



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

Location: Citizens Clean Elections Commission

1110 W. Washington, Suite 250

Phoenix, Arizona 85007

Date: Thursday, August 24, 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 August 24, 2023. This meeting will be held at 9:30 a.m. **This meeting will be held in person and virtually.** Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at ccec@azcanelections.gov.

The meeting may be available for live streaming online at <https://www.youtube.com/c/AZCCEC/live>. You can also visit <https://www.azcanelections.gov/clean-elections-commission-meetings>. Members of the Citizens Clean Elections Commission will attend in person, by telephone, video, or internet conferencing.

Join Zoom Meeting

<https://us02web.zoom.us/j/88339120262>

Meeting ID: 883 3912 0262

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 July 27, 2023.
- III. Discussion and Possible Action on Executive Director's Report, Enforcement and Regulatory Updates and Legislative Update.
- IV. Discussion and Possible Action on Adoption of Proposed Rules related to the Voter's Right to Know Act, Proposition 211.
 - A. R2-20-801- Definitions and rules of construction.
 - B. R2-20-802- Time.
 - C. R2-20-803- Opt-out notices under A.R.S. § 16-972.
 - D. R2-20-804- Exemptions from disclosure under A.R.S. § 16-973.
 - E. R2-20-805- Disclaimers on public communications under A.R.S. § 16-974.
 - F. R2-20-806- Communication with Commission, staff and others before the Commission.
 - G. R2-20-807- Recordkeeping required under Proposition 211.
 - H. R2-20-808- Advisory Opinions by the Commission under Proposition 211.

Please note: The Commission may adopt the rules specified in this agenda item, discuss them along with related comments. The Commission may direct staff to develop additional rule language based on comments that have been received. The Commission may defer adoption of any of these proposed rule until another public meeting.

The Commission may discuss other aspects of the Act, Chapter 6.1 of Arizona Revised Statutes Title 16, including other topics on which rulemaking should be considered and other rules related to Chapter 6.1. Some comments the Commission has received may include rule proposals that are currently in the public comment period but not eligible for final adoption yet. Other rules currently circulating for public comment are: R2-20-809 - Complaint Procedures, R2-20-810 - Response Procedures, R2-20-811 - Investigation and Enforcement Procedures, R2-20-812 - Enforcement Hearing Procedures, R2-20-813 - Transactions and Structuring.

Please see the Commission's regulatory agenda for further information. All language for proposed rules is available from the Commission at ccec@azcleaselections.gov.

- V. Discussion and Possible Action on Proposed Meeting Dates for September – December 2023.
- VI. 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

VII. Adjournment.

This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, 1110 W Washington St, #250, Phoenix, AZ 85007.

Dated this 23rd day of August, 2023

Citizens Clean Elections Commission

Thomas M. Collins, Executive Director

UPDATED

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 PUBLIC MEETING

Phoenix, Arizona
July 27, 2023
9:30 a.m.

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

**CERTIFIED
TRANSCRIPT**

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<p>1 PUBLIC MEETING BEFORE THE CITIZENS CLEAN 2 ELECTIONS COMMISSION convened at 9:30 a.m. on July 27, 3 2023, at the State of Arizona, Clean Elections 4 Commission, 1110 West Washington, Conference Room, 5 Phoenix, Arizona, in the presence of the following 6 Board Members:</p> <p>7</p> <p>8 Mr. Mark Kimble, Chairman Mr. Galen Paton Mr. Damien Meyer (Videoconference) Mr. Steve Titla (Videoconference)</p> <p>9</p> <p>10 OTHERS PRESENT:</p> <p>11</p> <p>12 Thomas M. Collins, Executive Director Paula Thomas, Executive Officer Mike Becker, Policy Director 13 Alec Shaffer, Web Content Manager Avery Xola, Voter Education Manager 14 Kara Karlson, Assistant Attorney General (Videoconference) 15 Mary O'Grady, Osborn Maledon (Videoconference) 16 Cathy Herring, Staff Rivko Knox, Member of the Public 17 (Videoconference) Nathan Madden, Member of the Public 18 (Videoconference) Eli Dalton Webb, Member of the Public 19 (Videoconference) 20 21 22 23 24 25</p>	<p>1 Commissioner Paton, seconded by Commissioner Titla. 2 I'll call the roll.</p> <p>3 Commissioner Paton.</p> <p>4 COMMISSIONER PATON: Aye.</p> <p>5 CHAIRMAN KIMBLE: Commissioner Titla.</p> <p>6 COMMISSIONER TITLA: Aye.</p> <p>7 CHAIRMAN KIMBLE: Commissioner Meyer.</p> <p>8 COMMISSIONER MEYER: I'll abstain. Since I 9 wasn't at the meeting, I can't verify whether they're 10 accurate.</p> <p>11 CHAIRMAN KIMBLE: Okay. Thank you.</p> <p>12 Chair votes aye.</p> <p>13 The minutes are approved 3-nothing with one 14 abstention.</p> <p>15 Item III, discussion and possible action on 16 the Executive Director's Report. Tom.</p> <p>17 MR. COLLINS: Yes. Thank you, Chairman and 18 Commissioners. I wanted to hit a few highlights from 19 this report. First, shockingly, it's -- next week is 20 August 1st, which begins the qualifying period for 21 participating candidates in the Clean Funding program. 22 That means that those candidates can start to collect 23 their \$5 qualifying contributions from registered 24 voters in their district or, in the case of Corporation 25 Commissioner candidates, registered voters in the</p>
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<p>1 P R O C E E D I N G</p> <p>2 CHAIRMAN KIMBLE: Good morning. Agenda 3 Item I is the call to order. It's 9:30 a.m. on 4 July 27th, 2023. I call this meeting of the Citizens 5 Clean Elections Commission to order.</p> <p>6 With that, we will take attendance.</p> <p>7 Commissioners, please identify yourselves for the 8 record.</p> <p>9 COMMISSIONER PATON: Galen Paton.</p> <p>10 COMMISSIONER MEYER: Damien Meyer.</p> <p>11 COMMISSIONER TITLA: Yeah, Steve Titla here.</p> <p>12 CHAIRMAN KIMBLE: Okay. We have a quorum.</p> <p>13 Thank you very much, Commissioners.</p> <p>14 Item II, discussion and possible action on 15 minutes for the June 22nd, 2023 meeting. Is there any 16 discussion on the minutes?</p> <p>17 (No response.)</p> <p>18 CHAIRMAN KIMBLE: If not, do I have a motion 19 to approve them?</p> <p>20 COMMISSIONER PATON: I'll make a motion to 21 approve the minutes.</p> <p>22 CHAIRMAN KIMBLE: Okay. Motion to approve 23 the minutes. Is there a second?</p> <p>24 COMMISSIONER TITLA: I second.</p> <p>25 CHAIRMAN KIMBLE: Thank you. Motion made by</p>	<p>1 state.</p> <p>2 This is always an exciting time of year, 3 so -- you know, we have had -- although, obviously, the 4 usage of the program -- that part of this program has 5 diminished over the years, we've always had strong and 6 consistent usage among the Corporation Commission 7 candidates, and I think this year will probably not be 8 an exception. And I also think that, you know, the 9 Corporation Commission is every -- every year, as the 10 State develops, the Corporation Commission becomes a 11 more important part of what, in fact, the government of 12 Arizona does.</p> <p>13 There is an election date on August 1 as 14 well, with Prescott, Tucson conducting Mayoral and 15 Council ballot-by-mail elections.</p> <p>16 And then the other thing to note -- and there 17 is a report attached to this. Mike's report on the 18 legislative activity is attached to this. Just a quick 19 note there: The Legislature will continue the session 20 on Monday, and, you know, nobody really knows what will 21 happen. They may come in and maybe sine die, they may 22 come in and then leave again.</p> <p>23 From news coverage and certainly in my 24 outreach, you know, we know that, you know, that the 25 biggest single issue is this Maricopa County</p>

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<p>1 transportation tax. For reasons that are kind of</p> <p>2 historical, in order for Maricopa County to impose a</p> <p>3 countywide sales tax, the Legislature has to actually</p> <p>4 approve that first. That -- the tax was last extended,</p> <p>5 I want to say, 10 years ago. It would expire in 2025,</p> <p>6 so that's been something people want to do. So that's</p> <p>7 been the main -- the main remaining issue. Although,</p> <p>8 there's a lot of chatter about the budget going</p> <p>9 forward, and that's something that we keep an eye on</p> <p>10 for a variety of reasons, not the least of which is,</p> <p>11 what does the budget picture look like in 2020 --</p> <p>12 fiscal 2025 and 2026, et cetera.</p> <p>13 I wanted to talk a little bit about the voter</p> <p>14 education outreach in particular. Couple of things</p> <p>15 that I wanted to really highlight. Yesterday Avery was</p> <p>16 a panelist on a McCain Institute panel entitled</p> <p>17 Arizona's Youth Electorate: Exploring the Political</p> <p>18 Behavior of Young Swing Voters. Some of us on staff --</p> <p>19 I know Chairman Kimble got a chance to watch -- to</p> <p>20 watch that panel.</p> <p>21 I thought it was a great opportunity for</p> <p>22 Avery. I thought that he did a very, very good job of</p> <p>23 articulating specific -- both -- both aspects of the</p> <p>24 history of youth voting and specific actions that</p> <p>25 organizations, whether it's Clean Elections or other</p>	<p>1 education. Now, again, I just want to highlight this</p> <p>2 because, again, it's an important aspect of what we do</p> <p>3 and it's an important linchpin in training election</p> <p>4 officers. In other words, basically every County</p> <p>5 employee who touches a ballot has to be trained through</p> <p>6 this process, so I think that having the recognition of</p> <p>7 Gina's expertise, you know, and the Commission's role</p> <p>8 in that process is important because, you know, that</p> <p>9 certification process touches, you know, so many people</p> <p>10 and helps validate the professionalism of our election</p> <p>11 officials in the state.</p> <p>12 I also wanted to highlight, Alec is working</p> <p>13 and has -- has created a guide for local jurisdictions</p> <p>14 on how they can include local candidates in the</p> <p>15 profiles on the Clean Elections website. And I think</p> <p>16 that's important because, as we iterate our website to</p> <p>17 continue to be the best one-stop shop for voters in any</p> <p>18 part of the state, local candidates are a key part of</p> <p>19 that.</p> <p>20 We know, from talking to local election</p> <p>21 officials over the years, local candidates is a thing</p> <p>22 they get questioned on; but because of their role,</p> <p>23 they're not in a position to provide that information.</p> <p>24 This is a way that we can help to serve both voters and</p> <p>25 local election officials. So when -- you know, when we</p>
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<p>1 folks who are involved in talking to younger voters,</p> <p>2 can take, you know.</p> <p>3 And, I mean -- and just to give you a sense</p> <p>4 of how, I mean, prestigious this panel was, obviously</p> <p>5 it's the McCain Institute, they had Harvard's director</p> <p>6 of polling on there, they had a woman who's a fellow at</p> <p>7 the McCain Institute who is now -- who was formerly the</p> <p>8 director of public policy for Snapchat, which is a big</p> <p>9 company.</p> <p>10 So I think that's certainly appropriate</p> <p>11 company for Avery to be in, and I felt like it was --</p> <p>12 and he, you know, I thought, was in many ways the most</p> <p>13 direct -- well, not in many ways -- in actuality the</p> <p>14 most direct speaker there to how -- how youth voting</p> <p>15 actually -- how people, you know, who -- voters,</p> <p>16 younger voters, actually act and what they're</p> <p>17 responsive to and, again, like I said, specific actions</p> <p>18 that organizations can take. So I was really</p> <p>19 impressed. And it was good for Avery, it was good for</p> <p>20 our organization, and it was a -- it was a -- and I</p> <p>21 think there will be a YouTube about it at some point.</p> <p>22 So if you want to watch it, I recommend it.</p> <p>23 I also wanted to highlight that Gina has been</p> <p>24 teaching the Arizona Secretary of State's election</p> <p>25 officer certification training on voter outreach and</p>	<p>1 talk about who our main constituencies are, obviously</p> <p>2 candidates are one of them because of the Clean Funding</p> <p>3 program or the debates and the candidate statement</p> <p>4 pamphlet, but election officials in counties and</p> <p>5 cities, and then obviously voters are the number one</p> <p>6 constituent. So I think that that's an important thing</p> <p>7 I wanted to highlight.</p> <p>8 You can see just obviously a continued effort</p> <p>9 on the part of everyone to -- to get out and be meeting</p> <p>10 with folks, and really I think some of these</p> <p>11 meetings -- some of these efforts are really starting</p> <p>12 to gel in a way that I am very -- I'm very happy about.</p> <p>13 One other note I want to mention. Gina and I</p> <p>14 yesterday went to a presentation on -- in honor of the</p> <p>15 33rd anniversary of the Americans with Disabilities Act</p> <p>16 with the -- which was presented by the Ed Pastor Center</p> <p>17 for Politics and Policy at ASU, the Arizona Center for</p> <p>18 Disability Law, and Ability360. And that, you know,</p> <p>19 itself was a -- was a -- was an important place for us</p> <p>20 to be. You know, something like 20 percent of all</p> <p>21 people across demographics have a disability, and not</p> <p>22 all those disabilities are visible, and accommodation</p> <p>23 of those -- those people who have disabilities --</p> <p>24 You know, I'm a lawyer, you know, a lot of</p> <p>25 people on the Commission are lawyers, and a lot of</p>

<p style="text-align: right;">Page 10</p> <p>1 people who advise election officials are lawyers. And 2 so if you look at things through the ADA lens, you're 3 looking at a -- at a -- at a sort of a minimal 4 requirement, which is really not the same as what is 5 actually necessary to actually try to meet a voter 6 where they are and accommodate them. And we heard some 7 stories about folks who have gone to what are nominally 8 ADA compliant voter centers that don't, in fact, 9 provide the access that is usable, right. So you have 10 an accessible machine, but it's placed in a -- it's 11 placed somewhere where there's not actually privacy 12 taken into account. 13 I think that that's important because, you 14 know, we have, through our -- through the ASL, 15 candidate statement pamphlet, through Sun Sounds, and 16 in other ways, tried to broaden our approach to 17 accessibility. And I think that's really something 18 that is important, again, because it can -- I mean, 19 just from looking in the room of folks -- folks who 20 were there, you know, we had just a broad diversity of 21 people from different parties and different walks of 22 life who, you know, who sort of were able to talk about 23 how the voting process -- there's what is legally 24 required, but then there is what is practically 25 necessary. And that divide is something, I think, we</p>	<p style="text-align: right;">Page 12</p> <p>1 of a nonpartisan aspect to that to try to maybe get 2 the -- try to build more confidence there. 3 So we have some information there about the 4 report. We will -- I hope to, in the -- probably in 5 the fall we'll have Tom Riley, who's a principle 6 author, here to talk us through that. But I think 7 there's a lot of insight there for a lot of the roles 8 that we play, whether it's our policy making role or 9 otherwise. 10 I think that -- the only other thing I wanted 11 to note on the lawsuit front, I do want to just make 12 sure -- two things. One, we had a result in the state 13 case against Prop 211 that was good. The case was 14 dismissed with leave to amend and file a new lawsuit. 15 That new complaint was filed on Friday. If you'd like, 16 obviously, we can send you a copy of it. 17 And then the other -- the other thing we did 18 do is we resolved the case called Legacy Foundation 19 Action Fund last -- last -- earlier this month. That's 20 been on this list for a long time, but that's now been 21 resolved and there's not -- no further action for the 22 Commission on that. 23 So I think that kind of concludes the report. 24 CHAIRMAN KIMBLE: Thank you, Tom. 25 Let me also just echo what you said about the</p>
<p style="text-align: right;">Page 11</p> <p>1 can help inform our constituencies about. 2 We continue to work with the Secretary's 3 Office on the Election Procedures Manual and sit in on 4 those meetings. 5 We did -- the Arizona State Center for 6 Inclusive and Sustainable Democracy launched a report 7 last week that we helped support on independent 8 election administration and on -- it was really a 9 survey. It's a survey of more than a thousand voters, 10 and it really looked at what do voters like about the 11 election system, what don't they like. And a couple of 12 things that were key takeaways were: Voters do not 13 like the partisanship within the election system 14 itself. So that means -- and the two key things, I 15 think, about that that are important to bear in mind 16 are: Voters are discouraged -- at least say they're 17 discouraged by a primary system that's maybe more 18 partisan focused and then with respect to election 19 officials themselves. 20 You know, the United States is somewhat 21 unique in Western democracies insofar as our election 22 administration process is run by people who are elected 23 in partisan elections, right, so -- and this is 24 something that some election officials who are elected 25 have talked about as well, the need to have some kind</p>	<p style="text-align: right;">Page 13</p> <p>1 McCain Institute forum and Avery's participation in it. 2 It was a very interesting forum, and I thought Avery 3 presented some very, very relevant statistics on -- on 4 young voting and also some excellent suggestions on how 5 to get more young people involved in the process, and 6 he told -- talked quite a bit about the role of Clean 7 Elections in educating voters. So I -- I was very 8 impressed, Avery. I appreciate you doing that. 9 Is there any other discussion or questions 10 from Members of the Commission? 11 (No response.) 12 CHAIRMAN KIMBLE: Hearing none, we'll move 13 on. 14 Item IV, discussion and possible action 15 regarding opening a public comment period on proposed 16 rules related to the Voters' Right to Know Act, 17 Proposition 211. As you can see, our Agenda sets forth 18 a number of rules that staff has drafted to begin the 19 rulemaking process under the Voters' Right to Know Act. 20 I'm not going to recite them all here. 21 The public comment period is designed to 22 solicit feedback from the public, the regulated 23 community, and other stakeholders. The public comment 24 period here will last no less than 60 days, and rules 25 will be placed on the Agenda for final approval after</p>

<p style="text-align: right;">Page 14</p> <p>1 that time. We take public comment up through and 2 during the Commission's meeting to approve a rule. 3 Actions we may take after a public comment period 4 include deferring action, making changes to the 5 proposed rules, and seeking further comment. 6 Tom, do you want to give us a brief overview 7 of the proposed rules? 8 MR. COLLINS: Yes. Thank you, Mr. Chairman, 9 Commissioners. 10 So -- so at our last meeting we began a 11 public comment period on rules that were designed to 12 address specific policy-related questions that the 13 Prop 211 dedicates to us, for example, disclaimers on 14 public communications, the process for notice before 15 someone's money can be used for campaign media 16 spending, you know, we did some definitional stuff, 17 some basic work on timelines, those kinds of things. 18 Those are currently out for public comment; although, 19 other than an initial comment we received with some 20 clarifying questions, which we're working on responding 21 to, we haven't received a lot yet. I assume we'll 22 probably receive most of that towards the end of the 23 60-day period. 24 Today we are doing what I see as the -- as 25 the, in all likelihood, the -- the second and last big</p>	<p style="text-align: right;">Page 16</p> <p>1 know, Title 16, Chapter 6.1, which is Prop 211, how to 2 provide that to us. We retained, from the Clean 3 Elections rules, the need to have that sworn and 4 notarized. We think that that, at a minimum, helps 5 ensure some validity to the rules, helps ensure that we 6 don't get frivolous complaints -- or, the complaint 7 process -- we don't get frivolous complaints, and we 8 think that that works well. We also require that, as 9 we do under the Clean Elections Act, for responses. 10 There is a -- you know, we have a process for 11 responding. The -- some of the highlights of what 12 happens then are: This set of rules more directly 13 empowers the staff of the Clean Elections Commission to 14 take investigatory steps in order to flesh out a 15 complaint or ultimately dismiss a complaint working 16 with a respondent. 17 It then sets forth a process by which the 18 staff and attorneys for the Commission will be -- will 19 work with the respondents and their counsel to, you 20 know, essentially -- as we work up to a hearing, it has 21 a specific prehearing conference. That's something 22 that I don't think many state agencies actually have. 23 But as we move towards more of a formal hearing process 24 here, rather than this more informal hearing process 25 we've had under the Clean Elections Act, you know, we</p>
<p style="text-align: right;">Page 15</p> <p>1 chunk of rules. And what I mean by that is not to say 2 that we won't have other rules that we'll propose, but 3 we really tried to break down this process into a 4 section on 211 as it -- you know, 211-specific things, 5 right. In other words, the thing -- substantive law of 6 211 requires us to take certain steps to fill in 7 particular blanks identified by the statute. This -- 8 and we tried, as much as we could, to also lay out 9 basic procedural rules like the time computations and 10 such in that -- in that set. 11 This set of rules has to do with -- with the 12 procedures around complaints, investigations, and 13 enforcement. And so for the -- the sources of these 14 rules are -- are principally, obviously, case law in 15 the state, we looked to the Clean Elections Act rules 16 themselves, we looked to the Secretary of State's 17 Election Procedures Manual, we looked to the Federal 18 Election Commission, and we looked to the -- not a -- 19 not a broad survey, but we looked to a number of rules 20 developed and implemented by other state boards and 21 commissions as it relates to their enforcement 22 authority. 23 So the broad strokes are, you know, the law 24 -- the law allows and the -- and the rules create a 25 process for if a person has a complaint underneath, you</p>	<p style="text-align: right;">Page 17</p> <p>1 thought it was important to build in that conference 2 process. 3 That conference will then result in a report 4 that will go to the Chair, congratulations, or the 5 Chair's designee to, you know, essentially do a 6 prehearing order that tries to capture, you know, 7 how -- how things will proceed. The goal here is to, 8 you know, end up with, rather than a reason to believe 9 hearing and a probable cause hearing, is to have a 10 single hearing where the issues -- the factual issues 11 are determined by the Commission and the assessment -- 12 and the assessment of penalties, if any, is determined 13 by the Commission. 14 And then from there, obviously, a respondent 15 who doesn't like the outcome can seek review or, in the 16 event that they don't -- or, whether they do or don't, 17 the Commission staff can seek to enforce whatever final 18 order is issued by the Commission. 19 You know, we think that, you know, this is 20 clear. We think it provides a -- sufficient 21 protections to respondents in terms of their interests. 22 And we think that, you know, we think that this will 23 be, you know, a relatively efficient system for 24 resolving complaints. 25 One of the things we don't know, obviously,</p>

