside of the envelope.

**Action Taken**

Passed Senate Elections 5-3

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**SB1095 - Early ballot envelope; notice****Sponsor**

Sen. Frank Carroll (R)

**Summary**

The envelope accompanying an early ballot is required to state: "Failure to mail an early ballot or deposit an early ballot in a ballot drop box by the Friday before the election will result in delayed election results."

**Action Taken**

Passed Senate Elections 5-3

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**SB1135 - Spoiled early ballots; election day****Sponsor**

Sen. John Kavanaugh (R)

**Summary**

If a voter brings the voter's early ballot to a polling place or other voting location on election day, the county recorder is required to remove the voter from the active early voting list and an early ballot will no longer be sent to the voter automatically. If a voter brings an early ballot to a polling place or voting center on election day, the early ballot is considered spoiled and the voter must exchange the early ballot for a regular ballot. County recorders or other officers in charge of elections are required, instead of allowed, to provide for a qualified voter who appears at their designated polling place or at a voting center on elected day with their voted early ballot to have their ballot tabulated. Also deletes authorization for county boards of supervisors to establish emergency voting centers.

**Action Taken**

Passed Senate Elections 5-3

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**SB1141 - Early ballot drop off; identification****Sponsor**

Sen. Jake Hoffman (R)

**Summary**

For any voter or voter's agent who delivers one or more voted early ballots in affidavit envelopes at any polling place or voting center, the election board must require the person to present identification for his/her own early ballot, and to attest in writing that he/she is the voter's family member, household member or caregiver for another person's early ballot. Knowing violations are a class 5 (second-lowest) felony.

**Action Taken**

Passed Senate Elections 5-3

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**SB1178 - Early voting; identification; signature****Sponsor**

Sen. Ken Bennett (R)

**Summary**

If a voter is issued an early ballot at any voting location during the period of early voting after presenting and confirming the required identification, the voter's early ballot is deemed ready for tabulating, and additional signature verification of the completed affidavit envelope is not required.

**Action Taken**

Passed Senate Elections 8-0

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**HB2613 - Voting equipment; requirements; origin****Sponsor**

Rep. Steve Montenegro (R)

**Summary**

Beginning January 1, 2028, the Secretary of State is prohibited from certifying a vote recording and vote tabulating machine or device used for elections for federal, state or county offices unless 100 percent of all the machine's or device's parts and components are sourced from the United States, and 100 percent of all the machine's or device's manufacturing and assembly is performed in the United States. Does not apply to vote recording and vote tabulating machines and devices that are acquired before January 1, 2028.

**Action Taken**

Passed House Municipal Oversight & Elections 6-4

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## **SB1140 - Elections; voting centers prohibited**

### **Sponsor**

Sen. Jake Hoffman (R)

### **Summary**

County boards of supervisors and any officer in charge of elections are prohibited from authorizing, establishing or using a voting center at which a voter who is a registered voter and resident anywhere in that county is allowed to receive the appropriate ballot for that specific voter.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1258 - Public officers; announcements; report**

### **Sponsor**

Sen. J.D. Mesnard (R)

### **Summary**

For any publication, resource or public service announcement that is issued by a public officer, that contains the public officer's name or likeness, and that is distributed free of charge or through the use of taxpayer resources, the public officer is required to publish a quarterly report describing the amount of money that was spent on the publication, resource, or public service announcement.

### **Action Taken**

Passed Senate Elections 5-3

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## **HB2604 - Licenses; not proof of citizenship.**

### **Sponsor**

Rep. Lydia Hernandez (D)

### **Summary**

The Arizona Department of Transportation is no longer prohibited from issuing a driver license, instruction permit, or nonoperating identification license for a person who does not submit satisfactory proof that the applicant's presence in the U.S. is authorized under federal law. Possession of a driver license, instruction permit, or nonoperating identification license is not proof of citizenship.

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## **HB2591 - Elections; early ballot drop boxes**

### **Sponsor**

Rep. Gail Griffin (R)

### **Summary**

All ballot drop boxes used in Arizona to receive voted early ballots must be located inside a county building, except that a drop box may be located outside of a building if the ballot drop box is secured to a building or footing. Ballot drop boxes must be usable only on Monday through Friday from 8:00AM to 5:00PM and must include a functioning camera or video recorder that photographs or video records and stores the images of each person who deposits one or more early ballots. The camera or video recorder may be motion activated. Establishes a fine of \$1,000 for each ballot for a person who knowingly marks a voted or unvoted ballot or ballot envelope with the intent to fix an election and for possessing a voted or unvoted ballot with the intent to sell the voted or unvoted ballot of another person.

### **Action Taken**

Passed House Municipal Oversight & Elections 6-4

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## **HB2682 - Lobbyists; campaign contributions; prohibition**

### **Sponsor**

Rep. Oscar De Los Santos (D)

### **Summary**

Lobbyists are prohibited from making or promising to make campaign contributions to or soliciting or promising to solicit campaign contributions for a member of the Legislature or the Governor at any time, instead of only during the regular session of the Legislature.

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## **HB2701 - Secure ballot containers; pilot program**

### **Sponsor**

Rep. Quang H. Nguyen (R)

### **Summary**

A county with a population of more than 230,000 persons and less than 400,000 persons (Yavapai County) is authorized to establish and implement a pilot program for the use of secure ballot deposit containers to receive voted early ballots. Each secure ballot deposit container is required to unlock for purposes of depositing ballots by use of a card or other similar means that is issued to the voter by the county recorder for that purpose and must provide for secure retention of the voted ballots until accessed by a person who is authorized by the county recorder to collect the ballots for verification and tabulation. Appropriates \$1.5 million from the general fund in FY2023-24 to the Secretary of State for disbursement to a county recorder for the pilot program.

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## **HB2722 - Elections; option; full hand count**

### **Sponsor**

Rep. Gail Griffin (R)

### **Summary**

The officer in charge of elections, the county recorder, or any person who is designated by the county board of supervisors is allowed to count by hand all or any portion of the ballots in an election. If the hand count is for less than one hundred percent of the ballots, the specific ballots to be counted must be randomly selected.

### **Action Taken**

Passed House Municipal Oversight & Elections 6-4

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## **HB2728 - Election worker harassment task force**

### **Sponsor**

Rep. Seth Blattman (D)

### **Summary**

Establishes a 10-member Election Worker Harassment Task Force in the Secretary of State's Office to coordinate, investigate, prosecute, or refer for prosecution violations of Chapter 16 (Elections and Electors). The Task Force is required to submit a report of its activities to the Governor and the Legislature by January 1, 2025 and each year after.

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## **SB1332 - Cast vote record; public records**

### **Sponsor**

Sen. Janae Shamp (R)

### **Summary**

For every election held in Arizona and after completion of the official canvass, the cast vote record for that election is a public record.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1341 - Voters; false communication; enterprises; enforcement**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

It is a class 5 (second lowest) felony for an enterprise to knowingly communicate to a registered voter by any means false information that is intended to impede the voter in exercising the voter's right to vote. A registered voter to whom false information is communicated is authorized to file a civil action

for relief, including an application for a permanent or temporary injunction, restraining order or other order against the person communicating the false information.

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## **SB1342 - Civics education; professional development; appropriation**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

The State Board of Education (SBE) is required to prescribe academic standards that require all school districts and charter schools to provide instruction on American civics education that promotes civic service, prepares students for the duties of citizenship, and includes instruction on a list of specified topics. Establishes the American Civics Education Instruction Grant Program in the Arizona Department of Education (ADE). Grants issued under the Program must be used to pay teachers' costs of attending a professional development course in civics education and media literacy. Establishes grant eligibility requirements. Appropriates \$100,000 from the general fund in FY2023-24 to the American Civics Education Instruction Fund for the Program.

### **Effect on CCEC**

Would be an opportunity to use CCEC civics program that has already been developed.

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## **SB1389 - Ballots; pollbooks; instructions; tabulating; storage**

### **Sponsor**

Sen. Ken Bennett (R)

### **Summary**

Various changes to statutes relating to elections. Early ballots that are returned at voting locations on election day may be removed by two authorized election workers who must be members of different political parties and who deliver the ballots to a designated receiving site. After the canvass is completed, the county recorder is required to deposit all rejected provisional and early ballots in a secure facility that is managed by the county treasurer.

### **Action Taken**

Passed Senate Elections 8-0

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## **SB1422 - Voting; elections; tally; prohibition..**

### **Sponsor**

Sen. Justine Wadsack (R)

### **Summary**

For every election held in Arizona, the person who receives the highest number of legal votes is required to be declared elected. The state, counties, municipalities, or political subdivisions are prohibited from using a voting method in an election or nomination process for any state, city, town, county, or federal office that allows voters to select or rank, designate or otherwise indicate approval of or preference for more candidates than are eligible to be declared elected for any office; that allows

ballots cast to be tabulated in any manner that involves the elimination of candidates through multiple rounds of tabulation or the transfer or redistribution of votes between or among candidates; or that requires the ranking of every candidate for an office as a condition of a voter's vote being counted in the final tally.

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## **SB1436 - Permanent early voting list.**

### **Sponsor**

Sen. Priya Sundareshan (D)

### **Summary**

The active early voting list is renamed the permanent early voting list. The county recorder is no longer required to remove a voter from the list if the voter fails to vote using an early ballot in all elections for two consecutive election cycles.

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## **SB1437 - Ballot delivery; collection**

### **Sponsor**

Sen. Priya Sundareshan (D)

### **Summary**

A voter is authorized to give the voter's voted early ballot to another person to deliver to a polling place, a ballot drop box, an election official, the U.S. Postal Service, or any other entity allowed by law to transmit post. It is no longer a class 6 (lowest) felony for a person to collect voted early ballots from another person.

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## **SB1451 - Early voting; preceding weekend**

### **Sponsor**

Sen. Thomas "T.J." Shope (R)

### **Summary**

If the county recorder or other officer in charge of elections is able to revise precinct registers and other elections materials in a timely manner for use on election day to indicate which voters have requested an early ballot, which voters have already voted, and which voters are on the inactive voter list, the county recorder or other office in charge of elections is allowed to operate the on-site early voting locations during the Saturday, Sunday and Monday immediately preceding election day.

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## **SB1452 - Primary election date; May**

### **Sponsor**

Sen. Thomas "T.J." Shope (R)

### **Summary**

Beginning in 2024, the primary election is moved to the last Tuesday before the last Monday in May in any year in which a general election or special election is held, instead of the first Tuesday in August in those years.

### **Effect on CCEC**

It would reduce the amount of time candidates have to collect \$5 qualifying contributions. Currently, candidates may begin collecting \$5 qualifying contributions August 1 of the year prior to the election, which is approximately one year before the primary election. This change would reduce collection time by 3 months (May to August).

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## **SB1471 - Ballot tabulation; hand count comparison**

### **Sponsor**

Sen. John Kavanagh (R)

### **Summary**

By September 1, 2023, the officer in charge of elections in a county with a population of more than two million persons (Maricopa County) is required to randomly select four election precincts in the county from the ballot test decks used for logic and accuracy testing for the 2022 general election and is required to recount all races using 100 of those ballots from each precinct. The recounting is required to include the use of duplication boards, adjudications boards and other functions generally used or required in ballot tabulations. The hand count boards are required to consist of volunteers who are members of the three largest political parties in the state and must include on each team a member of at least two different political parties. The actual ballots must be counted through a county ballot tabulator, and photocopies of the actual ballots must be hand counted. The officer in charge of elections is required to compare the totals, and if there is a difference great than 0.1 percent, the ballots and photocopies must be retabulated and recounted. During the hand counting, the officer in charge of elections is required to calculate how many ballots per hour each hand counting team is able to process, and estimate how many persons working 16 hours each day would be required to hand count the entire number of ballots cast in the November 2022 election. The officer in charge of elections is required to report on the results of the tabulations and calculations to the Governor and the Legislature. Self-repeals March 1, 2024.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1485 - National popular vote; interstate agreement**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

Establishes an agreement among the states to elect the U.S. President by national popular vote.

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## **SB1486 - Voting; ranking; ballot format**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

Establishes requirements for any election in which ranked choice voting is used. Provides for elimination rounds, the transfer for votes, and the sequence of tabulation. Single-seat ranked choice voting may be used in any county or municipal election contest in which a voter has three or more voting options for a particular office or issue, and multiseat ranked choice voting may be used in any county or municipal election contest in which a voter has three or more voting options for that group of offices. Establishes requirements for ballot format and voter instructions for ranked choice voting.

### **Effect on CCEC**

Would dramatically change how the Commission handles debates as well as the candidate statement pamphlet. May require the Commission to provide multiple candidate statement pamphlets as well as multiple debates. May require a constant update of the Commission's website to ensure that the correct information is available to the public.

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## **SB1487 - Voted ballots; custody; in-state**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

The county recorder or other officer in charge of elections, the county board of supervisors, any state elected official and any employee, contractor or vendor of those persons are prohibited from removing from the state any one or more of the ballots cast for an election.

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## **SB1510 - Campaign finance; public service corporations**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

A public service corporation, an affiliate of a public service corporation, and a "principal" (defined) of a public service corporation or its affiliate are prohibited from contributing directly or indirectly to an Arizona Corporation Commission (ACC) candidate or candidate committee. An ACC candidate is prohibited from accepting or soliciting contributions directly or indirectly from these persons and entities. A campaign expenditure by these persons or entities is not an independent expenditure if the expenditure is a coordinated public service corporation expenditure, and is considered an in-kind contribution to the ACC candidate. Establishes a list of expenditures that constitute a coordinated public service corporation expenditure.

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## **SB1515 - Polling places; drop boxes; campuses**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

The board of supervisors of each county is required to designate at least one polling place or voting center on the main campus of each state university in that county and is required to provide for at least one early ballot dropbox at each state university satellite location and each community college campus and community college satellite location in that county.

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## **SB1518 - Ballots; election day; identification**

### **Sponsor**

Sen. Ken Bennett (R)

### **Summary**

During the period of early voting or on election day, if a voter is issued an early ballot at any voting location or presents at any voting location the voter's mailed early ballot and the voter presents and confirms the required voter identification, the voter's early ballot is deemed ready for tabulating, and additional signature verification of the completed affidavit envelope is not required. After the period of early voting, a voter who delivers the voter's own voted early ballot to the county recorder or other officer in charge of elections or to a polling location is required to present and confirm the required voter identification before depositing the voted early ballot in a secure ballot box that is separate from ballot tabulators. Only the voter may deliver the voter's own voted early ballot.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1555 - Early voting locations**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

A county recorder or other officer in charge of elections is permitted to make changes to the approved early voting locations and must notify the public and the board of supervisors regarding the changes as soon as is practicable. A county recorder or other officer in charge of elections who establishes early voting locations may continue to operate those early voting locations during the three-day period immediately preceding election day, except that on-site early voting is required to end as needed to ensure that precinct registers and other election materials are revised for use on election day to indicate which voters have requested an early ballot, which voters have already voted and which voters are on the inactive voter list.

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## **SB1556 - Automatic voter registration; same day**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

A person who is otherwise qualified to register to vote may register during the 28 days immediately preceding an election and is eligible to vote in that election if the person has been a resident of the county and the precinct in which the person resides for at least 29 days immediately preceding the election. A person who is otherwise qualified to register to vote may register on Election Day at the polling place for the precinct in which that person maintains residence. A person who registers to vote under these provisions may vote only with a provisional ballot and does not qualify a person to vote in a partisan primary election. Every person who is applying for a driver license or renewal, including a nonoperating identification license or renewal, or who is making changes to drive license information and who is otherwise qualified to register to vote must be registered to vote automatically on completion of the license application unless the applicant clearly expresses a decision not to register. A person who is not qualified to register to vote and who unknowingly registers under this provision is not guilty of false registration or false swearing. Effective January 1, 2024.

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## **SB1565 - Ballot processing; electronic adjudication; limitation**

### **Sponsor**

Sen. Frank Carroll (R)

### **Summary**

Machines, devices, firmware, or software used in Arizona elections are prohibited from including any artificial intelligence or learning hardware, firmware, or software. Artificial intelligence or learning software or firmware is prohibited from being used in the processing of early ballots or by the election board in verifying the voter's affidavit.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1566 - Voter registration; reregistration; ten years**

### **Sponsor**

Sen. Frank Carroll (R)

### **Summary**

The county recorder is required to cancel all voter registrations on the effective date of this legislation, and on April 2 in every year thereafter that ends in 1. Before doing so, the county recorder is required to notify each person who was on the voter registration rolls on that date that the person's voter registration is canceled and that the person must reregister to vote. The county recorder is required to provide information and instructions on how to reregister to vote and is required to archive the voter registration rolls for each date on which all voter registrations are canceled.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1589 - Voter registration databases; designation**

### **Sponsor**

Sen. Ken Bennett (R)

### **Summary**

The Secretary of State is required to designate a list of voter registration databases and voter registration database services to be used monthly by each county recorder to determine possible registrations in multiple jurisdictions and possible changes of address.

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## **SB1595 - Early ballots; identification; tabulation**

### **Sponsor**

Sen. J.D. Mesnard (R)

### **Summary**

Beginning after 7:00PM on the Friday preceding election day, if a voter deposits an early ballot at a polling place, the voter is required to present the required voter identification and sign the signature roster or electronic pollbook before depositing the ballot. If a "voter's agent" (defined elsewhere in statute) delivers a voter's ballot to any polling place, the ballot will be counted and valid only if the voter presents the required voter identification to the county recorder or other officer in charge of elections no later than the 5th business day after election day for a primary, general, or special election that includes a federal office, and no later than the 3rd business day after election day for any other election.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1596 - Polling places; public office spaces**

### **Sponsor**

Sen. J.D. Mesnard (R)

### **Summary**

A state, county, municipal, or school district office is required to provide sufficient space for use as a polling place for any state, county, or municipal election when requested by the officer in charge of elections.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1597 - Early ballot on-site tabulation; requirement**

### **Sponsor**

Sen. J.D. Mesnard (R)

### **Summary**

No later than the 2024 general election, every county recorder or other officer in charge of elections is required, instead of allowed, to provide for a qualified voter who appears at the voter's designated polling location or at a voting center on election day with their voted early ballot to have the ballot tabulated on-site.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1598 - Elections; observers; federal candidates**

### **Sponsor**

Sen. J.D. Mesnard (R)

### **Summary**

Each political party and each candidate for federal office is allowed to have one poll observer in each polling place or early voting location at any one time during the election. A poll observer is prohibited from approaching an election official's table or equipment or the voting booths any closer than is reasonably necessary to properly perform the poll observer's functions. Each poll observer must be allowed to observe the setup of the voting location before the polls open and the closeout procedures at the voting location after the polls close. Poll observers are prohibited from interacting with a voter. Poll observers must be a registered voter in Arizona, and cannot be a candidate who appears on the ballot. One representative at any one time of each candidate for federal office, who has been appointed by the candidate, is added to the list of persons allowed to remain inside the 75-foot limit while the polls are open and the list of persons who may be designated as early ballot challengers.

### **Action Taken**

Passed Senate Elections 5-3

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## **SB1666 - Early ballot list; daily returns**

### **Sponsor**

Sen. Juan Mendez (D)

### **Summary**

On request from a county chairman or state chairman, the Secretary of State is required to provide at no cost a daily listing of persons who have returned their early ballots, Monday through Friday, beginning with the first Monday following the start of early voting and ending on the Monday before the election.

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## **HB2746 - Appropriation; secretary of state; elections**

### **Sponsor**

Rep. Laura Terech (D)

### **Summary**

Appropriates \$1.67 million from the general fund in FY2023-24 to the Secretary of State for election administration expenses, including enhancing the security and technological reliability of the voter registration database.

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## **HB2757 - Court of appeals; retention election**

### **Sponsor**

Rep. Ben Toma (R)

### **Summary**

Each judge of the court of appeals must be elected for retention on a statewide basis at the general election preceding the expiration of the judge's term in office. All otherwise eligible registered voters in Arizona are eligible to vote in these statewide races.

### **Action Taken**

Passed House Judiciary 5-3

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## **HB2768 - Political parties; precinct committeemen; organization**

### **Sponsor**

Rep. Mariana Sandoval (D)

### **Summary**

On completion of the primary election canvass, the county recorder is required to provide to the current county chairperson of each political party that is entitled to continued representation written notice of the number of elected precinct committeemen in the county for that political party for the purposes of making the calculations required for the state committee meeting. On receipt of the county recorder's notice, the current county chairperson is required to provide that notice to the chairperson of the legislative district committee of that political party.

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## **HB2785 - Early voting; absentee; military**

### **Sponsor**

Rep. Liz Harris (R)

### **Summary**

Eliminates early voting by mail in Arizona, all mail ballot elections, and the active early voting list. County boards of supervisors are required to authorize an on-site early voting location at the main office of the county recorder. The county recorder is prohibited from opening more than a single location for early voting, and only those voters who have signed an application, under penalty of perjury, that states that they expect to be absent from their precincts on election day are allowed to vote at an on-site early voting location. Only a voter who expects to be outside the state of Arizona on

election day and the 15 days immediately preceding is eligible to receive a mail ballot. The county recorder is prohibited from mailing a ballot to an address in Arizona. All early votes are required to be counted on election day before 7PM. The voter's signature on an early ballot affidavit must be notarized and must contain the notary's statement that the voter voted the ballot without assistance and outside the view of any other person. Voters who are ill or have a disability and cannot go to the polls are required to vote with a special election board. A county political party, early election board, and party observers are authorized to challenge early ballots on the grounds of inconsistent signatures or unmatching last four digits of social security numbers or dates of birth. The county recorder or other officer in charge of elections is required to provide to the county political party a copy of all early ballot envelopes along with all reference signatures and information for all accepted ballots before removing those ballots from their privacy envelopes in sufficient time for the county political party to challenge any unmatched signatures or information.

**Action Taken**

Passed House Municipal Oversight & Elections 6-4

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**HB2796 - Licensure; citizenship status; documentation**

**Sponsor**

Rep. Flavio Bravo (D)

**Summary**

Agencies and political subdivisions are prohibited from requiring an individual who is applying for a "license" (defined) to provide documentation of citizenship or alien status. If an agency or political subdivision requires an individual's social security number for the purposes of applying for a license, the agency is required to accept an individual's federal tax identification number in lieu of a social security number.

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**SB1593 - Recall; requirements; petitions**

**Sponsor**

Sen. Ken Bennett (R)

**Summary**

A special recall election must be held on the next following consolidated election date that is 120 days or more, increased from 90 days or more, after the order calling the election. A candidate for office in a special recall election is required to file a nomination petition between 90 and 120 days before the date of the recall election, instead of between 60 and 90 days before.

**Action Taken**

Passed Senate Elections 6-2

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## **HB2560 - Images; voter lists; records; contest.**

### **Sponsor**

Rep. Ben Toma (R)

### **Summary**

No later than ten days before each election, the county recorder or other officer in charge of elections is required to publish and post online a list of all voters who are registered to vote in the election, including persons who are on the inactive voter list. After the primary and general election and no later than 48 hours after the delivery of the official county canvass, the county recorder or other officer in charge of elections is required to submit to the Secretary of State, who shall immediately post online in a convenient downloadable format, a list of all persons who voted in the election, all ballot images used in the tabulation of the election, and the "cast vote record" (defined) in a sortable format. It is a class 1 (highest) misdemeanor to alter the contents of an image or a cast vote record from the database. The county recorder or other officer in charge of elections is required to ensure that paper ballots are stored in a manner that allows for convenient retrieval.

### **Action Taken**

Passed House Municipal Oversight & Elections 6-4

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## **HB2231 - Early absentee voting; limitations; conflicts**

### **Sponsor**

Rep. Liz Harris (R)

### **Summary**

Early voting is renamed early absentee voting. Qualified electors are only allowed to vote by early absentee ballot if the elector is physically unable to go to the polls due to illness, hospitalization, incarceration, or other confinement, or the elector expects to be absent from the elector's precinct at the time of the election, including electors covered by the federal Uniformed and Overseas Citizens Absentee Voting Act, or the elector is blind or has a visual impairment. Severability clause. Directs legislative council staff to prepare conforming legislation.

### **Action Taken**

Passed House Municipal Oversight & Elections 6-4

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## **HB2254 - Rulemaking; regulatory costs; legislative ratification**

### **Sponsor**

Rep. Justin Wilmeth (R)

### **Summary**

If a proposed rule is estimated to increase regulatory costs in Arizona in excess of \$500,000 within two years after implementation or to have an adverse impact on economic growth, the proposed rule cannot become effective until the Legislature enacts legislation ratifying the proposed rule. The agency is prohibited from filing a final rule with the Secretary of State before obtaining legislative approval of the rule through legislation.

**Action Taken**

Passed House Government 5-4

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**SB1695 - Election violations; disenfranchisement; new election****Sponsor**

Sen. Jake Hoffman (R)

**Summary**

For the primary and general election in a county with a population of more than one million persons (Maricopa and Pima), the county board of supervisors, county recorder and county officer in charge of elections are prohibited from canvassing the results of an election in which election laws were violated and the violations resulted in the disenfranchisement of at least one percent of the eligible voters in the county. The county board of supervisors, county recorder and county officer in charge of elections are required to hold a new primary or general election. Any member of the board of supervisors who violates these requirements must forfeit that office.

**Action Taken**

Passed Senate Government 5-3

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**SCR1027 - Cities; towns; elections****Sponsor**

Sen. Justine Wadsack (R)

**Summary**

The 2024 general election ballot is to carry the question of whether to amend the state Constitution to state that for any municipality that provides for election of municipal council members by district, ward, precinct or other geographic designation, only those voters who are qualified electors of the district, ward, precinct or other geographic designation, as applicable, are eligible to vote for that council member candidate in the municipality's primary, general, runoff or other election.

**Action Taken**

Passed Senate Government 5-3

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**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**

[R22-317]

**PREAMBLE**

- |  |  |
|--|--|
| <p><b>1. <u>Article, Part, or Section Affected (as applicable)</u></b><br/>                 R2-20-305<br/>                 R2-20-306</p> | <p><b><u>Rulemaking Action</u></b><br/>                 Amend<br/>                 Amend</p> |
|--|--|
- 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 statutes: 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: 29 A.A.R. 249, January 20, 2023 (*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 a person may report a suspected violation and how the Commission will process such reports.
- 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: February 23, 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/83049534974>  
 Meeting ID: 830 4953 4974  
 One tap mobile  
 +16699006833, 83049534974# US (San Jose)  
 17193594580, 83049534974# 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 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES**

Section  
 R2-20-305. Reporting Suspected Violations  
 R2-20-306. Disciplinary and Other Remedial Action

**ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES**

**R2-20-305. Reporting Suspected Violations**

- A. ~~Commissioners and employees~~ Persons who have information, ~~which that~~ causes them to believe that there has been a violation of a statute or a rule set forth in this Article or that a Commissioner should not participate in a Commission decision, shall report promptly, in writing, such ~~incident~~ information to the Commission’s Chair or Executive Director.
- B. When information made available to the Commission under subsection (A) indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided notice of the conflict issue and an opportunity to explain the conflict or appearance of conflict in writing. In the case of a Commissioner, the response shall be due five days from the issuance of the notice. The Commission’s Chair or Executive Director may decline to require a response if the claim is clearly meritless and, in such event, no response is required. In such cases, the Commission’s Chair or Executive Director shall state in writing why the claim is clearly meritless and provide the writing to the person who provided the information and the Commissioner.

