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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
July 25, 2024
9:30 a.m.

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



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1 PUBLIC MEETING BEFORE THE CITIZENS CLEAN
2 ELECTIONS COMMISSION convened at 9:30 a.m. on July 25,
3 2024, at the State of Arizona, Clean Elections
4 Commission, 1110 West Washington, Conference Room,
5 Phoenix, Arizona, in the presence of the following
6 Board Members:
7
8 Mr. Mark Kimble, Chairman
9 Mr. Galen Paton
10 Ms. Amy Chan
11 Mr. Steve Titla
12 Ms. Christina Werther

13 OTHERS PRESENT:

14 Thomas M. Collins, Executive Director
15 Paula Thomas, Executive Officer
16 Mike Becker, Policy Director
17 Gina Roberts, Voter Education Director
18 Alec Shaffer, Web Content Manager
19 Avery Xola, Voter Education Manager
20 Kara Karlson, Assistant Attorney General
21 John Bullock, Osborn Maledon
22 Emma Cone-Roddy, Osborn Maledon
23 Craig Morgan, Sherman & Howard
24 Tracy Olson, Snell & Wilmer
25 Jonathan Berkon, Elias Law Group
Paige Jarrell, KCA

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1 P R O C E E D I N G
2 CHAIRMAN KIMBLE: Good morning. Agenda
3 Item I is the call to order. It is 9:30 a.m. on
4 July 25th, 2024, and I'll call this meeting of the
5 Citizens Clean Elections Commission to order.
6 With that, we'll take attendance. I'm
7 Mark Kimble.
8 Commissioners, please identify yourselves for
9 the record.
10 COMMISSIONER WERTHER: Christina Werther.
11 COMMISSIONER PATON: Galen Paton.
12 COMMISSIONER CHAN: Amy Chan.
13 CHAIRMAN KIMBLE: Thank you very much. We
14 have a quorum.
15 Item II, discussion and possible action on
16 minutes for the June 24th, 2024 meeting.
17 Commissioners, you have the minutes from our last
18 meeting in your packet. Is there any discussion or
19 corrections --
20 COMMISSIONER PATON: It says 27th.
21 CHAIRMAN KIMBLE: I'm sorry?
22 COMMISSIONER PATON: You said 24. It says
23 27.
24 CHAIRMAN KIMBLE: 27. Okay. I apologize.
25 COMMISSIONER PATON: Okay.

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1 CHAIRMAN KIMBLE: So we have minutes for the
2 June 27th, 2024 meeting.
3 MR. COLLINS: That was a mistake.
4 CHAIRMAN KIMBLE: Any discussion or other
5 corrections?
6 (No response.)
7 CHAIRMAN KIMBLE: Hearing none, do I have a
8 motion to approve the minutes?
9 COMMISSIONER CHAN: I move that we approve
10 the minutes as written.
11 CHAIRMAN KIMBLE: Thank you,
12 Commissioner Chan.
13 Is there a second?
14 COMMISSIONER WERTHER: I second.
15 CHAIRMAN KIMBLE: Seconded by
16 Commissioner Werther.
17 I will call the roll. Commissioner Chan.
18 COMMISSIONER CHAN: Aye.
19 CHAIRMAN KIMBLE: Commissioner Werther.
20 COMMISSIONER WERTHER: Aye.
21 CHAIRMAN KIMBLE: Commissioner Paton.
22 COMMISSIONER PATON: Aye.
23 CHAIRMAN KIMBLE: Chair votes aye. The
24 minutes are approved 4-to-nothing.
25 Item III is discussion and possible action on

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1 the Executive Director's Report. Tom.
2 MR. COLLINS: Thank you, Commissioners.
3 Really quickly, the last day to vote early in
4 person is July 26th, which is tomorrow. The primary
5 election for the state election is Tuesday, July 30th,
6 so, you know, we will be watching for that eagerly.
7 Gina put together an outline of the process
8 for nomination -- for how a presidential candidate
9 nominee gets put on the ballot in Arizona, because
10 that's something that we've gotten a lot of questions
11 about and we think perhaps you will too. So that is
12 there for your review, and if someone stops you on the
13 street you have something to give them. But I think
14 it's a very helpful guide and we're working, I think,
15 on distributing that through our other -- some other
16 channels as well.
17 We've had a full -- you know, continue to
18 have a full plate of -- of activities that we're
19 participating in in terms of voter education and
20 outreach. I -- I want to highlight particularly that
21 Gina and her team, including Avery, have met with
22 county recorders, election administrators on their
23 voter education efforts. Most recently they were
24 meeting -- met with the Coconino County Recorder's
25 Office on helping them develop a responsive social

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1 media plan and -- and work on some website content
2 related to voters who may be eligible to vote in
3 federal elections, in the election world we -- they
4 call that fed-only voters, but not state elections.
5 So I also wanted to mention that we have had
6 a sort of iterative process with the Secretary of
7 State's Office on -- on getting the VRKA reporting
8 forms to a place where they're a little bit more user
9 friendly. What that means is that we've now got a --
10 we've really gone to more of a fillable PDF, which is
11 what the City of Phoenix is doing for their similar
12 law, for the time being. And what we're going to do as
13 staff is, you know, as we get those in over the next
14 couple of -- over the next week for this primary, we
15 will take a look at what's working and what's not.
16 We think that probably a couple tweaks to the
17 form to help with clarifying, you know, things around
18 disbursements, but we think that, by and large, that
19 the forms that we have developed, which I will -- I
20 have to credit Commissioner Chan for helping us
21 implement this over the -- and working with the
22 Secretary of State's Office IT department to get this
23 implemented. We are hopeful that that at least helps
24 address some of the concerns we've heard from the
25 regulated community about ease of use and, from the

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1 Secretary's end, allay some of their -- the concerns
2 that they have had to deal with as far as public
3 availability and those kinds of things. So that's, I
4 think, successful.
5 The Legislative Council, which is the agency
6 of the Legislature that handles a number of
7 administrative tasks, including drafting ballot measure
8 descriptions that go in that publicity pamphlet we're
9 all going to get, they met recently and adopted those
10 analyses. The link is there in the materials, if you
11 want to read them, and we have a list from the Ledge
12 Council of the measures that are currently set to be on
13 the ballot.
14 Now, obviously, a lot of these folks are
15 going to get -- a lot of these things are going to get
16 litigated. In fact, you know, there are -- there -- so
17 there are already lawsuits about the descriptive
18 language of the pamphlet. There are -- there is a
19 lawsuit that was filed yesterday about the legal
20 sufficiency of one of the initiative -- initiatives
21 that was filed. There are a couple of these that I
22 would just -- you may want to be aware of in general.
23 One has to do with Prop 133 and, it doesn't
24 have a number on it here yet, but will eventually, may
25 already, the Make Elections Fair Act. Those both

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1 relate to how elections are actually put together, I
2 mean, from a sort of top-down perspective or bottom-up,
3 I guess, depending on how you look at it. But the one
4 the Legislature put on would essentially ban something
5 called rank choice voting.
6 The Make Elections Fair Act would essentially
7 strip down the Arizona primary election process, it
8 would make changes to the presidential preference
9 election, and it would also make changes to the general
10 election process. And it would give the Legislature
11 and the Governor and, if not them, the Secretary of
12 State the ability to implement different kinds of
13 potential election strategies, so to speak, provided
14 that they did not use a party.
15 So, you know, something to be aware of. And
16 then -- and then -- something to be aware of, if this
17 were to pass, from an administrative perspective, how
18 that will, if at all, affect what we do.
19 The other similar thing that does -- that's
20 on the ballot that, you know, I think you should be
21 aware of -- and again, you know, I'm not -- we're not
22 going to take positions on these because they're on
23 the ballot, but the SCR1012, rulemaking legislative
24 ratification regulatory costs, where that's passed it
25 would say that any rulemaking that has a cost of a

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1 hundred thousand -- regulatory cost of over, I think
2 it's either a hundred thousand dollars or over a
3 hundred thousand dollars, I can't remember which, over
4 five years would have to be ratified by the
5 Legislature. So, again, that -- that would have an
6 impact on us.
7 And then the last two that I think are
8 important to mention that deal with elections in
9 general, judicial retention elections, SC1044, would,
10 you know, change us from a judicial retention system to
11 more of a -- a system that involves appointment and
12 then a -- through the merit system and then, you know,
13 give the Judicial Disciplinary Commission the ability
14 to oversee judges rather than having the retention.
15 And then the ballot measure challenges, I
16 believe that that is the one that says that you'd have
17 to -- in order to do an initiative, you'd have to go
18 out to the various counties and get a certain
19 percentage from every county.
20 So, you know, lots of stuff related to
21 elections and administrative law on the ballot, and
22 we'll -- so if you have questions about those, I'll --
23 that I can answer, I'm happy to try to do that, but
24 just generally. As you all know, because things that
25 affect us are on the ballot all the time, you know, we

