



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, January 19, 2023

Time: 9:30 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on January 19, 2023. This meeting will be held at 9:30 a.m. **This meeting will be held virtually.** Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at cccc@azcleanelections.gov.

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

Join Zoom Meeting

<https://us02web.zoom.us/j/82603959726>

Meeting ID: 826 0395 9726

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Please note that members of the public that choose to use the Zoom video link must keep their microphone muted for the duration of the meeting. If a member of the public wishes to speak, they may use the Zoom raise hand feature and once called on, unmute themselves on Zoom once the meeting is open for public comment. Members of the public may participate via Zoom by computer, tablet or telephone (dial in only option is available but you will not be able to use the Zoom raise hand feature, meeting administrator will assist phone attendees). Please keep yourself muted unless you are prompted to speak. The Commission allows time for public comment on any item on the agenda. Council members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing Council staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.

The Commission may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item listed on the agenda, pursuant to A.R.S. § 38-431.03 (A)(3). The Commission reserves the right at its discretion to address the agenda matters in an order different than outlined below.

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Meeting Minutes for December 15, 2022.
- III. Discussion and Possible Action on Executive Director's Report, Enforcement and Regulatory Updates and Legislative Update.
- IV. Discussion and Possible Action on Arizona Supreme Court supplemental briefing order in Legacy Foundation Action Fund v. Clean Elections, CV-22-0041-PR.

The Commission may choose to go into executive session for discussion or consultation with its attorneys to consider its position and instruct its attorneys regarding the public body's position regarding contracts, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. A.R.S. § 38-431.03(A)(4).

- V. Discussion and Possible Action on Center for Arizona Policy v. Hobbs (Secretary of State), CV2022-016564, Superior Court for Maricopa County (challenge to the Voters Right to Know Act) and Commission's legal positions and filings.

The Commission may choose to go into executive session for discussion or consultation with its attorneys to consider its position and instruct its attorneys regarding the public body's position regarding contracts, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. A.R.S. § 38-431.03(A)(4).

- VI. Discussion and Possible Action on Administrative, Rulemaking, and Technological issues in the implementation of the Voter's Right to Know Act, Proposition 211.
- VII. Discussion and Possible Action on the following 2022 Primary Election Candidate Audits:
- A. Shams Abdussamad, State Rep, LD 11
 - B. Anna Orth, State Rep, LD 11
 - C. Sherryln Young, State Rep LD 11
 - D. Clair Van Steenwyk, State Senate, LD 22
 - E. Kathy Hoffman, Superintendent of Public Instruction
 - F. Shiry Sapir, Superintendent of Public Instruction
 - G. Sandra Kennedy, Corporation Commissioner
 - H. Lauren Kuby, Corporation Commissioner
 - I. Nick Myers, Corporation Commissioner
 - J. Kevin Thompson, Corporation Commissioner
- VIII. Discussion and Possible Action on 2023 Chairperson.
- IX. Discussion and Possible Action on Commission meeting schedule, format and venue.
- X. 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
- XI. 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 17th day of January, 2023
Citizens Clean Elections Commission
Thomas M. Collins, Executive Director

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

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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING

Phoenix, Arizona
December 15, 2022
9:30 a.m.

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

**CERTIFIED
TRANSCRIPT**

<p>1 VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS 2 CLEAN ELECTIONS COMMISSION convened at 9:30 a.m. on 3 December 15, 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 Mr. Mark Kimble 8 Mr. Galen Paton Mr. Steve Titla 9 10 OTHERS PRESENT: 11 Thomas M. Collins, Executive Director Paula Thomas, Executive Officer 12 Mike Becker, Policy Director Gina Roberts, Voter Education Director 13 Avery Xola, Voter Education Manager Kara Karlson, Assistant Attorney General 14 Mary O'Grady, Osborn Maledon Cathy Herring, Staff 15 David Kolker, Campaign Legal Center Elizabeth Shimek, Campaign Legal Center 16 Rivko Knox, Member of the Public 17 18 19 20 21 22 23 24 25</p>	<p>1 CHAIRMAN MEYER: Thank you and good morning. 2 Agenda Item -- I'm Damien Meyer, I'm Chairman of the 3 Citizens Clean Election Commission for this year. 4 Agenda Item No. I is the call to order. It's 5 9:30 a.m., December 15, 2022, and I call this meeting 6 of the Citizens Clean Elections Commission to order. 7 I'd like to ask audience members to please ask their 8 microphones on mute. 9 And with that, we will take attendance. 10 Commissioners, please identify yourselves for the 11 record. 12 COMMISSIONER PATON: Galen Paton. 13 COMMISSIONER KIMBLE: Mark Kimble. 14 CHAIRMAN MEYER: So we have Commissioner -- 15 COMMISSIONER TITLA: We have Steve Titla on 16 the phone, Commissioner Steve Titla. 17 CHAIRMAN MEYER: All right. We have 18 Commissioner Titla, Commissioner Kimble, and 19 Commissioner Paton all present. 20 So Item No. II is discussion and possible 21 action on meeting minutes for October 27 of 2022. Any 22 discussion on the minutes from our October 27th 23 meeting? 24 (No response.) 25 CHAIRMAN MEYER: If not, can I have a motion</p>
<p>1 to approve the minutes? 2 COMMISSIONER KIMBLE: Mr. Chairman. 3 CHAIRMAN MEYER: Commissioner Kimble. 4 COMMISSIONER KIMBLE: I move we approve the 5 minutes for the October 27th, 2022 meeting. 6 CHAIRMAN MEYER: Is there a second for that 7 motion? 8 COMMISSIONER PATON: Second, Galen Paton. 9 CHAIRMAN MEYER: All right. We have a motion 10 to approve the October 27, 2022 meeting minutes and a 11 second, so we'll go ahead and call the roll. 12 Commissioner Kimble. 13 COMMISSIONER KIMBLE: Aye. 14 CHAIRMAN MEYER: Commissioner Paton. 15 COMMISSIONER PATON: Aye. 16 CHAIRMAN MEYER: Commissioner Titla. 17 COMMISSIONER TITLA: Aye. Aye. 18 CHAIRMAN MEYER: And this is Commissioner 19 Meyer, I vote aye as well. 20 Moving on to Agenda Item No. III is 21 discussion and possible action on the Executive 22 Director's Report. Tom. 23 MR. COLLINS: Thank you, Mr. Chairman, 24 Members. This is our last meeting of the year, 25 assuming -- you know, all other things being equal, so</p>	<p>1 thank you all for being here. 2 I wanted to take a little time here in the 3 Executive Director's Report to talk a little bit about 4 where we are with the wrap-up of the election in 5 November. There was a canvass on December 5th, and we 6 have -- and during the 2020-2022 legislative session, 7 the Legislature changed the threshold and made it 8 more -- you know, essentially saying that it was a -- a 9 recount would be required under a higher threshold than 10 previously was there. 11 So we have three state recounts, two 12 statewide ones and one in Legislative District 13. 13 Those are actually ongoing. The -- that requires 14 essentially a court order to start and then -- and then 15 a full set of logic and accuracy tests on those 16 machines that are being used for the tabulation, as 17 well as a hand count audit. 18 Unlike the general election, over the next 19 few weeks you won't be seeing sort of counties record 20 out on a periodic basis as they complete the recount; 21 rather, the results of the recount will be provided to 22 the court directly and then unsealed in open court and 23 then the court, at that point, declares the results of 24 the recount and the winner of the election. 25 That said, we have, you know, a full</p>

<p>1 resolution of the Governor's race, the Secretary of 2 State's race, and others. The inauguration ceremony is 3 scheduled for January 5th. And then the first day of 4 the legislative session, January 9th.</p> <p>5 We learned yesterday -- Gina and I did an 6 interview with some -- an outgoing lawmaker and a 7 government relations expert, and they noticed -- noted 8 two things that were really interesting. One, we'll 9 have a divided government between the Governor and the 10 Legislature for the first time in more than a decade, 11 and something like 50 percent of the Legislature is new 12 to the Legislature, which is a really extraordinary 13 thing.</p> <p>14 And you can see there in the note that, which 15 we'll be working on with voter education, Gina has 16 helped -- has been producing these subject matter 17 expert videos, which we did for the beginning of the 18 election season and we'll be doing those again. We 19 also -- we filmed one with Gina as, obviously, a 20 subject matter expert on post-election materials -- 21 post-election processes, including the recounts, and I 22 think that was pretty well received. I know it got at 23 least out from reporters to folks.</p> <p>24 And we are working -- Alec is working, along 25 with Riester and others, on analysis of the -- of our</p>	<p>1 website because, you know, I think our website has been 2 a -- it's a key tool for us and I think for our 3 outreach to voters because of its effectiveness, and so 4 we want to keep that up.</p> <p>5 You can see that during this interim period 6 Avery has continued to do a number of different 7 outreach activities. I think one he's really happy -- 8 that he enjoyed a lot was the -- serving as a judge for 9 the regional We The People competition, which was held 10 at Corona Del Sol, I believe, last week.</p> <p>11 So I wanted to mention on the candidates, you 12 know, as far as legislative Clean general election 13 candidates, we had -- I think we had at least three -- 14 no -- four candidates at least in the Legislature, I'm 15 not sure we got higher than that. And then we have the 16 two Corporation Commission candidates who were 17 successful. And then we had, you know, one other 18 statewide Clean Elections candidate, who was 19 Superintendent Hoffman, who was not successful in her 20 reelection.</p> <p>21 I want to take -- real quickly I wanted to 22 mention a few legal issues there. We did have an oral 23 argument on November 15th in a case called Legacy 24 Action Fund versus Clean Elections. That is a case 25 that arises from an enforcement the Commission</p>
<p>1 undertook, if you can imagine this, before, I think, 2 every Member of the Commission was appointed except for 3 Commissioner Titla, which is really hard to believe, so 4 a kind of Bleak House quality.</p> <p>5 Anyways, that -- the issue before the Supreme 6 Court is whether or not -- if a defendant -- or, a 7 petitioner, rather, in this case, fails to appeal an 8 administrative order within the time allotted by 9 statute, if they nevertheless can collaterally, that is 10 to say, outside of the previous proceedings, get out 11 from under that order by asserting that the 12 administrative agency lacks subject matter jurisdiction 13 over the object of the enforcement.</p> <p>14 So we -- it was a six-judge panel of the 15 Supreme Court. Justice King recused herself. Justice 16 Lopez also recused himself, but Justice Pelander -- or, 17 former Justice Pelander sat in his stead. And so we'll 18 have a result hopefully -- well, sometime next year.</p> <p>19 We did wrap up -- or, Mary is here. So thank 20 you, Mary, for all of your assistance on this. We did 21 wrap up the Clean Elections Commission versus Jennings 22 with a permanent injunction barring the defendant in 23 that case and her affiliates from using Clean Elections 24 marks.</p> <p>25 I want to quickly mention that there are</p>	<p>1 some what I -- they're post-election lawsuits. There's 2 at least three; I think there might be a fourth. You 3 know, those are -- I'm not sure what to say about them 4 in the sense that I'm -- I don't -- I don't -- it's a 5 difficult problem, they're -- particularly the 6 challenge that comes -- arises out of the Governor's 7 race. Because on the one hand, if you're, for example, 8 reporting on that to the public as a -- as a reporter, 9 you are going to follow the procedural aspects of that 10 along just like, that's the story. This is what 11 happened. The judge set a briefing schedule. The 12 judge set a hearing date. You know, those kind of 13 things.</p> <p>14 The problem is, and this is a real issue, 15 that those procedural steps, that those of us who 16 are -- either been attorneys or spend a lot of time 17 with legal processes know, are just what you have to do 18 when someone files a lawsuit in order to -- regardless 19 of the merits of the lawsuit, take on something like a 20 meritorious kind of aspect by virtue of the fact 21 they're being reported.</p> <p>22 You know, setting aside the AG litigation, 23 which is Kentch v. Mayes, because of the recount, and 24 so I just don't feel like I want to talk about that 25 very much, the Lake versus Hobbs and Fincham versus</p>

<p>1 Fontes cases are -- they're not plausible lawsuits and 2 they're not going to result in anything remotely like 3 what the plaintiffs in those cases are demanding. 4 There's not a legal mechanism for that. There's not an 5 evidentiary mechanism for that. 6 And so I think, you know, one of the things 7 we'll continue to have to work on, and everybody who's 8 involved in elections will have to work on, is the fact 9 that when you sue the folks who count ballots, you put 10 those people in -- those folks in a position where 11 they're having to defend their own work, right. That's 12 an area in which there's a serious -- it's a voter 13 education problem because the attention this lawsuit 14 will get naturally, by virtue of the proceedings that 15 have to occur whether it's meritorious or not, give it 16 weight to which the pleadings in those two matters are 17 simply not entitled. And so I think it's just 18 something that we'll have to keep our eye on. 19 I think that that kind of wraps up my -- my 20 report. And so, Commissioners, if you have any 21 questions for me or anybody else on staff, please fire 22 away. 23 CHAIRMAN MEYER: Commissioners, any questions 24 for Tom on the Executive Director Report? 25 (No response.)</p>	<p>1 CHAIRMAN MEYER: Tom, I had a question on the 2 timing of the Lake Hobbs suit or some of these suits. 3 Don't they need to be heard within something like 15 4 days so they can be resolved before the inauguration? 5 MR. COLLINS: Yeah, that's -- Chairman Meyer, 6 yes, that's correct. These are -- these are on a -- on 7 a tight timeline. If they were to go to a hearing, for 8 example, the judge has five days to resolve the case. 9 They had to be filed within five days of the canvass. 10 Yeah, so, you know, these are fast-moving pieces of 11 litigation. 12 You know, there's a motion to -- motions to 13 dismiss in the Lake case and the Fincham case. The 14 schedule for that has been set. I think the Fincham 15 case is ahead on their -- on when they'll have a 16 hearing. And then there will be a hearing on the PI -- 17 I'm sorry -- on the motion to dismiss, I think, on 18 Monday in the Lake case, and the briefing will be 19 completed over the weekend, right. So the motion to 20 dismiss is due either today or tomorrow, the response 21 is due on Saturday, the replies on due on Sunday, the 22 hearing is on Monday. So, you know, it's a -- 23 There was a pretty good story on the Arizona 24 Mirror website, which I can refer you to if you want to 25 read it, of some legal experts assessing these cases.</p>
<p>1 And, you know, one of the things that one of the 2 lawyers, and I tend to agree with this, pointed out is 3 that knowing the way the allegations are made in the 4 Lake matter, there would be simply no way to answer the 5 complaint because of the -- it's pled in such a sort of 6 ham-fisted and illogical and actually incorrect manner. 7 I mean, you'd be denying something in an answer, but 8 you'd be denying something that like -- it's just 9 like -- I don't even know how you could formulate a 10 response to it. 11 CHAIRMAN MEYER: Any other questions? Thank 12 you, Tom. Any other questions on the Executive 13 Director's Report? 14 (No response.) 15 CHAIRMAN MEYER: Okay. Thank you. We're 16 going to move on to Agenda Item No. IV, which is 17 discussion and possible action on overview of 18 Proposition 211 from Campaign Legal Center Action. 19 Proposition 211 was approved by voters and 20 became effective with the official canvass on 21 December 5th. According to the Act's text, the new 22 law, known as the Voter Rights -- Voters' Right to Know 23 Act, requires public disclosure of the identity of all 24 donors who give more than \$5,000 to fund campaign media 25 spending in an election cycle and the source of those</p>	<p>1 monies. The Commission is charged with enforcement of 2 this Act, which sets minimum penalties, authorizes the 3 Commission to take complaints and to develop rules, 4 among other things. 5 Campaign Legal Action is a nationally known 6 organization that works on campaign finance reform and 7 election reform. They were deeply involved in the new 8 Act, so we have asked them to give us a brief overview 9 of what they see as the key points of the Act. So 10 joining us are David Kolker and Elizabeth Shimek -- and 11 I apologize if I mispronounced either of your names, 12 please correct me -- and they are both with Campaign 13 Legal Action. 14 David has spent 20 years with the Federal 15 Election Commission before joining Campaign Legal in 16 2016. He has litigated important campaign finance 17 cases, such as Citizens United and SpeechNOW. 18 Elizabeth served as chief staff in the 19 Wisconsin Legislature, has worked on a number of 20 efforts to promote public engagement in the legislative 21 process and against efforts to undermine democratic 22 principles. She practiced political law before joining 23 Campaign Legal Action. 24 So with that, David and Elizabeth, thank you 25 so much for joining us. You have our attention. And</p>

<p>1 then once you've completed, we'll see if any of the 2 Commissioners have questions. So, again, thank you so 3 much and the floor is yours, so to speak.</p> <p>4 MR. KOLKER: Well, thank -- first of all, 5 thank you for inviting us on behalf --</p> <p>6 CHAIRMAN MEYER: You're very welcome.</p> <p>7 MR. KOLKER: -- of me and Beth. It's a 8 pleasure to be with you. And yes, I have been involved 9 with campaign issues -- campaign finance issues since 10 1994, so I've seen the various cycles.</p> <p>11 So what we wanted to do this morning is to 12 give you a brief overview and then take your questions, 13 because I assume you'll have some, and if not today, 14 sometime in the future as you dig further into it. We 15 assume that you've been provided a memo that we wrote 16 about Prop 211, as well as a frequently asked questions 17 document that goes into quite a bit of detail. So with 18 that, let me -- let me give you my half of the 19 interview, and then I will turn it over to Beth.</p> <p>20 In our view, what the Act really does is 21 restore campaign finance disclosure laws to what they 22 were always supposed to be. When the Supreme Court 23 upheld disclosure in 1976, and it has continued to 24 uphold disclosure -- just a footnote. In Citizens 25 United, although we lost, when I was at the FEC, the</p>	<p>1 spending limit in that case, the court upheld 2 disclosure eight to one. And what the court said in 3 1976 and has continued to say is that these disclosure 4 laws provide voters with important information, and 5 therefore, that's one of the main reasons they're 6 constitutional.</p> <p>7 They help people evaluate the messages they 8 hear. They help people evaluate the candidates who are 9 running, to know the money who's behind the candidates. 10 They also help to prevent corruption; because if big 11 money is exposed to the light of day, people will be 12 less likely to engage in favors for campaign 13 contributions. And finally, it helps the government, 14 folks like you, enforce campaign finance laws if you 15 have the data so that you can check whether people are 16 abiding by the law.</p> <p>17 So the focus of Prop 211 is on big donors, 18 those who give more than \$5,000, and on the 19 intermediary process, where the money is just passed 20 along from person to person. It does not limit 21 expenditures, it does not limit contributions. We 22 believe it's clearly constitutional, it goes back to 23 why these laws were passed in the first place, and it 24 is very narrowly tailored to prevent circumvention of 25 disclosure requirements.</p>
<p>1 The basic structure works like this. Lots of 2 defined terms; it's a statute. If you are a covered 3 person, you're somebody who spends more than \$50,000 in 4 Arizona on statewide campaigns or \$25,000 on other 5 campaigns, and you need to file reports about your 6 spending and you need to report the original source, 7 the original monies that were used for campaign media 8 spending.</p> <p>9 Campaign media spending is primarily focused 10 on various kinds of public communications: Ads that 11 expressly advocate for or against candidates; that 12 refer to a candidate in the window before the 13 elections; that promote or attack candidates. It does 14 cover ballot measure spending, so messages that promote 15 or attack ballot measures are included.</p> <p>16 And it does include certain partisan voter 17 activity. So if you do a get out the vote drive, but 18 you're only trying to drive, you know, Republicans or 19 Democrats to the polls, that is also included in the 20 definition of the campaign media spending, as well as 21 any underlying costs that were incurred to do that 22 work. So if you have a TV commercial, it's not just 23 the money that you spend to get it on the air, but the 24 money that you spent to produce the ad.</p> <p>25 If you're an individual and you're just</p>	<p>1 spending your own money to advocate somebody's 2 candidacy or you're just contributing your own money to 3 a covered person who's doing campaign electioneering, 4 you don't really have to do anything under this Act. 5 It doesn't -- doesn't require you to report anything to 6 the government.</p> <p>7 And the Act does have a special provision to 8 cover unions and membership organizations. The idea is 9 that if somebody gives less than \$5,000 in union dues 10 or if they're members of the Chamber of Commerce, for 11 the public it's more important to know that that money 12 is being spent by the union or the Chamber of Commerce 13 and not to trace it back to the individual dues-paying 14 members. But it does have a \$5,000 cap so that it's 15 not used as subterfuge, so that an organization doesn't 16 say, gee, everybody should pay a hundred thousand 17 dollars in dues and then we'll spend it in our name. 18 So it would require tracing back if an organization is 19 collecting more than \$5,000.</p> <p>20 One of the key aspects of the Act is the way 21 it treats donors, in terms of giving them notice and 22 putting certain obligations on them, and this is 23 because it does intend to trace back to the original 24 source of the money.</p> <p>25 If you're a covered person and you're raising</p>

<p>1 money for campaign media spending, when you go to 2 donors to get money, if you want to use the money you 3 receive for campaign spending, you need to let the 4 donors know that you intend to spend the money that way 5 in Arizona and that donors have a right to opt out so 6 that their money is not used that way. As the covered 7 person you don't need to have separate bank accounts, 8 but you do need to keep track of who has opted in and 9 who has opted out.</p> <p>10 It does give the covered persons a lot of 11 flexibility in terms of timing. So, for example, say 12 you're an interest group and you're raising money in 13 January and you really don't expect to spend any money 14 on campaigns, but come August some horrible person is 15 running and you want to try to defeat that person. You 16 can go back to your donors then, the big ones, right, 17 the ones who gave more than \$5,000, and say, you know, 18 you gave us \$20,000. We'd like to run a campaign 19 against this person. I didn't notify you at the time 20 that I wanted to use it that way. I'm notifying you 21 now. You have a right to opt out. So that money can 22 be collected in one month, but the notice could be 23 provided later on, so that you don't have to, if you're 24 an interest group, always tell people that you might 25 use that money that way, because maybe you don't know</p>	<p>1 yet.</p> <p>2 If you are one of these big donors who give a 3 covered person more than \$5,000 and if you don't opt 4 out, then the covered person is going to say to you, 5 okay, are you the original source of this money or did 6 it come from somebody else. If you're an individual 7 and you earned that money with your salary or whatever 8 or if you're a business and you earned that money 9 selling whatever products you sell, you say, yes, I'm 10 the original source of that money.</p> <p>11 But if you got the money from somebody else 12 and you didn't earn it yourself, then you're not the 13 original source and you have to tell the covered person 14 where that money came from and how it was passed along. 15 So that if you're an interest group -- say you're an 16 interest group that got a hundred thousand dollars from 17 another interest group or from some rich person. 18 You're not the original source, and when you pass money 19 along to the covered person you need to reveal who the 20 original source is.</p> <p>21 Now, it does give donors quite a bit of 22 flexibility, because the donor only has to tell the 23 covered person the original source of the money being 24 contributed, not all of the money in the donor's 25 possession. So let me give you an example of that.</p>
<p>1 Let's say you're an interest group and you've collected 2 a hundred thousand dollars in four \$25,000 donations, 3 so you have a hundred thousand dollars in your treasury 4 that is not original to you, you got it from four big 5 donors to you, and you want to pass on \$25,000 to a 6 super PAC, who's going to spend it on elections.</p> <p>7 The super PAC, when they get your \$25,000 8 donation, is going to say, where did it come from. And 9 you're going to have to say, well, it's not original to 10 me. I got it from Kolker. And the first \$25,000 that 11 the interest group passes on, that group gets to 12 decide, okay, I have a hundred thousand dollars. Whose 13 money am I passing on? I don't have to reveal where 14 all of the hundred thousand dollars that I've got in my 15 account came from; I just have to reveal where the 16 \$25,000 that I'm passing on came from.</p> <p>17 And the interest group may say, you know, 18 Kolker believes in this organization that I'm giving 19 the money to. I'm going to tag the 25,000 I got from 20 him as the original source of the contribution being 21 donated to the super PAC.</p> <p>22 So that gives the donor a lot of flexibility, 23 some may argue too much flexibility. And I would just 24 point out that if that interest group is sitting on a 25 hundred thousand dollars, if it wants to give away all</p>	<p>1 a hundred thousand dollars to covered persons, like 2 super PACs, it will eventually have to reveal the 3 original source of all 100,000. But if it's only 4 giving away a subset of that money, say, the first 5 25,000, it seems fair that they should get to choose, 6 among the funds that they, have who is the most 7 appropriately tagged as the original source of that 8 money.</p> <p>9 And we think that that doesn't create a dark 10 money problem because, again, if all of the money 11 that's given away -- if all of the money that the 12 interest group has is eventually given away, it will 13 all eventually be revealed. And if it's not ever spent 14 on campaign media spending, why should they have to 15 reveal all of the money in their treasury. So that's 16 one of the key ways that this Act is very narrowly 17 tailored.</p> <p>18 So I am going to stop here and pass it over 19 to Beth, who will talk more about your role in all 20 this, and then we really hope you'll have questions and 21 that we can try to answer them for you. And again, 22 thank you for inviting us.</p> <p>23 MS. SHIMEK: Thank you, David. Hard act to 24 follow, but I have the privilege of discussing 25 implementation of the Act and the new powers and</p>