**R2-20-306. Disciplinary and Other Remedial Action**

- A. A violation of this Article by an employee or Commissioner may be cause for remedial action or, if the matter involves a Commission employee, disciplinary action, which may be in addition to any penalty or enforcement mechanism provided by law.
- B. When the Commission’s Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission’s Executive Director may question the employee in the matter and gather other information. The Commission’s Executive Director and the employee’s supervisor shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If the Commission’s Executive Director, after consultation with the employee’s supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee’s explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.
- C. Remedial action pursuant to subsection (B) of this Section may include, but is not limited to:
  - 1. Changes in assigned duties;
  - 2. Divestment by the employee of his or her conflicting interest;
  - 3. Disqualification for particular action; or
  - 4. Disciplinary action.
- D. When the matter involves a Commissioner, the Commission’s Chair and Executive Director may conduct an appropriate investigation or gather relevant information for consideration by the Commission. After review of relevant information and a response from the Commissioner, the Commission’s Chair and Executive Director shall ensure that the matter is made part of the agenda for a Commission meeting for discussion and possible action no later than the next regular Commission meeting, unless there is less than one week before that meeting, in which case, the matter shall be scheduled at the next subsequent meeting. The Commission’s Chair may call for an interim meeting regarding the matter at the discretion of the Commission’s Chair.
- E. After consideration of the relevant information and a Commissioner’s response at an open meeting, the Commission may vote on an action for proper remedial action. Remedial action may include, but is not limited to:
  - 1. An expression of the majority opinion of the Commissioners about voluntary remedial action the Commissioner at issue should take to resolve the conflict issues and ensure the appropriate level of impartiality in Commission proceedings; or
  - 2. Disqualification of the Commissioner from participation in discussion or votes on any matter for which the Commissioner has, in the determination of a majority of the other non-disqualified Commissioners, a disqualifying conflict.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS  
FINANCIAL INSTITUTIONS**

[R22-318]

**PREAMBLE**

- |   |                                 |
|---|---------------------------------|
| <b><u>1. Article, Part, or Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
| Article 5   | Amend                           |
| R20-4-503   | Amend                           |
| R20-4-508   | Amend                           |
| R20-4-518   | Amend                           |
| R20-4-519   | Amend                           |
| R20-4-524   | Amend                           |
| R20-4-534   | 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. § 6-123(2)  
 Implementing statute: A.R.S. §§ 6-607, 6-634, 6-635, and 6-636
  - 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: 29 A.A.R. 249, January 20, 2023 (*in this issue*)
  - 4. The agency’s contact person who can answer questions about the rulemaking:**  
 Name: Mary E. Kosinski  
 Address: Department of Insurance and Financial Institutions  
 100 N. 15th Ave., Suite 261  
 Phoenix, AZ 85007-2630  
 Telephone: (602) 364-3476  
 Email: mary.kosinski@difi.az.gov  
 Website: <https://difi.az.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 Arizona Department of Insurance and Financial Institutions – Financial Institutions Division (“Department”) is proposing changes to A.A.C. Title 20, Chapter 4, Article 5 – Small Loans. The changes the Department is proposing will reflect the structural change to the former Department of Financial Institutions which merged with the Department of Insurance to form the Department of Insurance and Financial Institutions (the “new agency”), on July 1, 2020. The former Department of Financial Institutions became a division of the new agency.

As a result of the merger, the new agency made statutory changes to eliminate the position of Superintendent. Instead, the Director of the new agency assumed those duties. This structural change necessitated replacing references to “Superintendent” with “Director” throughout the Article.

When reviewing the rules in the Article, the Department also endeavored to modernize the current rules since the most recent rulemaking for this Article was in 2000. The Department is allowing the use of electronic recordkeeping and eliminating verbatim compliance with the exact language of the rule. In addition, the Department feels that changing the name of the Article to “Consumer Lenders” more accurately reflects the license type and restructuring subsections (B) and (C) of Section R20-4-524 will eliminate ambiguity about what is a “Consumer Lender.”

**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 Department did not review and does not propose to rely on any study relevant to this rulemaking.

**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:**

The rulemaking does not diminish a previous grant of authority granted to the Department.

**8. The preliminary summary of the economic, small business, and consumer impact:**

Pursuant to A.R.S. § 41-1055(A):

- The rulemaking is not designed to change any conduct. Instead, it is necessary to reflect the new structure of the Department and to modernize and clarify some of the Sections.
- Because this rulemaking is not made in response to a perceived problem caused by the conduct of licensees, it is not intended to reduce the frequency of any potentially violative conduct.
- The costs incurred by Consumer Lenders are not expected to impact revenues or payroll expenditures.
- The person listed in item 9 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

**9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

Name: Mary E. Kosinski  
 Address: Department of Insurance and Financial Institutions  
 100 N. 15th Ave., Suite 261  
 Phoenix, AZ 85007-2630  
 Telephone: (602) 364-3476  
 Email: [mary.kosinski@difi.az.gov](mailto:mary.kosinski@difi.az.gov)

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No proceeding is currently scheduled. Persons who wish to request an oral proceeding on this rulemaking should make a written request to the person listed in item 4. Requests must be received within 30 days of the publication of this Notice of Proposed Rulemaking, A.R.S. § 41-1023(C). If requested, the oral proceeding will be conducted at least 30 days after the receipt of any such request.

In lieu of an oral proceeding, interested parties may submit public comments to: [public\\_comments@difi.az.gov](mailto:public_comments@difi.az.gov). Please use “DFI Article 5 – Small Loans” in the subject line of the email. Persons submitting public comments should be aware that any comments submitted are “public” and may be published by the Department.

If no one requests an oral proceeding, the public comment period will close 30 days after the publication date of this Notice of Proposed Rulemaking. If anyone requests an oral proceeding, the public comment period will close at 11:59 p.m., on the date of the oral proceeding.

**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:**

No other matters prescribed by statute are applicable to the Department or to any specific rule or class of rules.

**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:**

The rule does not require a permit and does not use a general permit. A.R.S. § 6-603 requires a Consumer Lender to obtain a traditional license before engaging in the business of a Consumer Lender.

**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:**

No federal law is applicable to the subject of the rule.

1 Mary R. O’Grady, 011434  
James D. Smith, 016760  
2 Sarah P. Lawson, 036436  
OSBORN MALEDON, P.A.  
3 2929 North Central Avenue, Suite 2000  
Phoenix, Arizona 85012  
4 (602) 640-9000  
[mogradey@omlaw.com](mailto:mogradey@omlaw.com)  
5 [jsmith@omlaw.com](mailto:jsmith@omlaw.com)  
[slawson@omlaw.com](mailto:slawson@omlaw.com)

6 Attorneys for Defendant Arizona Citizens Clean Elections  
7 Commission

8  
9 ARIZONA SUPERIOR COURT  
10 MARICOPA COUNTY

11 Center for Arizona Policy, Inc., et al.,

12 Plaintiffs,

13 v.

14 Arizona Secretary of State, et al.,

15 Defendants.

No. CV2022-016564

CITIZENS CLEAN ELECTIONS  
COMMISSION’S MOTION TO  
DISMISS

(Assigned to the Honorable  
M. Scott McCoy)

16  
17 This lawsuit is a facial challenge to Proposition 211 (“Prop. 211” or “the Act”), a  
18 voter-approved citizens’ initiative that establishes new disclosure requirements that will  
19 provide Arizona voters with more information about the money spent to influence  
20 Arizona elections. Courts have upheld campaign finance disclosure requirements for  
21 decades, recognizing the importance of providing voters information about who is trying  
22 to influence their vote. *E.g.*, *Citizens United v. FEC*, 558 U.S. 310, 367 (2010); *Buckley*  
23 *v. Valeo*, 424 U.S. 1, 67 (1976).

24 To prevail in their facial challenge, Plaintiffs must establish that “no set of  
25 circumstances exists under which [Proposition 211] would be valid.” *State v. Wein*, 244  
26 Ariz. 22, 26, ¶ 34 (2018) (quoting *U.S. v. Salerno*, 481 U.S. 739, 745 (1987)). Plaintiffs’  
27 complaint does not satisfy their substantial burden in this facial challenge.

28



1 The Commission respectfully requests that the Court dismiss the Verified  
2 Complaint (filed 12/15/2022) with prejudice under Arizona Rule of Civil Procedure  
3 12(b)(6) because it fails to state any claim for which relief can be granted.

4 **Introduction—Overview of Prop. 211**

5 Prop. 211 (codified at A.R.S. §§ 16-971 to -979) was approved by the voters at the  
6 2022 general election. Compl. ¶ 2; *see also* 2022 Ariz. Legis. Serv. Prop. 211. It requires  
7 disclosing original sources of the funds that exceed specified thresholds and are used for  
8 “campaign media spending.” A.R.S. § 16-973. By requiring the disclosure of the original  
9 source of funds, it uncovers what is often referred to as “dark money,” which results from  
10 transferring contributions, often through multiple intermediaries, to hide the original  
11 source. Ex. 1, Prop. 211 § 2(C).<sup>1</sup>

12 Prop. 211’s new disclosure requirements focus on large donors to groups that  
13 spend significant amounts of money on Arizona elections. It requires “covered  
14 person[s]”—people/entities whose campaign media spending is more than \$50,000 on  
15 statewide elections and more than \$25,000 on other elections—to disclose the sources of  
16 donations exceeding \$5,000. A.R.S. §§ 16-971(7), 16-973(A). “Campaign media  
17 spending” is the spending money for certain public communications related to election  
18 campaigns, as well as the research and similar preparatory acts that go into creating the  
19 public communication. *Id.* § 16-971(2). A covered person must notify donors before  
20 using a person’s donation for campaign media spending; the donors then have a chance  
21 to opt out. *Id.* § 16-971(B). If a donor opts out, their money cannot be used on campaign  
22 media spending, and the donor is not disclosed. *Id.*

23 The covered person is responsible for collecting the information necessary so that  
24 it can disclose who provided the “original monies” being spent. *Id.* §§ 16-971(1), (12),

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25  
26 <sup>1</sup> A copy of Proposition 211 from the Secretary of State’s publicity pamphlet is attached  
27 as Exhibit 1 hereto. This is a public record, subject to judicial notice, which the Court  
28 may consider documents without converting this motion to one for summary judgment.  
*See, e.g., Strategic Dev. & Constr. Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60,  
64, ¶ 13 (App. 2010).

1 (14), -972(D), (E). The covered person may rely on this information to make its report  
2 unless “the covered person knows or has reason to know that the information relied on is  
3 false or unreliable.” *Id.* § 16-973(D). Donations are traced to the original sources of the  
4 funds; that is, an individual’s personal money or an organization’s business income. *Id.*  
5 § 16-971(12), (14), (1).

6 A covered person files any reports with the Secretary of State after its campaign  
7 media spending exceeds the applicable threshold to require a report. *Id.* § 16-973(A).  
8 The law prohibits structured transactions designed to evade reporting requirements. *Id.*  
9 § 16-975.

10 Although reports are filed with the Secretary of State, the Commission is  
11 responsible for enforcing the Act. *Id.* § 16-974(A). It may adopt and enforce rules,  
12 initiate enforcement actions, and perform other acts that may assist in implementing  
13 Prop. 211. *Id.* The Commission may impose civil penalties. *Id.* § 16-976(A). The  
14 Commission’s enforcement decisions are subject to judicial review. *See id.* §§ 16-977(C)  
15 (complainant opportunity for judicial review); -974(B) (opportunity for judicial review  
16 for party against whom penalty imposed).

## 17 **Argument**

### 18 **I. The Applicable Legal Standard**

19 Because this is a facial challenge, Plaintiffs fail to state a claim for which relief  
20 can be granted unless there are no circumstances in which the statute can be  
21 constitutionally applied. *Wein*, 244 Ariz. at 26, ¶ 34. “Laws enacted by initiative, like  
22 acts of the legislature, are presumed constitutional.” *Fann v. State*, 251 Ariz. 425, 433,  
23 ¶ 23 (2021). Plaintiffs bear a “heavy burden” to overcome that presumption. *Morgan v.*  
24 *Dickerson*, 253 Ariz. 207, 204, ¶ 6 (Ariz. 2022).

### 25 **II. Plaintiffs’ claim based on the Arizona Constitution’s Free Speech Clause fails.**

26 Nothing in the text, original public meaning, or caselaw supports Plaintiffs’ claim  
27 that Arizona’s Free Speech Clause, Article II, Section 6 of the Arizona Constitution,  
28 prohibits disclosures such as those in Prop. 211. Under Arizona’s Free Speech Clause,

1 “[e]very person may freely speak, write, and publish on all subjects, being responsible  
2 for the abuse of that right.” Ariz. Const. art. II, § 6. Nothing in Prop. 211 limits those  
3 rights. Prop. 211 requires certain disclosures, but it imposes no limits on speech. As the  
4 Supreme Court has recognized, “[d]isclaimer and disclosure requirements . . . do not  
5 prevent anyone from speaking.” *Citizens United*, 558 U.S. at 366 (citation and quotation  
6 marks omitted). Indeed, “[t]he First Amendment protects political speech; and disclosure  
7 permits citizens and shareholders to react to the speech of corporate entities in a proper  
8 way.” *Id.* at 371 (upholding disclosure requirements under Bipartisan Campaign Reform  
9 Act of 2002).

10       Moreover, Arizona’s Constitution included provisions that support electoral  
11 reforms and disclosure. Most significantly, it required that Arizona’s first legislature  
12 enact legislation to publicize “all campaign contributions to, and expenditures of  
13 campaign committees and candidates for public office.” Ariz. Const. art. VII, § 16.  
14 Article XIV, Section 18 prohibited corporations from making “any contribution of money  
15 or anything of value for the purpose of influencing any election. . . .” Ariz. Const. art.  
16 XIV, § 18. The Arizona Constitution also included a directive to enact voter registration  
17 “and other laws to secure the purity of elections and guard against abuses of the elective  
18 franchise.” Ariz. Const. art. VII, § 12. In this constitutional framework, Article II,  
19 Section 6 cannot be read to prevent disclosures about election spending, such as those in  
20 Prop. 211. Although in some contexts, Article II, Section 6 may provide broader  
21 protections than the First Amendment, it does not impose barriers to campaign finance  
22 disclosure requirements.

23       **A. Prop. 211 Satisfies Exacting Scrutiny**

24       Courts apply the “less stringent exacting scrutiny” standard to determine whether  
25 disclosure requirements are constitutional. *Comm. for Just. & Fairness v. Ariz. Sec’y of*  
26 *State’s Off.*, 235 Ariz. 347, 355-56, ¶ 32 (App. 2014) (“*CJF*”) (citation and quotation  
27 marks omitted). A law satisfies the “exacting scrutiny” standard if there is “a substantial  
28 relation between the disclosure requirement and a sufficiently important government

1 interest.” *Id.* 356, ¶ 33 (cleaned up); *see also Citizens United*, 558 U.S. at 366-67  
2 (applying exacting scrutiny to disclosure requirement).<sup>2</sup> Prop. 211 easily satisfies this  
3 standard.

4 **1. Multiple “sufficiently important” and compelling interests**  
5 **support Prop. 211.**

6 Over the decades, courts identified at least four important interests underlying  
7 election disclosure requirements. First, the government has an informational interest to  
8 keep the public apprised before elections of who is speaking; it lets the public better assess  
9 the messages and the candidates. *Buckley*, 424 U.S. at 67. Second, publicity deters  
10 corruption by exposing the sources of monies, permitting the people to assess post-  
11 election favors elected members of office might be providing. *Id.* Third, a state has a  
12 compelling interest to ensure the integrity of the election process. *Eu v. S.F. Cnty.*  
13 *Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989) (“A State indisputably has a  
14 compelling interest in preserving the integrity of its election process. Toward that end, a  
15 State may enact laws . . . when necessary to ensure that elections are fair and honest.”).  
16 Fourth, the government has an administrative interest to promote those three interests.  
17 *Buckley*, 424 U.S. at 67-68; *see also Citizens United*, 558 U.S. at 368 (disclosures permit  
18 the people to evaluate election arguments).

19 These are commonsense principles. “[D]isclosure permits citizens and  
20 shareholders to react to the speech of corporate entities in a proper way. This transparency  
21 enables the electorate to make informed decisions and give proper weight to different  
22 speakers and messages.” *Citizens United*, 558 U.S. at 371 (Scalia, J. concurring). Our  
23 Court of Appeals likewise found the informational interest, the anti-corruption interest,  
24 and the administrative interest are all “sufficiently important” to justify disclosure  
25

26  
27  
28 

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<sup>2</sup> Plaintiffs erroneously advocated using a strict scrutiny analysis in their preliminary  
injunction motion (filed 12/15/2022, at 10:1-13:28).

1 requirements. *CJF*, 235 Ariz. at 360, ¶ 48. Many cases describe these interests as  
2 important or compelling.<sup>3</sup>

3 Prop. 211 “is intended to protect and promote rights and interests guaranteed by  
4 the First Amendment of the United States Constitution and also protected by the Arizona  
5 Constitution, to promote self-government and ensure responsive officeholders, to prevent  
6 corruption and to assist Arizona voters in making informed election decisions by securing  
7 their right to know the source of monies used to influence Arizona elections.” Ex. 1, Prop  
8 211 § 2(B). These are important—even compelling—state interests.

9 **2. Prop. 211 is narrowly drawn and substantially advances the**  
10 **governmental interests it serves.**

11 Prop. 211 supplements longstanding disclosure laws in Arizona by adding  
12 disclosure of the original sources of funds. These disclosures serve all of the interests  
13 previously articulated that are served by campaign finance disclosure requirements.

14 The Act is also narrowly drawn in many ways. For example, the Act focuses on  
15 significant spending. Only people/entities who spend more than \$50,000 in statewide  
16 campaigns or more than \$25,000 in other campaigns are subject to the Act’s disclosure  
17 requirements. A.R.S. § 16-973(A); *see also* A.R.S. § 16-971(7) (defining “[c]overed  
18 person”). In addition, only donors that give more than \$5,000 are disclosed. *Id.* § 16-  
19 973(A)(6), (G). There are exceptions to prevent harm to donors in particular cases. *Id.*

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21 <sup>3</sup> *See also Gaspee Project v. Mederos*, 13 F.4th 79, 86 (1st Cir. 2021) (“[T]he Board’s  
22 interest in an informed electorate vis-à-vis the source of election-related spending is  
23 sufficiently important to support reasonable disclosure and disclaimer regulations.”);  
24 *Alaska Right to Life Comm. v. Miles*, 441 F.3d 773, 791-92 (9th Cir. 2006) (informational  
25 interest, anti-corruption interest, and administrative interest are “compelling”); *Adventure*  
26 *Comm’ns, Inc. v. Ky. Registry of Election Fin.*, 191 F.3d 429, 442 (4th Cir. 1999)  
27 (maintaining integrity of state election system and eradicating campaign finance  
28 corruption are “compelling”); *Corsi v. Elections Comm’n*, 981 N.E.2d 919, 925-26, ¶¶ 17-  
18 (Ohio Ct. App. 2012) (information interest is “sufficiently important”); *Bemis*  
*Pentecostal Church v. State*, 731 S.W.2d 897, 903-07 (Tenn. 1987) (state’s compelling  
interest in “protecting the integrity and fairness of the political process” justified  
regulations); *State v. Grocery Mfrs.’ Ass’n.*, 461 P.3d 334, 346, ¶¶ 42-45 (Wash. 2020)  
(informational interest is “sufficiently important”; initiative requiring disclosure served  
*voters’* First Amendment rights).

1 § 16-973(F). A donor can also opt out of permitting the organization to use its donation  
2 for campaign media spending and thereby avoid disclosure. *Id.* § 16-972(B), (C). All of  
3 these elements help narrow the disclosure requirements in a manner that achieves the  
4 purpose of disclosing the original source of monies used for campaign media spending.

5 **B. There are no facts supporting a “compelled speech” claim.**

6 Plaintiffs’ Complaint cites to cases describing the compelled speech concept, but  
7 they allege no facts that support a “compelled speech” claim. *See* Compl. ¶¶ 73-75. As  
8 a legal matter, the exacting scrutiny standard of review for campaign finance disclosures  
9 already accounts for any “compelled speech” element. *Buckley*, 424 U.S. at 64; *Citizens*  
10 *United*, 558 U.S. at 366-67. A “compelled speech” argument does not invalidate an  
11 otherwise valid campaign finance disclosure law. *See Gaspee Project*, 13 F.4th at 95.

12 What is more, Prop. 211 does not compel speech. Only donors contributing  
13 substantial sums to covered persons during defined time frames are disclosed. And Prop.  
14 211 lets any donor opt-out by directing that his/her/its funds not go toward covered  
15 campaign activity. The “readily available means of avoiding disclosure punches a sizable  
16 hole in [Plaintiffs’] insistence that [Prop. 211’s] disclosure requirements are tantamount  
17 to the compelled disclosure of membership lists.” *Id.* at 89. Even donors who meet Prop.  
18 211’s requirements without opting out do not face unconstitutional burdens. After all,  
19 “the election-law context is a breed apart, implicating the government’s substantial  
20 interest in transparent elections—the bedrock of our democracy.” *Id.* at 94 (rejecting  
21 challenge to disclosure and disclaimer regime).<sup>4</sup>

22  
23  
24  
25 <sup>4</sup> Plaintiffs cite (Compl. ¶ 75) *Rumsfeld v. Forum for Academic & Institutional Rights,*  
26 *Inc. (FAIR)*, 547 U.S. 47, 69 (2006), but that case does not support invalidating Prop. 211.  
27 *FAIR* held that requiring law schools to provide to military recruiters the same access as  
28 other recruiters does *not* unconstitutionally compel speech. *FAIR*, 545 U.S. at 61-65.  
Nothing in *FAIR* supports a claim against Prop. 211.

1           **C.     The Complaint does not state a viable claim that the Act is**  
2           **unconstitutionally vague.**

3           Plaintiffs also criticize portions of the Act as vague and unclear. (Compl. ¶ 76.)  
4           As a threshold matter, these concerns do not support a facial challenge of the Act. To  
5           prevail on a facial validity challenge, “the challenging party must demonstrate no  
6           circumstances exist under which the challenged statute would be found valid.” *State v.*  
7           *Burke*, 238 Ariz. 322, 325, ¶ 4 (App. 2015) (quoting *Lisa K. v. Ariz. Dep’t of Econ. Sec.*,  
8           230 Ariz. 173, 177, ¶ 8 (App. 2012)). And a facial vagueness claim fails if the law is  
9           valid “in the vast majority of its intended applications”; hypothetical situations will not  
10          support a facial attack. *Hill v. Colo.*, 530 U.S. 703, 733 (2000) (citation omitted); *Burke*,  
11          238 Ariz. at 327, 329, ¶¶ 10, 17 (challenger’s vagueness argument denied for failing to  
12          “show that under no set of circumstances is the statute constitutional for purposes of  
13          vagueness”).

14          Plaintiffs cite three phrases that they allege are “unclear”: (1) “directly or indirectly  
15          contributed,” (2) “promotes, supports, attacks, or opposes,” and (3) “[r]esearch, design,  
16          production, polling, data analytics, mailing or social media list acquisition or any other  
17          activity.” (Compl. ¶ 76 (quoting A.R.S. §§ 16-971, -972, -973, and -974.)) Plaintiffs  
18          assert that these phrases are “unclear on their face,” which “prevent[s] individuals and  
19          organizations from determining whether the Act applies to them.” (*Id.*) But a statute is  
20          unconstitutionally vague only if it “fails to give a person of ordinary intelligence a  
21          reasonable opportunity to know what is prohibited, so that he may act accordingly or if it  
22          allows for arbitrary and discriminatory enforcement by failing to provide an objective  
23          standard for those who are charged with enforcing or applying the law.” *Bird v. State*,  
24          184 Ariz. 198, 203 (App. 1995) (citation and internal quotation marks omitted). Here, a  
25          person of ordinary intelligence would ascribe the common, ordinary meanings to these  
26          phrases, and by doing so, would understand when certain disclosures are required. Plus,  
27          as read in the entirety of the Act and the larger context of Title 16, these phrases are not  
28          vague—rather, they provide additional detail on the scope of activities that may require

1 disclosures. *Korwin v. Cotton*, 234 Ariz. 549, 559, ¶ 29 (App. 2014) (reading challenged  
2 portions of statute “in their entirety” showed meaning; provision was not  
3 unconstitutionally vague).

4       Regardless, Plaintiffs’ specific citations to portions of the Act do not support a  
5 facial challenge of the *entire* measure based on vagueness. *See City of Tempe v. Outdoor*  
6 *Sys., Inc.*, 201 Ariz. 106, 110, ¶ 12 (App. 2001) (“We need not invalidate the entire  
7 Ordinance if the invalid portion can be severed from the remaining valid portions of the  
8 Ordinance.”). As with any statute, the statutory standards will be applied to specific facts  
9 during implementation. There may also be rules that provide further clarification. At this  
10 point, this abstract challenge is not ripe for adjudication. Prop. 211’s primary reach is the  
11 disclosure large donors of money used for campaign media spending. That reach is  
12 necessary to achieve the governmental interests elaborated above. Here, the Act is  
13 “clearly valid ‘in the vast majority of its intended applications.’” *Korwin*, 234 Ariz. at  
14 559 ¶ 30 (quoting *Hill*, 530 U.S. at 733).

15       Plaintiffs’ claim based on the Arizona Constitution’s Free Speech clause should  
16 be dismissed.

17 **III. Plaintiffs’ Claim Based on the Private Affairs Clause of the Arizona**  
18 **Constitution Fails.**

19       Under the Private Affairs Clause, “No person shall be disturbed in his private  
20 affairs, or his home invaded, without authority of law.” Ariz. Const. art. II, § 8.  
21 “[A]lthough different in its language, [it] is of the same general effect and purpose as the  
22 Fourth Amendment.” *Malmin v. State*, 30 Ariz. 258, 261 (1926); *see State v. Mixton*, 250  
23 Ariz. 282, 290, ¶ 31 (2021) (quoting *Malmin* for the principle that the Private Affairs  
24 Clause has been given the same effect as the Fourth Amendment “since statehood”). The  
25 Arizona Supreme Court has never extended “the Private Affairs Clause’s protections  
26 beyond the Fourth Amendment’s reach, except in cases involving warrantless home  
27  
28

1 entries.” *Mixton*, 250 Ariz. at 290, ¶ 32. In addition, Prop. 211 provides the “authority  
2 of law” for the disclosures.<sup>5</sup>

3 Plaintiffs’ claim fails because the Act’s disclosures do not concern “private  
4 affairs.” They concern disclosures related to campaign media spending in Arizona. To  
5 determine the meaning of “[p]rivate affairs,” courts look to the term’s “natural, obvious,  
6 and ordinary meaning.” *Id.* ¶ 33 (quoting *Kotterman v. Killian*, 193 Ariz. 273, 284, ¶ 33  
7 (1999)) (quotation marks omitted). “Private” means “affecting or belonging to private  
8 individuals, as distinct from the public generally,” “peculiar to one’s self,” “personal,”  
9 “alone,” “secret,” “not public,” “secluded,” “unofficial.” *Id.* at 290-91, ¶ 33 (quoting  
10 *Private*, Black’s Law Dictionary (2d. ed. 1910) and *Private*, New Websterian Dictionary  
11 (1912)). Donating or passing on large contributions to affect an election is not a private  
12 affair under that clause.

