



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

KATIE HOBBS
GOVERNOR

EXECUTIVE OFFICE

December 22, 2023

The Honorable Kimberly Yee
Treasurer of the State of Arizona
1700 W. Washington Street
Phoenix, Arizona 85007

Re: Arizona Citizens Clean Elections Commissioner Appointments

Dear Treasurer Yee:

I write in response to your December 20, 2023 letter. Thank you for your initiative on this matter. Having appointed two of the current commissioners as a legislator and served as Arizona's chief election official, I understand the important role the Citizens Clean Elections Commission serves in educating voters and administering the Citizens Clean Elections Act and the Voters' Right to Know Act. While I fully intend to make appointments to the Commission in accordance with applicable law, your proposed plan conflicts with those laws governing appointments to the Commission.

First and foremost, A.R.S. § 16-955 does not allow you to make three appointments with terms running through 2029. This is because a term of office that is fixed by law runs independently of the tenure of any officer appointed thereto. *See Graham v. Lockhart*, 53 Ariz. 531, 537 (1939); *Hoy v. State*, 150 Ariz. 416, 418-19 (App. 1984). A.R.S. § 16-955(D) establishes staggered five-year terms beginning February 1 of each year. As a result, despite the holdover status of all five commissioners, new five-year terms of office began upon the expiration of their respective terms and have continued to run. The current commissioners' holdover service cuts into those subsequent terms. Any new appointee will therefore serve the remainder of the present term for that seat, rather than a flat five years.

Second, the law is more nuanced than simply prescribing alternating appointments based on political party. It instead requires that appointment authority alternate between the Governor and the highest ranking statewide official who is not a member of the Governor's party. A.R.S. § 16-955(D).

Looking at these provisions together, it is clear that the appointment process is designed to produce a Commission that alternates each year between a 3-2 majority of gubernatorial appointees and a 3-2 majority of non-gubernatorial appointees. Accordingly, the appointment authority is necessarily tied to a specific term. This table outlines the current composition of the Commission and the appointing authority for each respective seat:

Commissioner	Appointing Authority	Term Start	Term End
Steve Titla (D, Gila)	Non-Governor (Senate Minority Leader)	2/1/2013	1/31/2018
Damien Meyer (D, Maricopa)	Governor	2/1/2014	1/31/2019
Mark Kimble (I, Pima)	Non-Governor (Senate Minority Leader)	2/1/2015	1/31/2020
Galen Paton (R, Pima)	Governor	2/1/2016	1/31/2021
Amy Chan (R, Maricopa)	Non-Governor (Senate Minority Leader)	2/1/2017	1/31/2022
Steve Titla (D, Gila)*	Governor	2/1/2018	1/31/2023
Damien Meyer (D, Maricopa)*	Non-Governor	2/1/2019	1/31/2024
Mark Kimble (I, Pima)*	Governor	2/1/2020	1/31/2025
Galen Paton (R, Pima)*	Non-Governor	2/1/2021	1/31/2026
Amy Chan (R, Maricopa)*	Governor	2/1/2022	1/31/2027
Steve Titla (D, Gila)*	Non-Governor	2/1/2023	1/31/2028

* Holdover

While you are presently authorized to appoint three commissioners, you are not entitled to appoint a successor for Commissioner Amy Chan because the appointing authority for the term in which she is serving as a holdover is the Governor. And none of your appointees will serve through 2029.

Furthermore, Linda Gray was appointed as a precinct committeeman in 2022.¹ She is therefore prohibited from serving on the Commission. A.R.S. § 16-955(B) (“Each candidate shall be a

¹ The relevant Yavapai County Board of Supervisors public meeting agenda can be accessed at https://destinyhosted.com/agenda_publish.cfm?id=92827&mt=ALL&vl=true&get_month=5&get_year=2022&dsp=ag&seq=1841.

qualified elector who has not, in the previous five years in this state, been appointed to, been elected to or run for any public office, *including precinct committeeman*, or served as an officer of a political party.” (emphasis added)). To the extent you wish to appoint a different Republican to the Commission, you may only do so to succeed Commissioner Galen Paton, as he is the only Republican you have authority to replace at this time. See A.R.S. § 16-955(A) (“No more than two members of the commission shall be members of the same political party.”).² That appointee’s term would expire January 31, 2026.

I intend to appoint successors for Commissioners Mark Kimble and Amy Chan before February 1, 2024. Further, by February 1, 2024, I intend to appoint a successor for Commissioner Damien Meyer, or whomever you appoint to replace him between now and the end of that term on January 31, 2024, because the appointment authority for that seat shifts to the Governor at that time.

I look forward to working with you to exercise our respective authority to appoint qualified and eligible individuals to the Commission in compliance with applicable law. To that end, my staff will reach out to arrange a meeting to occur no later than December 29, 2023 for our Offices to discuss these issues. If we cannot reach a common understanding of the appointment provisions by then, I believe seeking an Attorney General Opinion pursuant to A.R.S. § 41-193(A)(7) would be appropriate. Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'KH', followed by a long horizontal line extending to the right.

Katie Hobbs
Governor

cc

Mark Kimble, Chair, Citizens Clean Elections Commission, ceec@azcleelections.gov
Thomas Collins, Executive Director, Citizens Clean Elections Commission,
thomas.collins@azcleelections.gov
Adrian Fontes, Secretary of State, afontes@azsos.gov

² Although your letter states that the Commission is comprised of two Democrats, two Republicans, and one independent, that reflects only its current composition and not the statutory requirement. For example, any sitting member could be succeeded by an independent without violating A.R.S. § 16-955(A).