<p style="text-align: right;">Page 18</p> <p>1 is what the volume will be, you know, as we move 2 forward, those kinds of things. We also don't know -- 3 you know, as Commissioner Paton has mentioned in the 4 past, we also still aren't clear -- as clear about what 5 the person power, person hours are going to be involved 6 in this.</p> <p>7 One of the things that the rules make 8 explicit, which has always been implicit in the 9 practice of both the Commission and the Attorney 10 General's Office, is that the Commission will have to 11 have an attorney, who is your independent advisor, to 12 help assist not only with the hearing process, but with 13 these -- with the prehearing orders, you know, to make 14 sure that, you know, as your -- when you get this 15 packet of information of recommendations that are 16 hopefully jointly agreed to by both parties, you know, 17 to help sort through that. I mean, we put all that in 18 with some specificity, again -- not to be repetitive 19 here, but that's always been implicit, and some of it 20 is explicit in the agency manual that's promulgated by 21 the Arizona Attorney General's Office, but, you know, 22 in view of the litigiousness of folks in all parts of 23 the legal process, we thought it might be better to 24 just put it in there as clearly as possible, so -- but 25 at the end of the day, we hope that these rules come</p>	<p style="text-align: right;">Page 20</p> <p>1 if you're a person who is in this process who has 2 information you're conveying, and the information 3 you're conveying you reasonably believe to be accurate 4 or true or believable, you know, to you, you should be 5 able to rely on that. You know, we don't -- you know, 6 but the tradeoff for that we put in here, and people 7 can comment on this either way, is, you know, if it's 8 not, we don't -- you're not -- that's not a carte 9 blanche, you know. It needs to be actually believable 10 or reasonably believed.</p> <p>11 We also talked a little bit about the 12 evidentiary presumptions around structuring. So, in 13 other words -- and what it does is it said, the 14 Executive Director, when you're presenting a case, at 15 least for civil purposes, that talks about structuring, 16 you know, we're going to have essentially, you know, a 17 standard of having to show something of -- some willful 18 conduct with respect to the transaction or the 19 circumstance that you're operating from.</p> <p>20 And then finally, we have a provision that 21 attempts to -- for folks who advise people in the 22 process of dealing with Chapter 6.1, you know, to try 23 to give them some -- some -- it's not -- some, you 24 know, latitude there. But we do want to make clear -- 25 and then we do make clear in that rule that, you know,</p>
<p style="text-align: right;">Page 19</p> <p>1 across as relatively intuitive to practitioners in this 2 area.</p> <p>3 Obviously, most of the attorneys who appear 4 in front of us are -- are litigators, you know, in 5 their own right. And so I think that perhaps 6 there's -- you know, this might actually be more 7 consistent or more comfortable for them than perhaps 8 some of our more informal processes. And I use 9 informal not to say casual, right. I use informal to 10 mean we haven't traditionally had live witnesses just 11 because people have never really talked about it; this 12 would allow for that, if necessary, those kinds of 13 things.</p> <p>14 So that's -- that's sort of the process here. 15 As I say, we anticipate there will be --</p> <p>16 Oh, the other thing I should mention -- 17 sorry -- I need to mention is, we do have some rules on 18 transactions and structuring, and those are designed to 19 provide, again, a procedural backdrop for 16-975 in 20 particular which says, basically, you oughtn't 21 structure a transaction or attempt to structure or aid 22 in structuring a transaction to evade the requirements 23 of Chapter 6.1.</p> <p>24 So one of the things -- the things that we 25 tried to do there were twofold. Number one, say, look,</p>	<p style="text-align: right;">Page 21</p> <p>1 even if you're -- you know, someone advising a client 2 in enforcement or whatever is not going to be 3 inherently -- you know, wouldn't be subject to 4 structuring some kind of -- being implicated in some 5 kind of structuring scheme because of that.</p> <p>6 Nevertheless, you cannot -- and we have some reason to 7 believe, based on public statements by folks, that, in 8 fact, people are confused about the difference between 9 advising people of the law and advising people to 10 structure their transactions illegally. And so we made 11 explicit, based on that, that, you know, whatever you 12 are doing for your client, you cannot advise a client 13 to take actions or take actions yourself that result in 14 structuring your transactions to avoid the requirements 15 of the Act.</p> <p>16 Why that's a point of confusion is a little 17 bit beyond me. I don't know if election attorneys -- 18 if they've talked to their colleagues in the financial 19 services bar or not. It doesn't seem to be that big of 20 a problem there. But apparently it was something -- it 21 was a source of confusion, we've learned, through 22 public statements by lawyers in the -- who work in 23 elections. So that's why that's there. So we hope 24 that that together provides some clear processes for 25 attorneys and regulated folks to, you know, work</p>

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<p>1 through problems there.</p> <p>2 It's also important to note that in the prior</p> <p>3 rulemaking process we started a review process on an</p> <p>4 advisory opinion process, right. So you take these two</p> <p>5 things together. You have a rule that tries to outline</p> <p>6 what the procedures are going to be for -- for</p> <p>7 transactions and structuring, but also that's where</p> <p>8 this advisory opinion piece comes -- becomes important.</p> <p>9 Because there's no reason to be, on a -- on sort of a</p> <p>10 lark or on -- there's no reason, under this set of</p> <p>11 rules, to be acting with uncertainty about whether or</p> <p>12 not you have -- you are engaging in something that</p> <p>13 would be considered structuring, because you have a</p> <p>14 clear -- you know, assuming all these rules are</p> <p>15 finalized, you have a clear opportunity to have the</p> <p>16 Commission independently provide an opinion you can</p> <p>17 rely on about whether or not what you propose to do is</p> <p>18 appropriate and you have guidelines about what we</p> <p>19 think, generally speaking, you know, will fall in or</p> <p>20 outside those lines. So I think if you take those two</p> <p>21 things together, it's very difficult to see how, for me</p> <p>22 anyways, to see how someone would -- would have a</p> <p>23 serious problem with respect to that.</p> <p>24 COMMISSIONER PATON: I have a question.</p> <p>25 MR. COLLINS: Sure. Please.</p>	<p>1 requires is a -- is a little unclear to me. At this</p> <p>2 point, I am hesitant to staff up, with full-time staff,</p> <p>3 new -- until we have a sense of what the -- what the</p> <p>4 real amount of complaints really is, because that's</p> <p>5 a -- because there's a lot of -- I mean, just there's a</p> <p>6 lot of ET -- what are they called -- ERE -- there's a</p> <p>7 lot of ERE costs associated with that, especially if</p> <p>8 you're hiring someone who -- who is -- essentially has</p> <p>9 a JD. So that's probably something -- I mean, that's</p> <p>10 something I -- you know, I think we'll -- we will over</p> <p>11 time be able to talk --</p> <p>12 COMMISSIONER PATON: You mean that's a</p> <p>13 lawyer?</p> <p>14 MR. COLLINS: Right. Yeah. Yeah. But</p> <p>15 lawyers are expensive. And lawyers by the hour are</p> <p>16 actually cheaper than lawyers -- I mean, for us lawyers</p> <p>17 by the hour are less expensive than a permanent lawyer</p> <p>18 on staff who --</p> <p>19 And then -- and then there are questions --</p> <p>20 and I don't know how -- I mean, I'm just throwing this</p> <p>21 out here. And if I shouldn't, then I'm sure Kara and</p> <p>22 Mary are going to be not thrilled that I say this. But</p> <p>23 there are substantial questions about how arm's length</p> <p>24 a relationship with a lawyer has to be. I mean, in</p> <p>25 other words, can the Commission actually hire a lawyer,</p>
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<p>1 CHAIRMAN KIMBLE: Commissioner Paton.</p> <p>2 COMMISSIONER PATON: Couple things. So if we</p> <p>3 are having -- does that involve extra personnel to do</p> <p>4 that? Are we -- are we -- have a different budget? Is</p> <p>5 that coming out of the budget that we have now? And as</p> <p>6 far as somebody that advises us on this, is that a</p> <p>7 separate lawyer than what we have now or is it from the</p> <p>8 Attorney General's Office or how is that -- how does</p> <p>9 all that work, I guess?</p> <p>10 MR. COLLINS: Sure. That was a very good</p> <p>11 question, Mr. Chairman, Commissioner Paton. So from</p> <p>12 a -- from a budgeting perspective, you know, we are --</p> <p>13 we are hopeful that our budget process in the next --</p> <p>14 over the next few months will be a little bit more</p> <p>15 involved than it has been on a variety of different</p> <p>16 fronts. We will -- we will have to engage with the</p> <p>17 Attorney General's Office on this.</p> <p>18 The statute permits us to make hire -- to</p> <p>19 make -- to hire counsel outside of -- well, it's</p> <p>20 unclear to me if it allows us to hire entirely outside</p> <p>21 of the procurement process outlined in 41-192 and</p> <p>22 41-2518, but it nevertheless allows us to select</p> <p>23 counsel. So how that will work is probably something</p> <p>24 we will coordinate with the Attorney General's Office.</p> <p>25 How much more additional funding that</p>	<p>1 who is their independent advisor, without that lawyer</p> <p>2 then becoming subject of being pilloried in a -- in a</p> <p>3 later court opinion? I mean, we don't know the answers</p> <p>4 to those questions.</p> <p>5 So we'll work through all that. My -- my</p> <p>6 hope is that -- and how this should ultimately end up</p> <p>7 working is that there -- the most important points are</p> <p>8 going to be that the attorney who advises the</p> <p>9 Commission's loyalty flows to the Commission, to you</p> <p>10 all, and not to the staff, and that the -- and that</p> <p>11 there would be a conflict for that lawyer to -- to come</p> <p>12 across the sort of wall we've tried to erect in</p> <p>13 these -- in these rules.</p> <p>14 What I -- what I think will take the most</p> <p>15 work is ensuring -- and this is something that I will</p> <p>16 work on and, to the extent that -- and I, you know,</p> <p>17 obviously will engage with Kara about this, is making</p> <p>18 sure that the Attorney General's Office understands</p> <p>19 that that person will have to have substantive</p> <p>20 understanding of this statute. And that will benefit</p> <p>21 not just the Commission, but the respondents, right.</p> <p>22 I mean, in other words, what the --</p> <p>23 traditionally the Attorney General's Office has done</p> <p>24 for independent advice is they have attorneys who work</p> <p>25 in, say, the licensing bureau or some other place who</p>

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<p>1 can come in and basically -- and you've had this, 2 right? And some of those lawyers are very good and 3 very much understand the situation. And a lot of the 4 procedural aspects of -- of hearings are the same no 5 matter, right? If you're talking to the Fingerprint 6 Board or you're talking to the Clean Elections 7 Commission, a lot of the basic due process law stuff 8 that they're guiding you on is the same. However, this 9 rule requires them to be able to understand why -- you 10 know, why a scheduling order would require the things 11 that would be required and sort of requires a little 12 bit more subject matter expertise around these areas. 13 For example, if -- if you were to -- let's 14 just imagine that we get to the end of a case and you 15 want to issue a final order. A final order -- you 16 might not -- you know, the rules contemplate that the 17 respondent and the -- and the staff can both provide 18 you draft final orders. You might not like either of 19 those. The attorney who you would ask to write one 20 that you like will be an independent -- will be this 21 independent legal advisor. That means that person has 22 to understand the law at play in order to draft that 23 order properly, right? 24 So -- so that's -- that is -- so it's a 25 substantial question, and one that we'll kind of have</p>	<p>1 overwhelm us, I guess, because it's an unknown. 2 MR. COLLINS: Right. 3 COMMISSIONER PATON: And obviously the person 4 that advises us or advises the people interested -- 5 MR. COLLINS: Yeah. 6 COMMISSIONER PATON: -- that are coming for 7 answers to questions that they have, it could be a 8 whole little staff, right? 9 MR. COLLINS: Yeah. Right. Yes, that's 10 correct. So, I mean, certainly other agencies that 11 have similar responsibilities to ours in other states, 12 and certainly at the federal level, have -- have bigger 13 enforcement staffs than Mike and me. I'm -- but as I 14 say, I mean, I'm -- I am still not convinced that -- I 15 just -- I just -- the problem is that -- I mean, the 16 real problem becomes, just as a budget matter and as a 17 practical matter, if there was -- 18 Let me give you an example. And this is a 19 free -- this is a free -- a free idea for the Attorney 20 General's Office. If the Attorney General's Office was 21 to create a bureau of independent advisers whose job 22 was not to be the attorney contact point for the boards 23 and the commissions and other agencies that do 24 enforcement, but rather was designed to have broad 25 subject matter expertise in all of the different</p>
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<p>1 to work through. But right now my -- and it may very 2 well be that what we do is we end up having to hire 3 somebody who's outside to do that. I mean, I don't 4 know. Depending upon if there are attorneys who have, 5 you know, who have not been on one side or the other or 6 who are not currently, you know, sort of engaged in, 7 you know, representing clients, particularly partisan 8 or ideological clients, before the Commission or before 9 other campaign -- in other campaign finance cases. 10 So it's a -- it's a really good question, and 11 the reason I gave you such a long answer is because 12 it's -- these are all questions we'll have to -- we'll 13 have to -- some questions we'll have to answer. And so 14 what I'm trying to just demonstrate is our awareness of 15 that and how we can hopefully work through that over 16 the course of the next, you know -- you know, six 17 months or so. I'm not expecting -- 18 COMMISSIONER PATON: I'm just concerned that, 19 you know, we've got all these proposed rules and the 20 public comment that we've gotten -- 21 MR. COLLINS: Yeah. 22 COMMISSIONER PATON: -- is pages. 23 MR. COLLINS: Yes. 24 COMMISSIONER PATON: That seems to me this 25 could become, you know, fairly cumbersome and may</p>	<p>1 enforcement regimes in the state, and could provide 2 those attorneys to agencies on an ad hoc basis, that 3 would be a way that we could -- all the boards, who are 4 all in a similar situation, could address this kind of 5 issue. 6 And what that would mean would be you would 7 take -- let's say you hire five attorneys for that and 8 you broke up the major areas of -- of state regulation. 9 You had a health and safety person, you had a person 10 who, you know -- a health person, you had an election 11 person, you had a -- you had a person who deals with 12 the Board of Technical Registration and the Registrar 13 of Contractors. If you -- that person could be 14 cross-trained on some of those things. 15 It would be similar to how -- the way the 16 Legislative Council has a set of lawyers that work for 17 the Legislature, and each one of those legislative 18 lawyers has a -- 19 COMMISSIONER PATON: Like a utility player? 20 MR. COLLINS: Yeah, exactly. Each one of 21 those attorneys has a set -- a part of the Arizona 22 Revised Statutes that is their area. And so if 23 something comes in, someone wants a bill written about 24 Title 16, they go to one attorney. If they want a bill 25 written about the tax code, they go to another</p>

<p style="text-align: right;">Page 30</p> <p>1 attorney. That would be a way in which the Attorney 2 General's Office could better deal with both the 3 increasingly -- well, I shouldn't say increasing -- the 4 changes in administrative law that are coming out of 5 our court system, the changes in administrative law 6 that are likely to come out of the federal court system 7 that may apply to state institutions, and -- and also 8 maintain, you know, especially on those -- in those 9 areas where health and safety are critically important, 10 maintain a context where all of the respondents get all 11 the due process to which they're entitled to, but the 12 public and victims, in the cases of health and safety 13 issues, are also protected by the boards being able to 14 act independently.</p> <p>15 That would be -- that's my dream solution to 16 this problem, but -- because I don't think -- I just 17 don't think that each individual board trying to create 18 a huge, you know, a huge staff for this is probably 19 very effective, and it's very -- much more expensive.</p> <p>20 COMMISSIONER PATON: So my understanding is 21 this bill, I mean, this became law.</p> <p>22 MR. COLLINS: Yeah.</p> <p>23 COMMISSIONER PATON: And we're responsible 24 for it.</p> <p>25 MR. COLLINS: Yeah.</p>	<p style="text-align: right;">Page 32</p> <p>1 can -- we have funding available to backfill that, but 2 -- so I -- this is -- and that doesn't affect the 3 general fund, which is the most important legal aspect 4 of it. But, no, this doesn't pay for itself.</p> <p>5 I mean, but more importantly, you know, I 6 mean, the other problem here is that there are legal 7 changes to the way administrative law is done that 8 are -- that are coming, whether they're coming in the 9 form of the Legacy Foundation case that we just 10 resolved or coming in the form of cases that are now 11 pending at the U.S. Supreme Court, that are going to 12 require all of us, not just us, but everybody who does 13 this kind of work, to evaluate what the costs are going 14 to be.</p> <p>15 They're going to raise the costs of enforcing 16 laws, whether it's a law related to a doctor who gets 17 in trouble with BOMEX or a -- or an acupuncturist or an 18 independent expenditure -- person that makes 19 independent expenditures. They're going to raise the 20 costs of enforcing the law against those folks. There 21 is --</p> <p>22 And so I guess what I'm trying to say is, 23 your questions are exactly right, it's just that there 24 are -- there are a bunch of different factors that are 25 going to play out that are going to determine how that</p>
<p style="text-align: right;">Page 31</p> <p>1 COMMISSIONER PATON: But we weren't funded 2 for it, is what I'm asking you?</p> <p>3 MR. COLLINS: So that's a good question. So, 4 Mr. Chairman, so there's a 1 percentage -- there was 5 a -- there was a 1 percentage point increase in the 6 surcharge that funds the main Clean Elections Act. It 7 is -- the payments for this -- there are caps under the 8 Clean Elections Act for expenses under that article 9 that don't appear to apply to this chapter, but I would 10 say that -- let me put it this way. I think what -- it 11 was like --</p> <p>12 What was the number? You gave me the 13 number of what -- where we were at, roughly.</p> <p>14 MR. BECKER: About 72,000.</p> <p>15 MR. COLLINS: Right. So so far the 16 1 percentage point increase has provided about 72,000 17 in new revenue. That's -- obviously, for startup 18 purposes, that's not even in the ballpark. What could 19 -- if that's -- that's over six months' time. Let's 20 say -- and those revenues have not been consistent over 21 time, but let's say that raises 100 to \$150,000 a year 22 in additional revenue for this particular project. 23 That's not going to cover the cost of it.</p> <p>24 Now, the Act directs, essentially, the Clean 25 Elections fund to provide the funding for that, so we</p>	<p style="text-align: right;">Page 33</p> <p>1 gets paid for that we don't -- that all the chips 2 haven't fallen yet to know how that's going to work 3 out.</p> <p>4 My hesitancy, as Executive Director, to bring 5 on new staff members is, I don't want to bring in 6 somebody who's going to end up not having a lot of work 7 to do. A lot of this will end up inevitably falling 8 after --</p> <p>9 You know, we managed to run, for the most 10 part, the Clean Candidate program with the -- most of 11 the candidates, not all, but most of the candidates and 12 the Independent Expenditure Reporting program aspects 13 of the Clean Elections Act with basically Mike and I, 14 with assistance from Kara, and not -- but pretty, 15 pretty efficiently on a financial side. There are some 16 cases that blow up, but they don't blow up every time.</p> <p>17 This -- this one is a little bit -- a little 18 bit different. And if the Clean Elections Act startup 19 in 1999 through 2006 is any indication, there was -- 20 there were way more -- and I think, Mike, I think -- 21 there were way more things that turned into -- 22 immediately into sort of real litigation outside of 23 just the administrative process. And at that point, 24 that really is going to necessarily involve attorneys 25 and -- but not necessarily attorney -- but it doesn't</p>