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1 don't, as a Commission, have positions that we take on
2 these things.
3 COMMISSIONER PATON: I have a question.
4 MR. COLLINS: Sure.
5 CHAIRMAN KIMBLE: Commissioner Paton.
6 COMMISSIONER PATON: How's the -- how's the
7 SeeTheMoney website doing, working?
8 MR. COLLINS: SeeTheMoney is a -- is a -- a
9 work in progress, I would say.
10 COMMISSIONER PATON: Still?
11 MR. COLLINS: Well, I think that -- let me
12 put it this way. I think that we have had some fits
13 and starts here in the launch of the election reporting
14 cycle in earnest. The VRKA reports seem to get
15 affected by that, our trigger reports have been
16 affected by that a little bit. But I can say that,
17 notwithstanding the fact that there have been issues,
18 you know, at this point the Secretary's Office has been
19 more responsive to our, you know, identifying these
20 issues when they come to us from the regulated
21 community than many Secretaries' Offices have been in
22 the past.
23 And so I think that there is a recognition,
24 you know, and I can't really speak for the Secretary's
25 Office, but I -- from where I'm sitting, I think

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1 there's more of a recognition that some of the issues
2 that have come up with that in the past, they're maybe
3 more -- they're more likely to get to a place where
4 they recognize this as sort of a sunk cost and it may
5 not be worth trying to fix everything.
6 But that said, for this election cycle we are
7 what we are, and so the -- what I can tell you is that
8 I have been receiving regular reports from the
9 Secretary's Office about their efforts to maintain at
10 least the system in a manner that allows people to
11 file, and address the concerns of the regulated
12 community when they are not able to file, and that's a
13 level of responsiveness that we have not experienced in
14 the -- in the prior -- in prior administrations.
15 COMMISSIONER CHAN: Mr. Chairman and Tom, may
16 I --
17 CHAIRMAN KIMBLE: Commissioner Chan.
18 COMMISSIONER CHAN: -- just make a brief
19 comment?
20 Just as you all know, and for full disclosure
21 for anybody watching, I work at the Secretary's Office,
22 and so I'm familiar with the issues that Tom has
23 referenced.
24 And Commissioner Paton, your question about
25 SeeTheMoney is a good one. I think -- my personal

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1 opinion is that, you know, going back to, I think,
2 2017, when I first joined the Commission, there were
3 commitments made to the Commission on the part of that
4 administration about how SeeTheMoney would look when
5 the work was complete, and I think -- I don't know what
6 happened, but that just -- it never came to fruition.
7 Because what we were shown at the meetings
8 was something that was truly wonderful, a visual --
9 data visualization of contributors and expenditures and
10 things like that; and unfortunately, that's not what
11 SeeTheMoney is. And SeeTheMoney is the public-facing
12 side that, you know, public can go and see what
13 committees have reported spending. BEACON is what we
14 call the user side of it that the committees use to
15 enter their contributions and expenditures, and then
16 that's what is put into their reports that are then
17 published on SeeTheMoney.
18 So I just wanted to, I guess, not by way of
19 excuse, but just say that this is definitely something
20 that I think could be improved on, and I don't think
21 that the Secretary would disagree with that. And just
22 from using SeeTheMoney as a user in the course of my
23 daily job, I -- I do think it's -- it's not what we
24 were promised in the past, but -- but it's been so many
25 years and I -- I just think, yeah, there's -- there are

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1 decisions probably to be made about how to proceed,
2 because improvements could certainly be made, so --
3 COMMISSIONER PATON: Do they not know how to
4 fix it or --
5 COMMISSIONER CHAN: Well --
6 COMMISSIONER PATON: I don't understand.
7 COMMISSIONER CHAN: Yeah. You know,
8 Mr. Chairman, Commissioner Paton, Tom mentioned sunk
9 costs. And I think that's the point we're at is, this
10 has been lingering so long that I -- I imagine that
11 there have to be some tough conversations internally
12 with the Secretary and staff about resources,
13 priorities, and deciding whether to continue to put
14 money into the current system or maybe make a wholesale
15 change. And I don't know what's going to happen with
16 that, and we're certainly not going to be able to
17 address it until after the election at this point,
18 which is, of course, always a problem every two years.
19 So there's -- there's a finite period of time that we
20 have to kind of try to make these decisions and
21 implement the changes, but it's certainly something
22 that's very much on my mind in both of my capacities.
23 COMMISSIONER PATON: Thank you.
24 CHAIRMAN KIMBLE: Thank you,
25 Commissioner Chan and Commissioner Paton.

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1 Any other -- any other comments?
2 COMMISSIONER PATON: I do have another
3 question or -- on the legislator -- or, not just the
4 legislators, but all the people that are receiving
5 Clean Elections money, is that higher, lower than in
6 the past?
7 MR. COLLINS: I -- I think that, based on the
8 numbers I'm looking at here, and Mike can correct me if
9 I'm wrong, I think we're at about par for the -- for
10 the -- for the -- for the year -- year over year, cycle
11 over cycle. I mean, I think, as everybody knows, and
12 it's certainly no secret, that, you know, post 2010
13 there was a reduction and then post 2018 there was
14 another tail off as, you know, the Legislature, in both
15 situations, made changes. In one case, they went to
16 the voters to make a change that was, you know,
17 basically designed to limit participation. So I think
18 that -- you know, I think we're at par.
19 I think the biggest difference that Mike is
20 experiencing and dealing with folks is the slow starts.
21 In prior election cycles we had -- folks would get
22 their -- so the qualifying period starts in August,
23 right, so you've basically got all -- if you really run
24 it out, you've got almost an entire year to get your
25 qualifying signatures together -- the qualifying

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1 contributions together, rather.
2 Folks have been not doing that as much,
3 they've been waiting until the last minute, they've
4 been not filing paperwork -- they file everything at
5 once that they want to, essentially. And what they've
6 been doing is kind of procrastinating and doing that,
7 and that creates then kind of a back-end issue where,
8 you know, if you file stuff on -- later, then your need
9 to get it is more acute, and then -- but the
10 bureaucracy -- you know, getting money out of the State
11 of Arizona, while it will happen, it does take time.
12 The bureaucracy is -- it requires at least three
13 agencies, plus the candidate, to all have all their
14 paperwork say the same things. I mean, that's --
15 that's, you know -- I mean, that's just -- I mean,
16 that's not necessarily a guarantee that it will happen
17 quickly. So I think that's been the biggest challenge.
18 So I think that we're at a place where, you
19 know, moving the numbers to the pro, probably going to
20 be difficult for the time being. I mean, I think, as
21 we've identified here over the years, the -- the sort
22 of institutional point of view, especially that the
23 parties have, is -- both parties have is that, you
24 know, the public financing program doesn't have the
25 value for candidates that the party leadership thinks

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1 it ought to have.
2 However, you know, the math says something
3 different, but -- you know, but that's a -- but that's
4 a hard -- that's a hard -- that's a hard thing to
5 communicate with folks about, basically saying --
6 because the one thing Clean Elections funding will
7 never provide is the kind of income, for example, to a
8 political consultant or other folks that -- that a
9 traditional candidate can do in terms of fundraising.
10 But if you look at where a lot of candidates end up on
11 fundraising --
12 An example we cite just for purposes of this
13 all the time is, the person who ran for -- the person
14 who ran for treasurer on the Democratic side in 2022
15 basically raised as much money as he would have gotten
16 from Clean Elections, and he had all the costs of
17 raising that money, which he wouldn't have had in Clean
18 Elections. So from my perspective, the business
19 analysis there ought to be, you know, well, if I'm
20 really running and I'm going to raise X number of
21 dollars, if I can't beat Clean Elections, especially on
22 that, I ought to run clean. That seems to me a pretty
23 persuasive case. But there is a -- but it certainly
24 goes against the vibes of the -- of the -- of the --
25 sort of the folks who are -- they're going to hear more

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1 from.
2 COMMISSIONER PATON: So I have a question
3 then. Is there a way that we could streamline so that
4 it doesn't have to go to three agencies?
5 MR. COLLINS: Well, I think that we may reach
6 a point where that -- this might be -- this -- we --
7 after this here we may actually have some ability to do
8 that. I think that some of the candidates who have
9 been affected have -- have a -- have a little bit
10 more -- may have -- may be in a position to make a
11 little bit more -- and their campaign folks may have --
12 may be in a position to make that case better to -- to
13 at least the Department of Administration than we are
14 able to or have been able to historically.
15 I think -- because I think the disconnect is,
16 if the candidate recognizes and the candidate -- and
17 the leadership of the candidate campaigns recognizes
18 that -- that at the end of the day we're kind of on the
19 back end, you know, we're really not in the process,
20 and recognizes where that -- where the -- sort of the
21 inefficiency is, you know, we might be able to do that
22 or at least get to some kind of agreement within the
23 agencies to handle that a little -- a little more
24 efficiently. The -- but efficiency would be one thing.
25 I think the legislative changes to improve it