13 The Arizona Constitution *required* the first Legislature to impose disclosure  
14 requirements on contributions to and expenditures by campaign committees and  
15 candidates for public office. Ariz. Const. art. VII, § 16. Expenditures for election  
16 campaigns were not a “private affair” in 1912 (or 2023). The Constitution recognizes the  
17 need for publicly disclosing campaign spending information. Prop. 211 covers  
18 communications related to elections that are intended to reach the public. It does not fall  
19 within the Private Affairs Clause.

20 Even for true private affairs, the protection is not absolute. The Constitution  
21 permits an intrusion into truly private affairs under “authority of law.” Prop. 211 is that  
22 law. Plaintiffs can claim no legitimate expectation of privacy in their campaign media  
23 spending and related donations that occur after voters approved Prop. 211. Requiring  
24 “authority of law” protects against government officials “doing their jobs according to  
25 their own ideas of how to proceed . . . .” Charles W. Johnson & Scott P. Beetham, *The*  
26 *Origin of Article I, Section 7 of the Washington State Constitution*, 31 Seattle U. L. Rev.

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27 <sup>5</sup> The Court need not accept as true Plaintiffs’ allegations in Paragraphs 79-82 concerning  
28 the scope of the private affairs clause, as those are legal arguments, not factual allegations.

1 431, 448 (2008). Prop. 211 avoids any such threat—it requires disclosing only specific  
2 information in limited situations.

3 Although the Court need not proceed further with its analysis, when private affairs  
4 are at issue, “the permissibility of a particular practice is judged by balancing its intrusion  
5 on the individual’s Fourth Amendment interests against its promotion of legitimate  
6 governmental interest.” *Skinner v. Ry. Labor Execs. Ass’n*, 489 U.S. 602, 619 (1989)  
7 (cleaned up). As explained, even if campaign media spending were considered a private  
8 affair (which it is not), Prop. 211’s disclosure requirements are authorized by law and  
9 serve important governmental interests that justify disclosure.

10 Plaintiffs’ claim based on the Private Affairs Clause should be dismissed.

#### 11 **IV. Prop. 211 Does Not Violate Separation of Powers.**

12 Plaintiffs’ claim that portions of Prop. 211 violate separation of powers should also  
13 be dismissed. First, Plaintiffs lack standing to bring this claim because they lack a  
14 cognizable injury from the alleged violations. The claim also fails on the merits because  
15 the Act appropriately assigns responsibilities to executive officials and provides for  
16 judicial review.

##### 17 **A. Plaintiffs lack standing to bring the separation of powers claim.**

18 A plaintiff must allege “a distinct and palpable injury” to have standing. *Sears v.*  
19 *Hull*, 192 Ariz. 65, 69, ¶ 16 (1998). The injury must be individualized to the plaintiff and  
20 cannot be shared with “a large class of citizens.” *Id.* The injury must be caused by the  
21 alleged violation. *Id.* at 70-71, ¶¶ 17-28. Arizona courts generally decline jurisdiction  
22 when standing is absent. *Bennett v. Brownlow*, 211 Ariz. 193, 195, ¶ 14 (2005) (“As a  
23 matter of sound judicial policy, . . . this court has long required that persons seeking  
24 redress in Arizona courts must first establish standing to sue.”); *Karbal v. Ariz. Dep’t of*  
25 *Revenue*, 215 Ariz. 114, 116, ¶ 7 (App. 2007).

26 Plaintiffs’ do not allege a particularized injury based on their separation of powers  
27 claims. They assert “Plaintiffs are suffering, and will suffer in the future, irreparable harm  
28 . . . because governmental power is being exercised in violation of the separation of

1 powers. *See* Compl. ¶ 92. This is not a particularized harm conferring standing. More  
2 generally in their Complaint, Plaintiffs assert that Prop. 211’s disclosure requirements  
3 will chill their speech, but they do not allege any connection between the alleged  
4 separation of powers violations and any concrete injury. For example, Plaintiffs complain  
5 (¶ 87) that the Commission’s enforcement of Prop. 211 is not subject to other executive  
6 bodies’ approval. Plaintiffs fail, however, to allege that causes *them* individualized harm.  
7 Any harm is too remote and generalized to confer standing. *Bennett*, 211 Ariz. at 195-  
8 96, ¶¶ 6-19 (remote and generalized claims do not confer standing).

9 Plaintiffs’ separation of powers claim is, in essence, a request for an advisory  
10 opinion, and Arizona courts do not issue advisory opinions. *Sears*, 192 Ariz. at 71, ¶¶ 23-  
11 28.

12 **B. Plaintiffs’ separation of powers claim fails on the merits.**

13 Plaintiffs allege the following provisions in Prop. 211 violate separation of powers:

- 14 · The Commission’s rules and enforcement actions are not subject to  
15 approval, prohibition, or limitation by other executive or legislative bodies  
16 or officials. A.R.S. § 16-974(D). [Compl. ¶ 87.]
- 17 · The Commission is exempt from the Administrative Procedures Act for  
18 rulemaking. A.R.S. § 16-974(D). [Compl. ¶ 88.]
- 19 · The Commission may adopt and enforce rules, issue subpoenas, enforce the  
20 law, impose penalties, investigate, seek relief in court, and establish  
21 recordkeeping requirements. A.R.S. § 16-974(A)(1)-(8). [Compl. ¶ 89.]
- 22 · The Commission has a funding source via enforcing Prop. 211 and by a 1%  
23 surcharge on civil and criminal penalties. A.R.S. § 16-976. [Compl. ¶ 90.]

24 All are proper delegations of authority to the Commission, an executive branch agency.

25 Although Article III of the Arizona Constitution separates the powers of  
26 government into three branches, it has long been settled that “an entire and complete  
27 separation of power of the three branches of government” is not desirable nor was ever  
28 intended. *Sw. Eng’g Co. v. Ernst*, 79 Ariz. 403, 414-15 (1955). The Legislature has broad

1 authority to delegate “quasi-legislative” power to the executive to administer a statute.  
2 *State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205 (1971). And if the Legislature may  
3 delegate, then the voters may as well. Nothing in the Constitution prohibits the voters  
4 from giving rulemaking authority to an executive-branch body.

5 Because circumstances may vary, the Legislature (or here, the voters) need not  
6 specify an exact mathematical formula to the executive. *Id.* at 206. Thus, legislation may  
7 authorize the executive to exercise discretion; it suffices that the delegation be “defined  
8 with sufficient clarity to enable the [executive] to recognize its legal bounds.” *3613 Ltd.*  
9 *v. Dep’t of Liquor Licenses & Control*, 194 Ariz. 178, 183, ¶ 21 (App. 1999).

10 The challenged provisions of Prop. 211 easily satisfy our Constitution’s  
11 requirements. For example, Prop. 211 permissibly gives the Commission authority to  
12 adopt and enforce rules. *See* A.R.S. § 16-974(A)(1). But agencies routinely—and  
13 permissibly—enact rules and regulations under standards in the authorizing legislation.  
14 *E.g., Ariz. Mines Supply Co.*, 107 Ariz. at 205. Also, Commission enforcement actions  
15 are subject to judicial review; the Commission does not improperly exercise judicial  
16 power. *See* A.R.S. §§ 16-977(C), -974(B). Exempting the Commission’s rules from the  
17 Arizona Administrative Procedures Act (Title 41, Chapters 6 and 6.1) violates no  
18 separation of powers principle.<sup>6</sup> Prop. 211 provides for funding through fees and  
19 penalties; it is not clear how plaintiffs believe this violates Separation of Powers  
20 principles.

21 Merely asserting unconstitutionality falls far short of stating a cognizable claim  
22 for relief under Arizona law. Plaintiffs did not plead facts sufficient to meet their heavy

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23 <sup>6</sup> Such exemptions are common, too. *E.g.*, A.R.S. § 3-109.03; A.R.S. § 3-525.08(C);  
24 A.R.S. § 5-601(E); A.R.S. § 20-1241.09(B); A.R.S. § 23-491.16(I); A.R.S. § 32-1974(H);  
25 A.R.S. § 32-3253(A)(4); A.R.S. § 36-2205(B). The Legislature itself has exempted the  
26 Commission from certain administrative steps otherwise required of agencies. *E.g.*,  
27 A.R.S. § 41-1039(E)(2)(c) (exempting the Commission and any other “board or  
28 commission established by ballot measure at or after the November 1998 general  
election” from a requirement to seek written approval from the governor before any  
rulemaking).

1 burden of showing a violation of separation of powers requirements. Nor did they  
2 establish that they have standing to assert these claims.

3 **CONCLUSION**

4 For the foregoing reasons, the Commission Defendants respectfully ask the Court  
5 to dismiss Plaintiffs' Complaint with prejudice under Arizona Rule of Civil Procedure  
6 12(b)(6).

7 **Certification of Counsel**

8 Undersigned counsel certifies that counsel for Plaintiffs, Defendants, and proposed  
9 Intervenors conferred in good faith under Arizona Rule of Civil Procedure 12(j) but could  
10 not resolve the issues.

11 DATED this 17<sup>th</sup> day of February, 2023.

12 OSBORN MALEDON, P.A.

13 By /s/James D. Smith

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22 Maricopa County Superior Court  
101 West Jefferson, ECB-612  
23 Phoenix, Arizona 85003

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# EXHIBIT 1

# PROPOSITION 211

## OFFICIAL TITLE

### AN INITIATIVE MEASURE

AMENDING TITLE 16, ARIZONA REVISED STATUTES BY ADDING CHAPTER 6.1; RELATING TO THE DISCLOSURE OF THE ORIGINAL SOURCE OF MONIES USED FOR CAMPAIGN MEDIA SPENDING.

Be it enacted by the People of the State of Arizona:

#### **Section 1. Short title**

This act may be cited as the “Voters’ Right to Know Act”.

#### **Section 2. Purpose and Intent**

- A. This act establishes that the People of Arizona have the right to know the original source of all major contributions used to pay, in whole or part, for campaign media spending. This right requires the prompt, accessible, comprehensible and public disclosure of the identity of all donors who give more than \$5,000 to fund campaign media spending in an election cycle and the source of those monies, regardless of whether the monies passed through one or more intermediaries.
- B. This act is intended to protect and promote rights and interests 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.
- C. By adopting this act, the People of Arizona affirm their desire to stop “dark money,” the practice of laundering political contributions, often through multiple intermediaries, to hide the original source.
- D. This act empowers the Citizens Clean Elections Commission and individual voters to enforce its disclosure requirements. Violators will be subject to significant civil penalties.

#### **Section 3. Title 16, Arizona Revised Statutes, is amended by adding chapter 6.1, to read:**

### CHAPTER 6.1. CAMPAIGN MEDIA SPENDING

#### ARTICLE 1. DISCLOSURE OF ORIGINAL SOURCE OF MONIES

##### **16-971. Definitions**

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. “BUSINESS INCOME” MEANS:
  - (a) MONIES RECEIVED BY A PERSON IN COMMERCIAL TRANSACTIONS IN THE ORDINARY COURSE OF THE PERSON’S REGULAR TRADE, BUSINESS OR INVESTMENTS.
  - (b) MEMBERSHIP OR UNION DUES THAT DO NOT EXCEED \$5,000 FROM ANY ONE PERSON IN A CALENDAR YEAR.
2. “CAMPAIGN MEDIA SPENDING”:
  - (a) MEANS SPENDING MONIES OR ACCEPTING IN-KIND CONTRIBUTIONS TO PAY FOR ANY OF THE FOLLOWING:
    - (i) A PUBLIC COMMUNICATION THAT EXPRESSLY ADVOCATES FOR OR AGAINST THE NOMINATION, OR ELECTION OF A CANDIDATE.
    - (ii) A PUBLIC COMMUNICATION THAT PROMOTES, SUPPORTS, ATTACKS OR OPPOSES A CANDIDATE WITHIN SIX MONTHS PRECEDING AN ELECTION INVOLVING THAT CANDIDATE.
    - (iii) A PUBLIC COMMUNICATION THAT REFERS TO A CLEARLY IDENTIFIED CANDIDATE WITHIN NINETY DAYS BEFORE A PRIMARY ELECTION UNTIL THE TIME OF THE GENERAL ELECTION AND THAT IS DISSEMINATED IN THE JURISDICTION WHERE THE CANDIDATE’S ELECTION IS TAKING PLACE.

- (iv) A PUBLIC COMMUNICATION THAT PROMOTES, SUPPORTS, ATTACKS OR OPPOSES THE QUALIFICATION OR APPROVAL OF ANY STATE OR LOCAL INITIATIVE OR REFERENDUM.
  - (v) A PUBLIC COMMUNICATION THAT PROMOTES, SUPPORTS, ATTACKS OR OPPOSES THE RECALL OF A PUBLIC OFFICER.
  - (vi) AN ACTIVITY OR PUBLIC COMMUNICATION THAT SUPPORTS THE ELECTION OR DEFEAT OF CANDIDATES OF AN IDENTIFIED POLITICAL PARTY OR THE ELECTORAL PROSPECTS OF AN IDENTIFIED POLITICAL PARTY, INCLUDING PARTISAN VOTER REGISTRATION, PARTISAN GET-OUT-THE-VOTE ACTIVITY OR OTHER PARTISAN CAMPAIGN ACTIVITY.
  - (vii) RESEARCH, DESIGN, PRODUCTION, POLLING, DATA ANALYTICS, MAILING OR SOCIAL MEDIA LIST ACQUISITION OR ANY OTHER ACTIVITY CONDUCTED IN PREPARATION FOR OR IN CONJUNCTION WITH ANY OF THE ACTIVITIES DESCRIBED IN ITEMS (i) THROUGH (vi) OF THIS SUBDIVISION.
- (b) DOES NOT INCLUDE SPENDING MONIES OR ACCEPTING IN-KIND CONTRIBUTIONS FOR ANY OF THE FOLLOWING:
- (i) A NEWS STORY, COMMENTARY OR EDITORIAL BY ANY BROADCASTING STATION, CABLE TELEVISION OPERATOR, VIDEO SERVICE PROVIDER, PROGRAMMER OR PRODUCER, NEWSPAPER, MAGAZINE, WEBSITE OR OTHER PERIODICAL PUBLICATION THAT IS NOT OWNED OR OPERATED BY A CANDIDATE, A CANDIDATE’S SPOUSE OR A CANDIDATE COMMITTEE, POLITICAL PARTY OR POLITICAL ACTION COMMITTEE.
  - (ii) A NONPARTISAN ACTIVITY INTENDED TO ENCOURAGE VOTER REGISTRATION AND TURNOUT.
  - (iii) PUBLISHING A BOOK OR PRODUCING A DOCUMENTARY, IF THE PUBLICATION OR PRODUCTION IS FOR DISTRIBUTION TO THE GENERAL PUBLIC THROUGH TRADITIONAL DISTRIBUTION MECHANISMS OR IF A FEE IS REQUIRED TO PURCHASE THE BOOK OR VIEW THE DOCUMENTARY.
  - (iv) PRIMARY OR NONPARTISAN DEBATES BETWEEN CANDIDATES OR BETWEEN PROPONENTS AND OPPONENTS OF A STATE OR LOCAL INITIATIVE OR REFERENDUM AND ANNOUNCEMENTS OF THOSE DEBATES.
3. “CANDIDATE” HAS THE SAME MEANING AS IN SECTION 16-901.
  4. “CANDIDATE COMMITTEE” HAS THE SAME MEANING AS IN SECTION 16-901.
  5. “COMMISSION” MEANS THE CITIZENS CLEAN ELECTIONS COMMISSION.
  6. “CONTRIBUTION” MEANS MONEY, DONATION, GIFT, LOAN OR ADVANCE OR OTHER THING OF VALUE, INCLUDING GOODS AND SERVICES.
  7. “COVERED PERSON”
    - (a) MEANS ANY PERSON WHOSE TOTAL CAMPAIGN MEDIA SPENDING OR ACCEPTANCE OF IN-KIND CONTRIBUTIONS TO ENABLE CAMPAIGN MEDIA SPENDING, OR A COMBINATION OF BOTH, IN AN ELECTION CYCLE IS MORE THAN \$50,000 IN STATEWIDE CAMPAIGNS OR MORE THAN \$25,000 IN ANY OTHER TYPE OF CAMPAIGNS. FOR THE PURPOSES OF THIS CHAPTER, THE AMOUNT OF A PERSON’S CAMPAIGN MEDIA SPENDING INCLUDES CAMPAIGN MEDIA SPENDING MADE BY ENTITIES ESTABLISHED, FINANCED, MAINTAINED OR CONTROLLED BY THAT PERSON.
    - (b) DOES NOT INCLUDE:
      - (i) INDIVIDUALS WHO SPEND ONLY THEIR OWN PERSONAL MONIES FOR CAMPAIGN MEDIA SPENDING.
      - (ii) ORGANIZATIONS THAT SPEND ONLY THEIR OWN BUSINESS INCOME FOR CAMPAIGN MEDIA SPENDING.
      - (iii) A CANDIDATE COMMITTEE.
      - (iv) A POLITICAL ACTION COMMITTEE OR POLITICAL PARTY THAT RECEIVES NOT MORE THAN \$20,000 IN CONTRIBUTIONS, INCLUDING IN-KIND CONTRIBUTIONS, FROM ANY ONE PERSON IN AN ELECTION CYCLE.
  8. “ELECTION CYCLE” MEANS THE TIME BEGINNING THE DAY AFTER GENERAL ELECTION DAY IN EVEN-NUMBERED YEARS AND CONTINUING THROUGH THE END OF GENERAL ELECTION DAY IN THE NEXT EVEN-NUMBERED YEAR.
  9. “EXPRESSLY ADVOCATES” HAS THE SAME MEANING AS IN SECTION 16-901.01.
  10. “IDENTITY” MEANS:

- (a) IN THE CASE OF AN INDIVIDUAL, THE NAME, MAILING ADDRESS, OCCUPATION AND EMPLOYER OF THE INDIVIDUAL
  - (b) IN THE CASE OF ANY OTHER PERSON, THE NAME, MAILING ADDRESS, FEDERAL TAX STATUS AND STATE OF INCORPORATION, REGISTRATION OR PARTNERSHIP, IF ANY.
11. “IN-KIND CONTRIBUTION” MEANS A CONTRIBUTION OF GOODS, SERVICES OR ANYTHING OF VALUE THAT IS PROVIDED WITHOUT CHARGE OR AT LESS THAN THE USUAL AND NORMAL CHARGE.
12. “ORIGINAL MONIES” MEANS BUSINESS INCOME OR AN INDIVIDUAL’S PERSONAL MONIES.
13. “PERSON” INCLUDES BOTH A NATURAL PERSON AND AN ENTITY SUCH AS A CORPORATION, LIMITED LIABILITY COMPANY, LABOR ORGANIZATION, PARTNERSHIP OR ASSOCIATION, REGARDLESS OF LEGAL FORM.
14. “PERSONAL MONIES”
- (a) MEANS ANY OF THE FOLLOWING:
    - (i) ANY ASSET OF AN INDIVIDUAL THAT, AT THE TIME THE INDIVIDUAL ENGAGED IN CAMPAIGN MEDIA SPENDING OR TRANSFERRED MONIES TO ANOTHER PERSON FOR SUCH SPENDING, THE INDIVIDUAL HAD LEGAL CONTROL OVER AND RIGHTFUL TITLE TO.
    - (ii) INCOME RECEIVED BY AN INDIVIDUAL OR THE INDIVIDUAL’S SPOUSE, INCLUDING SALARY AND OTHER EARNED INCOME FROM BONA FIDE EMPLOYMENT, DIVIDENDS AND PROCEEDS FROM THE INDIVIDUAL’S PERSONAL INVESTMENTS OR BEQUESTS TO THE INDIVIDUAL, INCLUDING INCOME FROM TRUSTS ESTABLISHED BY BEQUESTS.
    - (iii) A PORTION OF ASSETS THAT ARE JOINTLY OWNED BY THE INDIVIDUAL AND THE INDIVIDUAL’S SPOUSE EQUAL TO THE INDIVIDUAL’S SHARE OF THE ASSET UNDER THE INSTRUMENT OF CONVEYANCE OR OWNERSHIP. IF NO SPECIFIC SHARE IS INDICATED BY AN INSTRUMENT OF CONVEYANCE OR OWNERSHIP, THE VALUE IS ONE-HALF THE VALUE OF THE PROPERTY OR ASSET.
  - (b) DOES NOT MEAN ANY ASSET OR INCOME RECEIVED FROM ANY PERSON FOR THE PURPOSE OF INFLUENCING ANY ELECTION.
15. “POLITICAL ACTION COMMITTEE” HAS THE SAME MEANING AS IN SECTION 16-901.
16. “POLITICAL PARTY” HAS THE SAME MEANING AS IN SECTION 16-901.
17. “PUBLIC COMMUNICATION”
- (a) MEANS A PAID COMMUNICATION TO THE PUBLIC BY MEANS OF BROADCAST, CABLE, SATELLITE, INTERNET OR ANOTHER DIGITAL METHOD, NEWSPAPER, MAGAZINE, OUTDOOR ADVERTISING FACILITY, MASS MAILING OR ANOTHER MASS DISTRIBUTION, TELEPHONE BANK OR ANY OTHER FORM OF GENERAL PUBLIC POLITICAL ADVERTISING OR MARKETING, REGARDLESS OF MEDIUM.
  - (b) DOES NOT INCLUDE COMMUNICATIONS BETWEEN AN ORGANIZATION AND ITS EMPLOYEES, STOCKHOLDERS OR BONA FIDE MEMBERS.
18. “TRACEABLE MONIES” MEANS:
- (a) MONIES THAT HAVE BEEN GIVEN, LOANED OR PROMISED TO BE GIVEN TO A COVERED PERSON AND FOR WHICH NO DONOR HAS OPTED OUT OF THEIR USE OR TRANSFER FOR CAMPAIGN MEDIA SPENDING PURSUANT TO SECTION 16-972.
  - (b) MONIES USED TO PAY FOR IN-KIND CONTRIBUTIONS TO A COVERED PERSON TO ENABLE CAMPAIGN MEDIA SPENDING.
19. “TRANSFER RECORDS” MEANS A WRITTEN RECORD OF THE IDENTITY OF EACH PERSON THAT DIRECTLY OR INDIRECTLY CONTRIBUTED OR TRANSFERRED MORE THAN \$2,500 OF ORIGINAL MONIES USED FOR CAMPAIGN MEDIA SPENDING, THE AMOUNT OF EACH CONTRIBUTION OR TRANSFER AND THE PERSON TO WHOM THOSE MONIES WERE TRANSFERRED.

**16-972. Campaign media spending; transfer records; written notice; donor opt-out; disclosure of previous records**

- A. A COVERED PERSON MUST MAINTAIN TRANSFER RECORDS. THE COVERED PERSON MUST MAINTAIN THESE RECORDS FOR AT LEAST FIVE YEARS AND PROVIDE THE RECORDS ON REQUEST TO THE COMMISSION.
- B. BEFORE THE COVERED PERSON MAY USE OR TRANSFER A DONOR’S MONIES FOR CAMPAIGN MEDIA SPENDING, THE DONOR MUST BE NOTIFIED IN WRITING THAT THE MONIES MAY BE SO

USED AND MUST BE GIVEN AN OPPORTUNITY TO OPT OUT OF HAVING THE DONATION USED OR TRANSFERRED FOR CAMPAIGN MEDIA SPENDING. THE NOTICE UNDER THIS SUBSECTION MUST:

1. INFORM DONORS THAT THEIR MONIES MAY BE USED FOR CAMPAIGN MEDIA SPENDING AND THAT INFORMATION ABOUT DONORS MAY HAVE TO BE REPORTED TO THE APPROPRIATE GOVERNMENT AUTHORITY IN THIS STATE FOR DISCLOSURE TO THE PUBLIC.
  2. INFORM DONORS THAT THEY CAN OPT OUT OF HAVING THEIR MONIES USED OR TRANSFERRED FOR CAMPAIGN MEDIA SPENDING BY NOTIFYING THE COVERED PERSON IN WRITING WITHIN TWENTY-ONE DAYS AFTER RECEIVING THE NOTICE.
  3. COMPLY WITH RULES ADOPTED BY THE COMMISSION PURSUANT TO THIS CHAPTER TO ENSURE THAT THE NOTICE IS CLEARLY VISIBLE AND THAT IT ACCOMPLISHES THE PURPOSES OF THIS SECTION.
- C. THE NOTICE REQUIRED BY THIS SECTION MAY BE PROVIDED TO THE DONOR BEFORE OR AFTER THE COVERED PERSON RECEIVES A DONOR’S MONIES, BUT THE DONOR’S MONIES MAY NOT BE USED OR TRANSFERRED FOR CAMPAIGN MEDIA SPENDING UNTIL AT LEAST TWENTY-ONE DAYS AFTER THE NOTICE IS PROVIDED OR UNTIL THE DONOR PROVIDES WRITTEN CONSENT PURSUANT TO THIS SECTION, WHICHEVER IS EARLIER.
- D. ANY PERSON THAT DONATES TO A COVERED PERSON MORE THAN \$5,000 IN TRACEABLE MONIES IN AN ELECTION CYCLE MUST INFORM THAT COVERED PERSON IN WRITING, WITHIN TEN DAYS AFTER RECEIVING A WRITTEN REQUEST FROM THE COVERED PERSON, OF THE IDENTITY OF EACH OTHER PERSON THAT DIRECTLY OR INDIRECTLY CONTRIBUTED MORE THAN \$2,500 IN ORIGINAL MONIES BEING TRANSFERRED AND THE AMOUNT OF EACH OTHER PERSON’S ORIGINAL MONIES BEING TRANSFERRED. IF THE ORIGINAL MONIES WERE PREVIOUSLY TRANSFERRED, THE DONOR MUST DISCLOSE ALL SUCH PREVIOUS TRANSFERS OF MORE THAN \$2,500 AND IDENTIFY THE INTERMEDIARIES. THE DONOR MUST MAINTAIN THESE RECORDS FOR AT LEAST FIVE YEARS AND PROVIDE THE RECORDS ON REQUEST TO THE COMMISSION.
- E. ANY PERSON THAT MAKES AN IN-KIND CONTRIBUTION TO A COVERED PERSON OF MORE THAN \$5,000 IN AN ELECTION CYCLE TO ENABLE CAMPAIGN MEDIA SPENDING MUST INFORM THAT COVERED PERSON IN WRITING, AT THE TIME THE IN-KIND CONTRIBUTION IS MADE OR PROMISED TO BE MADE, OF THE IDENTITY OF EACH OTHER PERSON THAT DIRECTLY OR INDIRECTLY CONTRIBUTED OR PROVIDED MORE THAN \$2,500 IN ORIGINAL MONIES USED TO PAY FOR THE IN-KIND CONTRIBUTION AND THE AMOUNT OF EACH OTHER PERSON’S ORIGINAL MONIES SO USED. IF THE ORIGINAL MONIES WERE PREVIOUSLY TRANSFERRED, THE IN-KIND DONOR MUST DISCLOSE ALL SUCH PREVIOUS TRANSFERS OF MORE THAN \$2,500 AND IDENTIFY THE INTERMEDIARIES. THE IN-KIND DONOR MUST MAINTAIN THESE RECORDS FOR AT LEAST FIVE YEARS AND PROVIDE THE RECORDS ON REQUEST TO THE COMMISSION.

