



**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, March 28, 2024

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 March 28, 2024. This meeting will be held at 9:30 a.m. **This meeting will be held in person and virtually. The meeting location will be open by 9:15 a.m. at the latest.** Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at ccec@azcleanelections.gov.

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

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Please note that members of the public that choose to use the Zoom video link must keep their microphone muted for the duration of the meeting. If a member of the public wishes to speak, they may use the Zoom raise hand feature and once called on, unmute themselves on Zoom once the meeting is open for public comment. Members of the public may participate via Zoom by computer, tablet or telephone. A dial-in option is also available but you will not be able to use the Zoom raise hand feature, so the meeting administrator will assist phone attendees. Please keep yourself muted unless you are prompted to speak. The Commission may allow time for public comment on any item on the agenda. Commission 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 Commission 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.

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission at (602) 364-3477. Requests should be made as early as possible to allow time to arrange accommodations.

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Meeting Minutes for February 29, 2024.
- III. Discussion and Possible Action on Executive Director’s Report, Enforcement and Regulatory Updates, and Legislative Update.

Note: The executive director’s report includes announcements about elections and campaign finance, a report on voter education activities, administrative information, information on candidates running clean, reports on legal proceedings involving Clean Elections and other Arizona election officials, a report on correspondence from other agencies, including the Attorney General’s Disposition of Open Meeting Law Investigation No. OML2022-0081, appointments, enforcement status, and regulatory agenda. It is included in the Commission packet available on the Commission’s website or by request at cccc@azcleelections.gov.

- IV. Discussion and Possible Action on 2024 Voter Education Activities including Candidate Debates and the Voter Education Guide.
- V. Discussion and Possible Action on Advisory Opinion 2024-03 relating to the application of the definition of campaign media spending in A.R.S. § 16-971 to public communications involving candidates, elected officials, and parties.
- VI. Discussion and Possible Action on Proposed Meeting Dates for April – August, 2024.
- VII. 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

- VIII. 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 26th day of March, 2024
Citizens Clean Elections Commission
Thomas M. Collins, Executive Director

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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
February 29, 2024
9:30 a.m.

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



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1 PUBLIC MEETING BEFORE THE CITIZENS CLEAN
2 ELECTIONS COMMISSION convened at 9:30 a.m. on
3 February 29, 2024, at the State of Arizona, Clean
4 Elections Commission, 1110 West Washington, Conference
5 Room, Phoenix, Arizona, in the presence of the
6 following Board Members:
7
8 Mr. Mark Kimble, Chairman
9 Mr. Galen Paton
10 Ms. Amy Chan
11 Mr. Steve Titla
12 Mr. Damien Meyer
13
14 OTHERS PRESENT:
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16 Thomas M. Collins, Executive Director
17 Paula Thomas, Executive Officer
18 Mike Becker, Policy Director
19 Gina Roberts, Voter Education Director
20 Avery Xola, Voter Education Manager
21 Alec Shaffer, Web Content Manager
22 Kara Karlson, Assistant Attorney General
23 Cathy Herring, Meeting Planner
24 Rivko Knox, Member of the Public
25

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1 P R O C E E D I N G
2 CHAIRMAN KIMBLE: Good morning. Item I on
3 today's Agenda is the call to order. It's 9:30 a.m. on
4 February 29th, 2024. I will call this meeting of the
5 Citizens Clean Elections Commission to order.
6 With that, we will take attendance.
7 Commissioners, please identify yourselves for the
8 record.
9 COMMISSIONER PATON: Galen Paton.
10 COMMISSIONER MEYER: Damien Meyer.
11 COMMISSIONER CHAN: Amy Chan.
12 COMMISSIONER TITLA: Steve Titla.
13 CHAIRMAN KIMBLE: Thank you, Commissioners.
14 We have all five of us here today.
15 Item II, discussion and possible action on
16 minutes for the January 25th, 2024 meeting.
17 Commissioners, you have minutes from our January
18 meeting in the packet. Is there any discussion on the
19 minutes?
20 COMMISSIONER CHAN: Mr. Chairman.
21 CHAIRMAN KIMBLE: Commissioner Chan.
22 COMMISSIONER CHAN: I move that we adopt the
23 minutes as written.
24 CHAIRMAN KIMBLE: Thank you,
25 Commissioner Chan.

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1 It's been moved that we adopt the minutes as
2 written. Is there a second?
3 COMMISSIONER PATON: I'll second it.
4 CHAIRMAN KIMBLE: Seconded by
5 Commissioner Paton.
6 I will call the roll. Commissioner Meyer.
7 COMMISSIONER MEYER: I'll abstain, since I
8 didn't attend.
9 CHAIRMAN KIMBLE: Okay. Thank you.
10 Commissioner Chan.
11 COMMISSIONER CHAN: Aye.
12 CHAIRMAN KIMBLE: Commissioner Titla.
13 COMMISSIONER TITLA: Aye.
14 CHAIRMAN KIMBLE: Thank you.
15 Commissioner Paton.
16 COMMISSIONER PATON: Aye.
17 CHAIRMAN KIMBLE: Chair votes aye. The
18 minutes are approved 4-to-nothing with one abstain.
19 Item III is discussion and possible action on
20 the Executive Director's Report. Tom.
21 MR. COLLINS: Yes. Thank you very much,
22 Mr. Chairman, Members. Thanks for being here. We have
23 a really -- relatively brief agenda today, so I'm
24 hopeful we'll be able to get you out of here relatively
25 quickly.

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1 Right now, just so everybody knows, the local
2 elections from March 12th, jurisdictional elections,
3 are happening. The main -- the two elections are, in
4 Tempe there is a primary and a general plan election,
5 and in Litchfield Park they are voting whether or not
6 to become a charter city.
7 And then importantly, the presidential
8 preference election, or PPE, is -- you know, early
9 voting has begun. The most important thing about this,
10 I think, is that, you know, we talk about this a lot,
11 and, in fact, there was a story in the Arizona
12 Luminaria today going into this in detail that, you
13 know, you have to be a member of the Democratic party
14 or the Republican party in order to participate in this
15 particular election. That's because of the law we have
16 on the books now.
17 So I think that, you know, all of Clean
18 Elections and all of the various election agencies in
19 the state, I think, have been trying to continue, as
20 we do every four years, to explain this distinction,
21 and hopefully folks understand that, you know, it's not
22 a -- the folks who are administrating this election
23 have no axe to grind with independent voters. It's
24 a -- it's a law, it is what it is, and -- but really,
25 you know, there's no reason, unless you're a member of

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1 the Democratic or Republican party, to be thinking you
2 need to be -- have a ballot to cast because you don't.
3 I wanted to highlight a couple of quick
4 things. On the -- on our voter education outreach, we
5 are continuing to do that at, I think, a very good
6 pace. A couple of things I wanted to highlight, two
7 activities Avery participated in in the last -- within
8 the last month that I thought were really important and
9 sort of -- and highlight, you know, both what Avery is
10 doing in general and then on behalf of us in his role
11 as our voter education manager.
12 One, he was a keynote speaker at a Flinn
13 Scholars event. For those of you -- I think most of
14 you are probably familiar with Flinn. The Flinn
15 Scholarship is an undergraduate scholarship that goes
16 to some of the top students around the state to go to
17 ASU or U of A, I think NAU also. I'm not quite sure if
18 I remember that right. So this was a really -- I
19 thought really good -- these are some of the sort of
20 young leaders who have already been identified, and I
21 think it's great that Avery was there.
22 And then more broadly, as we work to try to
23 continue to make sure that we are speaking to as many
24 different groups of voters as we can through our voter
25 education program, I think Avery's role on the Pastor

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1 Center's Diversifying Political Engagement forum, which
2 the link is in the materials if you want to watch it, I
3 think was really a good -- a good, again, demonstration
4 of how, you know, we are working to, both as an agency
5 and as individuals, to be a continual -- a continual
6 partner to folks who are trying to make sure that, you
7 know, our democracy is --
8 You know, democracy is more than just the
9 logistics of moving ballots from a polling place back
10 to central count. I mean, democracy includes
11 engagement, it includes conversation, it includes
12 debate, and all those things. And I think that if you
13 look at the voter education and outreach agenda that
14 Avery and Gina have been working on, we're continuing
15 to do -- do that work.
16 And the comic book is going to be -- is
17 available. It has been printed. We'll be distributing
18 those, I think, what, in the next little while. They
19 are in the back, if you want to look at them before you
20 leave. I saw them yesterday. It's pretty cool.
21 Turning to administration, Mike has held 18
22 candidate workshops, with more scheduled, and we've had
23 48 candidates attend those workshops.
24 Also, the filing system for the Voters' Right
25 to Know Act is available through the Secretary of

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1 State's Beacon system. And, you know, again, Mike has
2 been keeping track of that and interfacing with the
3 Secretary of State's Office on that. As of last week,
4 we -- no one has actually -- or, we believe no one has
5 hit the threshold, because certainly nobody has filed
6 any reports yet.
7 And then as I -- we noted in the report,
8 there will be an advisory opinion pending that we
9 circulated to the regulated community for comment
10 earlier this week, so we will be bringing that back to
11 you, in all likelihood, in the coming months.
12 On the court front, this morning we received
13 a ruling, which I haven't had a chance to fully digest
14 yet, from the Superior Court in the case Center for
15 Arizona Policy versus Arizona Secretary of State. We
16 had had an oral argument on July -- or, I'm sorry -- on
17 January 31st. And this was a -- so Center for Arizona
18 Policy, et al., had filed a lawsuit in the spring of
19 2023. That lawsuit resulted in the denial of their
20 preliminary injunction motion and a granting of the
21 State defendants' motion to dismiss.
22 They refiled as an as-applied challenge,
23 which is to say, a more narrow form of relief,
24 arguably, on constitutional grounds, with an
25 additional preliminary injunction motion. And this

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1 morning Judge McCoy issued a minute entry that ordered
2 that -- granting the motion to dismiss the amended
3 complaint and denying the motion for a preliminary
4 injunction. So that is -- so that's on Prop 211. And
5 their claims principally focused on the view of the
6 plaintiffs that, you know, Prop 211 was going to have a
7 unique kind of impact on their operations in a manner
8 that, you know, breached their rights under the State
9 Constitution for the most part. And so that will -- so
10 we'll see what happens from there, but that was, I
11 think, a good indicator that we are going to continue
12 to implement Prop 211, at least for the time being.
13 The appeal -- the legislative leadership's
14 appeal, which is Toma v. Fontes, we filed our response
15 brief. And then subsequent to me drafting the ED
16 Report, the legislative leadership have filed, now that
17 the briefing at the Court of Appeals is complete, have
18 filed a motion to transfer that to the Supreme Court.
19 You know, the staff point of view on this is
20 that, you know, I mean, we don't think that it would be
21 in the best interest of the agency or Prop -- or, you
22 know, implementing the law to have an immediate
23 transfer to the -- to the Supreme Court. There's
24 nothing particularly novel or special about this claim
25 that would warrant, in our view, that kind of immediate

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1 transfer, so -- but we'll see how that -- how that
2 plays out in the coming days.
3 As you can see, there's a whole bunch of
4 litigation already started in the context of elections.
5 Obviously, Kara and the rest of the folks at the AG's
6 Office are quite, you know, busy with that, including
7 three different lawsuits, which I don't attempt to get
8 into the details of in this report, just challenging
9 aspects of the Election Procedures Manual. I mean, if
10 in the future, either offline, individually, or at
11 another meeting, if you want to hear more about, you
12 know, those suits, we can talk -- we can talk about
13 them then.
14 But suffice it to say, you know, and from my
15 point of view, you know, I think that the litigation
16 around 2024's election is begun in earnest. You know,
17 if these are, in fact, the cases, you look at the
18 Arizona Free Enterprise v. Fontes cases in Yavapai
19 County, one of them has to do with verifying signatures
20 on vote by mail affidavits, what record is used to make
21 that verification, another has to do with what
22 constitutes staffing a drop box.
23 These are things that actually, over the
24 course of the last, you know, several election cycles,
25 have been, you know, issues of contention, and so these

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1 are pretty critical to, I think, the folks who want to
2 see changes to our election processes but are unable to
3 do that through the legislative process. So these are
4 important cases Kara is working on, along with her
5 colleagues.
6 We did get the opinion late last -- or, I
7 guess it was -- yeah, it was right after our last
8 meeting from the AG's Office. This is an official AG
9 opinion about how appointments to the Commission will
10 be made going forward. So we'll continue to monitor
11 that. But as of -- as of today, we haven't heard
12 anything about new appointments, so thank you all for
13 being here.
14 And I think that those were really the main
15 highlights we wanted to -- we wanted to hit on that --
16 on those points. So, like I said, to sort of sum up, I
17 mean, I think positive news as far as our efforts to
18 continue to implement Prop 211 on the denial of the
19 preliminary injunction. We'll see what happens with
20 the appeal of the legislative leadership. And then,
21 you know, as we go forward, we'll keep our eyes open to
22 see if we get appointments. So that concludes my
23 report, Mr. Chairman.
24 CHAIRMAN KIMBLE: Thank you, Tom.
25 Is there any discussion or questions from

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1 Members of the Commission?
2 (No response.)
3 CHAIRMAN KIMBLE: Okay. Hearing none, we'll
4 move on to Item IV, discussion and possible action on
5 the 2022-23 Annual Report. The Commission provides a
6 regular report to the Governor and the Legislature on
7 its activities. The report is in your packet. I think
8 the report does a good job of capturing our work over
9 the past two years, including highlighting our efforts
10 on voter education and implementing Proposition 211.
11 Do Commissioners have any questions for staff
12 about the report?
13 (No response.)
14 CHAIRMAN KIMBLE: None. Okay. If not, do I
15 have a motion to approve the Annual Report?
16 COMMISSIONER CHAN: Mr. Chairman, I move we
17 approve the Annual Report.
18 CHAIRMAN KIMBLE: Thank you,
19 Commissioner Chan, for moving to approve the Annual
20 Report.
21 Is there a second?
22 COMMISSIONER PATON: I'll second.
23 CHAIRMAN KIMBLE: Seconded by
24 Commissioner Paton.
25 I will call the roll. Commissioner Meyer.

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1 COMMISSIONER MEYER: Aye.
2 CHAIRMAN KIMBLE: Commissioner Chan.
3 COMMISSIONER CHAN: Aye.
4 CHAIRMAN KIMBLE: Commissioner Titla.
5 COMMISSIONER TITLA: Aye.
6 CHAIRMAN KIMBLE: Commissioner Paton.
7 COMMISSIONER PATON: Aye.
8 CHAIRMAN KIMBLE: Chair votes aye. The
9 Annual Report is approved 5-to-nothing. Thank you.
10 Item V, discussion and possible action on
11 HB2785, Laws 2024, Chapter 1, effective February 9th,
12 2024. Earlier this month the Legislature approved and
13 the Governor signed a measure intended to alleviate an
14 unintended consequence of changing our recount
15 threshold in Arizona for most elections. Senate Bill
16 1008 from 2022 changed the threshold from 0.1 percent
17 to 0.5 percent. According to a report by Axios, if
18 this had been the standard in 2020, there would have
19 been recounts for President, Corporation Commission,
20 County Recorder, Maricopa County Board of Supervisors
21 District 1, and Legislative District 28, Senate.
22 Obviously, we had some very close elections in 2022 as
23 well.
24 Because the procedures required to perform a
25 recount are detailed and time consuming, Arizona County

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1 Elections Directors and Recorders began raising
2 concerns that other election procedures might be
3 impacted. The resulting bill moves the primary
4 election date for 2024 to July 30th. The bill makes
5 several other changes.

6 Staff has prepared a presentation about some
7 of the effects of the bill on the election calendar and
8 other issues. Tom.

9 MR. COLLINS: Yes. Thank you, Mr. Chairman.
10 So we have a brief PowerPoint, which, in part, I wanted
11 to do just to show our -- reshew our art from our voter
12 education program you saw last month at our voter
13 education plan. I love the color scheme and I think
14 it's very striking. So anyways, that's the cover.

15 We can go on to the next slide, I suppose,
16 although I'll look at this all day.

17 So as the Chairman explained, you know, the
18 Legislature altered the threshold for recounts. So a
19 higher threshold -- and I have a hard time between
20 higher and lower. But essentially, it's a higher
21 threshold, right, so it's -- usually the -- under a 0.1
22 standard, that means that you would have to have a
23 difference of less than a hundred votes out of a
24 hundred thousand in order to have a -- in order to have
25 a recount under the pre-2022 standard. 0.5, obviously

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1 that's a -- that's a -- what, a -- you're the math
2 person -- fivefold difference in -- yeah, yeah, right,
3 exactly. So, you know, so that's a real thing.

4 And, you know, as we've talked about in some
5 of the Executive Director Reports over the past month,
6 there are some procedural issues that -- that have to
7 happen in order for a recount, and those, in the view
8 of the County Recorders, County Election Directors, and
9 other election officials and Secretary of State and the
10 Governor's Office and -- you know, would have an impact
11 on two critical things, in their view.

12 Sending ballots to uniformed and overseas
13 ballots -- overseas voters, especially for the general
14 election, that would come up because, if you had a
15 recount in the primary, we don't know what the ballot
16 looks like, you have to go to print, you have to have
17 those ballots out 45 days before Election Day, which is
18 earlier than the early ballots for, you know, folks who
19 are here; and then submitting Arizona's results in the
20 presidential election.

21 You know, whether or not -- how this would
22 play out, you know, there is some debate among lawyers
23 and even policymakers, but the County's position, I
24 think, and others, you know, was essentially better
25 safe than sorry in the sense that if there was a

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1 recount, say, on the presidential electors, and that
2 somehow delayed the -- delayed our electoral votes
3 being sent to the archivist of the United States and to
4 the presiding officer of the Senate, that could cause
5 unnecessary issues. So those are -- that's really --
6 that's sort of the big picture of what we're -- the
7 problem that the Legislature and others were trying to
8 address.

9 So, Cathy, if we could go to the next.

10 So the number one and most important headline
11 out of this is that the state primary date for 2024,
12 and only 2024, will be July 30th. And you see there,
13 this is our -- this is the new timeline. It basically
14 moves everything up one week, and we have there --
15 including the filing period for nomination petitions.
16 Obviously, within that will be the challenge period for
17 nominating positions, which is, you know, time
18 consuming in and of itself. So those are -- that's the
19 big shift.

20 So what they did not do, and we'll talk about
21 this a little bit more later, is sort of a, quote,
22 unquote, permanent fix for when the primary ought to
23 be. But for this year, it's July 30th.

24 Cathy, if we could...

25 Okay. For Clean Elections specific we've got

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1 a couple of different things. Number one, we have
2 these Clean Elections reports under 16-958. Those are
3 due with increasing frequency as you get closer to
4 Election Day. So by moving the primary, it moves up
5 the trigger reports going from monthly to weekly to
6 5-28 and going from weekly to essentially daily, or one
7 business day, to the 16th.

8 The idea behind those reports is -- these are
9 spending reports, not Prop 211 reports, just spending
10 reports. But the idea behind these reports has been
11 that, you know, the closer you get to the election, we
12 want -- the public has a right to know if the frequency
13 of spending is increasing.

14 And then importantly, 7-23 will be the last
15 day to collect qualifying contributions, and then the
16 week after that will be the last day to turn in those
17 qualifying contributions to the Secretary of State's
18 office.