<p>1 responsibilities that the Act provides to the 2 Commission. 3 You'll see, in practice, some things won't 4 necessarily change substantially after the Voters' 5 Right to Know Act. For example, PACs who already do 6 regular periodic reporting can largely stick with the 7 schedule that's already been established and include 8 this original source information within those reports. 9 In other places the Act provides the Commission with 10 additional powers and responsibilities, primarily 11 relating to these new trace-back authorities. The Act 12 is very specific about some of the Commission's powers 13 and very general about many others. 14 So I'll start by running through the seven 15 general powers that the Commission is provided with in 16 the Voters' Right to Know Act: That's the ability to 17 adopt and enforce rules; the ability to issue and 18 enforce civil subpoenas; the ability to initiate 19 enforcement actions and conduct fact-finding hearings 20 and investigations; the ability to impose civil 21 penalties for noncompliance; the ability to seek legal 22 and equitable relief in court; and the ability to 23 establish recordkeeping requirements. So these are the 24 general powers that are given to the Commission in the 25 Act.</p>	<p>1 The Act also includes some very specific 2 powers for the Commission. I'm going to highlight four 3 key areas here. First and foremost, the Commission is 4 required to establish top three original source donor 5 disclaimer requirements for any public communications 6 that are done by covered persons. These top three 7 donors are those who directly or indirectly made the 8 three largest contributions of original monies during a 9 single election cycle to the covered person. 10 In addition, the Act also requires the 11 Commission to develop a means for this disclaimer 12 information to be shared with an ad's audience, even if 13 it's not technologically feasible to include all of 14 that information on the face of the ad. For example, 15 if I receive an ad via text or social media message or 16 if I see it in a little banner at the top of a web 17 page, it might not be possible to fit all three 18 personal names or organizational names of the three top 19 original source donors on the face of that little tiny 20 banner. The Commission is given the power to develop 21 the means for that information to be shared with the 22 audience, even if it's not directly on that ad in the 23 immediate moment. 24 And these top donor disclaimers are not new. 25 They have been implemented successfully in other states</p>
<p>1 and localities. This combines them with this original 2 source trace-back and -- and it gives that fuller 3 picture of who the source of the funds are in the 4 disclaimer instead of hiding behind a series vaguely 5 named organizations. CLC has developed approaches to 6 addressing top three donor disclosure, and we're happy 7 to be a resource during the rulemaking process if the 8 Commission has questions. 9 The next power I want to touch on is the 10 Commission's standing to defend the Act on behalf of 11 the State in the case of legal action and the fact that 12 the Commission has the exclusive right to select 13 counsel to represent the Commission. And that's in 14 regards to lawsuits that might arise as to the 15 Commission's duties under the chapter or when it comes 16 to challenges to the general validity of the law. 17 The third specific power granted to the 18 Commission is the ability to adjust contribution 19 expenditure thresholds to reflect inflation. And this 20 empowers the Commission to keep the Act current, 21 relevant, up to date with inflation in Arizona without 22 requiring additional legislation. 23 The fourth and final power I want to touch on 24 is the Commission's ability to provide an exemption 25 from original source disclosure for those original</p>	<p>1 source donors who can demonstrate that they or their 2 family members face a serious risk of physical harm if 3 their identity were to be disclosed. And this is not a 4 new concept. The Supreme Court has long provided for 5 these protections for donors if they're facing a 6 serious risk of harm. This provides the Commission 7 with the ability to grant that exemption directly, as 8 opposed to forcing someone to sue in court in order to 9 keep their identity secret in the case of that serious 10 risk of harm. Those are kind of the four key specific 11 powers provided. 12 The final place I want to touch on in regards 13 to implementing the Act is a little bit different. 14 It's the creation of a verified public complaint 15 process. This allows any qualified Arizona voter to 16 file a verified complaint with the Commission alleging 17 that a person has failed to comply with the Act. This 18 is very similar to the citizen complaint process for 19 the FEC under FECA, the federal level. If the 20 Commission were to dismiss a complaint or fails to take 21 substantive enforcement action within a certain period, 22 the complainant is empowered to bring a civil action 23 against the Commission in court to pursue the alleged 24 failure to comply with the Act. 25 So in summary, as you implement the Voters'</p>

<p>1 Right to Know Act, some things are not necessarily 2 going to change substantially, particularly in terms of 3 reporting for many PACs. The Commission is granted a 4 broad array of powers to implement and enforce the Act 5 and a number of specific powers and responsibilities, 6 including top three donor disclaimers. There's also 7 the creation of this verified public complaint process, 8 similar to the FEC.</p> <p>9 If David has any further thoughts to add, I'm 10 happy to hand it back to him; otherwise, we'd be happy 11 to take any questions.</p> <p>12 MR. KOLKER: No, Beth, I have nothing to add 13 on your half, so we're here to answer whatever 14 questions you may have.</p> <p>15 CHAIRMAN MEYER: Thank you, David. I had a 16 question on the trace-back process. And if the -- if 17 the donor -- does the Act give you the authority to 18 actually get back to a human being, as opposed to just 19 a business? For example, like if it's an LLC -- you 20 know, in Arizona, for an LLC, there's a statutory 21 requirement that you have to disclose any member that 22 owns 20 percent or more of that LLC. So like in this 23 Act let's say if the original source of the funds is an 24 LLC, we may not be able to know who -- you may not know 25 who those members are. I know in some states you don't</p>	<p>1 have to disclose who any of those members are, like I 2 believe in Delaware. Is there a way -- does this Act 3 require -- does it allow you to get to the human beings 4 that are part of that LLC or company, or do you just -- 5 are you just stuck with the -- with the entity?</p> <p>6 MR. KOLKER: I think that's something that 7 you'll be able to focus on in implementation. I think 8 the answer is yes, that you can, and here is why. If 9 you look at the definition of original monies, it's 10 either personal funds or business income. And business 11 income is income, you know, earned by an entity in its 12 normal course of business. So if you have an LLC -- I 13 guess it depends upon what kind of LLC you have. If 14 you have an LLC that is a genuine business and it's 15 selling widgets, and they're literally using their 16 profits from that and giving it to a covered person, 17 then the LLC would be considered the donor and that 18 would be the end of it. But if the LLC is essentially 19 a front group, where I've set up an LLC, I've fed it 20 \$3 million, and it really isn't much of a business, 21 then the LLC isn't passing on money that it earned in 22 the normal course of business. It's passing on money 23 as a conduit.</p> <p>24 So I think it would depend upon whether the 25 LLC is a bona fide business or not. So that if it's a</p>
<p>1 bona fide business -- I mean, this is something I think 2 you'll have to decide as you interpret it. But my 3 interpretation would be if the LLC is a bona fide LLC 4 and it's really earning money in the marketplace and 5 that's the money it's giving, then that is the original 6 source. But if it's being used as a front group, which 7 is a common scheme in the dark money --</p> <p>8 CHAIRMAN MEYER: Right.</p> <p>9 MR. KOLKER: -- world that we're living in, 10 then you can pierce the veil and go back.</p> <p>11 CHAIRMAN MEYER: And then for Elizabeth I had 12 a question on the exemption of original source donors. 13 I guess historically how often or to what extent has 14 that exemption been requested or implemented? And 15 given the last, you know, three, four years and our 16 political climate now in this country, is it -- is it 17 being used more than it was previously?</p> <p>18 MS. SHIMEK: I can speak to this to the best 19 of my ability.</p> <p>20 CHAIRMAN MEYER: Sure.</p> <p>21 MS. SHIMEK: David may have additional 22 thoughts given his long history dealing with campaign 23 finance law.</p> <p>24 While this is not a new exemption, it has 25 been applied in some cases, most prominently to the</p>	<p>1 NAACP. That said, my understanding is it is not a 2 commonly applied exemption and I'm not personally aware 3 of any recent uses of it. Although, given that it is 4 meant to protect donors who might face a serious risk 5 of harm, that may not be public information.</p> <p>6 MR. KOLKER: Let me jump in. It does -- it 7 does -- as Beth said, the original concept with the 8 NAACP was actually not in the campaign finance context, 9 but it is the first time the court recognized it back 10 in a case in the 1950s.</p> <p>11 It has not been litigated very much. The 12 Socialist Workers Party brought a case that they won 13 before the Supreme Court. And then over time they went 14 to the -- this is at the federal level. They would go 15 back to the Federal Election Commission every two years 16 and say, we want to keep our exemption, and for years 17 the Commission allowed them to. But I'm not exactly 18 sure of the timing, maybe 10 years ago or so the 19 Commission decided, you know, the Socialist Workers 20 Party just isn't as vulnerable as they may have once 21 been during, you know, the 1950s, so they don't have an 22 exemption anymore.</p> <p>23 Most of the cases that have been brought 24 about this have been rather weak, where people who were 25 very wealthy have tried to say, you know, my business</p>

<p>1 is going to get harassed or whatever, and the courts 2 just haven't really equated that with the NAACP, where 3 you had individual people, you know, being physically 4 threatened or harmed.</p> <p>5 So the short answer is: It hasn't been 6 litigated much. And it's tended, in recent years, to 7 be used as a sort of tool, frankly, for people who want 8 to evade disclosure, who may not like being trolled 9 online, but don't really face the kind of serious harm 10 equivalent to what the NAACP faced in the 1950s.</p> <p>11 CHAIRMAN MEYER: Thank you. Any other of the 12 Commissioners have questions?</p> <p>13 COMMISSIONER KIMBLE: Mr. Chairman, this is 14 Commissioner Kimble.</p> <p>15 CHAIRMAN MEYER: Go ahead.</p> <p>16 COMMISSIONER KIMBLE: Elizabeth, I have a 17 question for you. In your discussion of the powers 18 that the Commission is granted through this, you 19 mentioned the amount that candidates get for running as 20 a Clean Elections candidate. And is it my 21 understanding that the Commission now can adjust those 22 amounts, the amount of funding a candidate who opts for 23 Clean Elections funding receives?</p> <p>24 MS. SHIMEK: I apologize. This applies to 25 the contribution and expenditure thresholds that are</p>	<p>1 discussed only in regards to the trace-back, the 2 original source trace-back contained within the Voters' 3 Right to Know Act. So there are thresholds that 4 require reporting that's -- you know, any contribution 5 of more than \$5,000 triggers that original source being 6 named in a report.</p> <p>7 COMMISSIONER KIMBLE: Okay.</p> <p>8 MS. SHIMEK: This provides the Commission 9 with the ability to adjust that amount as inflation 10 changes the value of the money in that contribution.</p> <p>11 COMMISSIONER KIMBLE: Okay. I'm sorry. I 12 misunderstood what you said then. Thank you.</p> <p>13 That's all, Mr. Chairman.</p> <p>14 CHAIRMAN MEYER: Thank you. Commissioner 15 Paton, do you have any questions?</p> <p>16 COMMISSIONER PATON: I have a question, but 17 it may be for Tom. Is this going to change our 18 staffing? Do we have the staff to follow this and how 19 does that really affect us, setup?</p> <p>20 MR. COLLINS: Sure. Mr. Chairman, 21 Commissioner Paton, so that's something we're looking 22 at. We -- in the interim period before the canvass, 23 we asked the Attorney General's Office to appoint 24 Mary O'Grady at Osborn Maledon to work with us on this, 25 in addition to the other resources we have. That's</p>
<p>1 sort of where we're starting. What we anticipate doing 2 in the first quarter of next year is a process that 3 involves, you know, first assessing what the rulemaking 4 needs to look like, kind of getting a handle on that 5 first.</p> <p>6 There are some serious technological 7 improvements that will be required of the Secretary of 8 State's Office. Those are similar to the technological 9 improvements that have consistently been required of 10 the Secretary's Office for the last decade that they 11 haven't undertaken. That's a serious -- so those are 12 the two first things.</p> <p>13 Third, on the staffing aspect of it, you 14 know, we're going to have to look at the volume of 15 complaints. Our volume of complaints at the Commission 16 over the course of the last 10 years has dropped 17 dramatically. We -- I think in 2014, which was really, 18 prior to this Act, the last time the Commission and the 19 Secretary's Office together both worked fairly -- this 20 was an active issue, it was a public issue, there were 21 lots of complaints happening, and it was something that 22 the Secretary's Office and we were working on on a 23 consistent basis, you know, I think we -- I want to say 24 -- I'm going to end up overshooting, but I think we had 25 30 or 40 complaints in the 2014 cycle. This year we've</p>	<p>1 had seven, and that includes Clean candidates.</p> <p>2 So it's going to take time. It'll take, I 3 think, an assessment of where the money is being spent, 4 that is to say, if you were to look at the 2022 and 5 2020 election cycle, how many people -- how many PACs 6 that we know of were over the threshold, how many 7 spenders who either filed trigger reports required 8 already under the Clean Elections Act or 9 (unintelligible) would have been at the state level.</p> <p>10 And then I think the other question that we get into is 11 there's some local, that is to say, county and city 12 races that will fall under this that would not have 13 previously been on our radar. So I think that if we -- 14 if we take a look at those inputs, we can start to make 15 some decisions about that.</p> <p>16 We are not planning, frankly, on an immediate 17 hiring sort of spree, if you will. We really look -- 18 the way we see it -- and obviously, we're in the 19 relative beginning of this. And the way we sort of 20 understand the Act and the intentions, and I'm open to 21 be corrected on this by David or Elizabeth, but the key 22 really becomes 2024. We need to -- there are -- there 23 are a number of implementation decisions on the 24 rulemaking and technological side that need to be in 25 place by 2024. There will be elections in 2023 that</p>

<p>1 may or may not fall under the requirements of the Act, 2 and those we're going to have to sort of assess on an 3 ongoing basis. 4 So I'm sorry if that's kind of a long, 5 indirect answer, Commissioner Paton, but the answer 6 is -- 7 COMMISSIONER PATON: It's rather 8 bureaucratic. 9 MR. COLLINS: Right. We have a -- we have a 10 process -- we envision a process to get to the answer, 11 and then when we get there we'll be able to make some 12 better recommendations. 13 COMMISSIONER PATON: But you don't sound 14 intimidated by it, that's -- I guess that's -- is this 15 going to be a daunting thing or not? 16 MR. COLLINS: Well, my personal view is that 17 with our staff and legal resources, Mary and Kara and 18 Mike in particular and myself, I mean, we have, you 19 know, had a lot of involvement in this issue in 20 Arizona. And people can quibble about what we've done 21 and what we propose, for example, we have one on the 22 Agenda, a proposed resolution on a case, those kinds of 23 things. But, you know, we believe as staff that we 24 have, and we think the regulated community believes 25 this too, that the Clean Elections Commission has been</p>	<p>1 the serious agency in the state with respect to the 2 disclosure obligations that exist in state law and 3 making sure at least those disclosure obligations are 4 met. 5 And so I am not particularly -- I mean, I 6 have -- I'm not overconfident, but I am confident that 7 with the -- some of the legal -- I hesitate to say even 8 doubts, but legal clouds that have been put on some of 9 the Commission's existing expressed authority over 10 independent spending cleared by this Act that we're in 11 a position to have -- to implement it effectively. And 12 I think, you know, obviously, although all of you are 13 in holdover status, and we all hope at some point 14 you'll begin a -- they'll begin a process of replacing 15 Commissioners, so long as you all are here and your 16 experience with, you know, a variety of different 17 enforcement actions, litigation actions in this niche 18 over the past decade, I mean, I feel like I'm hopeful 19 that the voters knew or at least had constructive 20 knowledge that the folks who would be -- at least the 21 current people who would be responsible for 22 implementing this would do an okay job of it. 23 COMMISSIONER PATON: Okay. Then I have a 24 question for our presenters. Do you foresee this 25 cooling donations or not?</p>
<p>1 MR. KOLKER: It's a little hard to say. I 2 mean, I think there are people who give dark money who 3 will give less if it has to come to light, but I think 4 that there are a lot of people who give dark money, 5 probably the majority, who will just say, okay, now I 6 can't do it in the dark anymore. And I think that 7 because there is some flexibility built into this Act, 8 as I mentioned, if you're sitting on a bunch of money 9 and you're only giving away a subset of it to a covered 10 person who has to do -- who has to do reporting, you 11 can tailor the money that you have to be given to 12 somebody who's going to disclose it in a way that, you 13 know, is less likely to chill your donors. But I'm 14 kind of speculating here. 15 You know, the people who, like us, who are 16 for this kind of disclosure, we're sort of -- it's not 17 meant to chill spending or not. It's just meant to 18 give voters the information that they deserve. 19 You know, one thing to keep in mind, in 1976, 20 when the Supreme Court upheld disclosure, they 21 recognized that it might chill some donors. And they 22 said, this is constitutional nevertheless, because it 23 was so important that people have this information. So 24 there could be some chilling; I don't believe that that 25 will matter in terms of defending the statute.</p>	<p>1 COMMISSIONER PATON: And are we the guinea 2 pigs, are we experimental, or how do you see that? 3 MR. KOLKER: Yes and no. Alaska passed a 4 ballot measure a couple years ago that does also 5 involve tracing back to the true source. We have been 6 involved in helping to defend the law there, and we won 7 at the trial level and now it's before the ninth 8 circuit on appeal. Rhode Island recently successfully 9 defended its top three donor disclaimer before the 10 first circuit court of appeals. So so far these laws 11 have been upheld. I would say that I think that the 12 Voters' Right to Know Act is actually a bit easier to 13 defend than the law in Alaska because it has the donor 14 notice and opt-out provision, which the Alaska 15 provision does not. So I think that that will give 16 Arizona a leg up on defending it. I don't doubt there 17 will be challenges, but I'm quite optimistic that the 18 courts will uphold it. 19 COMMISSIONER PATON: Thank you. 20 CHAIRMAN MEYER: Thank you, Commissioner 21 Paton. 22 Any other Commissioners have any questions 23 for our guests? 24 (No response.) 25 CHAIRMAN MEYER: Okay. Hearing none, I want</p>

<p>1 to again thank David and Elizabeth for being with us</p> <p>2 today and providing the information. It was very</p> <p>3 helpful. Thank you so much, and we -- we may take you</p> <p>4 up -- likely will take you up on your offers to help in</p> <p>5 implementation, so we will probably be speaking with</p> <p>6 you again.</p> <p>7 MR. KOLKER: Okay. Well, again, thank you so</p> <p>8 much for inviting us. And our offer for additional</p> <p>9 question and answering or assistance was genuine and</p> <p>10 heartfelt, so I hope this is just the beginning of our</p> <p>11 conversations.</p> <p>12 MS. SHIMEK: Thank you.</p> <p>13 CHAIRMAN MEYER: Thank you.</p> <p>14 Okay. So now we will move on to Agenda Item</p> <p>15 No. V, which is discussion and possible action on staff</p> <p>16 recommendation of conciliation agreement MUR 22-01,</p> <p>17 Freedom's Future Fund.</p> <p>18 This item relates to a matter that the</p> <p>19 Commission made a reason to believe determination on in</p> <p>20 August. The staff is recommending conciliation</p> <p>21 agreement; that was in our materials. Tom, is there</p> <p>22 anything you would like to add on this?</p> <p>23 MR. COLLINS: Mr. Chairman, just briefly.</p> <p>24 And I -- you know, I went almost an hour without a</p> <p>25 technological breakdown, but the computer I'm working</p>	<p>1 on just --</p> <p>2 CHAIRMAN MEYER: Don't jinx it.</p> <p>3 MR. COLLINS: No, it just crashed. It</p> <p>4 literally just --</p> <p>5 CHAIRMAN MEYER: Oh, okay.</p> <p>6 MR. COLLINS: I've got a message. I do not</p> <p>7 understand where my notes are supposed to be, so give</p> <p>8 me one second.</p> <p>9 CHAIRMAN MEYER: Gotcha. Well, the</p> <p>10 conciliation agreement, it looks like it's a settlement</p> <p>11 for a payment of \$45,000 --</p> <p>12 MR. COLLINS: Yes.</p> <p>13 CHAIRMAN MEYER: -- is the monetary amount.</p> <p>14 And I assume has the -- has the Freedom -- I want to</p> <p>15 say their name right -- Freedom's Future Fund, have</p> <p>16 they agreed to this agreement, you're just kind of --</p> <p>17 MR. COLLINS: Yep. Right.</p> <p>18 CHAIRMAN MEYER: -- getting the blessing from</p> <p>19 us? Okay.</p> <p>20 MR. COLLINS: Right. So just to walk through</p> <p>21 where we -- where we were, we anticipate that -- yes,</p> <p>22 we do believe that this will -- that we will -- we will</p> <p>23 have their agreement, and that's why we're recommending</p> <p>24 it to you. We did -- we are recommending the \$45,000</p> <p>25 fine. They will also have to file reports with the --</p>
<p>1 with the filing officer that will encompass their</p> <p>2 spending on -- essentially on Kari Lake-related ads, so</p> <p>3 ads that mentioned the clearly identified candidate of</p> <p>4 Kari Lake.</p> <p>5 You know, obviously we are confident that the</p> <p>6 other part of that reporting plus the other provisions</p> <p>7 of the conciliation relating to ensuring that there was</p> <p>8 not some other relationship, for example, with another</p> <p>9 candidate, you know, or otherwise an effort to evade</p> <p>10 the, you know, contribution limits, that that's an</p> <p>11 important aspect of this as well. We also have an</p> <p>12 agreement from them not to -- not to do business in</p> <p>13 Arizona again; although, I think they will wind up</p> <p>14 fairly quickly after this is completed.</p> <p>15 And then, you know, on the fine, I mean, the</p> <p>16 issue is always -- you know, the new Act sets forth</p> <p>17 some minimums that we don't have in current law, and</p> <p>18 that will be interesting there. One of the things that</p> <p>19 we have found in terms of when we try -- when we</p> <p>20 negotiate a fine are two specific things that -- and I</p> <p>21 only bring it back to what we just talked about because</p> <p>22 these will be different things. First, the strongest</p> <p>23 place for us to stand, in terms of effectiveness of the</p> <p>24 Act, is on the 941(D) reports. The fines on the 941(D)</p> <p>25 reports are only loosely proportional to the amount of</p>	<p>1 the spending because they run on a daily basis.</p> <p>2 Second, when you go into a situation like</p> <p>3 this, especially where you have a corporation that, in</p> <p>4 effect, was created for this purpose, which will be a</p> <p>5 different -- you know, this will be a different</p> <p>6 standard going forward, you essentially, as soon as you</p> <p>7 go into the negotiation process, you're almost in a</p> <p>8 position of being a creditor or -- you know, more than</p> <p>9 anything else in terms of --</p> <p>10 You know, so two problems. So that creates</p> <p>11 two problems. One -- on the one hand, the fine</p> <p>12 schedule itself that's set up in statute is not driven</p> <p>13 by the amount of the spending largely. It's got a --</p> <p>14 it's got literally a second order effect on the amount</p> <p>15 of the fines that cannot really, at a certain point,</p> <p>16 get to a level of a real</p> <p>17 beyond-the-cost-of-doing-business type of number,</p> <p>18 right, and that's just sort of where things are.</p> <p>19 And then relatedly, the way that -- the way</p> <p>20 that these organizations are currently set up, given</p> <p>21 the powers we know we have and we're most confident we</p> <p>22 have under the current regime, we really end up in this</p> <p>23 sort of creditor relationship at the end rather than</p> <p>24 sort of -- than a -- than a -- you know, it's just the</p> <p>25 nature of it.</p>