**16-973. Disclosure reports: exceptions**

- A. WITHIN FIVE DAYS AFTER FIRST SPENDING MONIES OR ACCEPTING IN-KIND CONTRIBUTIONS TOTALING \$50,000 OR MORE DURING AN ELECTION CYCLE ON CAMPAIGN MEDIA SPENDING IN STATEWIDE CAMPAIGNS OR \$25,000 OR MORE DURING THE ELECTION CYCLE IN ANY OTHER TYPE OF CAMPAIGNS, A COVERED PERSON SHALL FILE WITH THE SECRETARY OF STATE AN INITIAL REPORT THAT DISCLOSES ALL OF THE FOLLOWING:
1. THE IDENTITY OF THE PERSON THAT OWNS OR CONTROLS THE TRACEABLE MONIES.
  2. THE IDENTITY OF ANY ENTITY ESTABLISHED, FINANCED, MAINTAINED OR CONTROLLED BY THE PERSON THAT OWNS OR CONTROLS THE TRACEABLE MONIES AND THAT MAINTAINS ITS OWN TRANSFER RECORDS AND THAT ENTITY’S RELATIONSHIP TO THE COVERED PERSON.
  3. THE NAME, MAILING ADDRESS AND POSITION OF THE INDIVIDUAL WHO IS THE CUSTODIAN OF THE TRANSFER RECORDS.
  4. THE NAME, MAILING ADDRESS AND POSITION OF AT LEAST ONE INDIVIDUAL WHO CONTROLS, DIRECTLY OR INDIRECTLY, HOW THE TRACEABLE MONIES ARE SPENT.
  5. THE TOTAL AMOUNT OF TRACEABLE MONIES OWNED OR CONTROLLED BY THE COVERED PERSON ON THE DATE THE REPORT IS MADE.

6. THE IDENTITY OF EACH DONOR OF ORIGINAL MONIES WHO CONTRIBUTED, DIRECTLY OR INDIRECTLY, MORE THAN \$5,000 OF TRACEABLE MONIES OR IN-KIND CONTRIBUTIONS FOR CAMPAIGN MEDIA SPENDING DURING THE ELECTION CYCLE TO THE COVERED PERSON AND THE DATE AND AMOUNT OF EACH OF THE DONOR'S CONTRIBUTIONS.
  7. THE IDENTITY OF EACH PERSON THAT ACTED AS AN INTERMEDIARY AND THAT TRANSFERRED, IN WHOLE OR IN PART, TRACEABLE MONIES OF MORE THAN \$5,000 FROM ORIGINAL SOURCES TO THE COVERED PERSON AND THE DATE, AMOUNT AND SOURCE, BOTH ORIGINAL AND INTERMEDIATE, OF THE TRANSFERRED MONIES.
  8. THE IDENTITY OF EACH PERSON THAT RECEIVED FROM THE COVERED PERSON DISBURSEMENTS TOTALING \$10,000 OR MORE OF TRACEABLE MONIES DURING THE ELECTION CYCLE AND THE DATE AND PURPOSE OF EACH DISBURSEMENT, INCLUDING THE FULL NAME AND OFFICE SOUGHT OF ANY CANDIDATE OR A DESCRIPTION OF ANY BALLOT PROPOSITION THAT WAS SUPPORTED, OPPOSED OR REFERENCED IN A PUBLIC COMMUNICATION THAT WAS PAID FOR, IN WHOLE OR IN PART, WITH THE DISBURSED MONIES.
  9. THE IDENTITY OF ANY PERSON WHOSE TOTAL CONTRIBUTIONS OF TRACEABLE MONIES TO THE COVERED PERSON CONSTITUTED MORE THAN HALF OF THE TRACEABLE MONIES OF THE COVERED PERSON AT THE START OF THE ELECTION CYCLE.
- B. AFTER A COVERED PERSON MAKES AN INITIAL REPORT, EACH TIME THE COVERED PERSON SPENDS MONIES OR ACCEPTS IN-KIND CONTRIBUTIONS TOTALING AN ADDITIONAL \$25,000 OR MORE DURING AN ELECTION CYCLE ON CAMPAIGN MEDIA SPENDING IN STATEWIDE CAMPAIGNS OR AN ADDITIONAL \$15,000 OR MORE ON CAMPAIGN MEDIA SPENDING DURING AN ELECTION CYCLE IN ANY OTHER TYPE OF CAMPAIGNS, THAT COVERED PERSON SHALL FILE WITH THE SECRETARY OF STATE WITHIN THREE DAYS AFTER SPENDING MONIES OR ACCEPTING THE IN-KIND CONTRIBUTION A REPORT THAT DISCLOSES ANY INFORMATION THAT HAS CHANGED SINCE THE MOST RECENT REPORT WAS MADE PURSUANT TO THIS SECTION.
  - C. WHEN THE INFORMATION REQUIRED PURSUANT TO SUBSECTION A, PARAGRAPHS 1 THROUGH 4 OF THIS SECTION HAS CHANGED SINCE IT WAS PREVIOUSLY REPORTED, THE CHANGED INFORMATION SHALL BE REPORTED TO THE SECRETARY OF STATE WITHIN TWENTY DAYS, EXCEPT THAT THERE IS NO OBLIGATION TO REPORT CHANGES THAT OCCUR MORE THAN ONE YEAR AFTER THE MOST RECENT REPORT SHOULD HAVE BEEN FILED PURSUANT TO THIS SECTION.
  - D. TO DETERMINE THE SOURCES, INTERMEDIARIES AND AMOUNTS OF INDIRECT CONTRIBUTIONS RECEIVED, A COVERED PERSON MAY RELY ON THE INFORMATION IT RECEIVED PURSUANT TO SECTION 16-972, UNLESS THE COVERED PERSON KNOWS OR HAS REASON TO KNOW THAT THE INFORMATION RELIED ON IS FALSE OR UNRELIABLE.
  - E. WHEN A COVERED PERSON TRANSFERS MORE THAN \$5,000 IN TRACEABLE MONIES TO ANOTHER COVERED PERSON, OR AFTER RECEIVING THE REQUIRED NOTICE UNDER SECTION 16-972, SUBSECTION B, FAILS TO OPT OUT OF HAVING PREVIOUSLY TRANSFERRED MONIES USED FOR CAMPAIGN MEDIA SPENDING, A TRANSFER RECORD MUST BE PROVIDED TO THE RECIPIENT COVERED PERSON THAT IDENTIFIES EACH PERSON THAT DIRECTLY OR INDIRECTLY CONTRIBUTED MORE THAN \$2,500 OF THE ORIGINAL MONIES BEING TRANSFERRED, THE AMOUNT OF EACH PERSON'S ORIGINAL MONIES BEING TRANSFERRED, AND ANY OTHER PERSON THAT PREVIOUSLY TRANSFERRED THE ORIGINAL MONIES.
  - F. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE IDENTITY OF AN ORIGINAL SOURCE THAT IS OTHERWISE PROTECTED FROM DISCLOSURE BY LAW OR A COURT ORDER OR THAT DEMONSTRATES TO THE SATISFACTION OF THE COMMISSION THAT THERE IS A REASONABLE PROBABILITY THAT PUBLIC KNOWLEDGE OF THE ORIGINAL SOURCE'S IDENTITY WOULD SUBJECT THE SOURCE OR THE SOURCE'S FAMILY TO A SERIOUS RISK OF PHYSICAL HARM SHALL NOT BE DISCLOSED OR INCLUDED IN A DISCLAIMER.
  - G. THIS SECTION DOES NOT REQUIRE PUBLIC DISCLOSURE OF OR A DISCLAIMER REGARDING THE IDENTITY OF AN ORIGINAL SOURCE THAT CONTRIBUTES, DIRECTLY OR THROUGH INTERMEDIARIES, \$5,000 OR LESS IN MONIES OR IN-KIND CONTRIBUTIONS DURING AN ELECTION CYCLE TO A COVERED PERSON FOR CAMPAIGN MEDIA SPENDING.
  - H. ALL DISCLOSURE REPORTS MADE PURSUANT TO THIS SECTION SHALL BE MADE ELECTRONICALLY TO THE SECRETARY OF STATE AND TO ANY OTHER BODY AS DIRECTED BY

LAW. OFFICIALS SHALL PROMPTLY MAKE THE INFORMATION PUBLIC AND PROVIDE IT TO THE COMMISSION ELECTRONICALLY. ALL DISCLOSURE REPORTS ARE SUBJECT TO PENALTY OF PERJURY.

- I. EXCEPT AS PROVIDED IN SUBSECTION J OF THIS SECTION, A POLITICAL ACTION COMMITTEE OR POLITICAL PARTY THAT IS A COVERED PERSON MAY SATISFY THE TIMING REQUIREMENTS FOR REPORTING IN THIS SECTION BY FILING THE PERIODIC CAMPAIGN FINANCE REPORTS AS REQUIRED BY LAW FOR POLITICAL ACTION COMMITTEES AND POLITICAL PARTIES, PROVIDED THAT THE DISCLOSURES REQUIRED BY THIS SECTION ARE INCLUDED IN THOSE PERIODIC REPORTS, INCLUDING THE REQUIREMENT TO IDENTIFY THE ORIGINAL SOURCES OF TRACEABLE MONIES WHO GAVE, DIRECTLY OR INDIRECTLY, AND ANY INTERMEDIARIES WHO TRANSFERRED, DIRECTLY OR INDIRECTLY, MORE THAN \$5,000 IN TRACEABLE MONIES TO THE COVERED PERSON DURING THE ELECTION CYCLE.
- J. IF A POLITICAL ACTION COMMITTEE OR POLITICAL PARTY THAT IS A COVERED PERSON SPENDS MONIES OR ACCEPTS IN-KIND CONTRIBUTIONS WITHIN 20 DAYS OF AN ELECTION THAT WOULD REQUIRE A REPORT UNDER THIS SECTION, IT SHALL FILE A REPORT PURSUANT TO THIS SECTION WITHIN 3 DAYS OF THAT SPENDING OR IN-KIND CONTRIBUTION.

**16-974. Citizens clean elections commission; powers and duties; rules**

- A. THE COMMISSION IS THE PRIMARY AGENCY AUTHORIZED TO IMPLEMENT AND ENFORCE THIS CHAPTER. THE COMMISSION MAY DO ANY OF THE FOLLOWING:
  - 1. ADOPT AND ENFORCE RULES.
  - 2. ISSUE AND ENFORCE CIVIL SUBPOENAS, INCLUDING THIRD-PARTY SUBPOENAS.
  - 3. INITIATE ENFORCEMENT ACTIONS.
  - 4. CONDUCT FACT-FINDING HEARINGS AND INVESTIGATIONS.
  - 5. IMPOSE CIVIL PENALTIES FOR NONCOMPLIANCE, INCLUDING PENALTIES FOR LATE OR INCOMPLETE DISCLOSURES AND FOR ANY OTHER VIOLATIONS OF THIS CHAPTER.
  - 6. SEEK LEGAL AND EQUITABLE RELIEF IN COURT AS NECESSARY.
  - 7. ESTABLISH THE RECORDS PERSONS MUST MAINTAIN TO SUPPORT THEIR DISCLOSURES.
  - 8. PERFORM ANY OTHER ACT THAT MAY ASSIST IN IMPLEMENTING THIS CHAPTER.
- B. IF THE COMMISSION IMPOSES A CIVIL PENALTY ON A PERSON AND THAT PERSON DOES NOT TIMELY SEEK JUDICIAL REVIEW, THE COMMISSION MAY FILE A CERTIFIED COPY OF ITS ORDER REQUIRING PAYMENT OF THE CIVIL PENALTY WITH THE CLERK OF THE SUPERIOR COURT IN ANY COUNTY OF THIS STATE. THE CLERK SHALL TREAT THE COMMISSION ORDER IN THE SAME MANNER AS A JUDGMENT OF THE SUPERIOR COURT. A COMMISSION ORDER FILED PURSUANT TO THIS SUBSECTION HAS THE SAME EFFECT AS A JUDGMENT OF THE SUPERIOR COURT AND MAY BE RECORDED, ENFORCED OR SATISFIED IN THE SAME MANNER. A FILING FEE IS NOT REQUIRED FOR AN ACTION FILED UNDER THIS SUBSECTION.
- C. THE COMMISSION SHALL ESTABLISH DISCLAIMER REQUIREMENTS FOR PUBLIC COMMUNICATIONS BY COVERED PERSONS. A POLITICAL ACTION COMMITTEE THAT COMPLIES WITH THESE REQUIREMENTS NEED NOT SEPARATELY COMPLY WITH THE REQUIREMENTS PRESCRIBED IN SECTION 16-925, SUBSECTION B. PUBLIC COMMUNICATIONS BY COVERED PERSONS SHALL STATE, AT A MINIMUM, THE NAMES OF THE TOP THREE DONORS WHO DIRECTLY OR INDIRECTLY MADE THE THREE LARGEST CONTRIBUTIONS OF ORIGINAL MONIES DURING THE ELECTION CYCLE TO THE COVERED PERSON. IF IT IS NOT TECHNOLOGICALLY POSSIBLE FOR A PUBLIC COMMUNICATION DISSEMINATED ON THE INTERNET OR BY SOCIAL MEDIA MESSAGE, TEXT MESSAGE OR SHORT MESSAGE SERVICE TO PROVIDE ALL THE INFORMATION REQUIRED BY THIS SUBSECTION, THE PUBLIC COMMUNICATION MUST PROVIDE A MEANS FOR VIEWERS TO OBTAIN, IMMEDIATELY AND EASILY, THE REQUIRED INFORMATION WITHOUT HAVING TO RECEIVE EXTRANEIOUS INFORMATION.
- D. THE COMMISSION'S RULES AND ANY COMMISSION ENFORCEMENT ACTIONS PURSUANT TO THIS CHAPTER ARE NOT SUBJECT TO THE APPROVAL OF OR ANY PROHIBITION OR LIMIT IMPOSED BY ANY OTHER EXECUTIVE OR LEGISLATIVE GOVERNMENTAL BODY OR OFFICIAL. NOTWITHSTANDING ANY LAW TO THE CONTRARY, RULES ADOPTED PURSUANT TO THIS CHAPTER ARE EXEMPT FROM TITLE 41, CHAPTERS 6 AND 6.1.
- E. THE COMMISSION SHALL ESTABLISH A PROCESS TO REIMBURSE THE SECRETARY OF STATE AND ANY OTHER AGENCY THAT INCURS COSTS TO IMPLEMENT OR ENFORCE THIS CHAPTER.

- F. THE COMMISSION MAY ADJUST THE CONTRIBUTION AND EXPENDITURE THRESHOLDS IN THIS CHAPTER TO REFLECT INFLATION.

**16-975. Structured transactions prohibited**

A PERSON MAY NOT STRUCTURE OR ASSIST IN STRUCTURING, OR ATTEMPT OR ASSIST IN AN ATTEMPT TO STRUCTURE ANY SOLICITATION, CONTRIBUTION, DONATION, EXPENDITURE, DISBURSEMENT OR OTHER TRANSACTION TO EVADE THE REPORTING REQUIREMENTS OF THIS CHAPTER OR ANY RULE ADOPTED PURSUANT TO THIS CHAPTER.

**16-976. Penalties; separate account; use of monies; surcharge**

- A. THE CIVIL PENALTY FOR ANY VIOLATION OF THIS CHAPTER SHALL BE AT LEAST THE AMOUNT OF THE UNDISCLOSED OR IMPROPERLY DISCLOSED CONTRIBUTION AND NOT MORE THAN THREE TIMES THAT AMOUNT. FOR VIOLATIONS OF SECTION 16-975, THE RELEVANT AMOUNT FOR THE PURPOSES OF CALCULATING THE CIVIL PENALTY IS THE AMOUNT DETERMINED BY THE COMMISSION TO CONSTITUTE A STRUCTURED TRANSACTION.
- B. CIVIL PENALTIES COLLECTED FOR VIOLATIONS OF THIS CHAPTER SHALL BE DEPOSITED IN A SEPARATE ACCOUNT IN THE CITIZENS CLEAN ELECTIONS FUND ESTABLISHED PURSUANT TO CHAPTER 6, ARTICLE 2 OF THIS TITLE AND USED TO DEFRAY THE COSTS OF IMPLEMENTING AND ENFORCING THIS CHAPTER. ANY MONIES IN THIS ACCOUNT THAT ARE NOT USED TO IMPLEMENT AND ENFORCE THIS CHAPTER MAY BE USED FOR OTHER COMMISSION-APPROVED PURPOSES.
- C. AN ADDITIONAL SURCHARGE OF ONE PERCENT SHALL BE IMPOSED ON CIVIL AND CRIMINAL PENALTIES AND THE PROCEEDS DEPOSITED IN THE ACCOUNT IN THE CITIZENS CLEAN ELECTIONS FUND ESTABLISHED PURSUANT TO SUBSECTION B OF THIS SECTION. THE SURCHARGE SHALL BE SUSPENDED FOR ONE TO THREE YEARS AT A TIME IF THE COMMISSION DETERMINES THAT, DURING THAT PERIOD, IT CAN PERFORM THE ACTIONS REQUIRED BY THIS CHAPTER WITHOUT THE MONIES FROM THE SURCHARGE.

**16-977. Complaints; investigations; civil action**

- A. ANY QUALIFIED VOTER IN THIS STATE MAY FILE A VERIFIED COMPLAINT WITH THE COMMISSION AGAINST A PERSON THAT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER. THE COMPLAINT MUST STATE THE FACTUAL BASIS FOR BELIEVING THAT THERE HAS BEEN A VIOLATION OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER.
- B. IF THE COMMISSION DETERMINES THAT THE COMPLAINT, IF TRUE, STATES THE FACTUAL BASIS FOR A VIOLATION OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER, THE COMMISSION SHALL INVESTIGATE THE ALLEGATIONS AND PROVIDE THE ALLEGED VIOLATOR WITH AN OPPORTUNITY TO BE HEARD.
- C. IF THE COMMISSION DISMISSES AT ANY TIME THE COMPLAINT OR TAKES NO SUBSTANTIVE ENFORCEMENT ACTION WITHIN NINETY DAYS AFTER RECEIVING THE COMPLAINT, THE COMPLAINANT MAY BRING A CIVIL ACTION AGAINST THE COMMISSION TO COMPEL IT TO TAKE ENFORCEMENT ACTION, AND THE COURT SHALL REVIEW *DE NOVO* WHETHER THE COMMISSION'S DISMISSAL OR FAILURE TO ACT WAS REASONABLE. IN ANY MATTER IN WHICH THE CIVIL PENALTY FOR THE ALLEGED VIOLATION COULD BE GREATER THAN \$50,000, ANY CLAIM OR DEFENSE BY THE COMMISSION OF PROSECUTORIAL DISCRETION IS NOT A BASIS FOR DISMISSING OR FAILING TO ACT ON THE COMPLAINT. A COURT MAY AWARD THE PREVAILING PARTY IN A CIVIL ACTION UNDER THIS SUBSECTION ITS REASONABLE ATTORNEYS' FEES.

**16-978. Legislative, county and municipal provisions**

- A. NOTHING IN THIS ACT PREVENTS THE LEGISLATURE, A COUNTY BOARD OF SUPERVISORS OR A MUNICIPAL GOVERNMENT FROM ENACTING OR ENFORCING ADDITIONAL OR MORE STRINGENT DISCLOSURE PROVISIONS FOR CAMPAIGN MEDIA SPENDING THAN

THOSE CONTAINED IN THIS CHAPTER. ADDITIONAL OR MORE STRINGENT DISCLOSURE REQUIREMENTS FOR CAMPAIGN MEDIA SPENDING FURTHER THE PURPOSES OF THIS CHAPTER.

- B. TO THE EXTENT THE PROVISIONS OF THIS CHAPTER CONFLICT WITH ANY STATE LAW, THIS CHAPTER GOVERNS.

**16-979. Legal defense; standing; legal counsel**

- A. A POLITICAL ACTION COMMITTEE FORMED TO SUPPORT THE VOTERS’ RIGHT TO KNOW ACT OR ANY OF THAT COMMITTEE’S OFFICERS MAY INTERVENE AS OF RIGHT IN ANY LEGAL ACTION BROUGHT TO CHALLENGE THE VALIDITY OF THIS CHAPTER OR ANY OF ITS PROVISIONS.
- B. THE COMMISSION HAS STANDING TO DEFEND THIS CHAPTER ON BEHALF OF THIS STATE IN ANY LEGAL ACTION BROUGHT TO CHALLENGE THE VALIDITY OF THIS CHAPTER OR ANY OF ITS PROVISIONS.
- C. NOTWITHSTANDING ANY LAW, THE COMMISSION HAS EXCLUSIVE AND INDEPENDENT AUTHORITY TO SELECT LEGAL COUNSEL TO REPRESENT THE COMMISSION REGARDING ITS DUTIES UNDER THIS CHAPTER AND TO DEFEND THIS CHAPTER IF ITS VALIDITY IS CHALLENGED.

**Sec. 4. Severability**

The provisions of this act are severable. If any provision of this act or application of a provision to any person or circumstance is held to be unconstitutional, the remainder of this act, and the application of the provisions to any person or circumstance, shall not be affected by the holding. The invalidated provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of this act.

**Sec. 5. Applicability; Implementation**

- A. If approved by the voters, this act applies to all elections and contributions that occur after the effective date of this act.
- B. If approved by the voters, the Commission shall publicize the requirements of these provisions.
- C. The rights established by this Act shall be construed broadly.

**ANALYSIS BY LEGISLATIVE COUNCIL**

Proposition 211 would amend the campaign finance laws to require a “covered person” (a person or entity that spends \$50,000 or more on campaign media for a statewide candidate during a two-year election cycle or that spends \$25,000 or more on campaign media for any other type of candidate during a two-year election cycle) to disclose the identity of anyone who is the original source of donations of more than \$5,000 to the covered person for campaign media. Proposition 211 also requires any donor that contributes more than \$5,000 to a covered person during an election cycle for campaign media spending to identify to the covered person the identity of any person who contributed more than \$2,500 in original money that is being transferred to that donor, as well as any intermediaries that previously transferred the funds being given to the covered person.

Proposition 211 also provides for the following:

- 1. Requires that the covered person’s disclosure report to the Secretary of State include the following:
  - a. The identity of the person who owns or controls the money being contributed.
  - b. The identity of any entity established, financed, maintained or controlled by the person who owns or controls the money being contributed and that maintains its own transfer records.
  - c. The name, address and position of the person who is the custodian of the transfer records.
  - d. The name, address and position of the person who controls how the money is spent.
  - e. The total amount of money donated or promised to be donated to the covered person for use or transfer for campaign media spending on the date the covered person makes the report.
  - f. The identity of each donor of original monies who contributed, directly or indirectly, more than \$5,000 of money or in-kind contributions for campaign media spending during the election cycle to the covered person, and the date and amount of each donor’s contribution.
- 2. Requires each covered person to file a supplemental report within three days each time the covered person spends money or accepts in-kind contributions totaling an additional \$25,000 for campaign media spending during an election cycle



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8 Mark Kimble; Steve M. Titla; Thomas M. Collins

9  
10 ARIZONA SUPERIOR COURT  
11 MARICOPA COUNTY

12 Center for Arizona Policy, Inc., et al.,

13 Plaintiffs,

14 v.

15 Arizona Secretary of State, et al.,

16 Defendants.

No. CV2022-016564

**COMMISSION DEFENDANTS’  
RESPONSE TO PLAINTIFFS’  
MOTION FOR PRELIMINARY  
INJUNCTION**

(Assigned to the Honorable  
M. Scott McCoy)

17  
18 At Arizona’s 2022 general election, 72% of voters approved the Voters’ Right to  
19 Know Act (“Prop. 211” or “the Act”), a citizens’ initiative that requires new disclosures  
20 regarding significant expenditures to influence Arizona elections.<sup>1</sup> (Ex. 1, Decl. of Tom  
21 Collins, ¶ 10.) Courts have upheld campaign finance disclosure requirements for decades,  
22 recognizing the importance of providing voters information about who is spending money  
23 to try to influence their votes and other significant interests served by these disclosures.  
24 *E.g., Citizens United v. FEC*, 558 U.S. 310, 367 (2010); *Buckley v. Valeo*, 424 U.S. 1, 67  
25 (1976). Despite the caselaw supporting disclosure, Plaintiffs ask this Court to enjoin the  
26 Act’s implementation.

27  
28 <sup>1</sup> A copy of Proposition 211 and information about it from the Arizona Secretary of State  
Publicity Pamphlet is attached as Exhibit 2.

1 Plaintiffs fail to satisfy any of the requirements for a preliminary injunction. First,  
2 their legal claims fail on the merits. They claim (at 8-15) that the Act violates the Arizona  
3 Constitution’s free speech clause (Article 2, Section 6) under a strict scrutiny analysis.  
4 But the applicable standard is exacting scrutiny, and the Act easily satisfies that test.  
5 Second, Plaintiffs argue (at 15-16) that the Act’s disclosure requirements violate the  
6 Arizona Constitution’s Private Affairs Clause (Article 2, Section 8). The Private Affairs  
7 Clause, however, is our state constitution’s analogue to the Fourth Amendment of the  
8 U.S. Constitution. It does not limit legislative authority to establish campaign finance  
9 disclosure requirements. Third, Plaintiffs claim (at 16-18) that certain aspects of the Act  
10 violate the separation of powers. But the Act gives the Commission rulemaking and  
11 enforcement authority consistent with the role of an executive branch agency responsible  
12 for implementing this new law.

13 Throughout their Motion, Plaintiffs make arguments that may be relevant to an as-  
14 applied challenge but do not support their facial challenge of the Act. For example,  
15 Plaintiffs repeatedly assert that they fear future threats for their advocacy. That subjective  
16 fear, however, does not support a facial challenge. If genuine risks of harm might result  
17 from disclosure, this Court can address those fact-specific cases as they arise and based  
18 on adequate evidence. Speculative possibilities, however, do not justify enjoining the Act  
19 now.

20 Plaintiffs have not established irreparable injury, or that the balance of harms and  
21 public interest support a preliminary injunction. The Clean Elections Commission  
22 (“Commission”) has not yet begun its formal rulemaking process, and the Secretary of  
23 State does not yet have its system established for submitting the reports that are required  
24 under the Act. (Ex. 1, Collins Decl. ¶¶ 12, 13.) No disclosures or enforcements related  
25 to a failure to disclose are imminent. (*Id.*) Enjoining efforts to implement the Act now  
26 only thwarts the ability to implement this new law for the 2024 elections. (*Id.* ¶ 15.)

27 The Commission, which is charged with enforcing the Act, asks this Court to deny  
28 Plaintiffs’ Motion and permit implementation to proceed.

1 **OVERVIEW OF THE ACT**

2 Prop. 211 (codified at A.R.S. §§ 16-971 to -979) complements long-standing  
3 campaign finance laws in Arizona by requiring disclosure of the original sources of the  
4 funds that exceed specified thresholds and are used for “campaign media spending.”  
5 A.R.S. § 16-973. The Act enhances disclosure by requiring “the prompt, accessible,  
6 comprehensible and public disclosure of the identity of all donors who give more than  
7 \$5,000 to fund campaign media spending in an election cycle.” Prop. 211, § 2(A). It  
8 requires disclosure of “the source of those monies, regardless of whether the monies  
9 passed through one or more intermediaries.” *Id.* These disclosures target what is often  
10 referred to as “dark money,” which results from “laundering political contributions, often  
11 through multiple intermediaries, to hide the original source.” *Id.* § 2(C).