19 Now, from -- from a clean candidate
20 perspective, we do not anticipate this week being a big
21 issue -- there's not really anything we could do about
22 it even if we wanted to, but -- in part because, you
23 know, in our experience, if you haven't qualified by
24 the, you know, the week before the primary anyways, and
25 you only move it a week, you're really not in a

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1 position to be effective. You know, at the margins
2 there may be somebody who doesn't have a primary who
3 may just want to show up to the general, but, you know,
4 that's not really something that happens all that
5 often, and so we'll see.

6 I think the mitigating factor here is E-Qual.
7 I mean, the reality is that, through the E-Qual system
8 and the ability to get your \$5 qualifying contributions
9 through E-Qual, most candidates -- or, at least I think
10 we could say, right, increasingly candidates are able
11 to rely on that to get more and more of their \$5
12 qualifying contributions.

13 Now, the reason why that system is more
14 effective is because, rather than having to hope that
15 the person who signed your slip, when they get
16 checked, is actually -- lives in your district and
17 checks all those other boxes, you know, E-Qual actually
18 pings the voter registration system and confirms and
19 only offers voters who can give you a \$5 qualifying
20 contribution the opportunity to do so. So it's an
21 efficient system and it's an effective system, and so
22 hopefully folks continue to take advantage.

23 Mike, do you have anything else you want
24 to...

25 As far as other -- the other major Clean

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1 Elections issue is voter education. So under statute,
2 the last day to deliver a Voter Education Guide to
3 households is the first day of early voting, which is
4 7-3, and we also always endeavor to have our last day
5 for debates match that. So we'll be taking steps, and
6 we already are, working with the various vendors that
7 we have for those projects, especially the Voter
8 Education Guide.

9 I mean, the Voter Education Guide is an
10 undertaking, you know, has -- we've got to think about
11 everything from the vendor obtaining paper to getting
12 time on the printing press to -- you can't -- we've
13 talked about this, I think, in the past. You can't
14 show up with a million mail pieces at the -- at the
15 post office and just say, here, mail these. You have
16 to -- you have to schedule all that out. Because
17 otherwise, if you show up, they'll just say, well,
18 we'll get to it when we get to it, right. So every
19 step of the logistics of this is important and affects
20 all the other ones, so that will be something that
21 we'll be continuing to make sure we're up -- but that's
22 the biggest -- that's one of the big shifts there. So
23 I think that --

24 Gina, anything else you want to...

25 So we wanted to highlight a few other

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1 changes. This is not every change and this is not like
2 a high level of detail on every change. We have some
3 other resources available, if you're interested in
4 drilling down on any of these.

5 I think important points here, early voting
6 will extend to 7:00 p.m. from 5:00 p.m. on the Friday
7 before Election Day, and emergency voting can start
8 just after that 7:00 p.m. process. So emergency voting
9 is different. You have to actually be able to at least
10 articulate an emergency in an affidavit before you can
11 take advantage of emergency voting. It's supposed to
12 be for truly emergencies.

13 There is a provision that addresses candidate
14 petitions for candidates who included the original
15 date, that is to say the August date, on their
16 petitions and were already collecting signatures. The
17 Secretary's Office has put out some guidance on that.
18 The bottom line there is that petitions to run for
19 office, for whatever reason the statutory petition
20 language the Legislature adopted not only requires you
21 to identify your district and, you know, your
22 appropriate legal name, but you also have to say the
23 date of the primary that you're running in. I'm not
24 quite sure how that is confusing to anyone, rather than
25 the primary of 2024, but that's what the law says, so

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1 that had to be accounted for.

2 There's also a provision dealing with the --
3 and this deals with both the front end and the back
4 end. To do a recount, ordinarily, and there are lots
5 of people here who can correct me if I say anything
6 wrong here, but I think that ordinarily the whole
7 canvass sort of has to be wrapped up before you could
8 indicate that there's going to be a recount. This law
9 says that the Secretary of State can look at the
10 results that are out and determine that a recount is
11 necessary without waiting for that full roll-up.

12 Essentially as they're getting reports, they
13 can make that determination, they then file a complaint
14 in Maricopa County court, and then -- and then the
15 recount can proceed from there. So that's shaving,
16 what would you say, a week maybe off the -- yeah, off
17 the -- off that. So, again, the idea is how can we,
18 within the framework we have, save this time at the --
19 for the primary on the UOCAVA and then the general on
20 the certification of presidential electors.

21 I think another really important change
22 is that this -- and this is -- this gets to,
23 Commissioner Paton, you were talking about the delay,
24 the lag between Election Day and counting. This --
25 there was a -- over time the Legislature has moved up

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1 in time the amount -- when counties can start
2 processing those early ballots. This law says that
3 they can start processing those early ballots when they
4 get them. What that means is, in theory, that there --
5 that could cut down again on that lag.
6 The number one thing folks can do to cut down
7 on that lag is not deliver their ballot late, as a late
8 early, not drop it off on Election Day. There are some
9 election officials who believe that would be a good
10 thing to do as a policy, there are other election
11 officials and advocates who think that would be a
12 terrible idea, so this is the result they came up with
13 for this. So I think there's, you know, at least
14 decent reason to believe that it will have some
15 positive impact.
16 I mean, the reality is, in, I think it was
17 2020 or 2022, you know, there was something like -- I
18 think -- I think we had 99 percent of ballots in
19 Arizona had been resolved by six days -- by
20 November 11th. So, you know, it's a lag, but it -- but
21 it's -- you know, it's -- you know, it's -- but our
22 elections are so close that even if you're at
23 99 percent, you may not know -- you may not know the
24 answer to the result, so --
25 COMMISSIONER PATON: And historically --

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1 MR. COLLINS: Right.
2 COMMISSIONER PATON: -- we used to always
3 know --
4 MR. COLLINS: Right.
5 COMMISSIONER PATON: -- that night,
6 basically, or --
7 MR. COLLINS: Sure.
8 COMMISSIONER PATON: -- early in the morning.
9 MR. COLLINS: Right.
10 COMMISSIONER PATON: And so that's what
11 confuses people and they think something is --
12 MR. COLLINS: Sure.
13 COMMISSIONER PATON: -- something is twisted
14 here, something is --
15 MR. COLLINS: Right.
16 COMMISSIONER PATON: -- somebody is
17 manipulating and -- whether it's, you know, just
18 paranoia or whatever. So I think it's human nature.
19 MR. COLLINS: I agree. And I think -- I
20 mean, I think that the fact is that we now have, you
21 know, different viewpoints from election officials
22 around that issue, but I think that's -- I think, to
23 your point, I think it's important that that -- those
24 -- the folks who are ultimately on the ground doing
25 that work have -- are wrestling with that issue in a

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1 serious way.
2 And then there's also a codification of the
3 signature verification process. The signature
4 verification practices I'm talking about there are, you
5 know, when you sign your -- you get your early ballot
6 and you vote it, you put it in the envelope, you sign
7 that envelope, that signature is an affidavit that
8 will then be checked against your signature on file.
9 And so this codifies some of the practices that were
10 already being in place -- that were already in place
11 there.
12 So I guess we can go to the next slide,
13 please, Cathy.
14 Okay. So these get into a little more weedy
15 issues. So for -- through 2026 this changes the time
16 for correcting ballot envelope affidavit signatures to
17 five calendar days from five business days. So
18 essentially one can argue that takes two days off of
19 the process, which is a time savings, which is the
20 ultimate goal of the bill, but the tradeoff is that
21 local election offices have to stay open over the
22 weekend to allow folks to come in and make those
23 corrections, if necessary.
24 It does not settle the primary date past this
25 year. A May date was initially proposed in the

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1 intraset of this bill. That did not make it to the
2 finish line, so we're going to have to see what
3 happens.
4 You know, the Clean Elections Act dates for
5 most of -- whether it's voter education or the clean
6 program, you know, all kind of hinge off these dates,
7 and so, you know, there are -- there are pros and cons
8 to that. I think that one of the things we'll be
9 looking at -- I mean, probably not this year because of
10 the election, but going into next year, is, you know,
11 what would be a date that would -- we don't have the
12 ability to per se convince someone to not move the
13 date, right, and their -- you know, because the clean
14 program is not necessarily going to be top of mind for
15 folks, but there are arguments that moving the date
16 may, you know, in fact, help folks who are running
17 clean to see the benefit of running clean. There
18 are --
19 So, for example, if you had a May date,
20 what's the advantage of that? It allows you to -- you
21 would get -- you could get funded January 1 or
22 January 2, basically, you could -- or around there.
23 You would have that runoff to -- that runoff to go
24 through a primary. And then once you're a nominee, you
25 would get this additional influx of money.

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1 Now, you might say, okay, well, it's May, and
2 now you've got to have the money stretch from -- from
3 May until September -- or, I'm sorry -- until November.
4 But there are two key aspects of that.
5 Number one, for most elections no one is
6 going to raise the amount of money to stay on TV or be
7 in some kind of sustained campaign spending-wise
8 between May and September -- or, I don't know why I
9 keep saying September -- May and November. In other
10 words, in order -- I mean, in order to get on TV, you
11 probably have to have a million dollars.
12 And the fact is that most legislative
13 candidates are not in the million dollar ballpark, most
14 Corporation Commission candidates haven't touched a
15 million dollars, I don't think, in our lifetime, if
16 ever, I mean, never have, treasurer, all these other
17 elections. So the people who are going to be able to
18 sustain a constant stream of ads during that period are
19 U.S. Senate, maybe Congress, maybe Governor, maybe,
20 maybe, maybe AG and Secretary of State. But below that
21 line, it's not going to happen. And so what I think
22 that means is that it's not going to have a -- it's not
23 going to have nearly the impact folks are expecting.
24 The other thing that's important, and we
25 highlight this when we do have the opportunity to talk

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1 to candidates, compliance folks, parties, lawyers to
2 the extent that they will listen to us, that clean
3 candidates can -- are nominees of the party, and so
4 the nominee's ability to work with the party is part of
5 the -- is part of the program, and so there are a
6 number of different ways folks could get creative
7 and --
8 You know, I mean, I guess what I'm trying to
9 say is that, you know, as they talk about the election
10 date, we are -- I am cautiously optimistic that we
11 can -- that a change here might cause people to take a
12 look -- second look at the clean program, if they're
13 not now, if we can show its efficiency. We already
14 know we can show, for those that are -- have the ears
15 to hear, that if you're running for a down-ballot race,
16 the chances of you being able to outraise, if you
17 account for your time cost, if you account for your
18 public -- your private fundraising time, your call
19 time, the campaign time that you're not spending on the
20 road, that you're -- if you're running for any of the
21 lower-tier state races, you are -- you are -- you are
22 not making a good decision financially, you're just
23 making an inefficient decision if you run private
24 versus public.
25 There are some outlier cases where we've had

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1 some self-funders in down-ballot races that make that
2 -- that distort that analysis, but the reality is that
3 if you're running for Corporation Commission or you're
4 running for State Treasurer, if you can even meet the
5 number Clean Elections provides, you will have taken
6 all of your time on fundraising and none of your time
7 on any of the campaign stuff. Plus, if you have a
8 primary or anything else, you're going to have to --
9 you know, you're going to have to continually
10 fundraise, whereas under Clean Elections in the general
11 you're getting that second tranche of money without
12 additional -- without additional fundraising. That, to
13 me, is a pretty clear -- a pretty clear analysis.
14 We still hear regularly on this point from
15 consultants who say, well, there's just not enough
16 money in the first place. And it's like, but the
17 problem is, if the amount of money you need to win --
18 let's say you think you need -- to win you need
19 \$750,000 to win a treasurer race, right. Most
20 treasurer candidates are not raising \$750,000. So if
21 you have the ability to get money in the bank that you
22 can -- and especially without all the strings attached
23 that come with -- that come with raising private
24 dollars, you know, you're in a better position.
25 So I'm trying to look at some of these

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1 down -- downstream conversations as opportunities to
2 maybe talk a little bit more about how we can, you
3 know, get folks to reevaluate their preconceptions
4 about how the clean financing program works and think
5 about it in a -- in a -- in a sense that relates to
6 actual dollars that are actually in the candidate's
7 account, as opposed to dollars that a consultant is
8 fantasizing about transferring to their checking
9 account.
10 And then -- oh, then there's another -- this
11 is kind of an idiosyncratic thing to me, but starting
12 in 2026 if you didn't want, for some reason, your
13 signature checked, you could actually take your ID to
14 the place you're dropping off your ballot and the
15 election official would stamp your ballot as having
16 your ID checked on the envelope, rather than going
17 through the signature thing. That may change -- that
18 may save time ultimately. We don't know -- we won't
19 see that for a while to see what that is.
20 I guess, Cathy, if we go to the next slide.
21 And then, obviously, we're involved in voter
22 education around these issues. We had a meeting with
23 many of the counties' representatives last week with
24 Gina and Avery, Alec and I, and we identified some
25 issues and we're working on some projects there,

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1 obviously incorporating the new calendar into our
2 materials and the counties' materials, and then
3 identifying issues and messaging on issues like the
4 candidate ballot qualification, and then keeping our
5 eyes open as other things develop that we may not
6 have -- we may not have thought about.
7 I think one of the things that -- here that's
8 going to be -- you know, that is -- you know, is
9 that -- you know, if you go through and you look at the
10 bill from the introduction to the end, you know, the
11 bill as introduced had a lot of potential changes. The
12 negotiators that -- there was a bipartisan negotiation,
13 including the Governor's Office and the legislative --
14 Legislature Members from both sides, and I think that
15 that caused the bill to take a smaller bite than it
16 otherwise would have taken on some of these election
17 administration issues, but also flagged, going forward,
18 how some of these are going to -- how some of these are
19 going to work or how some of these might need to get
20 worked through.
21 So that's sort of -- you know, that's it. So
22 if you have questions, that's -- but we wanted to keep
23 that a little bit -- a little bit out of the weeds.
24 There are -- there are more details that are available
25 if for some reason you want to -- you would like to

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1 know about that.
2 But the big issue is, you know, I think, on
3 the voter education front, you know, this date
4 should -- you know, in our estimation, the change
5 itself is not something we anticipate folks thinking
6 too much about now that it's done. In other words,
7 most people don't know precisely when the primary is.
8 We may, and a person who's running a campaign may, you
9 know, and somebody who has just a fixation with
10 elections might, but the reality is that most folks --
11 and 80 percent of voters are more -- use vote by mail,
12 right, so they're going to get their -- and they're on
13 the active early voting list and they're going to get
14 their ballot when they get their ballot and they're
15 going to return their ballot when it says to return
16 their ballot, just like, you know, most folks. So the
17 point is really to just make sure that we can tamp down
18 on any confusion that might be residual and then make
19 sure that folks, you know, have access to the right
20 information.
21 CHAIRMAN KIMBLE: Thank you. So to sum up,
22 we're likely to have more recounts, that's cause to
23 cascading problems with recounts and primaries and
24 schedules have to be adjusted all up and down the -- up
25 and down the list. Any questions from Commissioners

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1 about this?
2 (No response.)
3 CHAIRMAN KIMBLE: Okay. Thank you, Tom.
4 Item VI, public comment. This is the time
5 for consideration of comments and suggestions from the
6 public. Action taken as a result of public comment
7 will be limited to directing staff to study the matter
8 or rescheduling the matter for further consideration
9 and decision at a later date or responding to
10 criticism. Please limit your comments to no more than
11 two minutes.
12 Does any member of the public wish to make a
13 comment at this time or anyone on Zoom wish to make a
14 comment?
15 (No response.)
16 CHAIRMAN KIMBLE: Hearing none, the public
17 may also send comments to the Commission by e-mail at
18 ccec@azcleanelections.gov.
19 At this time, I would entertain a motion to
20 adjourn.
21 COMMISSIONER PATON: I'll make a motion to
22 adjourn.
23 CHAIRMAN KIMBLE: Thank you,
24 Commissioner Paton.
25 There's a motion to adjourn. Is there a

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1 second?
2 COMMISSIONER CHAN: I'll second that motion.
3 CHAIRMAN KIMBLE: Thank you. Seconded by
4 Commissioner Chan.
5 I will call the roll. Commissioner Meyer.
6 COMMISSIONER MEYER: Aye.
7 CHAIRMAN KIMBLE: Commissioner Chan.
8 COMMISSIONER CHAN: Aye.
9 CHAIRMAN KIMBLE: Commissioner Titla.
10 COMMISSIONER TITLA: Aye.
11 CHAIRMAN KIMBLE: Commissioner Paton.
12 COMMISSIONER PATON: Aye.
13 CHAIRMAN KIMBLE: Chair votes aye.
14 We are adjourned. Thank you very much.
15 (The meeting concluded at 10:12 a.m.)
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25

1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)
3

4 BE IT KNOWN that the foregoing proceedings
5 were taken by me; that I was then and there a Certified
6 Reporter of the State of Arizona; that the proceedings
7 were taken down by me in shorthand and thereafter
8 transcribed into typewriting under my direction; that
9 the foregoing pages are a full, true, and accurate
10 transcript of all proceedings had and adduced upon the
11 taking of said proceedings, all to the best of my skill
12 and ability.
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 29th day of
19 February, 2024.
20

21 
22 _____
23 Kathryn A. Blackwelder, RPR
Certified Reporter #50666
24
25

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**CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
March 28, 2024**

Announcements:

- The Presidential Preference Election was held on March 19th.
 - Counties have until April 1st to canvass their results.
 - The Secretary of State will canvass statewide results on April 4th.
 - Unofficial results turnout: 39.62%
- The next local election is May 21, 2024.
 - Voter Registration Deadline: April 22nd
 - Voting Begins: April 24th
- Voter's Right to Know Act rules are available in the Arizona Administrative Register
 - R2-20-801 to R2-20-808, apps.azsos.gov/public_services/register/2023/45/contents.pdf.
 - R2-20-809 to R2-20-813, apps.azsos.gov/public_services/register/2023/48/contents.pdf.
- Filing for the Voter's Right to Know Act is available via the Secretary of State's Beacon system.

Voter Education and Outreach:

- Tom, Gina, and Avery teamed up for the Arizona Civics Coalition's Civics Night at the Museum, where they shared resources on civic engagement with valley educators.
- Avery had an interview with Terry Dickerson, a student journalist from Montclair State University, focusing on Gen Z's perspectives on politics.
- Gina was a panelist in the ASU Pastor Center's Diversifying Political Engagement Series: the Woman's Perspective. You can watch the webinar here: <https://www.youtube.com/watch?v=FrtiwvcEZpl>.
- Avery met with Matthew Landon from the Pima County Library to plan a virtual workshop for voters scheduled for this summer.
- At the 30th Arizona Aloha Festival, Avery collaborated with the Arizona Secretary of State to connect with the community and offer election resources.
- Partnering with the Maricopa County Deputy Registrar, Avery facilitated voter registration training for the Phoenix Indian Center.
- Gina presented to the Flinn Foundation on upcoming elections.
- Gina and Tom presented on the U.S. electoral system and the Clean Elections Act to a visiting European Delegation through the Global Ties program.
- Gina presented on 2024 elections in an Arizona Commission for the Deaf and Hard of Hearing webinar.
- Avery met with Nivea Krishnan of New Voters.org to explore potential collaboration and learn more about their organization.
- Avery attended the Native Vote Hour hosted by AZSOS.
- Gina met with Dr. Charles Philippe David, a political science professor from the University of Quebec, and provided an overview of U.S. and Arizona elections.