<p>1 Additionally, our focus has always been on</p> <p>2 trying to get the reports, trying to get the -- trying</p> <p>3 to get the assurance that no other campaign finance</p> <p>4 laws were broken.</p> <p>5 So those are all the factors that go into</p> <p>6 this. We do think that this is on the order of the</p> <p>7 kind of fines that we have issued in similar cases. We</p> <p>8 did one with the teachers union in 2020 that was</p> <p>9 roughly proportional to this, so -- so that's kind --</p> <p>10 those are the factors that we considered, and we think</p> <p>11 that that -- all those things taken together -- and</p> <p>12 then adding, you know, not only the risk of the</p> <p>13 organization essentially winding down in a way we might</p> <p>14 not be able to get to -- in this case, they are, in</p> <p>15 fact, a Delaware LLC -- we run into the litigation cost</p> <p>16 associated with the Legacy Foundation Action Fund case</p> <p>17 where we're literally eight years out and still don't</p> <p>18 have the reports or the fine.</p> <p>19 So, again, you know, I think that all those</p> <p>20 things taken together, you know, favor this</p> <p>21 recommendation, and we make it -- so we make it -- we</p> <p>22 make it pretty unreservedly, but we did want to give</p> <p>23 you, as much as we could, our context for making the</p> <p>24 recommendation.</p> <p>25 CHAIRMAN MEYER: Any other questions for Tom</p>	<p>1 on this conciliation agreement that he's recommending</p> <p>2 the Commission approve today?</p> <p>3 COMMISSIONER KIMBLE: Mr. Chairman, this is</p> <p>4 Commissioner Kimble.</p> <p>5 CHAIRMAN MEYER: Go ahead, Commissioner.</p> <p>6 COMMISSIONER KIMBLE: Tom, I'm not sure I</p> <p>7 understood all of that. So you're saying basically</p> <p>8 that they're going to fold up shop anyway. So is this</p> <p>9 going to be collectible?</p> <p>10 MR. COLLINS: That's precisely the right</p> <p>11 question, Mr. Chairman, Commissioner Kimble. In order</p> <p>12 to ensure we can collect, we will -- we are -- we</p> <p>13 are -- we were willing to accept a slightly -- a</p> <p>14 smaller fine than we would have. With the -- with the</p> <p>15 current -- the existing Act, one of the limitations of</p> <p>16 the existing Act is it does create some incentives</p> <p>17 to -- essentially to go out of business rather than</p> <p>18 collect anything, so that gives leverage to the</p> <p>19 respondent. And we kind of think that that -- you</p> <p>20 know, I mean, so that's why I used the analogy of</p> <p>21 debtor/creditor, because, you know, that's -- that's</p> <p>22 the kind of analysis that you get into when you're --</p> <p>23 when you're trying to -- when you're trying to work --</p> <p>24 make sure that you can collect enough to, you know, at</p> <p>25 least cover the effort put into bringing about the</p>
<p>1 result of the report.</p> <p>2 CHAIRMAN MEYER: So, Tom, yes, we're going to</p> <p>3 collect this 45,000?</p> <p>4 MR. COLLINS: Yeah. I'm sorry. Yes. I felt</p> <p>5 like I -- I felt like there were two questions, one,</p> <p>6 what was I talking about, and two -- but maybe I just</p> <p>7 didn't answer either of them.</p> <p>8 CHAIRMAN MEYER: Just to confirm -- no, you</p> <p>9 know probably said it; I just missed it.</p> <p>10 Commissioner Kimble, go ahead.</p> <p>11 COMMISSIONER KIMBLE: No, that's all. I just</p> <p>12 -- I wasn't clear whether -- how confident we are that</p> <p>13 we're actually going to see this money.</p> <p>14 MR. COLLINS: We are as confident as we can</p> <p>15 be.</p> <p>16 COMMISSIONER KIMBLE: Okay. Thank you.</p> <p>17 MS. KARLSON: Chairman, you're muted.</p> <p>18 CHAIRMAN MEYER: I am sorry. Hearing no</p> <p>19 other questions from Commissioners Paton or Titla, is</p> <p>20 there a motion anyone would like to make regarding the</p> <p>21 conciliation agreement?</p> <p>22 COMMISSIONER KIMBLE: Mr. Chairman.</p> <p>23 CHAIRMAN MEYER: Go ahead, Commissioner</p> <p>24 Kimble.</p> <p>25 COMMISSIONER KIMBLE: I move that we approve</p>	<p>1 the conciliation agreement as outlined in our material</p> <p>2 today.</p> <p>3 CHAIRMAN MEYER: Thank you.</p> <p>4 Is there a second?</p> <p>5 COMMISSIONER PATON: This is Commissioner</p> <p>6 Paton. I'll second.</p> <p>7 CHAIRMAN MEYER: All right. We have a motion</p> <p>8 to approve the conciliation agreement attached to our</p> <p>9 materials and we have a second to that motion, so we'll</p> <p>10 go ahead and vote on that motion and call the roll.</p> <p>11 Commissioner Kimble.</p> <p>12 COMMISSIONER KIMBLE: Aye.</p> <p>13 CHAIRMAN MEYER: Commissioner Paton.</p> <p>14 COMMISSIONER PATON: Aye.</p> <p>15 CHAIRMAN MEYER: Commissioner Titla.</p> <p>16 COMMISSIONER TITLA: Aye.</p> <p>17 CHAIRMAN MEYER: And Commissioner Meyer, I</p> <p>18 vote aye as well. The motion carries 4 to zero. The</p> <p>19 conciliation agreement is approved.</p> <p>20 So, Tom, I assume you'll now move forward in</p> <p>21 getting this signed and performed?</p> <p>22 MR. COLLINS: Yes.</p> <p>23 CHAIRMAN MEYER: All right. Thank you. That</p> <p>24 completes that item, correct? All right. Thank you.</p> <p>25 Okay. Item No. VI on the Agenda, discussion</p>

<p>1 and possible action on adoption of rule amendments to</p> <p>2 Arizona Administrative Code R2-20-211, R2-20-220, and</p> <p>3 R2-20-223 relating to compliance and enforcement</p> <p>4 procedures.</p> <p>5 A few months ago we approved seeking public</p> <p>6 comment on some administrative rule changes intended to</p> <p>7 clarify some procedural steps in the event of</p> <p>8 investigatory enforcement activity. We all have the</p> <p>9 rule language in our packet. We have not received any</p> <p>10 public comment, written public comment. Is there</p> <p>11 anyone here who would like to make comments before the</p> <p>12 Commission discusses approval of these amendments? And</p> <p>13 again, that's directed to the public. Is there any</p> <p>14 member of the public who would like to make comment on</p> <p>15 any of the proposed changes to the administrative code?</p> <p>16 (No response.)</p> <p>17 CHAIRMAN MEYER: Okay. Do any of the</p> <p>18 Commissioners have any questions or wish to further</p> <p>19 discuss these rules that we -- we've already approved</p> <p>20 these, correct, Tom, and sent them out for comment</p> <p>21 and --</p> <p>22 MR. COLLINS: Yes, so -- yes, you approved</p> <p>23 them for public comment.</p> <p>24 CHAIRMAN MEYER: Yeah.</p> <p>25 MR. COLLINS: We didn't -- we haven't</p>	<p>1 received any. Just so you know, the next step will be</p> <p>2 we will submit these to the Governor's Regulatory</p> <p>3 Review Council.</p> <p>4 CHAIRMAN MEYER: Our friends at GRRC, yes.</p> <p>5 Okay. So any questions or discussion on this</p> <p>6 from my fellow Commissioners?</p> <p>7 (No response.)</p> <p>8 CHAIRMAN MEYER: And if not, is there a</p> <p>9 motion?</p> <p>10 COMMISSIONER KIMBLE: Mr. Chair.</p> <p>11 CHAIRMAN MEYER: Yes, Commissioner Kimble.</p> <p>12 COMMISSIONER KIMBLE: I move we approve the</p> <p>13 proposed rule changes as outlined in our Agenda</p> <p>14 material today.</p> <p>15 CHAIRMAN MEYER: Is there a second to that</p> <p>16 motion?</p> <p>17 COMMISSIONER PATON: It's Commissioner Paton.</p> <p>18 I'll second it.</p> <p>19 CHAIRMAN MEYER: Excellent. We have a motion</p> <p>20 to approve the rule amendment set forth in our</p> <p>21 materials today; that motion has been seconded. I will</p> <p>22 now hold a vote on that motion. I will call the roll.</p> <p>23 Commissioner Kimble.</p> <p>24 COMMISSIONER KIMBLE: Aye.</p> <p>25 CHAIRMAN MEYER: Commissioner Paton.</p>
<p>1 COMMISSIONER PATON: Aye.</p> <p>2 CHAIRMAN MEYER: Commissioner Titla.</p> <p>3 COMMISSIONER TITLA: Aye.</p> <p>4 CHAIRMAN MEYER: And Commissioner Meyer, I</p> <p>5 vote aye as well.</p> <p>6 Tom, any further comment on that? We send</p> <p>7 them to GRRC and we'll hear back from them.</p> <p>8 Okay. Item No. VII is discussing and</p> <p>9 possible action on annual budgetary calculations and</p> <p>10 the 2023 spending plan.</p> <p>11 Every year the Commission considers a new</p> <p>12 calendar budget, calendar year budget, and we must</p> <p>13 approve certain calculations required by law. Again,</p> <p>14 this was Item VII in our materials, if you want to dig</p> <p>15 into those, get those in front of you here. And Mike</p> <p>16 Becker is available for any questions we have.</p> <p>17 So with that, I will turn it over to Mike.</p> <p>18 And then if there are any questions anyone has, now is</p> <p>19 the time.</p> <p>20 MR. BECKER: Thank you, Mr. Chairman,</p> <p>21 Commissioners. I won't take too much of your time, as</p> <p>22 you've all had the opportunity to review the numbers.</p> <p>23 A few areas I do want to point out in the '23</p> <p>24 projections.</p> <p>25 Commissioner Paton, you'd asked about</p>	<p>1 staffing regarding Prop 211 and any issues like that.</p> <p>2 We do have the funds in the budget for that, if it's</p> <p>3 necessary, if that's determined. So we do -- we are</p> <p>4 planning ahead for that just in case.</p> <p>5 Another area you'll see is rent charges. The</p> <p>6 move to our new office has increased our rent by about</p> <p>7 20, \$21,000, so we do have that budget. It's higher</p> <p>8 than it has been in the past, but that's based on the</p> <p>9 new rent.</p> <p>10 And third, if you notice, the revenue</p> <p>11 projections over the next four years, we are only</p> <p>12 projecting about \$5.5 million to be coming in, which is</p> <p>13 a considerable drop from the 7 million which we always</p> <p>14 projected in the past and the 6 million we projected</p> <p>15 last year. So I wanted to bring that to your attention</p> <p>16 so that you're not surprised by that.</p> <p>17 We do -- unfortunately, the numbers continue</p> <p>18 to drop in terms of the revenue we get from the court</p> <p>19 assessments. I think the biggest issue is certain red</p> <p>20 light cameras, things like that that we've had in the</p> <p>21 past that are no longer in existence or that there are</p> <p>22 ways around that. So just to make you aware, our</p> <p>23 revenue going forward is about 5.5 million from '23</p> <p>24 through '26, and I don't -- at this point, I don't see</p> <p>25 that increasing.</p>

<p>1 Lastly, if you look at the actuals, those are 2 not complete for 2022. They're only up through 3 November, which means -- or, I mean, up through 4 October, which means we still have November, December 5 to come in. So once we do, I will be able to give you 6 more up-to-date and complete numbers of what we spent 7 for the 2022 election cycle. 8 Well, with that -- those are the areas I 9 really wanted to bring to your attention, and with 10 that, I'm happy to answer any questions. 11 CHAIRMAN MEYER: Thank you, Mike. I had some 12 questions on, I guess it's Pages 10 and 11 of the PDF 13 of Exhibit -- Item VII and it relates to the fund 14 balance where it shows us going, you know, negative 15 14.6 million here in 2022. Can you explain that? Is 16 that correct or explain that to me. 17 Tom, you look like you want to say something. 18 MR. COLLINS: Well, I'm willing to -- only if 19 -- it's a quirk of the law, so I'm just not -- I mean, 20 I don't know, Mike, if you want to -- whoever. I don't 21 care. 22 MR. BECKER: Sure. So, Mr. Chairman, 23 Commissioners, what that is showing is where we began 24 -- the way the law is written, it forces us to look 25 back several years and then project out a few years to</p>	<p>1 2023, provided we spend all the way to the cap. And 2 once -- because we don't receive -- at best we receive 3 7 million a year. If we spend -- if we spend to the 4 cap, we're always going to be in the red every time. 5 So that's just to show what would happen if we went to 6 the cap. 7 CHAIRMAN MEYER: I think I'm remembering now 8 that I maybe ask this question every year, so I 9 apologize. But with that, maybe I'll be quiet and see 10 if -- 11 MR. COLLINS: No, it's a good question. 12 CHAIRMAN MEYER: -- the Commissioners have 13 any questions. 14 MR. COLLINS: I mean, what that really is, if 15 I may, Mr. Chairman, it's the delta between the revenue 16 we once would have undertaken when we had a checkoff 17 tax return that brought in about basically the roughly 18 -- and at this point, with the number of new taxpayers 19 in Arizona, we'd be bringing in way more money than the 20 court assessment. So that's -- that's -- essentially 21 what that is is the money the general fund currently 22 has that should be in the Clean Elections fund had the 23 Legislature not altered the funding formula 24 significantly. 25 CHAIRMAN MEYER: Page 12 is sort of the --</p>
<p>1 with the projections is kind of a better number to look 2 at, because that's -- you're actually viewing what 3 we've -- we're going to actually spend this -- not 4 assume we're spending the whole thing, correct? 5 MR. BECKER: That's correct, Mr. Chairman. 6 CHAIRMAN MEYER: Okay. Thank you. 7 All right. Any other Commissioners have any 8 questions on this? 9 (No response.) 10 CHAIRMAN MEYER: No. Okay. So if not, can I 11 get a motion to approve the memorandum in Item VII here 12 regarding our budget? 13 COMMISSIONER KIMBLE: Mr. Chairman. 14 CHAIRMAN MEYER: Yes. Go ahead, Commissioner 15 Kimble. 16 COMMISSIONER KIMBLE: I move that we approve 17 the proposed 2023 calendar year budget as outlined in 18 our material today. 19 CHAIRMAN MEYER: Is there a second? 20 COMMISSIONER PATON: This is Commissioner 21 Paton. I'll second it. 22 CHAIRMAN MEYER: All right. We have a motion 23 to approve our 2023 calendar year budget, and it's been 24 seconded, so we'll go ahead and vote. And I'll call 25 the roll.</p>	<p>1 Commissioner Kimble. 2 COMMISSIONER KIMBLE: Aye. 3 CHAIRMAN MEYER: Commissioner Paton. 4 COMMISSIONER PATON: Aye. 5 CHAIRMAN MEYER: Commissioner Titla. 6 COMMISSIONER TITLA: Aye. 7 CHAIRMAN MEYER: This is Commissioner Meyer, 8 I vote aye as well. So the motion carries -- passes 9 4-0. 10 Next, we have Item No. VIII, which is public 11 comment. This is the time for consideration of 12 comments and suggestions from the public. Action taken 13 as a result of public comment will be limited to 14 directing staff to study the matter or rescheduling the 15 matter for further consideration and decision at a 16 later date or responding to criticism. Please limit 17 your comment to no more than two minutes. 18 Does any member of the public wish to make 19 comments at this time? You may also send comments to 20 the Commission by mail or e-mail at 21 ccec@azcleanelections.gov. So if you are out there and 22 want to make a comment, go ahead and raise your hand 23 and we'll recognize you. 24 (No response.) 25 CHAIRMAN MEYER: All right. Seeing there's</p>

<p>1 no public comment -- real quick, this is not on the 2 Agenda, Tom, so I'm not sure how much attention we can 3 give it, but is there going to be a conversation 4 about -- a couple things. We had the issue with the 5 subpoena and Mr. LaSota. Did they -- I'm assuming they 6 didn't comply with that and maybe we need to discuss 7 that.</p> <p>8 MR. COLLINS: No, we'll be issuing you a 9 notice relating to the steps we've taken on that and 10 other correspondence.</p> <p>11 CHAIRMAN MEYER: And then the second is, I 12 can't help but notice it's the last month of the year 13 and I'm the Chairman. There's nothing in here about 14 maybe next year's Chairperson. Do we do that in 15 January?</p> <p>16 MR. COLLINS: No, we can talk about -- I 17 think we can at least briefly say that will be on the 18 next Agenda. And we made a -- we made a staff decision 19 that we would rather not put that in front of you. We 20 just felt like it was --</p> <p>21 CHAIRMAN MEYER: No, that's fine. And then 22 the other -- the other issue I wanted to bring up is 23 this concept of, you know, Commissioners rolling off. 24 Particularly if we're going to be implementing new 25 things, I think we need to have a discussion on that.</p>	<p>1 And I should have talked to you offline about this, so 2 I apologize.</p> <p>3 MR. COLLINS: No. And that is in the 4 Executive Director's Report, so -- and so, I mean, I 5 think that -- I mean, so I guess if you want it 6 clarified for the record, do you want to go back up to 7 Item III just real quick?</p> <p>8 CHAIRMAN MEYER: Yeah. I guess let's circle 9 back to Item III, the Executive Director's Report. I 10 apologize if I missed that, but --</p> <p>11 MR. COLLINS: Well, it's simply -- and I'll 12 just say, if I may, Mr. Chairman, I mean, we are -- you 13 know, staff is in kind of a weird place because of the 14 nature of our sort of self-interest, for lack of a 15 better -- or, perceived self-interest. I believe that, 16 you know, we have -- we have, at least internally and 17 have tried to share where we can with folks who have a 18 direct line to the appointing bodies, you know, some 19 recommendations we've received internally.</p> <p>20 And then -- and then we believe that with the 21 Committee -- the Committee -- the Voters' Right to Know 22 Committee, Stop Dark Money Committee has, you know, an 23 ongoing role under the Act in terms of its defense of 24 the new provisions of the Voters' Right to Know Act, so 25 we think they'll be engaged. I think that that creates</p>
<p>1 a similar kind of a situation to what we once had with 2 a group called the Arizona Advocacy Network that 3 dissolved about a year or so ago. So there are some -- 4 there are some more contact points with the appointing 5 executives than there might have been before, so I 6 think that that may come along.</p> <p>7 I think that one of the things, obviously, 8 that everyone can be concerned about, should be 9 concerned a little bit about is we have -- because of 10 the timing of things, there's substantial experience 11 that Commissioners have. And I know -- I don't know if 12 other Commissioners want to speak to this specifically. 13 Obviously, that's an issue, what's the most effective 14 way to do that while we're working through things and 15 not losing every -- every person who's been involved 16 in, you know, a lot of this stuff.</p> <p>17 I think what you'll find, for example, 18 because we have gone through rulemaking, because we 19 have gone through litigating, the extent of how -- a 20 lot of how these disclosure laws work, a lot of that's 21 going to come back to you. We haven't really dealt 22 with it the last couple years, but it's going to come 23 back to you all in terms of that familiarity. So, you 24 know, those are all things that as staff members we are 25 trying to at least be as facilitative as we can toward</p>	<p>1 getting that on the radar of the appointing bodies, the 2 major --</p> <p>3 I mean, the other thing I'll just say is, and 4 this is -- I just want to be frank. We're -- the state 5 government is going to go through about a six-month to 6 a year of real change. I mean, we have not had a 7 change of party at this significant level since the 8 1950s, I think. So, you know, I think we'll -- so it's 9 just one of those things where we'll -- but I will say 10 that the folks who are -- track the Commission are, you 11 know, incredibly aware of the issue and very sensitive 12 to it and in many ways they're in a position to be 13 more --</p> <p>14 You know, when Commissioner Paton was 15 appointed, for example, there was an actual 16 grassroots-ish -- I don't know if grassroots is quite 17 the right word -- there was an organized effort by some 18 folks who, I think the organization doesn't exist 19 anymore, AZAN, to ask the Governor to make an 20 appointment. That was the last time that happened. 21 So, you know, again -- but that may -- those kinds of 22 things can happen, and so I think that we'll keep our 23 eye on it. I'm -- I'm -- I just want to be, you know, 24 honest that, you know, at the end of the day, there's a 25 lot of things ahead of this in the queue for all of the</p>

