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, November 16, 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 November 16, 2023. This meeting will be held at 9:30 a.m. **This meeting will be held in person and virtually.** The meeting location will be open by 9:15 a.m. at the latest. Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at ccec@azcleanelections.gov.

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

Join Zoom Meeting

https://us02web.zoom.us/j/81766868868

Meeting ID: 817 6686 8868

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

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

The agenda for the meeting is as follows:

I. Call to Order.

II. Discussion and Possible Action on Meeting Minutes for October 26, 2023.

III. Discussion and Possible Action on Executive Director's Report, Enforcement and Regulatory Updates and Legislative Update.

IV. Discussion and Possible Action on Advisory Opinion Request 2023-01 from Service Employees International Union-United Healthcare Workers West.

Issue: Does a donation (monetary or in-kind) made to a ballot committee in support of its collection of signatures for ballot measure qualification ("qualification efforts") support a covered person's Campaign Media Spending as defined by the Act?

V. 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

VI. 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 14th day of November, 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.

THE STATE OF ARIZONA

CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
October 26, 2023
9:30 a.m.

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

CERTIFIED TRANSCRIPT

PUBLIC MEETING BEFORE THE CITIZENS CLEAN ELECTIONS COMMISSION convened at 9:30 a.m. on October 26, 2023, at the State of Arizona, Clean Elections Commission, 1110 West Washington, Conference Room, Phoenix, Arizona, in the presence of the following Board Members:

Mr. Mark Kimble, Chairman
Mr. Galen Paton
Ms. Amy Chan
Mr. Steve Titla

OTHERS PRESENT:

Thomas M. Collins, Executive Director
Paula Thomas, Executive Officer
Mike Becker, Policy Director
Gina Roberts, Voter Education Director
Alec Shaffer, Web Content Manager
Avery Xola, Voter Education Manager
Kara Karlson, Assistant Attorney General
Karen Hartman, Assistant Attorney General
Mary O'Grady, Osborn Maledon
Cathy Herring, Meeting Planner
Jessica Painter, Meeting Planner
Rivko Knox, Member of the Public

P R O C E E D I N G

CHAIRMAN KIMBLE: Agenda Item I, the call to the order. It's 9:30 a.m., October 26th, 2023, and I'm going to call this meeting of the Citizens Clean Elections Commission to order.

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

COMMISSIONER PATON: Galen Paton.

COMMISSIONER CHAN: Amy Chan.

COMMISSIONER TITLA: Yeah, Steve Titla here. Good morning.

CHAIRMAN KIMBLE: Good morning. We have a quorum with Commissioners Chan, Paton, Titla, and I'm Mark Kimble, the Chairman.

Item II, discussion and possible action on minutes for the September 21st, 2023 meeting. Is there any discussion on the minutes?

COMMISSIONER CHAN: Mr. Chairman, I move that we approve the minutes as written.

CHAIRMAN KIMBLE: Commissioner Chan has moved that we approve the minutes. Is there a second?

COMMISSIONER PATON: Paton, second.

CHAIRMAN KIMBLE: Thank you. A second by Commissioner Paton.

I will call the roll. Commissioner Chan.

COMMISSIONER CHAN: Aye.

CHAIRMAN KIMBLE: Commissioner Paton.

COMMISSIONER PATON: Aye.

CHAIRMAN KIMBLE: Commissioner Titla.

COMMISSIONER TITLA: Aye.

CHAIRMAN KIMBLE: Thank you, Commissioner Titla.

The Chair votes aye.

The minutes are approved 4-to-nothing.

Item III in the discussion -- Item III is discussion and possible action on the Executive Director's Report. Tom.

MR. COLLINS: Thank you, Mr. Chairman and Commissioners. Thank you all for being here.

I'd like to -- first, I wanted to mention, and so everybody knows, we have a -- November 7th is the next consolidated election date. And so many of you may see, either as you're around the state or at home, the signs related to school district bond and override elections, local municipal elections as well.

Many of these elections for this time of year are mail ballot elections. So what that means is, the jurisdiction that is -- has called the election, for example, a school district or a -- or a city or town,

has the authority, under state statute, to designate it to be an all-mail election. This is designed to save costs and be more efficient. It also means that everyone who is eligible to vote in that election will be mailed a ballot, not just those folks who are on the active early voter list.

You know, we -- the -- we recommend to folks, if they contact us and in other communications, that they mail their voted ballot back by October 31st, which is Tuesday, and then if they -- and after that, that they deliver it to the appropriate election officer.

I wanted to talk a little bit about our voter education and outreach projects for this month. We've -- we've continued -- I think this fall we had a very good pace of -- of outreach events that we've either put on or participated in. Avery, as you can see, has been -- has kept that pace up and has -- I think we've been -- we've been very happy with -- with that. It has -- I think our continuing to appear at various events, and especially these events that are put together by, you know, the community college district and the -- and Arizona State here in Phoenix and others, other educational institutions, are an important part of what we do and I think our presence

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at those, you know, demonstrates that we are connected to the community that we all live in.

I wanted to highlight also that Gina was a panelist on the Scholars Strategic Network Election Enhancement and Protection Program launch that -- if you ever have a chance, and we can send you the link, if you're interested, to that program, but it's a very interesting and -- look at how to improve our election processes nationwide.

I wanted real quick -- before we went on to the administrative stuff, I wanted to welcome to the -- or, back to the state of Arizona Karen Hartman, who is -- I don't know what her title is at the Attorney General's Office, but she's joined the Attorney General's Office election section, for what it's worth, or whatever the right nomenclature is, in the -- in the agency council section of the Attorney General's Office, which is in the state government division, I think.

In any event, Karen has a long experience as an attorney in elections and other important government roles. She comes to the AG's Office having worked in the civil division for the Maricopa County Attorney's Office for the past several years, where she advised the elected officials, including the Recorder's Office,

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the Treasurer's Office, the Assessor's Office, and participated in -- in a whole lot of litigation, if you want to call it that, of the 2020 election and the 2022 election. Some of you -- and, Mark, you may recall, Karen was an attorney at Steptoe & Johnson in their first amendment public records practice, which is, I think, where we first met, so -- so this is a welcome to Karen. And I'm sure anyone who's not here today will meet her eventually.

On the administrative front, we do -- we are running candidate workshops, and we've had about 20 candidates that participated in those workshops thus far.

The -- I guess this is probably the most important bullet point here, from my perspective, in terms of just positive news for us. So on the other day, I guess it was Tuesday, the Governor -- the Governor's Office, as you may recall, started a Bipartisan Election Task Force. And the Bipartisan Election Task Force brought together folks from elections, from the nonprofit sector, you know, from different parts of the state to talk about ways to improve their election processes. And there's a -- there's a whole range of proposals that were voted on, and we can get you those. The final report will be due

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on November 1st.

For our purposes, you know, the report calls for, and this was -- these were all approved by the -- by the Task Force, having a central website that's a sort of a one-stop shop for voters to get information about what's on their ballot. And the Task Force report recognizes the Commission's website as the proper vehicle for that and recognizes the work that we've always done -- already done to build that capacity.

You know, and I think that's a -- I think this is a very big plus for the voters of the state. I think it's important recognition for the work that Gina and Alec and the rest of our team have done on that and I think that -- so the vision going forward is to build that out further, to bring in more information that directly connects voters with both their state and federal and increasingly their local elections.

Gina, would you mind, if you have a second, would you -- could you -- would you have a little bit to add about that maybe.

If you don't mind, Mr. Chairman.

MS. ROBERTS: Sure.

CHAIRMAN KIMBLE: Gina.

MS. ROBERTS: Mr. Chairman, if I may.

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CHAIRMAN KIMBLE: Yes, Gina. Go ahead.

MS. ROBERTS: Mr. Chairman, Commissioners, yes, this is actually very exciting news, you know, one, for obviously the recognition that the site has been successful in its mission in serving voters across the state. We know with all of our Commissioners it's always been stressed that our voter education program, you know, meets the needs of every voters regardless if they're in a rural part of the state or, you know, if they're in metro Phoenix. And so our website has been designed to interact with all voters across the state regardless of their location and the election that is occurring.

So we have built relationships, Alec has built relationships with all of our local election officials to make sure that we get the timely and accurate election information to essentially consolidate it all on this single source, on this website, and we ensure that our website is accessible for voters. So we're not just putting the information out there, but we make sure that it's accessible in an easy-to-absorb way.

And so it's accessible from a voter with disabilities standpoint. It's accessible with screen readers. We have multiple languages for the website.

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And, of course, we present it in information that's very easy for the user, whether it's entering in their address if it's a nonstandard address for our travel communities, or simply just using a pin drop with -- with their longitude and latitude. So we've really built this website with the future in mind.

So we -- you know, we have the front facing of the website that provides this great service to voters, but also on the back end in how our systems and our databases operate and where we pull data from. We built it really forward thinking so that, to be able to continue to expand on the information that we want to provide voters, we have that infrastructure already in place because we were very forward thinking in its design. And we're actually going through a redesign right now too, so we're continuing to make improvements to the website all in the hopes that we are meeting voters. And the good news is -- too is that our data, our analytics show this as well.

We look at our monthly analytics, and more and more people are getting to the Clean Elections website organically, outside of paid media, outside of paid media campaigns. They are going to Google and they are searching for the Clean Elections website. So we know that it's being used by voters, we know that

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it's successful in the information that it's providing to voters, and we are in a position to continue to grow the website so that we can meet the needs of all voters.

So it really is a great, I think, recognition by the Governor's Task Force, but also it makes sense, because it really is a system that is very primed to continue to serve and meet the needs of voters.

CHAIRMAN KIMBLE: Thank you, Gina.

Tom.

MR. COLLINS: Thank you. Yes, and I just want to, you know, reiterate that I think that the work that Gina and Alec and the rest of their team on this has been, you know, excellent, and this has been -- you know, I think it's very exciting.

I want to -- real quick, couple other things just to keep our eyes on going forward. And this is also wrapped up in the Governor's Task Force recommendations. You know, there's some indication, you know, that -- back in, I think it was 2020 -- 2020 or -- 2021 or 2022 the Legislature passed a bill that lowered the threshold for automatic recounts. And we did, in fact, have automatic recounts in 2022. So the County Association and Election Directors have raised this as an issue for purposes of 2024. Two -- two

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consequences potentially if there's not some remedy for this recount threshold.

Recounts take a lot of time, right, so you've got to -- I mean, not an inordinate amount of time, but, you know, certainly an amount of time, when everything is on a very tight deadline. So two issues where that becomes a factor.

One, the primary. If there's an automatic recount in the primary, and there's no -- and the county in question or counties in question don't have the ability to know who is the nominee for a general election, that delays the printing of the ballots, which runs into the deadlines for -- particularly for sending -- mailing ballots to uniformed and overseas voters under UOCAVA.

Second, and perhaps more -- well, more interesting in a sort of intellectual way and maybe a little more anxiety inducing in a -- in an emotional way, is that the -- such a recount, if it were to affect the electoral -- the electors for the electoral college, the counties have said, and this is in a Votebeat story that's cited there, that that could delay the ability of the state to meet the safe harbor provisions of the Electoral Count Act. I don't purport to be an expert in the Electoral Count Act, but -- and

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what the consequences of that would be, but nevertheless, it's a serious issue. The counties have taken it quite seriously and are working on legislation related to it, according to Votebeat.

So the -- for us, what's the issue? You know, obviously, our -- a lot of our work, both on the voter education side and on the -- especially on the clean funding side, is tied to the primary date, in part, because of the -- both things, both on the deadlines for us to issue the candidate statement pamphlet and the deadlines the candidates face for qualifying for the Clean Elections funding if they were to choose to do that.

And then on the general election side, like people who print ballots, we also need to know the nominees for -- for the general election from a primary.

So -- so there's been discussion about moving the primary maybe back a couple weeks -- or, up a couple weeks, I should say. We've evaluated that internally and we are comfortable that we could -- you know, we could deal with that. The -- you know, on the clean candidate side, it would cut off, you know, two weeks of qualification. However, you know, in our experience as -- in working with these candidates,

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ordinarily if a candidate is that far behind, they're probably at the margins of qualifying and maybe weren't going to qualify anyways. In other words, very few people who get in at the last minute are able to use their funding in a particularly useful way. We've had candidates get funded at the last minute and basically have to turn around and return the money right away.