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1 are always going to be an uphill battle. So anything
2 that requires going to the Legislature, you know,
3 you've got -- we've got -- we know we have a segment of
4 the Legislature that's a no vote to begin with on
5 anything that might arguably improve the system, and so
6 that's really the evaluation.
7 So I think that I would say, and I think
8 Mike -- I hope Mike would agree with me, that based on
9 the interactions we've had with candidates over the
10 past couple of weeks, we definitely see more of a
11 swelling towards something is going to have to be
12 addressed going forward in order -- especially to
13 account for the fact that folks are coming in at the
14 last minute. I think that's --
15 COMMISSIONER PATON: So are we warning them
16 to not procrastinate?
17 MR. COLLINS: Oh, yeah.
18 COMMISSIONER PATON: I mean, I'm sure we do,
19 but -- but, you know, I could be a procrastinator
20 myself.
21 MR. COLLINS: We definitely do.
22 COMMISSIONER PATON: But it's not going to do
23 you any good if the election is coming up and you
24 haven't received the money because you waited so long
25 to turn stuff in, so I don't know.

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1 MR. COLLINS: I think part of the issue is
2 that in this day and age we have fewer and fewer
3 contested primaries in -- on both sides of the aisle at
4 the state level than we did. We have some, but not a
5 lot. And then within those contested primaries, folks
6 are probably less likely to use clean funding. So what
7 that means is that -- I think part of the -- part of
8 the procrastination comes from, if I know that I'm
9 really running in the general, I might not feel the
10 need to get the -- get the -- get my stuff together.
11 But the other thing that's just difficult, as
12 a general proposition, is that the Corporation
13 Commission candidates have often had a struggle to meet
14 their numbers. That's just been a -- that's just been
15 an ongoing issue. You have to be particularly
16 organized and --
17 COMMISSIONER PATON: You mean the signatures?
18 MR. COLLINS: Yeah, the qualifying
19 contributions.
20 COMMISSIONER PATON: Okay.
21 MR. COLLINS: Yeah. And I -- and for
22 whatever reason, and I don't -- this is something I
23 don't have a good answer to, but it's on the list of
24 things that we've considered as factors. Folks have
25 gotten very good at using E-Qual for petition

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1 signatures; not all folks are as good at using E-Qual
2 for their \$5 qualifying contribution slips, so --
3 because in other words, you ought to be able to use --
4 use both if you're organized. You should be able --
5 because what you see now is, you know, and we had -- we
6 had an example a couple weeks -- a couple years ago, I
7 think, where someone announced they were running for
8 County Attorney and had all their signatures on through
9 E-Qual in like an afternoon based on like a Twitter
10 campaign.
11 So those kinds of things I'm not sure that
12 the clean candidates have marshaled yet or figured out
13 yet, so -- but I don't know that we know why.
14 COMMISSIONER PATON: Okay. Okay. Thank you.
15 CHAIRMAN KIMBLE: Thank you.
16 Let me make note that Commissioner Titla has
17 joined our meeting and has been here for most of this
18 discussion.
19 Tom, I know you're not done with your --
20 MR. COLLINS: I am.
21 CHAIRMAN KIMBLE: Okay. You are done.
22 I -- I have one question --
23 MR. COLLINS: Sure.
24 CHAIRMAN KIMBLE: -- regarding the Voters'
25 Right to Know Act and the website you mentioned in your

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1 report. I just called up randomly some committee on
2 the website, Arizona for Abortion Access, and looked
3 through there, and they have their contributions and
4 their expenses listed. And one of their contributions
5 is \$2,200,000 from Arizona's -- Arizonans Fed Up With
6 Failing Health, and then you go and look at the website
7 and there's no Arizonans for Failing Health report
8 saying who this is. So is that just that they haven't
9 filed it yet or is this a failing of the --
10 MR. COLLINS: Well, at this point with the
11 forms I'm hesitant to call anything that anybody put on
12 the form failing, I really am. What I -- what I --
13 what I -- what I would say is this. What I -- what we
14 intend to do, as I said, as I mentioned earlier on, is
15 kind of go through the reports, both pre new form
16 reports and the new form reports, look at what folks
17 might be missing, so that we can address that in a --
18 in a -- in a constructive way.
19 If people are filing, from our perspective,
20 that's the most important thing. You know what I mean?
21 We're -- you know, people are getting engaged in the
22 system, they're trying to fill out these forms in good
23 faith, those kinds of things, that's -- that's really,
24 you know, kind of where we are as far as a benchmark,
25 and, you know -- but we'd like to do that and assess

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1 that.

2 Now, that having been said, you know, there

3 will be -- as we understand the universe of how folks

4 are reporting and how folks understand their reporting

5 obligations, we will start to be able to draw some

6 conclusions about where folks show up in our system

7 versus another system.

8 I'll give you an example. Imagine -- and

9 this is an example, so I'm going to take this outside

10 of the law, because I think it would get -- it may

11 confuse things with other discussion points, other

12 things we have to discuss today. But imagine you have

13 a federal PAC that is going to give money to an Arizona

14 PAC, and the Arizona PAC is a covered person and -- you

15 know, so let's assume that transaction happens.

16 The federal PAC is listed in one way or

17 another on the form, depending upon where the -- you

18 know, how the person filling out the form understood it

19 properly in the first place. That federal PAC is not

20 going to be in Arizona -- not going to be in the

21 Arizona SeeTheMoney system because they're filing with

22 the FEC, right. So those are the kinds of things

23 where, you know, getting at the -- you know, sort of

24 unspooling some of this stuff is going to take a little

25 bit of time to understand the universe of where money

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1 is coming from.

2 So, you know, the goal of the Act, and we

3 hope ultimately the reports, will be to get to

4 understand that you have -- and, you know, you have the

5 donors who are the original source donors and then you

6 have a space for intermediaries, and understanding

7 that, you know, intermediary is essentially the -- is

8 sort of the passthrough, right, and -- and as we'll --

9 and, again, trying to not get us too far ahead of

10 ourselves, because there's a -- we're talking about

11 this in a different context, but, you know -- we've had

12 questions where folks have confused what the

13 intermediary is versus the donor in terms of the

14 reports, those kinds of things, and so it's just going

15 to take some time to work through that.

16 I think that -- so what I have -- so the

17 perspective we've taken on it internally is, it would

18 be better, if folks are, in fact, filing, to sort of,

19 as -- once we get past Tuesday, to take kind of a

20 universal look at where people are, identify the

21 deficiencies that we're seeing, and then -- and be able

22 to issue some better guidelines and guidance that --

23 you know, a better checklist that says, you know, this

24 goes here, this goes here, this goes here.

25 The form -- that form that you're looking at

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1 is -- may not be the form that -- the most updated

2 form. One of the things -- the improvements we made,

3 and I worked -- was able to work with Commissioner Chan

4 directly on this and it was very, very helpful, was to

5 get the instructions written into the form that they're

6 now getting. In other words, the form that now -- that

7 a VRKA filer now gets basically literally says -- you

8 know, has the boxes that you fill in and then it has,

9 in instructions, this means this.

10 And, you know, so we're -- so we're trying to

11 get -- you know, so in that sense it has been iterative

12 in the sense that the instructions are clearer, the

13 form is clearer. We probably have another round of

14 form revisions, which should be simpler because they

15 don't require some kind of hard coding exercise or

16 anything like that, and then -- and then, again, trying

17 to get something out to the regulated community that

18 says, okay, you know -- you know, this scenario is this

19 or this is what we're seeing so that folks can start to

20 get familiar with that.

21 I will say that that's different -- that that

22 itself, what I've just described, will be different

23 from what the regulated community is used to in terms

24 of the kind of feedback it's getting on reports,

25 period. So most people who file PAC reports in

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1 Arizona, those reports are not -- are warehoused at the

2 Secretary of State's website, they're generally not

3 going to get looked at, they're generally not going to

4 get reviewed, they're generally not going to have

5 deficiencies identified, and that's -- that's just been

6 the approach for, I would say, as long as I can

7 remember on those things.

8 So the fact that we do intend to sort of try

9 to do an overall look at these and try to start

10 identifying deficiencies is something that -- again, we

11 want to be constructive about it and not sort of finger

12 pointing about it, because we think we have an

13 obligation and customer service matter to take that

14 approach. And that's really what, if you recall, we've

15 been saying in these meetings for the past 18 months is

16 that, you know. But part of the problem with the --

17 with this kind of thing is, you don't really know what

18 you don't know until you put something out and see what

19 comes back.