12 Prop. 211 requires “covered person[s]” to report the original sources of the monies  
13 they spend on public election campaigns. A.R.S. § 16-973(A). “Covered person[s]” are  
14 people and entities whose “campaign media spending” exceeds \$50,000 in statewide  
15 campaigns and \$25,000 in other campaigns. A.R.S. § 16-971(7). “Campaign media  
16 spending” is the spending of money for certain public communications on elections  
17 campaigns, as well as the research and similar preparatory acts that go into creating such  
18 communications. A.R.S. § 16-971(2). Public communications via methods of mass  
19 distribution are covered. A.R.S. § 16-971(17). Examples of “[c]ampaign media  
20 spending” include spending on public communications expressly advocating for or  
21 against a candidate, public communications referring to a clearly identified candidate  
22 within 90 days before a primary disseminated within the jurisdiction of the candidate’s  
23 election, and public communications supporting or opposing state initiatives and  
24 referenda. *Id.* § 16-971(2).

25 A covered person must notify donors when the covered person wants to use the  
26 donors’ funds for campaign media spending; the donors then have a chance to opt out.  
27 *Id.* § 16-972(B). If a donor opts out, their money cannot be used on campaign media  
28 spending, and the donor is not disclosed. *Id.*

1 Prop. 211 requires disclosing donors of more than \$5,000. *Id.* § 16-973(A)(6).  
2 This \$5,000 threshold requirement, combined with the \$50,000 threshold spending  
3 requirement for “covered persons,” means that Prop. 211 reaches only major donors to  
4 major spenders of campaign media spending.

5 The covered person is responsible for collecting the information necessary so that  
6 it can disclose who provided the “original monies” being spent. A.R.S. §§ 16-971(1),  
7 (12), (14), 16-972(D), (E). The covered person may rely on this donor-provided  
8 information, except in the narrow circumstance where the covered person knows or has  
9 reason to know the information is false. A.R.S. § 16-973(D). The covered person files  
10 reports with the Secretary of State after it spends money on elections communications  
11 above the designated thresholds. A.R.S. § 16-973(A), (B).

12 Prop. 211 also requires the Commission to establish disclaimer rules for “public  
13 communications.” A.R.S. § 16-974(C). A disclaimer identifies who paid for the  
14 communication (*e.g.*, “Paid for by the XYZ Committee for Arizonans”). At a minimum,  
15 the disclaimer rules will require disclosing the names of at least the top three donors of  
16 original monies to the covered person paying for the communication. *Id.*

17 Prop. 211 permits donors to obtain an exemption from disclosure if the disclosure  
18 would subject them or their families to serious risks of physical harm. A.R.S. § 16-  
19 973(F). Donors may demonstrate the need for an exemption to the Commission. The Act  
20 also protects the identity of an original source of funds “that is otherwise protected from  
21 disclosure by law or a court order.” *Id.*

22 Although reports are submitted to the Secretary, the Commission enforces Prop.  
23 211. A.R.S. § 16-974(A). It may adopt and enforce rules, initiate enforcement actions,  
24 and perform other acts that may assist in implementing Prop. 211. *Id.* The Act imposes  
25 no criminal penalties; it authorizes only civil remedies for violations. A.R.S. § 16-  
26 976(A). It also prohibits structuring transactions to evade the Act’s reporting  
27 requirements. A.R.S. § 16-975.

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## ARGUMENT

Plaintiffs cannot meet the high bar for a preliminary injunction in this facial challenge. “A party seeking a preliminary injunction must show (1) a strong likelihood of success on the merits, (2) the possibility of irreparable harm if the relief is not granted, (3) the balance of hardships favors the party seeking injunctive relief, and (4) public policy favors granting the injunctive relief.” *Fann v. State*, 251 Ariz. 425, 432, ¶ 16 (2021). Courts apply a sliding scale in assessing these elements, such that a plaintiff must show either (1) *probable* success and the possibility of irreparable harm or (2) “the presence of serious questions” and a balancing of hardships sharply in favor of the plaintiff. *Id.* Plaintiffs fail to satisfy any of the elements for a preliminary injunction.

### **I. Plaintiffs cannot show a likelihood of success on the merits.**

To prevail in their facial challenge, Plaintiffs must show that “no set of circumstances exists under which the Act would be valid.” *State v. Wein*, 244 Ariz. 22, 31, ¶ 34 (2018). They “bear[] the ‘heavy burden’” of demonstrating that the Act is unconstitutional. *Id.* at 26, ¶ 10 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). And in a facial challenge, courts will not “speculate about hypothetical or imaginary cases.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449-51 (2008) (internal quotation marks omitted). “[F]acial challenges leave no room for particularized considerations and *must* fail as long as the challenged regulation has *any* legitimate application.” *Gaspee Project v. Mederos*, 13 F.4th 79, 92 (1st Cir. 2021) (rejecting challenge to Rhode Island election disclosure law) (emphasis added).

None of Plaintiffs’ legal theories comes close to clearing this high bar.

#### **A. Prop. 211 does not violate the Free Speech Clause.**

##### **1. Structurally, Arizona’s Constitution does not prohibit disclosure requirements.**

Under Arizona’s Free Speech Clause, “every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.” Ariz. Const. art. II, § 6. Plaintiffs rely on the often-repeated statement that the Arizona’s Free Speech Clause

1 gives broader protection than its federal counterpart. But nothing in the text, original  
2 public meaning, or caselaw suggests that Article 2, Section 6 prohibits disclosure  
3 requirements like those in Prop. 211. Just the opposite is true.

4 Three other sections in the Constitution show that the drafters and the public  
5 recognized that disclosing and limiting campaign expenditures do not violate the Free  
6 Speech Clause. Arizona’s Constitution required the first Legislature to pass legislation  
7 to publicize “all campaign contributions to, and expenditures of campaign committees  
8 and candidates for public office.” Ariz. Const. art. VII, § 16. And Article 14, Section 18,  
9 prohibits corporations from “any contribution of money or anything of value for the  
10 purpose of influencing any election or official action.” The Constitution also mandates  
11 that there “shall be enacted registration and other laws to secure the purity of elections  
12 and guard against abuses of the elective franchise.” Ariz. Const. art. VII, § 12. Plaintiffs’  
13 spin on the Free Speech Clause is irreconcilable with these provisions.

14 Arizona’s founders did not perceive any conflict between (1) the speech  
15 protections in Article 2, Section 6; and (2) the provisions requiring mandatory disclosure,  
16 prohibiting corporate contributions, and ensuring election purity. Particularly  
17 considering these other constitutional provisions, Arizona’s Constitution does not  
18 prohibit the voters from requiring campaign disclosures.

## 19 2. The Act satisfies exacting scrutiny.

20 Plaintiffs erroneously claim (at 10) that strict scrutiny applies. When a statute  
21 “ultimately implicate[s] only disclosure requirements,” however, courts apply the “less  
22 stringent exacting scrutiny” standard. *Comm. for Justice & Fairness v. Ariz. Sec’y of*  
23 *State’s Office*, 235 Ariz. 347, 355-56, ¶¶ 32-33 (App. 2014) (“CJF”) (citation and internal  
24 quotation marks omitted). A law satisfies the “exacting scrutiny” standard if there is “a  
25 substantial relation between the disclosure requirement and a sufficiently important  
26 government interest.” *Id.* ¶ 33 (citation and quotation marks omitted); *see also Citizens*  
27 *United*, 558 U.S. at 366-67 (applying exacting scrutiny to disclosure requirement). Prop.  
28 211 easily satisfies this standard.

1                                    **a.     Multiple “sufficiently important” interests support Prop.**  
2                                    **211.**

3                                    Plaintiffs’ broad and categorical claims on content-based restrictions and strict  
4 scrutiny ignore well-established law upholding election disclosure requirements.  
5 “Disclaimer and disclosure requirements may burden the ability to speak, but they . . . ‘do  
6 not prevent anyone from speaking.’” *Citizens United*, 558 U.S. at 366 (quoting  
7 *McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 201 (2003)).

8                                    At least four “sufficiently important” and compelling governmental interests have  
9 long justified disclosure requirements. First, “disclosure provides the electorate with  
10 information ‘as to where political campaign money comes from and how it is spent by  
11 the candidate’ in order to aid the voters in evaluating those who seek federal office.”  
12 *Buckley*, 424 U.S. at 66-67 (quoting H.R. Rep. No. 92-564 at 4 (1971)); *see also First*  
13 *Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978) (“Identification of the  
14 source of advertising may be required as a means of disclosure, so that the people will be  
15 able to evaluate the arguments to which they are being subjected.”); *Citizens United*, 558  
16 U.S. at 368 (incorporating *Bellotti’s* assertion regarding the identification of the source of  
17 advertising to explain that “disclaimers avoid confusion by making clear that the ads are  
18 not funded by a candidate or political party”). Second, disclosure deters corruption by  
19 exposing the sources of monies, permitting the people to assess post-election favors from  
20 elected officials to donors. *Buckley*, 424 U.S. at 67. Third, a state has a compelling  
21 interest to ensure the integrity of the election process. *Eu v. S.F. Cnty. Democratic*  
22 *Cent. Comm.*, 489 U.S. 214, 231 (1989); *Chula Vista Citizens for Jobs and Fair*  
23 *Competition v. Norris*, 782 F.3d 520, 531 (9th Cir. 2015); *Adventure Commc’ns, Inc. v.*  
24 *Ky. Registry of Election Fin.*, 191 F.3d 429, 442 (4th Cir. 1999). Fourth, the government  
25 has an administrative interest to promote those interests. *Buckley*, 424 U.S. at 67-68.

26                                    The Court of Appeals explained that the informational interest, the anti-corruption  
27 interest, and the administrative interest are “sufficiently important” to justify disclosure  
28 requirements. *CJF*, 235 Ariz. at 360, ¶ 48. Other courts overwhelmingly share that view.

1 See, e.g., *Gaspee Project*, 13 F.4th at 86 (interest “in an informed electorate vis-à-vis the  
2 source of election-related spending is sufficiently important to support reasonable  
3 disclosure and disclaimer regulations.”); *Alaska Right to Life Comm. V. Miles*, 441 F.3d  
4 773, 791-92 (9th Cir. 2006) (the informational interest, the anti-corruption interest, and  
5 the administrative interest are all “compelling”); *Adventure Commc’ns*, 191 F.3d at 442  
6 (maintaining the integrity of the state election system and eradicating campaign finance  
7 corruption are “compelling”).

8 Arizona adopted verbatim the Free Speech Clause in Washington’s constitution.  
9 The Washington Supreme Court also finds the information interest is “sufficiently  
10 important” to justify campaign disclosure requirements. *State v. Grocery Mfrs.’ Ass’n*,  
11 461 P.3d 334, 346, ¶ 42 (Wash. 2020). The right to “receive information” is a  
12 “fundamental counterpart of the right of free speech.” *Id.* ¶ 45. Thus, “the public, acting  
13 as legislators on ballot propositions . . . , has the right to know who is lobbying for their  
14 votes.” *Id.* Simply put, a “state has a compelling interest in preserving the integrity of  
15 its election process . . . .” *Pilloud v. King Cnty. Republican Cent. Comm.*, 404 P.3d 500,  
16 502, ¶ 9 (Wash. 2017).<sup>2</sup>

17 Other states likewise routinely recognize these interests. States have a compelling  
18 interest in “protecting the integrity and fairness of the political process.” *Bemis*  
19 *Pentecostal Church v. State*, 731 S.W.2d 897, 903-07 (Tenn. 1987) (approving  
20 regulations). The state’s interest includes allowing the public “to gather as much  
21 information as possible in order to judge the merits of different positions,” which includes  
22 “the sources and credibility of the advocate.” *Corsi v. Elections Comm’n*, 981 N.E.2d  
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25 <sup>2</sup> Washington’s Free Speech and Private Affairs Clauses are identical to Arizona’s. Wash.  
26 Const. art. I, §§ 5 & 7. Arizona courts regularly consider Washington judicial decisions  
27 when interpreting similar constitutional provisions. E.g., *Coleman v. Johnson*, 235 Ariz.  
28 195, 198, ¶ 14 (2014). In 1973, Washington voters adopted a Fair Campaign Practices  
Act with similar disclosure requirements, including by “incidental committees.” Wash.  
Rev. Code. Ch. 42.17A. The Commission cannot find, and Plaintiffs did not cite, one  
Washington decision interpreting its Free Speech or Private Affairs Clauses to limit that  
state’s disclosure requirements as Plaintiffs here advocate.

1 919, 925-26 (Ohio Ct. App. 2012) (quoting *Human Life of Washington, Inc. v.*  
2 *Brumsickle*, 624 F.3d 990, 1008 (9th Cir. 2010)).

3 The Act “is intended to protect and promote rights and interests guaranteed by the  
4 First Amendment . . . and . . . the Arizona Constitution, to promote self-government and  
5 ensure responsive officeholders, to prevent corruption and to assist Arizona voters in  
6 making informed election decisions by securing their right to know the source of monies  
7 used to influence Arizona elections.” Prop. 211, § 2(B). Those are important—even  
8 compelling—state interests.

9 **b. Prop. 211 is narrowly drawn and substantially advances**  
10 **the governmental interests it serves.**

11 Prop. 211 permits Arizona’s campaign finance disclosure requirements to reach  
12 the original sources of the funds. Previously, contributors who wanted to keep their  
13 identities hidden were able to do so, which left the public uninformed about who is  
14 spending money to influence their votes. (*See Ex. 2, Secretary of State Publicity*  
15 *Pamphlet Excerpt at 10-14*). Prop. 211 substantially advances the governmental interests  
16 described above and is narrowly drawn.

17 One way in which the Act is narrowly drawn is its focus on significant spending.  
18 Only people/entities who spend more than \$50,000 in statewide campaigns or more than  
19 \$25,000 in other campaigns are subject to the Act’s disclosure requirements. A.R.S. § 16-  
20 973(A); *see also* A.R.S. § 16-971(7) (defining “[c]overed person”). It does not apply to  
21 individuals or organizations that spend their own money on “campaign media spending.”  
22 A.R.S. § 16-971(7)(b)(i), (ii). In addition, only donors that give more than \$5,000 are  
23 disclosed. A.R.S. § 16-973(A)(6), (G). There are exceptions to prevent harm to donors  
24 in particular cases. A.R.S. § 16-973(F). A donor can also opt out of permitting the  
25 organization to use its donation for campaign media spending and thereby avoid  
26 disclosure. A.R.S. § 16-972(B), (C).

27 Plaintiffs focus on limited portions of the Act to argue it is not sufficiently narrow  
28 to advance its purposes. For example, they argue (at 12) that the Act’s disclaimer

1 requirement in A.R.S. § 16-974(C) applies to the largest three donors, even if those donors  
2 have opted out of having their contributions used for campaign media spending. The Act  
3 does not specifically address how the opt-out affects disclaimer requirements, but the  
4 issue arises because A.R.S. § 16-974(C) refers to “original monies” rather than “traceable  
5 monies.” *See also* A.R.S. § 16-971(18) (defining “[t]raceable monies”). But traceable  
6 monies are only funds given to a covered person “for which no donor has opted out” for  
7 use for campaign media spending. *Id.* It seems illogical for disclaimer rules to encompass  
8 donors who opted out. In any event, the Commission is charged with establishing rules  
9 regarding disclaimer requirements, and that issue may be addressed in that rule-making  
10 process. Until the Commission adopts rules, however, there is no enforceable disclaimer  
11 obligation.<sup>3</sup> (*See* Ex. 1, Collins Decl. ¶ 12.)

12 Plaintiffs also criticize (at 13) the “opt out” provision because the Act requires the  
13 covered person to notify donors of the ability to opt out, but it does not require the covered  
14 person’s donors to make the same disclosure to those from whom it receives monies. The  
15 covered person is responsible for compliance with the Act’s requirements. A.R.S. §§ 16-  
16 972, -973. Covered persons or their donors may provide additional notices and opt out  
17 opportunities to intermediaries, but the Act does not require it. This policy choice does  
18 not mean the Act is not sufficiently narrow to serve its purpose, which is to provide  
19 additional disclosure.

20 Plaintiffs further argue (at 13) that A.R.S. § 16-973(F)’s exemption is too narrow.  
21 This subsection protects from disclosure an original source that is “otherwise protected  
22 from disclosure by law or a court order or that demonstrates to the satisfaction of the  
23 Commission that there is a reasonable probability that public knowledge of the original  
24 source’s identity would subject the source or the source’s family to a serious risk of  
25 physical harm.” A.R.S § 16-973 (F). If the Constitution requires greater protections, a  
26 court order can provide that protection. But Plaintiffs’ broad attack on disclosure would

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28 <sup>3</sup> This disclaimer obligation does not affect the disclosures filed with the Secretary.

1 apply not just to Prop. 211 but to all campaign finance disclosures. No case supports  
2 invalidating laws that inform voters who is spending money to influence their votes.

3 Plaintiffs' reliance on *NAACP v. Alabama* does not withstand scrutiny. In *NAACP*,  
4 the law required "reveal[ing] to the State's Attorney General the names and addresses of  
5 all its Alabama members and agents, without regard to their positions or functions in the  
6 Association." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 451 (1958).  
7 Comparing election disclosure requirements to the law requiring disclosure of the  
8 NAACP's membership rolls is like "equating aardvarks with alligators." *Gaspee Project*,  
9 13 F.4th at 94 (rejecting facial challenge to election expenditure disclosure requirements).  
10 Unlike this case, "*NAACP* involved what amounted to an as-applied challenge based on  
11 a developed record." *Id.* (describing record evidence that NAACP's members endured  
12 economic reprisal, loss of employment, and physical threats when identities revealed).

13 This is also not *Shelton v. Tucker*, 364 U.S. 479 (1960). (Mot. at 13.) That statute  
14 required teachers to disclose *all* organizations they had belonged or contributed to in the  
15 previous five years. The Court's conclusion that the law violated the teachers' rights does  
16 not support their arguments against Prop. 211's disclosure.

17 Plaintiffs repeatedly rely on *McIntyre v. Ohio Elections Commission*, 514 U.S.  
18 334, 357 (1995), which involved a complete prohibition on any anonymous campaign  
19 literature. But as the First Circuit recently held, *McIntyre* does not apply to "election-  
20 related disclosures." *Gaspee Project*, 13 F.4th at 93-94. Unlike the law in *McIntyre*,  
21 Prop. 211 requires disclosure in limited situations.

22 Not surprisingly, federal courts have also rejected Plaintiffs' compelled speech  
23 argument. *Buckley*, 424 U.S. at 66 ("compelled disclosure" of election contributions  
24 serves "governmental interests sufficiently important to outweigh the possibility of  
25 infringement."). If Plaintiffs were correct, then nearly any reporting requirement for any  
26 transaction would be "compelled speech."

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1 Plaintiffs also wrongly label (at 10-11) the Act as discriminatory, contending that  
2 highly controversial or competitive campaigns will attract more donations. This kind of  
3 natural consequence does not render a law unconstitutional.

4 Their claim that Prop. 211's disclosure requirements violate Arizona's Free  
5 Speech Clause fails.

6 **3. The Act is not unconstitutionally vague or overbroad.**

7 Plaintiffs claim (at 14-15) that two parts of the definition of "campaign media  
8 spending" are unconstitutionally vague and overly broad. Not so.

9 As a threshold matter, these narrow concerns do not support a facial challenge. A  
10 facial vagueness claim must fail if the law is valid "in the vast majority of its intended  
11 applications"; hypothetical situations will not support a facial attack. *Hill v. Colorado*,  
12 530 U.S. 703, 733 (2000) (quoting *United States v. Raines*, 362 U.S. 17, 23 (1960))  
13 (quotation marks omitted). To prevail on an overbreadth facial challenge, "the  
14 overbreadth of a statute must not only be real, but substantial as well, judged in relation  
15 to the statute's plainly legitimate sweep." *State v. Musser*, 194 Ariz. 31, 32 (1999)  
16 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)) (quotation marks omitted).

17 Here, Prop. 211's primary reach is donors for defined electioneering  
18 communications. That reach is necessary to achieve the governmental interests  
19 elaborated above. Consequently, narrow concerns about a provision's *hypothetical* reach  
20 do not justify enjoining the Act now in a facial challenge.

21 Plaintiffs' specific examples also lack merit. They first oppose including in the  
22 definition of campaign media spending "a public communication that refers to a clearly  
23 identified candidate within ninety days before a primary election until the . . . general  
24 election and that is disseminated in the jurisdiction where the candidate's election is  
25 taking place." A.R.S. § 16-971(2)(a)(iii). This provision is like the "electioneering  
26 communication" that the Supreme Court previously considered and upheld. *Citizens*  
27 *United*, 558 U.S. at 320-21 (defining "electioneering communications"), 366-71  
28 (upholding the disclosure requirement). Similarly, this aspect of the Act's definitions

1 poses no constitutional problem. Plaintiffs reference limitations on 501(c)(3)  
2 organizations, but Prop. 211’s reporting obligations do not affect whether a particular  
3 activity is permissible for a 501(c)(3) organization.

4 Second, Plaintiffs object to the portion of campaign media spending’s definition  
5 that includes “[r]esearch, design, production, polling, data analytics, mailing or social  
6 media list acquisition or any other activity conducted in preparation for or in conjunction  
7 with any of the activities.” A.R.S. § 16-971(2)(a)(vii). Plaintiffs focus (at 14) on the  
8 phrase “in preparation for or in conjunction with,” but that phrase must be read in context.  
9 The relevant activity must be “conducted in preparation for or in conjunction with” the  
10 specifically listed activities. In that context, the phrase is not vague or impermissibly  
11 broad because it still requires one of the specifically listed activities.

12 Their vagueness and overbreadth arguments fail as a facial challenge to the Act.

13 **B. Plaintiffs’ Private Affairs Clause Claim is likely to fail.**

14 Proposition 211’s disclosure requirements also do not violate the Arizona  
15 Constitution’s Private Affairs Clause. The Private Affairs Clause provides that “[n]o  
16 person shall be disturbed in his private affairs, or his home invaded, without authority of  
17 law.” Ariz. Const. art. II, § 8. “Although different in its language, [it] is of the same  
18 general effect and purpose as the Fourth Amendment.” *Malmin v. State*, 30 Ariz. 258,  
19 261 (1926); see *State v. Mixton*, 250 Ariz. 282, 290, ¶ 31 (2021) (quoting *Malmin* for the  
20 principle that the Private Affairs Clause has been given the same effect as the Fourth  
21 Amendment “since statehood”). The Arizona Supreme Court has never extended “the  
22 Private Affairs Clause’s protections beyond the Fourth Amendment’s reach, except in  
23 cases involving warrantless home entries.” *Id.* ¶ 32. It has no application here.

24 The Act’s disclosures do not concern “private affairs.” They concern disclosures  
25 related to campaign media spending in Arizona. To determine the meaning of “private  
26 affairs,” courts look to the term’s “natural, obvious, and ordinary meaning.” *Id.* ¶ 33  
27 (citation and internal quotation marks omitted). “Private” means “affecting or belonging  
28 to private individuals, as distinct from the public generally,” “peculiar to one’s self,”

1 “personal,” “alone,” “secret,” “not public,” “secluded,” “unofficial.” *Id.* at 290-91, ¶ 33  
2 (quoting *Private*, Black’s Law Dictionary (2d. ed. 1910) and *Private*, New Websterian  
3 Dictionary (1912)). Donating or passing on large contributions to affect an election is not  
4 a private affair under that clause.

5 The Arizona Constitution *required* the first Legislature to impose disclosure  
6 requirements on contributions to and expenditures by campaign committees and  
7 candidates for public office. Ariz. Const. art. VII, § 16. Expenditures for election  
8 campaigns were not a “private affair” in 1912 (or 2023). The Constitution recognizes the  
9 need for publicly disclosing campaign spending information. Prop. 211 covers  
10 communications related to elections that are intended to reach the public. It does not fall  
11 within the Private Affairs Clause.

12 Even for true private affairs, the protection is not absolute. The Constitution  
13 permits an intrusion into truly private affairs under “authority of law.” Prop. 211 is that  
14 law. Plaintiffs can claim no legitimate expectation of privacy in their campaign media  
15 spending and related donations that occur after voters approved Prop. 211. Requiring  
16 “authority of law” protects against government officials “doing their jobs according to  
17 their own ideas of how to proceed . . . .” Charles W. Johnson & Scott P. Beetham, *The*  
18 *Origin of Article I, Section 7 of the Washington State Constitution*, 31 *Seattle U. L. Rev.*  
19 431, 448 (2008). Prop. 211 avoids any such threat—it requires disclosing only specific  
20 information in limited situations.

21 Although the Court need not proceed further with its analysis, when private affairs  
22 are at issue, “the permissibility of a particular practice is judged by balancing its intrusion  
23 on the individual’s Fourth Amendment interests against its promotion of legitimate  
24 governmental interest.” *Skinner v. Ry. Labor Execs. Ass’n*, 489 U.S. 602, 619 (1989)  
25 (cleaned up). As previously explained, even if campaign media spending were considered  
26 a private affair (which it is not), Prop. 211’s disclosure requirements serve important  
27 governmental interests that justify disclosure.

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1 Plaintiffs raise no valid arguments to the contrary. They cite *Mixton* for the  
2 proposition that the Private Affairs Clause prohibits the government from reaching certain  
3 categories of information. (Mot. at 15.) This argument suffers from multiple flaws. First,  
4 *Mixton* does not support this. *Mixton* did not mention all the categories Plaintiffs specify,  
5 and it never held what Plaintiffs claim. If anything, it stated the contrary: “[T]he  
6 constitutional convention record is devoid of affirmative evidence of this sentiment.”  
7 *Mixton*, 250 Ariz. at 291, ¶ 35. Second, *Mixton* considered the need for a search warrant  
8 or court order to obtain information in a criminal investigation; it has nothing to do with  
9 disclosing election related spending required by law. Third, Plaintiffs ignore that the  
10 Private Affairs Clause does not absolutely prohibit government access to information but  
11 only requires “authority of law.”<sup>4</sup>

12 Plaintiffs (at 15 n.13) also misapply *expressio unius est exclusio alterius*. The  
13 Constitution required the first Legislature to pass a law about campaign contribution  
14 publicity. Ariz. Const. art. VII, § 16. But Article 7, Section 16 does *not* prohibit  
15 additional laws or purport to define the full scope of authority on the topic. Our Supreme  
16 Court rejected interpreting the Constitution as a limited granting of authority (as  
17 Plaintiffs’ argument requires). The “whole power not prohibited by the state and Federal  
18 constitutions is retained in the people and their elected representatives . . . . We do not  
19 look to the (state) Constitution to determine whether the Legislature is authorized to do  
20 an act, *but only to see if it is prohibited.*” *Earhart v. Frohmler*, 65 Ariz. 221, 224-25  
21 (1947) (rejecting application of *expressio unius*) (emphasis added and quotations  
22 omitted).<sup>5</sup> Article 7, Section 16 does not prohibit Prop. 211 or similar requirements; the  
23 Legislature or the voters may impose them. And Plaintiffs ignore that the provision’s  
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25 <sup>4</sup> In fact, *Mixton* held that a warrant was *not* required to obtain an IP address or subscriber  
26 information from an internet service provider. That holding is irreconcilable with  
Plaintiffs’ view of the Private Affairs Clause.

