



Reforming Campaign Finance in Arizona

A roadmap to greater transparency & accountability in Arizona's elections.

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Our constitutional system of democracy is premised on citizen self-governance: the right of every American to participate, meaningfully, in the political processes that direct and shape all levels of government. Even as a small number of wealthy special interests have increasingly gained disproportionate influence over our democracy by spending big money in federal and state campaigns, there are policy solutions available to ensure that our elected leaders better represent all of their constituents, not just large campaign donors, and that our democratic system is more transparent and accountable to the public. The following report reviews Arizona’s current campaign finance regime and proposes particular reforms to help ensure that Arizona elections are more transparent and that state candidates and elected officials are more accountable. These well-developed proposals are comparable to laws already in place in states and localities across the country, and are viable under the Supreme Court’s campaign finance jurisprudence.

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Executive Summary¹

Arizona’s elections have recently attracted significant national attention, as shifting demographics have led to fiercely competitive elections in the state and to a significant influx of unregulated and untraceable money flowing into state campaigns.² Many issues in contemporary elections in Arizona are at least partially attributable to gaps in the state’s campaign finance laws, which allow wealthy special interests to exert an outsized influence on state campaigns, permit unlimited secret spending in elections, and fail to protect Arizonans’ constitutional right to a transparent and accountable political process.

For example, the absence of meaningful disclosure requirements for independent expenditures and other outside election spending has enabled dark money—that is, election spending for which the donors are kept secret—to pour into the state, and Arizona voters have no legal means to identify the true sources of money spent to influence elections in their state. Additionally, Arizona’s disclosure regime has not been updated to account for the increasing prominence of digital media in modern campaigns, leaving Arizona voters in the dark about the sources behind online ads about candidate and ballot measures.

Although Arizona law bans corporate contributions to candidates, corporations and other special interests can nonetheless channel vast financial resources to support or oppose campaigns in the state, and Arizona law sets no limits on corporate entities’ ability to donate to political parties and PACs. Similarly, while federal law includes a broad general prohibition on foreign interference in federal and state elections, Arizona lacks a state-specific ban on foreign election spending in connection with state or local elections. Because the federal prohibition has not been interpreted to apply to state and local ballot measures and fails to include foreign-influenced corporations, this gap leaves both candidate races and ballot measure contests in Arizona susceptible to the kind of foreign meddling that has beleaguered elections at the federal level and in other states. Moreover, limits on state and local elections officials’ authority and resources to administer and enforce the state’s campaign finance laws make effective oversight of election spending a challenge.

This report explains these and other vulnerabilities in Arizona’s campaign finance laws, and it outlines a number of policy solutions to address them. Several other states have successfully revamped their election codes in response to issues similar to those Arizona is now experiencing, and those laws reflect some best practices that can guide Arizona in restoring accountability and transparency in its electoral system.³

The report examines seven key areas within Arizona’s campaign finance regime: (1) reporting and disclosure requirements; (2) regulation of digital political advertising; (3) coordination rules; (4) restrictions on corporate and labor campaign activities; (5) prevention of foreign interference in state elections; (6) personal use of campaign funds; and (7) enforcement and administration. For each of these areas, the report identifies gaps or vulnerabilities in Arizona’s existing laws and explains why such features are problematic, and then proposes policy recommendations to strengthen the law in accordance with national best practices.

Above all, this report aims to propose reasonable campaign finance reforms that would help make Arizona’s democratic system more accessible, transparent, and accountable to the public. These changes would help further First Amendment interests in ensuring robust, diverse debate and true self-government.

Overview of Report's Findings & Recommendations

This overview summarizes the key findings of each section of the report and outlines its major policy recommendations.

Reporting and disclosure requirements: Existing Arizona law provides very little transparency about non-political committee groups that spend money on elections. Notably, Arizona law entirely exempts 501(c) nonprofit groups from meaningful disclosure rules if they are in good standing with the federal Internal Revenue Service, regardless of how much money those groups ultimately spend to influence state or local elections. In effect, Arizona law cedes enforcement of the state's transparency rules for election spending by outside groups to the IRS, an unnecessary delegation of state authority that has opened the floodgates to dark money in Arizona elections. Similarly, Arizona's narrow focus on disclosure of expenditures that "expressly advocate" for or against candidates or ballot measures creates further opportunities for nonprofits and other outside groups to secretly spend money in Arizona elections without having to reveal information about themselves or their sources of funding. Other major gaps in Arizona's disclosure system include a failure to account for groups that form or spend money during the days or weeks just before an election, and a wholesale disclosure exemption for numerous types of contributions and expenditures received or made by campaigns and other political committees.

To address these problems in Arizona's disclosure laws, this report recommends the following reforms:

- ▶ *Introducing comprehensive disclosure requirements for the sources of money behind independent expenditures and ballot measure expenditures.*
- ▶ *Eliminating the categorical PAC-registration exemptions for nonprofit organizations.*
- ▶ *Expanding the kinds of independent campaign spending subject to transparency under state law.*
- ▶ *Requiring expedited registration for organizations that qualify as PACs during the month prior to an election.*
- ▶ *Adding supplemental pre-election reporting requirements for PACs and other groups that raise or spend large amounts shortly before Election Day.*
- ▶ *Narrowing the exemptions in the statutory definitions of "contribution" and "expenditure" that allow many payments to or by candidates and PACs to remain hidden from the public.*

Digital advertising: Modernizing Arizona's election laws to account for the exponential growth of online advertising in recent elections is essential, as campaigns increasingly use digital advertising to target and influence prospective voters. Arizona's disclosure rules do not clearly apply to the full spectrum of digital media formats currently used by political advertisers, and the law simultaneously exempts many of the most common forms of online advertising from its on-ad disclaimer mandates. Likewise, Arizona voters remain susceptible to "dark," microtargeted digital advertising campaigns, due to the lack of a reliable, centralized source of comprehensive information about online political advertisements concerning Arizona candidates and ballot measures.

The report thus recommends the following changes to strengthen Arizona's regulation of digital political advertising:

- ▶ *Amending the definition of "advertisement" so it clearly applies to the wide and evolving range of digital advertising in modern elections.*
- ▶ *Repealing disclaimer exemptions for common types of digital ads and introducing a modified exception that applies only in cases of technological impossibility.*
- ▶ *Creating a government-hosted archive of digital political advertisements in Arizona so that the public at large has access to comprehensive information about those ads and their sources.*

Coordination: Existing Arizona law narrowly defines what constitutes campaign spending that is coordinated with candidates—i.e., election spending that is subject to contribution limits. Indeed, current law does not apply to some of the most common practices that candidates and their supporters use to evade statutory limits on campaign contributions. To prevent this circumvention, Arizona should reinforce and expand its existing definition of coordination between candidate campaigns and outside groups that make expenditures to benefit those campaigns.

This report recommends that Arizona enact the following reforms to augment its coordination rules:

- ▶ *Clarifying and expanding the types of conduct and activities that qualify as coordination under the law.*
- ▶ *Eliminating the law’s “rebuttable evidence” standard and treating certain activities as de facto coordination instead.*
- ▶ *Removing the intent requirement to establish coordination when a campaign shares nonpublic, strategic information with an outside group.*
- ▶ *Repealing the statutory exemption that allows for unlimited coordinated expenditures by political parties on behalf of their candidates.*
- ▶ *Introducing certain conditions for outside spenders’ use of firewalls to preclude a finding of coordination.*

Corporate & labor campaign activities: Corporations and labor unions are powerful players in Arizona politics, and existing state law does not adequately guard against the special corruption concerns that these entities pose within our democratic system. While Arizona does prohibit corporations, LLCs, and unions from making contributions directly to candidates, it simultaneously allows these entities to give unlimited donations to political parties and PACs, which can then use those entities’ money in support of candidates, violating the spirit—if not the letter—of Arizona law. Similarly, Arizona’s loose rules on what amounts to corporate sponsorship of a political action committee permit many corporations to serve as shadow sponsors of PACs without having to fully disclose their relationship.

Accordingly, this report recommends that Arizona adopt the following reforms regarding corporate and labor groups’ campaign activities:

- ▶ *Limiting corporations’ and labor unions’ contributions to Arizona’s political parties and to PACs that contribute directly to candidates.*
- ▶ *Broadening the definition of “earmarked” to prevent circumvention of campaign contribution limits for candidates.*
- ▶ *Expanding the circumstances in which a corporate entity or labor union is considered the “sponsor” of a political committee to ensure adequate disclosure of that relationship to the public.*

Foreign election interference: Despite the federal prohibition against foreign nationals contributing or spending any money to influence federal, state, or local elections in the U.S., Arizona remains vulnerable to foreign meddling in its elections. The Federal Election Commission has not interpreted the federal “foreign national” ban to apply to ballot measure races or to certain foreign-influenced corporations that can now spend unlimited money to influence election outcomes in the post-*Citizens United* era, and Arizona’s own laws do not explicitly prohibit foreign sources from contributing or spending funds in state elections.

To protect Arizona voters from foreign influence campaigns, Arizona should enact the following changes:

- ▶ *Broadly banning foreign sources from directly or indirectly making contributions or expenditures in connection with both candidate elections and ballot measure races in Arizona.*
- ▶ *As part of a state-specific foreign spending prohibition, introducing a comprehensive definition of “foreign-influenced corporations” so that corporate entities substantially owned or controlled by foreign nationals cannot unduly influence Arizona’s elections.*

Personal use of campaign funds: Arizona currently lacks a clear prohibition on the personal use of campaign funds by candidates and committees, except for a committee disposing of surplus funds during the termination process. To close this gap and other channels for misuse of campaign donations, this report recommends adding the following restriction in Arizona’s campaign finance statute:

- ▶ *Introduce a comprehensive prohibition against the personal use of campaign funds by Arizona candidates and committees.*

Administration and enforcement: In Arizona, campaign finance administration and enforcement are divided among different state and local agencies, including the Secretary of State’s office, which has limited authority and insufficient resources to effectively carry out the law and investigate potential violations. The independent Citizens Clean Elections Commission, on the other hand, already possesses considerable administrative and enforcement powers, but its jurisdiction is presently limited to the Arizona Citizens Clean Elections Act and related statutory provisions.

This report thus recommends that Arizona strengthen its system of campaign finance administration and enforcement in the following ways:

- ▶ *Broadening enforcement powers under Arizona’s campaign finance statute and reducing opportunities for actual or apparent partisan influence over the enforcement process.*
- ▶ *Promulgating comprehensive rules and regulations for Arizona’s campaign finance laws.*
- ▶ *Introducing a narrow private right of action to ensure a mechanism for citizen enforcement of Arizona’s campaign finance statute when violations go unenforced by election officials.*
- ▶ *Adding criminal penalties for “knowing and willful” violations of Arizona’s campaign finance laws.*

I. Reporting & Disclosure Requirements

The following section discusses the vital role of transparency in elections, and reviews Arizona’s current disclosure laws for PACs, independent and ballot measure expenditures, and campaign advertising. It concludes with policy recommendations that would fortify transparency in Arizona elections by addressing deficiencies in existing law and introducing new measures to ensure Arizonans have greater access to information about the sources of money used in state and local campaigns.

Why Election Transparency Matters

Since the Supreme Court opened the door to unlimited corporate campaign spending in *Citizens United v. FEC*, the prevalence of “dark money” in federal and state elections has increased dramatically.⁴ Because many campaign finance disclosure laws were not designed to account for the outpouring of corporate and special-interest money precipitated by *Citizens United*, they typically impose minimal transparency requirements on organizations that do not qualify as political action committees (“PACs”) but nevertheless spend significant amounts on political advertisements independently of candidates or political parties. Consequently, voters too often lack information about the real sources of money behind political advertising and other spending in elections, even as the Supreme Court has consistently upheld campaign finance disclosure laws as a constitutional means of protecting the First Amendment interest of ensuring voters can “make informed choices and give proper weight to different speakers and messages” in the political marketplace.⁵

In contemporary Arizona elections, dark money is extremely common.⁶ According to an analysis by the Brennan Center for Justice, Arizona had one of “the biggest surge[s] in dark money” of any state in the four years following *Citizens United*.⁷ During the 2014 election cycle alone, dark money outfits spent more than \$10.3 million to sway state and local elections in Arizona;⁸ a significant share of this dark money—around \$3.2 million—was concentrated on the 2014 statewide elections for two seats on the Arizona Corporation Commission, whose members regulate Arizona’s public utility companies.⁹ Dark money has also flooded legislative, ballot measure, and local office races in Arizona throughout the post-*Citizens United* era.¹⁰

The influx of dark money in Arizona is directly attributable to the shortcomings of the state’s campaign finance disclosure law, which has been described as “one of the most pro-dark-money statutes imaginable.”¹¹ Arizona’s campaign finance statute exempts virtually all nonprofit organizations from having to register and report as PACs, regardless of how much money those organizations spend to influence state elections.¹² When nonprofit groups pay for political messaging in Arizona, they have no legal obligation to reveal their sources of funding. Consequently, big corporations and wealthy individuals have funneled millions of dollars through politically active nonprofits that either pay for independent spending themselves or transfer the money to super PACs and other nonprofits for election expenditures in Arizona.¹³ 501(c)(4) nonprofit organizations, in particular, have become the main conduits for dark money in Arizona and across the country.¹⁴

While 501(c)(4) groups must ostensibly operate for “the promotion of social welfare,”¹⁵ they may legally spend substantial amounts of money on overt electoral advocacy and still maintain their tax-exempt status, so long as participation in political campaigns does not become their “primary purpose.”¹⁶ Importantly, 501(c)(4) entities combine the abilities to make expenditures in political campaigns and to raise unlimited donations from any source, but have no corresponding legal obligation to disclose the identities of their donors on filings with the IRS.¹⁷ Similarly, Arizona law does not require 501(c)(4)s or other 501(c) organizations to disclose when they pay for advertisements about candidates or ballot measures unless the ads *expressly* urge the public to vote for or against the candidate or measure; even when they do have to publicly report their expenditures in Arizona’s elections, they need not include any information about their direct or indirect sources of funding.¹⁸

Within this legal framework, corporations and wealthy special interest groups can secretly influence Arizona elections by channeling vast sums of money into state campaigns through nonprofit intermediaries, while preventing voters from knowing their identity as the true source of the money.

Current Arizona Law

Disclosure by PACs: registration and reporting

Under Arizona law, an “entity”¹⁹ generally must register as a “political action committee” if that entity is (1) organized for “the primary purpose” of influencing the outcome of an Arizona election, and (2) receives “contributions” or makes “expenditures” totaling \$1,300 or more in a calendar year.²⁰ Within ten days of satisfying the two-prong standard for registration, a PAC must file a statement of organization with either the Secretary of State or the appropriate local filing officer, depending on whether the PAC is organized for a statewide, legislative, or local election.²¹

In 2016 and 2018, the state legislature amended the law to categorically exempt any 501(c) nonprofit organization from having to register and report as a PAC in Arizona as long as the organization has complied with the Internal Revenue Service’s requirements for tax-exempt status.²² The 2018 amendments similarly prohibit city and county officials in Arizona from requiring a 501(c) entity in good standing with the IRS to register or file reports as a PAC in local elections, to publicly disclose information about its donors and other information included in the entity’s filings with the IRS, or to produce evidence in connection with a potential campaign finance violation.²³

The major effects of these changes are to excuse most 501(c) organizations—including (c)(4) entities, the principal source of dark money in the post-*Citizens United* era—from all meaningful campaign finance disclosure obligations under state law, and to cede the Secretary of State’s authority to ensure nonprofits’ political spending in Arizona is transparent to the Internal Revenue Service.²⁴ While a 501(c)(4) organization risks losing its tax-exempt status if political campaign advocacy becomes its “primary” activity, a 501(c)(4) organization can spend millions of dollars to influence elections and still maintain tax-exempt status with the IRS. Accordingly, a nonprofit’s compliance with IRS rules for *tax-exemption* should not be determinative of the entity’s disclosure duties under Arizona *campaign finance* laws, which are not congruous with federal tax law and are meant to advance an entirely different set of governmental aims, including educating the voting public about disparate sources of political speech.²⁵ Moreover, the IRS has rarely acted to enforce restrictions on political activity by 501(c) organizations in recent years, so remaining in good standing with the agency is not likely to be difficult; the IRS did not revoke the tax-exempt status of any 501(c) organization between 2015 and 2019 for exceeding the legal limits on political campaign activity.²⁶

Arizona law requires registered PACs to file quarterly reports until their formal termination, as well as pre-election and post-election reports during election years. Pre-election reports are due ten days before the date of a primary or general election and must be complete through the 17th day prior to the election.²⁷ The filing deadline for post-election reports is the 15th day after the end of the calendar quarter in which the election occurred.²⁸ In the 2021-2022 cycle, post-election reports are due no later than October 15, 2022 and January 17, 2023 for the primary and general election, respectively.²⁹ The lag in filing deadlines between pre-election and post-election reports allows both existing committees and “pop-up PACs”—those formed after the pre-election reporting deadline has passed—to avoid disclosing their contributions and expenditures in the immediate days before the election until months after voters have gone to the polls.³⁰

On their reports, PACs must itemize all contributions received from other committees or entities, regardless of amount, and contributions made by individuals who have contributed more than \$50 in the election cycle.³¹ A PAC also must include an itemized list of all expenditures and other disbursements exceeding \$250 made within the reporting period.³² In all cases, donor reporting is limited to immediate sources of contributions to a PAC, and Arizona law imposes no obligation for PACs or other filers to trace contributions back to their original sources, thus providing an easy mechanism for spending large amounts to influence elections in secret.

In general, the terms “contribution” and “expenditure” include money or anything of value received or spent “for the purpose of influencing an election,”³³ though the statute carves out numerous exceptions to both definitions.³⁴ In particular, defrayment of a political party’s operating expenses or party-building activities, “coordinated party expenditures,”³⁵ payment of a committee’s legal or accounting expenses, and travel expenses and certain hospitality provided by an individual without compensation are all exempted from the meaning of “contribution” or “expenditure” in Arizona.³⁶ These exemptions were enacted as part of the Arizona Legislature’s 2016 overhaul of state campaign finance law,³⁷ and they undercut electoral transparency by exempting certain campaign contributions and expenditures from reporting requirements altogether. For example, if an Arizona candidate amasses millions of dollars in legal or accounting expenses for *any* purpose, a donor may pay those costs without the candidate’s campaign ever having to disclose the donor’s payment on public reports.³⁸ In short, these exemptions create a backdoor for secret quid pro quo exchanges in Arizona politics and deny the public important information about money raised and spent by candidates and committees.