So, you know, we're keeping an eye on it. Obviously, whatever the Governor and the Legislature choose to do would be -- you know, be good to know sooner rather than later, I suspect, but -- so we can provide, you know, appropriate information to candidates. But anyways, I think that's -- but that's something to keep an eye on, and it's not really clear to me that there yet -- and it may be clear to others, but it's not clear to me yet that there will be -- that we know how those things will get resolved and on what time frame.

We have our first advisory opinion request, which is attached. We have -- we have about a month left to -- to provide some kind of answer. So what I anticipate, just for preview of next month, is that we'll -- that we will have a draft advisory opinion for your consideration at the next meeting.

There is, as always, quite a bit of

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litigation, including new cases that have been brought in the last few weeks, one challenging what the Free Enterprise Club refers to as unstaffed drop boxes, claiming that the Election Procedures Manual that authorizes drop boxes is -- violates a statute that says that when you return mail ballots, you have to return them to the County Recorder or other officer in charge of elections.

Obviously, you know, were that lawsuit to be successful, it would -- election officials -- other election officials have said, and I think that it's fairly -- fairly clear that that would at least have an impact on the ability of folks to get their ballot back efficiently and -- and on the other hand, you know, the Maricopa County Recorder has said that in the event they had to staff these drop boxes 24 hours or however long, that that would raise a real cost-benefit issue for -- for at least Maricopa.

So, again, just, you know, that's out there. We obviously haven't taken a position on it, but I wanted to make sure that you're aware that -- that that's -- that's out there and that's sort of the situation.

MS. KARLSON: Excuse me, Mr. Chairman.

CHAIRMAN KIMBLE: Kara.

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MS. KARLSON: If you wanted an -- just procedurally an update on that, there was a response filed yesterday, and Karen will be going to Prescott tomorrow for a hearing on that. So just -- that just happened, so I wanted to give an update on that.

CHAIRMAN KIMBLE: Thank you.

Did you want to say anything about that, Karen? You don't have to. I just wanted to give you the opportunity, if you want it.

MS. HARTMAN: Thank you. No, I don't need to say anything.

CHAIRMAN KIMBLE: Okay. Thank you.

Were you done, Tom?

MR. COLLINS: Oh, I'm done.

CHAIRMAN KIMBLE: Okay. Any questions from any Commissioners?

(No response.)

CHAIRMAN KIMBLE: Karen, welcome. Thank you for coming.

MS. HARTMAN: Thank you, Mr. Chairman.

CHAIRMAN KIMBLE: Always nice to have one more lawyer in the room. We don't quite have enough, but -- but thank you for coming.

Next item, Item IV, discussion and possible action on adoption of rules pursuant to the Voters'

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Right to Know Act, Chapter 6.1 of Arizona Revised Statutes Title 16. This Agenda item involves the enforcement process for Proposition 211. The rules outline the requirements for filing and handling complaints. These are the final rules we have in our queue for implementation.

We have, over the course of the year, spent several meetings reviewing the substance and requirements of the Act. We have published and received comments on the core rules necessary to implement the Act. And going forward, we hope to work to help ensure the public and other stakeholders have the information they need in order to be in compliance with Proposition 211.

With that, staff has prepared a memo about comments related to this proposed rule. Tom.

MR. COLLINS: Yes. Thank you, Mr. Chairman, Commissioners. So these are the -- so Rule -- R2-20-809 through 813 outline the process by which we would handle complaints. It also, a little more substantially, I suppose, has some issues related to how to define the structuring provisions of the Act in the context of a -- which would only arise really in the context of a complaint.

So we received several comments, not as many

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as we have on other things. You can see outlined our thoughts on that. I don't know if anybody has any sort of specific questions beyond what's outlined in the memo.

You know -- you know, I think that -- you know, I really don't have a lot to add to the memo, I guess is what I'm trying to say. You know, we do have -- and I guess I'll just highlight it. We have a -- we have a -- we have a comment from the Campaign Legal Center related to donors and whether or not donors ought to -- how we would regulate donors, as opposed to -- I shouldn't say "as opposed to" -- separately from covered persons or -- you know, under the Act.

You know, my point of view on that is, as I state in the memo, is that if we're interested in -- in talking about that, the better place to do that would be, rather than in this context, would be to talk about it in the context of next -- of the next meeting. We could evaluate that more deeply and look at whether or not that's something we want to do and get some -- some, you know, feedback on that if we wanted to. You know, it's really up to the -- it's up to the Commission to really -- it's not a -- you know, I don't have a -- I mean, I have some -- well, that would be

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my -- if we want to talk about that more, I'd recommend we do that at an additional -- or, at our next meeting.

Beyond that, you know, as Chairman Kimble said, you know, this has been -- this is our -- this is sort of our -- we think that this is pretty much where we're going to be for the -- as we go into January. And as a practical matter, you know, I think that that's good. I mean, I think that we've done a good job of working through the statute and these rule proposals efficiently. I think we gave the courts a timeline for this process in responding to some of the filings in some of the now three cases that are out there, again, you know, trying to stop -- block Prop 211. I think we've kept to that timeline effectively. We may be off by a month, but -- give or take, but I think we've kept the -- kept that process moving along. And I think -- you know, so we'll --

You know, I just want to thank the Commissioners, you know, all of you, for -- I know we've -- obviously I am a talkative person in certain contexts and I go on and on sometimes at these meetings. And, as a result of that and this new Act, you know, we've spent a lot of -- I've spent a lot of time talking at you about the -- what's in the Act and -- to the best I can. And we've talked, I think --

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you know, certainly Commissioner Paton, Commissioner Kimble, and other Commissioners have had good questions about, you know, what we're trying to do -- or, what the Act purports to do and what we're trying to do to do our duty under the Act. And so I want to thank you all, Commissioners, for your patience in sitting through some of these longer PowerPoint presentations and such to have a -- to get up to speed on what -- what we're doing.

And, you know, unless -- and not to continue to prattle on, but unless you have any questions about the comments, I'm -- you know, I'm available for them, but otherwise I'm hopeful that you will approve the draft with the changes that we recommend that's in your packet.

CHAIRMAN KIMBLE: And just to be clear, we have received two sets of recommendations for changes to proposed rules, and the staff has recommended that some of those recommendations or requests be taken into account, and those changes are included in Exhibit 1 of this item, and in other cases they've recommended we not follow the requests by the two organizations. So what we're now looking at is Exhibit 1 of today's Agenda.

Is there anyone else here in the audience or

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on Zoom who wishes to make public comment on these rules?

(No response.)

CHAIRMAN KIMBLE: Hearing no one, is there anyone -- any Commissioners who want to make any comment or have any questions from Tom about the rules as recommended for adoption?

COMMISSIONER CHAN: Mr. Chairman.

CHAIRMAN KIMBLE: Commissioner Chan.

COMMISSIONER CHAN: I just want to state, for the record, that I think -- I appreciate what Tom has done in his memo because I feel like it's reflective of his unbiased approach to things. He's willing to take, you know, suggestions from interested parties who've weighed in, consider them thoughtfully, and make decisions on his recommendations to us on that basis rather than, you know -- I guess what I want to say is, I appreciate the thoughtfulness that Tom has exhibited in his memo.

And at this time I don't have any questions, and I don't want to -- you know, obviously if other Commissioners do, that's fine. But the one question I have is, would the motion be to approve with changes reflected in the Executive Director Memo, Exhibit 1? Is that, Tom, what we would be doing if we were going

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to just adopt, you know, approve your suggestions?
MR. COLLINS: I believe that that would be perfectly reasonably clear for the record and people would be able to understand what you're voting on. And if we have a roll call on that, I think that would be -- yes.
COMMISSIONER CHAN: Okay. That's -- I just wanted to make that statement for the record that, you know, I think -- obviously the record does kind of speak for itself in your memo, but I wanted to just make that statement that I was impressed with the work you've put into this.
And frankly, I appreciate all the parties -- I think we discussed this last time too. I'm very appreciative of the time that interested parties have put into this, because it's not easy. I mean, you know, I want to acknowledge the work you've done, Tom, and also the interested parties who've reviewed this and weighed in with their thoughts, because I do think it takes a village sometimes to make sure that all the different interests and potential interests are evaluated and thoroughly considered when we're adopting -- considering adopting things like this. So I just want to recognize that for you, as well as all the folks who've weighed in.

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CHAIRMAN KIMBLE: Thank you, Commissioner Chan. Those are very helpful comments. And I agree that it would have been very easy for Tom and other staff members who have worked on this to look at these suggestions and say, no. We -- we did it. We -- we don't need any of your suggestions. We got it right. But there are some -- some thoughtful comments that we received that have been incorporated in Exhibit 1, and I think it makes -- it makes the rule stronger and more clear for anyone who has questions. So thank you for those comments, Commissioner Chan.
Any other comments or questions from Members of the Commission?
(No response.)
CHAIRMAN KIMBLE: Hearing none, is there a motion to adopt R2-20-809 through R2-20-813 with the changes indicated in Exhibit 1 of the staff memo on those items?
COMMISSIONER CHAN: Mr. Chairman, I would so move.
CHAIRMAN KIMBLE: Thank you, Commissioner Chan.
Is there a second?
COMMISSIONER PATON: This is Paton. I would second it.

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CHAIRMAN KIMBLE: Thank you, Commissioner Paton.
It's been moved and seconded to adopt R2-20-809 through R2-20-813 with the changes indicated in Exhibit 1 of the staff memo on those items. If there's no further discussion, I'll call the roll. Commissioner Chan.
COMMISSIONER CHAN: Aye.
CHAIRMAN KIMBLE: Commissioner Paton.
COMMISSIONER PATON: Aye.
CHAIRMAN KIMBLE: Commissioner Titla.
COMMISSIONER TITLA: Aye.
CHAIRMAN KIMBLE: Chair votes aye.
The motion is approved 4-to-nothing.
Thank you very much, Commissioners. Thank you very much, Tom.
Item V, public comments. 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. If you have any comments, please limit them to no more than two minutes.
Does any member of the public wish to make

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comments at this time either in person or on Zoom?
(No response.)
CHAIRMAN KIMBLE: Going, going, no one.
MS. HERRING: No one.
CHAIRMAN KIMBLE: Thank you.
The public may also send comments to the Commission by mail or e-mail at ccec@azcleanelections.gov.
At this time, I would entertain a motion to adjourn.
COMMISSIONER CHAN: Mr. Chairman, I move that we adjourn.
CHAIRMAN KIMBLE: Thank you, Commissioner Chan.
Is there a second?
COMMISSIONER PATON: This is Paton, second.
CHAIRMAN KIMBLE: Thank you, Commissioner Paton.
I will call the roll on the motion to adjourn. Commissioner Chan.
COMMISSIONER CHAN: Aye.
CHAIRMAN KIMBLE: Commissioner Paton.
COMMISSIONER PATON: Aye.
CHAIRMAN KIMBLE: Commissioner Titla.
COMMISSIONER TITLA: Aye.

CHAIRMAN KIMBLE: Chair votes aye.
We are adjourned. Thank you very much.
(The meeting adjourned at 10:09 a.m.)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing proceedings were taken by me; that I was then and there a Certified Reporter of the State of Arizona; that the proceedings were taken down by me in shorthand and thereafter transcribed into typewriting under my direction; that the foregoing pages are a full, true, and accurate transcript of all proceedings had and adduced upon the taking of said proceedings, all to the best of my skill and ability.

I FURTHER CERTIFY that I am in no way related to nor employed by any of the parties hereto nor am I in any way interested in the outcome hereof.

DATED at Tempe, Arizona, this 27th day of October, 2023.

Kathryn A. Blackwelder, RPR
Certified Reporter #50666

CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
November 16, 2023

Announcements:

- Unofficial results for the November 7th jurisdictional election are available on the Clean Elections website.
- Notice of Final Exempt Rulemaking for Arizona Administrative Code sections R2-20-801 to R2-20-808 has been published in the Administrative Register. https://apps.azsos.gov/public_services/register/2023/45/contents.pdf. A copy is attached.