<p>1 different folks who are making decisions right now.</p> <p>2 And then a final -- a final point -- I mean,</p> <p>3 two final points. The first is, obviously, I believe</p> <p>4 that the fact that there haven't been appointments made</p> <p>5 is actually a pretty strong indicator that, yes, it's</p> <p>6 not maybe the highest priority in the world, but I'm</p> <p>7 familiar enough with the current Governor and the</p> <p>8 Secretary of State to say that if we were doing things</p> <p>9 that were really out of line or not orderly or not well</p> <p>10 administrated, they would take action. They have and</p> <p>11 they would. So that's a vote of confidence; that</p> <p>12 doesn't change the strain of your service, and I</p> <p>13 recognize that. But we do appreciate it and we do</p> <p>14 think you're doing a very good job.</p> <p>15 The other thing is that, you know, there's a</p> <p>16 provision in the Act that says if you all -- if any</p> <p>17 Member resigns because they can't complete their term,</p> <p>18 whatever that means, in theory there's a 30-day clock</p> <p>19 on the appointing person to make an appointment that</p> <p>20 exists. Now, what I don't know is, you know, whether</p> <p>21 or not that's an enforceable thing, in other words, I</p> <p>22 mean, you can put a clock on stuff and it just</p> <p>23 doesn't -- you know, it just doesn't happen.</p> <p>24 So, you know, my hope is that over the course</p> <p>25 of the next month or so maybe we'll hear more from some</p>	<p>1 of the, you know, organizations and the grassroots</p> <p>2 organizations, the real grassroots organizations, that</p> <p>3 are involved in this about what they intend to do. And</p> <p>4 if you want, Commissioners, I'm happy to, you know,</p> <p>5 have them communicate directly with you, because I</p> <p>6 think it is important that, you know, that they have an</p> <p>7 understanding of what it is you do, what the job is.</p> <p>8 You know what I mean? There's a lot of aspects of this</p> <p>9 that, you know, really may be important for</p> <p>10 stakeholders in this process, whether the regulated</p> <p>11 community or the advocacy community, to sort of get</p> <p>12 their -- get their arms around.</p> <p>13 CHAIRMAN MEYER: All right. Well, thank you,</p> <p>14 Tom.</p> <p>15 Do any other Commissioners --</p> <p>16 Oh, Ms. Karlson has her hand raised.</p> <p>17 MS. KARLSON: Sorry, Mr. Chairman. If I can</p> <p>18 -- I know that Tom did do a little bit of record</p> <p>19 cleanup, but just to make it super crystal clear, since</p> <p>20 this took place during the -- or, started during the</p> <p>21 public comment. It was in his Executive Director's</p> <p>22 Report on Page 3 was where the appointment was -- was</p> <p>23 identified, so I just want to make it really clear.</p> <p>24 CHAIRMAN MEYER: Yes.</p> <p>25 MS. KARLSON: Thank you.</p>
<p>1 CHAIRMAN MEYER: Thank you for the</p> <p>2 clarification.</p> <p>3 Do any other Commissioners have any questions</p> <p>4 or comments on that issue in Item III that we</p> <p>5 revisited?</p> <p>6 (No response.)</p> <p>7 CHAIRMAN MEYER: If not, we'll move to --</p> <p>8 we'll jump back to Agenda Item No. 9, which is a motion</p> <p>9 to adjourn. At this time, I would entertain a motion</p> <p>10 to adjourn from my fellow Commissioners. Anyone?</p> <p>11 COMMISSIONER KIMBLE: Mr. Chairman, I would</p> <p>12 move we adjourn.</p> <p>13 CHAIRMAN MEYER: Thank you.</p> <p>14 Is there a second?</p> <p>15 COMMISSIONER PATON: I will second that,</p> <p>16 Commissioner Paton.</p> <p>17 CHAIRMAN MEYER: All right. At this time, we</p> <p>18 have a motion to adjourn and a second. We'll call the</p> <p>19 roll for the vote.</p> <p>20 Commissioner Kimble.</p> <p>21 COMMISSIONER KIMBLE: Aye.</p> <p>22 CHAIRMAN MEYER: Commissioner Paton.</p> <p>23 COMMISSIONER PATON: Aye.</p> <p>24 CHAIRMAN MEYER: Commissioner Titla.</p> <p>25 COMMISSIONER TITLA: Aye.</p>	<p>1 CHAIRMAN MEYER: And Commissioner Meyer, I</p> <p>2 vote aye as well, so that ends our meeting.</p> <p>3 Happy holidays to everyone. Thank you for</p> <p>4 all your hard work all year. And if you're traveling</p> <p>5 or not traveling, just be safe and enjoy. Enjoy the</p> <p>6 season. So with that, I'll sign off.</p> <p>7 (The meeting concluded at 10:53 a.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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 19th day of
19 December, 2022.
20
21 
22 _____
23 Kathryn A. Blackwelder, RPR
Certified Reporter #50666
24
25

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**CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
January 19, 2023**

Announcements:

- The recounts for the following offices were completed on December 29th, and the initial winners were confirmed:
 - Attorney General (Statewide Recount)
 - Superintendent of Public Instruction (Statewide Recount)
 - State Representative in Legislative District 13 (Maricopa County Only)
- The next consolidated election is on March 14, 2023. Staff is working on compiling voting information for any local elections occurring.
 - Voter Registration Deadline: February 13, 2023
 - Early Voting Begins: February 15, 2023

Acknowledgement on Mel Hannah's death- Avery Xola, Voter Education Manager.

I would like to take this moment to acknowledge the passing of our colleague in public service, the honorable Mel J. Hannah. He was committed to serving the public which was evident from the many positions he held in civic leadership. Mel J. Hannah became the first African American elected to City council in Flagstaff and to serve on the Coconino County Board of Supervisors. He championed civil and voting rights throughout his career. Mel will be remembered for his devotion to Arizona, community involvement, affable personality and the ability to break barriers. Although there is a real and tangible loss by his absence, his legacy will live on through the many individuals he inspired to become civically engaged.

For more information on Mel please see:

<https://www.azcentral.com/story/news/local/arizona/2023/01/13/mel-hannah-civic-leader-in-flagstaff-and-phoenix-dies-at-84/69804354007/>.

Voter Education:

- Staff filmed voter education videos with subject matter experts on the upcoming legislative session and the roles and responsibilities of what happens after the election and the roles of statewide offices.
- Staff is working on website improvements, including user testing and redesigns.
- Staff is working on strategy and concepting for the 2023 voter education plans.

Outreach:

- Avery continues his participation on the African American Legislative Committee, Maryvale Youth Provider Network Community committee, and Mesa Community College Civic Engagement Team
- Avery plays a role on the Youth Pillar of the African American Legislative Committee to assist in the preparation of the 21st Annual African American Legislative Conference Youth Day at the Capitol event
- Gina and Avery continue to attend Arizona Civic Coalition meetings to collaborate with and offer resources on voter education
- Avery met with Maricopa County Elections department Voter Outreach Manager, Betty Galanter, to discuss upcoming events
- Gina will attend the National Association of Election Directors conference in February.
- Staff is meeting with civic education advocates regarding civic legislation.

Administration

- **New Office Remaining Tenant Improvements**
Mike and Paula continue to work with the GSD Project Manager, various contractors and state contracted vendors to wrap up completion of the new office and boardroom. Tentative completion dates for tenant improvement for remaining office areas is February possibly longer depending on backordered equipment.

Audits

Audits have begun for the general election legislative Clean Elections candidates as well as all statewide Clean Elections candidates. Most of the primary candidate audits are completed pending CEC review. See this agenda.

Legal

- Legacy Foundation Action Fund v. Clean Elections
 - The Arizona Supreme Court ordered supplemental briefing on an additional question last week. Briefs are due January 27. The Attorney General has been invited to opine. See this agenda.
- Center for Arizona Policy v. Fontes
 - Suit challenging Prop. 211, the Voters Right to Know Act, on state constitutional grounds. More discussion this agenda.
- The Power of Fives, LLC v. Clean Elections, CV2021-015826, Superior Court for Maricopa County
 - The Commission's reply in support of its motion for summary judgment is due at the end of the month.
- Protect Our Arizona v. Fontes, No. CV-22-0203-AP/EL (Ariz., January 17, 2023). <https://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/>

2023/CV220203APEL.pdf. The Arizona Supreme Court released an opinion explaining its earlier conclusion that petition language related to the recently passed Predatory Debt Collection Protection Act initiative was not misleading. The initiative passed with more than 70 percent of the voter.

- Arizona Republican Party v. Fontes, No. 1 CA-CV 22-0388 (Ariz. App. Div. 1, January 17, 2023). In a memorandum decision the Court of Appeals affirmed the Mohave County court's rejection of the Arizona GOP's challenge to vote by mail.
- Post Election lawsuits:
Lake v. Hobbs, CV2022-095403, Superior Court for Maricopa County, is being appealed.

Kentch v. Mayes, Superior Court for Mohave County, a Rule 60 motion has been filed.

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

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

Election officials

- Recorder Stephen Richer released a plan for reforming Arizona elections last week. https://elections.maricopa.gov/asset/jcr:2587d93a-a545-49e1-b941-a1dc19e3089c/Arizona%20Election%20Law%20Reform%20Proposals_Record%20Richer.pdf.
 - The proposal includes:
 - Consideration of a number of operations to speed the counting of votes, particularly focused on so-called late earlies, mail ballots returned on election day, a growing number of ballots that are the most time intensive to process.
 - Consideration of limiting the adjudication of voter intent in cases where a ballot may be unclear, as well as standardization across counties.
 - Nonpartisan elections for recorder.
 - Establishing a new entity with auditing power to enforce campaign finance laws.
 - Moving the primary date up.
 - Two of these proposals, a new campaign finance entity (notably Clean Elections is not mentioned in the report) and moving the primary debate have real implications for the Commission, the Clean Elections Act and the Voters Right to Know Act.
- Governor Hobbs announced an executive order creating "The Governor's Bipartisan Elections Task Force." The task force will "study and make

recommendations to strengthen election laws, policies, and procedures in the State of Arizona.” The order includes certain requirements on members and allows certain officials to make nominations. It is to report out its recommendations in November. <https://azgovernor.gov/office-arizona-governor/executive-order/3-2>.

- Notably for the Commission the task force has to include a person familiar with campaign finance laws and one of its goals will be “[p]romoting transparency, public confidence, and engagement in Arizona’s electoral process.”
- Secretary of State Fontes announced that former Clean Elections Executive Director Colleen Connor has joined his office as election director.
- The legislature has already introduced a number of bills on elections, including ending mail voting and lowering the age of eligibility to serve in the legislature.

Appointments

- No additional information at this time

Enforcement

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

Regulatory Agenda

The Commission may conduct a rulemaking even if the rulemaking is not included on the annual regulatory agenda.

The following information is provided as required by A.R.S. § 41-1021.02:

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

October 28, 2022

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

October 28, 2022

- Federal funds for proposed rulemaking: **None**
- Review of existing rules: **None pending**
- Notice of Final Rulemaking: **TBD** R2-20-211, R2-20-220, and R2-20-223 have been submitted to GRRC.
- Rulemakings terminated: **None**
- Privatization option or nontraditional regulatory approach considered: **None Applicable**

Notices in R2-20-305 and R2-20-306 have been filed with the Secretary of State. They will be on the Commission's February 23 agenda for consideration and final Commission approval.



2023 County Government Platform

Approved by the AACo Board of Directors on October 28th, 2022

Fiscal Measures

- 1. Personal Exemption Affidavits (Assessors)** – Expand the list of medical professionals who can sign off on disability or provide alternative documentation in lieu of a physician's signature.
- 2. Short-Term Rental Classification (Assessors)** – Create standard rules for when a short-term residential property is residential (Class 4) or commercial (Class 1).
- 3. Fee Increase (Constables)** – Add \$18 fee into statute on writs to a total of \$46 on the fee to offset costs of executing evictions in cases where the tenant does not voluntarily leave.
- 4. Constable Salary Increase (Constables)** – Set flat rate salary for each tier, have tiers determined by workload, increase pay slightly especially for those capped out in larger precincts and move process more into statute limiting Board discretion.
- 5. State Constable Salaries (Constables)** – Create cost-sharing on Constable salaries similar to the sharing between the State and Counties on Justice of the Peace salaries.
- 6. Adult Jail Education Funding (School Superintendents)** – Change funding level for county jail education program from 72% to 100% of the amount that would be paid for a pupil in another accommodation school program.
- 7. Lateral Hire Reimbursement (Sheriffs)** – Agencies pay for costs of training when hiring laterally from other agencies.
- 8. Off-Highway Vehicle Fee (Sheriffs)** – Modify off-highway vehicle decal statutes to increase the fee or redirect current funding for OHV and SAR response costs for sheriffs.

Efficiency Measures

- 9. Residency Requirements (Attorneys)** – Allow hiring of deputies or assistants to elected officials to be hired while they live outside the state by removing the residency requirement.
- 10. Clean Up (Election Officials)**
 - a. Remove two paragraphs conflicting with last year's omnibus** – Both paragraphs address information that is already provided in voter file.
 - b. Modernize language for ballot instructions** – Add language from the pamphlets about black or blue pens and other plain English into the statute.

- c. **Permissive language for removing late early ballots from polling place to count** – Allow early ballots dropped off at polling locations to be brought back to be processed before polling locations close for to start verification sooner.
 - d. **Clean-up 16-583 and 16-584 on paper rosters given ePollbook usage** – Clarifying statute to utilize ePollbooks.
 - e. **Clarify what happens to rejected early and provisional ballots** – Storage of these are separate from the other ballots after the election.
 - f. **Make 45-415C language consistent with Title 16** – Special local initiative language for active management areas is not currently consistent with standard election procedure.
 - g. **Voter Registration Form Update** – Add sections on the voter registration form that indicate whether the request is new or an update.
- 11. Procedures Manual (Election Officials)** – Codify that a manual that was previously approved remains in effect absent a new one while allowing elections officials to operate under new laws passed since the manual’s creation and requiring county consultation in creation of the EPM.
- 12. Title 19 Recall Changes (Election Officials)** – Move the deadline to call a recall election from 90 days before election to 120 days before and make related changes.
- 13. Can’t Pay Per Voter Reg Form (Recorders)** – Prohibit the practice of paying people “per form” when registering voters. Workers could still be paid hourly.
- 14. Display Ballot Harvesting Law (Recorders)** – Add a requirement that voting locations or voting instructions include the ballot harvesting law text so that voters understand the extent of the law.
- 15. Early Ballot w/ ID = No Signature Verification Needed (Recorders)** – Allow early ballots where the elector provided proper identification at an early voting location to be placed in a “ready to tabulate” bin while those mailed in will still have to be signature verified.
- 16. Weekend Voting (Recorders)** – Keep early voting centers open for the three days prior to election day instead of only having emergency voting centers that are opened on a discretionary basis.
- 17. Tax Statement Mailing (Treasurer)** – Allow mortgagors to request the tax statement online instead of in physical mail.

Public Safety/Criminal Justice Measures

- 18. Aggravated Unlawful Flight (Attorneys)** – Change statute so that worse or more dangerous flight from law enforcement is given a higher level of felony.

19. Drug Homicide (Attorneys) – Establish a new offense for individuals who provide drugs to an individual who then dies from the drug use utilizing second class homicide as the basis for the sentencing.

20. Title 36 Cleanup (Sheriffs) – Revise statute to clarify responsibilities and ensure individuals are connected with services either on a voluntary basis or involuntary processes if necessary.

SUPREME COURT OF ARIZONA

LEGACY FOUNDATION ACTION FUND,	)	Arizona Supreme Court
	)	No. CV-22-0041-PR
Plaintiff/Appellant,)	
	)	Court of Appeals
v.	)	Division One
	)	No. 1 CA-CV 19-0773
CITIZENS CLEAN ELECTIONS)	
COMMISSION,	)	Maricopa County
	)	Superior Court
Defendant/Appellee.	)	Nos. CV2018-004532
	)	CV2018-006031
)	
	)	FILED: 01/12/2023

O R D E R

On November 15, 2022, the Court heard oral argument on this matter. In considering the case, we have determined that supplemental briefing is required regarding the preclusive effect of the Citizens Clean Elections Commission's determination of its own jurisdiction. Because our decision may impact other agency procedures, we also think it appropriate to permit interested parties to submit amicus briefs. We explicitly invite briefing from the Arizona Attorney General's Office because it represents many state agencies.

Therefore, on the Court's own motion,

IT IS ORDERED that, on or before January 27, 2023, the parties and any interested amici shall provide supplemental briefing, not to exceed ten (10) pages, on the following issue: Did the Citizens Clean Elections Commission serve as a neutral decisionmaker in deciding

that it possessed subject matter jurisdiction in light of its concomitant advocacy role so that issue preclusion in the collateral superior court proceedings applied without violating Legacy Foundation Action Fund's due process rights?

IT IS FURTHER ORDERED that the parties may reply to any amicus briefs on or before February 3, 2023.

DATED this 12th day of January 2023.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

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Jason Brett Torchinsky
Mary R O'Grady
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Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CENTER FOR ARIZONA POLICY, INC.,
an Arizona nonprofit corporation;
ARIZONA FREE ENTERPRISE CLUB;
DOE I; DOE II;

Plaintiffs,

vs.

ARIZONA SECRETARY OF STATE;
KATIE HOBBS, in her official capacity;
ARIZONA CITIZENS CLEAN
ELECTIONS COMMISSION; DAMIEN R.
MEYER, in his official capacity as
Chairman; AMY B. CHAN, in her official
capacity as Commissioner; GALEN D.
PATON, in his official capacity as
Commissioner; MARK KIMBLE, in his
official capacity as Commissioner; STEVE
M. TITLA, in his official capacity as
Commissioner; THOMAS M. COLLINS, its
executive director,

Defendants.

Case No. CV2022-016564

**VERIFIED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

For their Verified Complaint, Plaintiffs allege as follows:

INTRODUCTION

1. This civil rights lawsuit challenges Proposition 211, styled the “Voters Right to Know Act” (referred to herein as “Prop 211” or the “Act”), because it violates the constitutional rights of Arizonans by requiring charitable organizations and individuals to report their names, addresses, employers, and charitable giving to the government and to publicly disclose that information if those nonprofit groups engage in speech on matters of

1 public concern. Plaintiffs are charitable organizations that will be adversely impacted by
2 the Act and individuals whose future charitable donations will be silenced or altered
3 because of the Act.

4 2. Prop 211 was passed in the November 2022 general election and was
5 enacted into law by the proclamation of the governor on December 5, 2022. The Act
6 requires organizations or individuals that spend more than \$50,000 on “Campaign Media
7 Spending” in a statewide campaign, or \$25,000 in a non-statewide campaign, to turn over
8 to the Secretary of State the names, mailing addresses, occupations, and identities of
9 employers of donors who gave more than \$5,000 to the organization during that election
10 cycle for that purpose, as well as of the top three donors of the organization, irrespective
11 of whether the donations could be used for “Campaign Media Spending.” Failure to make
12 the necessary disclosures can result in the imposition of significant fines and other
13 assessments.

14 3. Arizona’s Constitution guarantees its citizens the right to speak freely, a
15 right broader than the free-speech rights guaranteed under the First Amendment of the
16 U.S. Constitution. As with its federal counterpart, Arizona’s right to “speak freely”
17 includes the right to not be forced to speak. The Act violates Arizonans’ right to speak
18 freely by chilling donors from supporting causes they believe in and wish to support, lest
19 their charitable giving become public knowledge. It also impairs the speech of nonprofit
20 organizations, including Plaintiffs, because those organizations will be compelled to
21 refrain from speaking or engaging in public dialogue to avoid compromising the privacy
22 of their donors. The Act also violates Arizonans’ right not to speak by forcing the
23 disclosure of confidential donations and their donors.

24 4. Unlike its federal counterpart, Arizona’s Constitution expressly guarantees
25 that an individual’s “private affairs” will not be disturbed, particularly those that pertain to
26 financial information and one’s choices when casting a ballot. The Act violates that right
27 by forcing the disclosure of information related to confidential monetary and in-kind
28 donations to charities engaging in “Campaign Media Spending.”

5. Arizona's Constitution and laws also guarantee that Arizonans will have a government with a separation of powers, with a legislative branch that passes legislation, an executive that enforces laws, and a judicial that interprets them. Through the separation of powers, governmental power is constrained, and the rights of Arizona citizens better guaranteed. The Act violates the separation of powers by granting an unelected commission—immune from *any* legislative oversight or influence—with broad authority to create laws, interpret them, and enforce them. By consolidating broad powers in this manner, the principle of separation of powers is violated, which infringes upon the rights of Arizonans.

6. Prop 211 is styled the “Voters’ Right to Know Act,” but that is a misnomer. Voters only get to know who felt comfortable subjecting themselves to the Act’s identity and financial reporting requirements when communicating their political views; voters do not get to know who the Act silenced. That is backwards. Transparency is for government; privacy is for individuals. Prop 211 is unconstitutional and must be enjoined.

PARTIES, JURISDICTION, AND VENUE

The Organizational Plaintiffs

7. Plaintiff Center for Arizona Policy, Inc., (“CAP”) is an Arizona nonprofit organization based in and operating in Maricopa County. CAP is a statewide research and education organization that seeks to promote and defend foundational principles of life, marriage, family, and religious freedom. CAP is a tax-exempt, charitable organization under section 501(c)(3) of the Internal Revenue Code.

8. Plaintiff Arizona Free Enterprise Club (“FEC”) is an Arizona nonprofit organization that is based and operates in Maricopa County, Arizona. FEC is a statewide research and public policy organization that advocates for principles of free enterprise and pro-growth, limited government policies through extensive public education, lobbying, and grassroots activity, including hosting public policy events, issuing policy papers, and communicating with individual citizens, the media, and policymakers on public policy

1 issues. FEC is a tax-exempt social welfare organization under section 501(c)(4) of the
2 Internal Revenue Code. FEC is a not-for-profit organization operating exclusively to
3 promote the social welfare of the community.

4 **The Individual Donor Plaintiffs Who Desire Privacy—the “Doe Plaintiffs”**

5 9. Plaintiff Doe I is a citizen of Arizona and a resident of Maricopa County.
6 Doe I alleges that the Act is unconstitutional because it requires Doe I to reveal his or her
7 identity when donating to charitable organizations that engage in public communications
8 supporting issues and candidates that Doe I supports. Thus, the Act chills speech because
9 it deters Doe I from exercising his or her right to speak freely. The Act also deters Doe I
10 from speaking because it violates other rights Arizona law guarantees, including the right
11 to be undisturbed in his or her private affairs and the separation of powers.

12 10. If Doe I were required to disclose his or her identity in this action, then the
13 public would know that Doe I has supported charities that engage in public
14 communications in support of issues or candidates Doe I supports financially in amounts
15 governed by the Act. The public also would know that Doe I intends or desires to engage
16 in similar speech in the future. Doe I wants his or her identity kept private in relation to
17 his or her giving to charities that support issues and candidates Doe I supports through
18 public communications. If Doe I were to be identified in this action, the very right Doe I
19 seeks to protect would be lost. Accordingly, “Doe I” is used as a pseudonym for this
20 Plaintiff because identifying this Plaintiff by name would undermine the rights sought to
21 be vindicated in this action.

22 11. Plaintiff Doe II is a citizen of Arizona and a resident of Maricopa County.
23 Doe II alleges herein that the Act is unconstitutional because, in part, it requires Doe II to
24 reveal his or her identity when donating to charitable organizations that engage in public
25 communications supporting issues and candidates that Doe II supports. Thus, the Act
26 chills speech because it deters Doe II from exercising his or her right to speak freely. The
27 Act also deters Doe II from speaking because it violates other rights Arizona law
28

1 guarantees, including the right to be undisturbed in his or her private affairs and the
2 separation of powers.

3 12. If Doe II were required to disclose his or her identity in this action, then the
4 public would know that Doe II has supported charities that engage in public
5 communications in support of issues or candidates Doe II supports by donating money
6 and other resources to that charity in amounts governed by the Act. The public also
7 would know that Doe II intends to engage in similar speech-related conduct in the future.
8 Doe II wants his or her identity kept private in relation to his or her giving to charities that
9 support issues and candidates Doe II supports through public communications. If Doe II
10 were to be identified in this action, the very right Doe II seeks to protect would be lost.
11 Accordingly, “Doe II” is used as a pseudonym for this Plaintiff because identifying this
12 Plaintiff by name would undermine the rights sought to be vindicated in this action.

13 **Defendants Responsible for Implementing and Enforcing the Act**

14 13. Defendant Arizona Secretary of State (“SOS”) is a division of the executive
15 department of the government of the State of Arizona, with its main address in Maricopa
16 County. Pursuant to the Act, the SOS is responsible for receiving and retaining
17 information regarding donations used for “Campaign Media Spending,” as the Act defines
18 that term, and transmitting that information to the Arizona Citizens Clean Elections
19 Commission.