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<p>1 make any sense to actually have -- it's not the kind of</p> <p>2 attorney that you would necessarily employ in-house.</p> <p>3 It's inevitably going to result in -- whether it's the</p> <p>4 Attorney General's Office, depending upon the</p> <p>5 circumstance, or outside counsel, you know, whether --</p> <p>6 you know, whether that's Mary or what -- that's what</p> <p>7 Mary's role has been in a number of cases.</p> <p>8 You know, I don't have a quantitative answer;</p> <p>9 I only have qualitative answers on this question.</p> <p>10 COMMISSIONER PATON: So it's the great</p> <p>11 unknown really?</p> <p>12 MR. COLLINS: Yeah. Yes, it is. I mean,</p> <p>13 if -- we have the money, you know, provided the budget</p> <p>14 doesn't go -- the overall State budget doesn't go away</p> <p>15 and we don't find ourselves cannibalized, but --</p> <p>16 COMMISSIONER PATON: But I just -- I just</p> <p>17 feel like what if it turns into a significant thing.</p> <p>18 And I doubt that the Legislature is going to, you know,</p> <p>19 try to help us out. And I guess -- I guess if more</p> <p>20 people get fined or whatever, that would be -- but I</p> <p>21 thought our revenues were kind of going down --</p> <p>22 MR. COLLINS: Yes.</p> <p>23 COMMISSIONER PATON: -- for a couple years.</p> <p>24 MR. COLLINS: Oh, for sure.</p> <p>25 COMMISSIONER PATON: So that's -- maybe I'm</p>	<p>1 a -- this is a rule of thumb, but I would say nine</p> <p>2 times out of 10 we are in the -- in the context of</p> <p>3 independent expenditure reports and in the context of</p> <p>4 clean candidates, we are able to resolve complaints</p> <p>5 without -- without any -- without any -- without any</p> <p>6 kind of hearing by virtue of -- by just, you know,</p> <p>7 staying on top of them, getting -- I mean, you know,</p> <p>8 addressing them quickly and resolving them the most</p> <p>9 efficient way possible. We have not, for example,</p> <p>10 culturally had an approach that says that enforcement</p> <p>11 for the purposes of extracting financial penalties is</p> <p>12 our -- is our focus.</p> <p>13 The other X factor, just -- not to -- just to</p> <p>14 throw it out there, just so you have more awareness, is</p> <p>15 this Act is much more explicit about the rights of</p> <p>16 folks who are dissatisfied with our decisions to sue</p> <p>17 the Commission. That's a whole other cost that the</p> <p>18 Clean Elections Act does not -- does not make nearly as</p> <p>19 explicit. In fact, we've had many fewer lawsuits along</p> <p>20 those lines than this would. That happens at the FEC</p> <p>21 all the time. The FE- -- that part of the law is very</p> <p>22 similar to what the FEC faces.</p> <p>23 I am -- I guess what I want to say is, I am</p> <p>24 just, small c, conservative about wanting to invest the</p> <p>25 money in employment costs up front before we have a</p>
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<p>1 making a mountain out of a molehill, but I think try to</p> <p>2 plan what could happen.</p> <p>3 MR. COLLINS: Yeah. Mr. Chairman,</p> <p>4 Commissioner Paton, no, you're not making a mountain</p> <p>5 out of a molehill. You're identifying real concerns</p> <p>6 that we really talk about internally a lot. It's just</p> <p>7 that it's hard to get -- it's just hard to get ahead of</p> <p>8 -- I mean, we know there are administrative law</p> <p>9 decisions that are on the docket at the U.S. Supreme</p> <p>10 Court right now that may have a trickledown impact on</p> <p>11 the way everybody who enforces law through</p> <p>12 administrative process does business, right. And why</p> <p>13 does that -- and that will alter the terrain,</p> <p>14 potentially significantly, and it may really affect the</p> <p>15 costs quite a bit.</p> <p>16 But, you know, until those happen, the most</p> <p>17 important thing for us is to be able to tell you what</p> <p>18 we're considering, what we think is our solutions to</p> <p>19 those things if they -- if they were to occur, and</p> <p>20 then -- and then -- and then the big unknown -- the</p> <p>21 biggest single unknown is, what is the volume of</p> <p>22 complaints going to be, you know, and what is the</p> <p>23 volume of complaints that will actually have to be</p> <p>24 resolved by a hearing.</p> <p>25 You know, I mean, I would say -- this is not</p>	<p>1 better gauge of -- because we can ramp up stuff. It's</p> <p>2 a lot easier to ramp up than it is to ramp down.</p> <p>3 COMMISSIONER PATON: I guess maybe what I'm</p> <p>4 thinking is that -- that maybe we can try to figure out</p> <p>5 like a job description or whatever and have that kind</p> <p>6 of stuff set up if we actually need it --</p> <p>7 MR. COLLINS: Yeah.</p> <p>8 COMMISSIONER PATON: -- and have it ready to</p> <p>9 go so -- you know, before it envelopes us if something</p> <p>10 happens.</p> <p>11 MR. COLLINS: Yeah. I think that's -- I</p> <p>12 think that's a good -- Mr. Chairman, I think that's a</p> <p>13 good idea. We have had some conversations, I mean,</p> <p>14 along those lines. We had a -- we had a very -- I had</p> <p>15 a very good suggestion from somebody just the other day</p> <p>16 in that meeting about whether or not we needed to set</p> <p>17 up a more formal enforcement division, you know, on</p> <p>18 paper. So, you know -- yeah, so I think that's</p> <p>19 probably not a bad idea, and we can sort of have --</p> <p>20 COMMISSIONER PATON: Because we already have</p> <p>21 five, six, seven legal issues that we look at like</p> <p>22 every time we come.</p> <p>23 MR. COLLINS: Right. Right.</p> <p>24 COMMISSIONER PATON: And this could -- like I</p> <p>25 said, we are seeing these comments that are pages long,</p>

<p style="text-align: right;">Page 38</p> <p>1 so people are already thinking about stuff. So if 2 that's the case, then I think we should be prepared for 3 it. 4 MR. COLLINS: Sure. I think that -- 5 CHAIRMAN KIMBLE: Okay. Are there any other 6 questions or discussions from Members of the Commission 7 on opening a public comment period? 8 (No response.) 9 CHAIRMAN KIMBLE: I will note we received a 10 written comment yesterday from Lee Miller Law. 11 Is there anyone else here who wishes to make 12 a comment on the draft rules? 13 (No response.) 14 CHAIRMAN KIMBLE: Seeing no one, do I have a 15 motion to distribute the rules identified in Item V -- 16 excuse me -- Item IV of the Agenda for public comment? 17 (No response.) 18 CHAIRMAN KIMBLE: No one wishing to make a 19 motion? 20 COMMISSIONER MEYER: I'm sorry. I can make 21 that motion. Mr. Chair, I move that we circulate the 22 rules in Item V of the Agenda for public comment as 23 proposed by staff. 24 CHAIRMAN KIMBLE: Commissioner Meyer, that's 25 actually Item IV.</p>	<p style="text-align: right;">Page 40</p> <p>1 Item V, discussion and possible action on the 2 following 2022 primary and general election candidate 3 audits. Mike Becker is going to make some general 4 comments on this item. Mike. 5 MR. BECKER: Mr. Chairman, Commissioners, 6 thank you. Before you are the final two audits for the 7 2022 election cycle. One is a primary; one is a 8 general. The audits turned out fine. There's nothing 9 exciting or major to discuss in them. 10 I would like to say thank you to Fester and 11 Chapman, the auditing firm that we've worked with for 12 seven years. They do an amazing job. They have a lot 13 of patience with our candidates and they do a 14 phenomenal job getting the information that we need, so 15 can't say enough about them. 16 But with that being said, those are the last 17 two audits, and I ask that you approve them and we can 18 close the book on 2022. 19 CHAIRMAN KIMBLE: Thank you, Mike. 20 Are there any questions or comments from the 21 Commission on Item V? 22 (No response.) 23 CHAIRMAN KIMBLE: I'll entertain a motion to 24 approve the audits identified in Item V of the Agenda. 25 COMMISSIONER PATON: I'll make a motion to</p>
<p style="text-align: right;">Page 39</p> <p>1 COMMISSIONER MEYER: My apologies. Item IV. 2 CHAIRMAN KIMBLE: Okay. Thank you. 3 There's been a motion to distribute the rules 4 identified in Item IV of the Agenda for public comment. 5 Is there a second? 6 COMMISSIONER PATON: Second. 7 CHAIRMAN KIMBLE: Seconded by Commissioner 8 Paton. I will call the roll. 9 Commissioner Paton. 10 COMMISSIONER PATON: Aye. 11 CHAIRMAN KIMBLE: Commissioner Titla. 12 (No response.) 13 COMMISSIONER MEYER: Commissioner Titla, 14 you're on mute. 15 CHAIRMAN KIMBLE: Commissioner Titla. 16 COMMISSIONER TITLA: Yeah, hello. 17 CHAIRMAN KIMBLE: Yes. How do you vote on 18 the motion? 19 COMMISSIONER TITLA: Oh, aye. I vote aye. 20 CHAIRMAN KIMBLE: Okay. Thank you, 21 Commissioner Titla. 22 Commissioner Meyer. 23 COMMISSIONER MEYER: Aye. 24 CHAIRMAN KIMBLE: Chair votes aye. 25 The motion is approved 4-to-nothing.</p>	<p style="text-align: right;">Page 41</p> <p>1 approve these audits from Item No. V. 2 CHAIRMAN KIMBLE: Thank you, Commissioner 3 Paton. 4 Is there a second? 5 COMMISSIONER MEYER: I'll second that. 6 COMMISSIONER TITLA: I second it. 7 CHAIRMAN KIMBLE: Seconded by Commissioner 8 Titla. I will call the roll. 9 Commissioner Paton. 10 COMMISSIONER PATON: Aye. 11 CHAIRMAN KIMBLE: Commissioner Titla. 12 COMMISSIONER TITLA: Aye. 13 CHAIRMAN KIMBLE: Commissioner Meyer. 14 COMMISSIONER MEYER: Aye. 15 CHAIRMAN KIMBLE: Chair votes aye. 16 The audits are approved 4-to-nothing. 17 MR. BECKER: Thank you. 18 CHAIRMAN KIMBLE: Thank you, Mike. 19 This is the time for consideration of 20 comments and suggestions from the public. Action taken 21 as a result of public comment will be limited to 22 directing staff to study the matter or rescheduling the 23 matter for further consideration and decision at a 24 later date or responding to criticism. Please limit 25 your comment to two more -- to no more than two</p>

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<p>1 minutes.</p> <p>2 Does any member of the public wish to comment</p> <p>3 at this time?</p> <p>4 MR. WEBB: Yes.</p> <p>5 CHAIRMAN KIMBLE: Okay. I couldn't tell who</p> <p>6 that is who said "yes."</p> <p>7 MS. HERRING: Eli.</p> <p>8 CHAIRMAN KIMBLE: Eli?</p> <p>9 MR. WEBB: Yes.</p> <p>10 CHAIRMAN KIMBLE: Okay. Could you identify</p> <p>11 yourself for the record before you make your comment,</p> <p>12 please?</p> <p>13 MR. WEBB: My name is Eli Dalton Webb. I am</p> <p>14 a registered voter and resident of Cochise County,</p> <p>15 Arizona.</p> <p>16 CHAIRMAN KIMBLE: Okay. Mr. Webb, go ahead</p> <p>17 with your comment.</p> <p>18 MR. WEBB: All right. One is, I'm kind of</p> <p>19 concerned and a little bit disappointed about -- how</p> <p>20 much is the Clean Elections Commission spending on</p> <p>21 attorneys? Because I really felt like -- listening to</p> <p>22 that guy, he spoke for an hour, and it was a lot of,</p> <p>23 you know, almost nothing. It was a -- it was a lot of</p> <p>24 legalese that I don't think is leading anywhere. So,</p> <p>25 you know, I'd kind of like to know how much this guy is</p>	<p>1 against party. And then for the general, then throw</p> <p>2 everybody in. And that concludes my comments.</p> <p>3 CHAIRMAN KIMBLE: Okay. Mr. Webb, just to</p> <p>4 clarify on your first matter. You talked about some</p> <p>5 gentleman who spoke for about an hour. Are you talking</p> <p>6 about Mr. Collins here?</p> <p>7 MR. WEBB: Yes. I -- I don't know.</p> <p>8 CHAIRMAN KIMBLE: Okay. And I'm pointing to</p> <p>9 Mr. Collins, who's sitting to my left. Is that who you</p> <p>10 were talking about?</p> <p>11 MR. WEBB: Yes.</p> <p>12 CHAIRMAN KIMBLE: Okay. Okay. I just wanted</p> <p>13 to clarify your comment.</p> <p>14 And I don't know how much I want to get into</p> <p>15 this about the debates, but the debate is set up so</p> <p>16 that people who have a contested primary debate each</p> <p>17 other. And if there would be two Libertarians running,</p> <p>18 they would debate each other. If there's only one, and</p> <p>19 they don't have a contested primary, they probably</p> <p>20 wouldn't be participating in the debate.</p> <p>21 But we appreciate your comments, and thank</p> <p>22 you for attending the meeting.</p> <p>23 Is there any other member of the public who</p> <p>24 wishes to make a comment?</p> <p>25 (No response.)</p>
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<p>1 getting paid and, you know -- you know, I really think</p> <p>2 that it's, you know, the government milking the clock</p> <p>3 on that one.</p> <p>4 And the other thing that I'm concerned about,</p> <p>5 which is an even more serious concern, is the throwing</p> <p>6 everybody in the primaries -- or, sorry -- throwing</p> <p>7 everybody in the primary debates. I'll give you a very</p> <p>8 specific example. So the Republicans and Democrats are</p> <p>9 going to try to go after the Corporation Commission,</p> <p>10 you know, as usual, right, which that's -- that's to be</p> <p>11 expected. I believe there's, what, like three seats</p> <p>12 that are open. So if there's going to be like at least</p> <p>13 four Democrats and at least four Republicans, they're</p> <p>14 all going to get thrown in the same primary debate.</p> <p>15 But if there's one Libertarian that runs for the</p> <p>16 Corporation Commission, they're not going to be invited</p> <p>17 to that primary debate where they're going to get --</p> <p>18 but the Republicans are going to be debating against</p> <p>19 the Democrats, but the Libertarians won't be invited</p> <p>20 because they only have one candidate.</p> <p>21 So, you know, it really alienates anybody --</p> <p>22 or, any party that has equal to or less than the amount</p> <p>23 of seats that are up for election. So that is --</p> <p>24 that's pretty concerning. The primaries are supposed</p> <p>25 to be for the primary election, it should be party</p>	<p>1 CHAIRMAN KIMBLE: Seeing none, we will move</p> <p>2 on. The public may also send comments to the</p> <p>3 Commission by mail or e-mail at</p> <p>4 ccec@azcleanelections.gov.</p> <p>5 I would now entertain a motion to adjourn,</p> <p>6 Item VII in the Agenda.</p> <p>7 COMMISSIONER PATON: I would make a motion to</p> <p>8 adjourn.</p> <p>9 CHAIRMAN KIMBLE: Commissioner Paton has made</p> <p>10 a motion to adjourn. Is there a second?</p> <p>11 COMMISSIONER TITLA: I second.</p> <p>12 CHAIRMAN KIMBLE: Commission Titla seconds.</p> <p>13 I will call the roll.</p> <p>14 Commissioner Paton.</p> <p>15 COMMISSIONER PATON: Aye.</p> <p>16 CHAIRMAN KIMBLE: Commissioner Titla.</p> <p>17 COMMISSIONER TITLA: Aye.</p> <p>18 CHAIRMAN KIMBLE: Commissioner Meyer.</p> <p>19 COMMISSIONER MEYER: Aye.</p> <p>20 CHAIRMAN KIMBLE: And the Chair votes aye.</p> <p>21 We are adjourned until August. Thank you.</p> <p>22 (The meeting concluded at 10:31 a.m.)</p> <p>23</p> <p>24</p> <p>25</p>

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1 STATE OF ARIZONA)
) ss.

2 COUNTY OF MARICOPA)
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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.

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 28th day of
19 July, 2023.

20


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22

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Kathryn A. Blackwelder, RPR
Certified Reporter #50666

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**CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
August 24, 2023**

Announcements:

- The qualifying period for clean candidates began August 1. Candidates who forgo PAC and other large contributions can collect a certain number of small qualifying contributions to qualify for clean funding. Trainings are ongoing.
- The legislature ended its longest regular session on record July 31, 2023. The general effective date for legislation is October 30.

Voter Education and Outreach:

- Avery participates in Arizona Commission of African American Affairs committee meetings, Arizona African American Legislative Council and the Mesa Community College Civic Action Council
- Gina, Alec, and Avery attended the U.S. Election Assistance Commission (EAC) virtual public discussion about voter education research and ideas for 2024.
- Gina presented at the Election Officer Certification training in Tucson.
- Avery met with Watts College of Public Service and Community Solutions, senior program coordinator, Tiffany Thornhill to Discuss NVRD events and/or collaboration on future events.
- Discussed Tribal ID booklet and civic engagement plans with Dani Duarte from Vote Riders
- Avery presented on Running Clean for the AZ Commission of African American Affairs.
- Kara Karlson has received a promotion at the Attorney General's Office. She is now Senior Litigation Counsel with the State Government Division-Elections. Congratulations to Kara!

Administration:

- The Election Procedures Manual process has moved to its next phase. Public comment was accepted until last week. The next steps, the Secretary will finalize the document and send it to the Attorney General and the Governor for approval.
- Gov. Hobbs Bipartisan Elections Task Force continues its work. Following the task force meeting last month, the Secretary of State's office circulated a list of proposals that have been advanced by group. It is attached.

Legal:

- Center for Arizona Policy v. Arizona Secretary of State, CV2022-016564, Superior Court for Maricopa County.
 - Plaintiffs filed an amended complaint last month, following dismissal earlier this year.

- Americans for Prosperity v. Meyer, No. 2:23-cv-00470-ROS (D. Ariz.)
 - Suit challenging Prop. 211 on First Amendment grounds.
 - Commission, the VRKA Committee, and the Attorney General Office's have filed motions to dismiss. Briefing is ongoing.
- Toma v. Fontes, CV2023-011834, Superior Court for Maricopa County.
 - Lawsuit and related motion for preliminary injunction filed challenging Proposition 211 on separation of powers theories.
- 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.
- Lake v. Richer, CV2023-051480, Superior Court for Maricopa County.
 - In this public records matter, Lake challenges the county's decision to withhold ballot affidavit envelopes on the basis that 16-168(F) makes signatures exempt and in the best interests of the state.
- Richer v. Lake, CV2023-009417, Superior Court for Maricopa.
 - Suit by Stephen Richer for libel over statements by Kari Lake.
- Litigation challenging SB1485, HB2492 and HB2243, as well as SB1260 is ongoing.
- Appeals and special actions from election challenges are still pending in the Governor's and Attorney General's Office elections.

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.

If the Commission approves the items on the agenda day for public comment, the regulatory agenda will be updated.