Voter Education and Outreach:

- Clean Elections sponsored the Arizona Capitol Times Morning Scoop 2024 Elections: What Arizona Can Expect this Presidential Election Year. Panelists were The Honorable Ken Bennett, Arizona State Senator, The Honorable Gabriella Cázares-Kelly, Pima County Recorder, Roy Herrera, Partner, Herrera Arellano, LLP and Gina. A recording of the event will be available for those interested.
- Avery held a workshop on How to Discuss Politics with Friends, Family and Coworkers at the Tempe Public Library for National Civics Day.
- Avery met with Mesa Community college's new civic engagement coordinator, Alejandra Maya, to discuss 2024 engagement plans.
- Avery attended the Pastor's Center event, Military Veterans in Arizona Politics: Diversifying Political Engagement to provide resources.
- Avery presented to Phoenix High school students in collaboration with Flinn Brown's Youth Leadership and development program.
- Avery and Gina attended the Flinn Brown Annual Convention on public service, hosted by the Arizona Center for Civic Leadership.
- Avery participates in Arizona Commission of African American Affairs committee meetings, Arizona African American Legislative Council and the Mesa Community College Civic Action Council.

Administration:

- 11 Candidate Workshops have been held, with more to be scheduled through the end of the year. Workshops are held virtually on Tuesdays from 1-2pm. 27 candidates have attended the workshops.
- The Secretary of State submitted the 2023 Election Procedures Manual to the Attorney General and the Governor for approval.
- Governor Hobbs' Bipartisan Elections Task Force issued its report November 2. As press reports indicated, the report highlights a need for a one-stop shop website for voters and recommends Clean Elections website as the appropriate vehicle. The Governor's office highlighted several other recommendations:

- Election Administration: poll worker communication platform; incentives to improve poll worker recruitment; annual election officer certification trainings; election fellowship program; comprehensive website for voter information
- Voter Registration: requiring provisional ballot forms to serve as voter registration forms; improving cross-county voter registration; voting rights restoration; funding for the statewide voter registration database, the Access Voter Information Database (AVID)
- Early Voting: disability resource liaison; changing emergency voting to final weekend voting; preventing ballot return interference
- Election Day and After: ensuring timely recounts; reconciliation best practices guidelines
- Election Equipment and Security: election security advancements; election worker code of conduct

The Governor also announced $2.3 million in American Rescue Plan funding for Arizona elections and issued three executive orders: authorizing paid civic duty leave for state employees to serve as poll workers, making state buildings available as polling locations, and requiring state agencies to provide voter registration information and assistance, according to a news release.
A summary of the Governor's Actions, as well as links to the report and executive orders is available here: https://azgovernor.gov/office-arizona-governor/news/2023/11/governor-katie-hobbs-announces-executive-orders-and-funding.

- Press reports indicate that there is a January special session planned for addressing election calendar issues caused by lowering the threshold for automatic recounts in Arizona. Background is available in this story: https://arizona.votebeat.org/2023/10/19/23924048/arizona-presidential-election-timeline-katie-hobbs-legislature.

Legal

- Center for Arizona Policy v. Arizona Secretary of State, CV2022-016564, Superior Court for Maricopa County.
  - Ongoing.
- Americans for Prosperity v. Meyer, No. 2:23-cv-00470-ROS (D. Ariz.)
  - Suit challenging Prop. 211 on First Amendment grounds.
  - Commission, the VRKA Committee, and the Attorney General Office's have filed motions to dismiss.
- Toma v. Fontes, CV2023-011834, Superior Court for Maricopa County.
  - Lawsuit and related motion for preliminary injunction filed challenging Proposition 211 on separation of powers theories.
  - A hearing is set for December 13.
- The Power of Fives, LLC v. Clean Elections, CV2021-015826, Superior Court for Maricopa County & Clean Elections v. The Power of Fives, LLC et al. CV2022-053917, Superior Court for Arizona. Oral argument on these cases was held October 6.

- Lake v. Richer, CV2023-051480, Superior Court for Maricopa County.
    - In this public records matter, Lake challenges the county's decision to withhold ballot affidavit envelopes on the basis that 16-168(F) makes signatures exempt and in the best interests of the state.
- Richer v. Lake, CV2023-009417, Superior Court for Maricopa.
    - Suit by Stephen Richer for libel over statements by Kari Lake.
- Arizona Free Enterprise Club v. Fontes, SI300CV202300202 (Yavapai County). Lawsuit challenges process Maricopa and many other counties use to verify signatures on vote by mail affidavit envelopes.
- Arizona Free Enterprise Club v. Fontes (Yavapai County). Lawsuit challenging the use of what the Complaint refers to as "unstaffed" drop boxes for the return of mail ballots to the county recorder pursuant to the Elections Procedures manual. Case number unavailable at this time.
- The No Labels Party of Arizona v. Fontes, 2:23-cv-02172 (D. Ariz.) Complaint and Motion for Preliminary Injunction by a political party seeking to block the Secretary of State from accepting filings to run for office as a No Labels Party candidate for offices other than President and Vice President arguing that state statute allows the party to block such efforts and that their associational rights under the First Amendment likewise require the party to be able to bar such candidates.

Appointments:

- Governor Hobbs's Office of Boards and Commissions posted a notice recruiting applicants for the Citizens Clean Elections Commission. https://bc.azgovernor.gov/.

Enforcement:

- MUR 21-01, TPOF, pending.

Regulatory Agenda:

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

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

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

- Notice of Docket Opening:
    - R2-20-211. R2-20-220, R2-20-223- clarify roles of executive director and other representatives of the commission in enforcement proceedings. 28 A.A.R. 3489, October 28, 2022
    - R2-20-305 & R2-20-306 provide for a process to address complaints against a commissioner. January 20, 2023.

- Notice of Proposed Rulemaking:
    - R2-20-211. R2-20-220, R2-20-223- clarify roles of executive director and other representatives of the commission in enforcement proceedings. 28 A.A.R. 3409, October 28, 2022.
      Notice of Proposed Rulemaking: 28 A.A.R. 3409, October 28, 2022
    - R2-20-305 & R2-20-306- - provide for a process to address complaints against a commissioner. January 20, 2023
    - R2-20-801 to R2-20-808 – providing for definitions, time computations, opt out notices, exemptions, disclaimers, communications with the Commission, record keeping, and advisory opinions, 29 A.A.R. 1571, July 14, 2023.
    - R2-20-810 to R2-20-813 – providing for complaint and enforcement process, including hearings. 29 A.A.R. 1969, September 1, 2023.
- Federal funds for proposed rulemaking: **None**
- Review of existing rules: **None pending**
- Notice of Final Rulemaking:
    - Amendments to R2-20-220 and R2-20-223, 29 A.A.R. 994, May 5, 2023.
    - Amendments to R2-20-305 & R2-20-306, 29 A.A.R. 1549, July 14, 2023.
    - New rules R2-20-801 to R2-20-808, 29 A.A.R. 3523, November 10, 2023.
- Rulemakings terminated: Amendment to R2-20-211. 29 A.A.R. 1149, May 12, 2023.
- Privatization option or nontraditional regulatory approach considered: **None Applicable.**

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NOTICES OF FINAL EXEMPT RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Exempt Rulemaking.

It is common for an agency to be exempt from some of the steps outlined in the rulemaking process as specified in Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10, otherwise known as the Arizona Administrative Procedure Act (APA). An agency's exemption is written in laws - under the APA, or in statute by the Arizona State Legislature, or under a referendum or initiative passed into law by Arizona voters.

The Office makes a distinction when publishing certain exempt rulemakings, as provided in these laws, on a case-by-case basis, as determined by an agency's exemption. Other rule exemption types are published elsewhere in the *Register*.

Notices of Final Exempt Rulemaking were originally proposed with specific conditions, such as requiring the notice to be published in the *Register*, or requiring public input, or a public hearing on the rule.

Notices of Final Exempt Rulemaking include *Register* publication dates where the original Notice of Proposed Exempt Rulemaking was published.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R23-218]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

Article 8	New Article
R2-20-801	New Section
R2-20-802	New Section
R2-20-803	New Section
R2-20-804	New Section
R2-20-805	New Section
R2-20-806	New Section
R2-20-807	New Section
R2-20-808	New Section

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 16-974(A)(1)

Implementing statute: A.R.S. §§ 16-972(B); 16-973(F); 16-974(A)(5), (A)(7), (A)(8), and (C)

Statute or session law authorizing the exemption: A.R.S. § 16-974(C)

3. The effective date of the rule and the agency's reason it selected the effective date:

Sections R2-20-801 to R2-20-804 and R2-20-806 to R2-20-808 effective August 24, 2023

The agency selected August 24, 2023 in order to ensure that the regulated community and the public were in a position to make informed decisions related to Arizona Revised Statutes Title 16, Chapter 6.1.

Section R2-20-805 effective September 21, 2023

The agency selected September 21, 2023 in order to allow additional comment between August and September and to ensure that the regulated community and the public were in a position to make informed decisions related to Arizona Revised Statutes Title 16, Chapter 6.1.

4. A list of all notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:

Notice of Proposed Exempt Rulemaking: 29 A.A.R. 1571, July 14, 2023

5. The agency's contact person who can answer questions about the rulemaking:

Name: Thomas M. Collins

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

Telephone: (602) 364-3477

Email: ccec@azcleanelections.gov

Website: www.azcleanelections.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Voter's Right to Know Act, Chapter 6.1 of Title 16, Arizona Revised Statutes was passed by voters and certified on December 5, 2022. The Act provides for the disclosure of certain information related to the funding of political campaigns and disclaimers on

campaign public communications. It also granted enforcement, rulemaking, and other powers to the Citizens Clean Elections Commission, a nonpartisan state commission. These proposed rules are part of the implementation of the Act.

R2-20-801: Establishes that the definitions in A.R.S. § 16-971 shall apply to this article. Rules of construction will also be located in this section and this rulemaking proposes two: one relates to the definition of campaign media spending, the other relates to information provided to a covered person upon that person's request for donor information. This rule is necessary to ensure consistency in the application of terms.

R2-20-802: Establishes consistent rules for this article for when actions specified are to be completed. Time rules are necessary to provide predictability to those who have to take actions under the rules and the public.

R2-20-803: Provides rules for the form of opt-out notices required by A.R.S. § 16-972(F) as well records related to those decisions that may be provided to donors. These notices advise a person that their donation may be used for campaign media spending and allow them to opt out within a certain time. This proposed rule also addresses procedures if a covered person makes an additional notice to a person regarding opting out or when a person chooses to opt out at a later time.

R2-20-804: Section 16-973 provides that certain original sources may have their identities protected by legal mechanisms such as court orders, statutes, and an application to the commission. This rule is necessary to provide the procedures for establishing that an original source should or should not be protected, including how the Commission may address a matter in executive session and how records relating to these procedures should be treated.

R2-20-805: Section 16-974 directs the Commission to establish disclaimer requirements for public communications of covered persons. These communications are things like broadcast advertising, newspaper advertising, and internet advertising. The disclaimer states who paid for the and whether it was approved by a candidate or not. The rule provides details about how this rule applies in specific circumstances, such as kind of media.

R2-20-806: This rule provides details on how communication to and from the Commission should be handled, including defining ex parte communications and prohibiting them. It also sets forth the authority of the Executive Director to communicate regarding a complaint and how a respondent should advise the Commission that the respondent is represented by counsel. The rule is necessary to provide confidence to the public and others with business before the Commission that their matters will be handled fairly and provides predictability about how the Commission or its employees with interact with people with business before the Commission.

R2-20-807: Section 16-974 provides the Commission with authority to make rules related to recordkeeping. This rule does that. It is necessary because proper record keeping is crucial to ensuring compliance with the law.

R2-20-808: This rule provides a process for advisory opinions. Advisory opinions are a crucial part of the compliance and enforcement process because they allow a person to seek the Commission's opinion about an action before that person takes it, thus facilitating compliance and avoiding enforcement. The rule also provides the time frame and information required to process requests for advisory opinions.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were conducted relevant to these rules.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

The rulemaking does not diminish a previous grant of a authority of a political subdivision of this state.

9. The summary of the economic, small business and consumer impact, if applicable:

Not applicable

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

The Commission approved several changes at public meetings August 26, 2023 and September 21, 2023. Materials provided to the Commission, including all changes adopted, meeting minutes, and recordings of the public meetings are available by contacting the Commission. For clarity, this section notes where changes were made. These changes are not substantial.