20 14. Defendant Katie Hobbs is the current Secretary of State (“Secretary Hobbs”)
21 and is sued in her official capacity only. Secretary Hobbs is the elected official
22 responsible for administering the SOS’s office.

23 15. Defendant Arizona Citizens Clean Election Commission (the
24 “Commission”) is a jural entity with a physical address in Maricopa County, and is
25 responsible for implementing and administering the Citizens Clean Elections Act set forth
26 in A.R.S. § 16-940 *et seq.* In addition to administering the provisions of A.R.S., Title 16,
27 Chapter 6, Article 2, of the Arizona Revised Statutes, the Commission promulgates rules
28 and enforces A.R.S. §§ 16-940 through 16-961.

16. Per Prop 211, the Commission is “the primary agency authorized to implement and enforce [the] Act,” and may promulgate and enforce rules and regulations that assist in the implementation of the Act; issue and enforce civil subpoenas; initiate enforcement actions; conduct fact-finding hearings and investigations; impose significant fines for noncompliance, including penalties for late or incomplete disclosures; seek legal and equitable relief in court; establish the records persons must maintain to support their disclosures; and other acts that may assist in implementing the Act.

17. Defendants Damien R. Meyer, Amy B. Chan, Galen D. Paton, Mark Kimble, and Steve M. Titla (collectively, the “Commissioners”) are current commissioners of the Commission and are sued in their official capacities only. The Commissioners carry out the duties and responsibilities of the Commission, including its adherence to the Act.

18. Defendant Thomas L. Collins is the Executive Director of the Commission and is sued in that capacity only. Mr. Collins acts at the direction and authority of the Commissioners to fulfill the Commission's statutory role.

Jurisdiction and Venue

19. Jurisdiction over this action and its claims is provided by A.R.S. §§ 12-123, 12-1801, and 12-1831.

20. Venue is proper pursuant to A.R.S. § 12-401.

Notice of Unconstitutionality

21. Pursuant to A.R.S. § 12-1841, Plaintiffs are providing notice that they seek to have the Act declared unconstitutional to the Arizona Attorney General, the Speaker of the Arizona House of Representatives, and the President of the Arizona Senate.

FACTS COMMON TO ALL CLAIMS

22. Plaintiffs incorporate by reference all preceding allegations.

Donor Disclosure Requirements and Thresholds

23. The Act includes 19 terms that are defined in the Act or elsewhere in Arizona statutes. A.R.S. § 16-971(1)-(19). Nevertheless, the meanings and applications

1 of these defined terms are unclear. Throughout this Verified Complaint, capitalized terms
2 reference terms that are “defined” in the Act.

3 24. The Act defines a Covered Person as a person or entity that spends, through
4 direct or in-kind contributions, more than \$50,000 on Campaign Media Spending in a
5 statewide campaign, or \$25,000 in a non-statewide campaign, during an Election Cycle
6 (the two years between general elections), with certain exceptions. A.R.S. § 16-971(7).

7 25. The Act defines Campaign Media Spending as any public communication
8 that supports or opposes a ballot measure or a candidate. It also includes public
9 communications that refer to a candidate when that communication is made within 90
10 days of a primary election and thereafter until the election, even if the communication
11 does not advocate for or against the candidate or is otherwise unrelated related to the
12 election. A.R.S. § 16-971(2).

13 26. Campaign Media Spending includes any “research, design, production,
14 polling, data analytics, mailing or social media list acquisition or any other activity
15 conducted in preparation for” a public communication about a candidate, initiative, or
16 referendum counts towards the \$50,000 (or \$25,000) threshold. A.R.S. § 16-971(2)(vii).

17 27. Campaign Media Spending by an individual or entity includes all Campaign
18 Media Spending by “entities established, financed, maintained, or controlled by” the
19 individual or entity. A.R.S. § 16-971(7)(a).

20 28. The Act requires any Covered Person to disclose to the SOS the names,
21 mailing addresses, occupations, and employers of any individual “donor of Original
22 Monies who contributed, directly or indirectly, more than \$5,000 of Traceable Monies or
23 in-kind contributions for Campaign Media Spending during the Election Cycle to the
24 Covered Person and the date and amount of each of the donor’s contributions.” A.R.S. §
25 16-973(A)(6). If the donor is an organization, the Act requires the Covered Person to
26 disclose to the SOS the name, mailing address, federal tax status, and state of
27 incorporation, registration, or partnership of that organization.
28

1 29. After a Covered Person receives more than \$5,000 from a donor that is
2 available for “Campaign Media Spending,” the Act requires the donor to identify all
3 persons or organizations who contributed more than \$2,500 (indirectly or directly) to the
4 donor to enable the donor’s gift to the Covered Person and all intermediary or pass-
5 through persons or entities.

6 30. The Act prohibits anyone from structuring a solicitation, donation,
7 expenditure, disbursement, or other transaction—or even attempting to assist another in
8 doing so—to avoid the reporting requirements of the Act.

9 31. The Act requires any Covered Person, when soliciting or receiving a
10 donation, to inform the potential or actual donor that the donor has 20 days to “opt out” of
11 having his, her, or its donation used for Campaign Media Spending, with the Covered
12 Person unable to use those funds until 21 days after providing the notice or until the donor
13 provides written consent pursuant to the Act, whichever is earlier. The Act does not
14 require the Covered Person to provide this notice to the original sources of monies
15 acquired by the donor or any intermediaries of those monies. *See* A.R.S. § 16-972.

16 32. After meeting the threshold for Campaign Media Spending, the Covered
17 Person must disclose, as part of its campaign media, at least the names of the three donors
18 who made the three largest contributions to the Covered Person during the Election Cycle,
19 irrespective of whether those donors decided to “opt out” from having all or part of their
20 contributions used for Campaign Media Spending.

21 33. For reported donations, the Act permits the names, mailing addresses,
22 occupations, and employers (or names, mailing addresses, federal tax statuses, and states
23 of incorporation, registration, or partnership) of the original source of that donation to
24 remain confidential only if the disclosure is prohibited by law or court orders or if the
25 original source of that donation proves to the satisfaction of the Commission that the
26 source or the source’s family “would subject the source or the source’s family to a serious
27 risk of physical harm.” A.R.S. § 16-973(F).

34. The Act imposes various record-keeping and filing requirements with the SOS.

35. The Commission “is the primary agency authorized to implement and enforce” the Act. A.R.S. § 16-974(A). The Act empowers the Commission to conduct investigations, issue subpoenas, conduct hearings, engage in “rule-making,” and impose penalties.

Center for Arizona Policy

36. CAP is a charitable organization that engages in public education, lobbying, and grassroots activity, including hosting public policy events, issuing policy papers, and communicating with individual citizens, the media, and policymakers on public policy issues. CAP qualifies as a tax-exempt, charitable organization under section 501(c)(3) of the Internal Revenue Code.

37. Certain of CAP's activities appear to fall within the Act's definition of Campaign Media Spending, and CAP's expenditures related to those activities exceed the thresholds set forth in the Act. Other of CAP's activities might constitute Campaign Media Spending. The Act's vague definition for that activity makes it impossible for CAP to reasonably determine which of its activities would be permitted, prohibited, or otherwise covered by the Act.

38. CAP funds its activities through charitable contributions from donors throughout Arizona. During an Election Cycle, CAP receives charitable contributions from individual donors that exceed the Act's \$5,000 threshold.

39. CAP does not publicly disclose the identity of its donors, nor does it disclose the amounts of individual donations. CAP informs its donors that CAP will maintain the confidentiality of their donations and identities. CAP maintains a written donor privacy policy to this effect. Donors to CAP have expressed concern about having their contributions and identities disclosed to government officials and/or the public, and therefore require that their contributions and identities remain confidential.

1 40. As a direct consequence of the implementation of the Act, donors to CAP
2 will limit or eliminate their contributions to CAP rather than risk having their names,
3 addresses, and employment information turned over to the government. In addition, other
4 donors to CAP may “opt out” of having their contributions used for Campaign Media
5 Spending, which will curtail CAP’s ability to engage in that activity.

6 41. CAP has been subject to harassment and intimidation because of its
7 charitable activities related to communicating with the public on matters of public policy
8 and issue advocacy. CAP believes that its donors, if disclosed, may experience similar
9 harassment and intimidation because of their charitable contributions to CAP.

10 42. Implementation of the Act will force CAP to communicate to each of its
11 donors that the donor may “opt out” from having CAP use the donation for Campaign
12 Media Spending if they do so within the period the Act prescribes. During that period,
13 CAP will be unable to use the donation for that purpose.

14 43. Implementation of the Act will force CAP to refrain from providing any
15 information to donors regarding the Act’s reporting requirements other than to inform the
16 donor of the donor’s ability to “opt out” within the period the Act prescribes. The Act
17 also inhibits CAP’s ability to receive professional advice regarding how it can comply
18 with the Act and how it should communicate with donors or solicit donations because,
19 among other reasons, the Act vaguely prohibits anyone from “structur[ing] or assist[ing]
20 in structuring, or attempt[ing] or assist[ing] in an attempt to structure any solicitation,
21 contribution, donation, expenditure, disbursement or other transaction to evade the
22 reporting requirements.” A.R.S. § 16-975.

23 44. Rather than compromise its donors’ confidentiality, expose them to the risk
24 of retaliation and harassment, risk liability with attempting to comply with the Act’s
25 unclear requirements, and submit to the unchecked authority of the Commission to
26 enforce the Act, CAP is considering avoiding any activity that could be considered
27 “Campaign Media Spending” or that are otherwise governed by the Act.

1 45. To avoid falling prey to the Act, its many traps and ambiguities, and its
2 potential for substantial monetary sanctions, CAP would be required to discontinue many
3 of the kinds of public communications it currently makes, including virtually all
4 references to candidates, starting ninety days before a primary election and continuing
5 until the date of a general election, and issue advocacy pertaining to ballot measures.

6 46. CAP's issue advocacy is a reason donors contribute to CAP. If CAP is
7 forced to discontinue this activity, CAP will lose much of its donor support.

8 **Arizona Free Enterprise Club**

9 47. FEC is a charitable organization that advocates for free enterprise and pro-
10 growth, limited-government policies. To advance its mission, FEC engages in public
11 education and grassroots activity, including hosting public policy events, issuing policy
12 papers, and communicating with citizens, the media, and policymakers on public policy
13 matters.

14 48. FEC engages in some political activities in support of its social welfare
15 purposes, such as lobbying on questions of public policy and supporting or opposing
16 candidates for election, but as an organization that qualifies under section 501(c)(4) of the
17 Internal Revenue Code, those activities are not its primary activities.

18 49. Certain of FEC's activities appear to fall within the Act's definition of
19 Campaign Media Spending, and FEC's expenditures related to those activities exceed the
20 thresholds set forth in the Act. Other of FEC's activities might constitute Campaign
21 Media Spending. The Act's vague definition of that term makes it impossible for FEC to
22 determine which of its activities would be permitted, prohibited, or otherwise covered by
23 the Act.

24 50. FEC funds its activities through charitable contributions from donors
25 throughout Arizona. During an Election Cycle, FEC typically receives charitable
26 contributions from individual donors that exceed the Act's \$5,000 threshold.

27 51. FEC keeps the names and addresses of its donors, along with the amounts of
28 their charitable contributions, strictly confidential, and does not disclose them to

1 government officials in Arizona or any other jurisdiction. Donors to FEC have expressed
2 their concern about having their contributions and identities disclosed to government
3 officials and the public. FEC informs its donors that FEC will maintain the confidentiality
4 of their donations and identities.

5 52. With the implementation of the Act, donors to FEC will limit or eliminate
6 their contributions to FEC rather than risk having their names, addresses, and employers
7 publicly disclosed. In addition, other donors to FEC may “opt out” of having their
8 contributions used for Campaign Media Spending, which will curtail FEC’s ability to
9 engage in that activity.

10 53. FEC has been subject to harassment and intimidation because of its
11 charitable activities related to communicating with the public on matters of public policy
12 and issue advocacy. FEC believes that its donors, if disclosed, may experience similar
13 harassment and intimidation because of their charitable contributions to FEC.
14 Furthermore, certain of FEC’s donors have informed FEC that they fear the risk of
15 harassment or reprisal they will face if their contributions to FEC become publicly known.

16 54. FEC and the Commission have been at odds with respect to past ballot
17 initiative campaigns. FEC and the Commission have been adverse parties in extensive
18 litigation that resulted in a U.S. Supreme Court case that significantly curbed the
19 Commission’s power. Thus, FEC is justifiably concerned that the Commission will harass
20 or retaliate against FEC given the ambiguous language of the Act and the Commission’s
21 unchecked powers to interpret and enforce the Act.

22 55. Implementation of the Act will force FEC to communicate to each of its
23 donors that the donor may “opt out” from having FEC use the donation for Campaign
24 Media Spending if they do so within the period the Act prescribes. During that period,
25 FEC will be unable to use the donation for that purpose.

26 56. Implementation of the Act constrains FEC’s ability to provide information
27 to donors regarding the Act’s reporting requirements other than to inform the donor of the
28 donor’s ability to “opt out” within the period the Act prescribes.

57. Rather than compromise its donors' confidentiality, expose them and FEC to the risk of retaliation and harassment, risk liability with attempting to comply with the Act's unclear requirements, and submit to the unchecked authority of the Commission to enforce the Act, FEC is likely to avoid future activity that could possibly be considered "Campaign Media Spending" or that is otherwise governed by the Act.

58. To avoid falling prey to the Act, its many traps and ambiguities, and its potential for substantial monetary sanctions, FEC would be required to discontinue many of the kinds of public communications it currently makes, including virtually all references to candidates, starting ninety days before a primary election and continuing until the date of a general election, and issue advocacy pertaining to ballot measures.

59. FEC's issue advocacy is a reason donors contribute to FEC. If FEC is forced to discontinue this activity, FEC will lose donor support.

Doe I

60. Doe I has a history of giving to charitable organizations that would be regarded as Covered Persons under that Act in amounts that would exceed the Act's \$5,000 disclosure threshold. Before implementation of the Act, Doe I's intent was to continue charitable giving in ways that would be subject to the Act's disclosure requirements.

61. . Doe I donates to certain charitable organizations precisely because those organizations engage in issue advocacy, some of which would be considered Campaign Media Spending.

62. Doe I expects and relies upon the charitable organizations to which Doe I donates to keep Doe I's name, address, and other identifying information confidential. In particular, Doe I does not want his or her identity disclosed to government officials or to the public with respect to the donations to charitable organizations that engage in Campaign Media Spending in Arizona.

63. Because of the Act's disclosure requirements, Doe I plans to limit or eliminate Doe I's contributions to charitable organizations that engage in issue advocacy or Campaign Media Spending in Arizona.

64. Doe I is concerned that he or she will be subject to harassment or retaliation if Doe I's contributions to charitable organizations that engage in Campaign Media Spending in Arizona are known to the public. Doe I's concern is not limited to a risk of "serious physical harm" and includes economic, reputational, and other forms of harassment and retaliation.

Doe II

65. Doe II has a history of giving to charitable organizations that would be regarded as Covered Persons under that Act in amounts that would exceed the Act's \$5,000 disclosure threshold. Before implementation of the Act, Doe I's intent was to continue these past charitable giving practices.

66. Doe II donates to certain charitable organizations precisely because those organizations engage in issue advocacy, the type of activity that would be considered Campaign Media Spending.

67. Doe II expects and relies upon the charitable organizations to which Doe II donates to keep his or her name, address, and other identifying information confidential. In particular, Doe II does not want his or her identity disclosed to government officials or to the public with respect to the donations to charitable organizations that engage in Campaign Media Spending in Arizona.

68. Because of the Act's disclosure requirements, Doe II plans to limit or cease his or her contributions to charitable organizations that engage in issue advocacy or Campaign Media Spending in Arizona.

69. Doe II is concerned that he or she will be subject to harassment or retaliation if his or her contributions to charitable organizations that engage in Campaign Media Spending in Arizona are known to the public. Doe II's concern is not limited to a risk of

1 “serious physical harm,” and includes economic, reputational, and other forms of
2 harassment and retaliation.

3 CONSTITUTIONAL VIOLATIONS

4 COUNT I

5 Arizona Constitution Article II, Section 6—Right to Speak Freely

6 70. Plaintiffs incorporate by reference all preceding allegations.

7 71. The Arizona Constitution broadly protects the right to free expression:
8 “Every person may freely speak, write, and publish on all subjects, being responsible for
9 the abuse of that right.” Ariz. Const. art. II, § 6.

10 72. The Arizona Constitution’s protection for free speech “provides broader
11 protections for free speech than the First Amendment.” *Brush & Nib Studio, LC v. City of*
12 *Phoenix*, 247 Ariz. 269, 281 ¶ 45 (2019). Consequently, “a violation of First Amendment
13 principles ‘necessarily implies’ a violation of the broader protections of article 2, section 6
14 of the Arizona Constitution,” *id.* at 282 ¶ 47, but a law that does not violate the First
15 Amendment may still violate the Arizona Constitution.

16 73. Like the U.S. Constitution’s First Amendment protections, Arizona’s
17 Constitution “includes both the right to speak freely and the right to refrain from speaking
18 at all.” *Id.* at 282 ¶ 48 (internal quotations and citation omitted).

19 74. Under the Arizona Constitution, an Arizonan “may not be forced to speak a
20 message he or she does not wish to say.” *Id.* at 283 ¶ 52.

21 75. The U.S. Supreme Court has “held laws unconstitutional that require
22 disclosure of membership lists for groups seeking anonymity.” *Rumsfeld v. Forum*
23 *for Acad. & Institutional Rights, Inc. (FAIR)*, 547 U.S. 47, 69 (2006). Such laws
24 “ma[k]e group membership less attractive” and violate the First Amendment by
25 “affecting the group’s ability to express its message.” *Id.*

26 76. As a direct and proximate result of the Act, Plaintiffs are suffering, and will
27 suffer in the future, irreparable harm to their free-speech rights under the Arizona
28 Constitution. Covered Persons under the Act are forced to disclose the identities and

1 charitable contributions of donors who desire those donations to fund what the Act calls
2 Campaign Media Spending, even though the Covered Person and donors do not want that
3 information disclosed. The Act also is vague because terms and categories such as, but
4 not limited to, Campaign Media Spending (A.R.S. § 16-971(2)); “directly or indirectly
5 contributed” (A.R.S. §§ 16-971(19), 16-972(D) & (E), 16-973(A)(4), (6) & (E), (G), &
6 (I), 16-974(C)); “promotes, supports, attacks, or opposes” (A.R.S. § 16-971(2)); and
7 “[r]esearch, design, production, polling, data analytics, mailing or social media list
8 acquisition or any other activity” (A.R.S. § 16-971(2)(vii)) are unclear on their face,
9 preventing individuals and organizations from determining whether the Act applies to
10 them. As a consequence, the Act penalizes and deters speech and dissuades Plaintiffs and
11 other similar organizations from engaging in Campaign Media Spending and donors from
12 contributing to Plaintiffs and other similar charities that engage in Campaign Media
13 Spending.

14 77. Plaintiffs have no adequate legal, administrative, or other remedy by which
15 to prevent or minimize this harm. Unless Defendants are enjoined from implementing and
16 administering the Act, Plaintiffs and others similarly situated will continue to suffer great
17 and irreparable harm.

18 COUNT II

19 Arizona Constitution Article II, Section 8—Right to Undisturbed Private Affairs

20 78. Plaintiffs incorporate by reference all preceding allegations.

21 79. Article II, Section 8 of Arizona’s Constitution states, “No person shall be
22 disturbed in his private affairs, or his home invaded, without authority of law.” This
23 clause distinguishes between an individual’s “private affairs” and an individual’s right not
24 to have his home invaded, and thus affords broader constitutional protections than does
25 the federal Constitution.

26 80. The Private Affairs Clause prohibits, among other things, government
27 efforts to investigate a private organization’s financial dealings, or to compel the
28 disclosure of an organization’s financial records, books, and files, or to compel the public

1 disclosure of tax information or other sensitive information. *State v. Mixton*, 250 Ariz.
2 282, 291 ¶¶ 34–35 (2021).

3 81. At the time the Private Affairs Clause was written, information relating to
4 (inter alia) the financial support of ballot initiative campaigns, or of organizations other
5 than campaign committees, or of charitable organizations that engage in speech on matters
6 of public concern, was considered a private affair.

7 82. Through the Act, the state of Arizona compels the disclosure of confidential
8 charitable activities of Plaintiffs against their will and without just cause.

9 83. As a direct and proximate result of the Act, Plaintiffs are suffering, and will
10 suffer in the future, irreparable harm to their rights under the Arizona Constitution to have
11 their private affairs undisturbed. Plaintiffs have no adequate legal, administrative, or
12 other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined
13 from implementing and administering the Act, Plaintiffs and others similarly situated will
14 continue to suffer great and irreparable harm.

15 **COUNT III**

16 **Violation of Separation of Powers**

17 84. Plaintiffs incorporate by reference all preceding allegations.

18 85. Pursuant to Article III of the Arizona Constitution, the powers of the state
19 government are “divided into three separate departments, the legislative, the executive,
20 and the judicial; and ... no one of such departments shall exercise the powers properly
21 belonging to either of the others.”

22 86. The Act violates the Arizona Constitution’s requirement that the powers of
23 the state government be divided into distinct and separate departments. Among other
24 things:

25 87. The Act provides that the Commission’s “rules and ... enforcement actions
26 ... are not subject to the approval of or any prohibition or limit imposed by any other
27 executive or legislative governmental body or official ... [n]otwithstanding any law to the
28 contrary.” A.R.S. § 16-974(D).

1 88. The Act provides that any rules the Commission adopts pursuant to the Act
2 “are exempt from Title 41, Chapters 6 and 6.1,” Arizona’s Administrative Procedures Act.
3 *Id.*

4 89. The Act provides that the Commission can “[a]dopt and enforce rules,”
5 “[i]ssue and enforce civil subpoenas,” “[i]nitiate enforcement actions,” “[c]onduct fact-
6 finding hearings and investigations,” “[i]mpose civil penalties for noncompliance,”
7 “[s]eek legal and equitable relief in court,” “[e]stablish the records persons must maintain
8 to support their disclosures,” and “[p]erform any other act that may assist in implementing
9 this chapter.” A.R.S. § 16-974(A)(1)-(8).

10 90. The Act provides independent funding of the Commission with respect to its
11 administration and enforcement of the Act through the collection of penalties the
12 Commission itself imposes and grants the Commission the authority to impose a
13 “surcharge” to civil and criminal penalties as a source of additional funding. A.R.S. 16-
14 976.

15 91. The Act grants the Commission plenary power to write its own rules, to
16 interpret them, and to enforce them, consolidating legislative, judicial, and executive
17 powers into a single, unelected commission, which violates the Separation of Powers
18 doctrine in the Arizona Constitution

19 92. As a direct and proximate result of the Act, Plaintiffs are suffering, and will
20 suffer in the future, irreparable harm to their rights under the Arizona Constitution
21 because governmental power is being exercised in violation of the separation of powers.
22 Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or
23 minimize this harm. Unless Defendants are enjoined from implementing and
24 administering the Act, Plaintiffs and others similarly situated will continue to suffer great
25 and irreparable harm.