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. 28 A.A.R. 3489, October 28, 2022
 - R2-20-305 & R2-20-306 provide for a process to address complaints against a commissioner. 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. 28 A.A.R. 3409, October 28, 2022.
Notice of Proposed Rulemaking: 28 A.A.R. 3409, October 28, 2022
 - R2-20-305 & R2-20-306- - provide for a process to address complaints against a commissioner. January 20, 2023
 - R2-20-801 to R2-20-808 – providing for definitions, time computations, opt out notices, exemptions, disclaimers, communications with the Commission, record keeping, and advisory opinions, 29 A.A.R. 1571, July 14, 2023.
 - R2-20-810 to R2-20-813 – providing for complaint and enforcement process, including hearings. Submitted to the Secretary of State. Publication pending.
- Federal funds for proposed rulemaking: **None**
- Review of existing rules: **None pending**
- Notice of Final Rulemaking:
 - Amendments to R2-20-220 and R2-20-223, 29 A.A.R. 994, May 5, 2023.
 - Amendments to R2-20-305 & R2-20-306, 29 A.A.R. 1549, July 14, 2023.
- Rulemakings terminated: Amendment to R2-20-211. 29 A.A.R. 1149, May 12, 2023.
- Privatization option or nontraditional regulatory approach considered: **None Applicable.**

Bipartisan Elections Task Force Meeting - Draft Proposals July 27, 2023

The following draft proposals were considered by the Governor's Bipartisan Elections Task Force at the July 27 meeting. If a draft proposal advanced at today's meeting, additional research will be done, details will be added, and the members will talk with relevant stakeholders. The Task Force will consider the proposal in its final form at a later meeting. The final recommendations made to the Governor in the November Report will be available to the media.

1. Communication Platform for Poll Workers

This proposal would recommend that funding be allocated for a pilot program to develop and implement a technology solution for counties to communicate with poll workers.

2. Excused Absence from Work to be a Poll Worker

The proposal would suggest legislation to support employers of 50 or more in providing leave to employees to participate as poll workers.

3. Election Fellowship Program

This proposal would create an Election Fellowship program for recent graduates. The program is designed to help county election administrators who are experiencing high rates of turnover and to generate interest in working in elections for those entering the workforce.

4. Central Website for Ballot Information

The proposal would create one central website for information about all candidates, ballot measures, and judges in all jurisdictions across the state.

5. Election Officer Certification (EOC) Training Updates

This proposal incorporated two ideas:

- a. Statutory updates to allow EOC to be offered in even years, allow city clerks to attend training for free, and allow the Secretary of State's Office to purchase water bottles to provide at this training.

- b. ***The second part did not pass:*** *Procedural recommendations to require that the SOS provide dual tracks to EOC training for Voter Registration/Recorder staff and Election Department staff.*

6. Statute Updates around Dropping Off Ballots

This proposal would suggest legislation to address interfering with voters while dropping off their ballots.

7. Convert Emergency Voting to Final Weekend Voting

This proposal would suggest legislation to replace emergency voting with “Final Weekend Voting,” a period in which a voter could still vote using in-person early voting methods or have their ballot tabulated onsite, if the county opted to do so.

8. Improving Accessibility Best Practices Statewide

The proposal would suggest creating a Disability Liaison at the Secretary of State’s Office who would identify best practices and provide training to assist the counties in meeting the needs of voters with disabilities.

9. Automatic Recounts

This proposal would suggest legislation to address the amount of time required to conduct a recount. If left unaddressed, the current recount process may result in counties missing key election deadlines.

10. Canvass Deadline and Electronic Transmission

This proposal would suggest legislation to allow counties to transmit their official canvass via a secured electronic method to the Secretary of State (SOS) and allowing the SOS to conduct the statewide canvass earlier.

11. Best Practices for Reconciliation and Post-Election Audits

This proposal would establish best practices and training to be run out of the Secretary of State’s Office to provide counties with guidance and materials on reconciliation and post-election audit best practices.

12. Performance Audits

***Did not pass:** This proposal would have created a performance audit mechanism in the Auditor General's Office.*

13. Mandating Government Buildings Serve as Polling Places

***Did not pass:** This proposal would have required public facilities, including schools, to serve as polling locations when certain conditions are met.*

14. Provisional Ballot as Future Voter Registration Form

This proposal would suggest legislation to update the provisional ballot form to require it to be used as a method for voter registration.

15. Cross County Voter Registration

This proposal would suggest legislation to allow voters who are properly registered in any county in Arizona, but who established residence in a new county prior to Election Day, to vote in their new county.

16. Rights Restoration Committee

This proposal would address challenges related to restoring voting rights for individuals who have had felony convictions by considering legislative amendments and creating a committee to further consider options for rights restoration.

17. Arizona Voter Information Database (AVID) Maintenance and Operation Costs

This proposal would ensure a consistent funding source for AVID, the statewide voter registration system, via legislation.

18. Election Security and Transparency Standards for 2024

This proposal would create a set of security standards that meet or exceed industry standards for counties to implement in advance of the 2024 statewide elections.

19. Technology and System Security Guidelines for the Future

This proposal would create a process to regularly update security standards across the state.

20. Create Standards for Election Equipment Security

This proposal would establish a framework to ensure that tabulation-adjacent equipment meets certain standards.

21. Requiring Staff to Sign a Code of Ethics for Election Administrators

This proposal contained two parts:

- a. Proposing an elections specific ethics code that all elections staff would be required to abide by upon hiring. The aim is to decrease the risk of insider threat.
- b. ***The second part did not pass:*** Proposing that background checks be required for all permanent or long-term temporary staff who handle ballots, tabulation, or IT support.

22. Election Physical Security Fund

Create a sustainable funding mechanism to provide for continued improvements to election infrastructure.

Final Bills of 2023

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. Was amended by removing the requirement to announce the person that is handling the duties of the Secretary and to allow for the Secretary to certify the statewide canvas.

Action Taken

Passed House Municipal Oversight & Elections 7-3

Passed the House 31-29 and was sent to the Senate

Passed Senate Elections 5-3

Passed the Senate 16-14 and was sent back to the House as it was amended

Passed the House 31-26 and was sent to the Governor

Vetoed by the Governor

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

Passed the House 31-26 and was sent to the Senate

Passed Senate Elections 5-3

Passed the Senate 16-13 and was sent to the Governor

Vetoed by the Governor

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

Passed the House 47-13 and was sent to the Senate

Passed Senate Elections 5-3

Passed the Senate 16-14 and was sent to the Governor

Vetoed by the Governor

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

Passed the House 44-16 and was sent to the Senate

Passed Senate Government 5-3

Passed the Senate 16-13 and was sent back to the House

Passed the House 31-26 and was sent to the Governor

Vetoed by the Governor

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

Passed the House 31-29 and was sent to the Senate

Passed Senate Elections 5-3

Passed the Senate 16-14 and was sent to the Governor

Vetoed by the Governor

.

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

Passed the House 31-29 and was sent to the Senate

Passed Senate Elections 5-3

Passed the Senate 16-13 and was sent to the Governor

Vetoed by the Governor

.

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 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 House Municipal Oversight & Elections 6-4

Passed the House 31-28

Passed Senate Elections 5-3

Passed the Senate 16-14 and was sent to the Governor

Vetoed by the Governor

.

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.

Action Taken

Passed Senate Government 6-1

Passed the Senate 18-12 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-27 and was sent to the Governor

Vetoed by the Governor

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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

Passed the Senate 16-14 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-26 and was sent to the Governor

Vetoed by the Governor

.

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

Failed in the Senate 14-16

Passed the Senate 16-14 on reconsideration and was sent to the House

Passed House Municipal Oversight & Elections 5-4

Passed the House 31-26 and was sent to the Governor

Vetoed by the Governor

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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

Passed the Senate 16-14 and was sent to the House

Passed House Municipal Oversight & Elections 6-3

Passed the House 31-27 and was sent to the Governor

Vetoed by the Governor

.

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

Passed the Senate 16-13 and was sent to the House

Passed Municipal Oversight & Elections 6-2

Passed the House 31-27 and was sent to the Governor

Vetoed by the Governor

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SB1270 - Open meetings; capacity

Sponsor

Sen. John Kavanaugh (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

Passed the Senate 16-14 and was sent to the House

Passed House Government 9-0

Passed the House 57-0 and was sent to the Governor

Signed by the Governor

.

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

Passed the Senate 29-0 and was sent to the House

Passed House Government 9-0 with amendment

Passed the House 58-1 and was sent back to the Senate

Passed the Senate 28-1 and was sent to the Governor

Signed by the Governor

.

SB1066 - Election mailings; third-party disclosures

Sponsor

Sen. John Kavanagh (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

Passed the Senate 16-14 and was sent to the House

Passed House Municipal Oversight & Elections 10-0

Passed the House 38-20 and was sent to the Governor

Vetoed by the Governor

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

Passed the Senate 16-14 and was sent to the House

Passed House Municipal Oversight & Elections 5-4

Passed the House 33-25 with an amendment and was sent back to the Senate

Passed the Senate 16-12 and was sent to the Governor

Vetoed by the Governor

SB1135 - Spoiled early ballots; election day

Sponsor

Sen. John Kavanagh (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

Passed the Senate 16-12 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-27 and was sent to the Governor

Vetoed by the Governor

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

Passed the House 31-29 and was sent to the Senate

Passed Senate Elections 5-3

Passed the Senate 16-14 and was sent to the Governor

Vetoed by the Governor

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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

Passed the House 31-28 and was sent to the Senate

Passed Senate Elections 5-3

Passed the Senate 16-12 with an amendment and was sent back to the House

Passed the House 31-29

Sent to the Governor

Vetoed by the Governor

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

Passed the Senate 16-12 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-27 with an amendment and was sent back to the Senate

Passed the Senate 16-12

Sent to the Governor

Vetoed by the Governor

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

Passed the Senate 16-12 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-27 with an amendment and was sent back to the Senate

Passed the Senate 16-12 and was sent to the Governor

Vetoed by the Governor

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

Passed the Senate 16-11 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-26 and was sent to the Governor

Vetoed by the Governor

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

Passed the Senate 16-14 and was sent to the House

Passed House Municipal Oversight & Elections 5-4

Passed the House 31-27 with an amendment and was sent back to the Senate

Passed the Senate 16-12 and sent to the Governor

Vetoed by the Governor

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. Appropriates a total of \$10 million to be dispersed to counties to offset election related costs that come from this bill.

Action Taken

Passed Senate Elections 5-3

Passed the Senate 16-13 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed House Appropriations 9-6

Passed the House 31-29 with an amendment and was sent back to the Senate

Passed the Senate 16-12 and sent to the Governor

Vetoed by the Governor

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

Passed the Senate 16-14 and was sent to the House

Passed House Municipal Oversight & Elections 5-4

Passed the House 31-26 and was sent to the Governor

Vetoed by the Governor

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

Passed the Senate 16-13 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-27 with an amendment and was sent back to the Senate

Passed the Senate 16-12 and sent to the Governor

Vetoed by the Governor

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

Passed the House 31-28 and was sent to the Senate

Passed Senate Judiciary 6-1

Passed the Senate as amended 16-14 and was sent back to the House

Passed the House 31-27 and was sent to the Governor

Vetoed by the Governor

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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

Passed the House 31-27 and was sent to the Senate

SB 1324 was substituted for HB 2560 as they are the same bill, and passed the Senate 19-9 and was sent to the Governor

Vetoed by the Governor

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. Was amended from two years after implementation to five years after implementation.

Action Taken

Passed House Government 5-4

Passed the House 31-27 and was sent to the Senate

Passed Senate Government 5-3

Passed the Senate 16-14 and was sent back to the House as it was amended

Passed the House 31-27 and was sent to the Governor

Vetoed by the Governor

SB1264 - Officials; political action committee prohibition.

Sponsor

Sen. J.D. Mesnard (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 Senate Elections 5-3

Passed the Senate 16-14 and was sent to the Senate

Passed House Municipal Oversight & Elections 7-3

Passed the House 42-16 and was sent to the Governor

Vetoed by the Governor

HB2691 - Elections; ballot chain of custody

Sponsor

Rep. Justin Heap (R)

Summary

Ballot boxes must be locked with a tamper evident seal. The county recorder or other officer in charge of elections is required to prepare a chain of custody record for the transportation and delivery of all voted ballots. The record must include the time and signature for each point of contact, including the signature of the voting location supervisor when the election board members leave with the voted ballots, the signature of each election board member delivering the voted ballots, and the signature of the supervisor at the receiving site who receives the voted ballots. The chain of custody records are required to include the date, time, location and name of any election official who handles or processes a ballot. The county recorder or other officer in charge of elections is required to maintain a record of all voting irregularities that occur during early voting, emergency voting and election day voting, and information that must be included in the record is specified.

Action Taken

Passed House Municipal Oversight & Elections 6-3

Passed the House 31-28 and was sent to the Senate

Passed Senate Elections 5-3

Passed the Senate 16-13 and was sent to the Governor

Vetoed by the Governor

SB1074 - Tabulating equipment; standards; source codes (Election; contest; technical correction)

Sponsor

Sen. Sonny Borrelli (R)

Summary

A strike everything amendment was adopted. The bill now allows the use of electronic equipment to tabulate vote only if all of the following occur: the equipment meets or exceeds the standards set by the US Department of Defense, all parts of the electronic equipment are manufactured in the USA, and all source codes for the equipment are submitted and maintained by the Auditor General. In addition, for any action taken in the Superior Court regarding vote tabulation issues, the Court may appoint a Special Master to review the issue. The Special Master will submit their report to the Secretary of State for review.

Action Taken

Passed Senate Elections 5-3

Passed the Senate 16-13 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-27 and was sent to the Governor

Vetoed by the Governor

HCR2033 - Primary elections; eligible candidates

Sponsor

Rep. Austin Smith (R)

Summary

The 2024 general election ballot is to carry the question of whether to amend the state Constitution to require the direct primary election for partisan offices to be conducted in a manner so that each political party that has qualified for representation on the ballot must be permitted to nominate for each office a number of candidates equal to the number of positions to be filled for that office in the ensuing general election, and all otherwise eligible candidates who are so nominated must be placed on the ballot in the next ensuing general election. The direct primary election law enacted by the Legislature supersedes any contrary or inconsistent provision of any charter, law, ordinance, rules, resolution, or policy of any city.

Action Taken

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-28 and was sent to the Senate

Passed Senate Elections 5-3

Passed the Senate 16-13 and was sent to the Secretary of State

SCR1037 - Elections; systems; equipment (Presidential electors; constitutional appointments)

Sponsor

Sen. Anthony Kern (R)

Summary

The Legislature resolves that no voting system or component of a voting system may be used or purchased as the primary method for casting, recording, and tabulating ballots used in any election held in Arizona for federal office unless all components have been designed, manufactured, integrated, and assembled in the U.S. from trusted suppliers, the source code is made available to the public, and the ballot images and system log files from each tabulator are recorded on a secure write-once, read-many media with clear chain of custody and posted on the Secretary of State's website free of charge to the public within 24 hours after the close of the polls.

Action Taken

Passed Senate Elections 5-3

Passed the Senate 16-13 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-27 and was sent to the Secretary of State

SB1234 - Prohibition; photo radar

Sponsor

Sen. Wendy Rogers (R)

Summary

State agencies and local authorities are prohibited from using a photo enforcement system to identify violators of traffic control devices and speed regulations. Statutes authorizing and regulating photo enforcement systems are repealed. Contains a legislative intent section.

Action Taken

Passed Senate Government 5-3

Passed the Senate 16-13 and was sent to the House

Passed House Military Affairs & Public Safety 8-7

Passed the House 32-26 and was sent to the Governor

Vetoed by the Governor

Effect on Clean Elections

Would reduce the amount of funds that the Commission receives through the 10% surcharge on traffic tickets and criminal fines. However, this funding source has already been reduced through the ban on photo radar on state highways, so this action would not be a major issue for the Commission.

SB1180 - Voter registrations; payment prohibited

Sponsor

Sen. Ken Bennett (R)

Summary

A person is prohibited from paying or receiving money or any other thing of value based on the number of voter registrations or voter registration forms collected, completed or submitted.

Action Taken

Passed Senate Elections 5-3

Passed the Senate 16-14 and was sent to the House

Passed House Municipal Oversight & Elections 5-4

Passed the House 35-23 and was sent to the Governor

Vetoed by the Governor

SB1175 - Registrations; observers; counting procedures; verification

Sponsor

Sen. John Kavanagh (R)

Summary

Various changes relating to election observers and counting procedures. The county chairperson of each political party may designate a party representative for a polling place, a voting center, or a location at which electronic processing of ballots occurs. If the county party chairperson fails to appoint a party representative for a location, the state party chairperson may make those appointments, and if the state party chairperson fails to appoint a party representative, the legislative district chairperson in the area in which the polling place, voting center or other location is located may make those appointments for a location. The county officer in charge of elections is required to publish the procedures for a hand count, including the times and locations, on the county's website no later than the Tuesday before Election Day. If the county party chairperson fails to designate a sufficient number of board workers to assist with a hand count, the state party chairperson is required to designate qualified electors to be board workers. If the state party chairperson fails to designate a sufficient number of board workers, the legislative district chairperson of the district in which the hand count is to occur is required to designate qualified electors to be board workers. Establishes a process to select persons to perform the hand count at audited precincts. The county chairman of each party is authorized to designate a party representative to observe the proceedings at a third-party vendor that processes returned affidavit envelopes on behalf of a county. Beginning on the effective date of this legislation, any new signature images submitted for comparison of the signature on an early ballot envelope to the voter's registration record are prohibited from containing any indicator of the voter's designated political party. Some of these changes become effective January 1, 2024.

Action Taken

Passed Senate Elections 5-3

Passed the Senate 16-13 and was sent to the House

Passed House Municipal Oversight & Elections 6-4

Passed the House 31-27 with an amendment and was sent back to the Senate

Passed the Senate 16-12 and was sent to the Governor

Vetoed by the Governor

Katie Hobbs
Governor

Thomas M. Collins
Executive Director



Mark S. Kimble
Chair

Steve M. Titla
Damien R. Meyer
Amy B. Chan
Galen D. Paton
Commissioners

State of Arizona
Citizens Clean Elections Commission

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MEMORANDUM

To: Commissioners

From: Tom Collins

Date: 8/22/2023

Subject: Voter's Right to Know Act Rules

Summary

I believe the following rules are ready for final adoption at the Commission's discretion:

- R2-20-801- Definitions and rules of construction.
- R2-20-802- Time.
- R2-20-807- Recordkeeping required under Proposition 211.
- R2-20-808- Advisory Opinions by the Commission under Proposition 211.

The next set of rules, discussed at more length below, are ready for final adoption at the Commission's discretion with non-substantial changes included:

- R2-20-803- Opt-out notices under A.R.S. § 16-972.
- R2-20-804- Exemptions from disclosure under A.R.S. § 16-973.
- R2-20-806- Communication with Commission, staff and others before the Commission.

I am not ready to recommend moving forward on proposed R2-20-805 until we can spend more time with recently received comments on the proposed rule.

This memo summarizes and responds to comments received through August 22.

R2-20-801 Definitions and rules of construction.

Comment 1 from Herrera Arellano LLP (HA). HA focuses on this proposed language in R2-20-801(c):

In response to a request pursuant to A.R.S. §16-972(D), a person must inform that covered person in writing, 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 up to the amount of money being transferred to the requesting person.

HA believes that this language needs an additional provision specifying that a donor may use “any reasonable accounting system” to determine its compliance with this section. Such a provision would, in HA’s view, prevent donors from being “forced to identify and track the precise dollars the donors received” and lower the burden on donors in making those identifications.

Staff response. Staff respectfully disagrees. The proposed rules already require a record keeping system to track transactions. Proposed R2-20-207. That requirement, along with the statutory bar on structuring transactions illegally, provide flexibility to donors but require them to act reasonably. Imposing a specific kind of accounting method requires additional regulation and will potentially mire the Commission and donors deeply in accounting questions rather than compliance with the Act. In short, this additional regulation would unnecessarily burden donors and raise potential compliance and enforcement costs.

Comment 2 from HA. Again based on R2-20-801(C), HA argues for a rule change that would address what it sees an ambiguity in the law. Specifically, HA asserts that there is an ambiguity in A.R.S. § 16-973 that limits disclosure to just those donors who have both given money and had that money used for campaign media spending. The firm requests a rule that limits the disclosure to dollars actually used.

Staff response: The comment does not explain the statutory basis for the claimed ambiguity. Consequently, staff respectfully disagrees with the comment.

Staff recommends adoption of R2-20-801. The Campaign Legal Center identified a typographical error in 801(C) that staff will correct.

R2-20-802 – Time Computations

We received no comments on this rule and recommend its adoption.

R2-20-803 Opt out notices

Proposition 211 requires that donors be given an opportunity to opt out of having their donations used for campaign media purposes. This proposed rule provides details on how a covered person could comply with that requirement.