R2-20-801: Section R2-20-801(B) includes a reference to a definition in A.R.S. § 16-971(2)(a)(vii). The Notice of Proposed Exempt Rulemaking included a manifest typographical error mis-citing the provision. The error is manifestly typographical for two reasons. First, the Proposed rule referred to a subsection that does not exist at this time in Title 16, Chapter 6.1. Second, the rule directly includes the terminology from the correct section. Consequently, a reasonable person would have sufficient textual evidence to surmise the error was typographical.

In R2-20-801(C), the word "of" was added to correct a typographical error in this sentence: In response to a request pursuant to A.R.S. §16-972(D), a person must inform that covered person in writing, of the identity of each other person that directly or indirectly contributed more than $2,500 in original monies being transferred and the amount of each other person's original monies being transferred up to the amount of money being transferred to the requesting person.

R2-20-802: No changes were made to this section.

R2-20-803: The Commission added the word "period" to correct an unintended possible interpretation of the proposed rule and to ensure the rule is unambiguous. Specifically, the Commission added the word period to R2-20-803(D): "If a donor does not opt out after the initial notice period, a covered person may make subsequent written notices to a donor of their right to opt out and may set a time for response of no less than 1 day from the date the donor receives the notice." The Commission also added the word period to R2-20-803(E): "A donor may request to opt out at any time after the initial notice period and the covered person must confirm

the opt out to the donor in writing no later than 5 days after the request and subsequently that donor shall be treated as having opted out by the covered person."

R2-20-804: The Commission added language to R2-20-804(A) that restates the premise of the provision, which provides procedures for a donor to request an exemption from disclosure. Consequently, the section now reads:

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

In R2-20-804(B)-(D), the Commission added language clarifying that the "identity" of a donor should not be disclosed if requirements of the statute are met, rather than just the name of the donor. In those same sections, the Commission directed that in the event the requirements for the exemption are not met, the Executive Director shall issue a letter to the person who requested the exemption stating that the person's identity may be disclosed.

In R2-20-804(G), the Commission added language clarifying how records related to an exemption shall be maintained and released. Specifically, the rule now reads: "All records except the Executive Director's letter shall be destroyed ~~within~~ 30 days after ~~of~~ the determination, unless timely review of the Commission's action is sought. The Executive Director's letter shall not be made public except by a court order."

R2-20-805: In section R2-20-805(B), the Commission added language to better reflect the statute's underlying disclosure requirements. The section now reads: "Public communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies in excess of $5,000 for the election cycle and who have not opted out pursuant to A.R.S. § 16-972 or a rule of the Commission during the election cycle to the covered person as calculated by the covered person at the time the advertisement was distributed for publication, display, delivery, or broadcast. In the event a donor otherwise subject to disclosure pursuant to this section is protected under A.R.S. § 16-973(F) the disclaimer shall omit that donor's identity."

R2-20-806: The Commission clarified that restrictions on communications between the Commission and the Executive Director after the filing of a complaint alleging violations of Title 16, Chapter 6.1 or Commission rules under that Chapter relate to the Complaint. The Commission also added language requiring a Commissioner to report an ex parte communication to the Commission. Specifically, R2-20-806(G) states: In the event that a Commissioner receives an ex parte communication as defined in this rule, the Commissioner shall disclose receipt of such a communication in a public meeting of the Commission.

R2-20-807: No changes were made to this section.

R2-20-808: No changes were made to this section.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

R2-20-801: Comment 1 from Herrera Arellano LLP (HA). HA focuses on this proposed language in R2-20-801(C): In response to a request pursuant to A.R.S. §16-972(D), a person must inform that covered person in writing, the identity of each other person that directly or indirectly contributed more than $2,500 in original monies being transferred and the amount of each other person's original monies being transferred up to the amount of money being transferred to the requesting person.

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

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

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

Staff respectfully disagrees. The comment does not explain the statutory basis for the claimed ambiguity.

R2-20-803: Chapter 6.1 of Title 1, or Proposition 211, requires that donors be given an opportunity to opt out of having their donations used for campaign media purposes. This rule provides details on how a covered person could comply with that requirement.

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

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

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

staff does not recommend acting on Statecraft's comment.

Comment 2 from Statecraft. Statecraft notes that Proposition 211 states that "the notice required by this section may be provided to the donor before . . . the covered person receives a donor's monies, but the donor's monies may not be used or transferred for campaign media spending until at least twenty-one days after the notice is provided or until the donor provides written consent pursuant to this section, whichever is earlier." Statecraft requests that this language be incorporated into the rules.

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

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

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

Staff agrees that there may be unintended ambiguity by omitting the word "period" from the first sentence of R2-20-803(D). This is not a substantial change.

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

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

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

The dictionary definition of receipt is a "writing acknowledging the receiving of goods or money." https://www.merriam-webster.com/dictionary/receipt (August 22, 2023). Consequently, a receipt should by its terms acknowledge the amount of money donated and, in addition, the donor's choice as to opting out. Respectfully, staff does not believe this change is necessary.

R2-20-804: Proposition 211 provides that a donor may request an exemption from disclosure under certain circumstances including where the Commission concludes that "there is a reasonable probability that public knowledge of the original source's identity would subject the source or the source's family to a serious risk of physical harm."

CLC submitted seven comments on this provision.

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

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

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

Staff explained to the Commission that because the opt out notice does not trigger the request, but rather triggers the deadline, the timeline is clear. Nevertheless, as explained in Section 10 of this preamble, staff recommended and the Commission adopted, clarifying but non-substantial changes to ameliorate this potential misconception.

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

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

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

Staff believes that this additional time to opt out is unnecessary to mandate and inserts the Commission further in the donor-covered person relationship. However, as specified in Section 10 of the preamble, staff recommended clarifying language that indicates a letter will issue regarding either the grant or denial of a request and the Commission agreed. Specifying a written conclusion to the proceeding does not substantively change the rule.

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

Staff respectfully disagrees with the comment. Established legal principles, including the public records statutes in Arizona, the Arizona open meetings law, and due process itself would make the application of an exemption such as this to something like an

agenda contrary to law. The goal of the statute is to preserve confidentiality. Staff is not in a position to determine what information may lead to the identification of an original source who is entitled to an exemption. Given that the statute outlines those situations will arise in situations where the stakes are demonstrably high, staff respectfully does not recommend acting on this comment at this time.

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

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

HA submitted two comments on this proposed rule.

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

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

R2-20-805: Statecraft comments that the statute provides that donors who give less than $5,000 are not disclosed on reports under the VRKA. Statecraft notes that the rule should be clarified to ensure that a person who is otherwise not disclosable should not face disclosure in a disclaimer. Staff agrees that this is the intent of both the statute and the proposed rule and recommends the express inclusion of that threshold in the rule text.

Consequently, Section 805(B) would read: Public communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies <u>in excess of $5,000 for the election cycle and</u> who have not opted out pursuant to A.R.S. § 16-972 or a rule of the Commission during the election cycle to the covered person as calculated by the covered person at the time the advertisement was distributed for publication, display, delivery, or broadcast.

HA suggests two changes to this proposed rule. First, they suggest that the Commission, by rule, limit disclosure of donors on a disclaimer to only those whose funds were actually used for the communication in question. The statute doesn't provide for such a limitation nor does the pre-existing disclaimer statute A.R.S. § 16-925. Consequently, staff does not recommend this change.

The firm also recommends a change to account for the protection of identities. While the statute provides that under certain circumstances an otherwise disclosable donor is not subject to disclosure, the proposed rule does not directly address the consequence of that occurrence. In short, what goes on a disclaimer if the donor is not to be revealed. Like Statecraft's comment this suggestion squares with the terms of the statute and clarifies the terms of the rule. Additionally, while the statute requires that "at a minimum" the top three donors be identified on the disclaimer, staff sees no reason to have a fourth donor revealed merely because a third donor is protected.

Based on staff's recommendation, the combined language from the Statecraft and HA comments would read:
"Public communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies <u>in excess of $5,000 for the election cycle and</u> who have not opted out pursuant to A.R.S. § 16-972 or a rule of the Commission during the election cycle to the covered person as calculated by the covered person at the time the advertisement was distributed for publication, display, delivery, or broadcast. <u>In the event a donor otherwise subject to disclosure pursuant to this section is protected under A.R.S. § 16-973(F) the disclaimer shall omit that donor's identity.</u>"

CLC also made comments related to this proposed rule. The first suggestion CLC makes is to create a look back in the disclaimer such that a prior donor whose donation from a prior election cycle account for more than 50 percent of the covered person's funds. While there may be an argument the term "at a minimum" as used in A.R.S. § 16-974 would permit the Commission to tack on an additional requirement, the better reading of the statute is that at a minimum refers to the number of donors, not the time frame of the donation. The statute specifically states that donors in the current election cycle are to be identified. Staff does not recommend this change.

The next suggestion is that the commission add additional clarification as to what to if there is a tie among the top three donors. Staff doesn't think this level of detail is necessary. In the event that this occurs, staff may recommend revisiting this aspect of CLC's comment, but in the meantime, Staff recommends presuming a covered person will make a reasonable determination of how to disclose the top three donors. The next comment, CLC suggests, consistent with Statecraft that Commission clarify that donors under $5,000 are not to be disclosed in a disclaimer. Staff agrees.

The remainder of CLC's comments and suggested language focus on creating more specific parameters for covered person's in ensuring disclaimers are available and accessible. While Staff is conscious of the public's interest here, we are not aware of abuses of the reasonableness standard set forth in A.R.S. § 16-925 and reflected in this proposed rule. Consequently, staff does not recommend this change.

R2-20-806: CLC Comment. CLC requests that the title of the rule change to reflect it is principally about ex parte communications. It suggests clarifying language around when the Commission and staff can communicate in the event of a complaint. Finally, CLC suggests a subsection making clear the steps that a commissioner should take in the event of an ex parte communication. Staff agreed these clarifying, non-substantial changes are warranted.

Other comments: The organization Philanthropy Roundtable submitted a comment generally disagreeing with Proposition 211 and stating that the group opposes implementation without an explicit exemption for the legal, legitimate instances of nonprofit issue advocacy. Staff at this time believes that the definitions of campaign media spending, which cabin reporting obligation to a discreet

set of actions related to political campaigns, provide sufficient protection to issue advocacy absent an additional rule.

12. Any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include but not be limited to:

No other matters have been prescribed.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the subject of the rule.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No such analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

These rules were not made as emergency rules.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 8. VOTER'S RIGHT TO KNOW ACT RULES

Section

ARTICLE 8. VOTER'S RIGHT TO KNOW ACT RULES

R2-20-801. Definitions and Rules of Construction

A. The definitions in A.R.S. § 16-971 shall apply to these rules.

B. For purposes A.R.S. § 16-971(2)(a)(vii), research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the other activities described in A.R.S. § 16-971(2)(a) shall not be considered campaign media spending unless these activities are specifically conducted in preparation for or in conjunction with those other activities.

C. In response to a request pursuant to A.R.S. §16-972(D), a person must inform that covered person in writing, of the identity of each other person that directly or indirectly contributed more than $2,500 in original monies being transferred and the amount of each other person's original monies being transferred up to the amount of money being transferred to the requesting person.

R2-20- 802. Time

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

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

R-20-803. Opt-out Notices

A. Before a covered person may use or transfer a donor's monies for campaign media spending, the donor must be notified in writing that the monies may be so used. The covered person must give the donor an opportunity to opt out of having the donation used or transferred for campaign media spending.

B. The notice must:

1. Inform donors that their monies may be used for campaign media spending and that information about donors may have to be reported to the appropriate government authority in this state for disclosure to the public.

2. Inform donors that they can opt out of having their monies used or transferred for campaign media spending by notifying the covered person in writing within twenty-one days after receiving the notice that the donor prefers to opt-out of having their monies used or transferred for campaign media spending and that a receipt confirming their choice shall be provided upon request.
3. Opt-out information shall be provided in writing. If provided with other written information the opt-out information must be provided in a format at least the same size type as any other information provided in writing along with the notice. The information must be either the first sentence in a paragraph or itself constitute a paragraph. If the opt-out information is provided without additional writing it must be clearly readable. To be valid, the opt-out information must provide contact information to allow the recipient to contact the person who provided the opt-out information within 21 days. Upon request of the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice. Nothing in this rule precludes providing a donor a receipt without waiting for a request.