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- A. Enter a judgment declaring the Act unconstitutional and unlawful in its entirety;
- B. Enter a permanent injunction against Defendants prohibiting them from administering and enforcing the Act;
- C. Award Plaintiffs their costs and attorney fees pursuant to A.R.S. §§ 12-341, 12-348, and the private attorney general doctrine; and
- D. Award such other and further relief as may be just and equitable.

/s/ Scott Day Freeman
Jonathan Riches (025712)
Timothy Sandefur (033670)
Scott Day Freeman (019784)
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Attorneys for Plaintiffs

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VERIFICATION

I, Cathi Herrod, declare under penalty of perjury that I am the President of Center for Arizona Policy, Inc. ("CAP"), a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* CAP has authorized me to verify that the facts stated in the foregoing Verified Complaint related to CAP are true and correct to the best of my knowledge, information, and belief.

Dated this 13th day of December, 2022.


Cathi Herrod

VERIFICATION

I, Scot Mussi, declare under penalty of perjury that I am the President of Arizona Free Enterprise Club ("FEC"), a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* FEC has authorized me to verify that the facts stated in the foregoing Verified Complaint related to FEC are true and correct to the best of my knowledge, information, and belief.

Dated this 13th day of December, 2022.

Scot Mussi

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VERIFICATION

I, Cathi Herrod, declare under penalty of perjury that I am the President of Center for Arizona Policy, Inc. ("CAP"), a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* CAP has authorized me to verify that the facts stated in the foregoing Verified Complaint related to CAP are true and correct to the best of my knowledge, information, and belief.

Dated this 13th day of December, 2022.

Cathi Herrod

VERIFICATION

I, Scot Mussi, declare under penalty of perjury that I am the President of Arizona Free Enterprise Club ("FEC"), a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* FEC has authorized me to verify that the facts stated in the foregoing Verified Complaint related to FEC are true and correct to the best of my knowledge, information, and belief.

Dated this 13th day of December, 2022.


Scot Mussi

VERIFICATION

I, **Redacted**, declare under penalty of perjury that I am a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* I verify that the facts stated in the foregoing Verified Complaint related to DOE I are true and correct to the best of my knowledge, information, and belief.

Dated this 13 day of December, 2022.

Redacted

VERIFICATION

I, **Redacted**, declare under penalty of perjury that I am a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* I verify that the facts stated in the foregoing Verified Complaint related to DOE II are true and correct to the best of my knowledge, information, and belief.

Dated this 13th day of December, 2022.

Redacted

Jonathan Riches (025712)
Timothy Sandefur (033670)
Scott Day Freeman (019784)
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Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CENTER FOR ARIZONA POLICY, INC.,
an Arizona nonprofit corporation;
ARIZONA FREE ENTERPRISE CLUB;
DOE I; DOE II;

Plaintiffs,

vs.

ARIZONA SECRETARY OF STATE;
KATIE HOBBS, in her official capacity;
ARIZONA CITIZENS CLEAN
ELECTIONS COMMISSION; DAMIEN R.
MEYER, in his official capacity as
Chairman; AMY B. CHAN, in her official
capacity as Commissioner; GALEN D.
PATON, in his official capacity as
Commissioner; MARK KIMBLE, in his
official capacity as Commissioner; STEVE
M. TITLA, in his official capacity as
Commissioner; THOMAS M. COLLINS, its
executive director,

Defendants.

Case No. CV2022-016564

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

(Oral Argument Requested)

Pursuant to Rule 65 of the Arizona Rules of Civil Procedure, Plaintiffs move for an order preliminarily enjoining Defendants from enforcing or implementing Proposition 211, the so-called "Voters' Right to Know Act" (the "Act" or "Prop 211").

INTRODUCTION

This action seeks to protect Plaintiffs' free speech, privacy, and other rights under the Arizona Constitution. The Act violates these rights by chilling Plaintiffs' speech, invading their private affairs, and burdening them with labyrinthine and vague disclosure

1 rules that are committed exclusively to an unelected commission to create, interpret, and
2 enforce.

3 The right to express one's views without fear of reprisal is deeply ingrained in the
4 American tradition. The works of Thomas Paine and *The Federalist*, for example—as
5 well as the responses to them—were published anonymously, and since those days,
6 anonymous speech has been prized in the United States, and limited only in the most
7 serious circumstances.¹ This core right, however, faces a serious infringement from Prop
8 211 with no serious circumstance to justify the limitation

9 Purportedly, the Act encourages transparency and more “civil discourse.” But
10 transparency is for the government, not citizens. Citizens are entitled to *privacy*. And
11 promoting “civil discourse” is an admission that the Act seeks to regulate how people
12 speak and who may do so.

13 Prop 211 also burdens individuals and charitable organizations with the task of
14 navigating a vague reporting regime, vesting the Citizens Clean Elections Commission
15 (“Commission”) with unfettered discretion to “clarify” and enforce the Act. Hurt most by
16 this scheme are small charities and low-dollar donors who cannot afford to risk being
17 caught up in the Act's various enforcement traps even if the “original sources” of
18 donations are willing to disclose their identities. The Act is most likely to silence groups
19 and individuals like these.

20 But more than just silencing the little guys, Prop 211 is more likely to stifle those
21 who engage in unpopular or controversial speech. Not long ago, members and advocates
22 in the LGBTQ community feared retaliation, discrimination, and ostracism, not only from
23 their own families but from the public. Although courageous people spoke against this
24 type of discrimination and for recognition and rights for this community, many chose to
25 remain anonymous fearing harassment, but still wishing to support their cause by
26 “speaking” through donations.

27 ¹ For example, forty-four states have some form of guaranty in their constitution related to
28 ballot secrecy. See <https://www.secretballotatrisk.org/Secret-Ballot-At-Risk.pdf> at
Appendix 2.

1 Today, the situation is different, with those advocating for no special recognition or
2 rights related to LGBTQ issues perhaps being ostracized or, in today's parlance,
3 "canceled," even if they express sincerely held religious or political beliefs. Many are not
4 willing to put their name to speech and advocacy against controversial issues.

5 Fortunately, Arizona's Constitution protects those who wish to speak on
6 controversial matters affecting public policy, allowing them to do so without fear of
7 reprisal. "Anonymity is a shield from the tyranny of the majority." *McIntyre v. Ohio*
8 *Elections Comm'n*, 514 U.S. 334, 357 (1995). That is why "[a]nonymous pamphlets,
9 leaflets, brochures and even books have played an important role in the progress of
10 mankind." *Talley v. California*, 362 U.S. 60, 64 (1960). Prop 211 destroys this shield.

11 Unless this Court enjoins its enforcement, Prop 211 will leave citizens without the
12 protections that generations of people who wished to speak on controversial and
13 potentially unpopular topics have enjoyed. But more than that, it will undoubtedly harm
14 the quality of discourse as it will shift the focus from what is being said to who is
15 speaking.

16 Prop 211 is styled the "Voters' Right to Know Act," but that is a misnomer. Voters
17 only get to know who felt comfortable subjecting themselves to the Act's identity and
18 financial reporting requirements and who can risk the exposure to retaliation when
19 communicating their political views; voters do not get to know who the Act silenced.
20 This action seeks a declaration that the Act is unconstitutional and an order permanently
21 enjoining its enforcement. The Motion asks the Court to preliminarily enjoin its
22 enforcement and effect immediately until such time the Court decides whether further
23 proceedings are necessary.

24 STATEMENT OF FACTS

25 What Prop 211 requires

26 Prop 211 went into effect on December 5, 2022. It adds Sections 16-971 through
27 16-979 to Title 16 of the Arizona Revised Statutes, imposing new original-source
28

1 disclosure requirements related to monetary and in-kind contributions used for “Campaign
2 Media Spending.” In summary, the Act provides as follows:

3 Section 16-971 adds nineteen defined terms, many with multiple subparts,
4 including terms not otherwise defined in the Arizona Revised Statutes such as “Business
5 Income,” “Campaign Media Spending,” “Covered Person,” “Identity,” “In-Kind
6 Contribution,” “Original monies,” “Personal Monies,” “Public Communication,” “Traceable
7 Monies,” and “Transfer Records.”²

8 Campaign Media Spending is defined broadly to include any Public
9 Communication that “expressly advocates for or against the nomination[] or election of a
10 Candidate”; “promotes, supports, attacks or opposes a Candidate within six months
11 preceding an election involving that Candidate”; “refers to a clearly identified Candidate
12 within ninety days before a primary election until the time of the general election and that
13 is disseminated in the jurisdiction where the Candidate’s election is taking place”; and
14 “promotes, supports, attacks or opposes the qualification or approval of any state or local
15 initiative or referendum.”³ A.R.S. § 16-971(2).

16 Campaign Media Spending also includes “[r]esearch, design, production, polling,
17 data analytics, mailing or social media list acquisition or any other activity conducted in
18 preparation for or in conjunction with any of the activities described in [the
19 subdivision].” *Id.* § 16-971(2)(vii) (emphasis added).

20 Section 16-972 requires a Covered Person⁴ to provide donors with notice and up to
21 21 days to “opt-out” of having their donations used for Campaign Media Spending.⁵ This

22
23 ² The Act’s defined terms are capitalized in this Motion.

24 ³ It also includes any “*activity* or Public Communication that supports the election or
25 defeat of Candidates of an identified political party or the electoral prospects of an
26 identified political party.” A.R.S. § 16-971(2)(vi) (emphasis added).

27 ⁴ Covered Person is defined as “any person whose total Campaign Media Spending or
28 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).

⁵ Confusingly, because Campaign Media Spending includes “research, design, production,
polling, data analytics, mailing or social media list acquisition,” etc., that might be used to
prepare for future Public Communications, charities can meet the Campaign Media
Spending threshold—thus becoming a Covered Person under the Act with disclosure

1 Section also requires that any person donating more than \$5,000 in Traceable Monies to a
2 Covered Person in an election cycle inform the Covered Person of identities of any other
3 person that “directly or indirectly” contributed more than \$2,500 Original Monies to the
4 donor and any intermediaries involved in transferring those Original Monies to the donor.⁶

5 Section 16-973(A) requires, among other things, that a Covered Person file a
6 disclosure report with the Secretary of State “[w]ithin five days after first spending
7 monies or accepting In-kind Contributions totaling \$50,000 or more during an Election
8 Cycle on Campaign Media Spending.” The report must contain the name, mailing
9 address, and occupation and employer of each “donor^[7] of Original Monies^[8] who
10 contributed, directly or indirectly, more than \$5,000 of Traceable Monies^[9] or In-kind
11 Contributions for Campaign Media Spending during the Election Cycle to the Covered
12 Person.” *Id.* § 16-973(A)(6). In other words, an organization that spends more than
13 \$50,000 for Campaign Media Spending during an Election Cycle must disclose to the
14 Secretary of State the name, mailing address, occupation, and employer information of all
15 donors who gave more than \$5,000 over those two years; the Secretary will then make
16 that information available to the public.¹⁰

17 Section 16-974(C) also requires a Covered Person to disclose “the names of the top
18 three donors who directly or indirectly made the three largest contributions of original
19

20 obligations—*simply by conducting research* and other things charities do. Unless
21 charities pre-emptively give all donors notice that donations might be used to fund
22 activities that could be regarded as Campaign Media Spending at least 21 days in the
23 future, they cannot use those donations in their charitable discretion without risking the
24 public disclosure of their donors’ private information.

⁶ This Section also requires a Covered Person to identify all persons the Covered Person
23 disbursed \$10,000 or more to in Traceable Monies during the election cycle. A.R.S. § 16-
24 973(A)(8).

⁷ If the donor is an Organization, the report must provide the Organization’s tax
25 identification number and state of organization.

⁸ Original Monies is defined to include “Business Income or an individual’s Personal
26 Monies.” A.R.S. § 16-971(12).

⁹ Traceable Monies is defined to include “[m]onies that have been given, loaned[,], or
27 promised to be given to a covered person and for which no donor has opted out of their
28 use or transfer for Campaign Media Spending.” A.R.S. § 16-971(18).

¹⁰ Under the Act, unions engaging in Campaign Media Spending are allowed to receive
twice as much in “dues” without having to disclose the donors so long as they use *only*
dues money on campaign media spending. *Id.* A.R.S. § 16-971(1) & (7)(b)(ii).

monies during the election cycle to the covered person.” This disclosure is required even if the donors of those Original Monies elected to not have their donations used for Campaign Media Spending, i.e., they “opted out” under Section 16-972(B).

Section 16-974(A) gives the Commission extensive powers, including the power to “[a]dopt and enforce rules ... [i]nitiate enforcement actions ... [c]onduct fact finding hearings and investigations ... [i]mpose civil penalties ... [and] [p]erform any other act that may assist in implementing this chapter.” Remarkably, this grant of powers is so broad that any rules or enforcement actions “are not subject to the approval of or any prohibition or limit imposed by *any other executive or legislative governmental body or official*,” and any “rules adopted pursuant to this Chapter are exempt from Title 41, Chapters 6 and 6.1.” A.R.S. § 16-974(D) (emphasis added).

Section 16-973(F) contains an exception that prevents disclosure only if the Original Source of a donation can demonstrate “that there is a reasonable probability that public knowledge of the Original Source’s Identity would subject the source or the source’s family to a serious risk of physical harm.”

Section 16-976 provides for the imposition of significant civil penalties for violating the Act, and Section 5 of Prop 211 itself states that “[t]he rights established by this Act shall be construed broadly.”

Effects on Plaintiffs

Plaintiffs are Center for Arizona Policy, Inc., (“CAP”), a qualified 501(c)(3) organization, and the Arizona Free Enterprise Club (“FEC”), a qualified 501(c)(4) organization, and Does I and II. CAP and FEC engage in issue advocacy related to campaigns in Arizona that would qualify them as “Covered Persons” under the Act. *See* Declaration of Cathi Herrod, attached as Exhibit 1, (“CAP Dec”) ¶¶ 1–14; Declaration of Scot Mussi, attached as Exhibit 2, (“FEC Dec”) ¶¶ 1–12. Doe plaintiffs are individuals who donate confidentially to organizations like CAP and FEC in amounts covered by the Act precisely because of the campaign-related issue advocacy engaged in by those charitable organizations. Declaration of Doe I, attached as Exhibit 3 (redacted), (“Doe I

Dec”) ¶¶ 1–9; Declaration of Doe II, attached as Exhibit 4 (redacted), (“Doe II Dec”) ¶¶ 1–9.¹¹

In their Verified Complaint, Plaintiffs assert that the Act is unconstitutional because it violates their rights to speak freely, to be undisturbed in their private affairs, and to a government where legislative, executive, and judicial powers are wielded by distinct and separate divisions of government. Implementing the Act violates these rights.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Plaintiffs satisfy the requirements for a preliminary injunction.

A party seeking a preliminary injunction must show 1) a likelihood of success on the merits; 2) the possibility of irreparable harm if relief is not granted; 3) balance of hardships favoring the moving party; and 4) public policy weighs in favor of injunctive relief. *Fann v. State*, 251 Ariz. 425, 432 ¶ 16 (2021). Courts apply a sliding scale in determining whether to issue a preliminary injunction rather than a strict balancing of the four factors. *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 410–11 ¶ 10 (2006). Thus, to warrant a preliminary injunction the plaintiff must “establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party.” *Id.* (citation and internal marks omitted). In other words, “[t]he greater and less reparable the harm, the less the showing of a strong likelihood of success on the merits need be.” *Id.* All these factors decidedly favor Plaintiffs on each of their claims.

II. Plaintiffs will prevail on the merits of each of their claims.

Plaintiffs allege that the Act violates their rights under the Arizona Constitution because it violates their rights to “speak freely,” to be “undisturbed” in their “private affairs,” and to have a state government constrained by the “separation of powers.”

¹¹ Declarations from the two organizational Plaintiffs are attached to this Motion. Plaintiffs are filing redacted versions of the Declarations submitted by Plaintiffs Doe I and II, and seeking leave to file the unredacted versions under seal. This is necessary to preserve the confidentiality of Doe I and II.

1 Verified Complaint ¶¶ 70–92. The Act fails strict scrutiny and is otherwise vague, overly
2 broad, and unenforceable.

3 **A. Plaintiffs’ First Claim: The Act Violates the Free Speech Guarantees in**
4 **Article II, Section 6, of the Arizona Constitution.**

5 The Arizona Constitution protects the right of all people to speak freely. Ariz.
6 Const. art. II, § 6 (“Every person may freely speak, write, and publish on all subjects,
7 being responsible for the abuse of that right.”).

8 Unlike the First Amendment, which frames free speech in terms of restricting
9 government actions, Arizona’s Constitution frames the right to speak freely as a positive
10 right, without reference to government action. *Sign Here Petitions LLC v. Chavez*, 243
11 Ariz. 99, 104 ¶ 10 (App. 2017) (“The right to free speech is granted directly to every
12 Arizonan and is not merely a protection against government action ...”).

13 In part because of these textual differences, the Supreme Court has consistently
14 held that Arizona’s Constitution provides greater protection than the First Amendment.
15 *See, e.g., Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281 ¶ 45 (2019)
16 (“[T]he Arizona Constitution provides broader protections for free speech than the First
17 Amendment.”); *see also Sign Here Petitions*, 243 Ariz. at 104 ¶ 10 (“Where the
18 guarantees of the Arizona Constitution are in question, ‘we first consult our constitution.’”
19 (citation omitted). Arizona courts may therefore use First Amendment precedent to
20 address state constitutional claims, because “a violation of First Amendment principles
21 ‘necessarily implies’ a violation of the broader protections” of the Arizona Constitution.
22 *Brush & Nib*, 247 Ariz. at 282 ¶ 47. But a law that does *not* violate the First Amendment
23 may still violate the Arizona Constitution.

24 Finally, like the First Amendment, Arizona’s Constitution “includes both the right
25 to speak freely and the right to refrain from speaking at all.” *Id.* at 282 ¶ 48 (citation
26 omitted); *see also Riley v. Nat’l Fed’n of the Blind*, 487 U.S. 781, 796–97 (1988) (First
27 Amendment guaranties include freedom of deciding “both what to say and what *not* to
28 say.”)

1 Here, the Act violates the right to speak and not speak: it chills speech through its
2 disclosure and regulatory scheme, and it compels speech through its donor disclosure
3 obligations. Plaintiffs consist of two charitable organizations and two individual donor
4 plaintiffs. The organizations have a history of engaging in Campaign Media Spending
5 with donors that Contribute more than \$5,000 to support those efforts during an Election
6 Cycle. CAP Dec ¶¶ 1–14; FEC Dec ¶¶ 1–12, 23. These organizations have experienced
7 harassment, threats (including violent threats), intimidation, and property damage because
8 of their public positions. CAP Dec ¶¶ 19–22; FEC Dec ¶¶ 16–17. These organizations
9 also keep their donors’ identities and donation amounts confidential, in part to shield them
10 from suffering harassment and other forms of retaliation. CAP Dec ¶¶ 15–18, 22–24;
11 FEC Dec ¶¶ 13–15, 17–24.

12 Plaintiffs Doe I and II each have a history of donating to charitable organizations
13 because those charities engage in issue advocacy that they support (Campaign Media
14 Spending under the Act) and do so in amounts governed by the Act’s disclosure
15 requirements. Doe I Dec ¶¶ 1–9; Doe II Dec ¶¶ 1–8, 15. Plaintiffs Doe I and II donate to
16 these organizations and require that their donations be kept confidential, in part because of
17 concern about harassment. *See* Doe I Dec ¶¶ 10–16; Doe II Dec ¶¶ 9–15.

18 Because of the Act, CAP and FEC will alter or eliminate activities that could
19 subject them and their donors to the Act, and that “self-censorship” will have a material
20 impact on their ability to speak to the public on policy issues and on donor support. CAP
21 Dec ¶¶ 25–30; FEC Dec ¶¶ 24–29. Likewise, Plaintiffs Doe I and II will limit or alter
22 their charitable donations to such organizations because of the Act. Doe I Dec ¶ 14; Doe
23 II Dec ¶¶ 13–15.

24 Thus, Plaintiffs’ Verified Complaint and declarations demonstrate beyond any
25 doubt that the Act chills speech. *See Citizens United v. FEC*, 558 U.S. 310, 340–41 (2010)
26 (stating that “political speech must prevail against laws that would suppress it by design or
27 inadvertence” and that “the First Amendment protects speech and speaker, and the ideas
28 that flow from each”).

1 **1. The Act is content-based and fails strict scrutiny.**

2 Laws or regulations that “distinguish favored speech from disfavored speech” or
3 “regulate speech because of the message it conveys” are content-based laws subject to
4 strict scrutiny. *Brush & Nib*, 247 Ariz. at 292 ¶ 96 (citations omitted). Laws that seem
5 “content neutral” are nevertheless content-based regulations of speech if they “cannot be
6 ‘justified without reference to the content of the regulated speech’ or [if they] were
7 adopted by the government ‘because of disagreement with the message [the speech]
8 conveys.’” *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015) (citation omitted). “[S]uch
9 laws are presumptively unconstitutional and may be justified only if the government
10 proves that they are narrowly tailored to serve compelling state interests.” *Brush & Nib*,
11 247 Ariz. at 292 ¶ 96 (citation & internal marks omitted).

12 The Act imposes content-based restrictions on speech and thus is presumptively
13 unconstitutional for the following reasons:

14 **First**, the Act is directed at a specific kind of political speech that comes in the
15 form of Campaign Media Spending. A.R.S. § 16-971(2). This includes speech that
16 “advocates for or against the nomination, or election of a candidate”; “promotes, supports,
17 attacks[,] or opposes” a candidate; “refers to a clearly identified candidate”; or “promotes,
18 supports, attacks[,] or opposes ... any state or local initiative for referendum” or “recall of
19 a public officer.” *Id.* Thus, the Act requires the examination of the content of the
20 communication to determine whether it applies. It applies to a particular kind of political
21 discourse, that which is tied in a poorly defined way to a campaign. It is thus “content
22 based.” *See Reed*, 576 U.S. at 163 (“Government regulation of speech is content based if
23 a law applies to particular speech because of the topic discussed or the idea or message
24 expressed.”)

25 **Second**, the Act discriminates against forms of speech most likely to garner
26 interest, e.g., intensely controversial issues or candidates in highly competitive elections.
27 These are the kind of “campaigns” most likely to generate the Act’s “Campaign Media
28 Spending,” and most likely to involve donors who want to contribute to charitable

1 organizations that take positions on those issues and in those contests. *See McIntyre*, 514
2 U.S. at 347 (“Urgent, important, and effective speech can be no less protected than
3 impotent speech, lest the right to speak be relegated to those instances when it is least
4 needed.”)

5 **Third**, the Act compels the disclosure of additional information with the
6 communication: the identity of donors, including the “top three” donors to the “Covered
7 Person,” irrespective of whether those donors “opted out” of having their donations used
8 for Campaign Media Spending. Thus, as the *Brush & Nib* court explained, if the
9 government mandates speech an organization would not otherwise engage in, and if that
10 speech alters the content of the speech, then the law operates as a content-based regulation
11 of speech. 247 Ariz. at 292 ¶ 100.

12 **Fourth**, the Act obviously discriminates against—in fact outright bans—a form of
13 anonymous speech. Here, Plaintiffs maintain the privacy of donors and their donations
14 that are used in what the Act now calls “Campaign Media Spending.” But anonymous
15 speech is a protected type of speech. *See McIntyre*, 514 U.S. at 342 (ban on anonymous
16 pamphleteering regarding a ballot measure violated First Amendment).