- Avery maintains his connections with the Arizona African American Legislative Council, NAU Votes, and actively participates in the AZSOS Engagement Advisory Board committee.
- Tom presented on Proposition 211, the Clean Funding program and Voter Education to the Democrats of Greater Tucson.

Legal:

Commission

- Center for Arizona Policy v. Arizona Secretary of State, CV2022-016564, Superior Court for Maricopa County.
 - Plaintiffs filed a notice of appeal Monday, March 25.
- Americans for Prosperity v. Meyer, No. 2:23-cv-00470-ROS (D. Ariz.)
 - The District Court granted the Commission and other defendants motion to dismiss last week.
- Toma v. Fontes, 1 CA-CV 24-0002, Court of Appeals Division 1.
 - The legislative leadership has filed a motion to transfer its appeal of the denial of a motion for a preliminary injunction to the Arizona Supreme Court.
 - Several amici have asked the court to take the transfer, including the Arizona Chamber of Commerce and Americans for Prosperity.
 - The leaders are also seeking a stay of superior court proceedings pending the appeal
- 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. No new developments.

Others

- Arizona Free Enterprise Club v. Fontes, SI300CV202300202 (Yavapai County). Lawsuit challenges process Maricopa and many other counties use to verify signatures on vote by mail affidavit envelopes.
- Arizona Free Enterprise Club v. Fontes (Yavapai County). Lawsuit challenging the use of what the Complaint refers to as “unstaffed” drop boxes for the return of mail ballots to the county recorder pursuant to the Elections Procedures manual. Case number unavailable at this time.
- The No Labels Party of Arizona v. Fontes, 2:23-cv-02172 (D. Ariz.)
The Court granted Plaintiff’s motion for an injunction seeking to block the Secretary of State from accepting filings to run for office as a No Labels Party candidate for offices other than President and Vice President. The State is appealing.
- Challenges to the recently approved Elections Procedures Manual.
There are three challenges filed against aspects of EPM. Some lawsuits challenge particular procedures adopted in the manual, a set of rules for election

procedures that, like other administrative rules, carry the force of law. Please let Tom know if you would like further information on these cases.

- Ongoing litigation related to the 2020 and 2022 elections

There are several matters at various levels of judiciary concerns the 2020 and 2022 elections, including Petition for Review on sanctions from 2020 litigation that was recently argued at the Arizona Supreme Court. Please let Tom know if you would like further information.

Correspondence from the Attorney General's Office:

- Disposition of Open Meeting Law Investigation No. OML2022-0081

The Attorney General's Office emailed the Commission a letter on March 5, 2024, stating that their office had been investigating an open meeting law complaint against the Commission. The Complaint was filed in late 2022. The Complaint alleged the Commission had not published its minutes lawfully since 2021. This is not true.

The Attorney General's office recognized no law had been broken but did make a determination that our website's minutes page could cause confusion, which it included in its letter informing the Commission of the investigation.

Copies of these documents are attached to this report.

Neither Commission members or staff nor any assigned attorney received notice the AGO was investigating this complaint against the Commission.

At all times during the period of the complaint and while the complaint was open, Ms. Karlson, our assigned attorney, attended our meetings in order to ensure compliance with the Open Meeting Law, reviewing agendas and other related materials before they are published, and provided an opportunity to review meeting materials promptly upon their availability and prior to the deadline for revisions.

Relevant to this Complainant, Ms. Karlson advised me directly on how to handle an objection this very person raised during a meeting of the Commission consistent with the OML. An excerpt of the minutes is attached as well.

Bottomline: Neither the Commission staff nor any attorney assigned to the Commission were advised that the AGO was investigating the Commission. Yet AGO attorneys were also providing the Commission with legal representation and advice on issues subject to the investigation.

I am concerned about three principle issues: the lack of notice, the AGO's determination that no conflict existed despite Ms. Karlson's advising us on OML issues, and more broadly the precise scope of the attorney-client relationship and its implications for other matters.

Given the circumstances, I plan to seek additional support from outside the attorney general's office to (1) ensure that the Commission and its constituents have a clear understanding of the Attorney General's Offices position, (2) to ensure that the Commission at all times has independent legal counsel without conflict or concern, and (3) to enable the Commission to have an informed and advised discussion about how to make its relationship with legal counsel more effective for the agency.

Administration:

- 18 Candidate Workshops have been held, with more to be scheduled through the end of the year. Workshops are held virtually on Tuesdays from 1-2pm. 48 candidates have attended the workshops.
- Commission staff is finalizing an Inter Agency Service Agreement with Arizona State University for research on younger voter behavior for purposes of informing the Commission's administration of the Clean Elections Act.

Appointments:

- No additional information.

Enforcement:

- MUR 21-01, TPOF, pending.

2024 Regulatory Agenda:

The Commission may conduct a rulemaking even if the rulemaking is not included on the annual regulatory agenda. The following information is provided under A.R.S. § 41-1021.02:

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



OFFICE OF THE ARIZONA ATTORNEY GENERAL

KRIS MAYES
ATTORNEY GENERAL

SOLICITOR GENERAL'S OFFICE
OPEN MEETING LAW ENFORCEMENT TEAM

Mary M. Curtin
Senior Litigation Counsel
(602) 542-3333

March 5, 2024

VIA EMAIL and U.S. MAIL

Arizona Citizens Clean Elections Commission
c/o Thomas M. Collins
1802 W. Jackson Street #129
Phoenix, Arizona 85007
ccec@azcleelections.gov

Re: Disposition of Open Meeting Law Investigation
Investigation No. OML2022-0081

Dear Mr. Collins:

The Office of the Attorney General received a complaint alleging an Open Meeting Law (“OML”) violation by the Arizona Citizens Clean Elections Commission (“Commission”). Complainant contends that the Commission has not published required meeting minutes since at least October 29, 2021, in violation of the OML.

The Office has concluded its review of the events discussed below and found no Open Meeting Law violation. The facts recited in this letter serve as a basis for these conclusions, but are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. §§ 38-431 *et seq.*

Analysis

The Commission is a public body subject to Open Meeting Law. *See* A.R.S. § 38-431(6) (defining “public body” to include “all boards and commissions of this state”); *see also* A.R.S. § 16-955(A) – (B) (establishing the Commission). Minutes must be taken of all public meetings and executive sessions, and may be taken in writing or may be recorded by audio or video recorder. A.R.S. § 38-431.01(C), (G). The minutes or recording of a public meeting other than an executive session must be made available to the public within three working days of the meeting. A.R.S. § 38-431.01(E).

Our review of the Commission’s website indicates that, since at least 2021, the Commission has live-streamed and recorded its meetings. The recorded meetings are preserved on

the Commission's YouTube channel and made accessible via a link from the Commission's website.¹ The video recordings include the full contents of each meeting in accordance with A.R.S. § 38-431.01(C)(1)-(4). As such, the Commission has complied with its obligations under A.R.S. § 38-431.01(E). *See* Ariz. Att'y Gen. Agency Handbook § 7.8.1 ("If the minutes have been recorded by an audio or video recorder, allowing the public to have access to that recording is sufficient.").

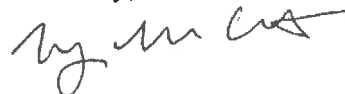
We do, however, note that the "Minutes" column on the Commission's website indicates that minutes are "Coming Soon" for certain meetings even though a video recording has been posted and, presumably, for which the Commission does not intend to post written minutes. For other meetings during the same year, a link to "Video Minutes" or written "Minutes" is provided. *See e.g.*, June 22, 2023 Regular Meeting (linking to "Video Minutes") and April 13, 2023 Debate Work Group Directory (linking to a written transcript of "Minutes"). Though not an OML violation, this inconsistency may cause the public to believe that written meeting minutes will be (or should have been) posted wherever the website states that minutes are "Coming Soon." To minimize confusion among the public about how and where to access minutes or recordings for prior meetings, the Commission should consider whether its website can be reorganized to more clearly direct members of the public to the recorded meetings and eliminate the suggestion that written minutes are forthcoming.

Conclusion

For the reasons set forth herein, we find that the Commission's process for posting video recordings of its meetings through its YouTube channel does not violate the OML.

This letter relates solely to the disposition of the aforementioned Open Meeting Law complaint, and does not relate to any non-OML matters. This is not a formal opinion of the Attorney General's Office and should not be cited as authority in other matters

Sincerely,



Mary M. Curtin
Senior Litigation Counsel

¹ *See* Commission Meeting Information, Arizona Clean Elections Commission, available at <https://www.azcleelections.gov/clean-elections-commission-meetings> (last visited February 9, 2024).

Curtin, Mary

From: Blas, Mary
Sent: Thursday, December 29, 2022 5:38 PM
To: Divis, Katlyn
Cc: Woodburn, Michael; Open Meeting Law
Subject: AZ Citizens Clean Elections Commission (12-22) -- FW: Submission: Open Meeting Law Complaint Form
Attachments: screenshot_20221225-143552_firefox.jpg; screenshot_20221225-143602_firefox_0.jpg; screenshot_20221225-143608_firefox.jpg; screenshot_20221225-143613_firefox.jpg



From: [Redacted]
Sent: Sunday, December 25, 2022 2:37 PM
To: Blas, Mary <Mary.Blas@azag.gov>
Cc: Divis, Katlyn <Katlyn.Divis@azag.gov>
Subject: Submission: Open Meeting Law Complaint Form

Office of Arizona Attorney General

Mark Brnovich
Open Meeting Law Complaint Form

Submitted by:

Full Name: Nathan Gage Madden
Street Address: [Redacted]
City, State: Buckeye, Arizona
Zip Code: 85325
Phone: [Redacted]
E-mail Address: [Redacted]



Public Entity Information

Business Name: Arizona Citizens Clean Elections Commission

Details of Complaint

Please describe the conduct that you believe violated the Open Meeting Law:

The commission has not publicly published their meeting minutes since 2021.

(See <https://www.azcleelections.gov/clean-elections-commission-meetings>)

Each violation found credible doubles as a violation of use of public monies since these commissioners collect a \$200 stipend any time a meeting is called and buissness conducted.

List the date(s) on which you believe the violation(s) occurred:

- Oct. 29, 2021
- Dec. 16, 2021
- Jan. 27, 2022
- Feb. 24, 2022
- Mar. 24, 2022
- May 19, 2022
- Jul. 28, 2022
- Aug. 25, 2022
- Sep. 8, 2022
- Sep. 29, 2022
- Oct. 27, 2022
- Dec. 15, 2022

Please identify all members of the public body whom you believe violated the requirements of the Open Meeting Law:

Chairman
Damien R. Meyer

Commissioner
Amy B. Chan

Commissioner
Galen D. Paton

Commissioner
Mark Kimble

Commissioner
Steve M. Titla

Declaration: I declare under penalty of perjury, that the facts and statements contained in this declaration, including any attached statements, are true, correct, and based upon my personal knowledge. I understand that the information contained in this declaration can only be altered by submitting a new declaration. By choosing to submit this form electronically, I certify and agree that by entering my name in the space below, I bind and legally obligate myself to the same extent as I would by signing my name on a printed paper version of this form.

Nathan Gage Madden

Attachments:

- [screenshot 20221225-143552 firefox.jpg](#)205.87 KB
- [screenshot 20221225-143602 firefox 0.jpg](#)259.2 KB
- [screenshot 20221225-143608 firefox.jpg](#)274.8 KB

- [screenshot 20221225-143613 firefox.jpg](#) 288.53 KB

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Dec. 16, 2021

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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING

Phoenix, Arizona
October 27, 2022
9:30 a.m.

COASH & COASH, INC.
Court Reporting, Video & Videoconferencing
1802 N. 7th Street, Phoenix, AZ 85006
602-258-1440 Staff@coashandcoash.com

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



| | |
|--|--|
| <p>1 VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS 2 CLEAN ELECTIONS COMMISSION convened at 9:30 a.m. on 3 October 27, 2022, at the State of Arizona, Clean 4 Elections Commission, 1110 West Washington, Conference 5 Room, Phoenix, Arizona, in the presence of the 6 following Board Members: 7 Mr. Damien Meyer, Chairman 8 Mr. Mark Kimble 9 Ms. Amy Chan 10 Mr. Steve Titla 11 12 OTHERS PRESENT: 13 Thomas M. Collins, Executive Director 14 Paula Thomas, Executive Officer 15 Mike Becker, Policy Director 16 Gina Roberts, Voter Education Director 17 Avery Xola, Voter Education Manager 18 Kara Karlson, Assistant Attorney General 19 Jeanne Galvin, Assistant Attorney General 20 Mary O'Grady, Osborn Maledon 21 Bill Richards, Richards & Moskowitz 22 Natalya Ter-Grigoryan, Richards & Moskowitz 23 Jon Weiss, Papetti Samuels Weiss McKirgan 24 Timothy LaSota, Attorney 25 Elliot Stratton, Tiffany & Bosco 26 Bob Branch, TPOF 27 Gianna George, Riester 28 Christina Stone 29 Cathy Herring, Staff 30 Rivko Knox, Member of the Public 31 Nathan Madden, Member of the Public 32 33 34 35</p> | <p>1 CHAIRMAN MEYER: Good morning. My name is 2 Damien Meyer. It is 9:30 a.m., October 27, 2022, and 3 I'm going to call this meeting of the Citizens Clean 4 Elections commission to order. 5 I'd like to ask the audience members to 6 please keep their microphones on mute. 7 And with that, we'll take attendance. 8 Commissioners, please identify yourselves for the 9 record. 10 COMMISSIONER CHAN: This is Commissioner 11 Amy Chan. 12 COMMISSIONER KIMBLE: And this is 13 commissioner Mark Kimble. 14 CHAIRMAN MEYER: And I don't believe we have 15 anyone else this morning. We have a quorum of three of 16 five, so we will proceed. 17 Agenda Item No. II is discussion and possible 18 action on Executive Director's Report, enforcement and 19 regulatory updates, and legislative update. 20 And just sort of for the good of the order, 21 so everyone kind of knows how this is going to proceed 22 today, I have a hard stop at 11:00 today. So in order 23 to get through the business, we're going to go slightly 24 out of order on the Agenda. After Item III, which is 25 the minutes, we're going to jump to Item VI and then V,</p> |
| <p>1 the drop box issue, and then Item IV, which are the 2 debates. So, again, the order of business is going to 3 be Item II, III, and then VI, V, and IV. Okay. So 4 apologies for that, but it's just the way it is today. 5 With that, we move to Item II, discussion and 6 possible action on the Executive Director's Report. 7 Tom, please go ahead. 8 MR. COLLINS: Sure. I apologize for being a 9 little late to log on. We have a building that is not 10 exactly upgraded to the 21st century, although it was 11 built in the 21st century. 12 The general election is on Tuesday, 13 November 8th. So by the time we see you again, the 14 election itself will be over. Friday of next -- Friday 15 of this week is the last day to request a ballot by 16 mail. The last day to vote early in person is 17 November 4th. And then emergency voting occurs on 18 Friday through Monday. 19 We've had a number of -- a whole panoply of 20 voter education activities over the last month, 21 including the candidate event for the candidates for 22 the Central Arizona Water Conservation District. We've 23 gotten a number of compliments on that, both from polls 24 and publicly, and that availability on our website I 25 think has gotten some good utilization. Gina and other</p> | <p>1 election officials appeared on a morning seminar with 2 the Capitol Times. And we are -- and Commissioner 3 Kimble and I went to a town hall with the Pima County 4 Recorder and the Pima County Election Director and the 5 Daily Star in Tucson last week on election security and 6 trusting our elections in conjunction with the Arizona 7 Democracy Resilience Network and some other groups, so 8 that was great. You can see Avery has continued to be 9 working with the community in general and a number of 10 specific groups, including, you know, doing a ballot 11 education section with the ASU Civic Engagement 12 Coalition. We are continuing with our audits of the 13 general -- or, the primary election. 14 And then I think that that's -- that's really 15 the bulk of it. You know, there is a -- I'll mention, 16 and it will ultimately come -- tie in a bit with the 17 Agenda item related to the voter confusion and the drop 18 boxes, but there are now two lawsuits filed against a 19 number of people and organizations related to this 20 so-called monitoring of drop boxes in Maricopa County 21 specifically, at least at this point, at the downtown 22 -- downtown headquarters of the County Recorder and 23 Election Department and then in Mesa at the County 24 facility there on Javelina. 25 So I'm sure I've missed something, but I do</p> |

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

1 Commissioner is serving grossly out of term, as he was
2 appointed in 2013. Thank you.

3 MR. COLLINS: Kara, can I make a -- on behalf
4 of the Commission, may I make a quick response
5 consistent with the open meeting law?

6 MS. KARLSON: Yes.

7 MR. COLLINS: Yeah. Mr. Madden, I appreciate
8 your commenting. You know, we are not responsible for
9 those appointments. The Governor's Office and the
10 Secretary of State's Office are responsible for those.

11 The statute is clear, and so I just want to
12 make clear that we are operating within the boundaries
13 of the law and will continue to do so. I just wanted
14 to make that record very quickly. Thank you for being
15 here.

16 CHAIRMAN MEYER: Thank you, Mr. Madden.

17 Any other members of the public wish to make
18 any comment?

19 (No response.)

20 CHAIRMAN MEYER: All right. Seeing none --

21 COMMISSIONER KIMBLE: Mr. Chairman.

22 CHAIRMAN MEYER: Oh, go ahead, Commissioner
23 Kimble.

24 COMMISSIONER KIMBLE: Looks like Ms. Knox has
25 raised her hand again.

2024 Legislative Bills

HB2065 - Early ballots; Friday deadline

Sponsor

Rep. Selina Bliss (R)

Summary

Repeals the expectation of having ballots tabulated at a designated polling place as criteria affecting the decision to consolidate polling places and precinct boards for the election. Repeals considering the number of early voting ballots that were tabulated at a prior election when considering ways to reduce voter wait time at the polls in primary and general elections. Defines the verbiage to be included in early voting instructions to include exceptions and a instructions on who to deliver early ballots to and the deadline for filing them. Requires early ballots sent by mail to be received by 7 p.m. on election day at the County Recorder's office or other officer in charge of elections in the political subdivision the elector is registered. Repeals the 7 p.m. the Friday before election day deadline for ballots received on site or at an early voting location. Establishes the new deadline for ballots received on site or at an early voting location to be 5 p.m. the Friday before election day. Establishes the signature comparison criteria for early ballots. Mandates that the County Recorder or other officer in charge of elections be present and open to receive mailed early ballots on election day until 7 p.m. and prohibits said officials from accepting hand delivered ballots. Mandates that ballots received in the mail be entered into the County's ballot tracking system, starting the day after the election. Repeals any notices necessary for compliance with early ballot on-site tabulation procedures and Sections 16-579.01 and .02 ARS.

HB2080 - Elections; municipal vacancies; primary

Sponsor

Rep. Laurin Hendrix (R)

Summary

Provides that if the person holding an office is appointed at the time of the primary, their term of office ends when an elected candidate takes the oath of office and that the candidate that receives a majority of votes at the primary election shall be declared elected to that office upon canvass and certification of results and on taking the oath of office.

Action Taken

Passed House Municipal Oversight & Elections 8-1

Passed the House 34-24 and was sent to the Senate

Passed Senate Elections 5-3

HB2145 - Candidate challenges; primary residence

Sponsor

Rep. David L. Cook (R)

Summary

Requires the assumption that the county and location of a candidate's listed residence and record of taxation is the candidate's primary residence if their nomination petition is challenged on the basis of residency.