20 CHAIRMAN KIMBLE: Okay. Okay. Thank you.

21 So, Tom, you're done with your --

22 MR. COLLINS: I am.

23 CHAIRMAN KIMBLE: -- with your report?

24 MR. COLLINS: Yes.

25 CHAIRMAN KIMBLE: Are there any other

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1 discussions or questions from Commissioners about Tom's
2 report?
3 (No response.)
4 CHAIRMAN KIMBLE: Thank you.
5 Item IV, discussion and possible action on
6 debate preparation and scheduling for the 2024 general
7 election. Gina and our partners have been working to
8 prepare for the general election debate program. That
9 work includes evaluating where we are from both a
10 content and infrastructure perspective to continue to
11 provide a service that will promote participation in
12 elections and encourage the free exchange of ideas.
13 Gina.
14 MS. ROBERTS: Hi. Good morning,
15 Mr. Chairman, Commissioners. I have just a brief
16 update for you on where we are with our general
17 election debates planning. To start, I will share the
18 debates that we plan to offer to the voters. So a
19 little bit about how we do that first, though.
20 When we offer our debates, we basically have
21 two pathways on how we produce them. One is we go
22 through our partnership with the Arizona Media
23 Association and we do debates in the studio where the
24 candidates come down, they debate in person, and we
25 make that available to our media partners across the

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1 state. The other path that we have for producing our
2 debates is through a virtual platform, so it's entirely
3 through Zoom.
4 So typically what we do is all of our
5 legislative debates, we host those through the Zoom
6 platform; and then for our debates that we intend to
7 broadcast, such as our statewide debates, we will do
8 those in the studio.
9 So what we are hoping to provide to the
10 voters for the general election, on the broadcast side,
11 where the candidates will come down into the studio, we
12 hope to offer a U.S. Senate debate, all nine
13 congressional districts, Corporation Commissioner,
14 potentially the Maricopa County Recorder's Office and
15 the Maricopa County Sheriff's Office races, and then
16 depending on the results of these ballot measures and
17 if they qualify for the ballot we may also do
18 three ballot measure debates, if you will. Those
19 would -- the topics would be abortion, elections, and
20 immigration. So that's what we intend to offer in our
21 debate programming through the broadcast mechanism.
22 Through our Zoom platform we will continue to
23 offer our legislative debates for 30, we may
24 potentially have debates also through the Zoom platform
25 for the Pima County Sheriff's Office and for the

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1 Maricopa County Board of Supervisors District 3 race,
2 possibly the Coconino County Recorder race, and
3 possibly, if there are runoff elections, for the
4 mayoral elections in Mesa and Scottsdale, and then
5 potentially for the Central Arizona Water Conservation
6 District seats that are open in Maricopa County.
7 So how we came about to determining these was
8 looking at, okay, which races do we know will be
9 competitive, will have an actual election in the
10 general, and the interest and how we can best reach
11 voters through these two different platforms.
12 So that's the schedule lineup that we are
13 looking forward to in the general election. If
14 there's, you know, no questions on that, Mr. Chairman,
15 I can move forward to some of the efforts we are taking
16 in regards to the security of our debates, but I'll
17 pause there in case there's any questions on the races
18 that we intend to offer and the pathway of how we
19 produce those through either broadcast or via Zoom.
20 CHAIRMAN KIMBLE: I just wanted to clarify
21 one thing. So regardless of whether it's broadcast or
22 Zoom, voters can go to the Clean Elections website and
23 see all of these debates and watch --
24 MS. ROBERTS: Mr. Chairman --
25 CHAIRMAN KIMBLE: -- whichever ones they

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1 wish?
2 MS. ROBERTS: Mr. Chairman, that is correct.
3 We will always have everything available on the Clean
4 Elections website, including how to tune in, but we
5 will always have a link available there for voters.
6 And then if there are additional opportunities, such as
7 TV stations or, you know, other links, such as
8 AZCentral, we will give them all of the information on
9 how they can access the debates.
10 CHAIRMAN KIMBLE: Okay. Thank you.
11 Any other questions so far from
12 Commissioners?
13 (No response.)
14 CHAIRMAN KIMBLE: Okay. Gina.
15 MS. ROBERTS: Okay. Thank you, Mr. Chairman,
16 Commissioners.
17 Additionally, we are also pausing to take a
18 look at our security measures to ensure that we are
19 using all of the resources available to us to ensure
20 security for our debates that we physically have those
21 candidates come down in person for. So, again, this
22 would be through those broadcast debates.
23 We -- as we look to the general election, we
24 know that we will have high-profile individuals there,
25 perhaps some sitting members of Congress who will be

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1 attending these debates in person. And while we
2 already have security measures in place that we
3 utilized in our primary election, just given the state
4 that we are in right now at this point in time, we
5 wanted to make sure that we were reviewing our existing
6 security practices, shoring them up where we can,
7 looking at training for staff and for any staff that
8 would be on site at the studio, that includes active
9 shooter training, situational awareness training.
10 Tom and I have the ability to meet with the
11 security experts over at the Secretary of State's
12 Office and just discuss some of the measures that our
13 elections officials partners put in practice, and we
14 were able to make some great contacts with law
15 enforcement. I've reached out to the Maricopa County
16 Sheriff's Office as well too.
17 So ideally what we would do is put our staff
18 through any training that is available. And we would
19 also have emergency evacuation plans available for our
20 staff at the studio making sure that our candidates and
21 any guests, members of the media, know how to evacuate
22 the building and that we have very tight controls over
23 access and credentialing and security measures in place
24 at the debates. So we are currently reviewing those
25 practices. Again, this is just to make sure that we

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1 are utilizing any resources that are available to us
2 and we are implementing best practices just so we can
3 ensure that our debates are as safe and secure as we
4 can possibly make them.
5 So those are the efforts that we are
6 undertaking right now as we prepare for our general
7 election debates schedule.
8 CHAIRMAN KIMBLE: Thank you, Gina.
9 Are there any questions or comments from --
10 COMMISSIONER PATON: I --
11 CHAIRMAN KIMBLE: -- Members of the
12 Commission?
13 COMMISSIONER PATON: I have a question.
14 CHAIRMAN KIMBLE: Commissioner Paton.
15 COMMISSIONER PATON: How many of -- what do
16 you think the percentage is for the Zoom rather than in
17 person?
18 MS. ROBERTS: Mr. Chairman,
19 Commissioner Paton, Commissioners, so just given the
20 fact that we have the 30 legislative districts, we will
21 have more Zoom debates, if you will, just due to,
22 again, that high -- high quantity of districts that we
23 have on that side.
24 So of all of our debate programming, you
25 know, I would say about 75 percent are going to be

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1 through the Zoom platform. And then the other
2 25 percent, or more of those federal offices and
3 statewide issues, will account for about 25 percent of
4 our debate programming.
5 CHAIRMAN KIMBLE: Thank you.
6 Any other questions or comments from Members
7 of the Commission?
8 (No response.)
9 CHAIRMAN KIMBLE: Thank you, Gina.
10 Item V, discussion and possible action on
11 advisory opinion regarding disclaimers required under
12 A.R.S. Section 16-974(C).
13 Commissioners, we have two advisory opinion
14 requests filed regarding the interpretation of
15 Section 16-974(C). That section requires covered
16 persons who engage in public communications to put the
17 "names of the top three donors who directly or
18 indirectly made the three largest contributions of
19 original monies during the election cycle to the
20 covered person" on the public communication. So this
21 is the language at the bottom of the sign that says who
22 paid for the sign.
23 The question presented is how a covered
24 person should determine whose names to put on a sign or
25 similar communication. In addition to the opinion

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1 draft, requests, and comment, we received two comments
2 late yesterday criticizing the opinion draft. I'd like
3 Tom to discuss the draft and our options in terms of
4 action here today.
5 Tom.
6 MR. COLLINS: Sure. Thank you, Mr. Chairman.
7 I think we're going to -- yeah. So we have a
8 PowerPoint here, which I'll try to make go quickly, I
9 think, but -- so that's the title. Okay.
10 So I want to talk about options first. So
11 the requestors asked for expedited review of this. We
12 are working within the structures we have to try to
13 make good on that. We have -- and we've at least tried
14 to communicate with the requestors about where we are
15 along the way.
16 But that having been said, basically where we
17 are today, I see it as we have two options. We could,
18 if you all agree with the advisory opinion draft, you
19 know, we could -- we could -- you could consider voting
20 to approve it. I think that, under the rules and the
21 timeline we're under, that the alternative option is
22 to -- is under Rule 80- -- R2-20-808 is to approve a
23 written response stating the Commission was unable to
24 approve an advisory opinion by the required affirmative
25 vote of a majority of Members present at a meeting of