Reporting of independent expenditures and ballot measure expenditures

Arizona law defines an “independent expenditure” as an expenditure by a person other than a candidate committee that “expressly advocates” the election or defeat of a “clearly identified candidate” and is not made in coordination with the candidate or candidate’s agent.³⁹ A “ballot measure expenditure” is one that “expressly advocates the support or opposition of a clearly identified ballot measure.”⁴⁰

A.R.S. section 16-926(H) requires entities, including PACs, that make “independent expenditures” or “ballot measure expenditures” exceeding \$1,000 in a reporting period to file reports identifying the specific candidate or ballot measure supported or opposed by the expenditure, the date of the relevant election, the mode of advertising, and the first date the ad was published, displayed, delivered, or broadcast.⁴¹ These reports need not include information about contributions or other money given to filers.

Separately, the Arizona Citizens Clean Elections Act⁴² also requires reporting of independent expenditures in excess of \$500 to support or oppose a statewide or legislative candidate;⁴³ subsequent reports are due each time the person makes further independent expenditures exceeding \$1,000 within the same cycle.⁴⁴ The deadline for filing the report depends upon when the expenditure is made, and 24-hour reporting is required for independent expenditures made within two weeks of a primary or general election.⁴⁵ Independent expenditure reports under the Citizens Clean Elections Act are in addition to any obligation to report independent expenditures under section 16-926(H). The independent expenditure reporting provisions of the Act also do not require filers to disclose their sources of funding.

Campaign advertisement disclaimers

In Arizona, an “advertisement”⁴⁶ must include a disclaimer statement that both identifies who paid for the ad and indicates whether the advertisement was authorized by any candidate.⁴⁷ An advertisement sponsored by a PAC also must list the names of the three PAC contributors that made the largest aggregate contributions in excess of \$20,000, if any, to the sponsoring PAC;⁴⁸ a PAC advertisement does not have to include on-ad identification of any non-PAC donors, irrespective of how much those donors contributed. Non-PAC organizations that sponsor political advertisements have no obligation to disclose the names of any donors on their ads. The law also exempts various types of communications from its disclaimer rules, including certain online messaging.⁴⁹

Policy Recommendations

The following policy recommendations would address certain transparency gaps in existing law and better protect Arizonans' First Amendment right to know who is spending money to influence their votes. Some of the recommendations are comparable to previous legislative and ballot measure proposals to bolster transparency in Arizona elections, and many of these policies have been enacted in other states.

- ▶ *Introduce donor disclosure for independent expenditure and ballot measure expenditure reports:* One of the central factors behind the prevalence of dark money in Arizona is the lack of donor disclosure rules for outside groups that spend or transfer funds to influence state elections. Under existing state law, nonprofits and other non-committee organizations can make unlimited independent expenditures and ballot measure expenditures without ever having to disclose their funding sources.⁵⁰ To bring about real transparency in Arizona election spending, we recommend mandating transparency regarding the original sources of big money used to fund independent spending in candidate elections and ballot measure races around the state.⁵¹

To facilitate original source disclosure even when funds have been transferred among multiple intermediaries before an expenditure is made, state law should require direct donors to the ultimate spender of the funds to inform the spender of the original sources of the money and any intermediaries who previously transferred those funds before they reached the spender. The spender should then disclose all this information to the Secretary of State when reporting its campaign expenditure. Although requiring original source disclosure will expand campaign spenders' existing reporting obligations, such requirements should apply narrowly to big spenders, particularly those who have engaged in complicated financial schemes that obscure the origins of money spent in Arizona elections. Moreover, these amendments should include an opt-out provision to permit donors who contribute to multipurpose advocacy groups for purposes *other than* election spending to instruct that their donations not be used for election-related spending, thereby allowing spenders to omit those donors from campaign finance filings and political ad disclaimers and lessening potential concerns about the breadth of original source disclosure requirements.

An ongoing ballot initiative campaign in Arizona in fact aims to establish this kind of comprehensive, original source transparency.⁵² The Voters' Right to Know Act, whose sponsors are now in the process of collecting signatures to qualify it for the 2022 ballot, would give Arizona voters "the right to know the original source of all major contributions used to pay, in whole or part, for campaign media spending" in Arizona elections.⁵³ A small but growing contingency of states have already adopted laws that entail some degree of multi-level disclosure of the sources of money used for independent campaign spending.⁵⁴ Most recently, Alaska voters approved a ballot measure in November 2020 that requires the disclosure of the "true source" of large contributions made to independent expenditure groups.⁵⁵

- ▶ *Eliminate PAC-registration exemptions for certain nonprofit organizations:* To improve transparency of outside spending in state elections, Arizona should repeal the exemptions in its campaign finance statute that excuse nonprofit organizations from registering as state PACs, regardless of how much they donate or spend to influence election outcomes in the state.⁵⁶ These exemptions "serve[] as a welcome mat for dark money in Arizona," and nonprofit entities, especially 501(c)(4) "social welfare" organizations, have unsurprisingly become the principal vehicles for funneling dark money into Arizona elections.⁵⁷ By removing the carve-outs for nonprofit organizations under the statutory provisions concerning PAC status and registration, Arizona would ensure that nonprofits that spend significant sums in state elections can still qualify as PACs and become subject to the state's more comprehensive disclosure regime for committees.⁵⁸
- ▶ *Expand the scope of independent campaign spending subject to transparency rules:* Arizona disclosure rules apply narrowly to "independent expenditures" and "ballot measure expenditures," such that only payments for express advocacy for or against a clearly identified candidate or ballot measure must be disclosed. Current transparency rules

thus leave a huge disclosure loophole for paid public communications that identify, discuss, and even support or oppose a candidate or ballot measure but refrain from using “magic words” of express advocacy or their equivalent. To address this transparency gap, we recommend expanding Arizona’s disclosure rules to cover “electioneering communications,” a campaign finance term of art that generally encompasses pre-election advertisements that name or feature a candidate or ballot measure without explicitly urging the election or defeat of that candidate or measure, and other advertising that “promotes, attacks, supports, or opposes” (“PASO”) candidates or ballot measures in terms that may not qualify as express advocacy. Importantly, the Supreme Court has upheld both electioneering communication disclosure and the PASO standard,⁵⁹ and various state disclosure laws now encompass electioneering and PASO communications.⁶⁰ In addition to encompassing more public communications, a more effective transparency regime would also extend to non-communication expenditures meant to influence election outcomes, such as partisan get-out-the-vote (“GOTV”) and similar activities.

- ▶ *Expedite PAC registration during the month prior to an election:* When PACs are set up just before an election, they should have to immediately register with Arizona election officials and report information about their donors so that the public has prompt access to information about these groups before going to the polls. Because Arizona law allows a PAC to wait ten days after qualifying as a committee before it must file its statement of organization, “pop-up” PACs can start making large campaign expenditures in Arizona in the immediate days before an election—and avoid registering until after Election Day.⁶¹ This loophole is particularly troubling regarding “super PACs”—committees that can suddenly receive millions of dollars from a single source as long as all of their spending is done independently of candidates and political parties. To preclude the gaming of registration and reporting rules, many states have expedited registration deadlines for political committees formed in the immediate days before an election.⁶² For example, Hawaii’s campaign finance statute generally requires a “noncandidate committee” to file a registration statement within ten days of raising contributions or making expenditures of more than \$1,000, but in the 30-day period before an election date, noncandidate committees must register within two days of surpassing the \$1,000 contribution or expenditure threshold.⁶³ We recommend that Arizona follow suit by introducing 24-hour or 48-hour registration and reporting requirement for PACs in the month before a primary or general election.
- ▶ *Add supplemental pre-election reporting for PACs and other groups that raise or spend large amounts shortly before an election:* Under existing Arizona law, PACs must file a pre-election report by the tenth day before an election, complete through the seventeenth day before the election. But after filing the pre-election report, PACs do not have to file another report until post-election reports are due on the fifteenth day *after* the end of the calendar quarter in which the election occurred.⁶⁴ Reports of independent expenditures generally are due on the same filing deadlines as PAC reports, unless the expenditures concern statewide or legislative races.⁶⁵ Although the Citizens Clean Elections Act mandates *one-day reporting* of large independent expenditures related to statewide or legislative candidates during the two weeks before an election, it does not require those reports to include any information about contributions received by the filing committee during that timeframe. In practice, this means that the public often must wait several months for complete information about PACs’ and outside groups’ fundraising and spending in the final days before an election, when many political organizations are highly active.⁶⁶

For federal elections and in many states, however, political committees and outside spenders are required to file supplemental, event-driven reports disclosing large contributions or expenditures received or made after the last regularly scheduled reports are due.⁶⁷ We recommend that Arizona likewise address the substantial gap between the pre-election and post-election reporting deadlines by introducing supplemental reporting in the final days before an election. This could be accomplished by broadening the Citizens Clean Election Act’s independent expenditure reporting provisions to apply to both expenditures and contributions in connection with *any* Arizona election, not just statewide or legislative races.

- ▶ *Narrow the exemptions from definitions of “contribution” and “expenditure”:* We recommend eliminating some of the statute’s exemptions from the definitions of “contribution” or “expenditure” to ensure greater transparency of

money spent to benefit a candidate or committee. In particular, we recommend limiting the exemption for payment of a committee's legal or accounting expenses, which currently allows unlimited payment of a committee's legal or accounting expenses by any person, for any reason, including for purposes unrelated to an election.⁶⁸ To prevent abuse and ensure more transparency about who is spending money to benefit candidates and committees, we advise narrowing the exemption only to cover legal or accounting costs paid by the regular employer of the individual rendering the services, and only if the services are related to compliance with state election law.⁶⁹ Similarly, we recommend narrowing the exemption for "the value of nonpartisan communications that are intended to encourage voter registration and turnout efforts" so that it applies *only* if the communications: (i) do not support or oppose any candidates or political parties, and (ii) are not coordinated with any candidate or political party. This change would align Arizona's exemption with FEC regulations regarding corporate and labor GOTV communications, and better protect against the circumvention of expenditure reporting requirements.⁷⁰

- ▶ *Consolidate the reporting requirements for independent expenditures in statewide and legislative races:* Both A.R.S. § 16-926(H) and the Arizona Citizens Clean Elections Act require reporting of independent expenditures concerning statewide or legislative candidates, albeit with different filing thresholds and deadlines. We recommend streamlining independent expenditure reporting in connection with statewide and legislative office races by consolidating the two existing reporting provisions into a single independent expenditure disclosure provision.⁷¹
- ▶ *Broaden the top contributor identification rules for campaign advertisements:* While state law currently requires a PAC's advertisements to list the names of its three largest contributors of more than \$20,000 that are also registered PACs in Arizona, if any, we recommend extending the top donor identification requirements to cover other organizations that pay for campaign advertising, as well; the informational value of immediately knowing the biggest donors behind an outside group's political messaging is especially high, and multiple states have enacted top donor disclaimer rules applicable to PACs and non-PAC entities alike.⁷² Similarly, on-ad donor disclaimers should identify the three largest "original source" donors to the sponsor of an ad, rather than the sponsor's largest PAC contributors, whose contributions necessarily consist of money from other donors. This change would deliver key information to Arizona's electorate about the real sources behind campaign ads in the state and preclude original source donors from avoiding public identification by routing their money through PACs or conduit organizations.⁷³

II. Regulation of Digital Advertising

Digital advertising in campaigns is growing at a staggering pace, with each successive election cycle setting new records for online campaign spending.⁷⁴ Multiple estimates place total spending on digital ads in 2020 federal, state, and local elections well in excess of \$1.5 billion, but an exact figure is difficult to come by, largely due to inconsistent and weak disclosure requirements for online communications.⁷⁵ By all accounts, though, digital spending will continue to escalate in future elections, as campaigns and political advocacy groups increasingly rely on digital media to engage voters.

Digital media's appeal to political advertisers is clear: it is relatively inexpensive and allows the targeting of political messages to highly specific segments of the electorate.⁷⁶ But the unique features of online advertising present special challenges for campaign finance laws, which have largely failed to keep pace with the rapidly expanding and evolving digital marketplace. For example, Congress has not updated the federal disclosure regime for "electioneering communications," which applies only to television or radio advertising,⁷⁷ since it was enacted in 2002.⁷⁸ Consequently, online political ads paid for by a person other than a political committee are only subject to federal reporting and disclaimer provisions if the ads expressly advocate for or against a federal candidate.⁷⁹ In 2016, this statutory loophole was notoriously exploited by Russian operatives, who purchased thousands of social media ads in the leadup to the U.S. presidential election that year, many of which disparaged Hillary Clinton or lauded Donald Trump—but did not explicitly urge their audiences to vote for or against either candidate.⁸⁰ Because these Russia-funded ads lacked express candidate advocacy⁸¹ and were publicly disseminated through internet platforms like Facebook and Twitter, rather than on TV or radio, they remained outside the narrow scope of federal disclosure requirements for online political ads.⁸²

In addition, some states' political ad disclaimer laws, like Arizona's, continue to exempt common types of online communications, such as paid social media content and small graphic or text ads.⁸³ While these exemptions may have been necessary to accommodate internet and mobile advertising fifteen years ago, today most digital media formats can carry on-ad disclaimers with relative ease.⁸⁴ Indeed, both Facebook and Google now *require* "paid for by" disclaimer statements to be included on U.S. election-related advertising purchased through those platforms.⁸⁵ On the other hand, many campaign finance laws make no mention of political advertising on video streaming services, also known as "connected TV," which grew tremendously during the 2020 cycle.⁸⁶

"Dark" advertising—online ads that are microtargeted to distinct blocs of voters using data analytics tools, but remain invisible to the rest of the population, including election officials and law enforcement—has emerged as another pressing issue in recent elections.⁸⁷ Notably, Russian agents utilized dark ads on social media to reach U.S. voters in 2016, weaponizing data-driven ad technologies as part of their covert cyber-operation to divide Americans and sway the presidential election.⁸⁸ In combination with their paid ads, Russian groups amplified online political misinformation using bots, troll farms, and fake accounts, which helped their messaging further spread through organic, peer-to-peer content shared by unwitting Facebook, Twitter, and Instagram users in the U.S.⁸⁹ Despite self-imposed transparency measures instituted by Facebook and other major platforms after 2016, including the creation of publicly searchable political ad archives, dark advertising resurfaced on Facebook during the 2018 and 2020 election cycles.⁹⁰

In Arizona, existing gaps in state campaign finance law's coverage of digital advertising undermine political transparency. Since Arizona is now a national hotbed of campaign spending, modernization of the law is crucial to ensure that Arizonans have access to meaningful information about the sources of digital advertising in their state elections.⁹¹

Current Arizona Law

Definitions of "advertisement," "social media message," and other key terms

Under Arizona's campaign finance statute, an "advertisement" generally means any "information or materials" distributed "for the purpose of influencing an election."⁹² The exact coverage of digital communications under the "advertisement" definition is somewhat unclear, but the term does exclude "nonpaid social media messages."⁹³ Arizona also exempts certain

uncompensated email and internet activity, including “social media messages,” from regulation as a “contribution” or “expenditure,” but these exceptions are not applicable to “transmittal of a paid advertisement or paid fund-raising solicitation” through digital media.⁹⁴

Disclaimers for digital campaign ads

Section 16-925, which sets out disclaimer requirements for campaign advertisements in general, does contain several carveouts for digital media, including “social media messages, text messages or messages sent by a short message service”; “advertisements that are placed as a paid link on a website, if the message is not more than two hundred characters in length and the link directs the user to another website that complies with [the disclaimer] section”; and “advertisements that are placed as a graphic or picture link, if the statements required in this section cannot be conveniently printed due to the size of the graphic or picture and the link directs the user to another website that complies with this section.”⁹⁵ As the volume of digital advertising has grown in recent elections, however, many social media platforms and other digital publishers have adjusted their ad policies to allow for disclaimers on political ads; in fact, Facebook and Google now require “paid for by” statements on paid communications concerning candidates and other political issues distributed on the platforms.⁹⁶ Given the advancements in digital ad technology, Arizona’s exemptions for digital ads are largely unnecessary today, while the importance of disclaimers on digital ads are more important than ever considering the growing volume of political advertising online.

Policy Recommendations

Our recommendations for digital ad disclosure would expand the advertising subject to disclaimer requirements in Arizona, accounting for the rapidly changing landscape of digital media. Additionally, we recommend that Arizona build and host a public database of digital ads in state elections to provide voters with critical information about online political advertising.

- ▶ *Amend the definition of “advertisement” to ensure it can flexibly apply to the wide and evolving range of digital advertising:* In light of the dramatic expansion of political advertising to digital platforms in recent elections, we recommend clarifying that an “advertisement” includes paid digital communications that appear on any public-facing website, internet-enabled application, streaming platform, or other digital application.⁹⁷ We also recommend eliminating the criterion that an “advertisement” is made “for the purpose of influencing an election.” This language is redundant since the statutory definition of “expenditure” is already limited to a payment or purchase “for the purpose of influencing an election,” and potentially creates uncertainty regarding whether an advertisement discussing an Arizona candidate or initiative is subject to disclosure if the sponsor claims a subjective, non-electoral purpose.
- ▶ *Repeal exemptions for certain digital ads in § 16-925(E) and introduce a modified exception for cases of technological impossibility:* We recommend repealing the current provision excluding several common digital ad formats from disclaimer requirements. Thanks to changes in the digital marketplace, disclaimer statements can be included with relative ease on most digital ad formats covered in the exemption, including social media messages, character-limited ads, and ads placed as graphic or picture links. In place of the current exemptions in section 16-925(E), we suggest including a modified disclaimer exception only for digital ads for which it is technologically impossible to include a full disclaimer, and we suggest allowing such ads instead to bear an adapted disclaimer that (i) identifies the ad sponsor, and (ii) immediately directs the ad’s recipients to a page containing the full disclaimer statements with minimal effort and without viewing extraneous material. Similar modified or adapted disclaimer requirements exist in Washington and Oregon.⁹⁸
- ▶ *Create a state-hosted archive of digital political advertising:* We recommend establishing a government-hosted archive of digital political ads to give the public access to information about online spending, and its sources, in state elections. Some state and local jurisdictions have already adopted archiving requirements for digital political advertisements to augment transparency around online spending in their elections.⁹⁹ Among the benefits, publicly

accessible and searchable archives of digital political ads are the most effective solution to the problem of “dark” digital ads. By ensuring that online political ads microtargeted to a small audience are preserved and standardized for review by the public at large, digital ad archives strengthen the transparency of online political advertising and aid enforcement of campaign finance laws in today’s elections.

There are multiple advantages to a government-hosted archive in comparison to a platform-hosted approach. First, a government-hosted archive provides a centralized repository of comprehensive and standardized information about digital advertising in elections, which the public can rely on as a “one-stop shop” for all digital ad information regardless of where the ads were originally displayed. Centralizing digital ad information in a government-hosted archive similarly ensures more transparency about a wide range of digital political ads, while avoiding concerns about compliance costs for smaller online platforms by absolving them of responsibility for building and maintaining their own archives.