Comment 1 from Statecraft, a Phoenix-based law firm. Statecraft first comments that it believes that there could be confusion among donors to PACs who receive an opt out notice regarding Proposition 211 and chose not to have their donation used for campaign media spending only to have their identity nevertheless revealed on regular campaign finance reports, or, in Statecraft's view, create complications for the PAC under the Internal Revenue Code.

Statecraft proposes an alternative way for PACs to comply with A.R.S. § 16-972 relating to opting out.

Staff response. Staff has not identified a basis in Proposition 211 to support Statecraft's proposed solution. Although nothing prevents a PAC or political party from providing additional information on how a donor's money may be used or identity may be disclosed, staff's reading of the comment is to create an alternative mechanism for compliance outside of the terms of the statute. Consequently, staff does not recommend acting on Statecraft's comment.

Comment 2 from Statecraft. Statecraft notes that Proposition 211 states that "the notice required by this section may be provided to the donor before . . . 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." Statecraft requests that this language be incorporated into the rules.

Staff response. Staff interprets the comment and draft language provided by Statecraft as being redundant of what the statute already allows. As such staff respectfully concludes this change is unnecessary.¹

¹ Elias Law Group provided a comment in the form of a long fact pattern based, in part, on proposed rule 803. Because this comment is not addressed to a rule suggestion, staff recommends Elias Law Group resubmit it as an advisory opinion request.

Campaign Legal Center (CLC). CLC submitted three comments regarding proposed R2-20-803.

CLC Comment 1. This comment states that the proposed rule creates an ambiguity because it can be read to allow a subsequent opt out opportunity to a donor before the 21-day period mandated by statute expires by the omission of the word “period.”

Staff response: Staff agrees that there may be unintended ambiguity by omitting the word “period” from the first sentence of R2-20-803(D). This is not a substantial change and the additional word may be added at this meeting in the process of adopting the rule.

CLC Comment 2. CLC’s second comment expresses concern about proposed R2-20-803(E). The comment states that the proposed rule requires a covered person to act on an effort by a donor to opt out after the initial notice period retroactively. The comment states that this may be impossible to comply with if the donor’s money has already been spent. The comment asserts that the covered person’s may not be able to manage their affairs if they are mandated to address constant efforts to opt out. CLC recommends removing the subsection.

Staff response: Staff is not certain why the renewed opt out request would have to be honored or could be honored retroactively. Nothing in Proposition 211 prevents a donor from later requesting to opt out. Furthermore, this rule provides some certainty to donors that their rights under the statute will be treated appropriately. Moreover, other comments indicate concern that donors may have with being disclosed based on actions of the covered person. Staff recommends a slight change to clarify that the subsequent request must come after the initial notice period, as intended.

CLC Comment 3. CLC’s third comment relates to receipts provided to donors by covered persons. CLC argues that the receipt should be more explicit and memorialize “whether funds have been opted-out at the time the receipt was issued.”

Staff response. A receipt is a “writing acknowledging the receiving of goods or money.”² Consequently a receipt should by its terms acknowledge the amount of money donated and, in addition, the donor’s choice as to opting out. Respectfully, staff does not believe this change is necessary.

² <https://www.merriam-webster.com/dictionary/receipt> (August 22, 2023).

The language for R2-20-803 as modified by the non-substantial changes suggested here would read:

D. If a donor does not opt out after the initial notice period, a covered person may make subsequent written notices to a donor of their right to opt out and may set a time for response of no less than 1 day from the date the donor receives the notice. To be valid, the opt-out information must provide contact information to allow the recipient to contact the person who provided the opt-out information within the time identified in the subsequent request. Upon request by the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice.

E. A donor may request to opt out at any time after the initial notice period and the covered person must confirm the opt out to the donor in writing no later than 5 days after the request and subsequently that donor shall be treated as having opted out by the covered person. Upon request of the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice.

R2-20-804 Request for Exemptions

Proposition 211 provides that a donor may request an exemption from disclosure under certain circumstances including where the Commission concludes 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."

CLC submitted seven comments on this provision.

CLC Comment 1. CLC believes that the proposed rule in general does not apply until an original source after a contribution has been made to the covered person.

Staff response. Staff did not intend this interpretation. Proposed R2-20-804(A) was intended to set a deadline for an original source. The deadline is 14 days after an opt out notice is given. If no opt out notice has been given, the deadline is not triggered. The language contains no limitation on the timing of the request. Nevertheless, as discussed below, staff recommends some clarifying but non-substantial changes to ameliorate this potential misconception.

CLC Comment 2. CLC states that because an original source may not actually receive an opt out notice and, as a result, the timeline would be unclear.

Staff response. Because the opt out notice does not trigger the request but rather triggers the deadline the timeline is clear. Nevertheless, as discussed below, staff recommends some clarifying but non-substantial changes to ameliorate this potential misconception.

CLC Comment 3. The CLC states that the proposed rule's 14 day timeline to seek an exemption after a notice is given is too short and the timeline to seek an exemption should be entirety of the opt out period.

Staff response. The reason for the 14-day period is that, in the event an original source desires to make a request they must make it before the 21-day opt out period expires if they are to have the exemption ruled upon prior to the expiration of the opt out period. This is an effort to minimize the impact of on the covered person's ability to use funds, and enable the original source to make an informed choice about the use of their funds and the possible reporting obligations stemming from that use. Staff respectfully does not recommend this change.

CLC Comment 4. CLC suggests an additional subsection that requires a letter to the original source detailing that they may opt out of having their money used for campaign media spending and providing five days to opt out.

Staff response. Staff believes that this additional time to opt out is unnecessary to mandate and inserts the Commission further in the donor-covered person relationship. However, as specified below, staff recommends clarifying language that indicates a letter will issue regarding either the grant or denial of a request. Background principles of law require some record of the Commission's decision be provided to the requestor, but making that more explicit will not substantively change the rule.

CLC Comment 5. CLC suggests the Commission narrow the proposed limit on public records requests, suggesting that even an agenda could be eliminated from a public records request. CLC suggests language that limits the language to information that could lead to the identity of the original source or specifically listing the records that will not be released.

Staff response. Staff respectfully disagrees with the comment. Established legal principles, including the public records statutes in Arizona, the Arizona open meetings law, and due process itself would make the application of an exemption such as this to something like an agenda contrary to law. The goal of the statute is to preserve confidentiality. Staff is not in a position to determine what information may lead to the identification of an original source who is entitled to an exemption.

Given that the statute outlines those situations will arise in situations where the stakes are demonstrably high, staff respectfully does not recommend acting on this comment at this time.

CLC Comments 6 and 7. CLC expresses concern that the rules requiring the destruction of requests for an exemption 30 days after a determination by the Commission authorizes that destruction regardless of pending legal action. It also expresses concern that the rules do not address specifically how records will be retained if there are subsequent proceedings.

Staff response. From a staff perspective, an executive director would be barred by other legal principles and rules from destroying records with further proceedings pending. That said, staff recommends some non-substantial modifications to bring these background principles into the text.

HA submitted two comments on this proposed rule.

HA Comment 1. Covered persons are not included in the process of determining whether an original source is entitled to an exemption. HA requests that an original source be required to send a copy of the determination to the covered person.

Staff response. As CLC notes, the original source requesting an exemption may not know who the covered person is. The reverse is also true. Placing this burden on the requestor does not appear to be a solution to the problem HA observes. Moreover, it would intrude on the privacy of the original source who just requested protection. Staff believes the better course is to allow original sources and covered persons to work out their communications among themselves.

HA Comment 2. HA observes that the statute and proposed rules have not provided clarity for how an exempted original source would be treated for purposes of disclosure. For example, disclaimers are to identify the top three donors to a covered person. Should the protected source be included in the top 3 (albeit not by name) or does the fourth place donor move up.

Staff response. These are good questions and staff will return to the Commission on this in future meetings.

With the non-substantial changes suggested above, staff recommends adopting the following language as the final rule.

A. An original source who has reason to believe their identity will or could be subject to disclosure under Chapter 6.1 of Title 16 may file a request for exemption pursuant to A.R.S. § 16-973(F) at any time. An original source who has not opted out of having their monies used for campaign media spending may file a request for an exemption with the Executive Director no later than 14 days after the notice to opt out is given. In the event an original source did not receive a notice to opt out, the person may file a request for exemption with the Executive Director no later than 21 days after discovering their monies may or have been used for campaign media spending.

B. In the event the request provides documentation of a court order requiring confidentiality, the Executive Director shall confirm the validity of the court order within five days. If the order is confirmed, the Executive Director shall issue a letter to the requestor stating that their ~~name~~ identity shall not be disclosed. In the event that the order is not confirmed, the Executive Director shall issue a letter to the requestor stating that their identity may be disclosed.

C. In the event that the person making the request claims a statute provides for such confidentiality, the request shall include a citation to the statute and argument why the statute applies to require confidentiality. The Executive Director may make a recommendation to the Commission. The Executive Director shall place the item on an agenda no later than the next regular Commission meeting. The person and their counsel may appear. In order to protect the interests of the original source pending a determination, the Commission may vote to go into executive session to protect confidential information and if warranted for other reasons authorized by the Open Meeting Law. For purposes of this rule, the person and their counsel shall be deemed individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities if the Commission votes to go into executive session pursuant to A.R.S. § 38-431.03(A)(2). No vote may be taken in the executive session. If the Commission decides that the statute applies by a roll call vote in public session in favor of the request, the Executive Director shall issue a letter to the requestor within 5 days stating that their ~~name~~ identity shall not be disclosed. If the Commission does not vote that the statute applies by roll call vote in favor of the request the Executive Director shall issue a letter to the requestor within 5 days stating that their identity may be disclosed.

D. In the event the person making the request claims that there is a reasonable probability that they or their family will experience threats of physical harm, the request shall provide such evidence. The request may also include argument in favor of the request. The Executive Director may make a recommendation to the

Commission. The Executive Director shall place the item on an agenda no later than the next regular commission meeting. The person and their legal representative may appear. In order to protect the interests of the original source pending a determination, the Commission may vote to go into executive session to protect confidential information and if warranted for other reasons authorized by the Open Meeting Law. For purposes of this rule, the person and their counsel shall be deemed individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities if the Commission votes to go into executive session pursuant to A.R.S. § 38-431.03(A)(2). No vote may be taken in the executive session. If the Commission decides that the request should be granted by a roll call in public session in favor of the request, the Executive Director shall issue a letter to the requestor within 5 days stating that their name identity shall not be disclosed. If the Commission does not approve the request by a roll call vote the Executive Director shall issue a letter to the requestor within 5 days stating that their identity may be disclosed.

E. The agenda shall not identify the requestor.

F. No records related to a request shall be subject to a public records request or any other type of request. The records shall not be produced absent a court order compelling disclosure.

G. All records except the Executive Director's letter shall be destroyed ~~within~~ 30 days ~~after~~ of the determination, unless timely review of the Commission's action is sought. The Executive Director's letter shall not be made public except by a court order.

R2-20-805

Staff requests additional time to review comments regarding this rule.

R2-20-806 Ex Parte

CLC Comment. CLC requests that the title of the rule change to reflect it is principally about ex parte communications. It suggests clarifying language around when the Commission and staff can communicate in the event of a complaint. Finally, CLC suggests a subsection that details steps a commissioner should take in the event of an ex parte communication.

Staff Response. Staff agrees these clarifying, non-substantial changes are warranted.

R2-20-806. ~~Communication~~ Ex Parte

A. No individual shall communicate with any Commissioner ex parte as defined in subsections E and F of this rule. No Commissioner shall communicate with any individual ex parte as defined in subsections E and F of this rule.

B. In the event of a Complaint, no Commissioner shall communicate with the Executive Director or any other commission staff or attorney who represents the Executive Director regarding the Complaint except in commission proceedings where the Respondent or Respondent's Counsel is present.

C. The Executive Director may communicate with a Respondent, a Respondent's counsel, a Complainant or Complainant's Counsel or any other person with information regarding a Complaint.

D. If a Respondent wishes to be represented by counsel with regard to any matter pending before the Commission, Respondent or Respondent's Counsel shall so advise the Commission by sending a writing to the Commission including the following:

1. The name, address, and telephone number of the counsel.
2. A statement authorizing such counsel to receive any and all notifications, service of process, and other communications from the Commission, its staff and attorneys on behalf of Respondent. Upon receipt, the Commission shall have no contact with Respondent except through the designated counsel unless authorized by Respondent.

E. Ex parte communication means any written or oral communication by any person outside the agency to any Commissioner or any member of a Commissioner's staff which imparts information or argument regarding prospective Commission action or potential action concerning:

1. Any proceeding involving a request for an exemption.
2. Any enforcement proceeding.
3. Any pending litigation matter, or
4. Any pending rulemaking, or
5. Any pending advisory opinion request.

F. Ex parte communications do not include the following communications:

1. Statements by any person publicly made in a public forum; or
2. Statements or inquiries by any person limited to the procedural status of an open proceeding, rulemaking, advisory opinion request, or a litigation matter.

G. In the event that a Commissioner receives an ex parte communication as defined in this rule, the Commissioner shall disclose receipt of such a communication in a public meeting of the Commission.

R2-20-807- Recordkeeping

We received no comments on this rule and recommend its adoption.

R2-20-808 – Advisory opinions

We received no comments on this rule and recommend its adoption.

Other comments

Elias Law Group, CLC and some other comments suggest additional areas for rulemaking or statements from the Commission. Staff will continue to review those and make recommendations as necessary.

There is also a comment from the Philanthropy Roundtable generally disagreeing with Proposition 211 and stating that the group opposes implementation without an explicit exemption for the legal, legitimate instances of nonprofit issue advocacy. Staff at this time believes that the definitions of campaign media spending, which cabin reporting obligation to a discreet set of actions related to political campaigns, provide sufficient protection to issue advocacy absent an additional rule.

R2-20-801. Definitions and Rules of Construction

- A.** The definitions in A.R.S. § 16-971 shall apply to these rules.
- B.** For purposes A.R.S. § 16-971(2)(a)(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 other activities described in A.R.S. § 16-972(2)(a) shall not be considered campaign media spending unless these activities are specifically conducted in preparation for or in conjunction with those other activities.
- C.** In response to a request pursuant to A.R.S. § 16-972(D), a person must inform that covered person in writing, 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 up to the amount of money being transferred to the requesting person.

R2-20- 802. Time

The following rules apply in computing any time period specified in these rules:

- A.** The day of the event or act shall be excluded.
- B.** If the deadline is five days or fewer, then Saturdays, Sundays, and legal holidays shall be excluded.
- C.** If the last day of the period is a Saturday, Sunday, or legal holiday, the last day is excluded, and the period runs until the next day that is not a Saturday, Sunday, or legal holiday.
- D.** The next day is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

R-20-803. Opt-out Notices

- A.** Before a 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. The covered person must give the donor an opportunity to opt out of having the donation used or transferred for campaign media spending.
- B.** The notice 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 that the donor prefers to opt-out of having their monies used or transferred for campaign media spending and that a receipt confirming their choice shall be provided upon request.
 3. Opt-out information shall be provided in writing. If provided with other written information the opt-out information must be provided in a format at least the same size type as any other information provided in writing along with the notice. The information must be either the first sentence in a paragraph or itself constitute a paragraph. If the opt-out information is provided without additional writing it must be clearly readable. To be valid, the opt-out information must provide contact information to allow the recipient to contact the person who provided the opt-out information within 21 days. Upon request of the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming

the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice. Nothing in this rule precludes providing a donor a receipt without waiting for a request.

- C. Any person responsible for providing the opt-out information must keep a record of when the information was provided and maintain all related records including the written notice for five years.
- D. If a donor does not opt out after the initial notice period, a covered person may make subsequent written notices to a donor of their right to opt out and may set a time for response of no less than 1 day from the date the donor receives the notice. To be valid, the opt-out information must provide contact information to allow the recipient to contact the person who provided the opt-out information within the time identified in the subsequent request. Upon request by the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice.
- E. A donor may request to opt out at any time after the initial notice period and the covered person must confirm the opt out to the donor in writing no later than 5 days after the request and subsequently that donor shall be treated as having opted out by the covered person. Upon request of the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice.

R2-20- 804. Request for Exemptions

- A. An original source who has reason to believe their identity will or could be subject to disclosure under Chapter 6.1 of Title 16 ay file a request for exemption pursuant to A.R.S. § 16-973(F) at any time. An original source who has not opted out of having their monies used for campaign media spending may file a request for an exemption with the Executive Director no later than 14 days after the notice to opt out is given. In the event an original source did not receive a notice to opt out, the person may file a request for exemption with the Executive Director no later than 21 days after discovering their monies may be or have been used for campaign media spending.
- B. In the event the request provides documentation of a court order requiring confidentiality, the Executive Director shall confirm the validity of the court order in five days. If the order is confirmed, the Executive Director shall issue a letter to the requestor stating that their ~~name~~ identity shall not be disclosed. In the event that the order is not confirmed, the Executive Director shall issue a letter to the requestor stating their identity may be disclosed.
- C. In the event that the person making the request claims a statute provides for such confidentiality, the request shall include a citation to the statute and argument why the statute applies to require confidentiality. The Executive Director may make a recommendation to the Commission. The Executive Director shall place the item on an agenda no later than the next regular Commission meeting. The person and their counsel may appear. In order to protect the interests of the original source pending a determination, the Commission may vote to go into executive session to protect confidential information and if warranted for other reasons authorized by the Open

Meeting Law. For purposes of this rule, the person and their counsel shall be deemed individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities if the Commission votes to go into executive session pursuant to A.R.S. § 38-431.03(A)(2). No vote may be taken in the executive session. If the Commission decides that the statute applies by a roll call vote in public session in favor of the request, the Executive Director shall issue a letter to the requestor within 5 days stating that their ~~name~~ identity shall not be disclosed. If the Commission does not vote that the state applies by roll call vote in favor of the request the Executive Director shall issue a letter to the requestor within 5 days stating that their identity may be disclosed.

- D.** In the event the person making the request claims that there is a reasonable probability that they or their family will experience threats of physical harm, the request shall provide such evidence. The request may also include argument in favor of the request. The Executive Director may make a recommendation to the Commission. The Executive Director shall place the item on an agenda no later than the next regular commission meeting. The person and their legal representative may appear. In order to protect the interests of the original source pending a determination, the Commission may vote to go into executive session to protect confidential information and if warranted for other reasons authorized by the Open Meeting Law. For purposes of this rule, the person and their counsel shall be deemed individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities if the Commission votes to go into executive session pursuant to A.R.S. § 38-431.03(A)(2). No vote may be taken in the executive session. If the Commission decides that the request

should be granted by a roll call in public session in favor of the request, the Executive Director shall issue a letter to the requestor within 5 days stating that their ~~name~~ identity shall not be disclosed. If the Commission does not approve the request by a roll call vote the Executive Director shall issue a letter to the requestor within 5 days stating that their identity may be disclosed.

- E. The agenda shall not identify the requestor.
- F. No records related to a request shall be subject to a public records request or any other type of request. The records shall not be produced absent a court order compelling disclosure.
- G. All records except the Executive Director's letter shall be destroyed ~~within~~ 30 days after ~~of the determination,~~ unless timely review of the Commission's action is sought. The Executive Director's letter shall not be made public except by a court order.

R2-20- 805. Disclaimers

- A. A covered person shall include the words "paid for by" on every public communication followed by the full legal name of the covered person making the public communication. The public communication shall also state whether it is: 1) authorized by any candidate or their agents and any candidate's name who individually or through their agents participated in the authorization; or 2) that the public communication is not authorized by any candidate or their agents acting on the candidate's behalf.
- B. Public communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies who have not opted out pursuant to A.R.S. § 16-972 or a rule of the Commission during the

election cycle to the covered person as calculated by the covered person at the time the advertisement was distributed for publication, display, delivery, or broadcast.

C. 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 section, the public communication must provide a means for viewers to obtain, immediately and easily, the required information without having to receive extraneous information. The public communication must always state the full legal name of the covered person.