C. Any person responsible for providing the opt-out information must keep a record of when the information was provided and maintain all related records including the written notice for five years.

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

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

R2-20-804. Request for Exemptions

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

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

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

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

E. The agenda shall not identify the requestor.

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

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

R2-20- 805. Disclaimers

A. A covered person shall include the words "paid for by" on every public communication followed by the full legal name of the covered person making the public communication. The public communication shall also state whether it is:
1. Authorized by any candidate or their agents and any candidate's name who individually or through their agents participated in the authorization; or
2. That the public communication is not authorized by any candidate or their agents acting on the candidate's behalf.

B. Public communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies in excess of $5,000 for the election cycle and who have not opted out pursuant to A.R.S. § 16-972 or a rule of the Commission during the election cycle to the covered person as calculated by the covered person at the time the advertisement was distributed for publication, display, delivery, or broadcast. In the event a donor otherwise subject to disclosure pursuant to this section is protected under A.R.S. § 16-973(F) the disclaimer shall omit that donor's identity.

C. If it is not technologically possible for a public communication disseminated on the internet or by social media message, text message or short message service to provide all the information required by this section, the public communication must provide a means for viewers to obtain, immediately and easily, the required information without having to receive extraneous information. The public communication must always state the full legal name of the covered person.

D. If the public communication is:
1. Broadcast on radio, the disclosure shall be clearly spoken at the beginning or end of the advertisement.
2. Delivered by hand or by mail, the disclosure shall be clearly readable.
3. Delivered electronically, the disclosure shall be clearly readable.
4. Displayed on a sign or billboard, the disclosure shall be displayed at a height that is at least four percent of the vertical height of the sign or billboard.
5. Broadcast on television, in a video or film, both of the following requirements apply:
   a. The disclosure shall be both written and spoken at the beginning or end of the advertisement, except that if the written disclosure statement is displayed for the greater of at least one-sixth of the broadcast duration or four seconds, a spoken disclosure statement is not required.
   b. The written disclosure statement shall be printed in letters that are displayed in a height that is at least four percent of the vertical picture height, except that if the advertisement is paid for by a political action committee, the written disclosure statement shall be displayed in a height that is at least ten percent of the vertical picture height.
   c. These disclosure requirements apply to any broadcast, video, or film format, whether distributed via airwaves, cable, the internet, or other delivery methods.

R2-20-806. Ex Parte Communications

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

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

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

D. If a Respondent wishes to be represented by counsel with regard to any matter pending before the Commission, Respondent or Respondent's Counsel shall so advise the Commission by sending a writing to the Commission including the following:
1. The name, address, and telephone number of the counsel.
2. A statement authorizing such counsel to receive any and all notifications, service of process, and other communications from the Commission, its staff and attorneys on behalf of Respondent. Upon receipt, the Commission shall have no contact with Respondent except through the designated counsel unless authorized by Respondent.

E. Ex parte communication means any written or oral communication by any person outside the agency to any Commissioner or any member of a Commissioner's staff which imparts information or argument regarding prospective Commission action or potential action concerning:
1. Any proceeding involving a request for an exemption.
2. Any enforcement proceeding.
3. Any pending litigation matter, or
4. Any pending rulemaking, or
5. Any pending advisory opinion request.

F. Ex parte communications do not include the following communications:
1. Statements by any person publicly made in a public forum; or
2. Statements or inquiries by any person limited to the procedural status of an open proceeding, rulemaking, advisory opinion request, or a litigation matter.

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

R2-20-807. Recordkeeping

A. All records required to be retained by Chapter 6.1 of Title 16 shall be kept in such order that a reasonable person could confirm the accuracy of transactions, transfer records, reports, opt out notices, and other information by review of the documents and other information.

B. Records may be kept in any media a person subject to Chapter 6.1 of Title 16 chooses, provided that the media is commonly available and not proprietary.

C. Failure to maintain records in a reasonable manner may give rise to factual presumption against the person in an enforcement proceeding or other action under Chapter 6.1 of Title 16.

R2-20-808. Advisory Opinions

A. Requests for advisory opinions.
1. Any person may request in writing an advisory opinion concerning the Chapter 6.1, of Title 16 or any regulation prescribed by the Commission pursuant to that chapter. An authorized agent of the requesting person may submit the advisory opinion request, but the agent shall disclose the identity of his or her principal.
2. The written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.
3. Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.
4. The Executive Director shall review all requests for advisory opinions submitted. If the Executive Director determines that a request for an advisory opinion is incomplete or otherwise not qualified, they shall, within 10 days of receipt of such request, notify the requesting person and specify the deficiencies in the request.
5. Advisory opinion requests must be sent to the Clean Elections Commission by email or as directed by the Commission staff. Procedures for advisory opinion requests shall be available on the Commission website.

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

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

D. A request for reconsideration may be made by:
1. The person who made the request within 15 days of the opinion's approval but no later than 5 days before the Commission's next regular meeting; or
2. Any person who states a good faith basis for vacating or reversing a prior opinion subject to other rules in this section.

E. Any request for reconsideration shall meet all of the requirements otherwise required of an initial request.

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September 28, 2023

Arizona Citizens Clean Elections Commission
1110 West Washington Street
Phoenix, Arizona 85007
Email: ccec@azcleanelections.gov

Re: Request for Advisory Opinion

Dear Commissioners:

On behalf of Service Employees International Union-United Healthcare Workers West (SEIU-UHW), and pursuant to Arizona Administrative Code, Rule R2-20-808, this letter requests an advisory opinion to confirm that contributions — whether cash or in-kind — made to an Arizona political action committee sponsoring a ballot measure in Arizona (a "ballot committee"), and in support of the ballot committee's collection of signatures for ballot measure qualification ("qualification efforts") do not support a covered person's Campaign Media Spending as defined by the Voters' Right to Know Act, A.R.S. § 16-971(2) ("the Act").

SEIU-UHW has made significant in-kind contributions to ballot measure campaigns over the last two election cycles and will do so again in the current cycle, specifically making in-kind contributions in the form of paying for professional signature gathering and/or making cash contribution to support of the same.

Factual Background

In 2020 and 2022, SEIU-UHW made significant in-kind contributions to the ballot measure committee Arizonans Fed Up with Failing Healthcare (Healthcare Rising AZ) in form of paying the professional signature gathering firm Fieldworks, LLC to collect signatures in support of submitting the Stop Surprise Billing and Predatory Debt Collection Protection Acts on the 2020 and 2022 General Election ballots respectively. SEIU-UHW will make similar in-kind contributions as well as cash contributions to ballot measure committees in 2024—although they are not likely to make contributions to Arizonans Fed Up with Failing Healthcare (Healthcare Rising AZ) during the 2023-2024 cycle.

SEIU-UHW intends to make these contributions on the condition that they not be used for Campaign Media Spending as defined by A.R.S. § 16-971, thereby taking advantage of the opt-out provision provided by the Act.

The activities that SEIU-UHW will be supporting with their contributions are (a) administrative, fundraising or strategic support in support of petition circulation efforts; (b) printing petition signature sheets, (c) developing training and quality control systems;(d) recruiting petition circulators; (e) training petition circulators; (f) circulating petitions and

obtaining signatures from eligible voters; (g) compiling the signatures gathered by circulators; (h) performing quality control analysis on those signatures, (i) providing reports to the relevant ballot committee, and (j) coordinating the submission of circulated petitions with the relevant ballot committee.

These costs may include the ballot committee's efforts to train canvassers how to interact with the public in soliciting signatures — such as how to approach members of the public respectfully, how to avoid trespass, how to respond to requests to relocate, etc. — and how to describe the measure — including directing potential signers to the 200-word summary and the text of the measure.

Excluded from the activities for which this letter seeks an advisory opinion, are any public communication by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium. Specifically excluded from this opinion request are contracts concerning phone banking, mass texting, mass emailing or any other communications directed *en masse* to hundreds of individuals.

Question Presented

Does a contribution (monetary or in-kind) made to a ballot committee in support of its collection of signatures for ballot measure qualification ("qualification efforts") support a covered person's Campaign Media Spending as defined by the Act?

Legal Background

On November 8, 2022, Arizona voters adopted the Voters' Right to Know Act. The Act

> establishes that the People of Arizona have the right to know the original source of all major contributions used to pay, in whole or part, for campaign ***media spending***. This right requires the prompt, accessible, comprehensible and public disclosure of the identity of all donors who give more than $5,000 to fund campaign ***media spending*** in an election cycle and the source of those monies, regardless of whether the monies passed through one or more intermediaries.

AZ LEGIS Prop. 211 (2022), 2022 Ariz. Legis. Serv. Prop. 211, §2. (emphasis added). The Act provides enhanced disclosure for traceable monies spent on campaign media spending in state and local races. A.R.S. § 16-973(A). Disclosure reporting is triggered by making campaign media spending. *Id*. (A)-(B). When determining whether a donor must be listed on the newly required disclosures, *id.*, or in newly required "paid-for-by" disclaimers under A.R.S. § 16-974(C), the recipient must ask whether the individual "contribute[d], directly or through intermediaries, $5,000 or less in monies or in-kind contributions during an election cycle to a

covered person for campaign media spending." A.R.S. § 16-973 (G). The Act also requires notification to a covered person's donors before making campaign media spending. A.R.S. § 16-972.

The Act recognizes that some expenditures made by a covered person will not be campaign media spending by requiring the covered person to "[i]nform donors that they can opt out of having their monies used or transferred for campaign media spending," before the monies are used for that purpose. *Id.* (B)(2).

In other words, the Act is focused intensely but not exclusively on campaign media spending, that is, public communications supporting or opposing candidates or ballot measures in local or state elections. Although the Act itself does not address operating expenses of a committee, it does not eliminate previous reporting requirements. For example, all contributions made to support or oppose local or state candidates or committees (including ballot committees) — including contributions that are not in support of campaign media spending, but that instead support operating or administrative expenses, or other activities — will be reported by the benefitted recipient committee as a contribution. These committees will disclose the information required by A.R.S. § 16-926.

The Act provides that "Campaign media spending" means spending monies or accepting in-kind contributions to pay for any of the following:

> (i) A public communication that expressly advocates for or against the nomination, or election of a candidate.
> (ii) A public communication that promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.
> (iii) A public communication that refers to a clearly identified candidate within ninety days before a primary election until the time of the general election and that is disseminated in the jurisdiction where the candidate's election is taking place.
> (iv) ***A public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum***.
> (v) A public communication that promotes, supports, attacks or opposes the recall of a public officer.
> (vi) An activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity.
> (vii) ***Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision***.

(Emphasis added). A.R.S. § 16-971(2).[1]

A public communication "[m]eans a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium." *Id.* (17). Arizona's definition of public communication closely mirrors the federal definition found at 52 U.S.C. § 30101(22) as implemented by 11 C.F.R. § 100.26.

Notably, when defining Campaign Media Spending, the Act specifically does not include election related activities such as nonpartisan activity encouraging voter turnout or encouraging citizens to register to vote. A.R.S. § 16-971(2)(b). Like general operating expenses, these expenditures, if made by a political action committee, will be disclosed in the report required by A.R.S. § 16-926.

Analysis

Contributions — whether cash contributions or in-kind — made to a ballot committee in support of its qualification efforts do not support a covered person's Campaign Media Spending under the Act. Stated simply, the act of collecting signatures for a ballot measure qualification is not a public communication, as such costs are more properly not categorized as general public political advertising or marketing.

While Subpart (iv) of the test applies to public communications related to ballot measures, the work around collecting signatures for ballot qualification is in fact not a public communication. The definition of "public communication" in A.R.S. § 16-971(17) requires conveying one message to many recipients via some type of mass media or broadcasting medium. Circulators collecting signatures from the public are not communicating to the public in any of the means identified in the definition of public communication. They are not broadcasting a message; they are not sending that message out via mass mailing or phone banking. They are, rather, engaged in the act of collecting signatures from the public through individual, one-on-one conversations.