Second, a government-hosted archive facilitates more effective legal oversight by state authorities, who can identify errors and omissions when uploading ad data to the archive. Third, a government-hosted archive avoids a piecemeal approach to transparency and ensures that regulated digital ads, regardless of where they appear online, are available for the public to review.

Fourth, a government-hosted ad archive ensures the long-term preservation of digital ad information. Platform-hosted ad archives pose an inherent risk that the public could lose access to political ad information if the platforms fold at some point in the future. A government-hosted archive thus provides more certainty of the continued availability of public information about digital political advertisements in the event that some online platforms on which ads were distributed cease to exist.

III. Coordination

To effectively prevent corruption and its appearance in our elections, campaign finance laws must embrace not only limits on direct campaign contributions, but also restrictions on spending that is functionally equivalent to a direct donation of money. In particular, when candidates control, collaborate, or otherwise coordinate with super PACs and other outside groups that spend significant sums to boost the candidates' electoral prospects, that spending should be treated the same way as writing a check to the campaign. Indeed, federal election law and most states treat coordinated expenditures as in-kind campaign contributions to a candidate, subject to the same limits and source restrictions applicable under the law. But, as discussed below, significant gaps in the definition of what counts as "coordination" have created loopholes that allow extensive amounts of coordinated spending to go unregulated.

Since *Buckley v. Valeo*, the Supreme Court has maintained that expenditures "controlled by or coordinated with a candidate" may be constitutionally limited in the same manner as contributions made directly to the candidate's campaign.¹⁰⁰ Given that coordinated expenditures are effectively in-kind campaign contributions, *Buckley* reasoned that regulating expenditures made in coordination with a candidate advances the same anti-corruption interests as limits on contributions, and also "prevent[s] attempts to circumvent the [limits] through prearranged or coordinated expenditures amounting to disguised contributions."¹⁰¹ More recent decisions from the Court have reiterated that restrictions on coordinated expenditures are justified because such expenditures "raise[] the risk of corruption (and its appearance) through circumvention of valid contribution limits."¹⁰² Notably, in *FEC v. Colorado Republican Federal Campaign Committee*, the Court concluded that coordinated spending between a political party and its candidates "may be restricted to minimize circumvention of contribution limits," and refused to accept that the close relationship between candidates and parties warranted greater First Amendment protection of a political party's coordinated expenditures.¹⁰³ Rather, the Court pointed out that "parties' capacity to concentrate power to elect is the very capacity that apparently opens them to exploitation as channels for circumventing contribution and coordinated spending limits binding on other political actors."¹⁰⁴

In the post-*Citizens United* landscape, coordination laws are especially critical to protect against the reality and appearance of quid pro quo corruption and to preserve the efficacy of contribution limits, including corporate source restrictions. While *Citizens United* relied on the assumption that independent expenditures, unlike campaign contributions, do not create a risk of corruption due to the absence of "prearrangement and coordination" with candidates,¹⁰⁵ many campaign finance statutes define "coordination" too narrowly, leaving ample opportunity for PACs and their favored candidates to engage in a range of collaboration and communications to boost the candidates' prospects.¹⁰⁶ Of course, cooperation between candidates and the supposedly "independent expenditure PACs" that support them belies any commonsense understanding of "independent" and undermines contribution limits' effectiveness as a safeguard against corruption.¹⁰⁷

Examples from recent federal elections highlight the numerous ways in which a candidate and outside group can cooperate and synchronize their activities to help the candidate's campaign. For instance, some individuals considering whether to run for federal office have first created and raised substantial money for political action committees before formally declaring their candidacies; once those candidates officially launched their campaigns, the political committees that they previously operated then proceeded to serve as single-candidate super PACs on their behalf.¹⁰⁸ Candidates have also endorsed or raised funds for super PACs that later spent large sums supporting their campaigns.¹⁰⁹

Many ex-campaign staffers have created or managed super PACs that support the candidacies of their former employers, bringing along valuable inside knowledge about the campaigns' core strategies and most pressing needs;¹¹⁰ candidates' family members have also created or financed supportive super PACs.¹¹¹ Super PACs and other outside groups have used a candidate's campaign materials in their own political messaging,¹¹² and the routine sharing of vendors by a candidate and allied outside groups has helped to ensure that independent expenditures most effectively complement spending by the official campaign.¹¹³

Many of these coordinated activities are permitted under Arizona’s campaign finance law, and the amendments made by S.B. 1516 now allow candidates to work in lock step with political parties and other outside groups without infringing state law’s contribution limits.¹¹⁴ Among other changes, those amendments added an “intent” element for establishing legal coordination and authorized unlimited coordinated expenditures between a political party and the party’s nominees in a general election.¹¹⁵ Thanks to the relaxed rules, Arizona has seen a rise in coordinated spending in recent elections.¹¹⁶

Current Arizona Law

Coordination under A.R.S. § 16-922

Under Arizona law, an expenditure generally is *not* “independent”—and therefore constitutes an in-kind contribution—if there is “actual coordination” between a candidate and outside spender, or if the expenditure is based on nonpublic information about a candidate’s plans or needs that the candidate provided to an outside spender “with an intent toward having the expenditure made.”¹¹⁷ The meaning of “actual coordination” is unclear, though, and the statutory prerequisite that a candidate must have shared nonpublic information with an outside spender with the “intent” of facilitating an expenditure greatly increases the burden on enforcement officials in Arizona to prove illegal coordination.¹¹⁸

Additionally, the following conduct constitutes “rebuttable evidence” of coordination between a candidate and an outside spender under state law: (i) an agent of the spender is also an agent of the candidate being supported by the expenditure; (ii) the spender’s agent is or has been authorized in the election cycle to raise or spend money on behalf of the candidate; and (iii) the candidate is or has been authorized in the election cycle to raise or spend money on behalf of the spender.¹¹⁹ Although these rebuttable presumptions encompass some of the most obvious conduct that can facilitate coordinated spending in elections, there are additional kinds of coordination activities not clearly covered in Arizona’s statute that campaigns often use to skirt contribution limits, including a candidate’s creation or management of an independent expenditure committee before declaring their candidacy, former campaign staff working for allied super PACs, and republication of campaign messaging.¹²⁰ Moreover, the law precludes a finding of coordination even in circumstances where one of the rebuttable presumptions is met so long as the spender has established and adhered to a written firewall policy designed to prevent any of its “agents” who satisfy a presumption from participating in decisions regarding the supportive expenditure.¹²¹

Exemption for unlimited “coordinated party expenditures”

The statute separately excludes from the definition of “contribution” any “coordinated party expenditures”¹²² for goods or services to benefit a political party’s nominee in a general election.¹²³ Although state law still limits the total *monetary* contributions that political parties can give to any candidate per election cycle, the exemption for coordinated party expenditures renders those limits hollow by effectively enabling parties to provide unlimited in-kind support to candidates’ campaigns.¹²⁴ Because contributions to parties are not subject to limits under the law, the exception for coordinated party expenditures creates a loophole for campaign donors to route additional in-kind support, in excess of the statute’s limits, to their favored candidates through political parties which are free to use the donors’ funds for unlimited spending in coordination with those same candidates. And the exemption effectively provides a workaround to Arizona’s prohibition on corporate and labor contributions to candidates, since corporations and labor groups can give to political parties in unlimited amounts, and parties can in turn use corporate and labor funds for coordinated expenditures with candidates.¹²⁵

Policy Recommendations

The following policy recommendations would build on Arizona’s existing coordination rules by addressing gaps and loopholes in the current state law that allow campaigns and outside spenders to circumvent contribution limits for candidates.¹²⁶

- ▶ *Clarify and expand the types of conduct that constitute coordination under the law:* We recommend that Arizona both specify the types of activities and relationships that qualify as “actual coordination” under the law and cover more practices that campaigns and outside groups commonly use to coordinate in federal and state elections.¹²⁷
 - ▶ *“Actual coordination”:* Currently, Arizona law does not define what constitutes “actual coordination” under section 16-922(B)(1). But when an expenditure is “not made totally independently” of a candidate, it should automatically be treated as legally coordinated.¹²⁸ We advise clarifying the scope of this key term by defining “actual coordination” to include any expenditure made pursuant to an express or implied agreement, a general or particular understanding, or a request by or communication with a candidate or an agent of a candidate.
 - ▶ *Candidate or candidate’s family member had a major role in creating, funding, or operating the outside spender:* When an individual who becomes a candidate, or their immediate family member, has previously formed or managed a super PAC that subsequently supports the candidate once they have announced their campaign, there is an extremely close nexus between the PAC and the candidate that in practice persists even after the candidate has formally launched the campaign and disaffiliated from the committee. We recommend that Arizona account for this type of arrangement by treating any expenditures by a PAC or other group to support a candidate as coordinated if, during the election cycle, the candidate or candidate’s immediate family member established, maintained, controlled, or principally funded that PAC or entity.
 - ▶ *Outside spender employs former campaign staff or common vendor with campaign:* While Arizona law includes a presumption of coordination when an expenditure is made by an outside spender whose “agent” also is currently an agent of the supported candidate, the presumption does not explicitly apply to a *former* campaign staffer or to common vendors shared by a candidate and outside spender. If an outside spender hires or retains the services of a person who has been managerial-level staff for a candidate within the previous two years, or who also is a vendor for the candidate’s campaign, we recommend classifying expenditures by the spender in support of the candidate as coordinated. Former campaign staff who should be covered are those who, at any point during the election cycle: (i) had executive or managerial authority for the candidate’s campaign; (ii) were authorized to raise or expend funds for the candidate and had received non-public information about the campaign’s plans or needs; or (iii) provided the candidate with professional services (other than accounting or legal services) related to campaign or fundraising strategy.
 - ▶ *Expenditures for republication of campaign materials created by the candidate:* A common way in which outside spenders help candidates is by amplifying their key messaging themes, including at times by incorporating official campaign materials into their own political advertising. Thus, we suggest that if an outside spender pays to republish, in whole or part, a candidate’s campaign materials, that expenditure should generally qualify as coordinated, *unless* the republication is used to oppose the candidate who created the materials. Such republication should be considered coordinated regardless of the extent to which there has been actual communication between the candidate’s campaign and the spender.
- ▶ *Eliminate the rebuttable evidence standard in section 16-922(C):* Along with expanding the specific kinds of conduct that constitute coordination under section 16-922(C), we recommend that Arizona classify such conduct, including the activities currently described in that section, as coordination per se, rather than treating it as “rebuttable evidence” of coordination.¹²⁹ This change would create more clarity as to what constitutes coordinated spending and better protect against campaigns leveraging their fundraising and personnel connections with outside spenders to elude limits on campaign contributions.
- ▶ *Remove the intent requirement for the sharing of nonpublic campaign information with outside spenders:* In § 16-922(B), we advise that Arizona remove the condition that a candidate or candidate’s agent must have shared nonpublic information about their campaign’s needs or plans with an independent spender with “intent toward having the expenditure made” in order for the subsequent expenditure to qualify as legally coordinated. This intent requirement effectively allows candidates to defend against an alleged coordination violation by claiming they did not

mean for an outside spender to use the shared campaign information to make expenditures in their support, and it also demands that enforcement officials, in addition to demonstrating a campaign actually provided nonpublic information to an outside spender, produce evidence establishing that the candidate in fact intended for that information to be used for supportive expenditures—evidence that in most cases will be very difficult to come by. There are virtually no justifications for why a candidate would share nonpublic information about their campaign strategy with a super PAC *except* to make sure that the super PAC’s subsequent expenditures are most beneficial for their campaign, and in other jurisdictions, the sharing of nonpublic information by a candidate with an outside spender constitutes automatic coordination.¹³⁰

- ▶ *Repeal the exemption for unlimited coordinated spending between political parties and candidates:* We recommend repealing the exemption for unlimited coordinated party expenditures, which is a major loophole in Arizona’s campaign finance law that, to a large extent, obviates the law’s candidate contribution limits. By enabling donors who have made maximum contributions to a candidate to give additional, unlimited contributions to a political party that in turn can spend the donor’s funds in coordination with that candidate with no limit, this exemption flagrantly “opens [political parties] to exploitation as channels for circumventing contribution and coordinated spending limits binding on other political players.”¹³¹ Arizona should eliminate this exemption and subject political parties’ coordinated expenditures to reasonable limits.¹³²

- ▶ *Introduce more guardrails for implementation of a firewall:* Finally, we recommend that Arizona adopt additional requirements for outside spenders who seek to establish a firewall pursuant to section 16-922(D)(1). This would better protect against an outside spender’s staff and agents indirectly coordinating with a candidate by creating meaningful separation between those providing services to the candidate’s campaign and those working on independent spending in support of the candidate. In addition to the existing conditions for implementing a firewall under section 16-922(D)(1),¹³³ Arizona’s statute should specify that an outside spender must: (1) separate specific staff working on expenditures to support a specific candidate from other staff who provide services to that candidate; (2) prohibit the spender’s leadership or managers from simultaneously supervising the work of staff members who are separated by the firewall; (3) create physical and technological separations to ensure that non-public information does not in fact flow between the spender and candidate, or between specific staff separated by the firewall; (4) distribute a written copy of the firewall policy, describing both the general firewall policy and the specific firewall created pursuant to it, to all relevant staff before any covered activities are undertaken; and (5) upon request, provide a copy of the written firewall policy to the Secretary of State or local election officials, as applicable.

IV. Corporate & Labor Campaign Activities

The modern prominence of political advertising funded, directly or indirectly, by corporate sources is a consequence of the Supreme Court's 2010 decision in *Citizens United v. FEC*, in which the Court ruled that corporations have a First Amendment right to use their general treasuries to pay directly for independent expenditures supporting or opposing candidates.¹³⁴ But even before *Citizens United*, legal channels existed for corporations and unions to harness their financial resources in support of specific candidates in federal and state elections, including by sponsoring and administering their own affiliated PACs, which must be funded through voluntary contributions from the sponsor's executives, employees, or members and may not use its sponsor's general treasury funds for making campaign contributions or expenditures.¹³⁵ Although corporate PACs have long been a tool for Fortune 500 companies and wealthy special interests "to curry favor with lawmakers" through the campaign finance system, their popularity has waned in recent years. Over the past decade, super PACs and political nonprofits, which may accept unlimited contributions from corporate and labor unions' general treasuries, have increasingly become the preferred vehicles for corporations and unions to influence elections—as well as for wealthy individuals who may set up a limited liability corporation to hide the true source of their contributions. Moreover, compared with maintaining one's own PAC, wealthy individuals, corporations, and unions face fewer administrative and public disclosure obligations by simply contributing money to super PACs and other outside entities.¹³⁶

While federal law and nearly half of the states forbid corporations or labor organizations from making campaign *contributions* using their general treasury funds, over twenty states do allow direct corporate and labor contributions to candidates, with five states imposing no limits at all on how much corporate entities can donate to campaigns. Likewise, a few states, including Arizona, permit corporations and labor unions to make contributions of general treasury funds to political parties or traditional PACs (i.e., non-super PACs) while still prohibiting corporate and labor donations to candidates.¹³⁷ Indeed, corporate and labor entities seeking to influence elections today have a menu of options available to them, from paying for independent expenditures directly to steering unlimited amounts of their business revenue or membership dues to super PACs and politically active 501(c) organizations to sponsoring their own PAC affiliates, or using some combination of these approaches. Corporate executives and employees also can contribute directly to Arizona candidates in their individual capacities, though their contributions are subject to state law's limits.¹³⁸

Recent elections for the Arizona Corporation Commission ("ACC"), whose five elected members regulate public utility companies in the state, and recent ballot initiatives related to clean energy have showcased the different avenues open for corporate money to flow into the electoral system. According to documents made public in 2019 in response to subpoenas issued by the ACC, the Arizona Public Service Co. ("APS"), Arizona's largest electrical utility, and Pinnacle West, its corporate parent, donated well over \$10 million in 2014 to a dark money network of 501(c)(4) organizations that spent heavily to help successfully elect two pro-business candidates to the ACC.¹³⁹ In 2016, Pinnacle West contributed around \$4 million to an allied super PAC, AZ Coalition for Reliable Electricity, that boosted the reelection campaigns of three Republican ACC commissioners with an advertising blitz run in the immediate days before the general election, while Pinnacle West's corporate PAC and its top executives gave large campaign contributions to numerous Arizona candidates that year, including Governor Doug Ducey.¹⁴⁰ Later, Pinnacle West poured almost \$38 million into the 2018 campaign to defeat Proposition 127, a ballot measure that would have amended Arizona's constitution to require public utilities like APS to generate at least half of their energy supply from renewable sources by 2030.¹⁴¹

Current Arizona Law

Contributions from corporations and labor organizations

In Arizona, corporations, LLCs, and labor unions may not give contributions directly to candidates using their general treasury funds.¹⁴² Prior to the adoption of S.B. 1516 in 2016, Arizona also prohibited corporate and labor entities from contributing to state political parties and PACs, other than independent expenditure committees or ballot measure committees.¹⁴³ However, corporations and labor organizations may now make unlimited contributions from their general

treasury funds to political parties and all PACs in Arizona.¹⁴⁴ Parties and PACs may only contribute to candidates using funds provided by individuals, partnerships, candidates, or other PACs or party committees, however,¹⁴⁵ and they must maintain a separate bank account for any contributions raised from corporate entities or labor organizations.¹⁴⁶

State law also proscribes the making or receipt of “earmarked” contributions intended for a specific candidate.¹⁴⁷ The separate account and earmarking restrictions may prevent the transfer of corporate or labor funds to candidates in some instances, though Arizona’s allowance for unlimited corporate and labor contributions to parties and PACs is clearly vulnerable to abuse. Currently, corporations and labor unions remain free to informally direct that a party or PAC use their contributions for making expenditures to benefit certain candidates or for payments that do not constitute “contributions” under the law, such as coordinated party expenditures.¹⁴⁸ This unchecked corporate financing for parties and PACs feeds into public perceptions that the “special characteristics of the corporate structure”—including their ability to accumulate and distribute vast financial resources—“threaten the integrity of the political process.”¹⁴⁹ Our constitutional framework is meant “to ensure that the *individual citizen* can effectively participate in and contribute to our republican system of self-government,”¹⁵⁰ and this central tenet of our democracy is subverted when our elected representatives govern “according to the wishes of those who have made large financial contributions valued by the officeholder,” particularly when those large contributions are derived from a corporation’s business earnings and reflect nothing about the wider popularity of the corporation’s political leanings.¹⁵¹

PAC sponsorship

A corporation, LLC, or labor organization may establish a separate segregated fund (“SSF”), which must be registered as a state PAC in Arizona, in order to solicit contributions from its shareholders, employees, or members, as well as those persons’ family members.¹⁵² Under the law, the “sponsor” of a PAC is the entity that “establishes, administers, or contributes financial support to the administration of” an SSF PAC, or that has “common or overlapping membership or officers” with the SSF PAC.¹⁵³

A sponsor must register its SSF PAC with the appropriate filing officer and include the sponsor’s contact information on its statement of organization, and the PAC’s official name must incorporate the name or “commonly known nickname” of its sponsor.¹⁵⁴ The Secretary of State and Arizona’s courts interpret the role of PAC sponsor identification as ensuring “that the ongoing relationship between the sponsoring entity and its SSF PAC (e.g., one operated by a corporation or labor union) is reflected in the committee name and organizational statement, because such support is not otherwise required to be reported as campaign contributions.”¹⁵⁵ This understanding of “sponsor,” though, does not necessarily encompass situations where another entity is overwhelmingly the predominant source of funding for a PAC if that entity has not formally established and administered the recipient PAC as a “separate segregated fund” pursuant to section 16-916(C).¹⁵⁶ This narrow construction of sponsorship has allowed some corporate entities’ significant financial ties to technically unaffiliated PACs to evade closer public scrutiny.¹⁵⁷

After registering, an SSF PAC may make contributions to Arizona candidates, subject to the applicable limits for PAC contributions.¹⁵⁸ The sponsor may pay for administrative, fundraising, or personnel costs associated with its SSF PAC without making a reportable contribution,¹⁵⁹ but the PAC must maintain a bank account separate from all other accounts or funds of its sponsor, and it may not use the sponsor’s general treasury or business revenue for making campaign contributions.¹⁶⁰

Policy Recommendations

The following policy recommendations would help to make Arizona’s prohibition against corporations and labor unions contributing to candidates less vulnerable to circumvention by introducing more statutory guardrails to prevent the use of political parties and PACs as conduits for funneling corporate and union money to campaigns. In addition, we suggest expanding the meaning of “sponsor,” for purposes of establishing corporate or labor PAC sponsorship, to encompass when a corporation or labor organization provides the vast majority of funding for a state PAC.