HB2153 - Mail ballot elections; technical correction

Sponsor

Rep. Alexander Kolodin (R)

Summary

Minor change in Title 16 (Elections and Electors) related to streamlining and standardizing the bill's language. Apparent striker bus.

HB2154 - Certificate of election; technical correction

Sponsor

Rep. Alexander Kolodin (R)

Summary

Minor change in Title 16 (Elections and Electors) related to streamlining the bill's language. Apparent striker bus.

HB2336 - Early ballot collection; limitations; repeal

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Removes the requirement that notification of ballot handling requirements be included in Board of Supervisors' voter and election guidance materials, specifically, verbiage that states that a person may only handle their own ballot or the ballot of "family member" (defined) or "household member" (defined) or persons they are a "caregiver" (defined.) Removes the designation of a Class 6 felony for and individual that collects voted or unvoted early ballots and the exclusion covering an election official or US mail carrier and the exclusion of elections held by special taxing districts, family or household members or caregivers.

HB2338 - Early voting; weekend hours

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Requires early voting locations, including Recorder Office locations, to be open until 7:00 PM on the Saturday, Sunday, and Monday immediately preceding Election Day.

HB2339 - Campaign finance; corporate recipients; registration

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Requires a corporation, limited liability company or labor union that contributes an aggregate of in excess of \$5,000 in one or more statewide races, or \$2,500 in legislative races, or \$1,000 in a “local election” (defined) in any county, city, town or other local jurisdiction, to register with the Secretary of State (SoS) and notify the appropriate filing officer within one day of making the contribution, excluding Saturdays, Sundays and holidays. Designates the SoS as the filing officer for registration and notifications for all registration and notification pertaining to the above campaign contribution thresholds. Stipulates that once registered for exceeding the limits set forth, the entity that registered does not have to do it again in a campaign cycle. Requires the SoS to develop the mechanisms for compliant filing and notifications and make that information available on its public website. Requires registrations to include the name and address of the entity filing, and the name, title, email address and telephone number of the person authorizing the contribution, and that each notification include the name and address of the entity, the amount of the contribution, the name of the candidate and race that will receive the contribution and the date of the contribution. Requires a covered contributor to file with the SoS or appropriate filing officer within five days after an initial threshold contribution a notarized, sworn statement that the person, agent of officer filing the registration and notice is authorized to make the contribution in question and until that is done, the notification is considered unverified and if it is not done in the prescribed timeframe, the notification will be deemed unverified and delinquent and the filing entity will be liable in a civil action brought by the Attorney General, county attorney or city or town attorney for up to three times the amount of the contribution. Designates that a person that makes knowingly false filings pursuant to the contributions covered in this bill is guilty of a Class 1 misdemeanor. Stipulates that no civil or criminal enforcement action may be filed until after the filing officer issues a reasonable cause determination.

HB2340 - Campaign finance; caregiving expenditures

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Permits a candidate's committee to pay for direct care, protection and supervision of a child or another individual the candidate has direct caregiving responsibilities for, and for the cost of that care to be counted as a lawful expenditure of candidate committee monies.

HB2341 - Independent expenditures; corporations; funding disclosure

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Requires an individual, corporation, limited liability company, or labor organization not required to register per state law that makes an expenditure for advertising or a fundraising solicitation to use the words “paid for by” followed by the name of the person making expenditures for the advertisement for solicitation and to state whether the expenditure was authorized by any candidate, followed by the identity of the authorizing candidate, if any. Requires a person making an expenditure for an advertisement to include the names of the top four funding sources making the largest aggregate contribution to the person making the expenditure. Designates an out-of-state contributor or group of out-of-state contributors that are a “major funding source” (defined) and a corporation, limited liability company, or labor organization as an out of state contributor. Requires a corporation, limited liability company, or labor organization making an independent expenditure, that also accepts donations or contributions to file a campaign Finance Report pursuant the state law.

HB2350 - Voting centers; board of supervisors

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Permits a County Recorder or other officer in charge of elections to use additional types of voting and determine alternative voting locations under a specific resolution of the Board of Supervisors (BOS,) including “voting centers” (defined) constituting, on election day, polling places, early voting locations, and ballot replacement locations, and early voting drop-off locations provided each is managed per state law. Requires the BOS to appoint a Voting Center Election Board for each voting center and outlines the criteria to be a member of those Boards, to serve as a reappointment to the board, and for removal from the board. Permits the BOS to appoint a person ineligible to vote to a Voting Center Election Board and provides the criteria for that person to serve. Prohibits requiring a school district or charter school to reduce its average daily membership for an absent pupil who is serving on a Voting Center Election Board, or the school district or charter school to count that pupil’s absence against any mandatory attendance policies. Allows the County Recorder or other officer in charge of elections to operate an on-site early voting location during the three-day period immediately preceding an election day provided either is able to update precinct registers and other election materials for use during that period.

HB2351 - Election procedures; registrations; campaign finance

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Numerous changes to statutes relating to elections. For every person who provides proof of U.S. citizenship when applying for, renewing or replacing a driver license or nonoperating identification

license, or updating the person's existing residence address or name on file with the Arizona Department of Transportation (ADOT), ADOT is required to electronically collect and transmit voter registration information to the Secretary of State for the purpose of registering the person to vote or updating an existing voter registration record. The Secretary of State and ADOT Director, after consulting with all county recorders, are required to adopt rules to implement a secure automatic electronic voter registration system that collects and transmits voter registration information. The Secretary of State is required to evaluate implementation of a secure automatic electronic voter registration system at other agencies, including the Arizona Health Care Cost Containment System (AHCCCS). By December 31, 2022, any agency that allows a person to affirmatively register to vote or to update the person's registration through the internet must allow the person to complete the registration without a driver license or nonoperating identification license and with any proof of citizenship that is valid under Arizona law. Eliminates the requirement for a voter to live in the boundaries of an election district for 29 days prior to an election to be eligible to vote in that election. By the 2024 primary election and for each election thereafter, each county recorder is required to designate at least one election official at each polling place, voting center or early voting location in the county to serve as a registration clerk to facilitate and enable eligible persons to register to vote on-site on election day or during early voting. A registration clerk must be present for all hours during which a polling place, voting center or early voting location is open. Every qualified voter in Arizona has the right, after registering to vote, to vote a secret ballot in all elections for which that voter is eligible to vote. By December 31, 2026, the Secretary of State, county recorders and other officers in charge of elections are required to evaluate incorporating "risk-limiting audit" (defined) protocols into ballot hand count procedures. Reduces individual and political action committee contributions limits to \$1,000 to candidates for legislative, county, municipal or district office, from \$6,250, and to \$2,500 for candidates for statewide office, from \$6,250. Much more. Due to voter protection, several sections of this legislation require the affirmative vote of at least 3/4 of the members of each house of the Legislature for passage.

HB2352 - Ballot measure amendments

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Allows a political committee that intends to file an application for initiative petition or referendum petition to request the Attorney General determine whether the description is lawful and sufficient. Requires the Attorney General to approve or reject the description within 10 days after submittal, and, if rejected define the reasons for the rejection. If approved, requires that any challenge to the description be filed in the Superior Court within 10 days after the Attorney General's approval. Allows a court to enforce a subpoena against a registered circulator as provided by law and if evidence is provided that shows that circulator is ineligible to circulate petitions or engaged in fraud with respect to some or all signatures obtained, and if so, the court may order those signatures collected by that circulator as invalid. Requires the Secretary of State and the Attorney General to prominently post the approved the impartial summary of any ballot measure on their respective websites, at least thirty days before the earliest date that the official ballots and publicity pamphlet are sent to be printed, and the Secretary of State shall provide a copy of the impartial summary to the committee that filed the ballot measure.

HB2353 - Ballot measures; descriptive title; summary

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Requires the Secretary of State and the Attorney General to prominently post the approved impartial summary of the official ballot on their respective websites at least 30 days before the earliest date that the official ballots and publicity pamphlet are sent to be printed. Requires the Secretary of State to provide an impartial summary of the ballot measure to the committee that filed the ballot measure.

HB2354 - Election laws; revisions; appropriation

Sponsor

Rep. Stephanie Stahl Hamilton (D)

Summary

Numerous changes to statutes relating to election law. A conviction for a felony no longer suspends the person's right to vote. The hours for on-site early voting are extended through 5:00PM on the Monday preceding the election, instead of 5:00PM on the Friday preceding the election, and emergency voting during that time period is eliminated. If a county recorder determines that a provisional ballot voter is not properly registered to vote, the county recorder is required to use the information from the provisional ballot to register the person to vote for subsequent elections. An electronic pollbook used in Arizona is required to comply with the requirements in the election instructions and procedures manual adopted by the Secretary of State. Appropriates \$100,000 from the general fund in FY2024-25 and 2025-26 to the Secretary of State to provide risk-limiting audit grants to officers in charge of elections to conduct risk-limiting audits for the 2024 general election instead of a hand count audit. The Secretary of State is required to report any findings and recommendations related to the use of risk-limiting audits to the Legislature by March 31, 2026.

HB2394 - Candidates; digital impersonation; injunctive relief

Sponsor

Rep. Alexander Kolodin (R)

Summary

A candidate or citizen of Arizona is entitled to bring an action for digital impersonation within two years after the date the person knows, or should know, that a digital impersonation of that person was published. The plaintiff must prove that a digital impersonation was published without the person's consent, and that on publication, the publisher did not take reasonable steps to inform the person whom the publication was made that the recording or image was a digital impersonation, or that reality was not obvious to anyone viewing the recording or image. The person bringing the action is entitled to obtain a preliminary judicial declaration that a recording or image is a digital impersonation within two judicial days after seeking relief, provided that person can prove by a preponderance of evidence that the person is a candidate for public office and an election is scheduled to be held for that office within 180 days of the date relief was requested, the impersonation depicts the person engaging in a sexual act or depicts unclothed breasts, buttocks or genitals of the person, or a criminal

act and the person can be reasonably expected to suffer significant personal, financial or employment hardship, and their reputation be irreparably harmed, in the absence of expedited relief.

Action Taken

Passed House Municipal Oversight & Elections 9-0

Passed the House 55-0 and was sent to the Senate

Passed Senate Elections 5-2

HB2404 - Voter registration cards; mailing limitation

Sponsor

Rep. John Gillette (R)

Summary

Prohibits the county recorders from providing an initial or updated voter registration card to a person whose mailing address is outside the state, except for persons on active duty military services outside the state and their family members, and persons who are residents of this state and who are not served by a United States Post Office in this state.

Action Taken

Passed House Municipal Oversight & Elections 5-3

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

Passed Senate Elections 5-2

HB2405 - Voter registrations; recorder; inactive status

Sponsor

Rep. John Gillette (R)

Summary

Permits the county recorders to place a person's voter registration information in inactive status and provide the person with notice of the action, if the County Recorder believes the person provided fraudulent or incorrect voter registration information.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

Passed Senate Elections 4-3

HB2421 - Election worker communications platform; pilot

Sponsor

Rep. Laura Terech (D)

Summary

Appropriates the sum of \$200,000 from the state general fund in FY 2024 - 2025 to the secretary of state to establish a communications platform for election officials and workers. Requires the Secretary of State to collaborate with County Recorders and election officers to develop an election worker communications platform suitable for mobile application and use by election administrators and workers, including poll workers, drivers, warehouse and supply workers, voter registration workers and central count center workers. Mandates that the communications system be deployed in a pilot program involving one or more counties, jurisdictions or portions of both. Permits the Secretary of State to offer the communications platform to counties at reduced or no cost. Self repeals on Jan 1, 2026.

HB2422 - Voter registration; same day

Sponsor

Rep. Laura Terech (D)

Summary

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

HB2423 - Automatic voter registration.

Sponsor

Rep. Laura Terech (D)

Summary

Every person who is applying for a driver license or renewal, including a nonoperating identification license or renewal, or who is making changes to drive license information and who is otherwise qualified to register to vote must be registered to vote automatically on completion of the license application unless the applicant declines to register. A person who is not qualified to register to vote and who unknowingly registers under this provision is not guilty of false registration or false swearing. Effective January 1, 2025.

HB2441 - Electoral college; support

Sponsor

Rep. Steve Montenegro (R)

Summary

Affirms that the legislature recognizes the importance of the electoral college and provides the reasoning behind that support.

HB2464 - Presidential preference election; independent voters

Sponsor

Rep. Jennifer Pawlik (D)

Summary

Voters registered without a political party designation may vote in the presidential preference election and may select the ballot of any political party at that election.

HB2469 - Elections; signatures; public record

Sponsor

Rep. Cory McGarr (R)

Summary

Requires voting officials to compare the signature on the envelope of an early voting ballot with the signature on record and to classify both as a public record, subject to requests for disclosure. Requires that the County Recorder or Officer in Charge of elections provide access to or copies of signatures of voter registrants and early envelope ballots within 48 hours after a request and if the request is for a noncommercial purpose.

HB2472 - Election contests; procedures

Sponsor

Rep. Cory McGarr (R)

Summary

Permits challenging an election based on counting votes where the chain of custody is broken and early votes present inconsistent signatures or personal information. Requires an appeal of a final judgment from a court to be filed and heard by the Arizona Supreme Court within 10 days of the issuance of the final judgment, a response filed within 5 days of the appeal filing and a reply filed within 3 days after the date on which the response is filed. Requires the state supreme court to schedule a hearing to be held within five days after the filing date of the reply and to render a decision within five days after the hearing. Considers an organization a person for the purposes of inspecting a ballot and may rotate staff to inspect ballots on behalf of the organization or entity. Permits involved parties to inspect physical ballots, ballot images, early ballot envelopes and registration records. Permits discovery on any matter that could pertain to an election and directs the court to liberally consider discovery requests and not limit discovery where possible. Permits each participating party to depose up to 10 persons.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

HB2474 - New party recognition; signatures; circulators**Sponsor**

Rep. Alexander Kolodin (R)

Summary

Disqualifies new party petitions collected more than 24 months before the primary election the party is seeking to be involved in and prohibits the filing officer from accepting the petition. Requires persons circulating a petition to be registered as circulators with the Secretary of State (SOS) before circulating petitions. Requires the SOS to develop a process for receiving service of process for petition circulators and procedures for registering circulators and receiving service of process and include those procedures in the general instructions and procedures manual issued by that office. Requires petitions to be strictly construed and those petitioning for a new party inclusion to completely apply to all pertinent statutes.

Action Taken

Passed House Municipal Oversight & Elections 8-0

Passed the House 57-2 and was sent to the Senate

Passed Senate Elections 7-0

HB2482 - Voter registration changes; text notice**Sponsor**

Rep. Barbara Parker (R)

Summary

Requires the County Recorder to notify an elector of any changes made to their registration record via a text message or email alert within 24 hours of making the change and if the elector has not subscribed to the Voter Registration Alert System, the Recorder shall notify the elector in writing within 10 days of the record change. Requires the notice to include how an elector may check their registration status, revise their registration information and notify the Recorder if no change was requested by the elector.

Action Taken

Passed House Municipality Oversight & Elections 9-0

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

Passed Senate Elections 5-2

HB2544 - Legislative intent; secrecy; mail voting

Sponsor

Rep. Rachel Jones (R)

Summary

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

HB2547 - Voting centers ban; precinct size

Sponsor

Rep. Rachel Jones (R)

Summary

Requires election precincts not contain more than 1,000 registered voters at the time precincts are designated. Prohibits the Board of Supervisors from using voting centers in place of designated polling places. Removes the requirement that early voting sites allow electioneering and other political activity. Prohibits the County Recorder from establishing on-site early voting locations at the recorder's office. Removes designating interfering with a voter within 72 feet of a main entrance to an on-site, early voting location a misdemeanor.

Action Taken

Passed House Municipal Oversight & Elections 5-4

Passed the House 31-24 and was sent to the Senate

Passed Senate Elections 4-3

HB2580 - Election officer certification training; yearly

Sponsor

Rep. Alexander Kolodin (R)

Summary

Requires that an election officer's certificate expires on December 31 in the year after the general election.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

Passed Senate Judiciary 4-3

HB2581 - Physical presence; resident

Sponsor

Rep. John Gillette (R)

Summary

Determines a resident to be an individual with a physical presence in the state for at least 181 days with the intent to remain in the state for tax purposes, vehicle registration and voter registration. Permits the County Assessor, Director of the Arizona Department of Transportation (ADT) to determine a person is a resident if they demonstrate an intent to remain in the state and provide evidence of in-state employment, purchase of real property, rental of residential property, purchase of real property for residential purposes, the enrollment of the individual or their children in a school district or charter school, or upon showing an active duty military service member identification for the service member or their dependents. Requires the Legislative Council to prepare proposed legislation to conform the ARS with the provisions established by this bill to be considered in the fifty-seventh legislature, first regular session.

Action Taken

Passed House Government 7-0

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

Passed Senate Government 4-2

HB2585 - Military poll workers; party representatives

Sponsor

Rep. John Gillette (R)

Summary

Permits a county board of supervisors to appoint an active duty military member with assignment orders to a post of duty in this state and a family member of an active duty military member with assignment orders to a post of duty in this state and who has identification as a military dependent to an election board, or as ballot challengers or a party representative, regardless of their residency or voter status.

HB2590 - Voter registration database; updates; counties

Sponsor

Rep. Timothy M. Dunn (R)

Summary

Minor changes in Title 16 (Elections and Electors) related to the qualification and registration of electors. Apparent striker bus.

Action Taken

Passed House Municipality Oversight & Elections 6-2

Passed the House 39-18 and was sent to the Senate

HB2620 - 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% of all the machine's or device's parts and components were sourced from the United States, and 100% of all the machine's or device's manufacturing and assembly was performed in the United States. Vote recording and vote tabulating machines and devices that were acquired before January 1, 2028 would have been exempt.

HCR2001 - Voting; qualifications; methods

Sponsor

Rep. Alexander Kolodin (R)

Summary

The 2024 general election ballot is to carry the question of whether to amend the state constitution to require that anyone voting in an Arizona election be a citizen of the United States, 18 years or older and a qualified, registered voter, prohibit a person from voting for more candidates for an office than number of offices to be filled, and requires that a person's vote be the sole means of determining the outcome of an election for public office that is required by federal or state law.

HCR2027 - House of representatives; designated seats

Sponsor

Rep. Cory McGarr (R)

Summary

The 2024 general election ballot is to carry the question of whether to amend the Arizona Constitution to require the seats for the House of Representatives be designated "A" and "B" in the alphabetic order of the surnames, then first names of elected members of each district and thereafter candidates shall run for and be elected from either seat "A" or "B" in a legislative district, beginning with the Inauguration of the Members of the fifty-seventh legislature in 2025.

Action Taken

Passed House Municipal Oversight & Elections 5-3

Failed in the House 29-31 but was put up for reconsideration

HCR2028 - Elections; signature verification process

Sponsor

Rep. Alexander Kolodin (R)

Summary

The 2024 general election ballot is to carry the question of whether to amend ARS Title 16, Chapter 4, Article 8 pertaining to voter "signature verification" (defined). Defines the physical and electronic signature verification process an election official must follow when processing early ballots, procedures if the election official discovers inconsistencies with the signatures. Exempts certain ballot affidavits from signature verification provided certain features are present and requires that election officials use the 2020 Secretary of State Signature Verification Guide for reference when performing signature verification.