In a matter assessing the application of the definition of "public communication"[2] to similar activities, a Commissioner from the Federal Election Commission (FEC) observed that most of the costs of a party committee's field program did not rise to the level of a "public communication" because most of those costs are associated with "door-to-door canvassing, manning campaign offices and other traditional grass roots activities" and other "staff and overhead costs," including "salaries and benefits of its employees, and for costs related to

[1] This request for an advisory opinion is only with respect to contributions in support of ballot qualification efforts. Such efforts to support the collection of signatures for ballot measure qualification do not satisfy subparts (i) through (iii) or (v) through (vi) because these efforts have no relation to candidates and are therefore not relevant to this question presented.

[2] As noted above, Arizona's definition of "public communication" largely mirrors the federal regulation promulgated by the FEC.

maintaining office space." *See* MUR 5564, Statement of Reason of Chairman Robert Lenhard. This Commissioner specifically differentiates the costs of making phone calls, which SEIU-UHW's contributions do not intend to support, from the other administrative costs listed as part of the committee's field program, which SEIU-UHW's contributions do intend to support. *See Id.* at FN4.

More specifically, FEC Commissioners have concluded that door-to-door canvassing, like the work that SEIU-UHW contemplates supporting in this election cycle, is not "general public political advertising" — and by extension, not a "public communication" for purposes of campaign finance regulation because canvassing does not involve paying "for access to an established audience using a forum controlled by another person"; rather, canvassing uses a forum the canvassing organization controls "to establish their own audience." *See* MUR 5564, Statement of Reasons of Vice Chairman David M. Mason and Commissioner Hans A. von Spakovsky (citing Internet Communications, 71 FED. REG. 18589, 18594-95 (F.E.C. 2006)).

The language of the Act demands a similar interpretation: it expressly defines "public communications" around mass media mediums, scenarios where the entity making the communication is paying for access to a specific established audience, via a specific forum. A.R.S. § 16-971(17). Petition circulation, on the other hand, involves direct communications with individuals, an audience selected by the communicating entity, and using no medium or forum other than direct person-to-person contact.

To that end, it is instructive that each subpart of the definition of campaign media spending relies on public communication. *See* A.R.S. § 16-971(2)(a). This is consistent with the Act's focus on specifically targeting *media spending* for additional regulation, and not all types of campaign or electoral spending, or all types of communications with the public. Black's Law Dictionary's definition of "media" is "[c]ollectively, the means of mass communication; specif., television, radio, newspapers, magazines, and the Internet regarded together." 11th ed. at 1175.

Understanding the act of collecting signatures to be outside the definition of Campaign Media Spending is also consistent with the exceptions identified in the statute. Registering people to vote is related to elections, and surely encouraging people to vote is related to elections or even campaigns, but those are not Campaign Media Spending because they are not the kind of mass communication activity or even the type of activity the Act seeks to regulate. Similarly, gathering signatures to put a measure on the ballot — as opposed to encouraging a particular vote on that ballot measure — is not Campaign Media Spending.

Such an act in furtherance of qualification is more similar to the nonpartisan voter registration and nonpartisan get out the vote activity that is **not** regulated by the Act and, under federal tax law, can even be conducted by 501(c)(3) charities that are prohibited from intervening in candidate elections. In fact, ballot qualification activities share the common goal to support an American's civic duty — the civic duty to exercise the right to vote without taking into account individual ideology or partisanship. A voter could sign a petition to support qualification of an initiative on the ballot, simply to exercise their right to ultimately vote against

the initiative once it was balloted. Like ensuring that individuals are registered to vote, the act of collecting petition signatures is simply an element of our civic mechanics.

Finally, the ballot qualification efforts that SEIU-UHW wishes to support do not satisfy subpart (vii) of the Campaign Media Spending definition. It is possible that some of a ballot committee's efforts associated with ballot qualification may include "research, design, production, polling, data analytics, mailing or social media list acquisition" in support of the specifically delineated categories of Campaign Media Spending in A.R.S. § 16-971(2)(a). For example, the development of literature or scripts advocating for the ballot measure that may be used by canvassers may have been intended by the drafters to be regulated under subpart (vii). However, as detailed above, the act of door-to-door or street canvassing to collect petitions is not itself a "public communication" that falls under subparts (i) - (vi) of the Campaign Media Spending definition, and therefore general support of signature collection cannot fall under subpart (vii) of the definition, which only encompasses activities "in preparation for or in conjunction with any activities described in items (i) through (vi)..."

Conclusion

For the above reasons, SEIU-UHW asks that the Commission issue an advisory opinion clarifying that paid signature gathering is not campaign media spending under A.R.S. § 16-971, SEIU-UHW's contributions — both monetary and in-kind — in support of a ballot committee's collection of signatures for ballot measure qualification do not support a covered person's Campaign Media Spending as defined by the Act.

Yours,

James E. Barton II

James E. Barton II
Counsel to SEIU-UHW

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Citizens Clean Elections Commission

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November 16, 2023
Advisory Opinion 2023-01

James Barton
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Tempe, AZ 85283

We are responding to your advisory opinion request on behalf of Service Employees International Union-United Healthcare Workers West ("SEIU-UHW" or the "organization") concerning the application of Voters' Right to Know Act (the "Act" or the "VRKA"), A.R.S §§ 16-971 to 16-979, to SEIU-UHW's proposal to continue its practice of making in-kind donations to ballot measure campaigns or make cash donations for professional signature gathering of petition signatures for ballot measures in Arizona.

Question Presented

Does a donation (monetary or in-kind) made to a ballot committee in support of its collection of signatures for ballot measure qualification ("qualification efforts") support a covered person's Campaign Media Spending as defined by the Act?

Commission Response

Professional signature gathering for ballot measures does not fall within the definition of campaign media spending set forth in the Act, and, therefore is not included in the calculation of whether an entity is a covered person subject to the Act's disclosure requirements.

Background

The facts presented in this advisory opinion are based on your letter received September 28, 2023 (Advisory Opinion Request or "AOR") and publicly available information.

SEIU-UHW is a "healthcare justice union of more than 100,000 healthcare workers, patients, and healthcare consumers" and an affiliate of the Service Employees International Union. *SEIU-UHW: Leading for Healthcare in California and Beyond*, (last checked November 11, 2023), www.seiu-uhw.org/about-seiu-uhw/. Based in California, SEIU-UHW's operations include organizing dialysis center workers and negotiating contracts on their behalf, electing members as delegates to the California Democratic Party, and other similar activities. *Our work*, (last checked November 11, 2023), https://www.seiu-uhw.org/campaigns/.

In Arizona, SEIU-UHW's activities have included paying for professional signature gathering by a company specializing in that service for two proposed measures in 2020 and 2022. The organization will make in-kind and cash donations to ballot measure committees in 2024. For the 2024 election, SEIU-UHW intends to "opt out" of having its funds used for campaign media spending. *See* A.R.S. § 16-972((B) (providing for a person who makes a donation to opt out of having their donation used for campaign media spending, i.e. restrict the use of their donation). AOR at 1.

The organization intends that its donations be used for "administrative, fundraising, or strategic support in support of petition circulation efforts, printing petitions, developing training and quality control for petition collection, recruiting petition circulators, training petition circulators, circulating petitions and obtaining signatures from eligible voters, compiling signatures gathered by circulators, performing quality control analysis on the signatures, providing reports to the relevant ballot committee, coordinating the submission of circulated petitions with the relevant ballot committee." *Id*. at 1-2. These activities could include training canvassers on how to interact with the public while soliciting signatures and how to describe the measure, including directing voters to the 200-word summary included on the petition and the text of a measure. *Id.* at 2.

The organization intends that certain activities be excluded from its donations. *Id.* at 1. The activities SEIU-UHW intends to exclude are any public communication by means of broadcast, cable, satellite, internet or other digital method, newspaper, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium. *Id.* at 2. It also states that it has

specifically excluded contracts concerning phone banking, mass texting, mass emailing or any other communications directed en masse to hundreds of individuals from its request for an advisory opinion. *Id*.

Legal analysis

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

When those spending thresholds are reached, covered persons must file reports that include, among other items, the identity of each donor of original monies who contributed, directly or indirectly, more than $5,000 of traceable monies or in-kind contributions for campaign media spending during the election cycle to the covered person and the date and amount of each of the donor's contributions, the identity of each person that acted as an intermediary and that transferred, in whole or in part, traceable monies of more than $5,000 from original sources to the covered person and the date, amount and source, both original and intermediate, of the transferred monies, and the identity of each person that received from the covered person disbursements totaling $10,000 or more of traceable monies during the election cycle and the date and purpose of each disbursement. A.R.S. § 16-973(A)(6), (7), (8).

Covered persons must give donors "an opportunity to opt out of having the donation used or transferred for campaign media spending." A.R.S. § 16-972(B). Cash donations where a donor has opted out are not traceable. A.R.S. § 16-971(18)(A). Consequently, where a donor has opted out of the use of its cash donation for campaign media spending, whether or not those funds can be used for the purpose of paying for the collection of ballot initiative petition signatures turns on whether or not that activity is campaign media spending.

As noted above, disclosure reports are triggered by campaign media spending, a defined term in the Act that "[m]eans spending monies or accepting in-kind contributions to pay for any of the following":

> (i) A public communication that expressly advocates for or against the nomination, or election of a candidate.
> (ii) A public communication that promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.
> (iii) A public communication that refers to a clearly identified candidate within ninety days before a primary election until the time of the general election and that is disseminated in the jurisdiction where the candidate's election is taking place.
> (iv) A public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum.
> (v) A public communication that promotes, supports, attacks or opposes the recall of a public officer.
> (vi) An activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity.
> (vii) Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.

A.R.S. § 16-971(2).

As is apparent from the language in this definition, most campaign media spending involves "public communication." Public communication "[m]eans a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium." A.R.S. § 16-971(17)(a).

Some campaign media spending does necessarily turn on a public communication. Specifically, "activit[ies] . . . that support[] the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party, including partisan voter registration, partisan get-out-the-

vote activity or other partisan campaign activity" are "campaign media spending." A.R.S. § 16-971(2)(a)(vi). "Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described [in the definition]" is also campaign media spending. A.R.S. § 16-971(2)(a)(vii); *see also* A.A.C. R2-20-801(B) (addressing requirement that expenses under 16-972(a)(7)(vii) are not campaign media spending unless conducted "in preparation for or in conjunction with" other activities listed in the definition of campaign media spending)

Notably, one kind of campaign media spending arises from ballot measures. Section 16-971(2)(a)(iv) provides that a "public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum" is campaign media spending.

Nothing in § 16-971(2)(a)(iv) applies to the payment for initiative petition signatures alone. Rather, the definition requires a public communication of some kind or, under 16-971(2)(a)(vii), activities in conjunction with the public communication.

Expenses related only to the collection of ballot measure petition signatures, but not in conjunction with campaign media spending, do not become campaign media spending solely because they are campaign related. Consequently, training, quality control and other activities identified in the AOR would not constitute campaign media spending, provided they are not performed in conjunction with campaign media spending. This does not mean that all such payments will necessarily go unreported. For example, in-kind and cash contributions to political action committees are reportable by those entities, as are the expenditures of these committees.

It could be argued that petitions themselves are public communications, given that ballot measure sponsors print petitions and seek signatures from members of the public. However, the Act's definition of public communications and the specific language governing ballot measures in the definition of campaign media spending are not that broad. In addition, given that ballot measure qualifications are among the most heavily regulated speech activities in Arizona, voters who approved the VRKA would likely not expect such activity, without more, to be included. *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 470 ¶ 10 (2009) ("Our primary objective in construing statutes adopted by initiative is to give effect to the intent of the electorate.") (quoting *State v. Gomez,* 212 Ariz. 55, 57 ¶ 11 (2006).

A Commission advisory opinion "may be relied upon by any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered, and any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered." A.A.C. R2-20-808(C)(3). A person who relies upon an advisory opinion and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act, be subject to any sanction provided in Chapter 6.1 of Title 16. *Id*. at (C)(4). Advisory opinions may be affected by later events, including changes in law.