D. If the public communication is:

1. Broadcast on radio, the disclosure shall be clearly spoken at the beginning or end of the advertisement.
2. Delivered by hand or by mail, the disclosure shall be clearly readable.
3. Delivered electronically, the disclosure shall be clearly readable.
4. Displayed on a sign or billboard, the disclosure shall be displayed at a height that is at least four percent of the vertical height of the sign or billboard.
5. Broadcast on television, in a video or film, both of the following requirements apply:
 - a. The disclosure shall be both written and spoken at the beginning or end of the advertisement, except that if the written disclosure statement is displayed for the greater of at least one-sixth of the broadcast duration or four seconds, a spoken disclosure statement is not required.
 - b. The written disclosure statement shall be printed in letters that are displayed in a height that is at least four percent of the vertical picture

height, except that if the advertisement is paid for by a political action committee, the written disclosure statement shall be displayed in a height that is at least ten percent of the vertical picture height.

- c. These disclosure requirements apply to any broadcast, video, or film format, whether distributed via airwaves, cable, the internet, or other delivery methods.

R2-20-806. Ex Parte

- A. No individual shall communicate with any Commissioner ex parte as defined in subsections E and F of this rule. No Commissioner shall communicate with any individual ex parte as defined in subsections E and F of this rule.
- B. In the event of a Complaint, no Commissioner shall communicate with the Executive Director or any other commission staff or attorney who represents the Executive Director regarding the Complaint except in commission proceedings where the Respondent or Respondent's Counsel is present.
- C. The Executive Director may communicate with a Respondent, a Respondent's counsel, a Complainant or Complainant's Counsel or any other person with information regarding a Complaint.
- D. If a Respondent wishes to be represented by counsel with regard to any matter pending before the Commission, Respondent or Respondent's Counsel shall so advise the Commission by sending a writing to the Commission including the following:
 - 1. The name, address, and telephone number of the counsel.
 - 2. A statement authorizing such counsel to receive any and all notifications, service

of process, and other communications from the Commission, its staff and attorneys on behalf of Respondent.

Upon receipt, the Commission shall have no contact with Respondent except through the designated counsel unless authorized Respondent.

E. Ex parte communication means any written or oral communication by any person outside the agency to any Commissioner or any member of a Commissioner's staff which imparts information or argument regarding prospective Commission action or potential action concerning:

1. Any proceeding involving a request for an exemption.
2. Any enforcement proceeding.
3. Any pending litigation matter, or
4. Any pending rulemaking, or
5. Any pending advisory opinion request.

F. Ex parte communications do not include the following communications:

1. Statements by any person publicly made in a public forum; or
2. Statements or inquiries by any person limited to the procedural status of an open proceeding, rulemaking, advisory opinion request, or a litigation matter.

G. In the event that a Commissioner receives an ex parte communication as defined in this rule, the Commissioner shall disclose receipt of such a communication in a public meeting of the Commission.

R2-20-807. Recordkeeping

A. All records required to be retained by Chapter 6.1 of Title 16 shall be kept in such order

that a reasonable person could confirm the accuracy of transactions, transfer records, reports, opt out notices, and other information by review of the documents and other information.

- B.** Records may be kept in any media a person subject to Chapter 6.1 of Title 16 chooses, provided that the media is commonly available and not proprietary.
- C.** Failure to maintain records in a reasonable manner may give rise to factual presumption against the person in an enforcement proceeding or other action under Chapter 6.1 of Title 16.

R2-20- 808. Advisory Opinions

- A.** Requests for advisory opinions
 - 1. Any person may request in writing an advisory opinion concerning the Chapter 6.1, of Title 16 or any regulation prescribed by the Commission pursuant to that chapter. An authorized agent of the requesting person may submit the advisory opinion request, but the agent shall disclose the identity of his or her principal.
 - 2. The written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.
 - 3. Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

4. The Executive Director shall review all requests for advisory opinions submitted. If the Executive Director determines that a request for an advisory opinion is incomplete or otherwise not qualified, they shall, within 10 days of receipt of such request, notify the requesting person and specify the deficiencies in the request.
5. Advisory opinion requests must be sent to the Clean Elections Commission by email or as directed by the Commission staff. Procedures for advisory opinion requests shall be available on the Commission website.

B. Availability and Comments on Requests.

1. Advisory opinion requests which qualify under this section shall be made public at the Commission promptly upon their receipt.
2. A copy of the original request and any supplements thereto, shall be available for public inspection and may be obtained via a written request to the Executive Director.
3. Any interested person may submit written comments concerning advisory opinion requests made public at the Commission.
4. The written comments shall be submitted within 10 days following the date the request is made public at the Commission. Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted by the Executive Director without an extension request. Comments Advisory opinion requests must be sent to the Clean Elections Commission by email or as directed by the Commission staff.

C. Issuance and Reliance on Advisory Opinions

1. Within 60 calendar days after receiving a qualifying advisory opinion request, the Commission shall issue to the requesting person a written advisory opinion or shall issue a written response stating that the Commission was unable to approve an advisory opinion by the required affirmative vote of a majority of members present at a meeting of the Commission.
2. The 60 calendar day period is reduced to 20 calendar days for a qualified advisory opinion request provided the request:
 - a. Is submitted by a person within the 60 calendar days preceding the date of any election to which Chapter 6.1 of Title 16 applies;
 - b. Identifies the election by date and jurisdiction.
 - c. Presents a specific transaction or activity related to the election that may invoke the 20 day period if the connection is explained in the request.
3. An advisory opinion rendered by the Commission may be relied upon by any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered, and any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.
4. Any person who relies upon an advisory opinion and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act, be subject to any sanction provided Chapter 6.1 of Title 16.

D. A request for reconsideration may be made by:

1. The person who made the request within 15 days of the opinion's approval but no later than 5 days before the Commission's next regular meeting; or

2. Any person who states a good faith basis for vacating or reversing a prior opinion subject to other rules in this section.
- E.** Any request for reconsideration shall meet all of the requirements otherwise required of an initial request.

Rule	Summary	Comment?	Summary & Response	Recommendation
801	Sets forth definitions. Includes rules of construction (e.g. interpretative rules for dealing with the Act)	Yes	<p>HA Comment 1 Reasonable Accounting system rule Staff: Not recommended, burdensome</p> <p>HA Comment 2: limit 16-973 disclosure. Staff: Legal basis unclear not recommended at this time</p>	Approve
802	Timing- sets forth the time definitions for certain acts the rules require	No		Approve

803	<p>Opt out rules. Prop. 211 requires donors to be given an opportunity to opt out of having their money be used for campaign media spending. Donors monies cannot be used for 21 days after notice or when donor gives assent whichever is earlier</p>	Yes	<p>Statecraft Comment 1: Alternative compliance for PAC/Party Staff: Statutory basis unclear, not recommended at this time.</p> <p>Statecraft Comment 2: The statute allows people to give advance written consent. Suggests a rule provision on this point. Staff: Doesn't appear necessary given statute.</p> <p>CLC Comments 1-3: Suggests clarifying language in terms of the time line to request an exemption. Requests removal of 803(E). Suggests additional language explaining the contents of a receipt. Staff: Agrees with some clarifying changes, does not agree with removing 803(E) or requiring additional details on the receipt.</p>	Approve with nonsubstantial changes.
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804	Provides process for those who believe that revealing their identities will do them harm under the standard provided for 211	No	<p>CLC Comments 1-7: Various technical suggestions, suggests narrowing public records exemption, including additional opt out period, destruction of records.</p> <p>Staff: Agree in part, disagree in part. Emphasis on keeping identity secure.</p> <p>HA 1-2: Include covered person notice, explain what happens to reporting and disclaimer when identity is not to be revealed.</p> <p>Staff: Disagree with including covered persons, agree that we should return with a separate analysis of how identity is accounted for.</p>	Approve with nonsubstantial changes.
805	Commission directed to make rules on advertising disclaimers	Yes	Staff still reviewing recent extensive comment.	Defer action
806	Communication and ex parte rules	Yes	<p>CLC Clarify ex parte definition, provide for Commissioner disclosure of ex parte communication, and retitle</p> <p>Staff: Agree</p>	Adopt with nonsubstantial changes
807	Record keeping	No		Adopt
808	Advisory opinion requests to the Commission	No		Adopt



August 21, 2023

Submitted electronically to ccec@azcanelections.gov.

Mark Kimble, Chairman
Arizona Citizens Clean Elections Commission
1802 W. Jackson St. #129
Phoenix, Arizona 85007

**Re: Comments in Support of Proposed Rules R2-20-801
through R2-20-808, relating to the Voters' Right to Know
Act (Proposition 211)**

Dear Chairman Kimble and Members of the Commission,

Campaign Legal Center ("CLC") respectfully submits these written comments to the Arizona Citizens Clean Elections Commission ("Commission") in support of Proposed Rules R2-20-801 through R2-20-808 (collectively "Proposed Rules") implementing Arizona's recently enacted Voters' Right to Know Act.¹

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

CLC commends the Commission's efforts to timely implement the Voters' Right to Know Act ("VRTKA" or "the Act") and commitment to developing thorough, clear, and functional regulations. Our comments and recommendations are intended to strengthen and clarify the draft rules and assist the Commission's work on this important issue.

DISCUSSION

I. Background

Before the passage of the Act, Arizona's prior campaign finance disclosure system was described as "one of the most pro-dark-money statutes imaginable."² Wealthy special interests used 501(c)(4) groups and other nonprofits as a conduit for millions of dollars, donating to organizations that

¹ See Ariz. Admin. Register, Vol. 29, Issue 28 at 1571-76, Notice of Proposed Exempt Rulemaking, Title 2. Administration, Chapter 20. Citizens Clean Elections Commission, Article 8, R2-20-801 through 808 (July 15, 2023), https://apps.azsos.gov/public_services/register/2023/28/contents.pdf.

² See Alexander J. Lindvall, Ending Dark Money in Arizona, 44 Seton Hall Legis. J. 61, 73 (2019).

either pay for independent spending directly or transfer the money to super PACs and other nonprofits for election spending in Arizona.³

The Voters' Right to Know Act was enacted by over 70% of Arizona voters in November 2022 to shine a light on the original sources of this flood of secret "dark money" campaign spending.⁴ Like other disclosure laws, the Act does not limit expenditures for campaign speech or contributions to pay for such speech. Instead, the Act protects the First Amendment rights of voters, enhancing robust public debate and providing voters with information critical to choosing, and holding accountable, their elected leaders. As the Commission is aware, this was recently affirmed in a ruling by the Superior Court of Arizona, Maricopa County,⁵ which granted the Commission and other defendants' motions to dismiss a facial challenge to the Act in June.⁶

II. The Proposed Rules and CLC's Recommendations

The Act is a critical policy achievement protecting voters' right to know who is spending big money to influence their vote. Laws requiring donor disclosure have always intended to educate the public about the true source of money trying to affect elections, and the Act ensures that disclosure in Arizona will be meaningful and not simply report the names of intermediaries or front groups who are masking the true identity of large donors. These proposed rules are an important next step in implementing the Act, fulfilling statutory obligations (as directed for top three donor disclaimers in A.R.S. § 16-974(C)), and providing necessary guidance and clarification to other sections.

In the following subsections, CLC suggests clarifications for four sections of the Commission's draft regulations, including provisions relating to opt-out notices, donor requests for exemptions from disclosure, top three donor disclaimers, and ex parte communications regarding pending complaints. We additionally suggest the Commission adopt regulations providing further guidance regarding how direct donors provide original source and intermediary information to covered persons under the Act. Finally, we have also included a brief subsection identifying some technical corrections.

A. § 803 - Opt-Out Notices

A key feature of the Act is each donor's right to opt-out their donations from use in campaign media spending; when a donor elects to opt-out within the 21-day statutory period, a covered person may not use those funds for campaign media spending, and the donor's identity is not subject to disclosure under the Act.⁷ This process empowers donors to decide whether their money can be used by covered persons to influence elections. To avoid

³ See David R. Berman, *Dark Money in Arizona: The Right to Know, Free Speech and Playing Whack-a-Mole*, Morrison Inst. for Pub. Pol'y 3-4 (2014). See also Lindvall at 67-68; *Dark Money Basics*, OpenSecrets, <https://www.opensecrets.org/dark-money/basics> (last visited January 28, 2023).

⁴ See ARIZ. SEC. OF STATE, STATE OF ARIZONA OFFICIAL CANVASS: 2022 GENERAL ELECTION 12 (Dec. 5, 2022, 10:00:00 AM), https://azsos.gov/sites/default/files/2022Dec05_General_Election_Canvass_Web.pdf. See also Jane Mayer, *A rare win in the fight against dark money*, THE NEW YORKER (Nov. 16, 2022), <https://www.newyorker.com/news/news-desk/a-rare-win-in-the-fight-against-dark-money>.

⁵ Minute Entry: Under Advisement Ruling, *Center for Arizona Policy, Inc. v. Arizona Secretary of State*, Sup. Ct. of the State of Arizona, Maricopa Cty., Case No. CV2022-016564 (Jun. 22, 2023) (copy of ruling available at <https://campaignlegal.org/document/center-arizona-policy-inc-et-al-v-arizona-secretary-state-et-al-under-advisement-ruling>).

⁶ CLC's affiliated 501(c)(4) organization, CLC Action, represents Voters Right to Know, the political committee established to draft and support Proposition 211, in this litigation.

⁷ See A.R.S. §§ 16-972(B) and (C), 16-973(A) and (E).

confusion for both donors and covered persons in the opt-out process, we recommend revisions to the below portions of § R2-20-803.

First, § R2-20-803(D) (providing covered persons with the ability to send donors additional opt-out notices) creates potential ambiguity surrounding the opt-out timeline when a covered person sends an additional opt-out notice or reminder within the statutory 21-day period.

The draft rule’s language permits covered persons to send subsequent opt-out notices with new opt-out deadlines of no less than one day after receipt of the new notice. However, because the rule does not address how these new opt-out notices interact with the statutory opt-out period, it could create confusion among covered persons regarding whether a subsequent opt-out notice alters the required minimum 21-day opt-out period under A.R.S. § 16-972.

While nothing prevents a covered person from providing a donor with additional time to opt their contribution out of campaign media spending, we recommend revisions to clarify that any subsequent notices provided by a covered person cannot shorten the statutory 21-day opt-out period.

Furthermore, the final rule should specify that if a covered person does send a donor a subsequent opt-out notice, the covered person may not spend, transfer, or otherwise obligate those funds for campaign media spending purposes until any additional opt-out time provided in that notice has elapsed (or, of course, the donor affirmatively opts in).

Suggested language for subsection (D) is available below:

“If a donor does not opt out after the initial 21-day notice period under A.R.S. § 16-972, a covered person may make subsequent written notices to a donor of their right to opt out and may set a time for response of no less than 1 day from the date the donor receives the notice. To be valid, the opt-out information must provide contact information to allow the recipient to contact the person who provided the opt-out information within the time identified in the subsequent request.”

Second, § R2-20-803(E) creates ambiguity regarding how covered persons must address donor opt-out requests made after the 21-day period—and any subsequent opt-out period provided by the covered person—has passed. While a covered person may choose to honor a late opt-out request from a donor, the draft language presents logistical issues and appears to be in tension with the 21-day statutory deadline that a donor must abide by in order to opt out.

A.R.S. § 16-972(B) permits funds that have not been opted out within the 21-day period to be used or transferred for campaign media spending. Section R2-20-803(E) of the Proposed Rules currently requires a covered person to honor a donor’s late opt-out request and treat it as a retroactive opt-out for that donor. However, this may be impossible if a covered person has already spent or obligated those funds for campaign media spending, as permitted by the statute. Moreover, this requirement potentially would result in covered persons being in a perpetual state of limbo: If any donor may opt out at any point after the initial notice, covered persons may be unable to spend donor funds on elections without being at risk of violating a late opt-out request.

We recommend the Commission eliminate the requirement that covered persons honor late opt-out requests and, accordingly, remove subsection (E) entirely. Covered persons could choose to honor a late opt-out request from a

donor if the funds have not already been spent or obligated, but they should not be required to do so. This deletion also dovetails with subsection (D), which (as clarified above) would allow covered persons to send additional opt-out notices with response periods after the initial 21-day statutory opt-out period has elapsed.

Third, we recommend revising the parallel language in § R2-20-803(B) and (D) regarding receipts provided to donors upon request.⁸ This language permits donors to request a receipt, which may be issued prior to the end of the 21-day opt-out period (or any subsequent opt-out period provided under subsection (D)). Currently, the language requires a receipt to “confirm[] the donor’s choice” as to whether funds have been opted out. Rather than requiring the receipt to confirm the status of the donated funds while the opt-out period is potentially still in effect, we suggest the following language:

“. . . Upon request of the donor, the person responsible for providing the opt-out information must provide a receipt to the donor stating whether the funds had been opted-out at the time the receipt was issued. If the covered person regularly provides receipts for donations the receipt shall note whether the funds have been opted out . . .”

B. § 804 - Requests for exemptions

The Act provides original source donors with the ability to request an exemption from disclosure of their identity under the Act when their identity is otherwise protected from disclosure by a law or by a court order, or where a donor “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.” A.R.S. § 16-973(F).

The administration of this provision is particularly important to ensure both that donors who are truly at risk are protected and that the exemption process is not abused by those who merely would prefer anonymity. We suggest seven areas for revision or clarification below:

First, and most generally, this section appears to contemplate only situations where original sources request exemptions *after* a contribution is made to a covered person. We strongly recommend the Commission allow original sources to request an exemption from the Act prior to receiving a solicitation or making a contribution; a donor may intend to make contributions subject to disclosure under the Act and should be able, at that time, to submit a request prior to making such contribution.

Second, proposed § R2-20-804(A) provides that an original source who has not opted their funds out from campaign media spending must file a request for an exemption within fourteen days after the notice to opt out is given. However, the original source of funds may not receive an opt-out notice; if the original source contributes funds to an intermediary, which then passes the funds on to a covered person, it is possible that only the intermediary receives the opt-out notice. While an intermediary could choose to pass the opt-out notice back to the original source, there is no requirement that an intermediary do so. In this case, the Proposed Rule’s timeline for an original source to apply for an exemption remains unclear.

We suggest that the regulations provide the same exemption request period for original sources who were not an immediate contributor to a covered person but may nonetheless be reported as the original source of funds in a

⁸ This language is also paralleled in subsection (E); we recommend removing that paragraph entirely, but if it is retained or otherwise revised, the parallel language should also be updated.

report required under the Act. For example, where an original source contributed funds to multiple entities, who each passed along funds (thus functioning as intermediaries) to the covered person that totaled more than the \$5,000 reporting threshold, the original source would not have received an opt-out notice – but would be identified in a report as a major contributor of funds in aggregate. That person may still qualify for, and should therefore be able to request, an exemption under A.R.S. § 16-973(F), and this situation should be contemplated in the final rule.

Third, proposed § R2-20-804(A) provides only a fourteen-day exemption request period after a donor receives the notice to opt out. This means that the exemption request period would elapse before the 21-day statutory opt-out period (or an extended opt-out period under § R2-20-803(D)) ends. We recommend modifying this subsection to reflect a twenty-one day exemption request period, in line with the statutory opt-out deadline.

Suggested language reflecting the above revisions to subsection (A) is as follows:

“A. An original source who has not opted out of having their monies used for campaign media spending may file a request for an exemption with the Executive Director no later than 21 days after the notice to opt out is given. An original source may file a request for an exemption with the Executive Director prior to making a donation. In the event an original source did not receive a notice to opt out, the original source may file a request for exemption with the Executive Director no later than 21 days after discovering their monies may be or have been used for campaign media spending.”

Fourth, proposed § R2-20-804(B), (C), and (D) currently describe the determination process for whether a requestor will be exempted from disclosure under the Act because of a court order (subsection (B)), statutory claim to confidentiality (subsection (C)), or reasonable probability of physical harm to the requestor or their family (subsection (D)). However, none currently provide for clear guidelines when the Commission determines the requestor is *not* entitled to the requested exemption. In such circumstances, the final rule should specify that the requestor’s identity is subject to disclosure under the Act *but* should also provide a requestor who has already contributed money to a covered person with an additional amount of time (for example, five days) from the date of the decision denying the exemption to determine whether they wish to opt-out their contribution from campaign media spending.

We suggest the below language be added as a new subsection following subsection (D):

“In the event the Commission decides that the request should not be granted, the Executive Director shall issue a letter to the requestor within five days stating the Commission’s decision. The letter shall notify the requestor that they can opt out of having their monies used or transferred for campaign media spending by notifying the covered person in writing within five days of receipt of the letter, and that if the requestor does not opt out, their name shall be subject to disclosure.”