17 The Act’s ban on forms of anonymous speech is particularly pernicious because it
18 affects “disfavored” speech. In *NAACP v. Alabama*, the U.S. Supreme Court “recognized
19 the vital relationship between freedom to associate and privacy in one’s associations,” and
20 compared the compelled disclosure of membership groups to “[a] requirement that
21 adherents of particular religious faiths or political parties wear identifying arm-bands.”
22 357 U.S. 449, 462 (1958) (citation & internal marks omitted). The Court found that such
23 a requirement would clearly be unconstitutional, and it struck down Alabama’s attempt to
24 compel public disclosure of private membership and donor information. The purpose of
25 Prop 211 is no different: it chills, changes, and silences speech by exposing the supporters
26 of CAP and FEC to having their identities and other private information placed on a
27
28

publicly accessible government list, thus risking and even encouraging harassment and intimidation.¹²

2. The Act does not further a compelling government interest nor is it narrowly tailored.

To survive strict scrutiny, the government must prove that the Act “(1) furthers a compelling government interest and (2) is narrowly tailored to achieve that interest.”

Brush & Nib, 247 Ariz. at 293 ¶ 105.

The purported “compelling interest” here is in an informed electorate that knows the identities of private groups or individuals funding communications. But the U.S. Supreme Court has held that such an informational interest is “plainly insufficient.”

McIntyre, 514 U.S. at 349. *McIntyre* explained that

People are intelligent enough to evaluate the source of an anonymous writing. They can see it is anonymous. They know it is anonymous. They can evaluate its anonymity along with its message, as long as they are permitted, as they must be, to read that message. And then, once they have done so, it is for them to decide what is “responsible,” what is valuable, and what is truth.

Id. at 348 n.11 (internal marks & citations omitted). The same applies here.

In addition, the Act’s disclosure requirements are not narrowly tailored, in part because it requires Covered Persons to disclose the identities of certain donors who have either “opted out” or who were not given the opportunity to “opt out.”

For example, it requires the disclosure of a Covered Person’s “top three donors who directly or indirectly made the three largest contributions,” even if those donors “opted out” of having their contributions used for Campaign Media Spending. *See* A.R.S. § 16-974(C). The Act also requires Covered Persons to disclose donors as well as the

¹² Indeed, one of Prop 211’s main proponents and drafters, Terry Goddard, explained that the Act’s disclosure requirements would change campaign ads by forcing speakers to alter their “tone,” on pain of not being allowed to speak. *See* Debate with Terry Goddard at 50:7 and 51:14, found at <https://www.youtube.com/watch?v=CTUZcJk8YhU>. These are admissions that the Act is content based, favoring one form of communication over another.

1 “original sources” of the money the donor contributed and any “intermediaries” of those
2 funds. But the Act only requires the “opt out” notice to be sent to those that donated
3 directly to the Covered Person, not to the “original sources.” That means the Act strips
4 people of privacy who have funded the charity for *other* reasons, and who might have no
5 idea that their funds ultimately would be given to a Covered Person. *See* A.R.S. § 16-
6 973(A)(6).

7 In addition, the Act’s exception to the disclosure requirement set forth in Section
8 16-973(F) is dangerously narrow, subjecting all but a handful of donors to the risk of
9 harassment, intimidation, and abuse. The exception applies *only* to donors who can prove
10 that disclosure is likely to cause a risk of a “serious” threat of “physical” harm. But the
11 harms speakers are likely to experience—and the constitutional rights speakers enjoy—are
12 not so limited. True, *NAACP v. Alabama* protected the privacy rights of people who
13 might have faced physical violence in retaliation for supporting the NAACP—but the
14 Court also struck down that disclosure requirement due to the risk that donors might face
15 “economic reprisal, loss of employment ... and other manifestations of public hostility,”
16 357 U.S. at 462, and in *Shelton v. Tucker*, 364 U.S. 479, 486 (1960), the Court struck
17 down a mandatory disclosure requirement because it would put “pressure upon a teacher
18 to avoid any ties which might displease those who control his professional destiny.” By
19 focusing solely on “physical” threats, the Act effectively endorses “doxing,” boycott,
20 harassment, ostracism, failure-to-hire, and other forms of retaliation.

21 In any event, the Act places an impossible burden on donors because no one can
22 predict how speaking about issues *today* might be viewed in the future. CAP Dec ¶ 24;
23 FEC Dec ¶ 22. Donor-endorsed speech might be completely anodyne today and highly
24 controversial in the future. *See Delaware Strong Fams. v. Denn*, 136 S. Ct. 2376, 2377
25 (2016) (Thomas, J., dissenting from denial of certiorari) (questioning “whether a State’s
26 interest in an informed electorate can ever justify the disclosure of otherwise anonymous
27 donor rolls” when it is admitted that the requirements will lead to individuals not speaking
28 for fear of harassment).

1 **3. The Act is unconstitutional because it is vague and overly broad.**

2 “A statute is unconstitutionally over broad when it prohibits or deters conduct
3 protected by the First Amendment.” *State v. Carrasco*, 201 Ariz. 220, 224 ¶ 14 (App.
4 2001). An individual can prevail on an overbreadth claim by proving there is “a realistic
5 danger that the statute will *significantly* jeopardize recognized first amendment
6 protections of individuals not before the court.” *State v. McLamb*, 188 Ariz. 1, 9–10
7 (App. 1996) (emphasis in original, citation omitted).

8 Here, the Act’s definitions alone render it unconstitutional because of their
9 vagueness and overbreadth. For example, Campaign Media Spending includes a wide
10 range of activities including any public communication that simply “refers to a clearly
11 identified candidate within ninety days before a primary election,” A.R.S. § 16-
12 971(2)(a)(iii), meaning that a simple blog post that mentions a candidate ninety days
13 before a primary—even if the reference has nothing to do with the candidacy or
14 election—could trigger the disclosure requirements under Section 16-973(A)(6). This is
15 particularly problematic for 501(c)(3) organizations, like CAP, which are expressly
16 prohibited from engaging in political activities like supporting or opposing candidates.

17 The meaning of Campaign Media Spending is also unclear because its spending
18 threshold includes activities “conducted in preparation for or in conjunction with” the
19 campaign related activities described in the statute. *See id.* § 16-971(2)(a)(vii). Section
20 16-971(2)(vii) contains no requirement that an organization actually engage in Public
21 Communications to count as Campaign Media Spending. Thus, charities like CAP and
22 FEC are left to guess at which activities might subject them to the Act’s reporting and
23 disclosure requirements, what contributions can be used to fund the charities’ activities,
24 and who should be provided with an “opt out” notice and when. *See* CAP Dec ¶¶ 27–28;
25 FEC Dec ¶ 26–27.

26 These examples exemplify the vagueness and overbreadth of an Act that causes the
27 disclosure and potential doxing of individuals with a highly attenuated connection to the
28 Public Communication ultimately conveyed, exposes people unprotected from anonymity

1 to real threats of reprisal, and leaves charities unable to safely navigate an unclear
2 regulatory environment.

3 **B. Plaintiffs will prevail on their Second Claim because the Act violates the**
4 **Private Affairs Clause of the Arizona Constitution.**

5 Article II, Section 8, of the Arizona Constitution, states, “No person shall be
6 disturbed in his private affairs, or his home invaded, without authority of law.”

7 In interpreting the Private Affairs Clause, Arizona courts look to its “natural,
8 obvious, and ordinary meaning.” *State v. Mixton*, 250 Ariz. 282, 290 ¶ 33 (2021) (internal
9 marks & citation omitted). This Clause prohibits, among other things, government efforts
10 to investigate a private organization’s financial dealings, or to compel the disclosure of an
11 organization’s financial records, books, and files, or to compel the public disclosure of tax
12 information or other sensitive information. *Id.* at 291 ¶¶ 34–35. When the Clause was
13 written, information relating to (inter alia) the financial support of ballot initiative
14 campaigns, or of organizations other than campaign committees, or of charitable
15 organizations that engage in speech on matters of public concern, was generally
16 considered a private affair.¹³

17 Plaintiffs’ contributions to charities that engage in issue advocacy or candidate
18 support are private affairs. These donations involve private financial decisions related to
19 speech in support of or opposition to matters that people ultimately vote on—in secret—
20 when voting. *See* Ariz. Const. art. VII, § 1 (“All elections by the people shall be by ballot,
21 or by such other method as may be prescribed by law; Provided, that secrecy in voting
22 shall be preserved.”) Plaintiffs have a legitimate expectation that their donations and
23 identities will be kept confidential. CAP Dec ¶¶ 15–18; FEC Dec ¶¶ 13–18; Doe I Dec ¶¶
24 10–12; Doe II Dec ¶¶ 9–12.

25
26 ¹³ The *sole* exceptions were specified in Ariz. Const. art. VII, § 16: “campaign
27 contributions to, and expenditures of campaign committees and candidates for public
28 office.” Pursuant to “[t]he maxim ‘*expressio unis est exclusio alterius*,’” *State v. Tucson*
Gas, Elec. Light & Power Co., 15 Ariz. 294, 299–300 (1914), the private financial
information of organizations that are neither campaign committees nor candidates, and
who do not make campaign contributions, are “private affairs” protected by the Private
Affairs clause.

1 The Act conditions Plaintiffs' ability to speak on campaign-related matters on
2 disclosing their donors' identities and contributions, thereby disclosing their donor's
3 support of those organizations, and subjecting them to the risk of retaliation. The Act,
4 therefore, violates Plaintiffs' constitutional rights under the Private Affairs Clause.

5 **C. The Act Violates the Separation of Powers Guarantees of Article III of**
6 **the Arizona Constitution.**

7 The Act gives the Commission—itsself a statutory body protected by Arizona's
8 Voter Protection Act—extensive new legislative, executive, and quasi-judicial powers.
9 This broad grant of interdepartmental powers, and the raising of the Commission to what
10 amounts to an independent “Fourth Branch of Government,” violates Article III of the
11 Arizona Constitution, which states:

12 The powers of the government of the state of Arizona shall be divided into
13 three separate departments, the legislative, the executive, and the judicial;
14 and, except as provided in this constitution, such departments shall be
separate and distinct, and no one of such departments shall exercise the
powers properly belonging to either of the others.

15 This Act empowers the Commission to wield powers of all three branches and removes
16 any normal oversight.

17 The Supreme Court has twice considered, and twice invalidated, similar broad
18 delegations of legislative authority. First, in *Tillotson v. Frohmiller*, the Board of
19 Directors of State Institutions was given power through an initiative to levy taxes, incur
20 debts, and establish a bank. 34 Ariz. 394, 397–98 (1928). The Court held that this
21 violated Article III, which assigns the power of making laws to the legislature, the
22 interpretation of laws to the courts, and the enforcement of laws to the executive. *Id.* at
23 401. The people through the initiative tried to give the Board absolute discretionary
24 power not subject to the legislature or executive. *Id.* at 403. That was unconstitutional.

25 Second, in *State v. Marana Plantations, Inc.*, the Court held unconstitutional the
26 “Sanitary Code” made for agricultural labor camps by the State Board of Health, because
27 the Code was made under an improper delegation of legislative power. 75 Ariz. 111,
28 114–15 (1953). The Court explained that the power “vested in the legislature ... cannot

1 be relinquished nor delegated,” and although it acknowledged that “[t]he line of
2 demarcation between what is a legitimate granting of power for administrative regulation
3 and an illegitimate delegation of legislative power is often quite dim,” it said that an effort
4 to “give[] unlimited regulatory power to a commission, board or agency with no
5 prescribed restraints nor criterion nor guide to its action offends the Constitution as a
6 delegation of legislative power.” *Id.* at 113–14.

7 The Act constitutes just that kind of unrestrained delegation. It empowers the
8 Commission to act on its independent and uncontrolled judgment in a variety of areas, and
9 makes clear that the Commission will have unrestricted powers: “[t]he Commission’s
10 rules and any commission enforcement actions pursuant to this chapter *are not subject* to
11 the approval of or any prohibition or limit imposed by any other executive or legislative
12 governmental body or official.” A.R.S. § 16-974(D) (emphasis added).

13 The Act also gives the Commission unlimited discretionary authority to raise or
14 lower the donation and expenditure thresholds. *See id.* § 16-974(F). It empowers the
15 Commission to “adjust” the thresholds to reflect inflation, so the Commission could
16 arguably lower both thresholds if the current high inflation goes down. The Commission,
17 once it uses penalties collected under the Act to pay for implementation and enforcement
18 of this chapter, can use left-over money for any “other Commission-approved purpose.”
19 *Id.* § 16-976(B). The Commission does not have to use the left-over money to further any
20 purpose *of the Commission*, but for whatever purpose *the Commission approves*. Thus,
21 the Commission can use the left-over money for whatever it wants, and since it is exempt
22 from standard rulemaking requirements, the legislature can exercise no control over such
23 expenditures.

24 Finally, the Act allows the Commission to “[p]erform any other act that *may* assist
25 in implementing this chapter.” *Id.* § 16-974(A)(8) (emphasis added). Again, it is
26 impossible to understand this vast delegation without also considering that the Act
27 *exempts the Commission from all traditional rulemaking oversight*. The use of “may,”
28 however, shows that the Commission can undertake any action that could conceivably

1 help in implementing the Act—an extremely broad grant of power, immune from
2 traditional checks or balances.

3 The Act, in the words of *Tillotson*, empowers the Commission to act as it chooses
4 “upon their independent uncontrolled judgment. 34 Ariz. at 403. Thus, the Act violates
5 separation of powers principles and constitutes an unlawful delegation of power.

6 **III. Irreparable harm will result absent an injunction.**

7 “The loss of First Amendment freedoms, for even minimal periods of time,
8 unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976);
9 *Am. Trucking Ass’n v. City of L.A.*, 559 F.3d 1046, 1059 (9th Cir. 2009) (“[C]onstitutional
10 violations cannot be adequately remedied through damages and therefore generally
11 constitute irreparable harm.” (citation omitted)).

12 Plaintiffs’ harm, the loss of unknown donations and the public disclosure of
13 individual Plaintiffs, is impossible to remedy with damages. *Shoen v. Shoen*, 167 Ariz.
14 58, 63 (App. 1990). After all, once an organization has been forced to place its donors’
15 private information on a publicly accessible government list, that disclosure cannot be
16 undone. *See Mobilisa, Inc. v. Doe*, 217 Ariz. 103, 112 ¶ 26 (App. 2007) (once an
17 anonymous party is “unmasked” there is no remedy for the unmasked person); *Constand*
18 *v. Cosby*, 833 F.3d 405, 410 (3rd Cir. 2016) (“Public disclosure cannot be undone”).

19 Unquestionably, the harm suffered by Plaintiffs is irreparable.

20 **IV. The balance of hardships and public interest favors Plaintiffs.**

21 When a government entity is a party to a lawsuit, it is appropriate to “consider the
22 balance of equities and the public interest together.” *California v. Azar*, 911 F.3d 558, 581
23 (9th Cir. 2018).¹⁴ Although it is not necessary for this Court to address these factors
24 because Plaintiffs have a strong likelihood of success on the merits, any violation of the
25 Constitution is also a hardship that tips the balance in favor of Plaintiffs, and enforcing the

26 ¹⁴ *Flynn v. Campbell*, 243 Ariz. 76, 80 ¶ 9 (2017) (“Although a federal court’s
27 interpretation of a federal procedural rule is ‘not binding in the construction of our rule,’
28 we recognize its instructive and persuasive vale and that ‘uniformity in interpretation of
our rules and the federal rules is highly desirable.’” (quoting *Orme Sch. v. Reeves*, 166
Ariz. 301, 304 (1990)))

1 constitution is always in the public interest. *See, e.g., Melendres v. Arpaio*, 695 F.3d 990,
2 1002 (9th Cir. 2012).

3 Conversely, any hardship to the government would be minimal. Plaintiffs here are
4 not asking this Court to halt enforcement of a longstanding disclosure regime on which
5 voters in Arizona have relied. Instead, the Act has not yet come into full force and the
6 Commission has not yet adopted rules to make the Act operative. An injunction would
7 simply preserve the status quo and bring no harm to the Commission or the Act itself.

8 If the Act were to be implemented immediately, however, Covered Persons
9 including Plaintiffs would have to file disclosure reports with the Secretary of State and
10 make their donors' private information public. Further, donor Plaintiffs would risk having
11 their private information disclosed. It is impossible to unwind such disclosures. Pausing
12 implementation of Prop 211 would have no longstanding harm in the unlikely event that it
13 passes constitutional muster, because the Commission would be in the same position it is
14 now. As the same cannot be said for the Plaintiffs, it is clear that the balance of hardships
15 and the public interest tip in favor of Plaintiffs.

16 **V. Plaintiffs meet all requirements for preliminary relief and no bond should be**
17 **required.**

18 A plaintiff seeking preliminary relief must usually post a bond "in such amount as
19 the court considers proper to pay," Ariz. R. Civ. Proc. 65(c), but the Court has discretion
20 to waive this requirement where doing so serves the interests of justice. *In re Wilcox*
21 *Revocable Trust*, 192 Ariz. 337, 341 ¶¶ 17–20 (App. 1988); *see also Save Our Sonoran,*
22 *Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2004) ("requiring nominal bonds is
23 perfectly proper in public interest litigation.")

24 Any bond in this matter should be nominal because plaintiffs are seeking in the
25 public interest to enjoin a violation of the Constitution(s). As one federal court observed
26 when interpreting Rule 56(c)'s federal counterpart, "requiring a bond to issue before
27 enjoying potentially unconstitutional conduct by a governmental entity simply seems
28 inappropriate," because that would make "protection of [constitutional] rights ...

1 contingent upon an ability to pay.” *Doctor John’s Inc. v. City of Sioux City*, 305 F.
2 Supp.2d 1022, 1043–44 (N.D. Iowa 2004).

3 Plaintiffs bring this case as concerned citizens seeking to vindicate rights enjoyed
4 by all Arizonans. *Cf. Ctr. For Food Safety v. Vilsack*, 753 F. Supp.2d 1051, 1062 (N.D.
5 Cal. 2010) (court dispensed with bond requirement where plaintiff was a “small non-
6 profit” and “requiring the organization to pay a bond would fatality [sic] harm its ability
7 to bring lawsuits on behalf of the public interest.”). Anything more than a nominal bond
8 will have a chilling effect on efforts to ensure legal compliance. *Cf. Wistuber v. Paradise*
9 *Valley Unified Sch. Dist.*, 141 Ariz. 346, 350 (1984) (Attorney fees should not be awarded
10 “[w]here aggrieved citizens, in good faith, seek a determination of the legitimacy of
11 governmental actions ... Courts exist to hear such cases; we should encourage resolution
12 of constitutional arguments in court rather than on the streets.”). The Court should
13 therefore waive the bond requirement or set it at a nominal amount.

14 CONCLUSION

15 This Court should grant Plaintiffs’ Motion and enter a preliminary injunction
16 enjoining the enforcement of the Act in all respects until the Court has the opportunity to
17 consider and enter a permanent injunction.

18
19 **RESPECTFULLY SUBMITTED** this 15th day of December, 2022.

20
21 /s/ Scott Day Freeman
Jonathan Riches (025712)
22 Timothy Sandefur (033670)
Scott Day Freeman (019784)
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25 Phoenix, Arizona 85004
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27
28

DECLARATION OF CATHI HERROD

I, Cathi Herrod, declare under penalty of perjury under the laws of the State of Arizona as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this declaration and am competent to testify regarding them.

2. I am the President of the Center for Arizona Policy ("CAP"), which is a statewide research and education organization. I have served in this capacity since 2006 and have worked at CAP since 1997. I am authorized to make this declaration on behalf of CAP.

3. CAP's mission is to promote and defend foundational principles of life, marriage and family, and religious freedom. To advance that mission, CAP engages in public education, lobbying, and grassroots activity, including hosting public policy events, issuing policy papers, and communicating with individual citizens, the media, and policymakers on public policy issues.

4. CAP is a tax-exempt, charitable organization under section 501(c)(3) of the Internal Revenue Code. CAP is a not-for-profit organization operating exclusively for charitable purposes.

5. As a 501(c)(3) organization, CAP is completely prohibited from supporting or opposing candidates for office within the meaning of the federal Internal Revenue Code. Under federal law, CAP is also limited in the amount of its budget that it can dedicate to communicating with policymakers or lobbying for or against state and local laws.

6. CAP is in good standing as a 501(c)(3) organization with the Internal Revenue Service (“IRS”), and it has been so since its founding in 1995.

7. CAP funds its activities by raising charitable contributions from donors throughout Arizona.

8. A number of donors have given CAP over \$5,000 each within the most recent election cycle as defined under A.R.S. § 16-971.

9. One of the primary reasons donors give to CAP is so that CAP can engage in research, education, advocacy, and public communications about issues to advance CAP’s charitable purpose. It is my belief and understanding that many of these activities fall within the definition of “campaign media spending” under A.R.S. § 16-971.

10. For example, CAP conducts research and analysis to prepare policy papers and other public communications that refer to government officials, including officials who may be running as incumbents in an election. Some of those communications may occur prior to general and primary elections.

11. CAP also regularly communicates with its supporters and the general public, through its website and the media. Some of those communications may refer to a candidate within the meaning of A.R.S. § 16-971, including government officials who are incumbents, prior to an election.

12. CAP also provides limited support and opposition to ballot measures as permitted by federal law to advance its charitable purposes.

13. During the most recent election cycle, CAP expended upwards of \$50,000 collectively on the public communications described in the preceding paragraphs. CAP

generally spends upwards of \$50,000 on these sorts of communications in a given election cycle.

14. CAP's communications to the public and its supporters will be impacted, impaired, and altered because of the disclosure and other regulatory requirements in the "Voters' Right to Know Act" (the "Act").

15. CAP keeps the names and addresses of its donors strictly confidential. It does not disclose the names and addresses of its donors to government officials in Arizona or any other state. CAP does not publicly disclose the identities of its donors or the amounts received from them.

16. CAP solicits charitable contributions in a variety of ways, including meeting with donors, and CAP works to build and maintain personal relationships with many of its donors. In conversations with CAP staff, several donors have expressed concerns about confidentiality and potential reprisals for exercising their speech rights, and in particular, concerns about the effects of the Act.

17. In soliciting charitable contributions, CAP informs donors that it will safeguard their identities. Moreover, CAP has a written donor privacy policy that appears on its website, expressing its commitment to safeguarding donor confidentiality.

18. CAP donors have informed me that they are concerned about having their contributions to CAP reported to government officials or about having that information disclosed to the public. Donors are concerned that if their donations to CAP are publicly disclosed, this will lead to harassment, retaliation, economic harm, harms to their reputation, and even physical harm. Donors, including donors who give more than

\$5,000 in an election cycle as defined under the Act, have specifically expressed to CAP the importance of remaining anonymous.

19. CAP as an organization, and its staff personally, have frequently been subject to harassment because of CAP's public communications. We have received many threats of physical harm (including some that resulted in local police and FBI involvement), protests outside CAP's office, and harassing emails.

20. The following are a few excerpts of the kind of harassing and threatening language directed at CAP and its staff in emails and other communications:

- "Sooner or later, you will die, and some of us pray it is sooner...."
- "Go f*** yourself and I hope you die of cancer. RIP b*****"
- "I know that I, and many, many others, will do everything it takes to marginalize your vulgar and loathsome organization from affecting any more lives."
- "You are a cancer that will soon be sliced out of our nation's sick body. I will make it my personal mission to bury every single one of you.... The great people of this state will make sure that you burn so that we can rebuild this state from the ashes of all you dead white zombies. I'm sure going to have a lot of fun ripping you apart and burying your legacy of hate."
- "You both [referring to myself and Senator Nancy Barto] deserved to be sued until you have to live like homeless twits in the AZ desert."