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1 the Commission. And you have a draft statement, it's
2 the last page of your materials, to that effect.
3 So what that means is basically, given the
4 timeline, given the rules, you know, we don't have the
5 option, in my view, to send this back to rewrite it.
6 We really are at the option of approve or disapprove.
7 And if we disapprove -- if you conclude that you're not
8 in agreement with the draft, I would -- I would -- I
9 would strongly recommend that we approve -- that you
10 approve the -- approve the non-approval language that
11 we -- or, the failure-to-approve language that we've
12 identified. I think those are the -- I think that's
13 the cleanest way to do this.
14 The result of option two would simply be, at
15 least from my point of view, you know, would be the
16 matter would be closed. I think a person might be able
17 to ask for reconsideration of that, but I'm not sure
18 that they -- I don't -- I mean, that's at least
19 something we'd have to look at, but essentially -- or
20 somebody might ask the question again at another time.
21 So with that, I think if we could -- so if
22 anyone -- don't have any questions over the context
23 here, I want to start with going over the issue.
24 And then I will note, you know, Tracy Olson
25 from Snell & Wilmer is here, and she'll, I'm sure, want

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1 to talk to you all. And then John Berkon from Elias, I
2 saw him on there also, so he may also want to discuss
3 this.
4 So the issue is, you know, as Chairman Kimble
5 identified, is how do you determine who the -- who the
6 names of the top three donors who directly or
7 indirectly made the three largest contributions of
8 original monies during the election cycle to the
9 covered person are.
10 So if we could go to the next slide, please.
11 So I want to start -- for the purpose of this
12 presentation, you have the draft in front of you and --
13 but I wanted to start really from the premise of why
14 this disclaimer exists, which is the -- and what's the
15 purpose and intent clauses of the VRKA that were
16 approved by voters. They establish -- the Act
17 establishes that the people of Arizona have the right
18 to know the original source of all major contributions
19 used to pay, in whole or part, for campaign media
20 spending. And by adopting this Act, the people of
21 Arizona affirm their desire to stop dark money, the
22 practice of laundering political contributions, often
23 through multiple intermediaries, to hide the original
24 source. So I think that -- from my perspective, you
25 know, that, I think, is important to keep in mind.

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1 Can we go to the next one, please. Thank
2 you.
3 So -- so we break the text down into, you
4 know, its component parts here. Public communications
5 by covered persons shall state: At a minimum; the
6 names of the top three donors; who directly or
7 indirectly made; the three largest contributions; of
8 original monies during the election cycle to the
9 covered person.
10 And then we'll go to the next slide, please.
11 So we -- if you saw in that language, we can
12 get into what the -- essentially why this question was
13 raised and the comments that -- both the public
14 comments we received, especially from -- from
15 Opportunity Arizona and their -- and then the GPL
16 request, as well as the -- especially the Arizona
17 Victory Fund letter we received yesterday.
18 So one way to look at this is, are we
19 interpreting or -- the phrase, top three donors who
20 directly or indirectly made the three largest
21 contributions of original monies, or, as the, you know,
22 the Victory Fund letter puts it, is the -- does the
23 issue simply turn on the word or. So that's really, I
24 think, the best way I can boil down, for purposes of
25 this discussion, the crux of the issue.

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1 What we did with the AO that we drafted for
2 your consideration is, sort of assuming the ambiguity,
3 we'll use the rules of statutory construction that are
4 imposed by the Legislature and the courts to provide
5 the best reading of the statute using the phrase
6 directly or indirectly in a manner consistent with its
7 use in Arizona law and consistent with the requirements
8 and the structure of the VRKA.
9 So what that means is that we are -- the AO
10 approach is -- on that ambiguity is looking at the
11 broader phrase in context and under those construction
12 rules rather than focusing on just the word or.
13 We can go to the next one then.
14 So -- and here we try to outline what we
15 think, and, you know, subject to correction I'm sure,
16 but what we think the advisory opinion does in the real
17 world. We tried to get at this a little bit through
18 the examples that -- that the requestors provided as
19 well in the opinion, but we tried to take another crack
20 at it here.
21 So in this scenario we have -- you can see
22 you've got -- the top line groups are the -- what we
23 would call, for purposes of VRKA, intermediaries.
24 You've got a PAC, you've got a 501 -- and you've got a
25 couple of 501(c)(4)s, you've got donations from a

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1 couple of real people, and donations from a couple of
2 corporations.
3 So under the advisory opinion the result
4 would be that the top three donors of original monies
5 would be the real people and the corporation, because
6 they're, you know, 59 -- 59 -- 5.9 million, 5 million,
7 5 million. You know, there may be a tie between the
8 corporation and the real person, but at a minimum we
9 know that -- that, you know, you would get -- you're
10 not going to get GOOD PAC, GREAT 501(c)(4), and BEST
11 501(c)(4).
12 So why -- why would that comport with the
13 purpose and intent of the Act, putting aside all the
14 construction stuff that's in the AO? Right to know the
15 original source of the major contributions, we think
16 that in this case that's the -- the real -- the real
17 people and the real corporation. And then stop the
18 practice of laund- --
19 And this is the language on the Act. I won't
20 -- you know, and obviously it has its own cast to it.
21 I don't want to pretend like I -- I don't want to -- I
22 don't want to -- I don't want to indicate that I
23 subscribe to the precise tone, but it is -- the
24 language is what it is.
25 Stop the practice of laundering political

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1 contribution to hide original source.
2 So what would that mean? If you believe that
3 to be the case, well, then -- well, GOOD PAC doesn't
4 tell you very much. GOOD PAC doesn't tell you really
5 anything at all. And the point of view of the VRKA is
6 that -- is, in fact, that. The VRKA says that GOOD PAC
7 and GREAT 501(c)(4) and Arizonans For Good Stuff and
8 all those kinds of names are not meaningful toward
9 voters exercising their rights to be informed about
10 who's actually looking for -- who's actually vying for
11 their vote.
12 We can go to the next one.
13 So we think that the alternative here under
14 this fact pattern, which is very simplified,
15 understand, but would be okay -- so if you take or,
16 right, as the -- as the -- as the sine qua non of this,
17 GOOD PAC, GREAT 501(c)(4), and BEST are, quote,
18 unquote, direct contributions. So in that or -- if you
19 interpret that or to be a choice between indirect or
20 direct, you have three direct contributors, you know,
21 they would say that they are contributing original
22 monies because they've collected donations from folks
23 who had original monies, presumably, and therefore the
24 top three donors would be GOOD PAC, GREAT 501(c)(4),
25 and BEST 501(c)(4).

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1 Now, when you look at the purpose and intent
2 clause, just to keep this at a very high level, you
3 find out that you don't get original sources identified
4 and you do get intermediaries identified. So, you
5 know, putting aside the statutory construction analysis
6 in the -- in the -- in the -- in the brief or in the
7 memo for one moment and just thinking about this as
8 what were the voters expecting this to do, they --
9 they -- based on the purpose and intent clause, they
10 were expecting original sources and not to result in
11 essentially the kind of intermediary identification
12 that -- that you would get under the alternative
13 construction.
14 Now, it also so happens that we, in the AO,
15 propose that the alternative construction is not
16 consistent with the structure of the Act as well, which
17 clearly identifies that folks, in their campaign
18 finance reports, are supposed to be identifying the
19 original source and the -- and the intermediary
20 separately.
21 So if we can go to this one.
22 And I don't mean to keep going. I'm just
23 going to keep going unless someone has a question.
24 So the objections. This is an attempt, in a
25 very shorthand way, to get at the -- particularly the

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1 letters we got yesterday. You know, and this was also
2 noted, I should note, in Opportunity Arizona's and
3 GPL's letters as well. In some cases, if no donor of
4 original monies is greater than \$5,000, you end up with
5 no donor to disclose.
6 So, you know, and the response to that is
7 that that's -- that is a result of the focus of the Act
8 being on preventing the use of intermediaries to
9 obscure major contributions. So if you don't have
10 major contributions to report, then -- to put on a
11 disclaimer, then that is consistent with, in our view,
12 the language of the Act, but also the purpose of the
13 Act.
14 The alternative, as we talked about, reveals
15 intermediaries, not donors of original monies or major
16 contributions.
17 So then we get into a little bit -- we try to
18 talk, boil down a little bit the PAC, 501(c)(4) as
19 examples of people, aren't they donors, aren't they
20 giving directly, right. So if I give to -- if I give
21 \$50,000 to, you know, Citizens for Arizona, and
22 Citizens for Arizona turns around and gives \$20,000 to,
23 you know, the initiative campaign, right, then isn't --
24 isn't the initiative -- isn't the Citizens for Arizona
25 also a donor.

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1 And the answer to that really does get to
2 this -- how this phrase, directly or indirectly,
3 operates in law. You know, I think that -- we think
4 that, in view of how that phrase is used in Arizona
5 law, the Legislature's direction that we should apply
6 statutes in a manner where words that have taken on a
7 particular meaning and context in Arizona law should be
8 applied in this consistent manner, that that's
9 referring to donors.