- ▶ *Limit contributions by corporations, LLCs, and labor organizations to parties and traditional PACs:* To reduce the corruption concerns tied to large corporate and labor contributions, we suggest that Arizona limit contributions from corporations, LLCs, and labor organizations to state political parties and PACs. This change would both better align the contribution rules for PACs and parties with those applicable to candidate committees, and safeguard against the use of PACs and parties as conduits for donors to channel additional financial support to candidates. Most states that prohibit corporate contributions to candidates likewise bar corporations from contributing to political parties and traditional PACs.¹⁶¹ As part of this change, Arizona could also institute limits on contributions to PACs and parties more generally, like many other states already have.¹⁶²
- ▶ *Broaden the definition of “earmarked” to help preserve integrity of contribution limits:* While political parties and PACs in Arizona may not accept a contribution from any source that is “earmarked” for subsequent transfer to a candidate, the meaning of “earmarked” leaves ample opportunity for donors, including corporate and labor sources, to ensure that parties and PACs know to spend their funds for the benefit of certain candidates. We therefore recommend that Arizona broaden its definition of “earmarked,” so that the term includes implicit designations by donors that their contributions be used to support a particular candidate. Other jurisdictions offer models for this change; for example, in Washington, a contribution is considered “earmarked” if it given to an intermediary with the express or implied instruction that all or part of the contribution be “made to or for the promotion of a certain candidate.”¹⁶³
- ▶ *Expand what constitutes a PAC “sponsor” to better regulate corporate control of state PACs:* We recommend that Arizona amend the definition of “sponsor,” for purposes of determining when a PAC is legally affiliated with a corporation or labor organization, to include circumstances where an organization is the predominant source of funding for a state PAC. For example, California’s Political Reform Act specifies that an entity “sponsors” a committee if the committee receives 80% or more of its total contributions from the entity or its members, officers, employees, or shareholders.¹⁶⁴ Arizona should add a comparable prong to the definition of “sponsor” in § 16-901(47), so that corporations and labor groups that effectively bankroll a committee cannot evade the heightened disclosure requirements connected to formal PAC sponsorship.¹⁶⁵

V. Protections Against Foreign Election Interference

Federal law has long prohibited “foreign nationals” from contributing or spending money in connection with a federal, state, or local election for public office,¹⁶⁶ and the Supreme Court has affirmed that the “government may exclude foreign citizens from activities intimately related to the process of democratic self-government.”¹⁶⁷ Despite the longstanding federal ban, however, opportunities remain for foreign interests to influence U.S. elections.¹⁶⁸

Critically, Congress has not updated the federal prohibition against foreign national contributions or expenditures since *Citizens United*, leaving the door open for foreign actors to secretly funnel money into U.S. elections through corporate intermediaries. Federal law’s foreign national restrictions also do not apply to so-called “issue ads” financed by foreign sources, even though those ads are often intended to influence election outcomes and broader governmental policy. And the FEC has interpreted the federal foreign national ban to apply only to candidate elections, thus leaving states’ and localities’ initiative and referendum contests highly susceptible to foreign influence.¹⁶⁹

Unsurprisingly, foreign governments and businesses, including corporations with significant foreign ownership, have readily exploited the gaps in our campaign finance laws to spend huge sums of money in elections around the country.¹⁷⁰ While Russia’s multifaceted digital influence operation in the 2016 presidential race is the most high-profile recent example of foreign meddling in our democracy,¹⁷¹ foreign sources have also directed money into recent state and local elections. In 2016, Mexican billionaire Jose Azano was sentenced to three years in prison for violating the federal ban on foreign nationals making campaign contributions, among other offenses.¹⁷² Evidence showed Mr. Azano and his affiliates used a domestic shell company and other straw donors in the U.S. as pass-throughs for transferring nearly \$600,000 in contributions to benefit two mayoral candidates in San Diego’s 2012 election.¹⁷³

Ballot measure elections have attracted significant foreign money in recent years, as well. In 2020 and 2021, Hydro-Quebec, a Canadian government-owned public utility company, has spent more than \$10 million to defeat a Maine ballot referendum that would block the company’s plans to build a hydropower corridor across the state.¹⁷⁴ Because Maine law did not bar foreign entities from spending their funds in ballot measure elections, Hydro-Quebec’s ballot initiative advocacy was not clearly proscribed—the company even registered its own political committee with Maine election authorities.¹⁷⁵ In California, the ride-sharing behemoth Uber, whose largest investors include the Saudi Arabia Public Investment Fund,¹⁷⁶ spent more than \$50 million last year supporting Prop 22, a statewide referendum approved by voters that overturned a state law that strengthened employment protections for ride-sharing companies’ drivers.¹⁷⁷ Similarly, in Austin, Texas, Uber joined forces with its competitor Lyft to provide well over \$8.5 million to back a 2016 local referendum campaign that sought, unsuccessfully, to repeal a city ordinance that required mandatory background checks for ride-share drivers.¹⁷⁸

In the absence of decisive federal action to end foreign interference in our democratic system, some state and local jurisdictions have taken the initiative by enacting their own laws to safeguard elections from foreign meddling.¹⁷⁹ These measures include explicitly barring foreign individuals or entities from spending money on state and local ballot issues,¹⁸⁰ and restricting contributions and expenditures by corporations that have significant foreign ownership.¹⁸¹

Current Arizona Law

Arizona has not enacted a prohibition against foreign individuals or organizations making contributions or expenditures in either candidate elections or ballot measure contests. As the Secretary of State has made clear in guidance materials, federal law’s prohibition on foreign national election spending does apply in Arizona candidate races.¹⁸² However, because of the many ways in which corporations and special interests can influence Arizona elections, including with unlimited donations to politically active 501(c) nonprofits exempt from meaningful disclosure obligations,¹⁸³ campaigns in the state are still susceptible to covert foreign influence efforts. Moreover, Arizona has no clear legal restrictions against foreign sources supporting or opposing state and local ballot measures.

Policy Recommendations

The following recommendations would foreclose the biggest avenues for foreign meddling in Arizona's elections. Our recommendations would help protect both Arizona ballot measure and candidate elections from foreign influence and also would ensure that corporations with significant foreign ownership no longer provide a vehicle for foreign interests to influence electoral outcomes in the state.

- ▶ *Prohibit contributions or expenditures from foreign sources on Arizona candidate and ballot elections:* We recommend that Arizona expressly prohibit foreign nationals, including foreign-influenced corporations, from directly or indirectly providing contributions, donations, or other assistance or making expenditures in connection with any election in the state, including ballot measure campaigns. The Supreme Court has recognized, in upholding federal law's broad ban on foreign nationals' involvement in candidate elections, that the "government may exclude foreign citizens from activities intimately related to the process of democratic self-government."¹⁸⁴ That rationale applies with at least as much force in the context of ballot measure elections, "where voters are responsible for taking positions on some of the day's most contentious and technical issues," in effect acting as legislators, and "'average citizens are subjected to advertising blitzes of distortion and half-truths and are left to figure out for themselves which interest groups pose the greatest threats to their self-interest.'"¹⁸⁵ Moreover, "the high stakes of the ballot context" have repeatedly enticed foreign-owned businesses to meddle in state and local elections around the U.S. when the success or defeat of a particular measure was likely to affect their economic interests.¹⁸⁶ Adding this prohibition therefore would help to prevent foreign influence in Arizona's elections and preserve its voters' right to meaningful self-governance in their state's democratic system.
- ▶ *Comprehensively define "foreign-influenced corporations":* As part of a new state-specific ban on foreign national election spending, Arizona should incorporate a comprehensive definition of "foreign-influenced corporation" in its campaign finance statute. Specifically, we recommend defining "foreign-influenced corporation" to include an entity in which a foreign owner holds at least 5% equity or multiple foreign owners collectively hold at least 20% equity. Foreign ownership above these thresholds presents the most risk that foreign nationals can influence political spending decisions or that domestic executives or managers of a corporation will take into account the foreign owners' interests when trying to influence state or local elections. Importantly, the Securities and Exchange Commission already requires any person who acquires more than 5% ownership in a publicly traded company to disclose their ownership stake.¹⁸⁷ Additionally, the Communications Act of 1934 proscribes foreign individuals, governments, and corporations from owning more than 20% of the equity in a broadcast company.¹⁸⁸ Thus, our recommended thresholds for defining ownership in a "foreign-influenced corporation" are grounded in longstanding controls to "safeguard the United States from foreign influence."¹⁸⁹

VI. Personal Use of Campaign Funds

Most states and federal election law clearly prohibit the personal use of campaign funds in order to prevent candidates, committee treasurers, and other persons from turning campaign accounts into personal slush funds, and to ensure that campaign donors' funds are in fact spent on election-related activities as they intended. Typically, these laws define "personal use" of campaign funds in general, and then give examples of specific expenditures that would represent *per se* illegal personal use, such as residential mortgages or rent payments, and travel or entertainment that is unrelated to the campaign.¹⁹⁰ However, candidates and lawmakers have continued to exploit ambiguities in law by spending campaign funds on items and services that blur the line between personal and campaign-related expenses, including through the use of leadership PACs.¹⁹¹

Current Arizona Law

Arizona's campaign finance statute prohibits the personal use of any surplus monies held by a committee that intends to terminate.¹⁹² The Secretary of State has interpreted this restriction to prohibit a candidate's personal use of campaign funds at any time,¹⁹³ but the Secretary's guidance does not specify if the personal use ban applies to funds held by PACs or political parties outside the context of their formal termination.¹⁹⁴ This ambiguity could facilitate the potential misuse of money held by these committees for personal purposes, which in turn could damage the public's confidence in the integrity of Arizona's political system.

Policy Recommendations

- ▶ *Introduce a clear and comprehensive personal use prohibition applicable to all candidates and committees throughout their existence:* We recommend that Arizona clearly forbid the personal use of campaign funds by any person, at any time, to resolve the current ambiguity regarding personal use of campaign funds when a committee is not preparing to terminate. An effective personal use law should both define the meaning of "personal use" and list specific disbursements that constitute unlawful personal use. Federal election regulations and other state laws offer templates for making this critical addition to Arizona law.¹⁹⁵

VII. Administration & Enforcement

Across the states, campaign finance administration and enforcement processes vary greatly, as do the government agencies and officials charged with carrying out these laws.¹⁹⁶ In many states, an independent commission or board oversees administration of campaign finance laws and, in some cases, is also responsible for civil enforcement of the law.¹⁹⁷ In others, like Arizona, an elected secretary of state is the primary campaign finance administrator, while state attorneys general and local government attorneys handle civil and criminal enforcement matters.¹⁹⁸ However structured, the effectiveness of campaign finance laws depends, to a large degree, on fostering a culture of compliance within the regulated community and deterring bad actors from breaking the law.

Importantly, there are several commonalities among the most effective agencies that administer and enforce campaign finance laws.¹⁹⁹ First, to ensure even-handed and independent administration and enforcement of state law, a campaign finance agency should be insulated from partisan politics and undue control by elected lawmakers subject to the law.²⁰⁰ Second, campaign finance agencies should have the authority to issue rules and other formal guidance so that campaigns, political committees, and other regulated groups clearly understand the meaning and scope of campaign finance laws. Third, those agencies also should be authorized to thoroughly investigate and prevent potential wrongdoing, including by issuing subpoenas for testimony and documents and by performing audits; relatedly, civil and criminal penalties for different campaign finance violations should reflect the nature and seriousness of the underlying offenses. Fourth, there must be transparency and accountability around the agency's proceedings to promote public confidence, and private citizens should be able to bring civil actions to enforce campaign finance laws when elections officials are unwilling or unable to do so. Finally, an effective agency requires adequate resources so it can capably execute its responsibilities under the law.

In Arizona, different state and local agencies, with varying powers and jurisdictions, handle administration and enforcement of campaign finance laws, depending on the election involved. Successful enforcement actions for campaign finance violations are relatively rare within this divided system of oversight,²⁰¹ and there is little regulatory oversight or guidance regarding state law outside of the context of the Citizens Clean Elections Act, creating more opportunities for quid pro quo corruption in state politics and depriving Arizona voters of information about the real sources behind spending in the state's elections.²⁰²

Current Arizona Law

By law, Arizona divides administration and enforcement of its campaign finance laws among multiple state and local agencies, depending on the election and the statutory provisions at issue.

Administration

The Secretary of State prescribes the format of most campaign finance reports and filings in Arizona.²⁰³ The Secretary also is required to establish guidelines "that outline the procedures, timelines and other processes that apply to investigations by all filing officers in this state."²⁰⁴ However, the Secretary does not have the authority to issue regulations or other interpretation of Arizona's campaign finance laws, except for establishing basic procedures and timelines for filing officers' initial investigations in the Secretary's elections procedures manual.²⁰⁵

For its part, the Citizens Clean Elections Commission is authorized to promulgate rules to implement reporting requirements and carry out the purposes of the Citizens Clean Elections Act.²⁰⁶ Similarly, the Commission must publish instructions and other materials to facilitate compliance with the Act, administer a voter education program, and organize candidate debates.²⁰⁷ In addition, the Commission performs audits of all participating candidates in the Clean Elections Program after each election.²⁰⁸ However, the Commission is not responsible for administering other sections of Arizona's campaign finance statute beyond the Citizens Clean Elections Act, except as they concern the public financing program.²⁰⁹

Enforcement of violations not related to the Citizens Clean Elections Act

The Secretary of State and the Attorney General are the “filing officer” and “enforcement officer,” respectively, for Arizona’s statewide and legislative elections, including statewide ballot measures, while local elections officers and county or municipal attorneys oversee reporting and enforcement in other elections.²¹⁰ Any person who believes a violation of Arizona’s campaign finance laws has occurred, other than a violation concerning the Citizens Clean Elections Act, may file a written complaint with the appropriate filing officer for that election describing the alleged violation and including any documents that support the allegations.²¹¹ There is a four-year statute of limitations to bring an enforcement action for violations of Arizona’s campaign finance laws.²¹²

Upon receipt of a valid complaint, the filing officer will conduct an initial investigation to determine if there is “reasonable cause” that a violation occurred,²¹³ if the filing officer finds there is not “reasonable cause” or dismisses the complaint, the complainant has no further recourse to enforce the law.²¹⁴ Prior to making a reasonable cause determination, neither a filing officer nor an enforcement officer may order a person or entity to register as a political committee, and they do not have audit or subpoena powers to compel the production of evidence or witness testimony regarding possible violations of Arizona campaign finance law.²¹⁵ This limitation on filing officers’ investigative authority significantly hampers their ability to gather evidence or substantiate alleged violations, and thereby undermines the overall effectiveness of Arizona’s enforcement system because, in many cases, it is difficult for filing officers to determine whether there is in fact “reasonable cause” to believe a violation occurred on the basis of the complaint alone.

If the filing officer concludes there is “reasonable cause,” the complaint is referred to the appropriate enforcement officer, who then conducts a full investigation and who may compel production of evidence through subpoenas.²¹⁶ If the enforcement officer concludes the respondent has violated the law, the respondent will be served a notice of violation with a presumptive civil penalty.²¹⁷ The presumptive penalty generally will equal the amount of the contribution or expenditure at issue in the infraction, but the enforcement officer may assess a penalty of up to three times the amount at issue in certain circumstances based on the nature of the violation.²¹⁸ However, a respondent that takes corrective action within 20 days of receiving a notice of violation is not liable for the presumptive penalty.²¹⁹

A respondent may file an appeal within 30 days after receiving a final notice of a penalty in Superior Court, which will conduct a trial de novo on the matter.²²⁰ Any nonpublic information gathered during the investigation must remain confidential until after the final disposition of any appeal of an enforcement order.