27 <sup>5</sup> This principle applies to initiatives, too. “This legislative power of the people [initiative]  
28 is as great as that of the legislature.” *League of Ariz. Cities & Towns v. Brewer*, 213 Ariz.  
557, 559 ¶ 9 (2006) (quotations omitted).

1 very existence shows that the founders did not view campaign contribution publicity as  
2 private affairs, much less falling within the Private Affairs Clause.

3 For these reasons, Plaintiffs' Private Affairs claim fails.

4 **C. Plaintiffs' Separation of Powers Claim fails.**

5 Plaintiffs allege (at 16-18) that four provisions of Prop. 211 unconstitutionally  
6 delegate legislative authority to the Commission: A.R.S. § 16-974(A)(8), (D), (F) and  
7 16-976(B). All are proper delegations of authority to the Commission, an executive  
8 branch agency.

9 Although Article III of the Arizona Constitution separates the powers of  
10 government into three branches, it has long been settled that "an entire and complete  
11 separation of power of the three branches of government" is not desirable nor was ever  
12 intended. *Sw. Eng'g Co. v. Ernst*, 79 Ariz. 403, 414-15 (1955). The Legislature has broad  
13 authority to delegate "quasi-legislative" power to the executive to administer a statute.  
14 *State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205 (1971). And if the Legislature may  
15 delegate, then the voters may, as well. Nothing in the Constitution prohibits the voters  
16 from giving rulemaking authority to an executive-branch body.

17 Because circumstances may vary, the Legislature (or here, the voters) need not  
18 specify an exact mathematical formula to the executive. *Id.* at 206. Thus, legislation may  
19 authorize the executive to exercise discretion; it suffices that the delegation be "defined  
20 with sufficient clarity to enable the [executive] to recognize its legal bounds." *3613 Ltd.*  
21 *v. Dep't of Liquor Licenses & Control*, 194 Ariz. 178, 183, ¶ 21 (App. 1999).

22 Plaintiffs first claim (at 17) Prop. 211 gives the Commission "unrestricted powers"  
23 because the Act states that "[t]he Commission's rules and any commission enforcement  
24 actions pursuant to this chapter are not subject to the approval of or any prohibition or  
25 limit imposed by any other executive or legislative governmental body or official."  
26 A.R.S. § 16-974(D). But the Constitution does not require either approval or veto power  
27 over rules or enforcement actions. The Legislature typically does not approve the  
28 executive branch's rules or enforcement actions. This would intrude on the executive

1 branch authority, particularly when the Commission’s rulemaking and enforcement  
2 powers come from the voters, not from the Legislature. As for the executive branch, the  
3 Commission is part of the executive branch, so separation-of-powers principles do not  
4 apply. Article III of the Constitution does not apply to *intra*-branch power.

5 They next challenge the Commission’s authority under § 16-974(F) to “adjust the  
6 contribution and expenditure thresholds . . . to reflect inflation.” This is a standard and  
7 narrow authority granted to the executive that helps preserve the economic significance  
8 of the contribution and expenditure thresholds. *See, e.g.*, A.R.S. §§ 16-959, 15-901.01,  
9 5-836(C)(2). The power granted by § 16-974(F) is cabined by actual inflation.<sup>6</sup> The  
10 Legislature (or the people) need not specify a mathematical formula. *Ariz. Mines Supply*,  
11 107 Ariz. at 206. It suffices to define the delegation with sufficient clarity that the  
12 executive knows the delegation’s legal bounds. *3613 Ltd.*, 194 Ariz. at 183, ¶¶ 18-22.  
13 The Constitution does not require legislative approval to make preapproved inflation  
14 adjustments.

15 Plaintiffs claim (at 17) that the Commission can use leftover money “for whatever  
16 it wants” because the Act allows the Commission to use funds for other “commission-  
17 approved” purposes. *See* A.R.S. § 16-976(B). But grants of power must be read within  
18 the statutory scheme as a whole to identify the standards that reasonably accompany them.  
19 *Ariz. Mines Supply*, 107 Ariz. at 205. The Commission can use funds only for purposes  
20 within the Commission’s power, not on “whatever it wants.”

21 Finally, § 16-974(A)(8) permits the Commission to “[p]erform any other act that  
22 may assist in implementing the chapter.” *Implementing* the Act is an executive, not  
23 legislative, function. *See State ex rel. Woods v. Block*, 189 Ariz. 269, 275 (1997) (“[T]he  
24 executive branch’s duty is to carry out the policies and purposes declared by the  
25 Legislature.”). Therefore, this provision grants executive authority and does not  
26 unconstitutionally delegate legislative authority.

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27 <sup>6</sup> Moreover, contrary to Plaintiffs’ argument (at 17), lower inflation numbers would not  
28 permit reductions in the thresholds. That would require *deflation*.

1           The two cases that Plaintiffs cite (at 16-17) are not remotely similar. Both involved  
2 broad grants of authority unlike Prop. 211. *See Tillotson v. Frohmiller*, 34 Ariz. 394,  
3 397-98, 403-07 (1928) (unconstitutional delegation to give Board of Control authority to  
4 decide to establish a banking system and construct gas plants and water plants, a printing  
5 plant for school books and “do all state printing,” and manufacturing establishments for  
6 natural products, and permitting the Board unlimited appropriations without allocating  
7 the funds); *State v. Marana Plantations, Inc.*, 75 Ariz. 111, 114-15 (1953) (permitting  
8 Board of Health “unlimited regulatory power” to “formulate general policies affecting the  
9 public health,” “regulate sanitation and sanitary practices in the interest of public health,”  
10 and “protect and promote the public health and prevent disability and mortality” was an  
11 unconstitutional delegation). Nothing in Prop. 211 includes such unbridled authority for  
12 the Commission. The initiative limits the Commission’s authority to defined  
13 contributions exceeding specified thresholds and limited to identified topics.

14           For these reasons, Plaintiffs separations of powers argument fails.<sup>7</sup>

15 **II. Plaintiffs will not suffer irreparable harm.**

16           Plaintiffs have no risk of suffering irreparable harm absent a preliminary  
17 injunction. The Commission and the Secretary are in the early phases of determining how  
18 to implement the Act. (Ex. 1, Collins Decl. ¶ 12, 13.) Prop. 211 disclosures will likely  
19 begin for the 2024 elections. (*Id.* ¶ 15.)

20           Plaintiffs assert irreparable injury by the “risk” of disclosure, but disclosure is not  
21 imminent. Plaintiffs also assert a risk of “loss of unknown donations.” (Mot. at 18.) But  
22 financial losses typically are not an irreparable injury. *Sampson v. Murray*, 415 U.S. 61,  
23 90 (1974); *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C.  
24 Cir. 1958). And their feared *potential* losses from the *risk* of future disclosure are  
25 speculative and not imminent. Moreover, Plaintiffs’ allegations of harm to them do not  
26 suffice in this facial challenge, which seeks to prevent all implementation of the Act.

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27 <sup>7</sup> Even if the Court were to find certain provisions of the Act unconstitutional, they would  
28 be severable. Prop. 211, § 4 (severability clause).

1 Finally, Plaintiffs rely on the statement in *Elrod v. Burns*, 427 U.S. 347, 373-74  
2 (1976) (plurality opinion), that the loss of First Amendment freedoms “for even minimal  
3 period of time” is irreparable injury. But in *Elrod*, the plaintiffs had to either change their  
4 political party or leave their jobs; all but one had already been fired and the last faced  
5 imminent discharge. *Id.* at 351 (plurality opinion). Plaintiffs here face no such threats.  
6 They may need to disclose more information about their political spending, but, as the  
7 Court has repeatedly stated, disclosure requirements “do not prevent anyone from  
8 speaking.” *Citizens United*, 558 U.S. at 366 (citation and quotations marks omitted).  
9 They have not established any loss of First Amendment freedoms justifying a preliminary  
10 injunction.

11 **III. The balance of hardships does not favor Plaintiffs.**

12 The balance of hardships favors a party seeking a preliminary injunction if it  
13 establishes probable success on the merits and the possibility of irreparable harm. *Shoen*  
14 *v. Shoen*, 167 Ariz. 58, 63 (App. 1990). “[T]he balance of hardships and public interest  
15 weigh against preliminary injunctive relief” when, as here, Plaintiffs did not show  
16 probable success on the merits. *Feldman v. Ariz. Sec’y of State’s Office*, 208 F. Supp. 3d  
17 1074, 1095 (D. Ariz. 2016) (refusing to enjoin statute prohibiting gathering early ballots).

18 Plaintiffs’ sole claimed “hardship” is that disclosures cannot be undone. Given  
19 the timeline related to the Act’s implementation, this does not support a preliminary  
20 injunction. (See Ex. 1, Collins Decl. ¶ 15.) “To merit a preliminary injunction, an injury  
21 ‘must be both certain and immediate,’ not ‘speculative or theoretical.’” *D.T. v. Sumner*  
22 *Cnty. Schs.*, 942 F.3d 324, 327 (6th Cir. 2019).

23 But entering an injunction means thwarting the policy goals of 1.7 million people  
24 who supported Prop. 211. They concluded that public disclosure about campaign  
25 expenditures is a crucial policy for election integrity. Meanwhile, every Plaintiff remains  
26 free to campaign, spend money to influence elections and publish web postings; there is  
27 no “hardship.” The harm to the public by blocking this new law outweighs any harms to  
28 Plaintiffs.

1 **IV. A preliminary injunction would harm the public interest.**

2 The public interest and balance of harms support denying the preliminary  
3 injunction. First, “statutes are presumptively constitutional and, absent compelling  
4 equities on the other side, . . . should remain in effect pending a final decision on the  
5 merits . . . .” *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1352  
6 (1977) (Rehnquist, J., in chambers). That presumption applies to voter initiatives: “Laws  
7 enacted by initiative, like acts of the legislature, are presumed constitutional.” *Fann*, 251  
8 Ariz. at 433, ¶ 23. “[A]ny time a state is enjoined by a court from effectuating statutes  
9 enacted by representatives of its people, it suffers a form of irreparable injury.” *New*  
10 *Motor*, 434 U.S. at 1351 (Rehnquist, J., in chambers).

11 By adopting Prop. 211 with a 72% vote, the public has spoken loudly and clearly  
12 on what the public interest is. A preliminary injunction would contravene that interest.  
13 An injunction would delay implementing Prop. 211, which will harm the public by  
14 impeding the disclosures the Act requires.

15 Throughout their Motion, Plaintiffs tried to conflate disclosing election spending  
16 with prohibiting speech. But courts across the country recognize the difference between  
17 speech prohibitions and reporting requirements. Arizona voters approved Prop. 211’s  
18 disclosure requirement for large election contributions. It does not silence speech or  
19 impose an unacceptable price for self-governance. It gives voters more information.

20 **CONCLUSION**

21 For these reasons, this Court should deny the Motion.  
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DATED this 14<sup>th</sup> day of February, 2023.

OSBORN MALEDON, P.A.

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4 of February, 2023, on:

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6 Maricopa County Superior Court

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# EXHIBIT 1



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13 Mark Kimble; Steve M. Titla; Thomas M. CollinsDenSco Investment Corporation

14 ARIZONA SUPERIOR COURT  
15 MARICOPA COUNTY

16 Center for Arizona Policy, Inc., an  
17 Arizona nonprofit corporation; Arizona  
18 Free Enterprise Club; Doe I; Doe II,

19 Plaintiffs,

20 v.

21 Arizona Secretary of State; Katie Hobbs,  
22 in her official capacity; Arizona Citizens  
23 Clean Elections Commission; Damien R.  
24 Meyer, in his official capacity as  
25 Chairman; Amy B. Chan, in her official  
26 capacity as Commissioner; Galen D.  
27 Paton, in his official capacity as  
28 Commissioner; Mark Kimble, in his  
official capacity as Commissioner; Steve  
M. Titla, in his official capacity as  
Commissioner; Thomas M. Collins, its  
executive director,

Defendants.

No. CV2022-016564

DECLARATION OF THOMAS M.  
COLLINS

(Assigned to the Honorable  
M. Scott McCoy)

I, Thomas M. Collins, declare:

1. I have personal knowledge of the facts set forth in this Declaration. I submit this Declaration in support of Citizen Clean Elections Commission’s response to Plaintiffs’ Motion for Preliminary Injunction.

1           2.     I am the Executive Director of the Citizens Clean Election Commission  
2 and have been the Executive Director since 2013.

3           3.     The position of Executive Director is established by A.R.S. § 16-955(J).  
4 As Executive Director, I supervise a staff of five and am responsible for overseeing all  
5 aspects of Clean Elections' work, subject to the direction of the five-member Clean  
6 Elections Commission.

7           4.     The Commission is a politically and geographically diverse public body.  
8 No more than two Commissioners may be from the same political party or from the  
9 same county. A.R.S. § 16-955(A).

10          5.     The Clean Elections Act, which created the Commission, was a citizen  
11 initiative approved in 1998. The Commission's original responsibilities included  
12 enforcing campaign finance reporting requirements, implementing a public campaign  
13 funding program, and providing voter education.

14          6.     The Voters' Right to Know Act, which Arizona voters approved at the  
15 November 2022 general election ("Prop. 211" or "the Act"), expanded the  
16 Commission's responsibilities.

17          7.     Prop. 211 establishes new disclosure requirements related to campaign  
18 media spending. Prop. 211 provides for disclosure of what is commonly referred to as  
19 "dark money." Prop. 211's additional disclosure will provide Arizona voters with more  
20 information about who is spending money to influence Arizona's elections.

21          8.     Any reports required under the Act will be filed electronically with the  
22 Secretary of State. While the Secretary of State's office has a campaign finance  
23 reporting web site known as Beacon, that system does not yet have functionality for the  
24 reports required by the Prop. 211.

25          9.     Although reports are filed with the Secretary of State, the Clean Elections  
26 Commission is responsible for enforcing and otherwise implementing Prop. 211. Clean  
27  
28

1 Elections may adopt and enforce rules, initiate enforcement actions, and perform other  
2 acts to implement Prop. 211.

3 10. The statewide canvass and the governor's proclamation confirming the  
4 voters' approval of Prop. 211 were completed December 5, 2022. Based on the  
5 canvass, the measure passed with support of 72% of the voters, 1,736,496 to 664,111,  
6

7 11. To prepare for its new responsibilities, the Commission discussed the Act  
8 at its December 15, 2022 and January 19, 2023 meetings. Its December meeting  
9 featured an overview of the measure by the Campaign Legal Center Action.

10 12. The Commission has not yet initiated its process to adopt rules for Prop.  
11 211. It has also taken no steps to initiate enforcement actions based on the Proposition  
12 and cannot do so until after the Commission adopts rules, and the Secretary of State  
13 begins accepting reports.

14 13. The Secretary of State does not yet have a system in place to accept  
15 reports under the Act. Based on my experience with the implementation of changes to  
16 reporting at the Secretary of State's office, I do not anticipate the filing system to be in  
17 place for elections earlier than 2024. That experience includes the development of the  
18 current system. The establishment of the current site was a lengthy process begun in  
19 2013 when the Commission authorized me to complete an interagency service  
20 agreement for the construction of a new website, included at least one system that was  
21 abandoned in 2017, [https://azcir.org/news/2017/03/22/arizona-secretary-of-state-](https://azcir.org/news/2017/03/22/arizona-secretary-of-state-michele-reagan-campaign-finance-website/)  
22 [michele-reagan-campaign-finance-website/](https://azcir.org/news/2017/03/22/arizona-secretary-of-state-michele-reagan-campaign-finance-website/), and later the launch of what is substantially  
23 available today. The Beacon system accommodates filings for state and legislative  
24 candidates, independent expenditure and ballot measure spending reports not including  
25 source funding, and other political committee reports.

26 14. The Commission's rulemaking process requires 60 days of public  
27 comment after rules are proposed. A.R.S. § 16-956(C). If significant changes in  
28 proposed rules result from the public comment, there may be an additional public

1 comment period. Commission staff is beginning the analysis necessary to draft rules for  
2 Proposition 211, but I do not anticipate having draft rules for the Commission to  
3 consider before the second quarter of 2023. Based on my experience with earlier  
4 Commission rulemaking, I estimate that Clean Elections will not adopt rules to  
5 implement Prop. 211 before the end of the third quarter.

6 15. Given the work necessary to prepare for implementation, I anticipate that  
7 Clean Elections will be able to enforce Prop. 211 in 2024 but not in 2023. The elections  
8 in 2023 are local elections. I anticipate the public communications under Prop. 211 that  
9 may trigger disclosure obligations for the elections will occur in 2024. Independent of  
10 Prop. 211, some cities that have their own original source reporting laws have a filing  
11 system available to election spenders.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed this 13<sup>th</sup> day of February, 2023.

14  
15  
16   
17 Thomas M. Collins

# EXHIBIT 2

**PROPOSITION 211****OFFICIAL TITLE****AN INITIATIVE MEASURE**

AMENDING TITLE 16, ARIZONA REVISED STATUTES BY ADDING CHAPTER 6.1; RELATING TO THE DISCLOSURE OF THE ORIGINAL SOURCE OF MONIES USED FOR CAMPAIGN MEDIA SPENDING.

Be it enacted by the People of the State of Arizona:

**Section 1. Short title**

This act may be cited as the “Voters’ Right to Know Act”.

**Section 2. Purpose and Intent**

- A. This act establishes that the People of Arizona have the right to know the original source of all major contributions used to pay, in whole or part, for campaign media spending. This right requires the prompt, accessible, comprehensible and public disclosure of the identity of all donors who give more than \$5,000 to fund campaign media spending in an election cycle and the source of those monies, regardless of whether the monies passed through one or more intermediaries.
- B. This act is intended to protect and promote rights and interests 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.
- C. By adopting this act, the People of Arizona affirm their desire to stop “dark money,” the practice of laundering political contributions, often through multiple intermediaries, to hide the original source.
- D. This act empowers the Citizens Clean Elections Commission and individual voters to enforce its disclosure requirements. Violators will be subject to significant civil penalties.

**Section 3. Title 16, Arizona Revised Statutes, is amended by adding chapter 6.1, to read:****CHAPTER 6.1. CAMPAIGN MEDIA SPENDING****ARTICLE 1. DISCLOSURE OF ORIGINAL SOURCE OF MONIES****16-971. Definitions**

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. “BUSINESS INCOME” MEANS:
  - (a) MONIES RECEIVED BY A PERSON IN COMMERCIAL TRANSACTIONS IN THE ORDINARY COURSE OF THE PERSON’S REGULAR TRADE, BUSINESS OR INVESTMENTS.
  - (b) MEMBERSHIP OR UNION DUES THAT DO NOT EXCEED \$5,000 FROM ANY ONE PERSON IN A CALENDAR YEAR.
2. “CAMPAIGN MEDIA SPENDING”:
  - (a) MEANS SPENDING MONIES OR ACCEPTING IN-KIND CONTRIBUTIONS TO PAY FOR ANY OF THE FOLLOWING:
    - (i) A PUBLIC COMMUNICATION THAT EXPRESSLY ADVOCATES FOR OR AGAINST THE NOMINATION, OR ELECTION OF A CANDIDATE.
    - (ii) A PUBLIC COMMUNICATION THAT PROMOTES, SUPPORTS, ATTACKS OR OPPOSES A CANDIDATE WITHIN SIX MONTHS PRECEDING AN ELECTION INVOLVING THAT CANDIDATE.
    - (iii) A PUBLIC COMMUNICATION THAT REFERS TO A CLEARLY IDENTIFIED CANDIDATE WITHIN NINETY DAYS BEFORE A PRIMARY ELECTION UNTIL THE TIME OF THE GENERAL ELECTION AND THAT IS DISSEMINATED IN THE JURISDICTION WHERE THE CANDIDATE’S ELECTION IS TAKING PLACE.

- (iv) A PUBLIC COMMUNICATION THAT PROMOTES, SUPPORTS, ATTACKS OR OPPOSES THE QUALIFICATION OR APPROVAL OF ANY STATE OR LOCAL INITIATIVE OR REFERENDUM.
  - (v) A PUBLIC COMMUNICATION THAT PROMOTES, SUPPORTS, ATTACKS OR OPPOSES THE RECALL OF A PUBLIC OFFICER.
  - (vi) AN ACTIVITY OR PUBLIC COMMUNICATION THAT SUPPORTS THE ELECTION OR DEFEAT OF CANDIDATES OF AN IDENTIFIED POLITICAL PARTY OR THE ELECTORAL PROSPECTS OF AN IDENTIFIED POLITICAL PARTY, INCLUDING PARTISAN VOTER REGISTRATION, PARTISAN GET-OUT-THE-VOTE ACTIVITY OR OTHER PARTISAN CAMPAIGN ACTIVITY.
  - (vii) RESEARCH, DESIGN, PRODUCTION, POLLING, DATA ANALYTICS, MAILING OR SOCIAL MEDIA LIST ACQUISITION OR ANY OTHER ACTIVITY CONDUCTED IN PREPARATION FOR OR IN CONJUNCTION WITH ANY OF THE ACTIVITIES DESCRIBED IN ITEMS (i) THROUGH (vi) OF THIS SUBDIVISION.
- (b) DOES NOT INCLUDE SPENDING MONIES OR ACCEPTING IN-KIND CONTRIBUTIONS FOR ANY OF THE FOLLOWING:
- (i) A NEWS STORY, COMMENTARY OR EDITORIAL BY ANY BROADCASTING STATION, CABLE TELEVISION OPERATOR, VIDEO SERVICE PROVIDER, PROGRAMMER OR PRODUCER, NEWSPAPER, MAGAZINE, WEBSITE OR OTHER PERIODICAL PUBLICATION THAT IS NOT OWNED OR OPERATED BY A CANDIDATE, A CANDIDATE’S SPOUSE OR A CANDIDATE COMMITTEE, POLITICAL PARTY OR POLITICAL ACTION COMMITTEE.
  - (ii) A NONPARTISAN ACTIVITY INTENDED TO ENCOURAGE VOTER REGISTRATION AND TURNOUT.
  - (iii) PUBLISHING A BOOK OR PRODUCING A DOCUMENTARY, IF THE PUBLICATION OR PRODUCTION IS FOR DISTRIBUTION TO THE GENERAL PUBLIC THROUGH TRADITIONAL DISTRIBUTION MECHANISMS OR IF A FEE IS REQUIRED TO PURCHASE THE BOOK OR VIEW THE DOCUMENTARY.
  - (iv) PRIMARY OR NONPARTISAN DEBATES BETWEEN CANDIDATES OR BETWEEN PROPONENTS AND OPPONENTS OF A STATE OR LOCAL INITIATIVE OR REFERENDUM AND ANNOUNCEMENTS OF THOSE DEBATES.
3. “CANDIDATE” HAS THE SAME MEANING AS IN SECTION 16-901.
  4. “CANDIDATE COMMITTEE” HAS THE SAME MEANING AS IN SECTION 16-901.
  5. “COMMISSION” MEANS THE CITIZENS CLEAN ELECTIONS COMMISSION.
  6. “CONTRIBUTION” MEANS MONEY, DONATION, GIFT, LOAN OR ADVANCE OR OTHER THING OF VALUE, INCLUDING GOODS AND SERVICES.
  7. “COVERED PERSON”
    - (a) MEANS ANY PERSON WHOSE TOTAL CAMPAIGN MEDIA SPENDING OR ACCEPTANCE OF IN-KIND CONTRIBUTIONS TO ENABLE CAMPAIGN MEDIA SPENDING, OR A COMBINATION OF BOTH, IN AN ELECTION CYCLE IS MORE THAN \$50,000 IN STATEWIDE CAMPAIGNS OR MORE THAN \$25,000 IN ANY OTHER TYPE OF CAMPAIGNS. FOR THE PURPOSES OF THIS CHAPTER, THE AMOUNT OF A PERSON’S CAMPAIGN MEDIA SPENDING INCLUDES CAMPAIGN MEDIA SPENDING MADE BY ENTITIES ESTABLISHED, FINANCED, MAINTAINED OR CONTROLLED BY THAT PERSON.
    - (b) DOES NOT INCLUDE:
      - (i) INDIVIDUALS WHO SPEND ONLY THEIR OWN PERSONAL MONIES FOR CAMPAIGN MEDIA SPENDING.
      - (ii) ORGANIZATIONS THAT SPEND ONLY THEIR OWN BUSINESS INCOME FOR CAMPAIGN MEDIA SPENDING.
      - (iii) A CANDIDATE COMMITTEE.
      - (iv) A POLITICAL ACTION COMMITTEE OR POLITICAL PARTY THAT RECEIVES NOT MORE THAN \$20,000 IN CONTRIBUTIONS, INCLUDING IN-KIND CONTRIBUTIONS, FROM ANY ONE PERSON IN AN ELECTION CYCLE.
  8. “ELECTION CYCLE” MEANS THE TIME BEGINNING THE DAY AFTER GENERAL ELECTION DAY IN EVEN-NUMBERED YEARS AND CONTINUING THROUGH THE END OF GENERAL ELECTION DAY IN THE NEXT EVEN-NUMBERED YEAR.
  9. “EXPRESSLY ADVOCATES” HAS THE SAME MEANING AS IN SECTION 16-901.01.
  10. “IDENTITY” MEANS:

- (a) IN THE CASE OF AN INDIVIDUAL, THE NAME, MAILING ADDRESS, OCCUPATION AND EMPLOYER OF THE INDIVIDUAL
  - (b) IN THE CASE OF ANY OTHER PERSON, THE NAME, MAILING ADDRESS, FEDERAL TAX STATUS AND STATE OF INCORPORATION, REGISTRATION OR PARTNERSHIP, IF ANY.
11. “IN-KIND CONTRIBUTION” MEANS A CONTRIBUTION OF GOODS, SERVICES OR ANYTHING OF VALUE THAT IS PROVIDED WITHOUT CHARGE OR AT LESS THAN THE USUAL AND NORMAL CHARGE.
12. “ORIGINAL MONIES” MEANS BUSINESS INCOME OR AN INDIVIDUAL’S PERSONAL MONIES.
13. “PERSON” INCLUDES BOTH A NATURAL PERSON AND AN ENTITY SUCH AS A CORPORATION, LIMITED LIABILITY COMPANY, LABOR ORGANIZATION, PARTNERSHIP OR ASSOCIATION, REGARDLESS OF LEGAL FORM.
14. “PERSONAL MONIES”
- (a) MEANS ANY OF THE FOLLOWING:
    - (i) ANY ASSET OF AN INDIVIDUAL THAT, AT THE TIME THE INDIVIDUAL ENGAGED IN CAMPAIGN MEDIA SPENDING OR TRANSFERRED MONIES TO ANOTHER PERSON FOR SUCH SPENDING, THE INDIVIDUAL HAD LEGAL CONTROL OVER AND RIGHTFUL TITLE TO.
    - (ii) INCOME RECEIVED BY AN INDIVIDUAL OR THE INDIVIDUAL’S SPOUSE, INCLUDING SALARY AND OTHER EARNED INCOME FROM BONA FIDE EMPLOYMENT, DIVIDENDS AND PROCEEDS FROM THE INDIVIDUAL’S PERSONAL INVESTMENTS OR BEQUESTS TO THE INDIVIDUAL, INCLUDING INCOME FROM TRUSTS ESTABLISHED BY BEQUESTS.
    - (iii) A PORTION OF ASSETS THAT ARE JOINTLY OWNED BY THE INDIVIDUAL AND THE INDIVIDUAL’S SPOUSE EQUAL TO THE INDIVIDUAL’S SHARE OF THE ASSET UNDER THE INSTRUMENT OF CONVEYANCE OR OWNERSHIP. IF NO SPECIFIC SHARE IS INDICATED BY AN INSTRUMENT OF CONVEYANCE OR OWNERSHIP, THE VALUE IS ONE-HALF THE VALUE OF THE PROPERTY OR ASSET.
  - (b) DOES NOT MEAN ANY ASSET OR INCOME RECEIVED FROM ANY PERSON FOR THE PURPOSE OF INFLUENCING ANY ELECTION.
15. “POLITICAL ACTION COMMITTEE” HAS THE SAME MEANING AS IN SECTION 16-901.
16. “POLITICAL PARTY” HAS THE SAME MEANING AS IN SECTION 16-901.
17. “PUBLIC COMMUNICATION”
- (a) MEANS A PAID COMMUNICATION TO THE PUBLIC BY MEANS OF BROADCAST, CABLE, SATELLITE, INTERNET OR ANOTHER DIGITAL METHOD, NEWSPAPER, MAGAZINE, OUTDOOR ADVERTISING FACILITY, MASS MAILING OR ANOTHER MASS DISTRIBUTION, TELEPHONE BANK OR ANY OTHER FORM OF GENERAL PUBLIC POLITICAL ADVERTISING OR MARKETING, REGARDLESS OF MEDIUM.
  - (b) DOES NOT INCLUDE COMMUNICATIONS BETWEEN AN ORGANIZATION AND ITS EMPLOYEES, STOCKHOLDERS OR BONA FIDE MEMBERS.
18. “TRACEABLE MONIES” MEANS:
- (a) MONIES THAT HAVE BEEN GIVEN, LOANED OR PROMISED TO BE GIVEN TO A COVERED PERSON AND FOR WHICH NO DONOR HAS OPTED OUT OF THEIR USE OR TRANSFER FOR CAMPAIGN MEDIA SPENDING PURSUANT TO SECTION 16-972.
  - (b) MONIES USED TO PAY FOR IN-KIND CONTRIBUTIONS TO A COVERED PERSON TO ENABLE CAMPAIGN MEDIA SPENDING.
19. “TRANSFER RECORDS” MEANS A WRITTEN RECORD OF THE IDENTITY OF EACH PERSON THAT DIRECTLY OR INDIRECTLY CONTRIBUTED OR TRANSFERRED MORE THAN \$2,500 OF ORIGINAL MONIES USED FOR CAMPAIGN MEDIA SPENDING, THE AMOUNT OF EACH CONTRIBUTION OR TRANSFER AND THE PERSON TO WHOM THOSE MONIES WERE TRANSFERRED.