HCR2032 - Voting centers; precinct voting

Sponsor

Rep. Rachel Jones (R)

Summary

The 2024 general election ballot is to carry the question of whether to amend ARS 16 to specify that at the time election precincts are designated, an election precinct may not contain more than 1,000 registered voters, the Board of Supervisors may not authorize the use of voting centers in place of or in addition to specifically designated polling places, the County Recorder may not establish early voting locations at the Recorder's office, and an elector that appears no later than 9 p.m. on the Friday prior to an election at an early voting location established by the County Recorder may not receive a ballot or update their registration information.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

Passed Senate Elections 4-3

SB1003 - Prohibition; photo radar

Sponsor

Sen. Wendy Rogers (R)

Summary

Prohibits the use of "photo enforcement systems" (defined) by law enforcement and local authorities to enforce traffic laws. Contains a legislative intent clause.

Action Taken

Passed Senate Transportation, Technology, and Missing Children 4-3

Passed Senate 16-13 and was sent to the House

Failed in House Transportation and Infrastructure 5-5

SB1008 - Voter registration events; posting

Sponsor

Sen. Jake Hoffman (R)

Summary

The Secretary of State and each County Recorder are required to post on their public websites a list of events that either office attends and provides voter registration services within 24 hours of attendance, including listing the location, event title and associated organizations in attendance

Action Taken

Passed Senate Elections 5-3

SB1060 - Federal candidates; observers; elections

Sponsor

Sen. J.D. Mesnard (R)

Summary

Limits ballot challenges to one per party if an agreed upon number cannot be reached between the Chairs of each political party represented on the ballot. Requires that representatives for each party represented may not approach an election official's table or equipment any closer than is necessary to perform their stated function. Allows each representative to observe election officials and requires each representative to provide their own materials and necessities. Prohibits any representatives from obstructing the administration of an election, election board procedures, or ballot processing. Requires representatives to present any questions regarding procedures to the Supervisor of the Early Election Board of Resolution. Requires that representatives for each party be registered voters in Arizona. Prohibits anyone on the ballot from serving in the role of ballot challenger.

Action Taken

Passed Senate Elections 5-2

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

Passed House Municipal Oversight & Elections 5-4

SB1063 - Political signs; removal; elections

Sponsor

Sen. John Kavanagh (R)

Summary

Removes reference to a specific primary election and adds a reference to a first election and extends the period it is a misdemeanor to remove, alter, deface or cover a political sign of a winner of a primary or first election until 15 days after the general or runoff election. Adds signs that support or oppose a "question or issue" to the prohibition of cities, towns and counties removing, altering, defacing or covering a political sign and stipulates that the prohibition only applies to 45 days before any election and 15 days after an election, except for candidates that advance to a general or runoff election, provided there are no more than 45 days between those elections and a general election.

Adds that the prohibition of removing, altering, defacing or covering a political sign applies to any election held by a city, state, county, school district, special taxing district or other governing entity including the state of Arizona.

Action Taken

Passed Senate Elections 8-0

Passed the Senate 23-5 and was sent to the House

Passed House Municipal Oversight & Elections 8-1

SB1094 - Automatic voter registration

Sponsor

Sen. Christine Marsh (D)

Summary

Every person who is applying for a driver license or renewal, including a nonoperating identification license or renewal, or who is making changes to drive license information and who is otherwise qualified to register to vote must be registered to vote automatically on completion of the license application unless the applicant declines to register. A person who is not qualified to register to vote and who unknowingly registers under this provision is not guilty of false registration or false swearing. Effective January 1, 2025.

SB1097 - School districts; partisan elections

Sponsor

Sen. Justine Wadsack (R)

Summary

Requires all elections for a School District Governing Board member to use a partisan primary election followed by a general election and in a form that is like a countywide or statewide election. Defines how ballots should be presented by the County School Superintendent. Effective date is January 1, 2025.

Action Taken

Passed Senate Education 4-3

Passed the Senate 16-10 and was sent to the House

Passed House Municipal Oversight & Elections 5-4

SB1114 - Write-in candidates; deadlines; ballots

Sponsor

Sen. Ken Bennett (R)

Summary

Changes the deadline for a write-in candidate to file nomination paperwork to the seventeenth day before an election. Modifies the ballot format to accommodate as many blank lines as there are

qualified write-in candidates, plus one additional blank line for each office, up to the total number of offices to be filled. Requires that there be one blank line for write-in candidates if no write-in candidates have qualified for an office and that each blank line will have a space for an elector to put a mark.

SB1115 - Election mailings; third-party disclosures

Sponsor

Sen. Ken Bennett (R)

Summary

Requires a nongovernmental person or entity that mails or delivers by hand 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 to include the words "not from a government agency" in boldfaced, clearly legible print on the outside of the envelope.

SB1116 - Voter registrations; payment prohibited

Sponsor

Sen. Ken Bennett (R)

Summary

Prohibits a person 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 4-3

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

SB1126 - Election; contest; technical correction

Sponsor

Sen. Wendy Rogers (R)

Summary

Minor changes to Title 16 (Elections and Electors) related to the conduct of elections. Apparent striker bus.

SB1128 - State agencies; payments; cryptocurrency

Sponsor

Sen. Wendy Rogers (R)

Summary

State agencies are authorized to accept "cryptocurrency" (defined) as a payment method for taxes, fees, fines, civil penalties, financial obligations, and special assessments by entering into an agreement with a "cryptocurrency service provider" (defined) to provide a method to accept cryptocurrency as a payment for any amount due to that agency or the state. Requirements for the agreement are listed. Effective January 1, 2025

Action Taken

Passed Senate Finance and Commerce 4-2

Passed the Senate 16-10 and was sent to the House

SB1131 - Low voter turnout elections; repeat

Sponsor

Sen. John Kavanagh (R)

Summary

Requires that for any non-statewide or federal election, any election that receives less than 25% of the eligible registered voters casting a ballot, the results are declared void and the election is required to be repeated on an election date with a statewide or federal office on the ballot.

Action Taken

Passed Senate Elections 5-3

SB1158 - Presidential candidates; qualification; no exclusion

Sponsor

Sen. Janae Shamp (R)

Summary

Prohibits a candidate for President from being excluded or removed from the general election ballot on the basis of a claimed violation of the 14th Amendment of the United States Constitution if the candidate is the official nominee of the National Convention of delegates of a political party that is entitled to continued representation on the ballot, a qualified independent candidate for president, or a qualified writing candidate for president.

Action Taken

Passed Senate Elections 5-2

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

SCR1001 - Photo radar prohibition

Sponsor

Sen. Wendy Rogers (R)

Summary

Bans local authorities and state agencies from using automated photo enforcement systems to identify excessive speed violations or failures to obey traffic control devices. More.

Action Taken

Failed in Senate Transportation, Technology, and Missing Children 3-3

SCR1011 - Voting; qualifications; methods.

Sponsor

Sen. Wendy Rogers (R)

Summary

The 2024 general election ballot is to carry the question of whether to amend the state constitution to require that anyone voting in an Arizona election be a citizen of the United States, 18 years or older and a qualified, registered voter, prohibit a person from voting for more candidates for an office than number of offices to be filled, and requires that a person's vote be the sole means of determining the outcome of an election for public office that is required by federal or state law.

Action Taken

Passed Senate Elections 5-3

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

SB1153 - Regulatory costs; rulemaking; legislative ratification

Sponsor

Sen. Anthony Kern (R)

Summary

Requires any proposed rule that will increase regulatory costs by more than \$500,000 within five years of implementation to be ratified through legislation. Requires the proposed rule be submitted to the Administrative Rules Oversight Committee no later than 30 days before the next regular legislative session and the Committee to submit the proposed rule to the legislature as soon as is practicable. Permits any member of the legislature to introduce the rule and exempts the rule from provisions covered under time and manner of rulemaking laws. Prohibits an agency from filing a final rule with the Secretary of State before obtaining legislative approval and if the legislature does not ratify the proposed rule in that legislative session, the agency is required to terminate the proposed rule by publishing a Notice of Termination in the register. Exempts emergency rules and the Corporation Commission. All rules that fall into this classification of rules are determined upon the effective date of this bill to be void and unenforceable without legislative ratification.

Action Taken

Passed Senate Government 5-2

Passed the Senate 16-10 and was sent to the House

Passed House Regulatory Affairs 4-3

HB2166 - Statewide voter registration database; costs

Sponsor

Rep. Timothy M. Dunn (R)

Summary

Replaces “county contribution” with “state contribution” to voter registration system fund and specifies that the Arizona Secretary of State manages the allocations, rather than the counties. Eliminates the requirement for an agreement between the county and Secretary for developing and administering a statewide voter database.

Action Taken

Passed House Municipality Oversight & Elections 8-0

Passed the House 58-0 and was sent to the Senate

Passed Senate Elections 7-0

SCR1023 - General election day; all offices

Sponsor

Sen. J.D. Mesnard (R)

Summary

The 2024 general election ballot is to carry the question of whether to amend the Arizona Constitution Article VII, Section 11, to include city, town and school district elections in general elections.

Action Taken

Passed Senate Elections 4-3

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

Passed House Municipal Oversight & Elections 5-4

SB1375 - Ballots; categories; count; identification number

Sponsor

Sen. Shawna Bolick (R)

Summary

Requires each ballot to bear a unique identification number that allows ballots to be linked to specific voting locations. Specifies methods for numbering. Requires the officer in charge of the election to choose the method to use. Requires that a count of the physical ballots that are printed as early ballots, regular ballots, provisional ballots, federal-only ballots, and electronic ballots, including any overlap, be posted on the county’s website in real time.

Action Taken

Passed Senate Elections 4-3

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

Passed House Municipal Oversight & Elections 5-3

SCR1014 - 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.

SB1429 - Candidates; electronic signatures; limit

Sponsor

Sen. Ken Bennett (R)

Summary

Permits a statewide and legislative candidate to choose up to 25% more than the full number of required nomination petition signatures or up to an amount equal to 25% more than the full number of required contribution qualification forms, or both, by use of the online signature collection system prescribed by this legislation. Permits a town or city candidate to choose to collect up to 25% more than the minimum number of required nomination petition signatures by use of the online signature collection system. Permits a candidate for United States Senator or Representative to collect up to 25% more than the full number of required nomination petition signatures by use of the online signature system. This legislation is effective upon an affirmative vote of at least three-fourths of the legislature.

Action Taken

Passed Senate Elections 6-0

Passed 27-2 and was sent to the House

SB1009 - Voting registrations; ballot requests; source

Sponsor

Sen. Jake Hoffman (R)

Summary

Prohibits the use of a signature a voter submitted on a non-official form being used as the sole evidence for signature comparisons by the County Recorder when processing a request for an early ballot or to amend a voter's registration information. Mandates that only a political party, county

recorder or election official can distribute early ballot request forms to voters, removing candidates from the list of allowable distributors. Exempts elections for special taxing districts formed for the purpose of protecting or providing services to agricultural lands and crops from these changes.

SB1288 - Electronic ballot adjudication; prohibition

Sponsor

Sen. Jake Hoffman (R)

Summary

The county board of supervisors and officer in charge of elections are prohibited from using an electronic vote adjudication. A duplicate copy of a damaged or defective ballot must be made by hand in the presence of witnesses and substituted for the damaged or defective ballot.

Action Taken

Passed Senate Elections 4-3

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

Passed House Municipal Oversight & Elections 5-4

HB2481 - Open meetings; public body; legislature

Sponsor

Rep. Barbara Parker (R)

Summary

Requires all “public bodies” (defined as no longer including the legislature) provide an opportunity for public comment in person before any final decision is made, subject to reasonable time, place and manner restrictions. Requires at least 48 hours’ notice and the official agenda to be available to the public (with a hyperlink to all relevant documents, contracts, agreements or proposals under consideration in the meeting) for any public meetings and allows a meeting to be recessed with less than 48 hours’ notice if the initial session of the meeting adheres to all state laws. Stipulates that any 48-hour requirements includes Saturdays if the public has access to the physically posted notice. Removes the ability of the legislature to provide exemptions from requirements or to be met by technological means.

Action Taken

Passed House Government 6-3

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

Passed Senate Government 4-3

HB2787 - Voting equipment; inspection; elected officials

Sponsor

Rep. Rachel Jones (R)

Summary

Allows any elected official to inspect voting equipment while accompanied by an expert of the elected official's choice. Requires the inspection to include access to all source code and other proprietary material related to the voting equipment if requested. Allows the elected official to conduct the inspection at any time but prohibits disruption of the voting process on election day. Requires the elected official and accompanying expert to keep all information received confidential unless the elected official or the accompanying expert has a good faith belief that the voting equipment is malfunctioning or being exploited in any manner that violates any election law.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

HB2876 - Elections; mailing; curing; canvassing; precincts

Sponsor

Rep. Michael Carbone (R)

Summary

Eliminates the use of voting centers, early voting locations or similar methods of voting. Requires that all voting occur through individual precinct voting locations with preprinted ballots. Limits those who may vote an early ballot to qualified electors who are students temporarily absent from the state for the purpose of attending school; required to temporarily reside outside of the state; required to travel on election day; elderly or disabled persons; and eligible electors under the Uniformed and Overseas Citizens Absentee Voting Act. Extends the beginning of the early ballot distribution period from no more than 27 days to no more than 34 days prior to the election and if an early ballot is requested 38 days or more prior to an election, the early ballot must not be distributed earlier than 34 days prior to the election. Reduces the signature curing period from no later than the fifth business days after a primary, general or special election with a federal office or the third business days after any other election to the second business day following any election. Revises the period elections must be canvassed from between 6 and 20 days to between 6 and 12 days following an election. Instructs the Secretary of State to canvass all state offices 14 calendar days following a general election as opposed to the fourth Monday following a general election. Requires the legislative council staff to prepare proposed legislation conforming to the provisions of this Act for consideration in the 57th legislature, first regular session.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

HB2852 - Voter registrations; organizations; prohibition

Sponsor

Rep. Justin Heap (R)

Summary

Prohibits this state and any of its political subdivisions from being a member of any multistate voter registration or voter registration list maintenance organization that requires Arizona to provide certain confidential voter registration information, such as social security numbers and driver license numbers; and from joining or entering into an agreement with any organization that imposes a duty on this state, such as mailing voter registration forms to voters that are not registered to vote. Prohibits a political subdivision of Arizona from joining an organization or entering an agreement with any organization that imposes a duty on the political subdivision, unless otherwise expressly required by Arizona law.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

Passed Senate Elections 4-2

HB2851 - Elections; ballot chain of custody

Sponsor

Rep. Justin Heap (R)

Summary

Requires the Board of Supervisors to provide a chain of custody record for ballot printing location; ballot transportation; storage and delivery of ballots to the county recorder or other officer in charge of elections; and any voting location. Asserts that the chain of custody record must include the time and signature for each point of contact and other specified information. Specifies that unvoted ballots delivered to a voting location where there is no election board worker requires the person delivering the ballots to note that the ballots were delivered and secured without a designated recipient. Adds that a ballot box, before receiving ballots, must be locked with a tamper evident seal. Specifies that the tamper evident seal must be checked by two board members in case of an emergency transfer. Details that at the close of the polls and if a ballot box has been transferred or opened, a report must be made including the date, time and name of any election officer witnessing the transfer or opening of a ballot box. Requires the county recorder or other officer in charge of elections to prepare a chain of custody record, with specified information, for the transportation and delivery of voted ballots. States that all damaged and defective ballots replaced with a duplicate ballot must be included in a chain of custody record that includes specified information. Requires the county recorder or election officer in charge to provide a live video, with full visibility of the ballots, at various stages of the ballot's cycle. Instructs the county recorder or election officer in charge to maintain a specified record of all voting irregularities that occur during specified elections. Specifies that the voting irregularities record must be sent to the President of the Senate, Speaker of the House and the Secretary of State.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

Passed Senate Elections 4-2

HCR2058 - Legislative districts; population; census; citizenship

Sponsor

Rep. Justin Heap (R)

Summary

Directs the Independent Redistricting Commission (IRC) or other officer or body designated by the Legislature, to take a census that must be completed by December 31 of years ending in zero. Requires the census to include a tabulation of the number of United States citizens residing in Arizona and their residences. Specifies the census may be conducted consistent with the procedures and methods adopted by the United States Census Bureau or its successor agency. Prohibits the IRC, or other designated body, from employing federal practices inconsistent with this Act. Instructs the IRC to use the data collected from the census to determine the citizen population of each Legislative district. Specifies, if no census is timely completed, the IRC must use the most current data from the United States Census Bureau or its successor agency to determine the citizen population of each Legislative district. Requires the IRC, during the commencement of the mapping process for legislative districts, to create districts of equal citizen population in a grid-like pattern across Arizona. Specifies any member of the Legislature has standing to initiate any action or proceedings to enforce the provisions of this Act.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

HCR2049 - Ballot measures; challenges.

Sponsor

Rep. Neal Carter (R)

Summary

The 2024 general election ballot is to carry the question of whether to amend the state statutes to stipulate that beginning in 2025 - 2026, if the amount of monies available to the Permanent State School Fund exceeds the amount required, pursuant to state law and there are no outstanding state school facilities revenue bonds, qualified zone academy bonds, state school trust revenue bonds issued to correct existing deficiencies, the Arizona State Land Department shall transfer those monies to the School Facilities Revenue Bond Debt Service Fund. Prohibits the State Treasurer from transferring monies pursuant to state law before meeting all obligations mentioned above.

Action Taken

Passed House Municipal Oversight & Elections 5-4

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

Passed Senate Transportation, Technology, and Missing Children 4-3

SB1571 - Campaign finance report; statewide office (Strike Everything Amendment)

Sponsor

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

Summary

A candidate committee for a statewide candidate shall file a campaign finance report only during the eight calendar quarters comprising the twenty-four-month period preceding the general election for the office for which the candidate is seeking election.

Action Taken

Passed Senate Elections 7-0

Passed the Senate 28-0 and was sent to the House

Passed House Municipal Oversight & Elections 9-0

HB2393 - Presidential preference; parties; voting methods

Sponsor

Rep. Alexander Kolodin (R)

Summary

For any party that chooses not to participate in a publicly administered presidential preference election and chooses to select a nominee for President by way of a vote open to the entire membership of the party, the party must provide a voting method for uniformed services or uniformed overseas citizens and persons with disabilities. The political party can choose its means of voting and is not obligated to hold a presidential preference election or select a nominee for President by popular vote.

Action Taken

Passed House Municipal Oversight & Elections 5-4

Passed the House 31-24 and was sent to the Senate

Passed Senate Elections 5-2

SB1357 - Early ballots; affidavits; privacy

Sponsor

Sen. J.D. Mesnard (R)

Summary

Requires an early ballot affidavit to be concealable when delivered or mailed to the county recorder or other officer in charge of elections.

Action Taken

Passed Senate Elections 5-3

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



March 8, 2024

Submitted electronically to ccec@azcleaselections.gov.