Enforcement of violations related to the Citizens Clean Elections Act

The Citizens Clean Elections Commission is primarily responsible for enforcement of the Citizens Clean Elections Act,²²¹ and it also has authority to oversee penalties imposed for violations of *any* reporting requirements under Arizona’s campaign finance laws.²²² Any person may file a written, sworn complaint with the Citizens Clean Elections Commission regarding a potential violation of the Citizens Clean Elections Act.²²³ The Commission’s executive director will initially review a complaint to ensure it is properly filed, provide the respondent with a copy of the complaint and opportunity to respond, and then make a recommendation to the full five-member Commission as to whether there is “reason to believe” that the respondent violated the Act.²²⁴ If at least three commissioners agree there is reason to believe a violation occurred, the Commission will issue an order to the respondent requiring compliance within 14 days.²²⁵ Unlike the scheme for other campaign finance complaints, if the Commission finds no reason to believe or otherwise terminates the enforcement proceedings, the original complainant may still bring a private enforcement action against the respondent in state court for civil penalties under the Act.²²⁶

A respondent may comply with the Commission’s order within 14 days or agree to an administrative settlement, which closes the matter.²²⁷ If the respondent fails to timely respond to the order or provide an explanation to the Commission, the Commission will refer the case to its executive director and staff for further investigation; the Commission’s staff is authorized to conduct audits, subpoena witnesses and the production of other evidence “material to the performance of

the commission’s duties or the exercise of its powers,” administer oaths and affirmations, and issue written questions under order in the course of the investigation.²²⁸ Following the staff’s investigation, if at least three of the five commissioners believe there is probable cause a violation occurred, the Commission will issue a probable cause order and assess a civil penalty.²²⁹ Civil penalties under the Citizens Clean Elections Act depend on the violation at issue, and they include fines of up to ten times the contribution or expenditure amount at issue as well as disqualification or forfeiture of office by a participating candidate;²³⁰ criminal penalties are also available for “knowing” violations of the Act.²³¹

Upon receiving notice of the Commission’s probable cause order, a respondent may pay the civil penalty assessed, attempt to reach a settlement with the Commission, or request a hearing before an administrative law judge;²³² if the respondent requests an administrative law hearing, the Commission will review the administrative law judge’s recommendation before making a final decision. In any event, the respondent may appeal the final decision of the Commission in Superior Court within 30 days.²³³

Policy Recommendations

The following recommendations would enhance the administration and enforcement of Arizona’s campaign finance statute by addressing significant issues like the limitations on investigations of potential violations and the general lack of administrative rules or guidance for most of Arizona’s campaign finance laws. The recommendations also would better preserve the independence of campaign finance administration and enforcement processes in the state. Although different options are available to remedy these issues, many of our policy recommendations could be most straightforwardly implemented by empowering the Citizens Clean Elections Commission, an independent and non-elected agency that is already responsible for implementing the Citizens Clean Elections Act, to administer and enforce Arizona’s other campaign finance laws.

- ▶ *Strengthen enforcement of Arizona’s campaign finance statute:* We advise expanding the investigation and enforcement powers under Title 16, Chapter 16. Currently, the Secretary of State has only limited authority to investigate complaints alleging infractions of Arizona campaign finance laws and must refer potential violations to external enforcement officers, who ultimately decide whether to sanction misconduct. Moreover, the Secretary of State is an elected office that risks creating the appearance of political bias when conducting investigations and enforcing the law. Therefore, we advise expanding the investigation and enforcement mechanisms available under Title 16, Chapter 6, while also ensuring that the law is enforced in a strictly nonpartisan manner.

One option for strengthening enforcement and reducing concerns about partisanship would be to authorize the Citizens Clean Election Commission to investigate and enforce all of Arizona’s campaign finance laws. In many respects, the Citizens Clean Elections Commission is a model campaign finance agency, albeit one with limited jurisdiction. It is a five-member, independent body whose members are appointed by different state officials, rather than popularly elected, and no more than two commissioners may belong to the same political party, a structure that helps to insulate the Commission from partisan conflicts of interest and gridlock.²³⁴ And the Commission’s power to investigate possible violations and meaningfully pursue enforcement of the law is protected by the Arizona Constitution,²³⁵ which makes the Commission’s authority less vulnerable to legislative rollbacks.²³⁶

Pursuant to the Citizens Clean Elections Act, the Commission already exercises many of the responsibilities and powers necessary for effective campaign finance enforcement, including conducting audits and field investigations and issuing subpoenas for the production of evidence “material to the performance of the commission’s duties or the exercise of its powers.”²³⁷ The Commission can also initiate its own administrative actions to enforce the Citizens Clean Elections Act, either sua sponte or on the basis of third-party complaints, and it may directly assess civil penalties for violations of the Act.²³⁸ Likewise, the Commission has already established administrative procedures governing all stages of its investigations and enforcement proceedings.²³⁹

Accordingly, the Commission is well positioned to enforce all of Arizona’s campaign finance laws, in addition to carrying out its current duties under the Citizens Clean Elections Act. Moreover, as required by the Arizona Constitution, expanding the Commission’s enforcement authority would further the purposes of the Citizens Clean Elections Act,²⁴⁰ which broadly aims to “improve the integrity of Arizona state government,” through improved oversight of all campaigns and political groups in Arizona.²⁴¹

- ▶ *Promulgate administrative regulations and guidance for all of Title 16, Chapter 6:* Because the Secretary of State does not have rulemaking authority under Title 16, Chapter 6 of the Arizona Revised Statutes, there are currently no substantive regulations in place with respect to most of Arizona’s campaign finance laws. To offer more guidance to candidates, committees, and other groups subject to state law, we recommend that Arizona authorize the issuance of regulations and other administrative guidance concerning Arizona’s campaign finance statute.

The Citizens Clean Elections Commission has long been authorized to issue rules and regulations concerning the Citizens Clean Elections Act, and it has promulgated a comprehensive set of regulations to implement that Act.²⁴² Expanding the Commission’s rulemaking authority to cover all of Arizona’s campaign finance laws therefore presents a straightforward option for clarifying ambiguities and filling in gaps within the statute’s provisions. And enabling the Commission to address specific questions on Arizona law’s application through advisory opinions and other administrative guidance would promote compliance in the regulated community and help to prevent future violations of the law.

- ▶ *Introduce a private right of action to ensure enforcement of Arizona’s campaign finance laws:* Persons who file complaints of campaign finance violations in Arizona currently have no recourse if state or local officials fail to take meaningful action regarding the wrongdoing alleged in their complaints. To address that dilemma, Arizona should create a narrow private right of action under its campaign finance statute to empower citizens to pursue enforcement of the law when elections officials are unwilling or unable to do so. While the Citizens Clean Elections Act includes a private right of action for complainants when the Citizens Clean Elections Commission dismisses or fails to take timely action on a complaint, it is limited to civil actions to enforce that Act. But citizen enforcement of the law in cases where the government fails to pursue serious violations of the law is an important component of an effective campaign finance enforcement regime and should not be limited to the Citizens Clean Elections Act. Arizona thus should add a private right of action under Title 16, Chapter 6 for cases where state or local officials dismiss or fail to act on a complaint to facilitate greater enforcement of state campaign finance law.
- ▶ *Introduce more criminal penalties for “knowing and willful” campaign finance violations:* Finally, we recommend that Arizona introduce additional criminal penalties for serious and intentional violations of its campaign finance statute. While criminal penalties are available for “knowing” violations of the Citizens Clean Elections Act, and for making corporate contributions or contributions in the name of another,²⁴³ there are no corresponding criminal penalties for intentional violations of Arizona’s other campaign finance provisions. Among its benefits, this change would help to deter bad actors by signaling that those who knowingly violate any campaign finance laws in Arizona will face serious punishment.

Conclusion

Reforming Arizona’s campaign finance laws presents an opportunity to push back against the status quo dominated by dark money, wealthy special interests, and lawmakers who fail to respond to the needs and interests of their broader constituencies. As the experiences of other states have proved, Arizona can bring about more inclusive, transparent, and fair elections through the commonsense money-in-politics reforms described in this report, including comprehensive disclosure requirements, effective coordination rules, and stronger administration and enforcement of the law. The policy recommendations outlined in this report would better protect and advance every Arizonans’ constitutional right to self-governance and meaningful participation in the democratic process by ensuring elected officials remain accountable to all their constituents and by making Arizona campaigns more transparent and open to the public.

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For more information about reforming campaign finance laws in your state or locality, please visit campaignlegalcenter.org. You may also contact CLC at info@campaignlegalcenter.org or by calling (202) 736-2200.

ENDNOTES

- ¹ This report was prepared at the request of the Arizona Secretary of State. The views and opinions expressed in this report are those of the authors and do not necessarily reflect the official policy or position of the Secretary of State. The information in this report is not legal advice nor does it create an attorney-client relationship between Campaign Legal Center and any person or entity.
- ² See Eldrid Harrington, *What Happened? Arizona turned blue in the 2020 presidential elections, but Republicans still control the state*, PHELAN US CENTRE (Jan. 21, 2021), <https://blogs.lse.ac.uk/usappblog/2021/01/21/what-happened-arizona-turned-blue-in-the-2020-presidential-election-but-the-republicans-still-control-the-state/>.
- ³ In addition, recent ballot measures concerning Arizona's regulation of money-in-politics reflect national best practices, including the "Stop Dark Money" initiative from former Arizona Attorney General Terry Goddard. See STOP DARK MONEY, <https://www.stopdarkmoney.com/>.
- ⁴ "Dark money" generally refers to campaign spending by entities, such as 501(c)(4) "social welfare" nonprofit corporations, that do not have to publicly identify their contributors, or by wealthy individuals or entities that route their spending through intermediaries to avoid public identification as the original funding sources.
- ⁵ *Citizens United v. FEC*, 558 U.S. 310, 371 (2010). See also *Buckley v. Valeo*, 424 U.S. 1, 68 (1976) (per curiam) ("Disclosure requirements certainly in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist."); *McConnell v. FEC*, 540 U.S. 93, 197 (2003) (recognizing that disclosure advances "First Amendment interests of individual citizens seeking to make informed choices in the political marketplace").
- ⁶ See Laurie Roberts, *Will Arizona (read: you) stand up to dark money?*, AZ CENTRAL (Jun. 29, 2016), <https://www.azcentral.com/story/opinion/op-ed/laurieroberts/2016/06/29/roberts-arizona-read-you-stand-up-dark-money/86493966/> (describing Arizona as "ground zero for 'dark money' campaigns – a breeding ground for special interests looking to secretly buy this state's elections without ever having to disclose their involvement.").
- ⁷ Chisun Lee et al., *Secret Spending in the States*, BRENNAN CTR. 7 (2016), https://www.brennancenter.org/sites/default/files/2019-08/Report_Secret_Spending_in_the_States.pdf.
- ⁸ *Id.*
- ⁹ *Id.* at 13. Much of the dark money spent in the 2014 Arizona Corporation Commission elections was eventually traced to the Arizona Public Service Company, a private corporation that is the state's largest electrical utility. Howard Fischer, *APS Admits Spending Millions in 2014 Election of Energy Regulators*, ARIZ. CAPITOL TIMES (Mar. 29, 2019), <https://azcapitoltimes.com/welcome-ad?retUrl=/news/2019/03/29/aps-admits-spending-millions-in-2014-election-of-energy-regulators/>.
- ¹⁰ See David R. Berman, *Dark Money in Arizona: The Right to Know, Free Speech and Playing Whack-a-Mole*, MORRISON INST. FOR PUB. POL'Y 3-4 (2014). See also Braham Resnik, *Bogus mailer portrays progressive Phoenix Democrat as full MAGA Trumper, and no one knows who sent it*, 12 NEWS (Feb. 12, 2021), <https://www.12news.com/article/news/politics/bogus-mailer-portrays-progressive-phoenix-democrat-as-full-maga-trumper-and-no-one-knows-who-sent-it-75-618d32a7-c87a-4911-9e53-ea6d8d7b722f>; Evan Wylloge, *Three-quarters of 'outside' election spending in AZ comes with scant disclosure*, ARIZ. CTR. FOR INVESTIGATIVE REPORTING (Sept. 7, 2016), <https://azcir.org/news/2016/09/07/az-three-quarters-outside-political-election-spending-little-disclosure-dark-money/>; Evan Wylloge, *Marijuana initiative tops campaign fundraising in 2015*, ARIZ. CTR. FOR INVESTIGATIVE REPORTING (Mar. 18, 2016), <https://azcir.org/news/2016/03/18/az-marijuana-recreational-initiative-ballot-measure-tops-campaign-fundraising-in-2015/>.
- ¹¹ See Alexander J. Lindvall, *Ending Dark Money in Arizona*, 44 SETON HALL LEGIS. J. 61, 73 (2020).
- ¹² See *infra* pp. 9-10.
- ¹³ See Berman, *supra* note 10, at 3. ("The complex systems built to launder funds through a variety of organizations to avoid donor disclosure resemble sets of Russian nesting dolls, where a series of hollow wooden figures fit inside larger ones. The process means that voters seeking the identities of campaign donors encounter organization after organization listing other organizations as the source of the funds.")
- ¹⁴ Lindvall, *supra* note 11, at 67-68; *Dark Money Basics*, OPENSECRETS, <http://www.opensecrets.org/dark-money/basics> (last visited Nov. 18, 2021).
- ¹⁵ 26 U.S.C. § 501(c)(4)(A).
- ¹⁶ 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i). The Internal Revenue Service has not provided meaningful clarity on when political activity definitively constitutes an organization's "primary purpose," though some practitioners maintain the line is crossed when expenditures in elections represent more than 49% of an organization's total spending. See Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in U.S. Elections & How 2012 Became the "Dark Money" Election*, 27 NOTRE DAME J. L. ETHICS & PUB. POL'Y 383, 465 (2012).
- ¹⁷ Potter & Morgan, *supra* note 16, at 463.
- ¹⁸ See *infra* p. 11.
- ¹⁹ An "entity" is defined as "a corporation, limited liability company, labor organization, partnership, trust, association, organization, joint venture, cooperative, unincorporated organization or association or other organized group that consists of more than one individual." Ariz. Rev. Stat. § 16-901(22).
- ²⁰ Ariz. Rev. Stat. § 16-905(C). "Primary purpose" is defined as "an entity's predominant purpose." *Id.* § 16-901(43). See also *id.* § 16-959(A) (requiring the Secretary of State to adjust the monetary threshold for PAC registration every two years to account for inflation).
- ²¹ See Ariz. Rev. Stat. § 16-928. The Secretary of State is the filing officer for candidates for statewide or legislative office in Arizona. *Id.*
- ²² See Ariz. S.B. 1516 (2016), <https://www.azleg.gov/legtext/52leg/2r/bills/sb1516s.pdf>; Ariz. H.B. 2153 (2018), <https://www.azleg.gov/legtext/54leg/1r/bills/HB2153P.pdf>. As amended, the law excludes a 501(c) organization from the statute's PAC definition if it (1) has tax-exempt status under the Internal Revenue Code; (2) applied to the IRS for recognition of its tax-exempt status; (3) has not had its tax-exempt status denied or revoked by the IRS; and (4) filed a timely IRS Form 990. Ariz. Rev. Stat. § 16-901(43). A state appeals court recently upheld the 2016 amendments to the "primary purpose" definition as consistent with the Arizona Constitution. *Ariz. Advocacy Network Found. v. Arizona*, 475 P.3d 1149, 1158-60 (Ariz. App. Div. 1, Dec. 2020).
- ²³ Ariz. Rev. Stat. § 16-905(E). See also Josh Keefe, *'Dark Money' in the States: Arizona GOP Blocks Cities from Implementing Transparent Elections*, NEWSWEEK (Apr. 2, 2018), <https://www.newsweek.com/arizona-legislature-ensures-dark-money-stays-secret-weeks-after-tempe-voters-867532>. Arizona's legislature passed the 2018 amendments just weeks after Tempe voters approved a ballot initiative to implement stronger disclosure of outside spending in city elections. *Id.*
- ²⁴ Lindvall, *supra* note 11, at 73.
- ²⁵ See, e.g., *Shays v. FEC*, 337 F. Supp. 2d 28, 127 (D.D.C. 2004) ("It is clear then that a prerequisite to the FEC enforcing its [statute] is the completion of enforcement action by the IRS pursuant to its own standards for enforcing the tax code." This is troubling, given the fact . . . that the IRS in the past has not viewed Section 501(c)(3)'s ban on political activities to encompass activities that are so considered under FECA.")
- ²⁶ Maya Miller, *How the IRS Gave Up Fighting Political Dark Money Groups*, PRO PUBLICA (Apr. 18, 2019), <https://www.propublica.org/article/irs-political-dark-money-groups-501c4-tax-regulation>.
- ²⁷ Ariz. Rev. Stat. § 16-927(A).
- ²⁸ *Id.* § 16-927(A)(2)(b).
- ²⁹ 2021-2022 Campaign Finance Reporting and Filing Periods, ARIZ. SEC'Y OF STATE, <https://azsos.gov/elections/campaign-finance-reporting> (last visited Nov. 18, 2021).
- ³⁰ "Pop-up PACs" have been active in Arizona's federal races, too, and they have similarly gamed FEC reporting rules to avoid disclosing their contributions and expenditures until well after Election Day; one pop-up PAC, known as Red and Gold, spent almost \$1.7 million less than one month after its formation to oppose Martha McSally in Arizona's 2018 Republican U.S. Senate primary, but, due to a loophole in federal law's disclosure regime that allows PACs to choose their reporting schedule, Red and Gold did not have to file its first FEC report until three weeks after the primary. See Brendan Fischer & Maggie Christ, *Dodging Disclosure: How Super PACs Used Reporting Loopholes and Digital Disclaimer Gaps to Keep Voters in the Dark in the 2018 Midterms*, CAMPAIGN LEGAL CTR. 9 (Nov. 2018), <https://campaignlegal.org/sites/default/files/2018-11/11-29-18%20Post-Election%20Report%20%281045%20am%29.pdf>. See also Karl Evers-Hillstrom, *Pop-up super PACs meddle in key races and hide donors from voters*, OPENSECRETS (Oct. 29, 2020), <https://www.opensecrets.org/news/2020/10/pop-up-super-pacs-key-races/>; Jeremy Duda, *Pro-McSally 'pop-up PAC' spent \$56k, including on an airplane banner, right before the election*, AZ MIRROR (Nov. 30, 2018), <https://www.azmirror.com/blog/pro-mcsally-pop-up-pac-spent-56k-including-on-an-airplane-banner-right-before-the-election/>.
- ³¹ Ariz. Rev. Stat. § 16-926(B)(2)(a).
- ³² *Id.* § 16-926(B)(3).
- ³³ *Id.* § 16-901(11), (25).
- ³⁴ *Id.* §§ 16-911, 16-921.
- ³⁵ See *infra* pp. 19-20.
- ³⁶ Ariz. Rev. Stat. §§ 16-911, 16-921.
- ³⁷ Ed. Board, *Our View: Can Arizona's dark money bill get any worse?*, AZ CENTRAL (Mar. 30, 2016), <https://www.azcentral.com/story/opinion/editorial/2016/03/30/lawmakers-pull-dark-money-curtain-over-arizonas-election-process/82437414/>.