**16-972. Campaign media spending; transfer records; written notice; donor opt-out; disclosure of previous records**

- A. A COVERED PERSON MUST MAINTAIN TRANSFER RECORDS. THE COVERED PERSON MUST MAINTAIN THESE RECORDS FOR AT LEAST FIVE YEARS AND PROVIDE THE RECORDS ON REQUEST TO THE COMMISSION.
- B. BEFORE THE COVERED PERSON MAY USE OR TRANSFER A DONOR’S MONIES FOR CAMPAIGN MEDIA SPENDING, THE DONOR MUST BE NOTIFIED IN WRITING THAT THE MONIES MAY BE SO

USED AND MUST BE GIVEN AN OPPORTUNITY TO OPT OUT OF HAVING THE DONATION USED OR TRANSFERRED FOR CAMPAIGN MEDIA SPENDING. THE NOTICE UNDER THIS SUBSECTION MUST:

1. INFORM DONORS THAT THEIR MONIES MAY BE USED FOR CAMPAIGN MEDIA SPENDING AND THAT INFORMATION ABOUT DONORS MAY HAVE TO BE REPORTED TO THE APPROPRIATE GOVERNMENT AUTHORITY IN THIS STATE FOR DISCLOSURE TO THE PUBLIC.
  2. INFORM DONORS THAT THEY CAN OPT OUT OF HAVING THEIR MONIES USED OR TRANSFERRED FOR CAMPAIGN MEDIA SPENDING BY NOTIFYING THE COVERED PERSON IN WRITING WITHIN TWENTY-ONE DAYS AFTER RECEIVING THE NOTICE.
  3. COMPLY WITH RULES ADOPTED BY THE COMMISSION PURSUANT TO THIS CHAPTER TO ENSURE THAT THE NOTICE IS CLEARLY VISIBLE AND THAT IT ACCOMPLISHES THE PURPOSES OF THIS SECTION.
- C. THE NOTICE REQUIRED BY THIS SECTION MAY BE PROVIDED TO THE DONOR BEFORE OR AFTER THE COVERED PERSON RECEIVES A DONOR’S MONIES, BUT THE DONOR’S MONIES MAY NOT BE USED OR TRANSFERRED FOR CAMPAIGN MEDIA SPENDING UNTIL AT LEAST TWENTY-ONE DAYS AFTER THE NOTICE IS PROVIDED OR UNTIL THE DONOR PROVIDES WRITTEN CONSENT PURSUANT TO THIS SECTION, WHICHEVER IS EARLIER.
- D. ANY PERSON THAT DONATES TO A COVERED PERSON MORE THAN \$5,000 IN TRACEABLE MONIES IN AN ELECTION CYCLE MUST INFORM THAT COVERED PERSON IN WRITING, WITHIN TEN DAYS AFTER RECEIVING A WRITTEN REQUEST FROM THE COVERED PERSON, OF THE IDENTITY OF EACH OTHER PERSON THAT DIRECTLY OR INDIRECTLY CONTRIBUTED MORE THAN \$2,500 IN ORIGINAL MONIES BEING TRANSFERRED AND THE AMOUNT OF EACH OTHER PERSON’S ORIGINAL MONIES BEING TRANSFERRED. IF THE ORIGINAL MONIES WERE PREVIOUSLY TRANSFERRED, THE DONOR MUST DISCLOSE ALL SUCH PREVIOUS TRANSFERS OF MORE THAN \$2,500 AND IDENTIFY THE INTERMEDIARIES. THE DONOR MUST MAINTAIN THESE RECORDS FOR AT LEAST FIVE YEARS AND PROVIDE THE RECORDS ON REQUEST TO THE COMMISSION.
- E. ANY PERSON THAT MAKES AN IN-KIND CONTRIBUTION TO A COVERED PERSON OF MORE THAN \$5,000 IN AN ELECTION CYCLE TO ENABLE CAMPAIGN MEDIA SPENDING MUST INFORM THAT COVERED PERSON IN WRITING, AT THE TIME THE IN-KIND CONTRIBUTION IS MADE OR PROMISED TO BE MADE, OF THE IDENTITY OF EACH OTHER PERSON THAT DIRECTLY OR INDIRECTLY CONTRIBUTED OR PROVIDED MORE THAN \$2,500 IN ORIGINAL MONIES USED TO PAY FOR THE IN-KIND CONTRIBUTION AND THE AMOUNT OF EACH OTHER PERSON’S ORIGINAL MONIES SO USED. IF THE ORIGINAL MONIES WERE PREVIOUSLY TRANSFERRED, THE IN-KIND DONOR MUST DISCLOSE ALL SUCH PREVIOUS TRANSFERS OF MORE THAN \$2,500 AND IDENTIFY THE INTERMEDIARIES. THE IN-KIND DONOR MUST MAINTAIN THESE RECORDS FOR AT LEAST FIVE YEARS AND PROVIDE THE RECORDS ON REQUEST TO THE COMMISSION.

**16-973. Disclosure reports: exceptions**

- A. WITHIN FIVE DAYS AFTER FIRST SPENDING MONIES OR ACCEPTING IN-KIND CONTRIBUTIONS TOTALING \$50,000 OR MORE DURING AN ELECTION CYCLE ON CAMPAIGN MEDIA SPENDING IN STATEWIDE CAMPAIGNS OR \$25,000 OR MORE DURING THE ELECTION CYCLE IN ANY OTHER TYPE OF CAMPAIGNS, A COVERED PERSON SHALL FILE WITH THE SECRETARY OF STATE AN INITIAL REPORT THAT DISCLOSES ALL OF THE FOLLOWING:
1. THE IDENTITY OF THE PERSON THAT OWNS OR CONTROLS THE TRACEABLE MONIES.
  2. THE IDENTITY OF ANY ENTITY ESTABLISHED, FINANCED, MAINTAINED OR CONTROLLED BY THE PERSON THAT OWNS OR CONTROLS THE TRACEABLE MONIES AND THAT MAINTAINS ITS OWN TRANSFER RECORDS AND THAT ENTITY’S RELATIONSHIP TO THE COVERED PERSON.
  3. THE NAME, MAILING ADDRESS AND POSITION OF THE INDIVIDUAL WHO IS THE CUSTODIAN OF THE TRANSFER RECORDS.
  4. THE NAME, MAILING ADDRESS AND POSITION OF AT LEAST ONE INDIVIDUAL WHO CONTROLS, DIRECTLY OR INDIRECTLY, HOW THE TRACEABLE MONIES ARE SPENT.
  5. THE TOTAL AMOUNT OF TRACEABLE MONIES OWNED OR CONTROLLED BY THE COVERED PERSON ON THE DATE THE REPORT IS MADE.

6. THE IDENTITY OF EACH DONOR OF ORIGINAL MONIES WHO CONTRIBUTED, DIRECTLY OR INDIRECTLY, MORE THAN \$5,000 OF TRACEABLE MONIES OR IN-KIND CONTRIBUTIONS FOR CAMPAIGN MEDIA SPENDING DURING THE ELECTION CYCLE TO THE COVERED PERSON AND THE DATE AND AMOUNT OF EACH OF THE DONOR'S CONTRIBUTIONS.
  7. THE IDENTITY OF EACH PERSON THAT ACTED AS AN INTERMEDIARY AND THAT TRANSFERRED, IN WHOLE OR IN PART, TRACEABLE MONIES OF MORE THAN \$5,000 FROM ORIGINAL SOURCES TO THE COVERED PERSON AND THE DATE, AMOUNT AND SOURCE, BOTH ORIGINAL AND INTERMEDIATE, OF THE TRANSFERRED MONIES.
  8. THE IDENTITY OF EACH PERSON THAT RECEIVED FROM THE COVERED PERSON DISBURSEMENTS TOTALING \$10,000 OR MORE OF TRACEABLE MONIES DURING THE ELECTION CYCLE AND THE DATE AND PURPOSE OF EACH DISBURSEMENT, INCLUDING THE FULL NAME AND OFFICE SOUGHT OF ANY CANDIDATE OR A DESCRIPTION OF ANY BALLOT PROPOSITION THAT WAS SUPPORTED, OPPOSED OR REFERENCED IN A PUBLIC COMMUNICATION THAT WAS PAID FOR, IN WHOLE OR IN PART, WITH THE DISBURSED MONIES.
  9. THE IDENTITY OF ANY PERSON WHOSE TOTAL CONTRIBUTIONS OF TRACEABLE MONIES TO THE COVERED PERSON CONSTITUTED MORE THAN HALF OF THE TRACEABLE MONIES OF THE COVERED PERSON AT THE START OF THE ELECTION CYCLE.
- B. AFTER A COVERED PERSON MAKES AN INITIAL REPORT, EACH TIME THE COVERED PERSON SPENDS MONIES OR ACCEPTS IN-KIND CONTRIBUTIONS TOTALING AN ADDITIONAL \$25,000 OR MORE DURING AN ELECTION CYCLE ON CAMPAIGN MEDIA SPENDING IN STATEWIDE CAMPAIGNS OR AN ADDITIONAL \$15,000 OR MORE ON CAMPAIGN MEDIA SPENDING DURING AN ELECTION CYCLE IN ANY OTHER TYPE OF CAMPAIGNS, THAT COVERED PERSON SHALL FILE WITH THE SECRETARY OF STATE WITHIN THREE DAYS AFTER SPENDING MONIES OR ACCEPTING THE IN-KIND CONTRIBUTION A REPORT THAT DISCLOSES ANY INFORMATION THAT HAS CHANGED SINCE THE MOST RECENT REPORT WAS MADE PURSUANT TO THIS SECTION.
  - C. WHEN THE INFORMATION REQUIRED PURSUANT TO SUBSECTION A, PARAGRAPHS 1 THROUGH 4 OF THIS SECTION HAS CHANGED SINCE IT WAS PREVIOUSLY REPORTED, THE CHANGED INFORMATION SHALL BE REPORTED TO THE SECRETARY OF STATE WITHIN TWENTY DAYS, EXCEPT THAT THERE IS NO OBLIGATION TO REPORT CHANGES THAT OCCUR MORE THAN ONE YEAR AFTER THE MOST RECENT REPORT SHOULD HAVE BEEN FILED PURSUANT TO THIS SECTION.
  - D. TO DETERMINE THE SOURCES, INTERMEDIARIES AND AMOUNTS OF INDIRECT CONTRIBUTIONS RECEIVED, A COVERED PERSON MAY RELY ON THE INFORMATION IT RECEIVED PURSUANT TO SECTION 16-972, UNLESS THE COVERED PERSON KNOWS OR HAS REASON TO KNOW THAT THE INFORMATION RELIED ON IS FALSE OR UNRELIABLE.
  - E. WHEN A COVERED PERSON TRANSFERS MORE THAN \$5,000 IN TRACEABLE MONIES TO ANOTHER COVERED PERSON, OR AFTER RECEIVING THE REQUIRED NOTICE UNDER SECTION 16-972, SUBSECTION B, FAILS TO OPT OUT OF HAVING PREVIOUSLY TRANSFERRED MONIES USED FOR CAMPAIGN MEDIA SPENDING, A TRANSFER RECORD MUST BE PROVIDED TO THE RECIPIENT COVERED PERSON THAT IDENTIFIES EACH PERSON THAT DIRECTLY OR INDIRECTLY CONTRIBUTED MORE THAN \$2,500 OF THE ORIGINAL MONIES BEING TRANSFERRED, THE AMOUNT OF EACH PERSON'S ORIGINAL MONIES BEING TRANSFERRED, AND ANY OTHER PERSON THAT PREVIOUSLY TRANSFERRED THE ORIGINAL MONIES.
  - F. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE IDENTITY OF AN ORIGINAL SOURCE THAT IS OTHERWISE PROTECTED FROM DISCLOSURE BY LAW OR A COURT ORDER OR THAT DEMONSTRATES TO THE SATISFACTION OF THE COMMISSION THAT THERE IS A REASONABLE PROBABILITY THAT PUBLIC KNOWLEDGE OF THE ORIGINAL SOURCE'S IDENTITY WOULD SUBJECT THE SOURCE OR THE SOURCE'S FAMILY TO A SERIOUS RISK OF PHYSICAL HARM SHALL NOT BE DISCLOSED OR INCLUDED IN A DISCLAIMER.
  - G. THIS SECTION DOES NOT REQUIRE PUBLIC DISCLOSURE OF OR A DISCLAIMER REGARDING THE IDENTITY OF AN ORIGINAL SOURCE THAT CONTRIBUTES, DIRECTLY OR THROUGH INTERMEDIARIES, \$5,000 OR LESS IN MONIES OR IN-KIND CONTRIBUTIONS DURING AN ELECTION CYCLE TO A COVERED PERSON FOR CAMPAIGN MEDIA SPENDING.
  - H. ALL DISCLOSURE REPORTS MADE PURSUANT TO THIS SECTION SHALL BE MADE ELECTRONICALLY TO THE SECRETARY OF STATE AND TO ANY OTHER BODY AS DIRECTED BY

LAW. OFFICIALS SHALL PROMPTLY MAKE THE INFORMATION PUBLIC AND PROVIDE IT TO THE COMMISSION ELECTRONICALLY. ALL DISCLOSURE REPORTS ARE SUBJECT TO PENALTY OF PERJURY.

- I. EXCEPT AS PROVIDED IN SUBSECTION J OF THIS SECTION, A POLITICAL ACTION COMMITTEE OR POLITICAL PARTY THAT IS A COVERED PERSON MAY SATISFY THE TIMING REQUIREMENTS FOR REPORTING IN THIS SECTION BY FILING THE PERIODIC CAMPAIGN FINANCE REPORTS AS REQUIRED BY LAW FOR POLITICAL ACTION COMMITTEES AND POLITICAL PARTIES, PROVIDED THAT THE DISCLOSURES REQUIRED BY THIS SECTION ARE INCLUDED IN THOSE PERIODIC REPORTS, INCLUDING THE REQUIREMENT TO IDENTIFY THE ORIGINAL SOURCES OF TRACEABLE MONIES WHO GAVE, DIRECTLY OR INDIRECTLY, AND ANY INTERMEDIARIES WHO TRANSFERRED, DIRECTLY OR INDIRECTLY, MORE THAN \$5,000 IN TRACEABLE MONIES TO THE COVERED PERSON DURING THE ELECTION CYCLE.
- J. IF A POLITICAL ACTION COMMITTEE OR POLITICAL PARTY THAT IS A COVERED PERSON SPENDS MONIES OR ACCEPTS IN-KIND CONTRIBUTIONS WITHIN 20 DAYS OF AN ELECTION THAT WOULD REQUIRE A REPORT UNDER THIS SECTION, IT SHALL FILE A REPORT PURSUANT TO THIS SECTION WITHIN 3 DAYS OF THAT SPENDING OR IN-KIND CONTRIBUTION.

**16-974. Citizens clean elections commission: powers and duties: rules**

- A. THE COMMISSION IS THE PRIMARY AGENCY AUTHORIZED TO IMPLEMENT AND ENFORCE THIS CHAPTER. THE COMMISSION MAY DO ANY OF THE FOLLOWING:
  - 1. ADOPT AND ENFORCE RULES.
  - 2. ISSUE AND ENFORCE CIVIL SUBPOENAS, INCLUDING THIRD-PARTY SUBPOENAS.
  - 3. INITIATE ENFORCEMENT ACTIONS.
  - 4. CONDUCT FACT-FINDING HEARINGS AND INVESTIGATIONS.
  - 5. IMPOSE CIVIL PENALTIES FOR NONCOMPLIANCE, INCLUDING PENALTIES FOR LATE OR INCOMPLETE DISCLOSURES AND FOR ANY OTHER VIOLATIONS OF THIS CHAPTER.
  - 6. SEEK LEGAL AND EQUITABLE RELIEF IN COURT AS NECESSARY.
  - 7. ESTABLISH THE RECORDS PERSONS MUST MAINTAIN TO SUPPORT THEIR DISCLOSURES.
  - 8. PERFORM ANY OTHER ACT THAT MAY ASSIST IN IMPLEMENTING THIS CHAPTER.
- B. IF THE COMMISSION IMPOSES A CIVIL PENALTY ON A PERSON AND THAT PERSON DOES NOT TIMELY SEEK JUDICIAL REVIEW, THE COMMISSION MAY FILE A CERTIFIED COPY OF ITS ORDER REQUIRING PAYMENT OF THE CIVIL PENALTY WITH THE CLERK OF THE SUPERIOR COURT IN ANY COUNTY OF THIS STATE. THE CLERK SHALL TREAT THE COMMISSION ORDER IN THE SAME MANNER AS A JUDGMENT OF THE SUPERIOR COURT. A COMMISSION ORDER FILED PURSUANT TO THIS SUBSECTION HAS THE SAME EFFECT AS A JUDGMENT OF THE SUPERIOR COURT AND MAY BE RECORDED, ENFORCED OR SATISFIED IN THE SAME MANNER. A FILING FEE IS NOT REQUIRED FOR AN ACTION FILED UNDER THIS SUBSECTION.
- C. THE COMMISSION SHALL ESTABLISH DISCLAIMER REQUIREMENTS FOR PUBLIC COMMUNICATIONS BY COVERED PERSONS. A POLITICAL ACTION COMMITTEE THAT COMPLIES WITH THESE REQUIREMENTS NEED NOT SEPARATELY COMPLY WITH THE REQUIREMENTS PRESCRIBED IN SECTION 16-925, SUBSECTION B. PUBLIC COMMUNICATIONS BY COVERED PERSONS SHALL STATE, AT A MINIMUM, THE NAMES OF THE TOP THREE DONORS WHO DIRECTLY OR INDIRECTLY MADE THE THREE LARGEST CONTRIBUTIONS OF ORIGINAL MONIES DURING THE ELECTION CYCLE TO THE COVERED PERSON. IF IT IS NOT TECHNOLOGICALLY POSSIBLE FOR A PUBLIC COMMUNICATION DISSEMINATED ON THE INTERNET OR BY SOCIAL MEDIA MESSAGE, TEXT MESSAGE OR SHORT MESSAGE SERVICE TO PROVIDE ALL THE INFORMATION REQUIRED BY THIS SUBSECTION, THE PUBLIC COMMUNICATION MUST PROVIDE A MEANS FOR VIEWERS TO OBTAIN, IMMEDIATELY AND EASILY, THE REQUIRED INFORMATION WITHOUT HAVING TO RECEIVE EXTRANEOUS INFORMATION.
- D. THE COMMISSION'S RULES AND ANY COMMISSION ENFORCEMENT ACTIONS PURSUANT TO THIS CHAPTER ARE NOT SUBJECT TO THE APPROVAL OF OR ANY PROHIBITION OR LIMIT IMPOSED BY ANY OTHER EXECUTIVE OR LEGISLATIVE GOVERNMENTAL BODY OR OFFICIAL. NOTWITHSTANDING ANY LAW TO THE CONTRARY, RULES ADOPTED PURSUANT TO THIS CHAPTER ARE EXEMPT FROM TITLE 41, CHAPTERS 6 AND 6.1.
- E. THE COMMISSION SHALL ESTABLISH A PROCESS TO REIMBURSE THE SECRETARY OF STATE AND ANY OTHER AGENCY THAT INCURS COSTS TO IMPLEMENT OR ENFORCE THIS CHAPTER.

- F. THE COMMISSION MAY ADJUST THE CONTRIBUTION AND EXPENDITURE THRESHOLDS IN THIS CHAPTER TO REFLECT INFLATION.

**16-975. Structured transactions prohibited**

A PERSON MAY NOT STRUCTURE OR ASSIST IN STRUCTURING, OR ATTEMPT OR ASSIST IN AN ATTEMPT TO STRUCTURE ANY SOLICITATION, CONTRIBUTION, DONATION, EXPENDITURE, DISBURSEMENT OR OTHER TRANSACTION TO EVADE THE REPORTING REQUIREMENTS OF THIS CHAPTER OR ANY RULE ADOPTED PURSUANT TO THIS CHAPTER.

**16-976. Penalties; separate account; use of monies; surcharge**

- A. THE CIVIL PENALTY FOR ANY VIOLATION OF THIS CHAPTER SHALL BE AT LEAST THE AMOUNT OF THE UNDISCLOSED OR IMPROPERLY DISCLOSED CONTRIBUTION AND NOT MORE THAN THREE TIMES THAT AMOUNT. FOR VIOLATIONS OF SECTION 16-975, THE RELEVANT AMOUNT FOR THE PURPOSES OF CALCULATING THE CIVIL PENALTY IS THE AMOUNT DETERMINED BY THE COMMISSION TO CONSTITUTE A STRUCTURED TRANSACTION.
- B. CIVIL PENALTIES COLLECTED FOR VIOLATIONS OF THIS CHAPTER SHALL BE DEPOSITED IN A SEPARATE ACCOUNT IN THE CITIZENS CLEAN ELECTIONS FUND ESTABLISHED PURSUANT TO CHAPTER 6, ARTICLE 2 OF THIS TITLE AND USED TO DEFRAY THE COSTS OF IMPLEMENTING AND ENFORCING THIS CHAPTER. ANY MONIES IN THIS ACCOUNT THAT ARE NOT USED TO IMPLEMENT AND ENFORCE THIS CHAPTER MAY BE USED FOR OTHER COMMISSION-APPROVED PURPOSES.
- C. AN ADDITIONAL SURCHARGE OF ONE PERCENT SHALL BE IMPOSED ON CIVIL AND CRIMINAL PENALTIES AND THE PROCEEDS DEPOSITED IN THE ACCOUNT IN THE CITIZENS CLEAN ELECTIONS FUND ESTABLISHED PURSUANT TO SUBSECTION B OF THIS SECTION. THE SURCHARGE SHALL BE SUSPENDED FOR ONE TO THREE YEARS AT A TIME IF THE COMMISSION DETERMINES THAT, DURING THAT PERIOD, IT CAN PERFORM THE ACTIONS REQUIRED BY THIS CHAPTER WITHOUT THE MONIES FROM THE SURCHARGE.

**16-977. Complaints; investigations; civil action**

- A. ANY QUALIFIED VOTER IN THIS STATE MAY FILE A VERIFIED COMPLAINT WITH THE COMMISSION AGAINST A PERSON THAT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER. THE COMPLAINT MUST STATE THE FACTUAL BASIS FOR BELIEVING THAT THERE HAS BEEN A VIOLATION OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER.
- B. IF THE COMMISSION DETERMINES THAT THE COMPLAINT, IF TRUE, STATES THE FACTUAL BASIS FOR A VIOLATION OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER, THE COMMISSION SHALL INVESTIGATE THE ALLEGATIONS AND PROVIDE THE ALLEGED VIOLATOR WITH AN OPPORTUNITY TO BE HEARD.
- C. IF THE COMMISSION DISMISSES AT ANY TIME THE COMPLAINT OR TAKES NO SUBSTANTIVE ENFORCEMENT ACTION WITHIN NINETY DAYS AFTER RECEIVING THE COMPLAINT, THE COMPLAINANT MAY BRING A CIVIL ACTION AGAINST THE COMMISSION TO COMPEL IT TO TAKE ENFORCEMENT ACTION, AND THE COURT SHALL REVIEW *DE NOVO* WHETHER THE COMMISSION'S DISMISSAL OR FAILURE TO ACT WAS REASONABLE. IN ANY MATTER IN WHICH THE CIVIL PENALTY FOR THE ALLEGED VIOLATION COULD BE GREATER THAN \$50,000, ANY CLAIM OR DEFENSE BY THE COMMISSION OF PROSECUTORIAL DISCRETION IS NOT A BASIS FOR DISMISSING OR FAILING TO ACT ON THE COMPLAINT. A COURT MAY AWARD THE PREVAILING PARTY IN A CIVIL ACTION UNDER THIS SUBSECTION ITS REASONABLE ATTORNEYS' FEES.

**16-978. Legislative, county and municipal provisions**

- A. NOTHING IN THIS ACT PREVENTS THE LEGISLATURE, A COUNTY BOARD OF SUPERVISORS OR A MUNICIPAL GOVERNMENT FROM ENACTING OR ENFORCING ADDITIONAL OR MORE STRINGENT DISCLOSURE PROVISIONS FOR CAMPAIGN MEDIA SPENDING THAN

THOSE CONTAINED IN THIS CHAPTER. ADDITIONAL OR MORE STRINGENT DISCLOSURE REQUIREMENTS FOR CAMPAIGN MEDIA SPENDING FURTHER THE PURPOSES OF THIS CHAPTER.

- B. TO THE EXTENT THE PROVISIONS OF THIS CHAPTER CONFLICT WITH ANY STATE LAW, THIS CHAPTER GOVERNS.