10 Because the original donors, the original
11 money possessor, is the only person who can give
12 directly or indirectly. A PAC that only solicits
13 contributions and has no business income, it is only
14 ever going to give directly. So the phrase directly or
15 indirectly, if we look at the memo, the examples are
16 there, is designed to focus on a person not being able
17 to use an intermediary to avoid a thing.

18 So that's why, for example, in the statutes
19 related -- that we cited related to conflict of
20 interest and payment for -- illegal payments under the
21 Arizona Code, you can't get a gift directly from your
22 patron, nor can your patron give the money to his
23 friend to get the money to you, right. That was the
24 example that we highlighted in the -- in the -- in the
25 memo. So that's where the phrase directly or

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1 indirectly appears most often. It's designed to
2 prevent evasion by going around the core of the
3 obligation.

4 So, again, and a -- and a real possible
5 result of the alternative is that you will never have
6 indirect donors revealed -- or, you'll never have
7 direct -- anything other than direct donors revealed.

8 Because what would happen would be, for example, let's
9 say, you know, if you're figuring out a top three and,
10 again, all your biggest donations are PACs, and within
11 those PACs are a lot of original monies that were
12 donated by individuals, they're going to get -- they're
13 going to get crowded out in that top three.

14 You know, does everybody understand that?
15 Essentially you'd be -- you'd be -- if you -- if you
16 stacked your PAC money on top of your original money
17 donors, you see that they drop out of the top three.
18 And that is contrary to what the -- not just the
19 language, but the structure and the purpose of the -- I
20 should say, not merely the exact text of 16-974(C), but
21 the remainder of the text of the VRKA.

22 You know, I think another example -- another
23 thing that happens within that is, let's say that I
24 give Mark's PAC \$5 million and Mark's PAC gives
25 Christina's PAC \$5 million. If Mark and I are at the

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1 top -- are both -- one of us is a direct donor and one
2 of us is an indirect donor, and we both end up there,
3 that \$5 million is getting counted twice. And so the
4 disclaimer would be misleading, because you have no way
5 of accounting if you apply -- if you don't apply direct
6 or indirect in the way that you traditionally apply it
7 in Arizona law, you end up with these situations where,
8 you know, the donors might get named if they're in the
9 top three, but the intermediary might also be named and
10 it's the same \$5 million. And that is a conclusion
11 that I think is somewhat at odds with, you know --
12 well, it's not just somewhat at odds. I think it's at
13 odds with, you know, the rules of statutory
14 construction and how you read statutes.

15 We can go to the next slide.

16 So the next thing we talk about is, doesn't
17 this result in less disclosure. And we have another
18 slide about this that I just was working on as we came
19 in after this, but I want to just highlight this here
20 first.

21 So 16-925 is the -- is the cite in the ASF --
22 ASVF letter, and they talk about how, under that rule,
23 if you're a PAC, you know, you have to donate -- you
24 have to identify your three biggest PAC contributors.
25 Now, you know, why is that -- why is that not -- why

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1 does this result in -- not result in less disclosure?
2 Well, in a manner of speaking, any information on the
3 sign is some disclosure. The problem is that the
4 disclosure that you're -- that you're talking about
5 there is exactly the kind of intermediary disclosure
6 that the VRKA says it wants -- it thinks -- the VRKA
7 says this, that it thinks is not meaningful, right.

8 So the Act has a position on what the better
9 disclosure is, and it has a system that, once you get
10 up to 25,000 or \$50,000 in spending, on what the
11 disclosure ought to be. And so the fact that some less
12 meaningful disclosure under 16-925 might fall out from
13 that, again, is not -- doesn't result -- is not a
14 result of a -- of any kind of analytical problem. It's
15 simply a policy choice the voters made.

16 And then -- and then the voters also decided
17 that, and there's other sections of the VRKA that talk
18 about this -- that says the grassroots PACs and stuff
19 that don't have serious money and have mostly -- and
20 have individual donors, those folks are not getting
21 disclosed because the purpose is to narrowly focus on
22 major donors.

23 Another -- another point I want to hit real
24 quick, donors do not have an obligation to provide
25 opt-out opportunity to their donors before a covered

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1 person may use those dollars for campaign media
2 spending. That's true, and we've said that in a
3 different AO, but we don't see that as a -- at least
4 from staff's perspective, we don't see that as a
5 conflict, because there's no reason why a PAC can't
6 tell its donors that -- its subdonors that their names
7 may be disclosed. And, in fact, in many cases those
8 names are already going to be disclosed on campaign
9 finance reports. So there is a concern expressed
10 later, and we'll talk a little bit more about this,
11 about some issues around that, but that's sort of where
12 that sits for now.

13 I think we can go to the next one, yeah.

14 So this is a little hard to read. And I was
15 trying to drill down a little more on the 16-925 issue,
16 if people are interested, and so I put the language
17 there.

18 501(c)(4)s, under 16-925, don't do anything
19 other than disclose their own -- their own name -- that
20 may not be big enough -- other than disclose their own
21 name and that the thing was paid for by the -- was not
22 paid for by a candidate, right. So the law prior to
23 VRKA was a 501(c)(4) didn't disclose anything on a sign
24 at all other than its own name.

25 PACs were treated differently, but, again, in

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1 this very kind of strange way where you only got to
2 know the PAC donors to the PAC, which is strange
3 because PACs don't take just money from other PACs.
4 PACs take money from 501(c)(4)s, PACs take money from
5 individuals, PACs take money from all kinds of
6 different sources, but for some reason the Legislature,
7 in putting together 16-925, said we're only going to
8 identify PAC donors.

9 So why is that -- why -- why does that matter
10 here? Well, when we talk about whether or not -- we're
11 talking about more or less disclosure, we have to
12 understand what disclosure we're talking about in the
13 first place. And the disclosure under 16-925 is:
14 501(c)(4)s, no disclosure; and PACs, disclosure that
15 will omit every original source and every non-PAC
16 source, and so it creates, in my view, a more distorted
17 picture of where a PAC's money comes from than VRKA.
18 VRKA may result in fewer names, fewer -- fewer
19 identifications on a sign, but those -- but the policy
20 position of the VRKA, as expressed in its language, is
21 that the names that are disclosed ought to have some
22 meaning to the voter and ought to give the disclaimer
23 some meaningful information.

24 So we can go to the next one.

25 So I tried to outline here -- again, I didn't

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1 realize the font was so small. 501(c) -- this is
2 basically what I said before. 501(c)(4)s under 16-925,
3 no additional disclosures; under VRKA, they'd have to
4 disclose donors of original monies over 5,000. PACs,
5 top three; PACs, VRKA would have to disclose donors of
6 original monies over 5,000.

7 So the conclusion is that the alternative
8 reading at best just replicates 16-925 without any
9 additional disclosure and only will end up disclosing
10 intermediaries. The purpose of the VRKA, as stated in
11 the purpose and intent clause, is to have more
12 meaningful disclosure.

13 Okay. So I just want to get through these
14 last two real quick. You can't approve the advisory
15 opinion close to an election. You know, this one I
16 simply would say that if that's the case, then we need
17 to get rid of the emergency advisory opinion rule
18 altogether because we could never approve an advisory
19 opinion within 20 days of an election. I don't think
20 that's true. I also don't think there's any risk of
21 voter confusion. I think the only risk I can think of,
22 which is not a risk under an advisory opinion at all,
23 is somebody who made expenditures based on the
24 assumption they had about the ambiguity here and
25 printed a bunch of signs and they're worried about

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1 somebody coming back at them on the signs. But that's
2 a totally different process and there's nothing about
3 this safe harbor request that has anything to do with
4 anybody -- anybody else's risk. This is only creating
5 a safe harbor. It's not identifying an enforcement
6 procedure. And it's got, at best, an attenuated, I
7 would say nonexistent, relationship to voter confusion.
8 Those are the kinds of things that courts looked at
9 when they said you can't do something close to an
10 election.

11 But like I said, there's no end point for
12 that, and so, you know, the real bottom line is that if
13 we can't approve an advisory opinion this close to an
14 election, then we can't have a rule that allows for a
15 short-term turnaround on these advisory opinions at
16 all. And in fact, we'd have to have a deadline in the
17 rules, that doesn't currently exist, that says after
18 some date no advisory opinions will be issued. That's
19 not the policy currently. I don't think that we need
20 to overrule our rules here, but this -- this particular
21 suggestion would require the Commission to essentially
22 reject its own rules.