Arizona Citizens Clean Elections Commission
c/o Thomas Collins, Executive Director
1110 West Washington Street
Phoenix, Arizona 85007

Re: Comments regarding AOR 24-01(Submitted Feb. 23, 2024)

Dear Commissioners,

Campaign Legal Center (“CLC”) respectfully submits these written comments in response to AOR 24-01, the request for an Advisory Opinion submitted by Opportunity Arizona regarding the Voters’ Right to Know Act (“the 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.²

CLC commends the Commission for its ongoing commitment to developing thorough, clear, and functional guidance to implement the Voters’ Right to Know Act. Our comments focus on the second issue presented in AOR 24-01, which concerns the Act’s coverage of ads that reference a clearly identified candidate close to an election.³ Specifically, adopting the interpretation advanced by Opportunity Arizona would eviscerate an entire category of political ads from the law’s coverage, undermining the Act’s goal of protecting Arizonans’ rights under the First Amendment and the Arizona Constitution to make informed election decisions “by securing their right to know the source of monies used to influence Arizona

¹ AOR 24-01, Request for Advisory Opinion from Opportunity Arizona (Feb. 23, 2024), <https://storageccec.blob.core.usgovcloudapi.net/public/docs/976-2024-02-23-Ltr-re-AO-Request--Opportunity-Arizona.pdf>.

² CLC’s affiliated 501(c)(4) organization, CLC Action, represents Voters’ Right to Know, the political committee established to support Proposition 211, in ongoing litigation relating to the Act.

³ See A.R.S. § 16-971(2)(a)(iii).

elections,” including “the original source of all major contributions used to pay, in whole or in part, for campaign media spending.”⁴

As explained in more detail below, an essential element of disclosure requirements for these types of ads—sometimes called “electioneering communications—is *not* requiring that such ads reference a candidate “as a candidate” for a particular office or expressly reference an election. Requiring transparency for these ads is plainly constitutional and critical to prevent evasion of disclosure requirements for political ads simply by omitting certain words.

I. Campaign finance transparency advances First Amendment rights.

The Voters’ Right to Know Act recognizes that voters have the right to certain information about the political messages they receive, including information about who pays for those messages⁵ — a right that has been long recognized by the Supreme Court.⁶ Public disclosure reports and on-ad disclaimers allow voters to know who is funding a campaign or trying to influence government decision-making.⁷ This helps voters determine who supports which positions and why, allowing them to make fully informed decisions at the ballot box.

As the Supreme Court has repeatedly recognized in decades of decisions upholding campaign finance disclosure provisions:

[D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters

⁴ See Voters’ Right to Know Act (2022 Proposition 211), Sections 2A. and 2B., *available at* <https://static1.squarespace.com/static/60621fe406d8457258f2d3fa/t/6090bcc2f3cadb117854a4e4/1620098242920/Voters%27+Right+to+Know+Initiative.pdf>.

⁵ *Id.*

⁶ The Supreme Court has long recognized the importance of transparency in a variety of contexts, including candidate elections, ballot initiatives, and lobbying. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (per curiam) (candidate elections); *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 792 n.32 (ballot initiative); *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 203 (1999) (“Through the disclosure requirements . . . voters are informed of the source and amount of money spent . . . [and] will be told ‘who has proposed [a measure],’ and ‘who has provided funds for its circulation.’” (second alteration in original)); *Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley, Cal.*, 454 U.S. 290, 299 (1981) (“The integrity of the political system will be adequately protected if [ballot measure] contributors are identified . . .”); *United States v. Harriss*, 347 U.S. 612, 625 (1954) (upholding federal lobbying disclosure statute).

⁷ *See No on E v. Chiu*, 85 F.4th 493, 505 (9th Cir. 2023) (“Understanding what entity is funding a communication allows citizens to make informed choices in the political marketplace.”); *Gaspee Project v. Mederos*, 13 F.4th 79,91 (1st Cir. 2021), *cert. denied*, 142 S.Ct. 2647 (“The donor disclosure alerts viewers that the speaker has donors and, thus, may elicit debate as to both the extent of donor influence on the message and the extent to which the top five donors are representative of the speaker’s donor base . . . [in *Citizens United*] the Court recognized that the disclaimers at issue were intended to insure that the voters are fully informed . . .” (internal quotation marks and citation omitted)).

to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches.⁸

Requiring disclosure of the sources of funding for election-related speech has been a feature of American campaign finance law for more than a century,⁹ and the Supreme Court has consistently rejected challenges to electoral transparency laws, repeatedly emphasizing their constitutional validity.¹⁰

The Supreme Court's decision in *Citizens United* opened the door to unlimited corporate independent expenditures and ultimately led to the creation of super PACs, making corporations an increasingly attractive vehicle to funnel unlimited funds to political committees and other independent spenders while concealing the true source of those funds.¹¹ The Court in *Citizens United* assumed that these new forms of unlimited spending would be transparent, observing that "prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."¹²

Effective disclosure helps prevent wealthy special interests from secretly "hiding behind dubious and misleading names" to disguise who they are and mask the source of their funding.¹³ Indeed, the Supreme Court also held in *Citizens United* that "[t]he right of

⁸ *Buckley*, 424 U.S. at 66-67 (internal quotation marks and footnote omitted). In *Buckley*, the Supreme Court articulated the constitutional standard for disclosure laws and upheld federal disclosure requirements, explaining that disclosure served three important purposes: "providing the electorate with information, deterring actual corruption and avoiding its appearance, and gathering data necessary to enforce more substantive electioneering restrictions." *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (listing the "important state interests" identified in *Buckley*), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010). The first of these, the public's informational interest, is "alone sufficient to justify" disclosure laws. *Citizens United*, 558 U.S. at 369; *see also No on E*, 85 F.4th at 504-06; *Gaspee Project*, 13 F.4th at 86.

⁹ *See* Publicity of Political Contributions Act, Pub. L. No. 61-274, §§ 5-8, 36 Stat. 822, 822-24 (1910).

¹⁰ *See Buckley*, 424 U.S. at 64-68 (upholding Federal Election Campaign Act disclosure requirements); *McConnell*, 540 U.S. at 194-99 (upholding McCain-Feingold Act's federal disclosure requirements); *Citizens United*, 558 U.S. at 366-71 (same); *see also Citizens Against Rent Control*, 454 U.S. at 299-300 (expressing approval of disclosure in the ballot initiative context); *Bellotti*, 435 U.S. at 792 & n.32 (striking down corporate expenditure ban in part because disclosure sufficed to enable "the people . . . to evaluate the arguments to which they are being subjected").

¹¹ *See Citizens United*, 558 U.S. at 365-69; *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc) (The D.C. Circuit's decision in *SpeechNow*, issued shortly after *Citizens United*, directly gave rise to super PACs by striking down the contribution limits applicable to political committees that make only independent expenditures).

¹² *Citizens United*, 558 U.S. at 370; *see also Buckley*, 424 U.S. at 67 ("A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return.").

¹³ *McConnell*, 540 U.S. at 197. For example, some independent spending groups have acknowledged that it can be "much more effective to run an ad by the 'Coalition to Make Our Voices Heard' than it is to say paid for by 'the men and women of the AFL-CIO.'" *Id.* at 128 n.23 (citation omitted).

citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”¹⁴

Veiling the true sources of electoral spending impairs democratic debate and decision-making. The Act ends the shell game of wealthy special interests hiding behind other entities in multiple ways, revealing the sources of funding behind independent expenditures and electioneering communications and supporting voters’ right to know who is spending to influence their ballots.¹⁵ And Arizona courts have agreed, firmly rejecting challenges to the constitutionality of the Act—both facially and as applied to particular plaintiffs.¹⁶

The AOR must be viewed in this context. While the AOR focuses on the impact of disclosure and disclaimer requirements on Opportunity Arizona and other political spenders, curtailing the Act’s transparency requirements would leave Arizona voters without critical information they need to fully participate in democratic self-government.

II. Disclosure under A.R.S. § 16-971(2)(a)(iii) is not limited to communications that expressly reference an election or identify a candidate “as a candidate.”

In AOR 24-01, Question 2 specifically seeks guidance regarding the application of A.R.S. § 16-971(2)(a)(iii) to paid public communications disseminated within 90 days before a primary election, where such communications explicitly reference by name elected officials who are candidates but do not explicitly “refer[] to any election.”¹⁷ Opportunity Arizona seeks to have such advertisements excluded from the disclosures required under the Act.¹⁸

The AOR attempts to create ambiguity in the Act where none exists, and adopting the proposed interpretation of A.R.S. § 16-971(2)(a)(iii) would weaken the Act’s clear disclosure requirements for campaign media spending. CLC strongly disagrees with this interpretation and requests that the Commission apply the plain language of A.R.S. § 16-

¹⁴ *Citizens United*, 558 U.S. at 339. The Supreme Court has recognized that disclosure does not meaningfully inhibit First Amendment interests and actually advances those interests. *See id.*

¹⁵ *Supra* note 4; *see also*, *Arizona’s Voters’ Right to Know Act to End Secret Spending in Arizona Elections* 1-2, 8-11, CAMPAIGN LEGAL CENTER (Nov. 29, 2022), <https://campaignlegal.org/sites/default/files/2022-11/AZ%20Proposition%20211%20White%20Paper%20-%202011.29.22.pdf>.

¹⁶ Minute Entry: Under Advisement Ruling, *Ctr. for Ariz. Pol’y, Inc. v. Ariz. Sec’y of State*, No. CV2022-016564 (Maricopa Cnty. Super. Ct., issued Jun. 22, 2023), *copy available at* <https://campaignlegal.org/document/center-arizona-policy-inc-et-al-v-arizona-secretary-state-et-al-under-advisement-ruling> (dismissing Plaintiffs’ facial challenge to the Act’s disclosure requirements); Minute Entry: Under Advisement Ruling, *Ctr. for Ariz. Pol’y, Inc. v. Ariz. Sec’y of State*, No. CV2022-016564 (Maricopa Cnty. Super. Ct., Feb. 29, 2024), *copy available at* <https://campaignlegal.org/document/under-advisement-ruling-applied-challenge> (dismissing Plaintiffs’ as-applied challenge to the Act’s disclosure requirements).

¹⁷ *Supra* note 1 at 7; Opportunity Arizona also appears to argue that such communications should not be covered because they do not reference these “as a candidate.” *Id.* at 8, 9.

¹⁸ *Id.* at 7-8.

971(2)(a)(iii) as written and consistent with similar disclosure provisions at the federal level.

A. *The plain language of A.R.S. § 16-971(2)(a)(iii) is clear.*

The statute is unambiguous: Campaign media spending includes “[a] public communication that refers to a clearly identified candidate within ninety days before a primary election until the time of the general election and that is disseminated in the jurisdiction where the candidate's election is taking place.”¹⁹ Nothing in that provision requires that a communication expressly reference an election or specifically identify a candidate “as a candidate” to qualify as campaign media spending. So long as the candidate is “clearly identified”—meaning “the name or a description, image, photograph or drawing of the candidate appears or the identity of the candidate is otherwise apparent by unambiguous reference”²⁰—no other description of the candidate or their particular status as a candidate is required for this provision to apply.

Importantly, in *Committee for Justice & Fairness v. Arizona Secretary of State's Office (CJF)*, the Arizona Supreme Court already rejected the kind of argument proposed in the AOR.²¹ When interpreting the term “expressly advocates,” the court rejected the argument that the requirement that an ad “refer[s] to one or more clearly identified candidates” means that the ad must refer to that person *as a candidate* for the office sought:

[A]lthough CJF argues Horne was not a ‘clearly identified candidate’ because the advertisement did not specifically identify him as a candidate for Attorney General, no question exists that Horne was in fact a ‘clearly identified candidate’ as defined under Arizona’s statutory scheme. . . . In the advertisement promulgated by CJF, Horne was identified through his name, photographs, and his prior and then-current public offices. Moreover, by the time the advertisement was run, Horne had been clearly identified to the general populace as the Republican candidate for Attorney General. It was unnecessary for the advertisement to further identify the position he sought.²²

Other provisions of the Act make clear that, were such requirements intended, they easily could have been included. For example, A.R.S. § 16-971(2)(a)(i) covers communications that expressly advocate “for or against *the nomination, or election* of a candidate.” Similarly, A.R.S. § 16-971(2)(a)(vi) covers any activity or communication” that “supports *the election or defeat* of candidates of an identified political party or the *electoral prospects* of an identified political party” Particularly given that A.R.S. § 16-971(2)(a)(iii) applies to a truncated time frame compared to other covered communications in the Act, there is no support in the Act’s text for limiting this provision to communications that expressly reference an election or a candidate “as a candidate.”

¹⁹ A.R.S. § 16-971(2)(iii).

²⁰ A.R.S. § 16-901(9); *cf.* 52 U.S.C. § 30101(18) (defining “clearly identified” similarly).

²¹ 332 P.3d 94 (Ariz. 2014).

²² *Id.* at 101, ¶ 28.

Additionally, comparison of A.R.S. § 16-971(2)(a)(iii) with federal disclosure requirements for electioneering communications—which this provision largely mirrors—further belies the AOR’s proposed interpretation.

Under the Bipartisan Campaign Reform Act of 2002 (BCRA), disclosures and disclaimers are required for “electioneering communications,” defined in relevant part as a broadcast, cable, or satellite communication that “refers to a clearly identified candidate for Federal office” made within 60 days prior to a general election or 30 days prior to a primary election.²³ FEC regulations interpreting the law provide that a communication refers to a clearly identified candidate where (1) it contains the candidate’s name, nickname, photograph, or drawing; (2) the candidate’s identity is “otherwise apparent through an unambiguous reference such as ‘the President,’ ‘your Congressman,’ or ‘the Incumbent’”; or (3) the candidate’s identity is “otherwise apparent ... through an unambiguous reference to *his or her status as a candidate* such as ‘the Democratic presidential nominee’ or ‘the Republic candidate for Senate in the State of Georgia.’”²⁴ As those commonsense rules explain, while referencing a person’s status as a candidate for the office sought is *one* way to clearly identify that person, it is not required or the only way.

Finally, the AOR’s comparison of A.R.S. § 16-971(2)(a)(iii)’s reference to “candidate” with § 16-971(2)(a)(v)’s reference to “public officer” is inapposite. As the AOR notes, § 16-971(2)(a)(v) concerns spending regarding a recall election. While it is unlikely that every candidate in a typical election will be a public officer, every person facing a recall is necessarily a public officer. Further, the statutory term “candidate” does not appear to include public officers facing a recall: Arizona law defines “candidate” as an individual seeking “nomination, election or retention for any public office,” and further defines “retention” as “the election process by which a superior court judge, appellate court judge or supreme court justice is retained in office as prescribed by” the Arizona Constitution.²⁵

B. Requiring disclosure for ads covered by A.R.S. § 16-971(2)(a)(iii) is constitutional.

Requiring disclosure for ads that reference a candidate close to an election ensures that influential election ads do not evade transparency simply by avoiding certain words. For this reason, the U.S. Supreme Court, along with numerous other courts, has consistently upheld disclosure requirements for these types of ads.

The history of federal election spending leading to electioneering communication disclosure is particularly illustrative. When Congress passed BCRA, federal lawmakers were seeking to close a major gap in federal law that had enabled organizations to sponsor sham “issue” advertisements that discussed federal candidates in the run up to an election but, because the ads carefully avoided the “magic words” of express advocacy, were not subject to

²³ 52 U.S.C. § 30104(f)(3)(A)(i). The definition also requires that, for communications referring to congressional candidates, the communication be “targeted to the relevant electorate,” *id.* § 30104(f)(3)(A)(i)(III), which is analogous to A.R.S. § 16-971(2)(a)(iii)’s requirement that the communication be “disseminated in the jurisdiction where the candidate’s election is taking place.”

²⁴ 11 CFR § 100.29 (b)(2) (emphasis added).

²⁵ A.R.S. § 16-901(7), (44).

independent expenditure reporting or on-ad disclaimer requirements.²⁶ For example, in the 2000 presidential election—the last one prior to BCRA’s enactment—“130 groups spent over an estimated \$500 million on more than 1,100 [such] ads.”²⁷ In other words, once wealthy special interests identified a gap in disclosure coverage, that gap was exploited to inundate voters with ads that failed to provide even basic information about who was running them.

To close this gap, Congress enacted new disclosure requirements for electioneering communications that were specifically formulated to increase transparency for pre-election ads that do *not* expressly advocate for or against a candidate in their capacity as a candidate. Importantly, the U.S. Supreme Court has twice affirmed that electioneering communication disclosure is constitutional and has explicitly rejected any constitutional significance between express advocacy and issue advocacy for disclosure purposes.

First, in *McConnell v. FEC*, the Court denied a facial challenge to federal disclosure requirements for electioneering communications.²⁸ In particular, the Court “rejected the notion that the First Amendment requires Congress to treat so-called issue advocacy differently from express advocacy” in the disclosure context, concluding that lawmakers may apply “disclosure requirements to the entire range of ‘electioneering communications’”—that is, without distinguishing between ads that expressly advocate for an electoral outcome and those that do not—and that these requirements advance the public’s interest in knowing the sources responsible for political speech in the leadup to an election.²⁹

Second, in *Citizens United v. FEC*, eight of the Court’s nine Justices joined the part of the decision which affirmed the constitutionality of BCRA’s electioneering communication disclosure requirements as applied to *Hillary: The Movie*, a video on-demand documentary, and to brief commercial ads for the film.³⁰ In upholding the statute’s application to commercials for the film, *Citizens United* resoundingly affirmed the constitutionality of disclosure and disclaimer requirements for pre-election advertising that references a candidate and does not advocate an electoral outcome: “Even if the ads only pertain to a commercial transaction, the public has an interest in knowing who is speaking about a candidate shortly before an election.”³¹

Following *Citizen United*’s broad endorsement of the constitutionality of electioneering communication disclosure, federal courts have routinely upheld disclosure requirements for

²⁶ Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in U.S. Elections & How 2012 Became The “Dark Money” Election*, 27 NOTRE DAME J.L. ETHICS & PUB. POL’Y 383, 431-35 (2013).

²⁷ *Id.* at 430 (quoting *McConnell*, 540 U.S. at 129 n.20).

²⁸ 540 U.S. at 189-202.

²⁹ 540 U.S. at 194, 196.

³⁰ 558 U.S. at 369.

³¹ *Id.*

pre-election advertising that does not advocate for an electoral outcome.³² The AOR entirely ignores *Citizens United* and these subsequent decisions from federal courts in arguing that “[l]obbying and legislative accountability efforts are regulated separately from electoral advocacy efforts because a legal difference exists between the two.” Indeed, the AOR relies primarily on the Supreme Court’s decision in *Wisconsin Right to Life v. FEC (WRTL)*³³ in making this argument, which the Court explicitly rejected in *Citizens United*.

WRTL concerned a different aspect of BCRA: its expansion of federal law’s longstanding *ban* on corporate independent expenditures to also ban corporate electioneering communications. Applying strict scrutiny—because the law entirely banned certain types of corporate political spending—the Court concluded the ban could not be constitutionally applied to ads that were neither express advocacy nor its functional equivalent.³⁴ While *Citizens United* subsequently expanded *WRTL* by striking down federal law’s ban on both corporate independent expenditures and electioneering communications, the Court explicitly rejected extending *WRTL*’s rationale to *disclosure* requirements:

As a final point, *Citizens United* claims that, in any event, the disclosure requirements [for electioneering communications] must be confined to speech that is the functional equivalent of express advocacy. The principal opinion in *WRTL* limited 2 U.S.C. § 441b’s restrictions on independent expenditures to express advocacy and its functional equivalent. *Citizens United* seeks to import a similar decision into BCRA’s disclosure requirements. We reject this contention.³⁵

As the Court explained, the constitutionally significant difference is whether a law *bans* certain communications or whether it merely requires *disclosure* about certain

³² See, e.g., *Human Life of Wash. v. Brumsickle*, 624 F.3d 990, 1016 (9th Cir. 2010) (“Given the Court’s analysis in *Citizens United*, and its holding that the government may impose disclosure requirements on speech, the position that disclosure requirements cannot constitutionally reach issue advocacy is unworkable.”); *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 54-55 (1st Cir. 2011) (“We find it reasonably clear, in light of *Citizens United*, that the distinction between issue discussion and express advocacy has no place in First Amendment review of these sorts of disclosure-oriented laws.”); *Independence Inst. v. Gessler*, 812 F.3d 787, 795 (10th Cir. 2016) (“It follows from *Citizens United* that disclosure requirements can, if cabined within the bounds of exacting scrutiny, reach beyond express advocacy to at least some forms of issue speech.”); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 484 (7th Cir. 2012) (“*Citizens United* made clear that the wooden distinction between express advocacy and issue discussion does not apply in the disclosure context.”); see also *Independence Inst. v. FEC*, 216 F. Supp. 3d 176, 187 (D.D.C.) (three-judge court) (“[T]he Supreme Court and every court of appeals to consider the question have already largely, if not completely, closed the door to the Institute’s argument that the constitutionality of a disclosure provision turns on the content of the advocacy accompanying an explicit reference to an electoral candidate.”), *aff’d mem.*, 580 U.S. 1157 (2017).