- ³⁸ See Lindvall, *supra* note 11, at 73 (“[U]nder a plain reading of this statute, a corporation could fly a politician to the CEO’s house on a private jet, wine and dine him, and send him back with the knowledge that the corporation plans to make a hefty donation to a politically-minded 501(c)(4) that supports him—and none of this would have to be disclosed.”).
- ³⁹ Ariz. Rev. Stat. § 16-901(3). As defined in the statute, “expressly advocates” means conveying a communication that either (1) includes messaging such as “vote for,” “elect,” “reelect,” or “vote against,” or (2) refers to a “clearly identified candidate,” is “targeted to the electorate” for that candidate, and “in context can have no reasonable meaning other than to advocate the election or defeat of the candidate.” *Id.* § 16-901.01(A). The definition further stipulates that a communication is not express advocacy if it merely “presents information about the voting record or position on a campaign issue of three or more candidates,” so long as it is not coordinated with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate’s agent. *Id.* § 16-901.01(B).
- ⁴⁰ *Id.* § 16-901(4).
- ⁴¹ *Id.* § 16-926(H).
- ⁴² Passed by citizen initiative in 1998, the Citizens Clean Elections Act introduced a system of public financing for statewide and legislative office candidates in Arizona. The Act is administered and enforced by the Citizens Clean Elections Commission, a separate agency outside of the Secretary of State’s office. See *Citizens Clean Elections Act*, ARIZ. S. RES. STAFF (Aug. 3, 2018), <https://www.azleg.gov/Briefs/Senate/CITIZENS%20CLEAN%20ELECTIONS%20ACT%202018.pdf>.
- ⁴³ Ariz. Rev. Stat. §§ 16-941(D), 16-958(A)-(B).
- ⁴⁴ *Id.* § 16-958(B).
- ⁴⁵ *Id.* § 16-958(B).
- ⁴⁶ An “advertisement” includes “information or materials, other than unpaid social media messages, that are mailed, e-mailed, posted, distributed, published, displayed, delivered, broadcasted or placed in a communication medium and that are for the purpose of influencing an election.” *Id.* § 16-901(I).
- ⁴⁷ *Id.* § 16-925(A).
- ⁴⁸ *Id.* § 16-925(B).
- ⁴⁹ See *infra* Part II.
- ⁵⁰ See Ariz. Rev. Stat. §§ 16-926(H), 16-941(D).
- ⁵¹ The Supreme Court’s recent decision about nonpublic disclosure by nonprofit organizations in *Americans for Prosperity Foundation v. Bonta* does not implicate concerns regarding public disclosure of the sources of election spending. 141 S. Ct. 2373 (July 1, 2021). That decision struck down California’s requirement that nonprofits operating in the state confidentially disclose donor information from their annual IRS filings to the state attorney general to help the attorney general’s office prevent and detect charitable fraud and self-dealing. See *id.* at 2386-87. In *Bonta*, the Court found the California law to be inadequately tailored to address those government interests, but the case in no way questioned the entirely distinct public interest in informing the public about the sources of election-related spending. The Supreme Court and lower courts have upheld a range of election-related disclosure laws in recognition of the importance of that informational interest to the democratic process.
- ⁵² Ariz. Initiative Petition I-04-2022 (filed May 4, 2021), <https://apps.arizona.vote/info/assets/33/0/BallotMeasures/I-04-2022%20Voters%20Right%20to%20Know%20Act.pdf>.
- ⁵³ *Id.*; see also Howard Fischer, *Initiative targets ‘dark money’ in Arizona politics*, TUCSON.COM (May 13, 2021), https://tucson.com/news/state-and-regional/initiative-targets-dark-money-in-arizona-politics/article_86a17d46-b27e-11eb-9592-83ba50a5466a.html.
- ⁵⁴ See Alaska Stat. § 15.13.040(j); Md. Code, Elec. Law § 13-309.2 (requiring a 501(c)(4), 501(c)(6), or 527 organization that gives disbursements in excess of \$10,000 to a political committee or independent expenditure group to file a report disclosing any source that gave more than \$10,000 in donations); Minn. Stat. Ann. § 10.27A Subd.15(b) (requiring an “association” that contributes more than \$5,000 to an independent expenditure group to prepare a disclosure statement listing each person that gave the association donations, dues, or fees totaling more than \$5,000); R.I. Gen. Laws § 17-25.3-1 (requiring a person who makes a “covered transfer” exceeding \$1,000 to file a report itemizing donors of more than \$1,000).
- ⁵⁵ Alaska Stat. § 15.13.040(j). In Alaska, the “true source” of a contribution means “the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services,” *Id.* § 15.13.400(19). A person or entity whose funds derive from “contributions, donations, dues, or gifts” may not be disclosed as the “true source.” *Id.*
- ⁵⁶ Ariz. Rev. Stat. §§ 16-905(E).
- ⁵⁷ Lindvall, *supra* note 11, at 69.
- ⁵⁸ Because 501(c)(3) organizations are legally barred from spending any money in candidate elections and may only engage in very small amounts of ballot measure advocacy, Arizona could retain a more limited version of the exemption exclusively for 501(c)(3) nonprofits in good standing with the IRS. See *Frequently Asked Questions About the Ban on Political Campaign Intervention by 501(c)(3) Organizations*, IRS, <https://www.irs.gov/charities-non-profits/charitable-organizations/frequently-asked-questions-about-the-ban-on-political-campaign-intervention-by-501c3-organizations> (last visited Nov. 16, 2021).
- ⁵⁹ See *McConnell v. FEC*, 540 U.S. at 169 (“Public communications” that promote or attack a candidate for federal office . . . also undoubtedly have a dramatic effect on federal elections.”); *id.* at 194 (“The term ‘electioneering communication’ applies only (1) to a broadcast (2) clearly identifying a candidate for federal office, (3) aired within a specific time period, and (4) targeted to an identified audience of at least 50,000 viewers or listeners. These components are both easily understood and objectively determinable.”). See also *Yamada v. Snipes*, 786 F.3d 1182, 1192-94 (9th Cir. 2015) (holding that “advocates,” “supports,” and “opposition” are not vague); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 128-29 (2d Cir. 2014) (holding PASO standard is not vague); *Ctr. for Individual Freedom, Inc. v. Tennant*, 706 F.3d 270, 285-87 (4th Cir. 2013) (holding “promoting” and “opposing” are not vague); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 485-86 (7th Cir. 2012) (holding “support” and “opposition” are not vague); *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 62-64 (1st Cir. 2011) (holding that “promoting,” “support,” and “opposition” are not vague). And the First, Second, Fourth, and Ninth Circuits rejected arguments that *McConnell*’s vagueness holding was limited to application of the PASO standard to political parties. *Yamada*, 786 F.3d at 1192 n.4; *Vt. Right to Life Comm.*, 758 F.3d at 128-29; *Ctr. for Individual Freedom v. Tennant*, 706 F.3d at 287; *Nat’l Org. for Marriage*, 649 F.3d at 63 (rejecting plaintiffs’ argument that *McConnell*’s upholding of the PASO standard did not apply to “other speakers”).
- ⁶⁰ See, e.g., Conn. Gen. Stat. § 9-601b(a) (defining “expenditure” to include a payment “to promote the success or defeat of any candidate seeking the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or the success or defeat of any political party”).
- ⁶¹ See *supra* notes 19-26 and accompanying text.
- ⁶² See, e.g., Cal. Gov’t Code § 84101(b), (c) (requiring an organization that qualifies as a “recipient committee” within 16 days of an election (i.e., “after the closing date of the last campaign statement required to be filed before the election”), or that makes “late independent expenditures” of \$1,000 or more within 90 days of election, to file a statement of organization within 24 hours); Conn. Gen. Stat. § 9-605(a) (requiring the chairperson of a political committee organized within ten days of an election to file a registration statement “immediately”); Wash. Rev. Code § 42.17A.205(f) (requiring a political committee organized within three weeks of an election to file a statement of organization within three days or when the committee “first has the expectation of receiving contributions or making expenditures in the election campaign.”).
- ⁶³ Haw. Rev. Stat. § 11-321(g).
- ⁶⁴ Ariz. Rev. Stat. § 16-927(A).
- ⁶⁵ *Id.* § 16-926(H).
- ⁶⁶ For example, in the 2021-2022 election cycle, PACs’ post-election reports are due no later than January 17, 2023, which is 80 days after the filing deadline for pre-election reports on October 29, 2022. See 2021-2022 Campaign Finance Reporting and Filing Periods, *supra* note 29.
- ⁶⁷ See 52 U.S.C. § 30104(g) (requiring 24-hour reporting of independent expenditures of \$1,000 or more made by any person, including a political committee, within twenty days of an election); Colo. Rev. Stat. § 1-45-107.5(4)(c) (requiring any person who makes an independent expenditure in excess of \$1,000 within thirty days of a primary, general, or regular biennial school election to file a report within forty-eight hours of obligating funds for the independent expenditure); Minn. Stat. Ann. § 10A.20 Subd. 5 (requiring political committees to report any contribution of more than \$1,000 “received between the last day covered in the last [regular] report before an election” and the date of the election to be reported within 24 hours); 25 Pa. Stat. Ann. § 3248 (requiring a “political committee . . . which receives any contribution or pledge of five hundred dollars or more, and any person making an independent expenditure . . . of five hundred dollars or more after the final pre-election report has been deemed completed shall report such contribution, pledge or expenditure . . . within twenty-four hours”).
- ⁶⁸ See *Ariz. Advocacy Network Found. v. Arizona*, 475 P.3d at 1155 (“Assistance in the form of a ‘contribution’ is subject to the contribution limits, but assistance in a form that does not constitute a ‘contribution’ is not. ‘Expenditures’ work the same way.”).
- ⁶⁹ See 11 C.F.R. § 100.86.
- ⁷⁰ See *id.* § 114.4(c)(2)(ii).
- ⁷¹ Legislative amendments to § 16-941(D), which is part of the voter-approved Arizona Clean Elections Act, would likely need to comport with the Voter Protection Act. Ariz. Const. art. IV, pt. 1, § 1; see also *Ariz. Advocacy Network Found. v. Arizona*, 475 P.3d at 1152.

- ⁷² See, e.g., Conn. Stat. Ann. § 9-621 (requiring any person making or incurring an independent expenditure “during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made” to ensure that “such communication shall also bear upon its face the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable.”); D.C. Code § 1-1163.15(a)(2) (requiring independent expenditure political advertising to include “written or oral statement of the words ‘Top Five Contributors’, followed by a list of the 5 largest contributors over the amount of \$5,000, whose contributions were made for the purpose of making an independent expenditure, to the independent expenditure committee or person making the independent expenditure, if applicable, during the 12-month period before the date of the political advertising.”); Haw. Rev. Stat. § 11-393 (requiring any advertisements paid for by a noncandidate committee that makes only independent expenditures to contain an additional notice starting with the words “The three top contributors for this advertisement are”, followed by the names of the three top contributors who made the highest aggregate contributions of \$10,000 or more within a 12-month period to the noncandidate committee for the purpose of funding the advertisement); Mass. Gen. Laws ch. 55, § 18G (“An independent expenditure or electioneering communication made by an individual, corporation, group, association, labor union or other entity which is transmitted through paid television, internet advertising or print advertising appearing larger than 15 square inches or direct mail or billboard shall include a written statement at the bottom of the advertisement or mailing that contains the words ‘Top Contributors’ and a written statement that lists the 5 persons or entities or if fewer than 5 persons or entities, all persons or entities that made the largest contributions to that entity, regardless of the purpose for which the funds were given.”).
- ⁷³ The Stop Dark Money initiative, the proposed ballot measure, would charge the Arizona Citizens’ Clean Elections Commission with establishing on-ad disclaimer rules that provide for identification of “the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle” to the sponsor of an ad. See Ariz. Initiative Petition I-04-2022, § 3, <https://apps.arizona.vote/info/assets/33/0/BallotMeasures/I-04-2022%20Voters%20Right%20to%20Know%20Act.pdf>.
- ⁷⁴ See Howard Homonoff, *2020 Political Ad Spending Exploded: Did It Work?*, FORBES (Dec. 8, 2020), <https://www.forbes.com/sites/howardhomonoff/2020/12/08/2020-political-ad-spending-exploded-did-it-work/?sh=44ealc243ce0> (“In the 2015-2016 election cycle, digital media accounted for roughly 2-3% of political ad spend. That jumped to 18% in [the 2019-2020 cycle].”).
- ⁷⁵ Kate Holliday & Jordan Lieberman, *Digital Political Advertising in 2020: What We Learned*, CAMPAIGNS & ELECTIONS (Nov. 30, 2020), <https://www.campaignsandelections.com/campaign-insider/digital-political-advertising-in-2020-what-we-learned>; *Political Ads in 2020: Fast and Furious*, WESLEYAN MEDIA PROJECT (Mar. 23, 2020), <https://mediaproject.wesleyan.edu/2020-summary-032321/>;
- ⁷⁶ 2020 POLITICAL DIGITAL ADVERTISING REPORT, TECH FOR CAMPAIGNS, <https://www.techforcampaigns.org/impact/2020-political-digital-advertising-report>
- ⁷⁷ See *supra* notes 59-60.
- ⁷⁸ See 52 U.S.C. § 30104(f)(3)(A) (defining “electioneering communication,” in part, as a “broadcast, cable, or satellite communication” that refers to a “clearly identified candidate for Federal office” within sixty days of a general election or thirty days of a primary) (emphasis added). <https://crsreports.congress.gov/product/pdf/IF/IF10758>.
- ⁷⁹ See Making independent expenditures, FEC, <https://www.fec.gov/help-candidates-and-committees/making-independent-expenditures/> (last visited Nov. 18, 2021).
- ⁸⁰ See Ian Vandewalker & Lawrence Norden, *Getting Foreign Funds Out of America’s Elections*, BRENNAN CTR. 6-7 (Apr. 6, 2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_Foreign_Funds.pdf.
- ⁸¹ According to Special Counsel Robert Mueller’s report, the Internet Research Agency, a Saint Petersburg-based “troll farm” with links to the Russian government, purchased over 3,500 Facebook ads before the 2016 election and may have reached up to 126 million people on that platform. Special Counsel Robert S. Mueller III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, U.S. DEPT’ OF JUST. 25-26 (Mar. 29, 2019).
- ⁸² See *id.* Some Russia-sponsored social media advertisements did amount to express advocacy for or against the 2016 presidential candidates; other ads did not mention any candidates and instead focused on politically divisive issues like immigration and gun control. See Josh Dawsey, *Russian-funded Facebook ads backed Stein, Sanders and Trump*, POLITICO (Sept. 26, 2017), <https://www.politico.com/story/2017/09/26/facebook-russia-trump-sanders-stein-243172>; see also Leslie Shapiro, *Anatomy of a Russian Facebook ad*, WASH. POST (Nov. 1, 2017), <https://www.washingtonpost.com/graphics/2017/business/russian-ads-facebook-anatomy/?tid=graphics-story>.
- ⁸³ See, e.g., Fl. Stat. § 106.143(10)(b), (c); Wisc. Stat. § 11.1303(2)(f) (exempting communications “printed on small items on which the [disclaimer] required by this subsection cannot be conveniently printed, including text messages, social media communications, and certain small advertisements on mobile phones.”).
- ⁸⁴ See FEC AO 2017-12, Concurring Statement of Comm’r Ellen L. Weintraub (Dec. 21, 2017), https://www.fec.gov/files/legal/aos/2017-12/2017125_2.pdf (“Nothing about the online world is the same as it was 15 years ago in 2002 Then, internet advertising existed in the realm of 160-character messages, each one of which cost their recipients about a nickel apiece, with no way of ensuring that multiple messages arrived in any coherent order. Now, high-definition videos of any length can be freely delivered to and received by the handheld device of virtually every voter in America.”).
- ⁸⁵ *US: Creating Disclaimers to Run Ads About Social Issues, Elections or Politics*, FACEBOOK (Sept. 24, 2020), [https://support.google.com/adspolicy/troubleshooter/9973345?hl=en#zippy=%2Chow-disclosure-appears-in-different-ad-formats](https://www.facebook.com/gpa/blog/creating-disclaimers; Election advertising verification, GOOGLE, https://support.google.com/adspolicy/troubleshooter/9973345?hl=en#zippy=%2Chow-disclosure-appears-in-different-ad-formats) (last visited July 12, 2021).
- ⁸⁶ By one estimate, campaigns spent more than \$100 million in 2020 for connected TV advertisements. Sara Fischer, *The future of political advertising is connected TV*, AXIOS (Apr. 15, 2021), <https://www.axios.com/future-political-advertising-connected-tv-3f31db94-945e-47ef-b200-243b2b1a0f46.html>. See also Letter from Campaign Legal Ctr. to Lisa J. Stevenson, Acting General Counsel, FEC (July 9, 2021), <https://campaignlegal.org/sites/default/files/2021-07/CLC%20Rulemaking%20Comment%20-%20REG%202011-02%2C%207.9.21.pdf>; *Paid Programming: Investigating streaming ads during the election season*, MOZILLA FOUND., <https://foundation.mozilla.org/en/campaigns/paid-programming/> (last visited Aug. 12, 2021).
- ⁸⁷ See Ann M. Ravel, Samuel C. Woolley, & Hamsini Sridharan, *Principles & Policies to Counter Deceptive Digital Politics*, MAPLIGHT 3 (2019), <https://maplightarchive.org/story/principles-and-policies-to-counter-deceptive-digital-politics/> (“With increasingly sophisticated uses of consumer and voter data, these tools can narrowly target particular geographic areas, social groups, and even specific individuals, creating a divisive information environment and making it difficult to identify (much less counter) this harmful political activity.”). See also Matthew Crain & Anthony Nadler, *Political Manipulation and Internet Advertising Infrastructure*, 9 J. INFO. POL’Y 370, 377-78 (2019) (“As early as 2013, researchers developed methods to reliably infer sensitive personal attributes based solely on Facebook ‘Likes’ data; these included personality traits, political and religious views, intelligence, happiness, and sexual orientation. As psychological profiling and predictive analytics have advanced, advertisers have found opportunities to design campaigns around characteristics and traits that have not been self-disclosed by the targets. Such inferences have been made available to target, or exclude, politically sensitive groups for social media ad campaigns.”).
- ⁸⁸ See Massimo Calabresi, *Inside Russia’s Social Media War on America*, TIME (May 18, 2017), <https://time.com/4783932/inside-russia-social-media-war-america/>.
- ⁸⁹ *Id.*
- ⁹⁰ Tom Perkins, *Facebook ads funded by ‘dark money’ are the right’s weapon for 2020*, GUARDIAN (July 5, 2019), <https://www.theguardian.com/technology/2019/jul/05/facebook-ads-2020-dark-money-funding-republican-trump-weapon>; Nicholas Nehamas & Sarah Blaskey, *Disinformation, dark money, looting and rioting: 2020 election ads bombard Florida*, MIAMI HERALD (Oct. 16, 2020), <https://www.miamiherald.com/news/politics-government/article246486250.html>.
- ⁹¹ Mark Murray, *Phoenix has become the top individual advertising market in the 2020 White House Race*, NBC NEWS (June 24, 2020), <https://www.nbcnews.com/politics/meet-the-press/blog/meet-press-blog-latest-news-analysis-data-driving-political-discussion-n988541/ncrd1236033#blogHeader>
- ⁹² Ariz. Rev. Stat. § 16-901(I).
- ⁹³ *Id.* § 16-901(I). The definition of “social media messages” in turn covers “forms of communications, including internet sites for social networking or blogging, through which users create a personal profile and participate in online communities to share information, ideas, and personal messages.” *Id.* § 16-901(46).
- ⁹⁴ *Id.* §§ 16-911(B)(1)(d), 16-921(B)(1)(d).
- ⁹⁵ *Id.* § 16-925(E).
- ⁹⁶ *How Disclaimers Work for Ads About Social Issues, Elections, or Politics*, FACEBOOK, <https://www.facebook.com/business/help/198009284345835?id=288762101909005> (last visited Nov. 18, 2021); *List of Ad Policies*, GOOGLE, <https://support.google.com/adspolicy/answer/6014595?hl=en> (last visited Nov. 18, 2021).
- ⁹⁷ New York recently adopted similar terminology in regulations for digital ads that concern state elections. See 9 NYCRR (b) (11) (“(i) *Paid internet or digital advertisement* means any digitally displayed advertising paid for by an independent expenditure committee that exists on or is transmitted via the Internet. (ii) *A paid internet or digital advertisement* shall include, but not be limited to: (a) display advertising; (b) image, video, audio, or interactive media advertisements; (c) paid or promoted content on social networking sites; (d) search engine marketing; (e) native advertising; and (f) sponsorships.”).
- ⁹⁸ See Or. Admin. R. 165-012-0525(6) (requiring digital communication disclaimers to identify the sponsor and “include an active link for the recipient of the digital communication to immediately view the remainder of the information required under [state law] with minimal effort.”); Wash. Admin Code § 390-18-030(3) (“Online political advertising must provide the same disclosures that apply to non-online advertising to the extent practical. As an alternative, small online advertising may provide the required disclosures by using an automatic display with the advertising that takes the reader directly to the required disclosures.”) (emphasis added).