23 Then I want to -- oh, if I could do -- go
24 back one more. Just I want to talk about the House
25 Victory letter real quickly. I think that's very

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1 helpful to understanding some of the differences
2 between what PACs, who are used to operating in the
3 federal system, are used to in terms of how they
4 earmark and distribute their money; however, I think
5 that the better way to address that wouldn't be through
6 this, but might be to -- you know, looking at
7 recommending a legislative change, if the Legislature
8 was interested in hearing from us on that -- I suspect
9 they're not, but at a minimum, that's certainly on the
10 table -- and then less likely, making additional
11 substantive rules in this area.

12 The reason -- the reason I say less likely to
13 make additional substantive rules is, in our rulemaking
14 throughout this last year and a half we have tried to
15 make our rules largely procedural, you know. And you
16 can't avoid, I think, to some extent, having some
17 substantive aspect to an administrative rule. And
18 whether or not a rule is substantive or procedural is
19 something that all of the lawyers here spent at least
20 one semester trying to figure out, and they all got
21 better grades than I did. So, you know, but the bottom
22 line is that it's still been our effort here in
23 implementing this to not make a lot of policy
24 pronouncements in our rules.

25 The fact is, though, that one of the tensions

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1 here that -- with the real world that the House Victory
2 letter identifies is, look, you know, we may have a
3 person who -- who, you know, essentially put dollars
4 into the stream of money, stream of commerce, as it
5 were, and don't realize that that money could end up
6 being disclosed on a sign in Arizona. I mean, the
7 reality is that that's something that, at least since
8 2022 when this passed, was a risk, I think. And so I
9 think that, you know, that is something -- but that's
10 something that a fundraiser, the person responsible for
11 donor relations at these organizations, can work with
12 to ensure that folks have that knowledge. In other
13 words, you don't necessarily need the government to
14 tell you to tell your customers what their risks are.

15 You know, and so I think that's a balance
16 that's -- that folks should be able to strike
17 themselves. But, that said, you know, as staff, from
18 staff's perspective, we are certainly open to an
19 effective and sound approach to addressing that issue
20 if -- if that were something that was possible.

21 So that's kind of -- I think that's it. And
22 then I brought it back to this is just a review of what
23 the purpose and intent of the clause were.

24 So, you know, my -- so my bottom line here
25 is, you know, look, I am fairly confident that the

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1 construction and reading that we put forward in the
2 proposed AO is solid. And I think it's solid because
3 we look to the traditional rules of construction for
4 phrases like direct or indirect that Arizona courts and
5 the Arizona Legislature tell us to. And that is, you
6 know, to use a jargoning term, that's textualism. And
7 that is something that -- and I think that what we --
8 what we proposed there is -- so I think what we
9 proposed there is correct.

10 Now, that said, I certainly recognize that,
11 you know, we -- getting the response we got from the
12 two letters that we got late yesterday -- you know,
13 granted, it might have been more helpful if folks
14 weighed in when the -- when the -- when the -- when the
15 actual requests were circulated. You know, we kind
16 of -- I'm not sure we want to encourage, in the future,
17 sort of waiting to see what the staff says and then --
18 and then attacking that. That -- we may have to look
19 at whether or not that's going to be an effective way
20 to do decision making here. There was nothing that
21 would have prevented either of the people who filed
22 their letters yesterday from filing letters within the
23 time frame that was allocated for them to do so. So,
24 you know, but I think that we -- I'll just be candid.
25 I think we got it right.

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1 Now, that said, I recognize the concerns in
2 the regulated community. If anyone has listened to
3 these meetings over the course of the past 18 months
4 about this, if there's one refrain we have it has been
5 we are sensitive to the needs of the regulated
6 community and we are concerned about making sure that
7 folks understand that, from a staff perspective, our
8 approach to this is to be focused on compliance and not
9 enforcement. Now, there may be enforcements. That
10 doesn't mean there's no enforcements. It simply means
11 that we want to have an open door to the regulated
12 community as much as possible.

13 The regulated community -- some members of
14 the regulated community have taken advantage of that
15 door more than others. We're having -- but I will
16 just -- to go back to the earlier part of the meeting,
17 part of the reason we were able to improve the -- the
18 Secretary's Office was able to improve what they're
19 doing on the -- on the -- on the VRKA forms was through
20 being responsive to the regulated community and making
21 sure folks know that they have a place where they can
22 be heard by the Secretary's Office or by our office,
23 so --

24 But in keeping with all that, that said, I
25 can understand why you have concerns over -- over

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1 comments that we've received, and so that's why, you
2 know, staff is perfectly content if you also -- if you
3 were to say, we don't feel -- you know, we don't -- we
4 don't have an ax to grind -- or, a dog in the fight of
5 whether or not we think that you need to do this today.
6 We do not. We simply think -- but we do think that
7 we've done an effective job of assessing this law in
8 view of all of the rules that go into addressing this
9 kind of issue.

10 So that's sort of my presentation. I'm happy
11 to take questions. And obviously, I know there are
12 other folks who want to speak.

13 CHAIRMAN KIMBLE: Thank you.

14 I know we have a couple of people who want to
15 speak. Are there any Members of the Commission who at
16 this point want to ask Tom any questions?

17 (No response.)

18 CHAIRMAN KIMBLE: Hearing none, Ms. Olson,
19 did you wish to speak?

20 Ms. Olson, could you start off by stating
21 your name and your firm for the record?

22 MS. OLSON: Absolutely. Chair,
23 Commissioners, thank you for having me today. I very
24 much appreciate the opportunity to address you. My
25 name is Tracy Olson, I'm an attorney at Snell & Wilmer,

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1 and I'm here today on behalf of Arizona Senate Victory
2 Fund.

3 For all the reasons we've stated in our
4 letter and those other letters that were submitted to
5 you, we oppose the interpretation that was put forth in
6 the draft advisory opinion. I won't restate all of
7 those points now, but I do want to take this time to
8 rebut a few of the points in the presentation just to
9 ensure that our interpretation is clear to you, because
10 I think there are a few points that we disagree with.

11 I think I'll start first with the slide that
12 was titled alleged ambiguity and kind of the difference
13 between the interpretations that was proposed in the
14 draft advisory opinion versus the interpretation that
15 was proposed in our letter and also many of the letters
16 that you received prior to ours.

17 I don't think it's fair to characterize our
18 position as coming down to just or; we are also looking
19 at the full text of the statute, and really our
20 interpretation traces the order of the statute and
21 looks at exactly what directly and indirectly are
22 modifying.

23 CHAIRMAN KIMBLE: Ms. Olson, if I could ask
24 you to pause just for a second.
25 Is it possible to get the slide that

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1 Ms. Olson is referring to on the screen?

2 MS. JARRELL: Could you repeat it one more
3 time?

4 MS. OLSON: It's the one titled alleged
5 ambiguity.

6 MR. COLLINS: It should be 6.

7 CHAIRMAN KIMBLE: Is this the one you were
8 talking -- okay.

9 MS. OLSON: Yes. Thank you, Chair.

10 So here -- it's not our view that direct and
11 indirect is really modifying donors; it's directly or
12 indirectly making contributions of original monies to
13 the covered person. And so maybe an example will
14 illustrate our position. A direct contribution of
15 original monies would be the monies or a contribution
16 an individual or an entity might make, because
17 individuals have personal monies and entities have
18 business income, so they're making direct contributions
19 of original monies.

20 What the advisory opinion classifies as maybe
21 an intermediary, but in our normal kind of procedure is
22 typically a PAC or a (c)(4) or a (c)(6) or a similar
23 organization, those are the organizations that are
24 making indirect contributions of original monies. And
25 if you see that, that's how the statute is phrased.

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1 It's directly making contributions of original monies,
2 individual and entities, or indirectly making
3 contributions of original money, meaning I'm making an
4 indirect contribution of original money as a PAC. So
5 that's our interpretation, and we think that's -- that
6 closer hues to the text of the statute here, especially
7 because I think the advisory opinion interpretation
8 really focus on the idea of an original source, and the
9 idea of a source, or that term, it's not defined in the
10 Act and it's also not in the statute.

11 So from this textual interpretation we would
12 then work backwards on some of the objections that were
13 addressed by the Director. The first and perhaps most
14 important is the timing of this advisory opinion. We
15 appreciate that the rules put a 20-day timeline on you,
16 but approving an advisory opinion like this one that
17 carries so much, you know, discourse and disagreement,
18 it really shouldn't be approved this close to an
19 election, because prior to Tuesday all -- most, if not
20 all, covered persons had interpreted the top three
21 donor to include, perhaps the way the Director put it,
22 direct or indirect donors, meaning both intermediaries,
23 as termed in the advisory opinion, and it included
24 those original source donors.