Sincerely,

Mark Kimble
Chair

October 27, 2023

VIA EMAIL

Arizona Citizens Clean Elections Commission
1110 W. Washington St.
Phoenix, AZ 05007
ccec@azcleanelections.gov

Re: Public Comment on Request for Advisory Opinion Submitted by SEIU-UHW on September 28, 2023

Dear Commissioners:

The Ballot Initiative Strategy Center Foundation (the "Foundation") provides this letter as public comment on the pending request for an advisory opinion submitted by SEIU-UHW on September 28, 2023 (the "Request").[1]

The Foundation agrees with SEIU-UHW that cash and in-kind contributions made to support the qualification-related signature collection efforts of an Arizona political action committee sponsoring a ballot measure in Arizona do not constitute campaign media spending under the Voters' Right to Know Act. The Foundation submits this comment to provide additional analysis in support of this proposition.

The Foundation's Interest

The Ballot Initiative Strategy Center Foundation, a 501(c)(3) organization, strengthens democracy by understanding the role ballot measures play in civic engagement and building state-based power. The Foundation regularly supports ballot measure campaigns and state-based advocates in Arizona. The Foundation supports campaigns and advocates through training, technical support, and various in-kind and financial resources.

Analysis

Contributions made to support the signature collection efforts ("qualification efforts") of an Arizona political action committee sponsoring a ballot measure in Arizona (a "ballot committee"), whether cash or in-kind, do not constitute "campaign media spending" under the Voters' Right to Know Act, A.R.S. § 16-971 *et seq.* ("the Act"). Campaign *media* spending

[1] The Request is available at https://storageccec.blob.core.usgovcloudapi.net/public/docs/948-SEIUUHW-CCEC-Advisory-Opinion-Request.pdf.

means just that—spending on media, not spending on petitioning voters face-to-face. The Act's definitions provision makes this quite clear. Moreover, if the Act's disclosure requirements *did* apply to contributions to support signature collection, grave constitutional concerns would result.

I. Statutory Analysis

The Act, adopted in November 2022, creates new disclosure requirements for certain contributions and spending, including underlying-donor disclosure obligations. *Id.* § 16-973. It also provides for enforcement of those requirements by the Arizona Citizens Clean Elections Commission ("Commission"), *id.* §§ 16-974, 16-977, and creates penalties for noncompliance, *id.* § 16-975.

Under the Act, a "covered person" is "any person whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than $50,000 in statewide campaigns or more than $25,000 in any other type of campaigns." *Id.* § 16-971.[2] Covered persons are obligated to disclose the identity of all donors that give more than $5,000 in cash or in-kind contributions to fund "campaign media spending" in an election cycle, including the underlying source of that funding. *Id.* § 16-973(A). The Request relates to whether contributions and spending in support of qualification efforts constitute "campaign media spending."

The Act's definitions provision defines "campaign media spending" as "spending monies or accepting in-kind contributions to pay for" any of seven specific activities. *Id.* § 16.971(2)(a). Two of those activities[3] are routine activities for ballot committees: "public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum" and "[r]esearch, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described [in the preceding subsections]." *Id.* § 16-971(2)(a)(iv), (vii). The definitions provision defines "public communication" as "a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium." *Id.* § 16.971(17)(a).

Applying standard tools of statutory interpretation to these provisions, contributions or spending to support a ballot committee's qualification efforts quite clearly do not constitute "campaign media spending."

First, by its plain terms, the Act does not define "public communication" to include qualification efforts. "When a statutory scheme expressly defines certain terms" courts and agencies "are bound by those definitions in construing a statute within that scheme." *Zumar*

[2] The Act's definition of "person" includes both natural persons and entities. A.R.S. § 16-971(13).

[3] The remaining five activities are related to candidates, parties, and public officers and, therefore, are not relevant to our comment. *See* A.R.S. § 16.971(2)(a).

Indus. Inc. v. Caymus Corp., 244 Ariz. 163, 167 (App. 2017). Here, the Act expressly defines "public communication" to mean several specific categories of communication (*e.g.*, "mass media"). A.R.S. 16.971(17)(a). Petitioning in support of a qualification effort is not one of the explicitly delineated categories. *Id.* Nor does such petitioning fall within either of the broader catchall categories of covered communication: "a paid communication to the public by means of … another mass distribution" or "any other form of general public political advertising or marketing." *Id.* Petitioning is directed at individuals whose signatures are needed to qualify ballot measures, not the "general public"—after all, the "general public" cannot sign a qualifying petition. Petitioning also occurs on a one-to-one or small-group basis and each conversation is individualized based on that individual's questions related to the petition, not via "mass distribution." And petitioning does not entail "advertising" or "marketing" in any conventional sense.

Two established canons of construction further confirm what the plain statutory text makes clear: that "public communication," as defined by the Act, does not encompass qualification efforts.

Ejusdem generis canon: Where "a more general term follows more specific terms in a list, the general term is usually understood to 'embrace only objects similar in nature to those objects enumerated by the preceding specific words.'" *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1625 (2018) (citation omitted). Here, all the specific categories of communication the Act includes under the rubric of "public communication" relate to *mass media* communication: "broadcast," "satellite," "internet," "newspaper," "mass mailing," and so on. These are all instruments for conveying a message (i) all at once to (ii) a large and (iii) undifferentiated public. It follows that the Act's catchall categories—"a paid communication to the public by means of … another mass distribution" and "any other form of general public political advertising or marketing"—cover only forms of communication with those three characteristics. And petitioning—even highly organized and thorough petitioning—lacks all three characteristics. Petitioning conveys a message piecemeal and sequentially to specific individuals, not all at once to the general public.

Whole-text canon: "In ascertaining the plain meaning of the statute" a court or agency "must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). Or, put more succinctly, courts and agencies "do not read statutes in little bites." *Kircher v. Putnam Funds T.*, 547 U.S. 633, 643 (2006). Here, the Act's definition of "public communication" underpins a statutory scheme that, by its own terms, aims to regulate "campaign *media* spending." The whole-text canon thus underscores the point just made—"public communication" entails communication via conventional mass media, not face-to-face petitioning as part of qualification efforts.

<u>*Second*</u>, given the foregoing discussion, contributions or spending in direct support of qualification efforts do not constitute "campaign media spending." This conclusion follows directly from the above discussion of "public communication." The only category of "campaign media spending" that relates directly to the ballot-initiative process is spending on "*public*

communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum." A.R.S. § 16-971(2)(a)(iv). As just established, qualification efforts are not a form of "public communication" under the statute's precise and explicit definition of that term. Accordingly, contributions or spending made to support qualification efforts are not "campaign media spending."

Third, contributions in indirect support of qualification efforts also do not constitute "campaign media spending" by the same logic. Section 16-971(2)(a)(vii) includes in that category spending monies to pay for "[r]esearch, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision." In other words, contributions to support research, design, polling, and so on constitute campaign media spending *only* if done "in preparation for or in conjunction with" another form of campaign media spending as defined in the immediately preceding subsections of the Act. *Id.*; *see also* R2-20-801(b). And because spending in direct support of qualification efforts is not campaign media spending—as just shown—neither is spending in indirect support of qualification efforts. For example, spending on research about qualification efforts strategy or the design of petitions is not campaign media spending.

II. Constitutional Analysis

The foregoing statutory analysis leaves no room for doubt: Contributions or spending in support of qualification efforts are not "campaign media spending" and so are not covered by the Act's disclosure requirements. Moreover, if contributions or spending in support of qualification efforts *were* campaign media spending, and so were subject to the Act's disclosure requirements, the Act would very likely be in violation of the U.S. Constitution.

Regimes mandating disclosure of contributions and contributors are subject *at the very least* to exacting scrutiny under the First Amendment. *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373, 2383 (2021) (plurality opinion) (applying exacting scrutiny); *see id.* at 2390 (Thomas, J., concurring in part) (arguing for strict scrutiny); *id.* at 2391–92 (Alito, J., joined by Gorsuch, J., concurring in part) (agreeing that either exacting or strict scrutiny applies). Exacting scrutiny requires that disclosure regimes "be narrowly tailored to the government's asserted interest." Narrow tailoring, in turn, imposes an *affirmative* burden on the state to justify the burden it has imposed on First Amendment–protected activity. *See Williams-Yulee v. Florida Bar*, 575 U.S. 433, 444 (2015) ("We have emphasized that 'it is the rare case' in which *a State demonstrates* that a speech restriction is narrowly tailored to serve a compelling interest." (emphasis added)); *Bonta*, 141 S. Ct. at 2385–86. And courts must view the "'breadth'" of a disclosure regime "'in the light of less drastic means for achieving the same basic purpose,'" and "a substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored." *Bonta*, 141 S. Ct. at 2384 (quoting *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)).

The constitutional restrictions on disclosure regimes are particularly sharp where, as here, those regimes apply to organizations that are not controlled by a candidate and do not have the

major purpose of supporting a candidate's nomination or election. *See Buckley v. Valeo*, 424 U.S. 1 (1976). By its plain terms, the Act's "covered person[s]" include both major-purpose and non-major-purpose organizations, because they are defined based solely on expenditure thresholds without reference to an organization's other, unrelated activities. *See* A.R.S. § 16-971(7). And for regimes applicable to non-major-purpose organizations, the Supreme Court has upheld only very narrow disclosure requirements, including requirements to disclose "funds used for communications that expressly advocate the election or defeat of a clearly identified candidate," *Buckley*, 424 U.S. at 80, or funds used for "electioneering communications" defined as "broadcast, cable, or satellite communication[s]" shortly before an election that refer to a clearly identified candidate, *McConell v. FEC*, 540 U.S. 93, 189, 206 (2003). The Supreme Court has not ruled out the *possibility* that other requirements could withstand scrutiny, but it has emphasized the need for clear, narrow definitions, "to avoid problems of vagueness and overbreadth" in this area. *Id.* at 192.

The Act's disclosure regime, if interpreted by the Commission to cover cash and in-kind contributions or spending in support of ballot measure qualification efforts, would be overbroad and not narrowly tailored under this analysis. The Supreme Court has long held that the state interest in compelling disclosure in the ballot-measure context is low, because "ballot initiatives do not involve the risk of *'quid pro quo'* corruption present when money is paid to, or for, candidates." *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 203 (1999) ["*ACLF*"]. And the Act's motivating purpose, according to its proponents, was to crack down on the spending of "unlimited money" on "anonymous political ads."[4] That has nothing to do with qualification efforts petitioning. The Act's disclosure requirements are comprehensive, demanding, and necessitate considerable expense to comply. *See* A.R.S. § 16-973. Perhaps those burdens are justified by the state's interest in regulating anonymous spending on mass media advocacy on behalf of candidates. But they are not as applied to qualification efforts, a domain with far less risk of corruption.[5]

An interpretation of the Act that captures qualification efforts within its definition of "public communication" would also render that term unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment. A law is "unconstitutionally vague when it 'fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" *Yamada v. Snipes*, 786 F.3d 1182, 1187 (9th Cir. 2015) (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008). And where "First Amendment freedoms are involved, 'rigorous adherence'" to the requirement

[4] See https://azpbs.org/horizon/2022/10/discussion-on-voters-right-to-know-act/.

[5] At the very least, extending the Act's disclosure regime to one category of *in-kind* contributions in support of petitioning would be flagrantly unconstitutional. A common form of in-kind contribution in support of a petitioning effort is volunteering as a petition circulator—which is to say, canvassing. In *ACLF*, the Supreme Court struck down a Colorado regime compelling the disclosure of the identity of *paid* petition circulators. 525 U.S. at 203–04. The state interest in compelling the disclosure of the identity of volunteer circulators, who make nothing more than an in-kind contribution of their time, is even lower than in *ACLF*. Thus, at a minimum, any response to the Request should categorically confirm that the Act does not cover in-kind contributions in support of petitioning—to suggest otherwise would be an obvious constitutional violation.

to avoid vagueness "'is necessary to ensure that ambiguity does not chill protected speech.'" *Id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989).

Here, if "public communication," as used in the Act, encompasses qualification efforts—even though all available statutory evidence suggests that term encompasses only mass media communication—it follows that the Act fails to provide a person of ordinary intelligence fair notice of what disclosure is required to avoid liability. Such a conclusion by the Commission would inevitably chill protected speech—if qualification efforts are covered and create a disclosure requirement, plausibly *any* organized communication activity in any way related to political advocacy might also be swept up by the Act.