- ⁹⁹ See, e.g., N.Y. Elec. Law § 14-107(5-a); LA. Mun. Code § 49:731(C)(2). Maryland also adopted political ad archiving requirements for online platforms in 2018—its law requires a wide range of *platforms*, rather than the state, to host public archives on their websites. Md. Code, Elec. Law § 13-405(b). In a consent judgment issued earlier this month, the state agreed to a permanent injunction barring enforcement of Maryland's digital archiving law against a group of regional newspapers whose websites qualified as "online platforms" under the state law. See *Wash. Post v. McManus*, 944 F.3d 506 (4th Cir. 2019); see also Pamela Wood, *Maryland settles challenge over law regulating online campaign ads*, BALTIMORE SUN (May 6, 2020), <https://www.baltimoresun.com/politics/bs-md-pol-settlement-newspapers-20200506-7q67acrd5ydpng7vc3juvnsku-story.html>.
- ¹⁰⁰ 424 U.S. 1, 46-47 (1976).
- ¹⁰¹ *Id.* at 47.
- ¹⁰² *FEC v. Colo. Republican Fed. Campaign Committee*, 533 U.S. 431, 456 (2001). Additionally, *McConnell v. FEC* declined to strike down the Bipartisan Campaign Reform Act's expansion of federal coordination rules to include expenditures made in the absence of "an agreement or formal collaboration" between a candidate and outside group, emphasizing that "expenditures made after a 'wink or nod' often will be 'as useful to the candidate as cash.'" 540 U.S. at 221.
- ¹⁰³ 533 U.S. at 465.
- ¹⁰⁴ *Id.* at 455.
- ¹⁰⁵ 558 U.S. at 357.
- ¹⁰⁶ Richard Briffault, *Coordination Reconsidered*, 113 COLUM. L. REV. SIDEBAR 88, 96 (May 2013) ("[E]xperience underscores the need to rethink the standard of coordination to prevent mega-donations to and expenditures by nominally independent groups that are effectively 'disguised contributions' to candidates from breaching the wall between coordinated and independent activity erected by Congress and sustained by the Supreme Court.").
- ¹⁰⁷ See *id.* at 99 ("[W]hen a committee exists solely to support a specific candidate and either is organized and directed by individuals with close political ties to the candidate or is recognized as a supporter by the candidate, donations to the committee pose the same dangers of corruption and the appearance of corruption as donations to the candidate's official campaign committee.").
- ¹⁰⁸ Alex Isenstadt, *Jeb Bush's \$100M May*, POLITICO (May 8, 2015), <https://www.politico.com/story/2015/05/jeb-bush-right-to-rise-super-pac-campaign-117753>; Alexandra Jaffe & Kailani Koenig, *Fiorina Super PAC Tests Legal Limits of Campaign Coordination*, NBC NEWS (Sept. 17, 2015), <https://www.nbcnews.com/meet-the-press/fiorina-super-pac-tests-legal-limits-campaign-coordination-n428056>; see also Paul S. Ryan, "Testing the Waters" or *Diving Right In?*, COMMON CAUSE (Jan. 2019), <https://www.commoncause.org/wp-content/uploads/2019/01/TestingtheWatersv3.pdf>.
- ¹⁰⁹ See, e.g., Complaint, FEC MUR 7370 (filed Apr. 23, 2018), https://www.fec.gov/files/legal/murs/7370/7370_01.pdf; Complaint, FEC MUR 7496 (filed Sept. 14, 2018), https://www.fec.gov/files/legal/murs/7496/7496_01.pdf.
- ¹¹⁰ See Briffault, *supra* note 106, at 90-91 (providing examples); Maggie Severns, *Pro-Buttigieg super PAC hired Buttigieg finance staffer amid ad blitz*, POLITICO (Feb. 21, 2020), <https://www.politico.com/news/2020/02/21/pete-buttigieg-super-pac-staffer-116607>. Under FEC regulations, an expenditure made by an outside group that employs a candidate's former campaign staffer is only treated as "coordinated" if the staffer was employed by the campaign within 120 days of when the expenditure was made. See 11 C.F.R. § 109.21(d)(5)(i).
- ¹¹¹ Fredreka Schouten & Christopher Schnaars, *Some candidates' super PACs are a family affair*, USA TODAY (July 18, 2014), <https://www.usatoday.com/story/news/nation/2014/07/18/relatives-fund-candidate-super-pacs-rothblatt/12824361/>.
- ¹¹² Rob Lenhard, *Super PACs Using Candidates' B-Roll Footage and the FEC's "Own Message" Cases*, INSIDE POLITICAL LAW (Mar. 19, 2014), <https://www.insidepoliticallaw.com/2014/03/19/super-pacs-using-candidates-b-roll-footage-and-the-fecs-own-message-cases/>.
- ¹¹³ Ashley Balcerzak, *Candidates and their super PACs sharing vendors more than ever*, OPENSECRETS (Dec. 21, 2016), <https://www.opensecrets.org/news/2016/12/candidates-super-pacs-share-vendors/> (finding there were 632 instances where super PACs and the candidates they supported had hired the same individual or company during the 2016 federal election cycle).
- ¹¹⁴ See *Ariz. Advocacy Network Found. v. Arizona*, 475 P.3d at 1152 ("[B]ecause of SB1516's changes, ... [c]oordinated party expenditures, ... are no longer 'contribution[s].'").
- ¹¹⁵ See Lindvall, *supra* note 11, at 74; *Ariz. Advocacy Network Found. v. Arizona*, 475 P.3d at 1152 ("[B]ecause of SB1516's changes, ... [c]oordinated party expenditures, ... are no longer 'contribution[s].'").
- ¹¹⁶ See Jeremy Duda, *Arizona Democratic Party spends big for secretary of state, not for governor*, AZ MIRROR (Oct. 5, 2018), <https://www.azmirror.com/2018/10/05/arizona-democratic-party-spends-big-for-secretary-of-state-not-for-governor/>; Evan Wyloge, *Ducey campaign double reports \$1.1 million in contributions*, ARIZ. CTR. FOR INVESTIGATIVE REPORTING (Mar. 21, 2018), <https://azcir.org/news/2018/03/21/doug-ducey-campaign-double-reports-1-1-million/>.
- ¹¹⁷ Ariz. Rev. Stat. § 16-922(B).
- ¹¹⁸ See Lindvall, *supra* note 11, at 73-74.
- ¹¹⁹ Ariz. Rev. Stat. § 16-922(C).
- ¹²⁰ See *In the Matter of Tom Horne*, No. 14F-001-AAG, at 20 (Ariz. Office of Admin. Hrgs. Apr. 14, 2014) ("Because Arizona statutes do not provide a great deal of specificity with how to interpret coordination activities, authorities often look to the federal guidelines for instruction.").
- ¹²¹ Ariz. Rev. Stat. § 16-922(D). In addition, the law stipulates that coordination is not established solely because an agent of an outside spender has served on a candidate's host committee for a fundraising event. *Id.*
- ¹²² "Coordinated party expenditures" are "expenditures that are made by a political party to directly pay for goods or services on behalf of its nominee." *Id.* § 16-901(14).
- ¹²³ See *id.* Stat. § 16-911(4)(b).
- ¹²⁴ See *id.* § 16-915(A). In the 2021-2022 cycle, a political party may make monetary contributions of up to \$80,300 and \$8,300 to statewide and legislative candidates, respectively. Campaign Contribution Limits 2021-2022 Election Cycle, ARIZ. SEC'Y OF STATE, https://azsos.gov/sites/default/files/2021-2022_Contribution_Limit_Chart_FINALv2.pdf (last visited Nov. 18, 2021).
- ¹²⁵ See Wyloge, *Ducey campaign double reports \$1.1 million in contributions*, *supra* note 115 ("By allowing the parties to receive unlimited contributions, then allowing them to coordinate with their nominee to spend unlimited sums of money, Arizona law now creates a loophole where a donor can give unlimited contributions to a [party's] nominee").
- ¹²⁶ All of these policies have already been adopted to some degree by other states. See, e.g., Haw. Rev. Stat. Ann. § 11-363(c) ("Coordinated activity" means ... (2) The payment by any person for the production, dissemination, distribution, or republication of any written, graphic, or other form of campaign material, in whole or in part, prepared by a candidate, candidate committee, or noncandidate committee, or an agent of a candidate, candidate committee, or noncandidate committee."); Md. Code, Elec. Law § 13-249(a)(4)(iii) ("Coordinated expenditure" includes a disbursement for any communication that republishes or disseminates, in whole or in part, a video, a photograph, audio footage, a written graphic, or any other form of campaign material prepared by the candidate or political party that is the beneficiary of the disbursement."); D.C. Code Ann. § 1-1161.01(10B)(B) ("There shall be a rebuttable presumption that a contribution or an expenditure is coordinated with a public official, a political committee affiliated with a public official, or an agent of a public official or a political committee affiliated with a public official, if ... The person making the contribution or expenditure retains the professional services of a person who also provides the public official, political committee affiliated with the public official, or an agent of a public official or a political committee affiliated with a public official, with professional services related to campaign or fundraising strategy.") (emphasis added); N.Y. Elec. Law § 14-107(1)(d)(i), (iv) (defining "coordination" to include when a candidate has participated in the creation or formation of an independent expenditure committee or when an agent of an independent expenditure committee is a member of the candidate's immediate family or managed by a member of the candidate's immediate family). Recent federal legislation, including the For the People Act (H.R. 1, S. 1), has proposed expanding coordination rules in federal races along similar lines. See For the People Act, S. 1, 117th Cong. sec. 2, § 4402 (2021); Political Accountability & Transparency Act, H.R. 679, 116th Cong. sec. 3, § 324 (2019).
- ¹²⁷ CLC's recommendation, in Part I.C., to regulate additional kinds of outside spending also would implicitly expand the range of expenditures subject to the law's coordination restrictions. See *supra* p. 13.
- ¹²⁸ *Buckley v. Valeo*, 424 U.S. at 47.
- ¹²⁹ Currently, section 16-922(C) lists the following conduct as "rebuttable evidence of coordination" that state officials *may* consider in assessing whether an expenditure is coordinated: "(1) Any agent of the person making the expenditure is also an agent of the candidate whose election or whose opponent's defeat is being advocated by the expenditure. (2) In the same election cycle, the person making the expenditure or that person's agent is or has been authorized to raise or spend monies on the candidate's behalf. (3) In the same election cycle, the candidate is or has been authorized to raise money or solicit contributions on behalf of the person making the expenditure."
- ¹³⁰ See 11 C.F.R. § 109.21(d)(2); R.I. Gen. Laws § 17-25-23(6); N.Y. Elec. Law § 14-107(1)(d)(ix); 2 Cal. Code Regs. § 18225.7(d)(1).
- ¹³¹ *FEC v. Colo. Republican Fed. Campaign Committee*, 533 U.S. at 455.
- ¹³² In making this change, Arizona could either subject coordinated party expenditures to the same limits applicable to parties' monetary contributions to candidates, or, in recognition of the close association between parties and their candidates, introduce a separate, somewhat higher limit exclusively for their coordinated spending, like federal law's treatment of coordinated party expenditures. 52 U.S.C. § 30116(d); 11 C.F.R. § 109.32. See also *Coordinated party expenditure limits*, FEC,

- <https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/coordinated-party-expenditures/coordinated-party-expenditure-limits/> (last visited Nov. 18, 2021).
- ¹³³ Section 16-922(D)(1) currently stipulates that an outside spender must have “a written policy establishing the firewall and its requirements,” “follow[] the written policy regarding the firewall,” and prevent agents of the spender who are separated by the firewall from participating “in deciding to make the expenditure or in deciding the content, timing or targeting of the expenditure.”
- ¹³⁴ See 558 U.S. at 365 (invalidating federal law’s restrictions on corporate independent expenditures on the basis that “[n]o sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.”); *Citizens United and the States*, NAT’L CONF. OF STATE LEGISLATURES (July 21, 2016), <https://www.ncsl.org/research/elections-and-campaigns/citizens-united-and-the-states.aspx#laws> (noting *Citizens United* invalidated 24 states’ laws prohibiting corporations from directly making independent expenditures).
- ¹³⁵ See Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV. 83, 95 (2010). For example, in the 2007–2008 election cycle, the last full cycle before *Citizens United*, corporate sponsored PACs are estimated to have collectively spent more than \$300 million in federal elections. *Id.*
- ¹³⁶ See Samantha Subin, *Capital riot reaction: Corporations and the future of political donations*, CNBC (Jan. 13, 2021), <https://www.cnbc.com/2021/01/13/capitol-riot-reaction-corporations-and-political-donations.html>. See also Lawrence Norden & Daniel I. Weiner, *Corporations and Fixing Campaign Finance*, BRENNAN CTR. (Jan. 21, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/corporations-and-fixing-campaign-finance>.
- ¹³⁷ See Ariz. Rev. Stat. § 16-916(B) (“A corporation, limited liability company or labor organization may make unlimited contributions to persons other than candidate committees.”); see also Mont. Stat. § 13-35-227 (proscribing corporate or labor contributions only to candidates); Mo. Const. art. 8, § 23(12) (authorizing PACs to accept contributions from unions, corporations, and other associations).
- ¹³⁸ See, e.g., Jimmy Jenkins, *Arizona Lawmakers Invest More In Private Prisons After Record-High Campaign Contributions*, KJZZ (Aug. 2, 2021), <https://kjzz.org/content/1703791/arizona-lawmakers-invest-more-private-prisons-after-record-high-campaign>.
- ¹³⁹ Howard Fischer, *APS admits spending millions in 2014 election of energy regulators*, AZ CAPITOL TIMES (Mar. 29, 2019), <https://azcapitoltimes.com/news/2019/03/29/aps-admits-spending-millions-in-2014-election-of-energy-regulators/>; Jeremy Duda, *APS docs reveal it funded 2014 ‘dark money’ effort supporting commissioner’s son*, AZ MIRROR (Apr. 1, 2019), <https://www.azmirror.com/2019/04/01/aps-docs-reveal-it-funded-2014-dark-money-effort-supporting-commissioners-son/>.
- ¹⁴⁰ Courtney Holmes, *ACC candidate ran PAC funded by APS parent company in 2016 ACC race, vows ‘fair deal’ for ratepayers*, ABC 15 (Sept. 28, 2020), <https://www.abc15.com/news/local-news/investigations/acc-candidate-ran-pac-funded-by-aps-parent-company-in-2016-acc-race-vows-fair-deal-for-ratepayers>; Howard Fischer, *Utility company funneling money to Ducey campaign*, PINAL CENTRAL (Feb. 6, 2018), https://www.pinalcentral.com/arizona_news/utility-company-funneling-money-to-ducey-campaign/article_db9bbe7d7-a738-54b8-aa78-3a91de9f13cd.html.
- ¹⁴¹ Ryan Randazzo, *APS parent company spent \$37.9 million fighting clean-energy measure*, THE REPUBLIC (Jan. 17, 2019), <https://www.azcentral.com/story/news/politics/arizona/2019/01/17/pinn.t-38-million-fight-arizonas-prop-127-clean-energy-measure/259571002/>. Proposition 127 ultimately became the most expensive in Arizona history, with committees for and against the ballot proposal collectively spending over \$62 million. *Id.*
- ¹⁴² Ariz. Rev. Stat. § 16-916(A).
- ¹⁴³ *Id.* § 16-919 (repealed 2016). See also *Ariz. State Democratic Party v. Arizona*, 115 P. 3d 121, 123 (Ariz. 2005) (“Section 16-919 . . . prohibits ‘a corporation,’ ‘a limited liability company’ (‘LLC’), or ‘a labor organization’ from making ‘any contribution of money or anything of value for the purpose of influencing an election.’”); Bret W. Johnson, Sara J. Agne, & Sarah E. Delaney, *Arizona’s Revised Laws on PACs and Corporate Contributions*, SNELL & WILMER (Feb. 2, 2017), <https://www.swlaw.com/publications/view/id/2467>.
- ¹⁴⁴ Ariz. Rev. Stat. § 16-916(B).
- ¹⁴⁵ *Id.* §§ 16-914(C), 16-915(B).
- ¹⁴⁶ *Id.* §§ 16-914(C), 16-915(B), 16-907(B).
- ¹⁴⁷ *Id.* § 16-918. “Earmarked” is defined as “a designation, instruction or encumbrance between the transferor of a contribution and a transferee that requires the transferee to make a contribution to a clearly identified candidate.” *Id.* § 16-901(16).
- ¹⁴⁸ See *supra* Part V.
- ¹⁴⁹ *FEC v. Beaumont*, 539 U.S. 146, 153 (2003).
- ¹⁵⁰ *Globe Newspaper Co. v. Super. Ct. for Norfolk Cty.*, 457 U.S. 596, 604 (1982) (emphasis added). See also *Reynolds v. Sims*, 377 U.S. 533, 565 (1964) (“[R]epresentative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State’s legislative bodies.”).
- ¹⁵¹ *McConnell v. FEC*, 540 U.S. at 153.
- ¹⁵² Ariz. Rev. Stat. § 16-914(C).
- ¹⁵³ *Id.* § 16-901(47).
- ¹⁵⁴ *Id.* §§ 16-905(F), 16-906(B)(1)(b).
- ¹⁵⁵ *Campaign Finance Guide Political Action Committee*, ARIZ. SEC’Y OF STATE at 4 n.23 (Feb. 4, 2020), <https://azsos.gov/sites/default/files/%28FINAL%29%202020-2-4%20Campaign%20Finance%20-%20PAC%20Handbook.pdf>.
- ¹⁵⁶ See *Leach v. Reagan*, 430 P.3d 1241, 1254 (Ariz. 2018) (Bales, C.J., concurring) (observing that a corporation did not constitute the “sponsor” of a PAC under the law even where the corporation “made nearly all the contributions to [the PAC] after its formation”).
- ¹⁵⁷ See *id.* at 1257 (Gould, J., dissenting) (“[I]n terms of disclosure, requiring PACs to incorporate sponsors in their committee name has ramifications extending far beyond the statement of organization itself. . . . [A] PAC is effectively required to disclose the name of a sponsor in most campaign advertisements and solicitations.”).
- ¹⁵⁸ Ariz. Rev. Stat. § 16-916(C); see also *id.* § 16-914(A)-(B) (providing limits on PAC contributions, per election cycle, to candidates for different offices).
- ¹⁵⁹ *Id.* §§ 16-911(B)(9), 16-916(C)(2).
- ¹⁶⁰ *Id.* § 16-907(B).
- ¹⁶¹ See *Campaign Contribution Limits: Overview*, NAT’L CONF. OF STATE LEGISLATURES (Oct. 4, 2019), <https://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx>; *Limits on Contributions to Political Parties*, NAT’L CONF. OF STATE LEGISLATURES (Feb. 5, 2008), <https://www.ncsl.org/research/elections-and-campaigns/limits-on-contributions-to-political-parties.aspx>.
- ¹⁶² According to the National Conference of State Legislatures, more than 20 states limit contributions to political parties or PACs or both. See *Campaign Contributions Limits: Overview*, *supra* note 160.
- ¹⁶³ Wash. Admin. Code § 390-16-240(1). See also 11 C.F.R. § 110.6(b)(1) (“[E]armarked means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized committee.”).
- ¹⁶⁴ Cal. Gov’t Code § 82048.7(b)(1). See also Mo. Const. art. VIII, § 23(12) (defining “connected organization,” for purposes of political committee sponsorship, to include a corporation or labor organization “if more than fifty percent of the persons making contributions to the committee during the current calendar year are members, officers, directors, employees or security holders of such organization or their spouses.”).
- ¹⁶⁵ See *supra* pp. 26-27.
- ¹⁶⁶ 52 U.S.C. § 30121; 11 C.F.R. § 110.20. For purposes of the federal prohibition, a “foreign national” means “an individual who is not a citizen of the United States or a national of the United States . . . who is not lawfully admitted for permanent residence,” or a “foreign principal,” including a foreign government, foreign political party, or “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.” 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b).
- ¹⁶⁷ See *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011) (three-judge court) (Kavanaugh, J.), *aff’d mem.*, 565 U.S. 1104 (2012).
- ¹⁶⁸ See generally Michael Sozan, *Ending Foreign-Influenced Corporate Spending in US Elections*, CTR. FOR AM. PROGRESS (2019), <https://www.americanprogress.org/issues/democracy/reports/2019/11/21/477466/ending-foreign-influenced-corporate-spending-u-s-elections/>.
- ¹⁶⁹ See Notification with Factual & Legal Analysis from FEC General Counsel to Sandfire Resources NL and Sandfire Resources America, Inc. (Oct. 4, 2021), https://eqs.fec.gov/eqsdocsMUR/7523_24.pdf. See also Office of Comm’r Ann M. Ravel, *Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission Reveals the Unlikelihood of Draining the Swamp*, FEC 20 (Feb. 2017), https://www.fec.gov/resources/about-fec/commissioners/ravel/statements/ravelreport_feb2017.pdf.
- ¹⁷⁰ See Ken Dilanian, *U.S. intel agencies: Russia and China plotting to interfere in 2020 election*, NBC NEWS (Jan. 29, 2020), <https://www.nbcnews.com/politics/national-security/u-s-intel-agencies-russia-china-plotting-interfere-2020-election-n963896>.
- ¹⁷¹ See *supra* notes 79-81 and accompanying text.
- ¹⁷² See Press Release, *Mexican Businessman Jose Susumo Azano Matsura Sentenced for Trying to Buy Himself a Mayor*, U.S. DEP’T OF JUST. (Oct. 27, 2017), <https://www.justice.gov/usao-sdca/pr/mexican-businessman-jose-susumo-azano-matsura-sentenced-trying-buy-himself-mayor>.