Fifth, subsection (F) provides that “[n]o records related to a request shall be subject to a public records request or any other type of request. The records shall not be produced absent a court order compelling disclosure.” This prohibition on sharing any records “related to” an exemption request is potentially overly broad and could capture even routine Commission agendas that mention a request but do not contain any identifying information regarding the requestor. We recommend narrowing this public records exemption to apply only to records that contain information that could lead to

the identification of a requestor, or by specifically listing the types of records subject to the exemption in subsection (F). Suggested language is as follows:

“Records related to a request that contain information that may lead to the identification of a requestor shall not be subject to a public records request or any other type of request. Such records shall not be produced absent a court order compelling disclosure.”

Furthermore, in the final rule, the Commission should consider making redacted versions of each final determination letter available to the public; the reasoning contained in such letters could be helpful to the public and to potential future applicants for exemptions to understand the process and reasoning behind the Commission’s decision.

Sixth, we recommend modifying the language in (G) to clarify that records must be retained upon appeal of the Executive Director or Commission’s determination:

“All except the Executive Director’s letter shall be destroyed within 30 days of the final disposition or determination and only after the conclusion of any subsequent court review, in the case of an appeal.”

Lastly, § R2-20-804 does not provide for how the Commission will handle situations where a request for exemption is denied by the agency and later upheld by a court upon review. We suggest that a final version of the rules also provide guidelines for this situation. For example, when a request is denied by the Commission and then upheld by the court, the Commission should retain records until thirty days after the conclusion of the case, or until the period for an appeal has passed, whichever is longer.

C. § 805 – Disclaimers

Section R2-20-805 provides necessary guidance for A.R.S. § 16-974(C), which directs the Commission to establish a top three donor disclaimer requirement for public communications by covered persons. We commend the Commission in particular for including in proposed § R2-20-805(B) a clarification that top-three donor disclaimers only include donors of original monies who have not opted out pursuant to A.R.S. § 16-972. This interpretation of the Act is clearly consistent with its intent and other provisions.

As the Commission explores how to implement the top three donor disclaimers, we recommend additional language regarding how to calculate the top three donors and updated language applying the disclaimer requirement to different ad formats. These additional guidelines are particularly important for practical implementation; for example, if an ad runs over a longer period of time, the identity of the top three original source donors who did not opt out their funds might change. Without clear guidelines for these common situations, there may be questions or confusion for the regulated community.

Our recommended language is as follows:

“B. Public communications by covered persons shall state in a clear and conspicuous manner the names of the top three donors who directly or indirectly made the three largest contributions of original monies who have not opted out pursuant to A.R.S. § 16-972 or a rule of the Commission during the election cycle to the covered person as calculated by the covered person at the time the advertisement was distributed for publication, display, delivery, or broadcast.

1. For purposes of this subsection, contributions of traceable monies made in prior election cycles shall be considered to have been contributed in the current election cycle if the contributor’s

aggregate contributions of original funds to the covered person constituted more than half of the covered person's traceable funds at the start of the election cycle;

2. If multiple contributors have contributed identical amounts such that there is no difference in contributed amounts between the third-highest contributor and the fourth-highest (or lower), the contributor who most recently contributed to the covered person shall be deemed a top three donor.

3. No contributor of traceable monies shall be deemed a top three donor if its aggregate contributions of original funds during the election cycle to the covered person are less than \$5,000."

The recommended language below is designed to dovetail with the "clear and conspicuous" language in (B) and efficiently address how covered persons should include disclaimers in the broad range of ads and ad formats that fall under this requirement and would replace (C) and (D) from this section. The proposed standards leave potential ambiguity as to what would qualify as, for example, "clearly readable" or "clearly spoken." By creating a safe harbor where ads meet certain requirements, these regulations also provide the Commission with flexibility to better address potential violations of the Proposed Rule's disclaimer requirement.

C. For purposes of this § R2-20-805(B), a communication does not make a statement in a clear and conspicuous manner if it is difficult to read or hear or if the placement is easily overlooked.

D. Flexibility for certain internet or digital communications.—

1. Accommodation for technological impossibility. In the case of a public communication disseminated on the internet or by social media message, text message, or short message service where it is not technologically possible to provide all the information required by this section, the communication shall, in a clear and conspicuous manner—

a. state the full legal name of the covered person who paid for the communication; and

b. provide a means for the recipient of the communication to immediately and easily obtain the remainder of the information required under (B) with minimal effort and without receiving or viewing any additional material other than such required information.

E. Safe harbor for determining clear and conspicuous manner. A statement shall be considered to be made in a clear and conspicuous manner if the communication meets the following requirements:

1. Text or graphic communication.— In the case of a text or graphic communication, the statement shall be clearly readable and —

a. appear in letters at least as large as the majority of the text in the communication;

b. is contained in a printed box set apart from the other contents of the communication; and

c. is printed with a reasonable degree of color contrast between the background and the printed statement.

d. In the case of a sign or billboard, in addition to the requirements in clauses (a), (b), and (c), the disclosure shall be displayed at a height that is at least four percent of the vertical height of the sign or billboard.

2. Audio communications.— In the case of an audio communication, the statement is spoken in a clearly audible and intelligible manner at the beginning or end of the communications and lasts at least 4 seconds.

3. Video communications.— In the case of a video communication which also includes audio, the statement—

a. is included at either the beginning or the end of the communication; and

b. is made both in a written format that meets the requirements of clause (1) and appears for at least 4 seconds, and in an audible format that meets the requirements of clause (2).

4. Other communications.— In the case of any other type of communication, the statement is at least as clear and conspicuous as the statement specified in clauses (1), (2), or (3).

5. Brief video communications.— In the case of a video communication that is a qualified internet or digital communication shorter than 10 seconds, the audible portion of the statement may be omitted.

6. The disclosure requirements in (1), (2), and (3) apply to any broadcast, video, film, or audio format, whether distributed via airwaves, cable, the internet, or other delivery methods.”

D. § 806 - Communication (ex parte)

We recommend the Commission consider re-titling proposed § R2-20-806 to “Ex Parte Communication” provide greater clarity regarding its purpose. In addition, we recommend a small revision to (B) to reflect that the ban on communications between the Executive Director (or any other commission staff or attorneys representing the Executive Director) and the Commissioners applies *only* to communications relating to a pending Complaint. In the absence of this revision, the proposed rule seems to suggest that the Commissioners cannot communicate with the Executive Director or other Commission staff at all if there is any complaint pending before the Commission.

“B. In the event of a Complaint, no Commissioner shall communicate with the Executive Director or any other commission staff or attorney who represents the Executive Director regarding the Complaint except in commission proceedings where the Respondent or Respondent’s Counsel is present.”

We additionally suggest that the Commission insert a new subsection (C) as follows, and re-number the current subsections (C) through (F) as (D) through (G).

“C. In the event that a Commissioner receives an ex parte communication as defined in subsections F and G of this rule, the Commissioner shall disclose receipt of such a communication on the public record in commission proceedings.”

E. Proposed Additional Regulations

Any final regulations promulgated by the Commission on the Act should include guidance regarding the process for the direct donor to a covered person to provide original source information for the funds contributed if that donor is not the original source themselves.

A.R.S. § 16-972(D) requires any person who donates more than \$5,000 in traceable monies in an election cycle to inform a covered person in writing of the identity of each other person who directly or indirectly contributed more than \$2,500 of the donation in original monies and the amount of money contributed by those persons. A donor must convey this information within ten days after receiving a written request from the covered person, and must maintain these records for at least five years, available upon request to the Commission. Similar provisions govern in-kind contributions valued at more than \$5,000. *See* A.R.S. § 16-972(E).

Language outlining this responsibility and the process for donors to report this information to a covered person – from a request by a covered person to the tracing, reporting, and record-keeping process for donors – should be addressed in the final regulations to reduce confusion for both donors and covered persons.

F. Minor Changes and Corrections

In addition to the more detailed and policy-oriented suggestions above, we identified a few minor changes and corrections the Commission may wish to consider. We suggest updating:

- § R2-20-801(C): “. . . a person must inform that covered person in writing of the identity of each other person that directly or indirectly contributed . . .”
- § R2-20-803(B)(3): “Provide opt-out information in writing. . . .” (The structure set forth in (B) and followed in (B)(1) and (2) is not followed in (B)(3) but can be resolved with this language).
- § R2-20-804(B): “. . . the Executive Director shall confirm the validity of the court order within five days . . .” provides greater flexibility to the Executive Director and parallels the construction in (C).

Conclusion

CLC thanks the Commission for its consideration of the foregoing comments and recommendations regarding this important rulemaking. As the Commission prepares to implement the Voters’ Right to Know Act, CLC would be glad to provide further assistance or resources.

Respectfully submitted,

s/ Elizabeth D. Shimek
Elizabeth D. Shimek
Senior Legal Counsel

June 21, 2023

BY ELECTRONIC MAIL DELIVERY

Arizona Citizens Clean Elections Commission
1110 W. Washington St., Suite 250
Phoenix, AZ 85007

Re: Comment Regarding Draft Rules for Chapter 6.1 of Title 16, Arizona Revised Statutes – the Voters’ Right to Know Act

Dear Commissioners:

We are election law practitioners who represent clients that plan to spend funds in connection with Arizona state elections in 2024. We are in receipt of an email from Mr. Thomas Collins, the Executive Director of the Arizona Clean Elections Commission (the “*Commission*”) dated June 18, 2023, in advance of a June 22 meeting to discuss the draft rules (the “*Draft Rules*”) implementing Chapter 6.1 of Title 16, Arizona Revised Statutes (the “*Voters’ Right to Know Act*” or the “*Act*”). We appreciate Mr. Collins noting that “you may have your own ideas you would like the Commission to consider” and to “[p]lease feel free to get in touch with us if you have any questions, concerns or comments.” We have also reviewed the two new provisions of the Draft Rules circulated on June 18.

Our goals in this process are twofold: ensuring that the Draft Rules properly implement the Act and obtaining regulatory certainty for our clients. We understand that this process may be iterative and that the formal comment period will not open until after the June 22 meeting. By submitting comments now, we hope to focus the Commission’s attention on two issues prior to the meeting.

First, to ask the Commission to clarify how sections 801(c) and 803 of the Draft Rules will work in practice when an entity (as opposed to an individual) transfers monies to a “covered person.” We do not believe that any additional Draft Rule provisions are required to address this matter; we are instead requesting that the Commission confirm that our understanding of the Draft Rules – as applied to two hypothetical scenarios – is correct. We defer to the Commission as to the proper avenue for such confirmation, whether it be a written explanation and justification for the Draft Rules or a statement on the record at a Commission meeting. If our understanding of the Draft Rules is incorrect, however, then additional regulatory provisions may be required.

Second, to clarify the scope of the sixth and seventh types of “campaign media spending.” We are agnostic as to whether the Commission addresses this issue via new regulatory provisions or an interpretive statement.

A. Clarifying how sections 801(c) and 803 of the Draft Rules work in practice.

Proposed section 801(c) of the Draft Rules reads as follows:

In response to a request pursuant to A.R.S. § 16-972(D), a person must inform that covered person in writing, 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 ***up to the amount of money being transferred to the requesting person.***¹

Proposed section 803(a) of the Draft Rules reads as follows:

Before a 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. The covered person must give the donor an opportunity to opt out of having the donation used or transferred for campaign media spending.²

The remaining subparts of section 803 specify how the written notice must be provided.

To ensure that the public understands how these two sections will work together, in practice, alongside the existing statutory provisions, we have set forth two hypothetical scenarios below that reflect how organizations transfer funds to influence Arizona state elections. We ask that the Commission clarify that the Donor and Covered Person's proposed course of action in Hypotheticals A and B comply with the statute and Draft Rules.

Hypothetical A

- Donor is a national organization that focuses on electing Democrats to statewide and legislative offices. Donor will effectuate its Arizona program by making monetary and in-kind contributions to Covered Person.
- Covered Person is a national organization that focuses on electing Democrats to statewide and legislative offices. Covered Person will effectuate its Arizona program by engaging in campaign media spending.
- Donor raises funds from individuals and organizations. To comply with applicable federal and state rules, Donor segregates its funds in different bank accounts based on money type (individual v. organizational), amount (some jurisdictions have contribution limits), and other factors (some donors place restrictions on their funds).

¹ See First Round Draft Notice of Proposed Rulemaking (June 18, 2023) at R2-20-801(C).

² See *id.* at R-20-803(A).

- While Donor would not use or transfer any funds provided by its donors restricted for use outside of Arizona elections, Donor has *not* sent section 803 compliant notices to *its* donors. (We do not read the Draft Rules to require Donor to do so.)
- On Friday, March 1, 2024, Donor contributes \$500,000 to Covered Person. On Monday, March 4, 2024, Covered Person sends a section 803 compliant notice to Donor *and* a request for original monies notice prescribed by section 801(c) of the Draft Rules and A.R.S. § 16-972(D).
- During the current election cycle, Donor has received \$2.5 million in contributions in total from both organizations and individuals. The donations from organizations are not original monies. Donor made the \$500,000 contribution from a bank account that had received \$1 million in contributions solely from individuals, all of which constituted original monies.
- In response to the request for original monies, Donor discloses that the individuals below contributed the following amounts since the beginning of the election cycle:
 - Individual A -- \$100,000
 - Individuals B and C -- \$50,000 each
 - Individuals D, E, F, G, and H --\$25,000 each
 - Individual I, J, K, and L -- \$10,000 each
 - Individual M, N, O, P, Q, R, and S -- \$5,000 each
 - Unitemized -- \$100,000 total from individuals who contributed \$2,500 or less to Donor since beginning of election cycle.
- Donor responds to section 803 notice by opting-in to use of \$500,000 for campaign media spending.

We interpret the aforementioned steps in Hypothetical A to be in compliance with proposed sections 801(c) and 803 of the Draft Rules. The statute and Draft Rules only require the opt-out notice to be sent from a covered person to a donor; that was done here. There is no requirement in the statute or Draft Rules that a donor must send opt-out notices to its own donors. Instead, the statute and Draft Rules merely require that a donor provide the “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 up to the amount of money being transferred to the requesting person.” That, too, was done here to the extent that the Commission would allow Donor to count the \$100,000 in unitemized (\$2,500 or less contributions) donations toward the \$500,000 amount. (If it is instead required to provide the Covered Person with a list of donors who contributed \$2,500 or less in original monies – even if those donors are not required to be disclosed on filings with the Commission – the Donor could comply in that way too.)

Hypothetical B

The same as Hypothetical A, except that Donor contributes \$400,000 from the account consisting solely of contributions of original monies from individuals and \$100,000 from a separate account consisting solely of contributions of non-original monies from nonprofit organizations. Neither the statute nor Draft Rules require that the disclosure of original monies be tied to the bank account from which the contribution of traceable monies is made. Therefore, Donor chose to source all \$500,000 in original monies from the individual-only account, even though Donor contributed only \$400,000 from that account and \$100,000 from another account.

B. Clarifying the meaning of “campaign media spending.”

The statute defines “campaign media spending” to mean “spending monies or accepting in-kind contributions to pay for” five types of “public communications” enumerated at § 16-971(2)(a)(i)-(v) *or* either of the following:

(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.”³

(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.”⁴ The Draft Rules clarify that these activities “shall not be considered campaign media spending unless these activities are specifically conducted in preparation for or in conjunction with those other activities.”⁵

We are asking the Commission to clarify the meaning of these latter two terms.

1. Clarifying the meaning of “activity” in Ariz. Stat. § 16-971(a)(vi).

The term “activity” is not defined anywhere in Title 16 and is used only once in the definition of “campaign media spending.” The common definition of the term is so broad as to potentially include anything that a person does. This potential overbreadth creates confusion. For example, if a donor gives \$50,000 to a statewide political party over the course of an election cycle, have they engaged in campaign media spending because they have done an “activity” that supports the electoral prospects of a candidate or political party? If so, the donor becomes a covered person with their own reporting obligations under the Act.⁶ We do not think this is the intention of the Act. In this example, the political party is already obligated to report the identity of the donor to

³ A.R.S. § 16-971(2)(a)(vi).

⁴ *Id.* § 16-971(2)(a)(vii).

⁵ First Round Draft Notice of Proposed Rulemaking (June 18, 2023) at R2-20-804.

⁶ *See* A.R.S. §§ 16-971(7)(a), 16-973.

the state and saddling donors with a duplicative reporting obligation does not further the goals of the law.⁷

We are asking the Commission to clarify that the term “activity” only includes programs aimed externally at voters to support or oppose a political party, as opposed to monetary or in-kind contributions of goods or services made to a covered person *or* internal work performed by an organization. This interpretation is consistent with the language of the statute. While rules of statutory construction dictate that the term “activity” mean something distinct from “public communication,” the statutory examples of such “activity” – partisan voter registration and partisan get-out-the-vote-activity – describe external programs aimed at voters that contain non-communicative program elements, such as collecting and submitting voter registration cards or transporting voters to the polls. We read the inclusion of the term “activity” to simply encompass these non-communicative elements that sometimes accompany programs aimed externally at voters. Likewise, the interpretive canon of *ejusdem generis* dictates that the term “other partisan campaign activity” is limited to activities of the same type as partisan voter registration and partisan get-out-the-vote activity – *e.g.*, external programs aimed at voters.⁸

It is also consistent with the statute’s structure. The term “campaign media spending” includes a seventh type – discussed below – that is aimed squarely at *internal* activities. Unlike any of the other provisions, which stand on their own, the seventh provision stipulates that if these internal activities qualify as “campaign media spending” only if they are “conducted in preparation for or in conjunction with any of the [other six] activities.”⁹ If the sixth type of campaign media spending were also aimed at internal activities, it would likely contain the same requirement that it be conducted in preparation for or in conjunction with other types of campaign media spending. But it does not, further bolstering the interpretation that the sixth type covers only activity aimed externally at voters.

2. Clarifying that an organization does not engage in “campaign media spending” if it makes an in-kind contribution of research, design, production, polling, data analytics, mailing or social media list acquisition to a covered person.

The term “campaign media spending” is defined to mean “spending monies *or accepting in-kind contributions* to pay for ... [r]esearch, 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.”¹⁰ It is notable that the term does *not* include *making* in-kind contributions for these goods or services. This reflects the clear distinction that the statute draws between donors and covered persons, and indicates a clear choice that the *recipient* of in-kind contributions bears the burden of filing reports. Therefore, we ask the Commission to clarify that an organization does not engage in

⁷ See *id.* § 16-926.

⁸ See *Wilderness World, Inc. v. Dep’t of Revenue State of Arizona*, 182 Ariz. 196, 199 (1995) (describing the *ejusdem generis* interpretive canon as “where general words follow the enumeration of particular classes of persons or things, the general words should be construed as applicable only to persons or things of the same general nature or class of those enumerated.”), quoting *White v. Moore*, 46 Ariz. 48, 53–54 (1935) and 59 C.J. Statutes § 581 (1932).

⁹ See A.R.S. § 16-971(a)(2)(vi).

¹⁰ See *id.*

“campaign media spending” if it makes an in-kind contribution of research, design, production, polling, data analytics, mailing or social media list acquisition to a covered person.

We appreciate the Commission’s consideration of our request and are available to answer any questions.

Respectfully submitted,

Jon Berkon
Meredith Parnell
Elias Law Group LLP

August 21, 2023

Arizona Citizens Clean Elections Commission
1110 West Washington Street, Suite 250
Phoenix, Arizona 85007

(via email: ccec@azcanelections.gov)

RE: Public Comment on Proposed Rules Implementing Prop. 211

Dear Commissioners:

This firm represents various political action committees, unions, and nonprofit corporations engaged in Arizona elections. We have been closely following the Commission's rulemaking process related to the Voters' Right to Know Act (the "Act"). We appreciate the opportunity to make public comment on proposed rules and ask the Commission for further clarification regarding certain portions of the Act.

Accordingly, please consider the following comments regarding the proposed rules introduced on June 22, and please further consider questions or points of clarification that we respectfully submit here, in the hopes that the Commission may choose to issue further rules or respond in writing to clarify the Act.

I. Donor Disclosure

Our primary concern about the Act and its proposed rules relates to the obligation that Covered Persons and their donors identify and disclose their contributors. Per our reading of the Act, there is ambiguity as to which contributions must be disclosed and how a Covered Person or a donor should appropriately identify those reportable contributions.

a. Scope of Donors' Duty to Identify Subcontributors (R2-20-801(C))

We turn first to non-Covered Persons (e.g., donors) and their obligation to disclose contributions. Proposed Rule R2-20-801(C) is responsive to this topic:

In response to a request pursuant to A.R.S. § 16-972(D), a person must inform that covered person in writing, 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 up to the amount of money being transferred to the requesting person.