³³ 551 U.S. 449 (2007).

³⁴ *Id.* at 476-81.

³⁵ *Citizens United*, 558 U.S. at 368-69 (internal citation omitted).

communications. The Court explained that disclaimer and disclosure requirements “impose no ceiling on campaign-related activities” and “do not prevent anyone from speaking.”³⁶ Importantly, *CJF*—a case the AOR claims supports a distinction in Arizona law between issue advocacy and candidate advocacy—also emphasized *Citizens United*’s distinction of disclosure laws, explaining that “the permissible scope of disclosure requirements ... could extend beyond speech that is the functional equivalent of express advocacy to address even ads that only pertain to a commercial transaction.”³⁷ Accordingly, there is no basis for curtailing A.R.S. § 16-971(2)(a)(iii)’s coverage of political ads based on any supposed distinction between express advocacy and issue advocacy.

In light of the plain language of the Act, the important role of disclosure and disclaimer requirements for political ads in the run-up to an election, and the significant body of case law affirming the constitutionality of disclosure and disclaimer requirements for these ads, we urge the Commission to reject the AOR’s request to limit A.R.S. § 16-971(2)(a)(iii) to ads that explicitly reference an election or refer to a candidate “as a candidate.”

CONCLUSION

We thank the Citizens Clean Elections Commission for considering our comments regarding AOR 24-01, and we applaud the Commission’s efforts to provide clear guidance for spenders and the public in Arizona. We would be happy to answer questions or provide additional information to assist the Commission’s development of its Advisory Opinion.

Respectfully submitted,

/s Elizabeth D. Shimek

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³⁶ *Id.* at 366 (quoting *Buckley*, 424 U.S. at 64, and *McConnell*, 540 U.S. at 201). Opportunity Arizona tacitly acknowledges as much in a footnote, noting that its speech would not be “suppressed” to the point of total censorship, as was the case in *Wisconsin Right to Life*.” AOR at 9 n.6.

³⁷ 332 P.3d at 105 (quoting *Free Speech v. FEC*, 720 F.3d 788, 795 (10th Cir. 2013)) (internal quotation marks omitted); *see also id.* (noting *Citizens United* supports “mandatory disclosure requirements” for “ads that merely mention a candidate” (quoting *The Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 552 (4th Cir. 2012) (internal brackets omitted)).



Thomas Collins <thomas.collins@azcleaselections.gov>

Draft Advisory Opinion responding to AOR 24-01 Opportunity Arizona

1 message

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

Tue, Mar 26, 2024 at 3:53 PM



Dear colleagues:

Attached please find a draft Advisory Opinion responding to AOR 24-01. It is scheduled to be discussed on Thursday March 28, 2024 at 9:30 AM.

Staff intends to recommend that the Commission take additional written public comments on this draft ahead of our April meeting, which we anticipate holding April 18.

We anticipate asking the Commission to have such comments due no later than April 5 at 11:59 p.m. Arizona time.

Staff is particularly interested in substantive comments about A.R.S. 16-971(2)(a)(ii) ("A public communication that promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate."). We also encourage additional comments on the other two questions presented by this AOR.

As always, your attendance through any of the means provided by the Commission is always welcome.

Thank you,
Tom Collins

--
Thomas M. Collins
Executive Director
Arizona Citizens Clean Elections Commission
www.azcleaselections.gov
602-364-3477
--> 602-397-6362 <--

3 attachments

 **AO 24 03 Draft for Circulation 3 26.pdf**
318K

 **AO Request - Opportunity Arizona recd 02-23-24.pdf**
790K

 **CLC Comment on AZ CCEC AOR 24-01 recd 03-08-24.pdf**
232K

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Governor

Thomas M. Collins
Executive Director



Mark S. Kimble
Chair

Steve M. Titla
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Amy B. Chan
Galen D. Paton
Commissioners

State of Arizona
Citizens Clean Elections Commission

1110 W. Washington St. - Suite 250 - Phoenix, Arizona 85007 - Tel (602) 364-3477
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_____, 2024
Advisory Opinion 2024-03

Roy Herrera
Jillian Andrews
Austin Marshall
Herrera Arellano LLP
530 E McDowell Rd #107-150
Phoenix, AZ 85004

We are responding to your advisory opinion request on behalf of Opportunity Arizona concerning whether advertisements relating to policies and actions contemplated by elected officials who are also candidates for office or by their respective governmental bodies constitute campaign media spending under the Voter's Right Know Act (the "Act" or the "VRKA"), A.R.S. §§ 16-971 to 16-979.

Questions Presented¹

1) If disseminated within six months "preceding an election involving" a sitting lawmaker who is running for reelection, do public communications like any of the examples provided in the Advisory Opinion Request (AOR), that mention elected officials by name, but only in relation to their official positions or votes without referring to any election, qualify as Campaign Media Spending by constituting "[a] public communication that promotes, supports, attacks or opposes" a candidate? *See* A.R.S. § 16-971(2)(ii).

¹ The questions presented have been slightly reworded from the request to clarify references to particular communications.

2) If disseminated within 90 days “before a primary election” in which a sitting lawmaker is running for office, do public communications like the examples provided in the AOR, that mention elected officials by name, but only in relation to their official positions or votes without referring to any election, qualify as Campaign Media Spending by constituting “[a] public communication that refers to a clearly identified candidate?” *See* A.R.S. § 16-971(2)(a)(iii).

3) Does a public communication like two examples provided (AOR at 3-5) that refer generally to the legislative actions of a political party qualify as Campaign Media Spending by “support[ing] the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party?” *See* A.R.S. § 16-971(2)(a)(vi).

Commission Response

Question 1

Examples 1 and 2, which “promote, support, attack or oppose” a candidate’s positions, qualify as campaign media spending. Examples 3, 4, and 5 involve direct and narrow communications with elected officials about particular policies but say nothing about a candidate’s positions, do not meet the definition of “[a] public communication that promotes, supports, attacks or opposes” a candidate.

Question 2

Yes, Arizona law does not require a candidate to be identified as a candidate for a particular office in order to be clearly identified. Consequently, a public communication beginning 90 days before primary maybe campaign media spending regardless of reference to a particular candidacy.

Question 3

No. Although each public communication warrants its own analysis, the three communications identified do not involve the electoral prospects of candidates of a particular party or the party itself. Each advertisement only mentions party as a means to another end, whether providing context for a call to action to contact a legislator, seeking to bring more people into association with the organization, or facilitating direct communication with a particular elected official.

Background

The facts presented in this advisory opinion are based on your AOR received February 23, 2024 and publicly available information.

Opportunity Arizona describes itself as an Arizona nonprofit corporation. AOR at 1. It states that it has obtained tax exempt status pursuant to Internal Revenue Code § 501(c)(4). *Id.* The organization states that it exists to “to build issue majorities and political power for policies that improve the lives of hardworking Arizonans.” *Id.*

The organization spends money on what it calls “political campaign intervention” as well as lobbying and “issue advocacy.” *Id.* For example, Opportunity Arizona states that it spends money urging the public to contact members of the state legislature on certain bills, thanks and criticizes legislators for their positions on bills and issues. The AOR contains specific examples of the kinds of communications Opportunity Arizona has used and it states that it intends to continue to use these kinds of communications. *Id.* at 2.

The AOR identifies five public communications for the Commission’s analysis. The Commission accepts for purposes of this response Opportunity Arizona’s assumption that all of the communications it discusses are public communications. The Commission also accepts the assumption that each legislator identified in the communications is a “candidate” as defined in the Act.

Example 1. First, the AOR identifies an advertisement that features a photo illustration of the state capitol building along with the text “Click to send a thanks to Senator [] for investing in house affordability!” followed by a link to “Visit www.opportunityarizona.org to learn more.” AOR at 2.

Example 2. The second public communication calls on people to email a particular lawmaker to urge her to change her position on what Opportunity Arizona claims are “barriers to voting.” It includes a photo of the legislator as well as a headline from the website Salon.com. The headline states “‘Hyper-partisan attack’: Arizona GOP advances voting bills inspired by conspiracy theories.” This public communication was published during the legislative session. AOR at 4.

Example 3. The third communication identifies policy values it identifies with a particular party. Specifically, the advertisement claims a party is in favor of “tax breaks for private jet owners,” giveaways for big business,” and “rigging the system for the elite” with the tag line “What is the Republican-led legislature

thinking.” The communication further states that “Arizona families are struggling. It’s time the Republican-led legislature stopped serving special interests and started serving us” Finally, the advertisement states: Join us to learn what your representatives are doing at the state capitol.”² This public communication, the AOR states, refers to an apparently prior legislative session, but does not specify when it was published. AOR at 4.

Example 4. The fourth public communication is a so-called patch call where a person calls someone with an offer to directly connect that person to an elected official’s office by phone.

[Q1] **MAGA extremists at the Arizona Capitol** are considering laws that make more barriers to early voting by mail - making it harder for everyone to vote, especially enlisted military and their families. But you can stop it RIGHT NOW. **Can I transfer you to Senator/Representative (NAME)’s office** right now so you can demand they pledge to protect early voting by mail?

1= Yes [GO TO PATCH STATEMENT]

2= No [GO TO CLOSING]

3= Unsure [READ] Laws are moving through the process that make more barriers to voting. Now is the time to call your State Senator/Representative to stop them. **I urge you to contact State Senator/Representative (NAME) and ask them to pledge to keep voting accessible for the active-duty military and their families.** [GO TO CLOSING]

4= Supports issue but does not want to patch [GO TO CLOSING]

5= Anti issue [GO TO CLOSING]

6= Refused to say [GO TO CLOSING]

7= Does not answer political surveys [GO TO CLOSING]

[PATCH STATEMENT] Great! Here’s what will happen next. In just a moment, **I’ll transfer you to Senator/Representative (NAME)’s office.** Whether you reach a live person or an answering machine, tell their office your name, where you live, and that they need to protect early voting by mail and drop offs. I’ll transfer you now. The next voice you hear will be someone in the office or instructions to leave a voicemail. [TRANSFER CALL]

[END CALL]

AOR at 4-5 (footnote omitted).

² Opportunity Arizona also includes other potential variations on these communications. AOR at 4 fn. 2. This Response does not address those variations in view of the fact-specific analysis required.

Example 5. The fifth public communication features a photo illustration of a person placing a ballot envelope in a mailbox and the statement “For 30 years Arizona has voted by mail.” The next frame or slide of the public communication includes a photo of an Arizona legislator along with text stating “Opportunity Arizona” and “call 602-926- [] to tell Senator [] to protect our freedom to vote.” The AOR provides no information on when the advertisement ran.

Legal analysis

Voters passed the VRKA as Proposition 211 at the 2022 General Election and it was certified by Governor Doug Ducey in December 2022. The Act provides for reports by covered persons, that is, “any person whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than \$50,000 in statewide campaigns or more than \$25,000 in any other type of campaigns.” A.R.S. § 16-971(7)(a). “For the purposes of [the VRKA], the amount of a person’s campaign media spending includes campaign media spending made by entities established, financed, maintained or controlled by that person.” *Id.*

Campaign media spending is a defined term under the Act. This AOR addresses three definitions of campaign media spending:

A public communication that promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.

A public communication that refers to a clearly identified candidate within ninety days before a primary election until the time of the general election and that is disseminated in the jurisdiction where the candidate’s election is taking place.

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.

A.R.S. § 16-971(2)(a)(ii), (iii), (vi).

Question 1: If disseminated within six months “preceding an election involving” a sitting lawmaker who is running for reelection, do public communications like any of the examples provided in the AOR, that mention elected officials by name, but only in relation to their official positions or votes without referring to any election, qualify as Campaign Media Spending by constituting “[a] public communication that promotes, supports, attacks or opposes” a candidate? See A.R.S. § 16-971(2)(a)(ii).

Campaign media spending includes “a public communication that promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.” A.R.S. § 16-971(2)(a)(ii). This definition is not limited to *only* those public communications that refer directly to an election by using the word “election” or “candidate.” A public communication that mentions a candidate “promotes, supports, attacks, or opposes” that candidate—and thus qualifies as campaign media spending—if the public communication discusses the candidate’s prior positions or votes. A.R.S. § 16-971(2)(a)(ii).

The terms promote, support, oppose, or attack are not defined in the Act.³ Absent a definition, we examine their ordinary meaning.

- Promote, as used in this context, means “to contribute to the growth or prosperity of: further,” “to help bring (something, such as an enterprise into being: launch,” or “to present (merchandise) for buyer acceptance through advertising, publicity, or discounting.” *Promote*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/promote> (last checked March 24, 2024).
- Support, as used in this context, means “to promote the interests or cause of,” “to uphold or defend as valid or right: advocate [as in] supports fair play,” or “to argue or vote for [as in] supported the motion to lower taxes.” *Support*, Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/support> (last checked March 24, 2024).
- Attack, as used here, means “to assail with unfriendly or bitter words [as in] a politician verbally attacked by critics.” *Attack*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/attack> (last checked March 24, 2024).
- Oppose, as used here, means “to place opposite or against something [as in] oppose the enemy [or] oppose a congressional bill.” *Oppose*, Merriam

³ The phrase “promote, support, oppose, or attack” is used in federal campaign finance law, but we have not found useful guidance that informs how it should be applied to respond to the questions raised in this AOR.

Webster Dictionary, <https://www.merriam-webster.com/dictionary/oppose> (last checked March 24, 2024).

Two of the five example advertisements that Opportunity Arizona identifies “promotes, supports, attacks, or opposes” an elected official. Assuming both ads depict elected officials who are “candidates,” examples 1 and 2 qualify as campaign media spending.

The first public communication, which asks the viewer to click to send a thank you message to an elected official “for investing in housing affordability” “promotes” or “supports” a candidate because it “contribute[s] to the growth or prosperity” of the candidate and his or her official position. *See Promote & Support*, Merriam Webster, *supra*. Thus, it qualifies as a campaign media spending.⁴

In a similar way, the second public communication, which asks voters to contact an elected official to ask her to “stop making barriers to voting for Arizonans,” “attacks” a candidate. The language of the communication, shows that Opportunity Arizona is “placed opposite or against” the candidate’s stance on voting in Arizona. Thus, the second public communication qualifies as campaign media spending.

Because both Examples 1 and 2 either “promote, attack, support or oppose” e, they qualify as campaign media spending. Thus, under VRKA, Opportunity Arizona is required to disclose the original sources of its traceable monies if Opportunity Arizona meets the \$50,000 or \$25,000 thresholds for campaign media spending as applicable. A.R.S. § 16-973(A).

In contrast, the Examples 3, 4, and 5 do not qualify as “campaign media spending” under A.R.S. § 16-971(2)(a)(ii) because they do not “promote, support, attack or oppose” a candidate.

Example 3, which discusses “tax breaks for private jet owners,” does not refer to any individual, so it does not “promote, support, attack or oppose” a candidate.

Example 4, the so-called patch call, likewise does not fall under the ambit of § 16-971(2)(a)(ii) because it does not promote, support, attack or oppose a candidate. Rather, it involves a direct solicitation to immediately contact an elected

⁴ This AO does not address the circumstances in which public communications that serve to “defray[] the expense of communication with constituents” may be contributions. *See* A.R.S. § 16-901(11)(b).

official and demand a particular policy position. Although the script uses a derogatory term, it never associates that term directly with the elected official who is being called. Though Example 4 may promote a particular policy, it does not promote or attack a candidate based on their prior positions on that policy.

In the same way, Example 5 does not promote, support, attack or oppose a candidate because it does not even identify the candidate's position on the particular issue, but rather calls on readers to urge the elected official/candidate to take a particular position.

Other provisions of the Act may apply to these communications, but A.R.S. § 16-971(2)(a)(ii) does not.

Question 2: If disseminated within 90 days “before a primary election” in which a sitting lawmaker is running for office, do public communications like the examples provided in the AOR, that mention elected officials by name, but only in relation to their official positions or votes without referring to any election, qualify as Campaign Media Spending by constituting “[a] public communication that refers to a clearly identified candidate?” *See* A.R.S. § 16-971(2)(a)(iii).

Yes. Arizona law does not require a candidate to be identified as a candidate for a particular office in order to be clearly identified. Consequently, a public communication beginning 90 days before primary may be campaign media spending regardless of reference to a particular candidacy.

Several of the examples provided by Opportunity Arizona refer to a sitting legislator who is presumably running for office, either reelection or another Arizona office covered by the Act. The organization asserts that “merely referring to the individual should not automatically convert the public communication to one that ‘refers to a clearly identified candidate’ for Campaign Media Spending purposes.” AOR at 9 (quoting A.R.S. § 16-971(2)(a)(iii)).

Indeed, Opportunity Arizona insists that “[t]o interpret the Act to the contrary would create an untenable proposition for organizations that wish to use donor funds not for electoral advocacy, but to hold current election officials accountable for their official acts that affect the lives of everyday Arizonans.”

Further, Opportunity Arizona argues that because the recall provisions of the Act refer to a “public officer” rather than a “candidate,” the Commission should infer that the Act is only triggered by a public communication that refers to a

“clearly identified candidate” as “a candidate.” Put another way, Opportunity Arizona asserts that a communication suggesting that voters call Representative X about a bill 90 days before the primary simply does not implicate the Act.

As an administrative agency, the Commission is bound by the interpretations of Arizona appellate courts. The analysis proposed by Opportunity Arizona is contrary to the Court of Appeals’ published opinion in *Comm. for Just. & Fairness v. Ariz. Sec’y of State*, 235 Ariz. 347 (App. 2014), which rejected the organization’s position:

[T]he advertisement did not specifically identify [a person] as a candidate for Attorney General, no question exists that [the person] was in fact a “clearly identified candidate” as defined under Arizona’s statutory scheme. “‘Clearly identified candidate’ means that the name, a photograph or a drawing of the candidate appears or the identity of the candidate is otherwise apparent by unambiguous reference.” A.R.S. § 16-901(4). . . . In the advertisement promulgated by [the organization], [the person] was identified through his name, photographs, and his prior and then-current public offices. Moreover, by the time the advertisement was run, [the person] had been clearly identified to the general populace as the Republican candidate for Attorney General. It was unnecessary for the advertisement to further identify the position he sought.