- ¹⁷³ *Id.* See also Greg Morgan & Dana Littlefield, *Jury finds Azano guilty on 36 counts in foreign money case*, SAN DIEGO UNION-TRIBUNE (Sept. 9, 2016), <https://www.sandiegouniontribune.com/news/watchdog/sdut-azano-guilty-illegal-campaign-finance-2016sep09-story.html>.
- ¹⁷⁴ Steve Mistler, *Maine Lawmakers Again Seek To Limit Foreign Influence in Anti-Power Line Referendum*, MAINE PUB. RADIO (Mar. 15, 2021), <https://www.mainepublic.org/politics/2021-03-15/maine-lawmakers-again-seek-to-limit-foreign-influence-in-anti-power-line-referendum>.
- ¹⁷⁵ Jessica Piper, *Hydro-Quebec pays \$35K ethics fine stemming from effort to save Maine corridor*, BANGOR DAILY NEWS (Jan. 29, 2020), <https://bangordailynews.com/2020/01/29/news/augusta/hydro-quebec-pays-35k-ethics-fine-stemming-from-effort-to-save-maine-corridor/>. Hydro-Quebec did pay a \$35,000 fine for initially failing to register and disclose its ballot referendum activities in Maine. *Id.*
- ¹⁷⁶ See Bradley Hope & Justin Scheck, *How the crown prince of Saudi Arabia made his way into Silicon Valley circles with a \$3.5 billion investment in Uber*, BUS. INSIDER (Sept. 2, 2020), <https://www.businessinsider.com/how-investment-in-uber-brought-saudi-prince-to-silicon-valley-2020-9>.
- ¹⁷⁷ See Suhauna Hussain, Johana Bhuiyan, & Ryan Menezes, *How Uber and Lyft persuaded California to vote their way*, L.A. TIMES (Nov. 13, 2020), <https://www.latimes.com/business/technology/story/2020-11-13/how-uber-lyft-door-dash-won-proposition-22>. Uber and other companies collectively spent over \$200 million to support Proposition 22, making it the most expensive ballot initiative in U.S. history. *Id.*
- ¹⁷⁸ Nolan Hicks, *Make that the \$8.6 million campaign, as Uber ups ante with another 500k*, STATESMAN (Oct. 12, 2016), https://www.statesman.com/news/20161012/make-that-the-86-million-campaign-as-uber-ups-ante-with-another-500k?_ga=2.32039672.752022539.1629497300-881729433.1629497300.
- ¹⁷⁹ See Alaska Stat. § 15.13.068; Cal. Gov. Code § 85320(a); Colo. Rev. Stat. § 1-45-107.5(1); Md. Code, Elec. Law § 13-2361; Nev. Rev. Stat. § 294A.325; N.D. Cent. Code § 16.1-08.1-0315; S.D. Codified Laws § 12-27-21; Wash. Rev. Code § 42.17A.417; see also St. Petersburg, Fla., Mun. Code § 10-51(m).
- ¹⁸⁰ See, e.g., Cal. Gov. Code § 85320(a); Md. Code, Elec. Law § 13-2361.
- ¹⁸¹ See Alaska Stat. § 15.13.068(e)(5) (defining “foreign-influenced corporation” as “a corporation for which (A) a foreign national or foreign owner holds, owns, controls, or has direct or indirect beneficial ownership of equity or voting shares in an amount equal to or greater than five percent of all corporate voting shares outstanding or all corporate equity; (B) two or more foreign nationals or foreign owners combined hold, own, control, or have direct or indirect beneficial ownership of equity or voting shares in an amount equal to or greater than 20 percent of all corporate voting shares outstanding or all corporate equity; or (C) a foreign national or foreign owner participates directly or indirectly in decisions relating to covered expenditures or contributions”).
- ¹⁸² See *Campaign Finance Candidate Guide*, ARIZ. SEC’Y OF STATE 19-20 (Feb. 4, 2020), <https://azsos.gov/sites/default/files/%28FINAL%29%202020-2-4%20Campaign%20Finance%20-%20Candidate%20Handbook.pdf>.
- ¹⁸³ See *supra* pp. 9-10.
- ¹⁸⁴ *Bluman v. FEC*, 800 F. Supp. 2d at 287.
- ¹⁸⁵ *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010) (quoting *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1105-06 (9th Cir. 2003). See also *Doe v. Reed*, 561 U.S. 186, 221 (2010) (Scalia, J., concurring) (“When a . . . voter signs a referendum petition . . . , he is acting as a legislator.”).
- ¹⁸⁶ *Human Life of Wash.*, 624 F.3d at 1006; see also *supra* notes 169-180 and accompanying text.
- ¹⁸⁷ 15 U.S.C. § 78m(d)(1).
- ¹⁸⁸ 47 U.S.C. § 310.
- ¹⁸⁹ *Moving Phone P’ship L.P. v. FCC*, 998 F.2d 1051, 1055 (D.C. Cir. 1993) (internal quotations omitted).
- ¹⁹⁰ See Amanda Zoch, *Defining ‘Personal Use’ in Campaign Finance Laws*, NAT’L CONF. OF STATE LEGISLATURES (Sept. 30, 2019), <https://www.ncsl.org/blog/2019/09/30/defining-personal-use-in-campaign-finance-laws.aspx>.
- ¹⁹¹ See *All Expenses Paid: How Leadership PACs Became Politicians Preferred Ticket to Luxury Living*, CAMPAIGN LEGAL CTR. & ISSUE ONE (July 19, 2018), <https://campaignlegal.org/document/all-expenses-paid-how-leadership-pacs-became-politicians-preferred-ticket-luxury-living>.
- ¹⁹² Ariz. Rev. Stat. § 16-933(B).
- ¹⁹³ *Campaign Finance Candidate Guide*, *supra* note 181, at 38 n.217.
- ¹⁹⁴ See generally *Campaign Finance PAC Guide*, ARIZ. SEC’Y OF STATE (Feb. 4, 2021), <https://azsos.gov/sites/default/files/%28FINAL%29%202020-2-4%20Campaign%20Finance%20-%20PAC%20Handbook.pdf>.
- ¹⁹⁵ See 52 U.S.C. § 30114(b)(1) (“A contribution or donation . . . shall not be converted by any person to personal use.”); 11 C.F.R. § 113.1(g) (defining “personal use”). See also Conn. Gen. Stat. § 9-607(g)(4); N.Y. Elec. Law § 14-130.
- ¹⁹⁶ See generally *Campaign Finance Enforcement*, NAT’L CONF. OF STATE LEGISLATURES (Oct. 15, 2020), <https://www.ncsl.org/research/elections-and-campaigns/campaign-finance-enforcement.aspx>.
- ¹⁹⁷ See, e.g., *About the FPPC*, CAL. FAIR POLITICAL PRACTICES COMM’N, <https://www.fppc.ca.gov/about-fppc.html> (last visited Nov. 18, 2021); *About Us*, MONT. COMM’R OF POLITICAL PRACTICES, <https://politicalpractices.mt.gov/Home/About-Us> (last visited Nov. 18, 2021).
- ¹⁹⁸ See *Elections & Voting*, Colo. Sec’y of State, <https://www.sos.state.co.us/pubs/elections/> (last visited Nov. 18, 2021).
- ¹⁹⁹ See Lawrence M. Noble, *Blueprints for Democracy*, CAMPAIGN LEGAL CTR. & ISSUE ONE 59-63 (2015), https://campaignlegal.org/sites/default/files/IO_BlueprintsForDemocracy_FINAL.PDF.
- ²⁰⁰ See Daniel P. Tokaji, *America’s Top Model: The Wisconsin Government Accountability Board*, 3 U.C. IRVINE L. REV. 575, 582 (2013) (“The predominant models of running elections are problematic, given the inherent conflicts of interest they create for state chief election authorities. Specifically, there is a conflict between their obligation to the citizenry to discharge their duties without partisan bias on the one hand, and their incentive to make decisions that benefit their party on the other.”).
- ²⁰¹ See, e.g., Howard Fischer, *Group tries to dodge fine for campaign finance law violations*, ARIZ. CAPITOL TIMES (Oct. 16, 2019), <https://azcapitoltimes.com/news/2019/10/16/group-tries-to-dodge-fine-for-campaign-finance-law-violation/>.
- ²⁰² See Katherine Duncan, *Arizona steps into the dark*, CREW (Apr. 4, 2016), <https://www.citizensforethics.org/reports-investigations/crew-investigations/arizona-steps-dark/>; see also E.J. Montini, *Opinion, Plotting a dirt nap for Clean Elections*, AZ CENTRAL (Feb. 29, 2016), <https://www.azcentral.com/story/opinion/op-ed/ej-montini/2016/02/29/montini-clean-elections-commission-arizona-legislature/81108874/> (“This legislature, like many in the recent past, has lawmakers going after the commission’s funding and its authority on several different fronts.”).
- ²⁰³ Ariz. Rev. Stat. § 16-926(A).
- ²⁰⁴ *Id.* § 16-938(B).
- ²⁰⁵ See *id.* § 16-938(B); see also Ariz. *Elections Procedures Manual*, ARIZ. SEC’Y OF STATE 266 (Dec. 2019), https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf.
- ²⁰⁶ Ariz. Rev. Stat. § 16-956(C); see also Ariz. Admin. Code R2-20-109.
- ²⁰⁷ Ariz. Rev. Stat. § 16-956(A).
- ²⁰⁸ Ariz. Admin. Code R2-20-402.01.-.02.
- ²⁰⁹ See *Ariz. Advocacy Network Found. v. Arizona*, 475 P.3d at 1161 (“The Commission’s duties and powers include investigating potential violations of articles 1 through 1.7 to the extent they would identify a violation of the Act”) (emphasis added); *id.* at 1159 (finding that the Commission does not have “power over ‘dark money’ in non-candidate elections” because the “financing of non-candidate elections simply is not relevant to the [Clean Elections] Act.”).
- ²¹⁰ For a county or municipal-level (city or town) race, the “filing officer” is the county or municipal officer in charge of the local jurisdiction’s elections, and the “enforcement officer” is the county, city, or town attorney in the jurisdiction. Ariz. Rev. Stat. §§ 16-928, 16-938.
- ²¹¹ Ariz. Rev. Stat. § 16-938. See also Ariz. *Elections Procedures Manual*, *supra* note 206, at 266-67.
- ²¹² Ariz. Rev. Stat. § 12-550.
- ²¹³ See Ariz. *Elections Procedures Manual*, *supra* note 206, at 270 (“In determining whether there is reasonable cause, the standard of review is akin to ‘probable cause’ to support the complainant’s allegations, which generally means there is reasonably trustworthy information and circumstances that would lead a reasonable person to conclude there is substantial likelihood that the respondent committed a violation.”).
- ²¹⁴ *Id.* at 269-70.
- ²¹⁵ Ariz. Rev. Stat. § 16-938(D).
- ²¹⁶ *Id.* § 16-938(E). In the case of a registered committee’s failure to file reports, no further investigation or discovery by the enforcement officer generally is needed before the enforcement officer may issue the notice of violation. *Id.* § 16-937.
- ²¹⁷ *Id.* § 16-938(E)(2).
- ²¹⁸ *Id.* § 16-938(E)(2).
- ²¹⁹ *Id.* § 16-938(G)(1).
- ²²⁰ *Id.* § 16-938(H), (I).
- ²²¹ *Id.* § 16-956(A)(7).
- ²²² *Id.* § 16-942(B); see also *Clean Elections Inst., Inc. v. Brewer*, 99 P.3d 570, 574 (Ariz. 2004).

²²³ Ariz. Rev. Stat. § 16-957; Ariz. Admin. Code R2-20-203(A). The Commission's staff, "in the normal course of carrying out its statutory responsibilities," also may generate complaints of potential violations of the Act. Ariz. Admin. Code R2-20-207.

²²⁴ See Ariz. Rev. Stat. § 16-957; Ariz. Admin. Code R2-20-204; see also *What Happens When A Complaint Is Filed?*, ARIZ. CITIZENS CLEAN ELECTIONS COMM'N, <https://www.azcleanelections.gov/enforcement-infographic> (last visited Nov. 18, 2021).

²²⁵ Ariz. Rev. Stat. § 16-957; Ariz. Admin. Code R2-20-206, -208.

²²⁶ Ariz. Rev. Stat. § 16-957(C); Ariz. Admin. Code R2-20-208(C).

²²⁷ Ariz. Rev. Stat. § 16-957(A).

²²⁸ Ariz. Rev. Stat. § 16-956(A)(7); Ariz. Admin. Code R2-20-209, -210, -211.

²²⁹ Ariz. Admin. Code R2-20-217.

²³⁰ Ariz. Rev. Stat. § 16-942.

²³¹ *Id.* § 16-943.

²³² *Id.*; Ariz. Admin. Code R2-20-224, -226.

²³³ Ariz. Admin. Code R2-20-227, -228.

²³⁴ Ariz. Rev. Stat. § 16-955.

²³⁵ See *Ariz. Advocacy Network Found. v. Arizona*, 475 P.3d at 1160-61.

²³⁶ See Ariz. Rev. Stat. § 16-938(D).

²³⁷ *Id.* § 16-956(B).

²³⁸ See *id.* §§ 16-956(A)(7), 16-942.

²³⁹ See Ariz. Admin. Code R2-20-201-R2-20-228.

²⁴⁰ See Ariz. Const. art. IV, pt. 1, § 1.

²⁴¹ Ariz. Rev. Stat. § 16-940(A).

²⁴² See Ariz. Admin. Code R2-20.

²⁴³ See Ariz. Rev. Stat. § 1022.