**16-979. Legal defense; standing; legal counsel**

- A. A POLITICAL ACTION COMMITTEE FORMED TO SUPPORT THE VOTERS’ RIGHT TO KNOW ACT OR ANY OF THAT COMMITTEE’S OFFICERS MAY INTERVENE AS OF RIGHT IN ANY LEGAL ACTION BROUGHT TO CHALLENGE THE VALIDITY OF THIS CHAPTER OR ANY OF ITS PROVISIONS.
- B. THE COMMISSION HAS STANDING TO DEFEND THIS CHAPTER ON BEHALF OF THIS STATE IN ANY LEGAL ACTION BROUGHT TO CHALLENGE THE VALIDITY OF THIS CHAPTER OR ANY OF ITS PROVISIONS.
- C. NOTWITHSTANDING ANY LAW, THE COMMISSION HAS EXCLUSIVE AND INDEPENDENT AUTHORITY TO SELECT LEGAL COUNSEL TO REPRESENT THE COMMISSION REGARDING ITS DUTIES UNDER THIS CHAPTER AND TO DEFEND THIS CHAPTER IF ITS VALIDITY IS CHALLENGED.

**Sec. 4. Severability**

The provisions of this act are severable. If any provision of this act or application of a provision to any person or circumstance is held to be unconstitutional, the remainder of this act, and the application of the provisions to any person or circumstance, shall not be affected by the holding. The invalidated provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of this act.

**Sec. 5. Applicability; Implementation**

- A. If approved by the voters, this act applies to all elections and contributions that occur after the effective date of this act.
- B. If approved by the voters, the Commission shall publicize the requirements of these provisions.
- C. The rights established by this Act shall be construed broadly.

**ANALYSIS BY LEGISLATIVE COUNCIL**

Proposition 211 would amend the campaign finance laws to require a “covered person” (a person or entity that spends \$50,000 or more on campaign media for a statewide candidate during a two-year election cycle or that spends \$25,000 or more on campaign media for any other type of candidate during a two-year election cycle) to disclose the identity of anyone who is the original source of donations of more than \$5,000 to the covered person for campaign media. Proposition 211 also requires any donor that contributes more than \$5,000 to a covered person during an election cycle for campaign media spending to identify to the covered person the identity of any person who contributed more than \$2,500 in original money that is being transferred to that donor, as well as any intermediaries that previously transferred the funds being given to the covered person.

Proposition 211 also provides for the following:

- 1. Requires that the covered person’s disclosure report to the Secretary of State include the following:
  - a. The identity of the person who owns or controls the money being contributed.
  - b. The identity of any entity established, financed, maintained or controlled by the person who owns or controls the money being contributed and that maintains its own transfer records.
  - c. The name, address and position of the person who is the custodian of the transfer records.
  - d. The name, address and position of the person who controls how the money is spent.
  - e. The total amount of money donated or promised to be donated to the covered person for use or transfer for campaign media spending on the date the covered person makes the report.
  - f. The identity of each donor of original monies who contributed, directly or indirectly, more than \$5,000 of money or in-kind contributions for campaign media spending during the election cycle to the covered person, and the date and amount of each donor’s contribution.
- 2. Requires each covered person to file a supplemental report within three days each time the covered person spends money or accepts in-kind contributions totaling an additional \$25,000 for campaign media spending during an election cycle

on statewide campaigns or an additional \$15,000 during an election cycle for any other type of campaigns.

3. During the twenty days before an election, requires a political action committee or political party that is a covered person that spends reportable money or receives reportable in-kind contributions to file disclosure reports within three days.

4. Exempts the following from the new disclosure requirements in this measure:

a. Persons or entities that spend only their own personal money or business income.

b. Candidate committees.

c. Political action committees or political parties if they receive not more than \$20,000 from any one person or entity during an election cycle.

d. Donors who contribute \$5,000 or less directly or indirectly to a covered person.

e. Original sources of contributions that are otherwise protected by law or if the Clean Elections Commission determines that there is a reasonable probability that disclosure of that original source will subject that original source or the original source's family to serious risk of physical harm.

5. Requires disclosures to be electronically filed with the Secretary of State under penalty of perjury and with other officials as provided by law, with the disclosures to be publicly posted.

6. Prohibits a person from attempting to, assisting in or structuring any solicitation, contribution, donation, expenditure, disbursement or other transaction to evade campaign finance reporting requirements.

7. Designates the Clean Elections Commission as the primary agency to implement and enforce this act. Authorizes the Commission to adopt and enforce rules, issue civil subpoenas, initiate enforcement actions, conduct fact-finding hearings and investigations, impose civil penalties for noncompliance and seek legal and equitable relief in court.

8. Requires the Clean Elections Commission to establish requirements for a covered person to name in the campaign media at least the top three donors who made the three largest contributions during the election cycle, except for certain electronic communications when not technologically possible.

9. Requires the Clean Elections Commission's civil penalties to be at least as much as the amount of the improper contribution but not more than three times that amount, and requires penalties to be deposited in the Clean Elections Fund to pay for implementing and enforcing campaign finance laws or for other Commission-approved purposes.

10. Allows any voter to file a complaint with the Clean Elections Commission to enforce this act and provides for an investigation and a hearing. If the Commission dismisses or takes no enforcement action on the complaint, the voter may file a civil action to compel the Commission to take action on the complaint.

11. Provides for an additional 1% surcharge on civil and criminal penalties, to be deposited in the Clean Elections Fund. Allows suspension of the surcharge for one to three years if the Commission determines it can perform its duties under this act without the surcharge.

12. Allows the Legislature and counties, cities and towns to enact more stringent disclosure provisions.

13. Allows the Clean Elections Commission and the proponents of this act to have standing to intervene in or defend any challenge to this act.

14. Gives the Clean Elections Commission authority to select its own attorneys regarding this act.

15. States that the rights established by this act shall be construed broadly.

**Notice:** Pursuant to Proposition 105 (1998), these measures cannot be changed in the future if approved on the ballot except by a three-fourths vote of the members of each house of the legislature and if the change furthers the purpose of the original ballot measure, by an initiative petition or by referring the change to the ballot.

### **JOINT LEGISLATIVE BUDGET COMMITTEE FISCAL ANALYSIS**

#### PROPOSITION 211 (I-04)

A.R.S. § 19-123(E) requires the Joint Legislative Budget Committee Staff to prepare a summary of 300 words or less on the fiscal impact of voter-initiated ballot measures. Proposition 211 enacts a 1% surcharge on all fines for criminal offenses and civil violations and implements changes to state laws regarding campaign finance.

The initiative's 1% fine surcharge is projected to increase annual state revenues by \$600,000 and these revenues would be deposited into a separate account in the Citizens Clean Elections Fund.

The initiative enacts various requirements regarding campaign finance and disclosure of campaign contributions. These changes are estimated to increase state spending for the Secretary of State's campaign finance database, with an estimated one-time cost of \$135,000 for information technology upgrades to accept new reporting required by the initiative. This cost would be paid from the revenues collected from the 1% fine surcharge.

The act requires the Citizens Clean Elections Commission to enforce the new campaign finance requirements. Any new enforcement costs can be paid with the new 1% surcharge revenue.

## ARGUMENTS “FOR” PROPOSITION 211

Vote “YES” on Prop 211 the “Voters’ Right to Know Act,” also known as Stop Dark Money, if you believe, as we do, that Arizona voters should know who is actually behind political ads.

Voters’ Right to Know/Stop Dark Money is a non-partisan group that believes democracy works best when election funding is transparent. We believe that Arizona voters should have the right to know the source of funds spent to influence their votes. Proposition 211 will give us that Right.

Current Arizona law allows unlimited money to be spent on anonymous political ads. Currently, the names and motivations of those actually paying for these ads remains hidden.

Yet, when an Arizona citizen contributes \$50 or more to a candidate, they must disclose their name, the amount contributed, home address and employer. This information becomes publicly available and searchable on the internet. But people spending millions on political ads to influence our vote do not have to disclose anything.

We believe knowing who is running political ads is critical to understanding their message and motivation. Without accountability for what is said, those running misleading or inaccurate ads face no consequences and politics becomes dirtier.

Proposition 211 requires any group spending over \$50,000 on statewide elections or \$25,000 on local elections to disclose the source of all contributions over \$5,000. The Citizens Clean Elections Commission will investigate complaints of noncompliance, force disclosure and fine violators.

Stop keeping voters in the dark and shine a light on the secret funders!

Please vote YES on Proposition 211.

Terry Goddard, David Tedesco, Bob Bertrand, Paul Johnson

Co-chairs: Voters’ Right to Know

**Voters’ Right to Know, Sponsoring Organization, Voters’ Right to Know, Phoenix; Terry Goddard, Co-Chair, Voters’ Right to Know, Phoenix; David Tedesco, Co-Chair, Voters’ Right to Know, Phoenix; Bob Bertrand, Co-Chair, Voters’ Right to Know, Phoenix; and Paul Johnson, Co-Chair, Voters’ Right to Know, Scottsdale**

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Dark money happens on all sides of the political fence. Individuals and groups on the Left and the Right that won’t tell you who they are, spend vast amounts of money on media advertising trying to influence how you vote.

As an ordinary citizen, if I donate to a candidate’s campaign, I must disclose my name, address, and occupation. Yet the names of donors to dark money groups, with names that tell you nothing about what they really believe, like “Americans for Everything Good”, are never disclosed. These dark money groups can spend unlimited amounts of money on political ads. They don’t care about the citizens of Arizona. They only care about their own (hidden) agenda.

The Voters’ Right to Know Act, Proposition 211 doesn’t stop any person or group from expressing their opinions. It’s about transparency. Period. It’s about requiring anonymous, dark money donors to disclose to the public their names and how much they donate, just like the rest of us.

In *Citizens United*, the Supreme Court ruled that corporations have constitutional rights. But that ruling also said that requiring disclosure of the names of donors who pay for political media advertising is allowed under the First Amendment, that voters should have the right to know who is trying to persuade them to vote one way or the other. The late Justice Scalia, who voted with the majority in *Citizens United*, was a fierce advocate for transparency. He said: “Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously.... hidden from public scrutiny and protected from accountability of criticism. This does not resemble the Home of the Brave.”

**Diane McQueen, Self, Dewey**

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I have been active in both partisan and nonpartisan organizations in AZ since I moved here in 1966. I have volunteered on many campaigns, both on behalf of candidates and initiatives, some of which were successful and others not. However, I don’t think I’ve volunteered for one campaign where there is as much support – across party lines, age, gender, race, and any other category you can think of -- as for Voters’ Right to Know. The clarity and simplicity of this Initiative requires almost no ‘persuasion’ on my part when I have knocked on doors & gone to events to collect signatures. AZ voters that I’ve talked to all agree that there should be transparency regarding campaign donations regardless of which type of legal entity

to which you donate, as long as that entity is actively involved in campaigning for or against a candidate or ballot measure. Dark money is NOT acceptable to most Republicans, Independents, Democrats, young & first time voters, folks my age (I'm 84), pro lifers and pro choice folks, etc. They have all told me "put your name where your money goes." Please vote YES on Voters' Right to Know.

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**Rivko Knox, Phoenix**

Four score and seven years ago our forefathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men [and women] are created equal. – Abraham Lincoln

Now we are engaged in a great... contest over who gets heard and whose interests matter in making and carrying out laws in Arizona. Will we allow Dark Money special interests to continue to drown out the voice of the PEOPLE?

The world might little note, nor long remember what we each say on our sacred and secret ballots. But we have a chance to make sure the world can never forget when Arizona voters enact into law the Stop Dark Money aka The People's Right to Know initiative.

It is for us, the civic minded voters of Arizona, to dedicate ourselves to the proposition that our children and grandchildren will be able to know by experience what Lincoln meant (and I paraphrase) when he closed the Gettysburg address declaring that we now emphatically resolve that this nation and state, under God, shall have a new birth of freedom—that government of the people, by the people, for the people, shall not perish from the earth.

Further, as Suffragette Susan B. Anthony, whose passion and perseverance was rewarded finally when the 19th Amendment was ratified in 1920, 20 years after her death, stated – Wherever women gather together failure is impossible.

Let your action in this election be a tribute to both Anthony and Lincoln.

Steve Muratore, publisher, Arizona Eagletarian blog <https://stevemuratore.blogspot.com>

**Steve Muratore, Publisher, Arizona Eagletarian (blog), Scottsdale**

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I will vote YES on the "Voter's Right To Know Act." I am retired and had a great career in health care and I raised 3 kids. Any time my kids showed up with money or things that I didn't know where they came from, I asked them, "Who gave it to you? How'd you get it? What did they want in return?" I had to protect them from drugs and danger and teach them about influencers. I ask my politicians the same things. Because, I have to still protect my kids, grandkids and communities from dangerous and unscrupulous elements. Recently we saw undocumented dollars try to influence people's votes in the Phoenix Light Rail Extension vote. I and my neighbors in the Payson region had our APS rates increase. Of course after APS put 10 Million Undocumented dollars into candidates campaigns. I felt ambushed. So did the retirees on fixed incomes. Things were no different when I led healthcare organizations. I always needed to know who was providing money, free trips, supplies, free seminars to influence our medical staff referrals and decisions. Containing expenses and remaining in compliance with federal and state laws required it be done.

Bottom line, I support transparency. I like sunshine on things. I live with smart family members and wise neighbors. They and I need to know what we're buying into when we vote. To do that, we need to know for what the dark money spenders are paying. Help us all out by voting YES

**Gary Brennan, LFACHE, Retired, Tempe**

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Please Vote for Transparency: Vote Yes on Proposition 211, the Voters' Right to Know Act

Dark money is political spending on election advertising by anonymous sources. It is called "Dark Money" because we can't see who's sponsoring the messages in political ads.

Under current Arizona law, rich power brokers get special treatment and unduly influence elections by secretly spending money on advertisements and promotions supporting their candidate or ballot proposition. This "Dark Money" bombards voters with negative ads, misleading information, and even outright lies.

Because we don't know who's paying for the advertisements, ordinary people don't have the information they need to figure out whether it's credible or not. It's like my grandmother used to always say... "According to whom?" Well, with Dark Money dominating our elections, we can't answer that question for ourselves.

Spelling, grammar and punctuation were reproduced as submitted in the "for" and "against" arguments.

Proposition 211 will fix that. It simply builds transparency into our political system by requiring ALL major contributors to identify themselves if they spend more than \$5,000 for a campaign or candidate.

Elections have profound impacts on public health and policy— good and bad. Persons that get elected to public office at the federal state and local level routinely make decisions that influence public health. They appoint people for key jobs (we saw how important that was during the pandemic). They also make funding decisions that impact public health. In short, elections have a significant impact on public health. That’s why it’s super important to have an informed electorate, so people can make informed decisions about what they decide in the ballot box- whether it’s a person running for elected office at the state, federal, or local level- or whether it’s about a voter initiative.

Please cast your vote for Transparency. Vote YES on Proposition 211.

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**Will Humble, Director, Arizona Department of Health Services (2009-2015), Phoenix**

Fellow Voters;

Please vote YES on the Voters’ Right to Know Act.

You will hear some weak arguments from pro-dark money groups about their desire to hide their corrupting campaign spending.

Dark money spending has never been a tradition in America and only those who want to rig our political system argue for it today.

They, for instance, point to a Supreme Court case called NAACP vs Alabama to argue that people should hide their money in political campaigns in order to protect themselves from threats and intimidation.

That is not what that case was about. That case was about keeping membership lists private, not political contributions. Further, even our conservative Supreme Court has continued to uphold the right of public disclosure in political campaigns.

As the very conservative Justice Scalia said, “There are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.”

He continued, “For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.”

The real intimidation to our democracy is coming from dark money. When I was a lawmaker, fellow legislators told me personally how they had been threatened with dark money if they did not vote a certain way on legislation.

Voting in favor of this Proposition is the first step to begin to repair the wounds inflicted by an acidic political system.

Ken Clark,  
Former Legislator, Phoenix

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**Ken Clark, Former Legislator, Phoenix**

The League of Women Voters of Arizona strongly supports this initiative which will force campaigns to reveal the sources of “dark money.” Groups that currently can legally refuse to disclose their donors would have to reveal the original source of funds used to purchase media advertising. Voters should have the right to know which special interests are trying to influence election outcomes by purchasing ads. This initiative will provide that right if passed by Arizona voters.

A “yes” for this measure will require any person spending over \$50,000 on statewide campaigns, or \$25,000 on other campaigns, to disclose the original sources (people or corporations) of contributions exceeding \$5,000. They must also disclose their largest donors in their campaign materials. The Citizens Clean Elections Commission, a non-partisan, voter-established body, will enforce this Act. Violations could incur substantial penalties.

The League of Women Voters of Arizona believes democracy should be protected from distortion by undisclosed

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individuals and corporations buying media in election campaigns to persuade voters. The League supports the public's right to know the source of money spent on advertising to influence voters.

It is time to stop “dark money,” the practice of laundering political contributions to hide the original source.

THE LEAGUE OF WOMEN VOTERS OF ARIZONA URGES YOU TO VOTE YES.

**Pinny Sheoran, President, League of Women Voters of Arizona, Phoenix**  
*Sponsored by League of Women Voters of Arizona*

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We as Arizona voters are constantly deluged with campaign TV ads and printed material that feature misleading disclaimers that begin with “Paid for by \_\_\_\_\_”. These mentioned organizations are often simply vehicles behind which rich corporations or super PACs hide. Sadly, current Arizona election laws do not require that the ORIGINAL source of campaign funds be identified in campaign ads. As a result, voters have no way of knowing what person or special interest group is providing huge amounts of funding to candidates who then carry an unspoken obligation to do the bidding of their benefactor. We saw this dynamic in the previous election, when newly elected Corporation Commission members went about thanking APS for their millions in donated funds with their generous voting decisions. And since APS had been able to make their campaign contributions to the pair anonymously, the public didn't find out about this deception until years later, after it was too late to make an informed vote. We see it all the time. And this kind of corruption will continue to flourish in Arizona until we as voters pass the Voters' Right to Know Act and demand to be able to see, in all election campaign advertising, exactly who is behind a candidate before we decide to vote for that person.

**Kelly Gibbs, Arizona Voter, Flagstaff**

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I support Proposition 211, The Voter's Right to Know, as it is time we stop the spending of Dark Money from anonymous sources spent to influence our vote. Voters need and deserve the transparency behind political advertising in order to make informed political decisions. Dark Money allows organizations to hid behind a cloak of secrecy and engage in false, negative, and misleading political advertising. It is important that these political influencers come out of the shadows and provide names and addresses and amounts behind their contribution just like we ordinary citizens must do when we contribute to a campaign. Proposition 211 furthers our democracy by allowing informed voter decisions.

**Patrice Horstman, Supervisor, Coconino County Board of Supervisors, Flagstaff**

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I'm voting YES on Proposition 211 because Arizona voters have a right to know who is spending money to influence their votes.

Proposition 211 sheds a light on anonymous, dark money that gets spent every election cycle to run negative (and oftentimes false) attack ads.

I have to disclose my donations to campaigns, why should a few dark money power brokers get special treatment? Why should they get to hide their donations behind innocuous sounding campaign names like “Citizens for a Bright Future” and then bombard us with lies and misstatements?

When we know who the messenger is, we get to carefully consider their credibility.

Just like you, I want fair and clean elections in Arizona. We want to know who is trying to influence our votes. Afterall, our votes are our voices.

Let's help make sure that Arizona voters have a chance to make informed decisions at the ballot box.

Let's get hidden, dark money out of Arizona's politics. Please join me in voting YES on Proposition 211.

**Becky Daggett, Flagstaff**

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Please join me in supporting Prop 211, the Voter's Right to Know (Stop Dark Money) initiative. I personally know what terrible things can happen when Dark Money is used in campaigns. In 2014, when I ran for re-election to the Corporation Commission, millions of dollars in libelous Dark Money television ads were run against me, dominating the airwaves. It was like a mortar shelling in a war zone; we did not know who was doing it, and there was no way to respond legally or financially when you are a Clean Elections candidate like me. Who do you sue when they hide behind anonymity? My

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campaign staff even got threatening anonymous phone calls. When they thought they would never be found out, the level of cowardice on their part was appalling, saying things in their ads that they would never say if their identity was known.

When I was re-elected in 2018, I set out to discover who was behind this Dark Money spending. I subpoenaed Pinnacle West/APS about all of its political spending. Through that subpoena, I uncovered millions in their dark money spending. Not only did my subpoena lay bare the millions of dollars used against me, it forced Pinnacle West/APS to disclose its influence peddling through its other Dark Money spending. On the heels of their 2014 Dark Money spending, there was an enormous rate increase and confusing rate plans for APS customers to choose from, proving that Dark Money takes money out of people's pockets. The \$10 million in Dark Money spending seems to have netted Pinnacle West/APS record profits, at the expense of consumers.

The Stop Dark Money ballot initiative will provide the Transparency that all elections should have in a democracy. Please support it with your vote!

**Sandra Kennedy, Corporation Commissioner, Arizona Corporation Commission, Phoenix**

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8 years ago, I published a series of investigative reports on the dark money which flooded Arizona's 2014 gubernatorial and Corporation Commission elections. Much of that money was provided by regulated utility APS, and it very likely made the difference in who was elected. (E.g. <http://bit.ly/50ShadesOfDarkMoneyArchive>) Stop Dark Money will help shine a light on any similar dark efforts in the future. With this transparency, Arizonans will have more confidence in our electoral system, and will worry less that shadowy forces are manipulating our votes (and our system)!

Please join me in voting YES to Stop Dark Money!

**Paul Weich, Candidate, AZ House, LD12, Phoenix**

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I have volunteered to support the Stop Dark Money initiative for several years now. This is a common-sense issue that has strong support among Arizonans regardless of political party because we all benefit from transparency in our elections. Dark money allows wealthy donors--many of whom are out of state--to have an outsized influence on our state and local elections with no accountability. This law will not prevent anyone from donating to support candidates or ballot measures, but it will allow voters to see where major funding is coming from, thus allowing us all to make more informed choices on Election Day. Besides this, anonymity removes accountability. If major donors are required to identify themselves, campaigns will be held to a higher level of accuracy and civility. We've all seen too many misleading and hostile campaign ads, and the Voters' Right to Know Act will encourage campaigns to support their causes and candidates with civil discourse rather than lies and attacks. Arizona needs clean and transparent campaigns, and we need it now.

**Michael Rulon, Flagstaff**

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# ARGUMENTS “AGAINST” PROPOSITION 211

Prop 211 is Unconstitutional and will Make Cancel Culture Worse

We urge the voters of Arizona to reject proposition 211, an unconstitutional measure designed to silence and harass private citizens, organizations, and non-profit groups for exercising their first amendment rights.

One of the bedrock principles our country was founded upon was the right to free speech, which includes being able to support causes and issues they believe in without fear of harassment and intimidation. Just last year the US Supreme affirmed this right, declaring that any effort to require non-profit organizations to publish the names of their donors and supporters is unconstitutional.

Yet Prop 211 ignores the first amendment and would attempt to implement a draconian disclosure scheme that would be impossible for any group to comply with and would immediately lead to litigation. Even more offensive is that the measure would not apply to the media, big tech or to the labor unions, which have a specific carve-outs in Prop 211 that exempts them from the disclosure requirements.

In effect, Prop 211 is designed to target citizens whom the drafters of the measure do not like, simply because they have beliefs and values with which they do not agree. They want the names of private citizens so that they can doxx, harass and cancel them in their communities. And they intend to use their friends in Big Tech and the Corporate Media (which are exempt from this initiative) to aid them in their quest.

We do not need another unconstitutional law on the books that will only make cancel culture worse. Vote No on Prop 211.

**Scot Mussi, President, Arizona Free Enterprise Club, Gilbert**  
*Sponsored by Arizona Free Enterprise Club*

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Don't let the title fool you; this initiative is about bullying some citizens out of campaign involvement. Proponents of the “Voter’s Right to Know Act” would like you to think deep pockets on only one side of an issue or one party are funding campaigns. In truth, folks on all sides exercise their free speech rights by contributing to campaigns with which they agree.

The difference is how some want to name the contributors in an effort to force a boycott, bully, and otherwise silence the speech of those with whom they disagree. The desired effect is to scare contributors out of donating to campaigns, while their own donors virtue signal by touting their donations to woke causes.

The hypocritical nature of this initiative is apparent in the fact that it demands disclosure from private groups, but big tech, corporate media, and labor unions are all exempt. Ironic that all those exempted favor one party over the other.

All citizens should be free to put their money and effort behind campaigns they support without the risk of conspired retaliation by those in opposition.

The measure is also likely unconstitutional. The U.S. Supreme Court has already ruled that campaign contributions are free speech.

Please vote NO.

**Cathi Herrod, President, Center for Arizona Policy Action, Phoenix**

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# BALLOT FORMAT

## PROPOSITION 211

PROPOSED BY INITIATIVE PETITION RELATING TO THE DISCLOSURE OF THE ORIGINAL SOURCE OF MONIES USED FOR CAMPAIGN MEDIA SPENDING

<p><b><u>OFFICIAL TITLE</u></b>                  AMENDING TITLE 16, ARIZONA REVISED STATUTES BY ADDING CHAPTER 6.1; RELATING TO THE DISCLOSURE OF THE ORIGINAL SOURCE OF MONIES USED FOR CAMPAIGN MEDIA SPENDING.</p>
<p><b><u>DESCRIPTIVE TITLE</u></b>                  THE LAW WOULD REQUIRE ENTITIES AND PERSONS SPENDING OVER \$50,000 ON STATEWIDE CAMPAIGNS OR \$25,000 ON OTHER CAMPAIGNS, NOT INCLUDING PERSONAL MONIES AND BUSINESS INCOME, TO DISCLOSE THE ORIGINAL DONOR OF CONTRIBUTIONS OVER \$5,000; AND CREATE ADDITIONAL REPORTING AND ENFORCEMENT PROVISIONS.</p>

<p>A “YES” vote shall have the effect of requiring additional disclosures and reporting by entities and persons whose campaign media spending and/or in-kind contributions for campaign media spending exceeds \$50,000 in statewide campaigns or \$25,000 in other campaigns, including identifying original donors of contributions of more than \$5,000 in aggregate; creating penalties for violations of the law; and allowing the Citizens Clean Elections Commission to adopt rules and enforce the provisions of the law.</p>	<p><b>YES</b> <input type="checkbox"/></p>
<p>A “NO” vote shall have the effect of retaining existing law on campaign finance reporting requirements.</p>	<p><b>NO</b> <input type="checkbox"/></p>

BALLOT FORMAT PROPOSITION 211

***Proposed Commission Meeting Dates  
March - August 2023***

<b>Month</b>	<b><i>Date</i></b>	<b><i>State Holiday – Office Closed</i></b>
<b>March</b>	<b><i>23<sup>rd</sup></i></b>	
<b>April</b>	<b><i>27<sup>th</sup></i></b>	
<b>May</b>	<b><i>18<sup>th</sup></i></b>	<b><i>Memorial Day, May 29<sup>th</sup></i></b>
<b>June</b>	<b><i>22<sup>nd</sup></i></b>	
<b>July</b>	<b><i>27<sup>th</sup></i></b>	<b><i>Independence Day, July 4<sup>th</sup></i></b>
<b>August</b>	<b><i>24<sup>th</sup></i></b>	



During the months of March – August 2023, staff estimates commission meetings will be held once a month. All meeting dates are on Thursday and scheduled to begin at 9:30 a.m.

In the event additional meetings are required, Staff will work individually with each Commissioner to determine availability and ensure we have a quorum for the meeting.

**ITEM VIII**