The Voters' Right to Know Act has transformed Arizona's campaign finance landscape. As the Commission does the important work of fleshing out what the Act requires, it should look first to the Act's plain text and should be mindful of long standing constitutional constraints. To do otherwise disserves Arizonans and risks endangering the Act as a whole.

Sincerely,

Chris Melody Fields Figueredo

October 30, 2023

BY EMAIL

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Re: Comment Regarding SEIU-UHW Advisory Opinion Request - the Voters' Right to Know Act

Dear Commissioners:

Pursuant to Rule R2-20-808(B)(3)-(4), eQual Public Benefit Corp ("***eQual***") submits this comment in connection with the request for an advisory opinion submitted on behalf of Service Employees International Union-United Healthcare Workers West ("***SEIU-UHW***") to the Arizona Citizen Clean Elections Commission ("***Commission***") on September 28, 2023. SEIU-UHW seeks confirmation that contributions made to an Arizona political action committee sponsoring a ballot measure in Arizona ("***ballot committee***") to support collection of signatures for ballot measure qualification ("***qualification efforts***") do not qualify as "campaign media spending" under the Voters' Right to Know Act (the "***Act***").

In short, we support the arguments articulated in the SEIU-UHW advisory opinion request. Our comments supplement SEIU-UHW's request by demonstrating that defining "campaign media spending" to include qualification efforts would extend the reach of the Act beyond its intended scope.

Background

eQual is a public benefit corporation that provides software and data services to help grassroots organizations qualify progressive state ballot measures. eQual has helped organizations win democracy reform, abortion rights, gun safety, affordable healthcare access, minimum wage, sick and family leave, and more, across the country. In Arizona, we provided our services to Arizona Healthcare Rising in 2022 to help qualify their medical debt collection reform measure.

Analysis

The Act defines "campaign media spending" to mean "spending monies or accepting in-kind contributions to pay for" seven types of "public communications" and activities supporting "public communications," enumerated at A.R.S. § 16-971(2)(a)(i)-(vi), including in relevant

part:

> (iv) "A public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum."[1]
>
> *or*
>
> (vii) "Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision."[2]

These subsections ("***Prongs***") of the definition of campaign media spending—Prong 4, A.R.S. § 16-971(2)(a)(iv), and Prong 7, A.R.S. § 16-971(2)(a)(vii)—are the only possible components of campaign media spending which could potentially apply to a ballot committee's payment for signature gathering in order to qualify an initiative for the ballot.[3] Prongs 1-3, A.R.S. § 16-971(2)(a)(i)-(iii), and Prongs 5-6, A.R.S. § 16-971(2)(a)(v)-(vi), involve public communications that reference a candidate, the recall of a public officer, or an identified political party, and therefore are not at issue here.

The Commission's implementing Rules clarify that the activities set forth in Prong 7, A.R.S. § 16-971(2)(a)(vii), "shall not be considered campaign media spending unless these activities are specifically conducted in preparation for or in conjunction with those other activities" set forth in Prongs 1-6, A.R.S. § 16-971(2)(a)(i)-(vi).[4] Accordingly, the central question presented by SEIU-UHW's advisory opinion request is whether paid signature gathering to qualify an initiative for the ballot, without more, constitutes the activity described at Prong 4: "A public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum."[5]

We agree with SEIU-UHW that such qualification efforts do <u>not</u> meet this definition because they are not "public communications" for the reasons articulated in SEIU-UHW's advisory opinion request. Moreover, attempting to capture contributions made for qualification efforts as "campaign media spending" would extend the Act beyond its stated purpose.

When interpreting statutory terms established by voter-approved ballot initiatives, the Commission's primary objective must be "to place a reasonable interpretation on 'the intent of the electorate that adopted it.'"[6] If it were possible to discern the statute's meaning from the language alone, then the Commission would do so without further analysis.[7]

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[1] A.R.S. § 16-971(2)(a)(iv).
[2] *Id.* § 16-971(2)(a)(vii).
[3] This statement assumes that these public communications related to ballot initiatives or referenda (and supporting activities) would <u>not</u> *also* reference a candidate, the recall of a public officer, or an identified political party.
[4] Ariz. Admin. Code R2-20-801(B).
[5] A.R.S. § 16-971(2)(a)(iv).
[6] *State v. Estrada,* 201 Ariz. 247, 250 (2001) (quoting *Foster v. Irwin,* 196 Ariz. 230, 231 (2000))
[7] *Saban Rent-a-Car LLC v. Arizona Dep't of Revenue*, 246 Ariz. 89, 95 (2019).

Here, Arizona law defines "public communication" to mean "a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium."[8] Qualification efforts are plainly not a broadcast, cable, satellite, internet or other digital, newspaper, magazine, outdoor advertising facility, mass mailing or other mass distribution, telephone bank, or marketing communication. Therefore, the Commission can only conclude that such efforts are "public communications" if it finds them to be "general public political advertising or marketing."

"General public political advertising or marketing" is not defined anywhere in Title 16 and is used only once in the Act—in the definition of "public communication" at A.R.S. § 16-971(17)(a). The phrase "general public political advertising or marketing" has no commonly understood meaning and is subject to multiple reasonable interpretations. Given this ambiguity, the Commission must look to the history, effect, purpose, and intent of the Act to ascertain whether qualification efforts like the efforts contemplated in the SEIU-UHW advisory opinion request constitute campaign media spending.[9]

The overarching purpose of the Act is clear: to prevent donors who fund political advertisements in an effort to influence how citizens vote in Arizona elections from avoiding public disclosure by funneling their contributions through intermediaries. Stop Dark Money, the organization that sponsored Proposition 211, describes the Act on its website as "a bipartisan initiative [which] aims to eliminate dark money in Arizona."[10] The organization's website provides this context for the Act:

> "Under [then-]current Arizona law, a few dark money power brokers get special treatment, the rules that all the rest of us must follow don't apply to them. These well-funded organizations and individuals exert a major influence in elections by spending money on advertisements and promotions supporting their candidate or ballot proposition."[11]

Qualification efforts are clearly outside of the regulatory intent and should not be considered campaign media spending.

Similarly, the official statement of the Act's "Purpose and Intent" as certified by the Secretary of State provides: "This act is intended to . . . prevent corruption and to assist Arizona voters in making informed election decisions by securing their right to know the source of monies used

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[8] A.R.S. § 16-971(17)(a).
[9] *Arizona Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 470 (2009) ("Statutes that are subject to only one reasonable meaning are applied as written, but if a statute is ambiguous, we consider the statute's context; its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose.") (internal quotations omitted).
[10] Stop Dark Money, *Why is it so important that we stop dark money in Arizona?*, https://www.stopdarkmoney.com/why-stop-dark-money.
[11] *Id.*

to influence Arizona elections."[12]

The Act does *not* regulate donors who are engaged in the political process in ways that do not attempt to influence how citizens vote in Arizona elections. For example, the definition of "campaign media spending" expressly excludes: (i) news stories published by a company not owned or operated by a candidate or political party, (ii) nonpartisan activity intended to encourage voter registration and turnout,[13] and (iii) primary or nonpartisan debates featuring opposing candidates or both sides of a ballot measure issue.[14] These activities promote civic participation by informing voters and encouraging their involvement in the political process.

Signature collection efforts to qualify a measure for the ballot are akin to these civic engagement activities because they do not try to influence how citizens will eventually vote on the ballot measure after it is qualified for the ballot. This is why the Federal Election Commission ("***FEC***") has long considered a ballot committee's activities in the pre-ballot qualification period to not be "in connection with" an election for the purpose of campaign finance law.[15] Commissioners explain:

> "Before qualification, a committee is principally concerned with (1) obtaining the signatures required to gain ballot access and (2) ensuring compliance with other technical requirements of ballot access. The activities undertaken in support of these goals do not occur within close temporal proximity to the election. Although pre-qualification activity may have some limited political consequences, such activity is sufficiently removed that it is not 'in connection with' an election."[16]

Accordingly, finding qualification efforts to be campaign media spending would result in the regulation of efforts that have nothing to do with influencing how Arizona citizens vote on Election Day. Furthermore, treating such ballot committees' pre-qualification signature collection efforts as campaign media spending would not increase the transparency of the original sources of contributions to influence election results, would not give voters more information so they can make informed decisions and hold officeholders accountable, and would not reduce the potential for corruption or the laundering of political monies—all stated

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[12] *See* Ariz. Sec'y. of State, Certificate and Title: An Initiative Measure Amendment Title 6, Arizona Revised Statutes by Adding Chapter 6.1; Relating to the Disclosure of the Original Source of Monies Used for Campaign Media Spending, https://apps.arizona.vote/electioninfo/assets/33/0/BallotMeasures/Certificate%20and%20Title.pdf (hereinafter "***VRTK Act Purpose and Intent Statement***").

[13] Qualification efforts are inherently nonpartisan since the efforts are focused on an issue, not a candidate or party. Moreover, we find that when citizens engage in petition efforts, they regularly engage in broader civic engagement, including registering to vote and voting. Thus, such efforts are arguably also exempt from the Act's reach under the explicit exclusion for nonpartisan voter registration and turnout activities.

[14] A.R.S. § 16-971(2)(b)(i), (ii) and (iv).

[15] *See* Fed. Elec. Comm'n., Adv. Op. 2010-07 at 3 (June 14, 2010) (permitting Members of Congress to solicit soft money for a ballot committee to fund their activities during the period before an initiative qualifies for a ballot and reasoning that such pre-qualification activities are not "in connection with an election" and thus not subject to the Bipartisan Campaign Reform Act of 2002's limitations governing how Members of Congress may solicit funds in connection with an election).

[16] *Id.*, Concurring Statement of Vice Chair Bauerly and Commissioners Walther and Weintraub at 2 (July 8, 2010).

goals of the Act.[17] Such an interpretation would extend the reach of the Act beyond its purpose, and beyond what its sponsor and electorate who voted for it intended.

For these reasons the Commission should confirm that qualification efforts do not constitute campaign media spending when issuing an advisory opinion in response to SEIU-UHW's request.

Sincerely,

Jim Heerwagen
Co-Founder
eQual Public Benefit Corp.

[17] *See* VRTK Act Purpose and Intent Statement.

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October 28, 2023

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

Re: Comment on SEIU-UHW Advisory Opinion Request

Dear Director Collins:

I write on behalf of Center for Arizona Policy Action ("CAP Action") to submit a comment in connection with the advisory opinion request filed on September 28, 2023, pursuant to Arizona Administrative Code R2-20-808(B)(3). CAP Action agrees with the requestor that face-to-face canvassing or other field activities in connection with initiative or referendum efforts are not "public communications," within the meaning of A.R.S. § 16-971(17).

The term "[m]eans a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium." A.R.S. § 16-971(17)(a). Canvassing inarguably is not among the specific methods of communication catalogued in the definition. The residual phrase—"any other form of general public political advertising or marketing"—is implicitly confined to species of political advertising or marketing that are substantially similar to those itemized. *See Wilderness World, Inc. v. Dept. of Revenue*, 182 Ariz. 196, 199 (1995) ("Under the doctrine of *ejusdem generis,* 'where general words follow the enumeration of particular classes of persons or things, the general words should be construed as applicable only to persons or things of the same general nature or class of those enumerated.'"). As the requestor notes—and as federal authorities construing analogous provisions confirm—the "public communications" denoted by Proposition 211 are those communications that entail the use of a third-party commercial intermediary to publish a political message. *See also* FEC Adv. Op. 2022-20 ("The listed forms of 'general public political advertising' share several common elements, one of which is that they typically require the person making the communication to pay to use a third party's platform to gain access to the third party's audience."). Because canvassing and field activities are intrinsically a direct, face-to-face mode of outreach, they are not "public communications" within the meaning of A.R.S. § 16-971(17).

Although the advisory opinion request pertains specifically to petition signature collection, the definitional ambit of "public communications" likewise excludes canvassing, field operations, and similar face-to-face activities in *opposition* to an initiative or referendum effort. Because Proposition 211's mandates are—and are constitutionally compelled to be—viewpoint neutral, the Commission's advisory opinion should take care to

exposit a symmetrical construction of "public communication" that does not distinguish activities or communications in opposition to the qualification of a ballot measure from those in support of it.

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Thank you for your consideration of the foregoing comment.

Respectfully,

/s/ Thomas Basile
Thomas Basile