- “It would be great if you, Cathy and the other kooks in your crazy cult pack up and leave our state.”
- “Get the f*** out of Arizona.”
- “I love to watch people like you squirm.”

21. CAP and its staff have also been characterized in extremely negative and repugnant ways in emails and other communications. For example:

- “race baiters”
- “making money from hate and bigotry”
- “ignorant fascist[s]”
- “turning us into a religious autocracy”
- “medieval throwback horrible anti-woman garbage”
- allegations of bribing public officials

22. It is my understanding and belief that many of CAP’s donors will limit or eliminate their contributions to CAP rather than risk having their names, addresses, and employers publicly disclosed.

23. It is my understanding and belief that the “disclosure exemption” set out in A.R.S. § 16-973(F) is insufficient to assuage CAP donor concerns because, among other things, that provision puts the burden on donors to prove the exemption and whether the exemption is granted is within the sole discretion of the Citizens Clean Elections Commission (“Commission”). The exemption is also limited to “a serious risk of physical harm” to the donor or the donor’s family. As set out above, CAP donors are not

only concerned about physical harm if their contributions are made public; they are also concerned about economic and reputation harm and other forms of harassment and retaliation.

24. What's more, the disclosure exemption provisions of A.R.S. § 16-973(F) are inadequate because it is impossible to predict the risk of *future* harm from public communications made *today*. As political, policy, and cultural winds shift, a donation or communication that is not controversial now may become highly controversial, with the potential of leading to harassment and retaliation, in the future.

25. Thus, it is my understanding and belief that donors who do not wish to have their identities reported to the government and publicly disclosed will limit, alter, or eliminate their contributions to CAP as a result of the Act's disclosure requirements. For this same reason, the "opt-out" provisions of A.R.S. § 16-972 are inadequate.

26. In addition to the negative impact that the Act would have on charitable contributions, CAP would incur significant costs to comply with the Act's requirements, including having to hire counsel to advise CAP how to comply.

27. Several portions of the Act are so vague and ambiguous that CAP cannot reasonably determine which of its current charitable activities would be permitted, prohibited, or otherwise covered by the Act.

28. Rather than compromise its donors' confidentiality, expose them to the risk of retaliation and harassment, risk the liability of attempting to comply with the many vague and ambiguous provisions in the Act, and submit to the unchecked authority of the Commission to enforce the Act's requirements, CAP is considering simply avoiding any

activities that could possibly be considered “campaign media spending” under A.R.S. § 16-971.

29. Ceasing such activity, however, would require CAP to stop making the kinds of public communications it currently makes, including virtually all references to candidates, starting ninety days before a primary election and continuing until the date of a general election. This will drastically curtail CAP’s ability to carry out the research, education, advocacy, and public communications central to CAP’s charitable purpose.

30. Donors trust CAP to be their voice. If CAP is forced to self-censor in this way, it is my understanding and belief that CAP will lose much of its donor support, as it will have to cease many of the very activities that lead donors to support CAP in the first place.

I declare that to the best of my knowledge the foregoing is true and correct.

Cathi Herrod
Cathi Herrod

DATED: 12-13-2022

DECLARATION OF SCOT MUSSI

I, Scot Mussi, declare under penalty of perjury under the laws of the State of Arizona as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this declaration and am competent to testify regarding them.

2. I am the President and Executive Director of the Arizona Free Enterprise Club (“FEC”), which is a statewide research and public policy organization that is registered and in good standing with the Arizona Corporation Commission. I have served in this capacity since 2014, and I am authorized to make this declaration on behalf of FEC.

3. Since 2005, FEC has been a leading organization in Arizona advocating for principles of free enterprise and pro-growth, limited government policies. To advance that mission, FEC engages in extensive public education, lobbying, and grassroots activity, including hosting public policy events, issuing policy papers, and communicating with individual citizens, the media, and policymakers on public policy issues. Our communication efforts focus on helping the public understand why policies that promote free enterprise help ensure prosperity for all Americans and Arizonans.

4. FEC is a tax-exempt social welfare organization under section 501(c)(4) of the Internal Revenue Code. FEC is a not-for-profit organization operating exclusively to promote the social welfare of the community.

5. As a 501(c)(4) organization, FEC engages in lobbying activities to educate policymakers on questions of public policy within our charitable purposes. FEC also

engages in some political activities in support of our charitable purposes, including supporting and opposing candidates for election, but as a 501(c)(4) organization, those activities are not its primary activities.

6. FEC is in and has remained in good standing as a 501(c)(4) organization with the Internal Revenue Service (“IRS”), with no violations of any IRS-administered statute or regulation, since it was granted that status in 2006.

7. One of the primary reasons donors give to FEC is so that FEC can engage in education, advocacy, and public communications about issues to advance FEC’s charitable purpose. It is my belief and understanding that many of these activities fall within the definition of “campaign media spending” under A.R.S. § 16-971.

8. For example, as part of its research and educational advocacy efforts, FEC produces policy reports and research and analysis on public policy issues, including a legislative scorecard. In these materials, FEC routinely refers to public officials, including public officials who are political candidates.

9. FEC also hosts educational and civic events, and it sometimes refers to public officials at those events, and invites public officials, including public officials who are candidates, to speak at those events.

10. In the most recent election cycle, FEC expended more than \$50,000 toward communication activities that referred to public officials, including public officials who are candidates.

11. FEC funds its activities by raising charitable contributions from donors throughout Arizona.

12. A number of donors have given FEC more than \$5,000 within the most recent election cycle as defined under A.R.S. § 16-971, and most of these donors reside in Arizona.

13. FEC keeps the names and addresses of its donors strictly confidential. It does not disclose the names and addresses of its donors to government officials in Arizona or any other state. FEC does not publicly disclose the identities of its donors or the amounts of donations received, and it has expressed to its donors its commitment to safeguard this information.

14. FEC solicits charitable contributions in a variety of ways, including meeting with donors, and FEC works to build and maintain personal relationships with many of its donors. In conversations with FEC staff, donors have expressed concerns about confidentiality and potential reprisals for public communications, and in particular, concerns about the effects of the “Voters’ Right to Know Act” (the “Act”).

15. Many FEC donors are concerned about having their contributions to FEC reported to government officials or about having that information publicly disclosed and rely upon FEC to safeguard this information.

16. FEC and its staff have been subject to harassment because of its public communications. For example, both I and members of my staff have received numerous phone calls and voicemails from individuals threatening violence or harassing or trying to intimidate our organization because of FEC’s speech and activities. On one occasion a staff member had her car vandalized in retaliation for engaging in public communications on FEC’s behalf.

17. It is my understanding and belief that current and future donors to FEC are justifiably afraid that public disclosure of their names, addresses, occupations, and employers will result in harassment and reprisal against them because of their charitable contributions to FEC.

18. Donors have informed me that although they would like to continue contributing to FEC, they fear the risk of the harassment or reprisal they will face if their contributions become publicly known.

19. Donors have informed me that they would limit, alter, or eliminate their contributions to FEC if their names, addresses, and employers are publicly disclosed.

20. FEC is concerned about the possibility of harassment or retaliation at the hands of government officials because of the disclosure requirements under the Act. FEC is particularly concerned that the law vests the Citizens Clean Elections Commission (“Commission”) with extremely broad discretion in how to exercise its considerable rulemaking and enforcement authority over FEC, an organization with which the Commission has had a long and often-adversarial relationship. The Commission and FEC have been at odds in ballot initiative campaigns, extensive litigation, and a U.S. Supreme Court case that significantly curbed the Commission’s power,¹ in which FEC and the Commission were opposing parties.

21. It is my understanding and belief that the “disclosure exemption” set out in A.R.S. § 16-973(F) is insufficient to assuage FEC donor concerns because, among other

¹ See *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011).

things, that provision places the burden on the donor to affirmatively demonstrate to the satisfaction of the Commission that public disclosure of the donor's identity poses a reasonable probability that the donor or the donor's family will be subject to "a serious risk of physical harm." As set out above, FEC donors are not only concerned about the risk of physical harm if their contributions are made public; they are also concerned about economic and reputational harm and other forms of harassment and retaliation.

22. What's more, the disclosure exemption provisions of A.R.S. § 16-973(F) are inadequate because it is impossible to predict the risk of *future* harm from public communications made *today*. As political, policy, and cultural winds shift, a donation or communication that is not controversial now may become highly controversial, with the potential of leading to harassment and retaliation, in the future.

23. Many donors support FEC specifically because FEC engages in education, advocacy, and public communications that may fall within the definition of "campaign media spending" under A.R.S. § 16-971.

24. Thus, it is my understanding and belief that donors who do not wish to have their identities reported to the government and publicly disclosed will limit, alter, or eliminate their contributions to FEC as a result of the Act's disclosure requirements. For this same reason, the "opt-out" provisions of A.R.S. § 16-972 is inadequate.

25. In addition to the negative impact that the Act would have on charitable contributions, FEC would incur significant costs to comply with the Act's requirements, including hiring counsel to advise FEC how to comply.

26. Several portions of the Act are so vague and ambiguous that FEC cannot reasonably determine which of its current charitable activities would be permitted, prohibited, or otherwise covered by the Act.

27. Rather than compromise its donors' confidentiality, expose them to the risk of retaliation and harassment, risk the liability of attempting to comply with the many vague and ambiguous provisions in the Act, and submit to the unchecked authority of the Commission to enforce the Act's requirements, FEC will likely avoid triggering the Act's reporting requirements by altogether avoiding any activities that could possibly be considered "campaign media spending" under A.R.S. § 16-971.

28. Ceasing such activity, however, will require FEC to avoid virtually all references to candidates, including public officials who happen to be running as incumbent candidates, at least six months before a primary election and continuing through to the date of the general election. This is because the Act's definition of "campaign media spending" includes any public communication that "promotes, supports, attacks, or opposes" a candidate within six months of an election or even "refers" to a candidate ninety days before a primary election—a hopelessly vague standard that is left to the unfettered discretion of the Commission to interpret and enforce. This will drastically curtail FEC's public communications during legislative sessions and through the campaign season.

29. It is my understanding and belief that by self-censoring in this way, FEC will lose much of its donor support, as it would have to cease many of the very activities that lead donors to support FEC in the first place.

I declare that to the best of my knowledge the foregoing is true and correct.


Scot Mussi

DATED: 12/13/22

DECLARATION OF Redacted

I, **Redacted** declare under penalty of perjury under the laws of the State of Arizona as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this declaration and am competent to testify regarding them.

2. I am a U.S. Citizen and a resident of the State of Arizona.

3. I am currently the Executive Director of the **Redacted**

Redacted and its sister organization, **Redacted**

Redacted is a **Redacted**

Redacted

4. I previously served in the **Redacted** for a period of approximately 15 years, including as the **Redacted**

5. I participate in many civic and community activities and engage in charitable giving.

6. Over the years, I have given to 501(c)(3) nonprofit organizations, including nonprofit organizations that operate in Arizona and engage in charitable activities within Arizona.

7. I have previously given and wish to continue giving charitable contributions that exceed \$5,000 during an "election cycle" as that term is defined in A.R.S. § 16-971(8).

Exhibit 3

8. On information and belief, charitable organizations that I donate to engage in charitable activities within Arizona that fall within the definition of “campaign media spending” as that phrase is defined in A.R.S. § 16-971(2).

9. I donate to charitable issue advocacy organizations in Arizona specifically because they engage in issue advocacy work that falls within the definition of “campaign media spending” under A.R.S. § 16-971.

10. I expect the nonprofit organizations to which I donate to keep my name, address, and other identifying information confidential, and, on information and belief, the Arizona nonprofit organizations to which I donate that also engage in issue advocacy or “campaign media spending” keep my name, address, and other identifying information confidential.

11. I am concerned that under the “Voters’ Right to Know Act” (“Act”), my donations to charities that engage in issue advocacy or “campaign media spending,” as well as my name, address, and other identifying information, will be reported to government officials and publicly disclosed because of my charitable giving.

12. I do not want my name, address, and other identifying information reported to government officials or publicly disclosed because of my charitable contributions to nonprofit organizations that engage in issue advocacy or “campaign media spending” in Arizona.

13. I am concerned that if my contributions to nonprofit organizations that engage in “campaign media spending” are publicly disclosed it will lead to harassment,

retaliation, and other harms to me and possibly my employer because of those contributions.

14. As a result of the disclosure requirements under the Act, I plan to limit or alter my charitable contributions to nonprofit organizations that engage in issue advocacy or “campaign media spending” in Arizona.

15. The “disclosure exemption” set out in A.R.S. § 16-973(F) is insufficient to assuage my concerns because that provision places the burden on me to affirmatively demonstrate to the satisfaction the Clean Elections Commission that public disclosure of my private information poses a reasonable probability that me or my family will be subject to “a serious risk of physical harm.” As set out above, I am not only concerned about physical harm if my contributions are made public, but I am also concerned about other forms of harassment and retaliation.

16. The “opt-out” provisions of A.R.S. § 16-972 would limit and alter my charitable giving because I support nonprofit organizations specifically because those organizations engage in issue advocacy, including education, advocacy, and public communications activities that may fall within the definition of “campaign media spending” under A.R.S. § 16-971.

I declare that to the best of my knowledge the foregoing is true and correct.

Redacted

DATED: 12/7/22

DECLARATION OF Redacted

I, **Redacted**, declare under penalty of perjury under the laws of the State of Arizona as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this declaration and am competent to testify regarding them.
2. I am a U.S. Citizen and a resident of the State of Arizona.
3. I am an attorney licensed to practice law in the State of Arizona. I am currently employed as a Partner at **Redacted**.
4. I participate in a variety of civic and community activities and engage in charitable giving.
5. Over the years, I have given to 501(c)(3) nonprofit organizations, including nonprofit organizations that operate in Arizona and engage in charitable activities within Arizona.
6. I have previously given and intend to continue giving charitable contributions that exceed \$5,000 during an "election cycle" as that term is defined in A.R.S. § 16-971(8).
7. On information and belief, a charitable organization that I donate to engages in charitable activities within Arizona that falls within the definition of "campaign media spending" as that phrase is defined in A.R.S. § 16-971(2).
8. I donate to this charitable issue advocacy organization in Arizona specifically because it engages in issue advocacy work that falls within the definition of "campaign media spending" under A.R.S. § 16-971.

9. I expect the nonprofit organizations to which I donate to keep my name, address, and other identifying information confidential, and, on information and belief, the nonprofit organization to which I donate that also engages in issue advocacy or “campaign media spending” does that.

10. I am concerned that under the “Voters’ Right to Know Act” (the “Act”), my donations to a charity that engages in issue advocacy or “campaign media spending,” as well as my name, address, and other identifying information, will be reported to government officials and publicly disclosed.

11. I do not want my name, address, and other identifying information reported to government officials or publicly disclosed because of my charitable contributions to nonprofit organizations that engage in issue advocacy or “campaign media spending” in Arizona.

12. I am concerned that if my contributions to a nonprofit organization that engages in “campaign media spending” are publicly disclosed it will lead to harassment, retaliation, and other harms to me and possibly my employer because of those contributions.

13. As a result of the disclosure requirements under the Act, I plan to limit or alter my charitable contributions to nonprofit organizations that engage in issue advocacy or “campaign media spending” in Arizona.

14. The “disclosure exemption” set out in A.R.S. § 16-973(F) is insufficient to assuage my concerns because that provision places the burden on me to affirmatively demonstrate to the satisfaction the Clean Elections Commission that public disclosure of

my private information poses a reasonable probability that me or my family will be subject to “a serious risk of physical harm.” As set out above, I am not only concerned about physical harm if my contributions are made public, but I am also concerned about other forms of harassment and retaliation.

15. The “opt-out” provisions of A.R.S. § 16-972 would limit and alter my charitable giving because I support an issue advocacy nonprofit organization specifically because that organization engages in issue advocacy, including education, advocacy, and public communications activities that may fall within the definition of “campaign media spending” under A.R.S. § 16-971.

I declare that to the best of my knowledge the foregoing is true and correct.

Redacted

DATED: 12-9-2022

Jonathan Riches (025712)
Timothy Sandefur (033670)
Scott Day Freeman (019784)
**Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE**
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Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CENTER FOR ARIZONA POLICY, INC.,
an Arizona nonprofit corporation;
ARIZONA FREE ENTERPRISE CLUB;
DOE I; DOE II;

Plaintiffs,

vs.

ARIZONA SECRETARY OF STATE;
KATIE HOBBS, in her official capacity;
ARIZONA CITIZENS CLEAN
ELECTIONS COMMISSION; DAMIEN R.
MEYER, in his official capacity as
Chairman; AMY B. CHAN, in her official
capacity as Commissioner; GALEN D.
PATON, in his official capacity as
Commissioner; MARK KIMBLE, in his
official capacity as Commissioner; STEVE
M. TITLA, in his official capacity as
Commissioner; THOMAS M. COLLINS, its
executive director,

Defendants.

Case No.

**[PROPOSED] ORDER GRANTING
PRELIMINARY INJUNCTION**

Upon consideration of Plaintiffs' Motion for a Preliminary Injunction, the Court finds that Plaintiffs have demonstrated a need for preliminary injunctive relief in this case. Plaintiffs are likely to prevail on the merits because the recently enacted Proposition 211, otherwise known as the "Voters Right to Know Act" (the "Act"), violates Plaintiffs' rights under the Arizona Constitution to speak freely, be undisturbed in their private affairs, and to a government limited by the separation of powers. The Act is

1 also unconstitutionally vague and overly broad, further infringing on Plaintiffs'
2 constitutional rights.

3 Because the Act is unconstitutional, Plaintiffs will suffer irreparable harm if the
4 Act is implemented and enforced, with public resources dedicated to those efforts. The
5 balance of hardships and the public interest also weigh strongly in favor of enjoining the
6 Act.

7 Accordingly, IT IS ORDERED granting a Preliminary Injunction prohibiting
8 Defendants from taking any action to enforce or implement the Act.

9 IT IS FURTHER ORDERED that because this case is brought in the public
10 interest, a nominal bond is justified in the amount of \$1.00.

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12 DATED: _____
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15 Judge of the Maricopa County Superior Court
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CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Shams Abdussamad
Participating Candidate for
State Representative - District 11
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Shams Abdussamad's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Shams Abdussamad. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 12, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
- Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$0.00 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$0.00 at September 30, 2022.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:
- (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$4,323 limit for a legislature candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$800 limit for a legislature candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Anna Orth
Participating Candidate for
State Representative - District 11
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Anna Orth's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Anna Orth. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 5, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
- Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$0.00 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$0.00 at September 30, 2022.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:

- (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$4,323 limit for a legislature candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$800 limit for a legislature candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Sherrylyn Young
Participating Candidate for
State Representative - District 11
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Sherrylyn Young's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Sherrylyn Young. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 2, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
- Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected one deposit (total population) and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$0.00 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$0.00 at September 30, 2022.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:

- (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$4,323 limit for a legislature candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$800 limit for a legislature candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Clair Van Steenwyk
Participating Candidate for
State Senator - District 22
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Clair Van Steenwyk's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Clair Van Steenwyk. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

November 21, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
- Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

There were no deposits made during the reporting period. We selected five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$0.00 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$9.62 at September 30, 2022.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:

- (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$4,323 limit for a legislature candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$800 limit for a legislature candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Kathy Hoffman
Participating Candidate for
Superintendent of Public Instruction
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Kathy Hoffman's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Kathy Hoffman. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 7, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
- Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected one deposit (entire population) and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$130,852.87 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$130,857.57 at September 30, 2022. The Candidate is continuing on to the General Elections.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:
- (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$27,675 limit for a Superintendent of Public Instruction candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$1,580 limit for a Superintendent of Public Instruction candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Shiry Sapir
Participating Candidate for
Superintendent of Public Instruction
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Shiry Sapir's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Shiry Sapir. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

November 21, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
 - Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected one deposit (entire population) and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$0.00 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$0.00 at August 31, 2022.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:

- (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$27,675 limit for a Superintendent of Public Instruction candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$1,580 limit for a Superintendent of Public Instruction candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Sandra Kennedy
Participating Candidate for
Corporation Commissioner
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Sandra Kennedy's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Sandra Kennedy. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

November 21, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
- Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$46,692.74 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$49,226.63 at September 30, 2022. The Candidate is continuing on to the General Elections.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:
- (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$27,675 limit for a Corporation Commission candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$1,580 limit for a Corporation Commission candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Lauren Kuby
Participating Candidate for
Corporation Commissioner
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Lauren Kuby's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Lauren Kuby. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 1, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
 - Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected one deposit (entire population) and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$69,973.67 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$72,872.41 at September 30, 2022. The Candidate is continuing on to the General Elections.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:
 - (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period exceeded the \$27,675 limit for a Corporation Commission candidate, as the Candidate's 2022 Qualifying Period Recap Report lists the amount of individual contributions as \$27,855.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$1,580 limit for a Corporation Commission candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate acknowledged the oversight and will work with the CCEC to correct it.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Nick Myers
Participating Candidate for
Corporation Commissioner
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Nick Myers's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Nick Myers. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

November 23, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
- Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected three deposits (entire population) and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$47,920.64 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$47,920.64 at September 30, 2022. The Candidate is continuing on to the General Elections.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:
- (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$27,675 limit for a Corporation Commission candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$1,580 limit for a Corporation Commission candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Kevin Thompson
Participating Candidate for
Corporation Commissioner
Primary Election 2022**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Kevin Thompson's (the Candidate)'s Campaign finance reports between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are presented on the subsequent pages.

We were engaged by the Commission to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Kevin Thompson. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the Commission and the Candidate and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

November 21, 2022

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Contractor will obtain a copy of the candidate's campaign finance report for the reporting period.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2022 Quarter 1 report, starting January 1, 2022, through the 2022 Post-Primary Election (Q3) report, which ended September 30, 2022.

- b). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Contractor will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements one month prior to the election date (beginning on the first of the month), the month including the election day, and one month after the election day (ending on the last of the month) in the reporting period and perform the following:
- Select five (5) samples of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period, which is defined as reporting the ending balances of the September 2022 bank statement and the Post-Primary Election (Q3) campaign finance report.

Finding

The Candidate's Post-Primary Election (Q3) campaign finance report listed a balance of \$49,233.29 at September 30, 2022. The Candidate's campaign bank account statement listed a balance of \$51,800.83 at September 30, 2022. The Candidate is continuing on to the General Elections.

- d) Using the dates and limits defined in the Arizona Citizens Clean Elections Guide, review the receipts reported in the candidate's campaign finance reports to determine the following:
- (i) The candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) None of the contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$180 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$27,675 limit for a Corporation Commission candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$1,580 limit for a Corporation Commission candidate.

- e) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) contributions reported in the candidate's campaign finance report (not including the \$5 qualifying contributions) and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$100, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

- (i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

- f) For both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- g) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,580.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, for both the primary election and the general election, contractor will judgmentally select a 10% sample size with a minimum of five (5) candidate's petty cash fund expenditures and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$180 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- h) Determine if the candidate/campaign incurred any debt. If so, report all debt.

Finding

The Candidate did not report any debt on the Campaign Finance Reports.

- i) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We reported our findings to the Candidate and the Candidate did not provide responses to our findings.