We appreciate that this rule makes clear that a donor need only disclose those "original monies being transferred up to the amount of money being transferred to the requesting person." In other words, a donor who contributes \$100,000 to a Covered Person must disclose the original sources of \$100,000 of the donor's own funds (the "subcontributions"). But we respectfully request that the Commission add additional language to this rule to clarify that the donor may use any reasonable accounting system in determining *which* subcontributions to disclose, such that the donor's obligation is satisfied if it discloses non-opt-out donors who have made gifts totaling the amount equal to that transferred to the Covered Person. Given that money is fungible, donors should not be forced to attempt to identify and track the precise dollars the donor received and then transferred to the Covered Person.

A rule of this nature would appropriately balance the Act's interest in transparency and the burden on donors.¹ This is especially true because the Act places fewer burdens on donors compared to the burdens on Covered Persons themselves. As relevant, these requirements are principally that donors, who have not opted out of their funds being used for campaign media spending, provide records showing transfers of over \$2,500 to covered persons and that such records be maintained for five years. *See* A.R.S. §16-972(D)–(E), -973(E). Because donors may not know that the recipient of their money will eventually qualify as a Covered Person (and therefore may not know until later that the Act applies to them at all), donors should not be expected to track each the original source of each precise dollar that is contributed to that eventual Covered Person.

Accordingly, adding language to R2-20-801(C) allowing for donors to use any reasonable accounting method to identify the source of the money "being transferred

¹ Short of a rewritten rule on this issue, we would welcome written guidance from the Commission explaining that donors need not disclose the sources of *specific* dollars given to a Covered Person but may instead use any reasonable method to identify donors who have made gifts to the donor totaling an amount equal to that being transferred to the Covered Person.

up the amount of money being transferred to the requesting person” would clarify how donors are to identify the sources of the funds transferred.

b. Scope of Covered Persons’ Duty to Disclose Contributors

Related to the disclosure of original monies, we respectfully request that the Commission clarify its intent regarding Covered Persons’ obligation to identify “each donor of original monies who contributed, directly or indirectly, more than \$5,000 of traceable monies or in-kind contributions for campaign media spending during the election cycle to the covered person and the date and amount of each of the donor’s contributions.” A.R.S. § 16-973(A)(6).

Based on our reading of the Act, it is ambiguous whether, on any given report, a Covered Person must disclose (1) *all* donors who have given the Covered Person more than \$5,000 during the relevant election cycle or (2) only those donors who have given more than \$5,000 *and* whose money was actually used in the Campaign Media Spending that triggers the Covered Person’s report.

In the face of similarly ambiguous language related to non-Covered Person donors, the Commission helpfully explained in R2-20-801(C) that donors need only disclose the sources of funds “up the amount of money being transferred.” Similar language regarding Covered Persons would resolve ambiguity in the Act and promote compliance because Covered Persons will understand that the extent of their reporting obligations is limited to disclosure of those non-opt out donors whose contributions were used for Campaign Media Spending.

II. Disclaimers

Next, we request that the Commission clarify proposed Rule R2-20-805 regarding disclaimers on public communications. Would this rule, as written, require a Covered Person to list its top three donors (who have not opted out), regardless of whether those donors’ funds were used to create the communication on which the disclaimer is to appear?

If that is the case, we respectfully urge the Commission to reconsider this proposed rule and rewrite it such that only the Covered Person’s top three donors *whose funds were used to create the public communication* be included in the disclaimer. Donors may wish to be associated with certain but not all speech of a Covered Person. The Act should allow donors and Covered Persons to agree on specific uses of contributions, even if the donor has not opted out of their use for Campaign Media Spending.

It is not difficult to imagine a scenario in which a donor makes a contribution to fund certain work of a Covered Person, but by virtue of being one of the Covered Person's top three overall donors, the donor's name appears on messaging that is entirely unrelated to the goal which the donor hoped to further—perhaps without any forewarning. This scenario—made possible, in part, by proposed Rule R2-20-805—poses a nightmare for donors who wish to support Covered Persons on certain issues but not others. It will chill donor speech by forcing them to sign on to *all* communications of a Covered Person or *none*.²

III. Protected Identities

Proposed Rule R2-20-804 provides a clear mechanism for persons seeking to protect their identity from disclosure. But the public would benefit from guidance pertaining to what happens after any such exemption is approved. Currently, the draft rule provides that the Executive Director “shall issue a letter [granting the exemption] to the requestor within 5 days stating that their name shall not be disclosed.” R2-20-804(C), (D). The requestor, as contemplated by the proposed rule, is the original source of traceable monies, not the Covered Person. The Covered Person, therefore, may have no indication that the identity of one of its donors should be withheld from the Covered Person's report.

It would be useful to include additional language that indicates that the original source who receives the exemption letter must send a copy to the Covered Person. Otherwise, Covered Persons may inadvertently violate the law by disclosing a person with a valid exception.

Covered Persons would also benefit from a rule regarding the effect that a protected-identity exemption has on the Covered Person's disclosure reports and disclaimers. The Act mandates that someone with an exemption “shall not be disclosed or included in a disclaimer.” A.R.S. § 16-973(F). But neither the Act nor the proposed rules make clear whether other, non-identifying information about the exempted donation (*e.g.*, date, amount, etc.) must be included in the disclosure report.

Covered Persons would also benefit from an explanation of the disclaimer rules as applied when the identity of a Covered Person's top-three donor's identity must be

² In light of this problem, we also urge the Commission to consider whether the Act would allow a donor to opt out of certain of a Covered Person's Campaign Media Spending activities but not others.

withheld. In that case, a disclaimer could reasonably state one of the three donor's names has been redacted, or the disclaimer could skip the exempted donor and instead identify the next top donor who has not been exempted.

We respectfully request further elaboration from the Commission on the precise steps that a Covered Person must take to craft compliant reports and disclaimers when a major donor is exempt from disclosure.

IV. Conclusion

We appreciate you considering our input during the Commission's public comment period and for allowing us to ask questions that may benefit from further clarification by the Commission. Please feel free to contact us and let us know if we may be of assistance as the Commission addresses these comments and requests.

Sincerely,

A handwritten signature in black ink that reads "Roy Herrera". The signature is written in a cursive, flowing style.

Roy Herrera

Cc: Tom Collins (Thomas.collins@azcleelections.gov)



Thomas Collins <thomas.collins@azcleaselections.gov>

Re: Voters Right to Know Act - Prop 211 - Arizona - Complaint, Enforcement, Investigation, Transaction and Structuring Rules

lee@leemillerlaw.com <lee@leemillerlaw.com>

Wed, Jul 26, 2023 at 3:27 PM

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

Couple of things re VRKA,

1. Is it assumed that a covered entity can use funds received from a donation required to be disclosed (+\$5000 donation) even if they the underlying donor disclosure information hasn't yet been received from the donor? For example, my covered entity receives a \$50K donation from a South Dakota trust via an online donation. I have no knowledge of who controls this trust and all I have to communicate with them is an email address. I send them an email saying they have 21 days to give me the opt out notice. 21 days go by and its radio silence. Covered entity reports the \$50k donation but then reports that the underlying donor information has "been requested." This is somewhat similar to what treasurers do when they don't have employer or occupation information on contribution reports. Is my covered entity free to start spending the \$50k on political stuff? I don't see anything that puts the donation on hold in the absence of the donor information.

Is the assumption that an opponent will file a complaint, you'll send me the complaint and I'll provide you the info I have on the SD trust. The CCEC will send the SD trustee a subpoena asking for beneficiary or trustor information and then the CCEC and the trust will get into a fight over SD's laws protecting trustee's from disclosure?

2. Does R2-20-813 mean that if I inquire of the trustee of the SD trust where the trust got its money and the trustee sends me an email that says the money came from "investments" then my inquiry is complete and my covered entity is in compliance by reporting the \$50K donation from Hillside Trust, Pierre, South Dakota.

On Jul 24, 2023, at 4:21 PM, Thomas Collins <thomas.collins@azcleaselections.gov> wrote:

Colleagues:

As you know, we have a meeting of the Commission currently scheduled for 7.27 at 9:30 a.m. Arizona time.

The agenda will be posted online no later than Wednesday 7.26 at 9:30 a.m. Arizona time.

The Commission will be meeting in person although virtual appearances are available.

Attached you will find language we intend to present to the Commission to begin a public comment period. The attached documents include rules related to complaints, investigations, enforcement, transactions and structuring.

Unless we hear more, this is the last chunk of rules we intend to bring to the Commission to commence a public comment period.

We are only asking the Commission to formally begin a public comment period that will last no less than 60 days.

And of course you may have your own ideas you would like the Commission to consider. Please feel free to get in touch with us if you have any questions, concerns or comments.

Thank you,
Tom

--

Thomas M. Collins
Executive Director
Arizona Citizens Clean Elections Commission

7/26/23, 3:55 PM

State of Arizona Mail - Re: Voters Right to Know Act - Prop 211 - Arizona - Complaint, Enforcement, Investigation, Transaction and...

www.azcleaselections.gov

602-364-3477

--> 602-397-6362 <--

<Complaint, Investigation, Enforcement, Transactions and Structuring VRKA.pdf>



August 22, 2023

BY ELECTRONIC MAIL DELIVERY

Citizens Clean Elections Commission
Attn: Mr. Thomas M. Collins
1110 W. Washington Street
Suite 250
Phoenix, AZ 85007

Re: Comment on Proposed Rule Titled "Voter's Right to Know Act, Proposition 211"

Dear Mr. Collins:

Philanthropy Roundtable files the following comments on the Citizens Clean Elections Commission's proposed rule, Voter's Right to Know Act, Proposition 211, which is a clear violation of the First Amendment. This proposed rule should be narrowly tailored to avoid any forced disclosure of donors to nonprofit organizations engaging in issue advocacy.

Arizona is home to almost 29,000 nonprofit organizations, with generous Arizonans giving more than \$3.6 billion to charity each year. Philanthropy Roundtable supports the right of Arizonans to give and associate anonymously and believes donor privacy must be robustly protected.

The right of Arizonans to give freely and anonymously is protected by the First Amendment. Donors may choose to give anonymously for a variety of reasons including religious reasons, reasons of humility, to avoid solicitations, or in fear of reprisal and harassment. The decision by the U.S. Supreme Court in *Americans for Prosperity Foundation (AFPF) v. Bonta* has reaffirmed the robust protection of privacy rights under the U.S. Constitution. The decision in *AFPF v. Bonta* is a significant victory for privacy rights and underscores the fundamental importance of the right to freely associate without fear of government intrusion.

Regrettably, these rights are now under assault in Arizona after the passing of Proposition 211. Misleadingly titled the "Voters' Right to Know Act," Proposition 211 mandates that nonprofit organizations divulge the personal information of some of their donors, including names, addresses, employers, and contribution sums, to the government if these organizations participate in discussions about public matters. This directly undermines long-standing safeguards for donor confidentiality established by federal law and decisions of the U.S. Supreme Court. It enforces a new requirement on nonprofits that spend over \$50,000 within a span of two years to address policy issues before an election, compelling them to publicly reveal any donor who has contributed more than \$5,000 during the same two-year period.

Proposition 211 disregards fundamental safeguards for freedom of speech by establishing a so-called public entitlement to encroach upon an individual's personal matters. It coerces donors into a dilemma:

either stand by the causes and groups they endorse or expose their contributions and private details on a government registry. This outcome is poised to curtail open expression, intensify unwarranted intimidation, and foster a more contentious political dialogue. The landscape of philanthropy in Arizona stands as a testament to the remarkable generosity of its citizens, contributing billions to support the diverse array of nonprofit organizations that enrich the state's communities. The value of donor privacy is deeply rooted in the First Amendment and the *AFPF v Bonta* ruling reaffirms the significance of safeguarding privacy and maintaining the right to associate freely without undue government interference.

Proposition 211 threatens these foundational principles by demanding the exposure of donors' personal information, undermining their autonomy and potentially silencing their voices. This ill-conceived measure not only jeopardizes the vibrant philanthropic spirit of Arizona but also risks diminishing the open exchange of ideas and civic engagement. The preservation of donor privacy and the cherished ideals of free expression and association hang in the balance, calling for careful consideration and advocacy to uphold the essence of democracy itself.

On behalf of Philanthropy Roundtable, thank you for considering our cautionary comments in opposition to the implementation of the Voter's Right to Know Act, Proposition 211 without an explicit exemption for the legal, legitimate instances of nonprofit issue advocacy. If you have questions regarding our comments, please do not hesitate to contact me at emcguigan@philanthropyroundtable.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth McGuigan', with a stylized, flowing script.

Elizabeth McGuigan
Vice President, Policy & Government Affairs

August 7, 2023

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

Re: Comments on Draft Rules R-20-803, R-20-805 and R-20-813

Dear Director Collins:

I respectfully submit the following comments in connection with the draft regulations R-20-803, R-20-805 and R-20-813, pursuant to the Commission's Notice of Proposed Rulemaking. Although I write solely on my own behalf, the comments are informed by my experience as an election law practitioner, to include ambiguities and uncertainties that some of my clients have encountered in seeking to understand and ensure compliance with the new regulatory obligations created by Proposition 211, A.R.S. §§ 16-971, *et seq.*

I. Draft R-20-803: Application to Political Action Committees

This regulation should be revised to reflect the impracticality of the “opt-out” provisions of A.R.S. § 16-972 as applied to “covered persons” that are also political action committees (“PACs”). The current Arizona campaign finance code, which Proposition 211 did not amend in any material respect, requires PACs to publicly report all receipts, to include itemized disclosures of all contributions in any amount by entities and out-of-state individuals and all contributions by Arizona residents in excess of \$100 for the election cycle. *See* A.R.S. § 16-926(B)(1). More broadly, section 527 of the Internal Revenue Code—which is the predicate for most PACs’ tax-exempt status—largely conditions such entities’ exemption from federal income tax on the use of revenues for “exempt functions,” *i.e.*, “influencing or attempting to influence the selection, nomination, election, or appointment” of individuals to public office.” 26 U.S.C. § 527(e).

The upshot is that the opt-out provisions of Proposition 211 stand in considerable tension with regulatory and disclosure obligations imposed on many PACs by extrinsic sources of law. For example, assume an individual donates \$6,000 to a “covered person” that is also a PAC; assume further that the recipient PAC notifies the donor of his opt-out rights in accordance with the proposed R-20-803, and that the donor exercises this prerogative. The PAC then must ensure that the funds are not used or transferred for reportable “campaign media spending.” *See* A.R.S. § 16-972(C). If those funds are used for any other purpose that could constitute influencing an election, however, the PAC remains required by A.R.S. § 16-926(A)(1)(a) to publicly disclose that donor’s identity. Alternatively, the PAC could in theory allocate the monies to wholly non-electoral purposes (thus rendering the funds a receipt other than a “contribution,” within the meaning of A.R.S. § 16-901(11)), but the donation then may no longer be for an “exempt purpose,” within the meaning

of the Internal Revenue Code. Application of the opt-out provisions to individuals who donate less than \$5,000 per election cycle to a “covered person” PAC produces even more incongruous results. Proposition 211 generally leaves such donors’ privacy intact irrespective of whether they exercise opt-out rights, but A.R.S. § 16-926(A)(1) nevertheless may necessitate their disclosure. Providing the opt-out notice envisaged by R-20-803 to such donors could easily induce confusion, if not an erroneous belief by the donor that his or her privacy will remain protected.

For these reasons, the Commission should consider amending the proposed R-20-803 by adding a subsection (F), as follows:

“ . . . F. Notwithstanding the foregoing, a covered person that is also a registered political action committee pursuant to A.R.S. § 16-905(C) may comply with this section and A.R.S. § 16-972 by including either in its written solicitations of funds or in a written receipt provided to a donor within ten (10) days of receiving the donor’s monies a clear and conspicuous written notice that the political action committee is required by Arizona law to publicly report the name, address, and (if applicable) occupation and employer of all out-of-state contributors and all entity contributors, and of Arizona residents who contribute more than \$100 per election cycle.”¹

II. Draft R-20-803: Advance Written Consent

A.R.S. § 16-972(C) permits covered persons to bypass the 21-day opt-out waiting period by instead obtaining the donor’s advance written consent to the use or transfer of the donor’s monies for campaign media spending. The regulation should likewise incorporate this alternative, which in many instances offers a logistically easier and more efficient method of compliance. Accordingly, the Commission should amend draft R-20-803 by adding subsection (G)—in addition to the subsection (F) proposed above—as follows:

“ . . . G. Notwithstanding the foregoing, a covered person may comply with this section and A.R.S. § 16-972 by obtaining, at the time monies are transferred to the covered person or thereafter, the donor’s written consent to the use or transfer of such monies for campaign media spending. A consent provided pursuant to this subsection is sufficient if it includes an affirmative written manifestation by the donor (including but not limited to the marking of a check box on an electronic or paper remittance form) that the donor (i) authorizes the use or transfer of some or all of the donor’s monies for campaign media spending and (ii) understands that the donor’s identifying information may be reported to the appropriate governmental authority in this state for disclosure to the public.”

III. Draft R-20-805: Disclaimer Exemption for Small Donors

Although A.R.S. § 16-973(G) preserves the privacy of original sources that donate \$5,000 or less in monies or in-kind contributions per election cycle for campaign media spending, neither A.R.S. § 16-974(C) nor the draft R-20-805 directly incorporates this limitation, thereby creating an ambiguity, if not a direct conflict between these provisions.

¹ For similar reasons, the Commission should consider including political party committees within the ambit of this proposed revision as well.

The Commission accordingly should amend the draft R-20-805(B) to clarify: “Public communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies in excess of \$5,000 for the election cycle and who have not opted out”

IV. Draft R-20-813: Application to Attorneys or Other Fiduciaries

The final sentence of the draft R-20-813(D)—to wit, “Willful conduct includes advising a client to take an action or taking an action to violate A.R.S. § 16-975”—is improper. The Commission has no constitutional or statutory authority to prescribe obligations for fiduciaries acting in their capacity as such, particularly when the proposed regulation is incongruent with, or cumulative of, ethical directives or rules of conduct promulgated by a licensing authority or (in the case of attorneys) a separate branch of government.

With respect to attorneys, Arizona Rule of Professional Conduct 1.2(d) provides that “[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.” While the draft R-20-813(D) might be intended to codify a prohibition approximating this ethical limitation, its wording is not so confined.

The final sentence should be removed from the draft regulation entirely. While admittedly not having researched the question exhaustively, I am aware of no other instance in which an administrative agency has purported to devise an independent predicate for an attorney’s or other fiduciary’s liability when acting in that capacity. To do so apparently for the first time in a regulatory field that is suffused with both First Amendment imperatives and increasingly vindictive litigation tactics is, I respectfully suggest, inappropriate and misguided.

Attorneys are, of course, subject to the same civil and criminal laws that bind all other citizens, in addition to the Rules of Professional Conduct. But the final sentence of the draft R-20-813(D) risks chilling effective legal representation by engendering a potential (if not actual) discrepancy between an attorney’s ethical duties to his or her client and the Commission’s diktats. It also cultivates a perverse incentive for complainants to strategically engineer conflicts of interest and undermine confidential attorney-client relationships by joining a covered person’s legal counsel as a co-respondent in Commission proceedings.

The Commission accordingly should excise the final sentence of the draft R-20-813(D) entirely. To the extent a comparable provision remains in the adopted regulation, it should be revised to incorporate verbatim the language of Arizona Rule of Professional Conduct 1.2(d).

Thank you for your consideration of the foregoing comments.

Respectfully,

/s/ Thomas Basile
Thomas Basile

Proposed Commission Meeting Dates for September - December 2023

Month	<i>Date</i>	<i>State Holiday</i>
September	<i>21st</i>	<i>Monday, Sept 4th, Labor Day</i>
October	<i>26th</i>	<i>Monday, Oct 9th, Columbus Day</i>
November	<i>16th</i>	<i>Friday, Nov 10th Veteran's Day & Thursday, Nov 23rd, Thanksgiving Day</i>
December	<i>14th</i>	<i>Monday, Dec 25th, Christmas Holiday Monday, Jan 1st, New Years Day Holiday</i>

In the event additional meetings are required or changes need to be made, staff will work directly with each member to secure at least a quorum. All above noted meeting dates will be on Thursday. Meeting start time is 9:30 a.m.