Id. at 354 ¶ 28 (second internal citation omitted).⁵

The Commission, like all administrative agencies, is bound by the Court of Appeals’ opinion. Consequently, a public communication need not expressly identify a candidate as a candidate for a specific office in order for that candidate to be clearly identified.⁶

⁵ Substantially the same language appears today in A.R.S. 16-901(9).

⁶ Notably, Laws 2012, ch. 257 removed a similar provision from A.R.S. § 16-901.01. That provision required a “general public communication” that identified a “clearly identified candidate” to be reported at certain thresholds “[i]n the sixteen-week period immediately preceding a general election.”

Question 3: Does a public communication like Examples 2, 3, and 4 that refer generally to the legislative actions of a political party qualify as campaign media spending by “support[ing] the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party?” *See* A.R.S. § 16-971(2)(a)(vi).

No. Although each public communication warrants its own analysis, the three communications identified do not involve the electoral prospects of candidates of a particular party or the party itself. Each advertisement only mentions party as a means to another end, whether providing context for a call to action to contact a legislature, seeking to bring more people into association with the organization, or facilitating direct communication with a particular elected official.

The organization cites three public communications that are included in two sets of examples. AOR at 3-5. Two are advertisements and one is a so-called “patch call” script. For ease of reference the descriptions of these public communications employed above in response to Question 1 are repeated here.

Example 2 calls on people to email a particular lawmaker to urge her to change her position on what Opportunity Arizona claims are “barriers to voting.” It includes a photo of the legislator as well as a headline from the website Salon.com. The headline states “‘Hyper-partisan attack’: Arizona GOP advances voting bills inspired by conspiracy theories.”

Example 3 identifies policy values it identifies with a particular party. Specifically, the advertisement claims a part is in favor of “tax breaks for private jet owners,” “giveaways for big business,” and “rigging the system for the elite” with the tag line “What is the Republican-led legislature thinking.” The communication further states that “Arizona families are struggling. It’s time the Republican-led legislature stopped serving special interests and started serving us.” Finally, the advertisement states: “Join us to learn what your representatives are doing at the state capitol.”

Example 4, the patch call script, was reproduced in the AOR at 4-5 and is set forth above.

The Act provides that campaign media spending includes “[a]n 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.” None of these three examples meet that definition.

Example 2 only mentions a party in the form of an apparently authentic headline from a news story, albeit from a news site associated with a left-of-center point of view. The headline thus provides context for the main call to action in the communication. Because it does not “support . . . the defeat” of candidates of a particular political party, it does not fall under the definition in § 16-971(2)(a)(vi).

Example 3 purports to identify policies associated with a political party. But rather than its “electoral prospects,” the advertisement’s call to action is to join Opportunity Arizona to receive more information about that party’s supposed positions. A call to action that is specifically designed to bring more people into association with Opportunity Arizona is not itself a public communication having to do with a party’s electoral prospects.

Finally, Example 4, while using a term of derision for a party, uses that term in a particular context—facilitating a direct communication with an elected official. This publication is narrow and, in the context of the call, the derisive term enhances the efficiency of the solicitor’s call as by sorting those who might be responsive to such a term from those who would not be.

Conclusion

A Commission advisory opinion “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.” Ariz. Admin. Code § R2-20-808(C)(3). A “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 in Chapter 6.1 of Title 16.” *Id.* at (C)(4). Advisory opinions may be affected by later events, including changes in law.

Sincerely,

February 23, 2024

Via Email

Arizona Citizens Clean Elections Commission
c/o Thomas Collins, Executive Director
1110 West Washington Street
Phoenix, Arizona 85007

RE: Request for Advisory Opinion

Dear Commissioners:

Pursuant to A.A.C. R2-20-808, Opportunity Arizona through undersigned counsel seeks an advisory opinion from the Arizona Citizens Clean Elections Commission regarding its proposed activities. Opportunity Arizona has developed plans to spend money that traditionally constituted non-reportable grassroots lobbying and issue advocacy unrelated to candidate elections. It now seeks clarification as to whether these planned expenditures would qualify as Campaign Media Spending under the Voters' Right to Know Act (the "Act").

I. Background

A. Opportunity Arizona

Opportunity Arizona is an Arizona nonprofit corporation organized under Internal Revenue Code § 501(c)(4), and its mission is "to build issue majorities and political power for policies that improve the lives of hardworking Arizonans." To those ends, Opportunity Arizona engages in some political campaign intervention during elections, but it also engages in significant lobbying and issue advocacy work unrelated to particular candidates.

For example, Opportunity Arizona spends resources asking the public to call legislators about supporting or opposing certain bills when the Legislature is in session. It also places advertisements thanking specific legislators by name for their positions on bills or alerting the public that a legislator opposes an issue. Last, it at times calls for support for "legislative Democrats" or "Democrats in the Legislature" and their agenda.

To be clear, however, Opportunity Arizona’s advertisements credit and target both Democratic and Republican legislators alike. Opportunity Arizona’s advertisements are focused on promoting the organization’s mission of improving the lives of Arizonans, regardless of party affiliation. As such, it has alerted the public to positions Democratic members have taken on bills it opposes, and thanked Republicans for voting for bills it supports. During the current legislative session, Opportunity Arizona’s work will continue to call attention to timely legislative issues, encourage Arizonans to get involved in the process, and call out the work of legislators on both sides of the aisle.

B. Examples of Opportunity Arizona’s Potential Advertisements

To illustrate the activity Opportunity Arizona has engaged in previously and intends to prospectively, some examples of communications are listed below.¹ While these are examples from prior legislative sessions, they are illustrative of the work that Opportunity Arizona hopes to engage in during the coming months.

In light of the following examples, we request that the Commission provide responses to Opportunity Arizona’s Questions #1-3 below, and where appropriate, indicate whether each of the below advertisements would constitute “Campaign Media Spending” under the Act. *See* A.R.S. § 16-971(2).

1) “Thank you” Advertising

Some of Opportunity Arizona’s advertisements include messages thanking legislators for their official positions or votes on bills and, at times, ask voters to contact an official’s office to communicate that support. For example:



¹ For the purposes of this request, Opportunity Arizona assumes that all its proposed ads will be “public communications” per A.R.S. § 16-971(17).

The above ad refers to a legislator only in her capacity as a Senator and does not mention any election, let alone ask viewers to vote for her.

2) Accountability Advertising

The following are examples of Opportunity Arizona's prior "accountability" advertising, which aim to notify voters of a position that a legislator (or group of legislators) has taken that is contrary to Opportunity Arizona's values.



The first ad, which ran during a prior legislative session, refers to a sitting legislator and prompts her constituents to email her in opposition to several voting bills that she sponsored and/or voted for during the legislative session. While the identified lawmaker was, at the time, running for reelection, the ad does not mention the legislator in the context of an election.²

The second ad refers to the “Republican-led Legislature” without referring to any individual legislator by name. It also does not mention the “Republican-led Legislature” in the context of an election, but instead references three specific legislative actions the group collectively took during that session.

3) Patch Calls

Opportunity Arizona also directly calls individuals with scripts that ask the individual to contact their legislator’s office and give their opinion on a legislative issue. The following is an example script from a prior call campaign, similar to what Opportunity Arizona plans to do this session:

[Q1] **MAGA extremists at the Arizona Capitol** are considering laws that make more barriers to early voting by mail - making it harder for everyone to vote, especially enlisted military and their families. But you can stop it RIGHT NOW. **Can I transfer you to Senator/Representative (NAME)’s office**³ right now so you can demand they pledge to protect early voting by mail?

1= Yes [GO TO PATCH STATEMENT]

2= No [GO TO CLOSING]

3= Unsure [READ] Laws are moving through the process that make more barriers to voting. Now is the time to call your State Senator/Representative to stop them. **I urge you to contact State Senator/Representative (NAME) and ask them to pledge to keep**

² At other times, an ad may identify a lawmaker and a timely issue, but not include a direct method to contact the legislator, instead (like in the second ad in Example 2 above) including a link to Opportunity Arizona’s website and an invitation to “learn what your representatives are doing at the state capitol.” Opportunity Arizona’s website includes resources for Arizonans who want to learn more or get involved in the legislative process. See *Opportunity Arizona*, <https://www.opportunityarizona.org/advocacy> (providing a calendar of legislative committee hearings and an opportunity for Arizonans to sign up to speak during the hearings).

³ The “(Name)” is to be filled in with the name of the legislator(s) in the relevant district. Constituents receive calls only about their own legislators.

voting accessible for the active-duty military and their families.
[GO TO CLOSING]

4= Supports issue but does not want to patch [GO TO CLOSING]

5= Anti issue [GO TO CLOSING]

6= Refused to say [GO TO CLOSING]

7= Does not answer political surveys [GO TO CLOSING]

[PATCH STATEMENT] Great! Here's what will happen next. In just a moment, **I'll transfer you to Senator/Representative (NAME)'s office.** Whether you reach a live person or an answering machine, tell their office your name, where you live, and that they need to protect early voting by mail and drop offs. I'll transfer you now. The next voice you hear will be someone in the office or instructions to leave a voicemail. [TRANSFER CALL]

[END CALL]

(Emphasis added.)

These calls may mention sitting legislators, some of whom will likely run for reelection at the time the call is made. They also mention factions of legislators, in this case "MAGA extremists," but may at other times mention "Legislative Democrats" or "Legislative Republicans." However, the calls refer to these groups only in their capacity as lawmakers, and do not mention any election.

4) Issue Advocacy

Last, Opportunity Arizona engages in other issue advocacy ad campaigns, such as the ad below:



The ad calls for support for specific issues or bills and identifies the recipient constituent's lawmaker so that they may contact her directly. But the ad does not identify legislators in the context of their election or defeat.

II. Questions Presented

- 1) If disseminated within six months "preceding an election involving" a sitting lawmaker who is running for reelection, do public communications like any of the examples above, that mention elected officials by name, but only in relation to their official positions or votes without referring to any election, qualify as Campaign Media Spending by constituting "[a] public

communication that promotes, supports, attacks or opposes” a candidate? *See* A.R.S. § 16-971(2)(ii).

- 2) If disseminated within 90 days “before a primary election” in which a sitting lawmaker is running for office, do public communications like any of the examples above, that mention elected officials by name, but only in relation to their official positions or votes without referring to any election, qualify as Campaign Media Spending by constituting “[a] public communication that refers to a clearly identified candidate?” *See* A.R.S. § 16-971(2)(a)(iii).
- 3) Does a public communication like Examples 2 and 3 above that refer generally to the legislative actions of a political party qualify as Campaign Media Spending by “support[ing] the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party?” *See* A.R.S. § 16-971(2)(a)(vi).

III. Legal Analysis & Proposed Answers

A. None of the Example Public Communications are Campaign Media Spending under the Act.

None of the above examples of public communications qualify as Campaign Media Spending (and thus the answer to questions 1-3 above is “No”) because they only refer to public officials in their official capacity and not in any context related to elections. The Act details seven discrete types of Campaign Media Spending that trigger the Act’s disclosure obligations:

- (i) A public communication that expressly advocates for or against the nomination, or election of **a candidate**.
- (ii) A public communication that promotes, supports, attacks or opposes **a candidate** within six months preceding an election involving that candidate.
- (iii) A public communication that refers to **a clearly identified candidate** within ninety days before a primary election until the time of the general election and that is disseminated in the jurisdiction where the candidate's election is taking place.
- (iv) A public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum.
- (v) A public communication that promotes, supports, attacks or opposes the recall of **a public officer**.

(vi) An activity or public communication that supports the election or defeat of **candidates of an identified political party or the electoral prospects of an identified political party**, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity.

(vii) Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.

A.R.S. § 16-971(2)(a) (emphasis added).

To be clear, Opportunity Arizona understands that these categories expand disclosure obligations of election-related speech beyond the traditionally regulated “express advocacy.” But the Act should not be interpreted to disrupt the status quo so much as to also regulate issue advocacy—a distinct form of speech that Arizona law has always recognized as separate from candidate advocacy. *See Comm. for Just. & Fairness v. Ariz. Sec’y of State*, 235 Ariz. 347, 353–55 ¶¶ 22–30 (App. 2014) (analyzing the difference between issue advocacy and express advocacy).

At the outset, none of the issue-based advocacy that Opportunity Arizona intends to engage in refers to a specific election or a person in their capacity as a candidate. But unfortunately, given the definition of “candidate” under the Act, most legislators who plan to run for reelection are perpetual “candidates.”⁴ *See* A.R.S. § 16-971(3); § 16-901(7). Thus, an overly broad reading of the categories of Campaign Media Spending could result in organizations being forced to disclose lobbying and issue advocacy communications simply because they name a sitting legislator who will be up for reelection in under two years. This is not in keeping with the intent of the Act, which was presented to Arizona voters as aimed at *electoral* advertisements—in particular, “stop[ping] ‘dark money,’ [and] the practice of laundering political contributions.” Ariz. Sec’y of State, 2022 General Election Publicity Pamphlet, Proposition 211 § 2,

⁴ Given the brevity of a two-year term, most candidates who have successfully won state legislative office leave their candidate committee open to fundraise for their next election, which is always just around the corner. Thus, per the definition in the Act, they are nearly always “candidates” because they may “receive[] contributions or make[] expenditures” from that committee while simultaneously sitting as a legislator. A.R.S. § 16-901(7).

https://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf.⁵

The Act should recognize the difference between electoral and issue advocacy, regardless of whether the issue advocacy occurs within one of the designated Campaign Media Spending time periods of six months or 90 days before a primary election. Even if an elected official is running for reelection, merely referring to the individual should not automatically convert the public communication to one that “refers to a clearly identified candidate” for Campaign Media Spending purposes. A.R.S. § 16-971(2)(a)(iii). And it certainly should not mean that issue-based messaging “promotes, supports, attacks or opposes a candidate.” *Id.* § 16-971(2)(a)(ii). To interpret the Act to the contrary would create an untenable proposition for organizations that wish to use donor funds not for electoral advocacy, but to hold current elected officials accountable for their official acts that affect the lives of everyday Arizonans.

Lobbying and legislative accountability efforts are regulated separately from electoral advocacy efforts because a legal difference exists between the two. *See, e.g., FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 480 (2007) (“There is a vast difference between lobbying and debating public issues on the one hand, and political campaigns for election to public office on the other.” (quoting *Austin v. Mich. Chamber of Com.*, 494 U.S. 652, 678 (1990) (Stevens, J., concurring))). Namely, “the interests held to justify restricting corporate campaign speech or its functional equivalent do not justify restricting issue advocacy.” 551 U.S. at 457. For this reason, speakers’ First Amendment rights to hold public officials to account and to advocate for better public policy via grassroots lobbying communications and accountability ads should remain unfringed. These communications that invoke the name of an individual in their public-official role touch on different speech interests than those that invoke their name as a candidate. And “discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election.” *Id.* at 474.⁶

⁵ Notably, the Act was also intended to “promote rights guaranteed by the First Amendment . . . to promote self-government and ensure responsive officeholders.” Ariz. Sec’y of State, 2022 General Election Publicity Pamphlet, Proposition 211 § 2, https://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf. The best way to exercise traditionally protected First Amendment rights and keep officeholders responsive to voters’ priorities is to engage in lobbying and issue advocacy.

⁶ Opportunity Arizona recognizes that its speech under the Act is not “suppressed” to the point of total censorship, as was the case in *Wisconsin Right to Life*. But the Act’s reporting scheme requires a heavy lift from groups engaging in speech regulated by the Act (*e.g.*, sending opt-out notices and awaiting responses, obtaining transfer

Indeed, the Act’s Campaign Media Spending definition *itself* recognizes a difference between someone’s public-official capacity and their candidate capacity. “[W]hen the legislature uses different language within a statutory scheme, it does so with the intent of ascribing different meanings and consequences to that language.” *Workers for Responsible Dev. v. Tempe*, 254 Ariz. 505, 511 ¶ 21 (2023) (citation omitted). Standard principles of statutory interpretation such as this apply equally to voter-approved initiatives. See *Ariz. Citizens Clean Elections Comm’n v. Brain*, 234 Ariz. 322, 324 ¶ 11 (2014); *Sedona Grand, LLC v. City of Sedona*, 229 Ariz. 37, 40 ¶ 11 (App. 2012) (“We apply the same principles to the interpretation of a voter-approved initiative.”).

The Act purposefully differentiates between public communications referring to people in their candidate capacity (§ 16-971(2)(a)(i–iii, vi)), and ads that refer to people as “public officer[s]” (§ 16-971(2)(a)(v)). The latter is triggered only when a public communication “promotes, supports, attacks or opposes the recall of” someone in their public-officer capacity. Equating a public communication that refers to a legislator only in their legislative capacity with a public communication that refers to that same person in the express context of an election would nullify this textual difference. “A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.” *Ariz. Chapter of the Associated Gen. Contractors of Am. v. City of Phoenix*, 247 Ariz. 45, 47 ¶ 9 (2019) (citation omitted).

This reasoning also extends to A.R.S. § 16-971(2)(a)(vi) including 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.” Public communications supporting or opposing the policy positions of “Democratic” or “Republican” legislators collectively, such as Example 2 above (referring to the “Republican-led Legislature”) and Example 3 (referring to “MAGA extremists”) are not the same as supporting or opposing the Democratic or Republican Party in an election. Merely because a group of legislators of the same party support or oppose an issue that is the focus of Opportunity Arizona’s public communication does not mean the public communication “supports the election or defeat of . . . the electoral prospects of an identified political party.” *Id.* Rather, the communication would—at the very least—need to mention an election involving that party or spend funds on direct electoral activity like that named in § 16-971(2)(a)(vi) (“partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity”).

record requests, performing detailed accounting, and reporting). These obligations should not be imposed on issue-based advocacy. And without clarity on the status of its potential future public communications, Opportunity Arizona may be forestalled from engaging in this important work during the current legislative session, thus chilling its speech.

Finally, this Commission’s prior Advisory Opinion supports differentiating between electoral-related Campaign Media Spending that falls within the Act’s purview and issue advocacy that does not. Given the speech-interest differences between public communications that focus solely on issue advocacy and official action and those that are election-related, “voters who approved [the Act] would likely not expect such activity, without more, to be included” in its disclosure requirements. *Ariz. Citizens Clean Election Comm’n*, AO 2023-01 at *5. As this Commission observed in the context of signature gathering for initiatives, more express language would be required to make clear that voters intended to regulate a completely separate type of First Amendment protected activity than appears on the face of the Act.

IV. Conclusion

None of the types of public communications described above qualify as Campaign Media Spending because they do not refer to candidates or political parties in an electoral capacity—the ads only refer to public officials, or groups of affiliated public officials, in their *official* capacity. The law generally, and the Act specifically, differentiates between issue advocacy that seeks to influence official action and Campaign Media Spending that seeks to influence elections. The requirements of the Act should be applied accordingly.

Sincerely,



Roy Herrera
Jillian Andrews
Austin Marshall

***Proposed Commission Meeting Dates
April – August 2024***

| Month | <i>Date</i> | <i>State Holiday – Office Closed</i> |
|---------------|-------------------------------|--|
| April | <i>18th</i> | |
| May | <i>30th</i> | <i>Memorial Day, Mon, May 27th</i> |
| June | <i>27th</i> | |
| July | <i>25th</i> | <i>Independence Day, Thurs, July 4th</i> |
| August | <i>29th</i> | |
| | | |



During the months of April – August 2024, staff estimates commission meetings will be held once a month. Most meeting dates will be on Thursday and scheduled to begin at 9:30 a.m.

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

ITEM VI