25 So everybody, to our knowledge, has been

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1 operating on this understanding, and, you know, monies
2 have been spent, signs have been printed. We didn't
3 feel a need to weigh in before then because that was
4 the status quo.
5 So we also think it's not accurate to say
6 that the advisory opinion is just a safe harbor.
7 While, yes, it does provide a safe harbor opportunity,
8 if it allows you to follow it to avoid enforcement
9 action, the natural result of that is that it means not
10 following the advisory opinion could result in an
11 enforcement action. And so it's kind of the
12 Commission's statement on what the law means, and
13 changing kind of people's understanding about what the
14 law means in the middle of an election cycle, five days
15 before a primary election, I think is a really
16 dangerous precedent to start.
17 Next --
18 COMMISSIONER CHAN: Mr. Chairman and
19 Ms. Olson, I'm sorry to interrupt, but I have a
20 question.
21 CHAIRMAN KIMBLE: Okay. Commissioner Chan.
22 COMMISSIONER CHAN: And it's going back to
23 this very, you know, bland, dry idea of the slide that
24 was actually up. Can you go back to that, and maybe
25 really you haven't left it, but I'm trying to

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1 understand the distinction between what the draft
2 advisory opinion says and what you're trying to convey
3 to us. Can you help me with that?
4 And I'm looking at your letter, and it may be
5 that I do need more time, I don't know what the rest of
6 the Commissioners think, but I just want to make sure I
7 understand the distinction between what you're seeing
8 in the advisory opinion and this emphasis on or versus,
9 you know, original monies. And original monies, I
10 think you already referenced, is a defined term that
11 means business income or an individual's personal
12 monies. So if you -- if you can help me with that, and
13 it may mean retreading what you've already gone over,
14 and I apologize for that.
15 MS. OLSON: Sure, Commissioner Chan.
16 Absolutely. I'm happy to kind of discuss the
17 differences between the two.
18 So I think in the statements that were made
19 here today or perhaps a prior understanding of our
20 position was that direct or indirect means did I
21 directly donate to the covered person or did I
22 indirectly donate to the covered person by virtue of my
23 original monies being passed through. However, the way
24 that the text of the statute is phrased here, it's
25 directly making contributions of original monies to the

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1 covered person.
2 And so the way we view this is a direct
3 contribution of original monies to a covered person,
4 i.e., a donor who directly makes the three largest
5 contributions of original monies to a covered person,
6 means that the holder of the original monies has made
7 that contribution to the covered person directly, so
8 there's a direct link between the original monies and
9 the covered person, one stop.
10 Then indirect contributions of original
11 monies, under the statute, would mean that the original
12 monies have made more than one stop, the original
13 monies have indirectly made their way to the covered
14 person. Now, the holder of the original monies isn't
15 the donor to the covered person. The donor of the
16 original monies, in that sense, is the -- what the
17 advisory opinion classifies intermediaries, but the
18 PAC.
19 So an example might help here. You have
20 Donor A, Individual A, contributes to PAC B. And PAC B
21 contributes to PAC C. And PAC C is the covered person.
22 PAC B is not a covered person. And part of PAC B's
23 contribution to PAC C contains the original monies
24 received from Person A. The original monies that were
25 contributed to PAC C were contributed indirectly. And

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1 so that's kind of the difference between our
2 interpretation here and the idea that it means direct
3 or indirect donors. I think it comes to the same
4 result, but I think that the reading that I'm trying to
5 articulate here is more closely matched with the text
6 of the statute.
7 COMMISSIONER CHAN: Okay. Thank you. I -- I
8 do think I'm missing something. I'm just going to keep
9 listening. Because when you're explaining -- I think
10 I'm missing something. Because when I hear what you're
11 saying, I feel like that is what the advisory -- draft
12 advisory opinion is saying, and that's where I'm
13 missing something.
14 MS. OLSON: Sure.
15 COMMISSIONER CHAN: I know I must be missing
16 something.
17 MS. OLSON: Chair, Commissioner Chan, and
18 maybe I could clarify that point. I think the
19 difference between the two is that the advisory opinion
20 is saying only original sources can be one of the three
21 largest contributions; what we're saying is the top
22 three donors isn't exclusive to original sources. So
23 you can be a top three donor if you've directly made a
24 contribution of original monies, or you can be a top
25 three donor if you've indirectly made a contribution.

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1 And that doesn't mean that the person who holds the
2 original monies has indirectly contributed, it means
3 the person who -- or, the person who originated those
4 original monies is the indirect donor, it means that
5 the person who takes control of those original monies,
6 the PAC, if you will, they are indirectly contributing
7 those original monies.

8 I think that the advisory opinion by GPL puts
9 this really well in the sense that it says original
10 monies don't lose their identity as they're passed from
11 person to person. So if -- if this were to say, you
12 know, the top three sources of original monies
13 contributed directly or indirectly, that might get you
14 to the answer the advisory opinion is getting to. But
15 it doesn't say top three sources. It asks who donated
16 to the covered person and was that donation a direct
17 contribution of original money or an indirect
18 contribution of original money.

19 COMMISSIONER CHAN: Okay. Thank you.
20 CHAIRMAN KIMBLE: Thank you,
21 Commissioner Chan.
22 MS. OLSON: Chair, if I may.
23 CHAIRMAN KIMBLE: Yes, you may --
24 MS. OLSON: Thank you.
25 CHAIRMAN KIMBLE: -- Ms. Olson.

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1 MS. OLSON: A few other points that we wanted
2 to clarify. We think it's incorrect to say that
3 nothing is stopping a covered person from notifying the
4 subdonors, and that's because contact information, and
5 especially the type of contact information that would
6 be necessary to immediately contact a subdonor, is not
7 part of the transfer records that are given. You know,
8 transfer records are going to say name, where you work,
9 maybe an address, but it's not going to give you a
10 phone number, an e-mail address to where you could
11 reach out to these people.

12 Again, we're five days from the election. If
13 you do adopt the advisory opinion today, PACs who have
14 already, you know, printed their documents or maybe are
15 printing things later today or tomorrow, they might
16 have to -- I mean, we don't have contact information
17 for these subdonors that are now going to be listed on
18 potentially a television ad.

19 And I think we can all agree that there's a
20 big difference between your name on the reports that
21 are given to the Secretary of State's Office as it is
22 required to list both, you know, original sources all
23 the way to passthroughs and your name on a television
24 ad. And maybe another example might illustrate this
25 and the fact that we believe that this advisory

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1 opinion, if adopted, will have serious First Amendment
2 implications.

3 So consider a donor contributes a hundred
4 thousand dollars to PAC A. And then PAC B -- PAC A
5 contributes that to PAC B, and potentially it gets
6 passed another time. Now, these transfers aren't made
7 for the purpose of concealing, but that's how it goes,
8 PACs contribute to other PACs. And eventually that
9 money ends up into a covered person's information, and
10 that person's information has been communicated to a
11 covered person as a part of those transfer records that
12 the law requires.

13 Now that donor, let's say, has been made on
14 the top three, and tomorrow he's sitting on his couch
15 and watches TV and it says his name as a top three to a
16 PAC he's never heard of to a cause he doesn't support.
17 And now this interpretation is going to force
18 association between that donor and the PAC and that
19 message, even though the donor had no idea it was
20 happening because that wasn't -- that wasn't the intent
21 of the contribution. We think that's going to end up
22 chilling speech. And we also think that listing a
23 donor who has no idea that the PAC even exists or maybe
24 doesn't support the message of the ad is far more
25 misleading than potentially double counting, as the

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1 Director put it.

2 I'd also like to maybe consider an
3 alternative fact pattern that might illustrate that
4 there still will be original sources that are disclosed
5 on the top three donor rule. And if it's helpful,
6 perhaps switching to the slide that lists the example
7 with the three donors. And I'll -- I'll suggest two
8 fact changes to this example to illustrate my point.

9 COMMISSIONER PATON: I have a question.
10 CHAIRMAN KIMBLE: Commissioner Paton.
11 COMMISSIONER PATON: So the original donor
12 gives money to a PAC, and they're taking that money
13 from PAC 1 and transferring it to PAC 2 or 3, and it's
14 not what the donor believes in necessarily. I don't
15 understand that. Why are they -- why are they not
16 explaining to the donor what's -- you know, that it may
17 go to somewhere you don't want? To me that's -- you
18 know, I don't understand that.

19 MS. OLSON: Chair, Commissioner, thank you
20 for your question.
21 COMMISSIONER PATON: Sure.
22 MS. OLSON: I think perhaps the Chair's
23 question at the beginning of today's session might
24 illustrate that. For example, he asked about a PAC
25 that had listed a 2.2 million contribution from another

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1 PAC, but I believe that PAC was actually formed for a
2 different election cycle. So they raised some money,
3 let's say they have some leftover money, and now
4 they're looking to distribute it, but let's say
5 two ballot initiatives might not draw the same exact
6 sphere of people. So let's say I feel very
7 passionately about Ballot Initiative A, and Ballot
8 Initiative A rises and falls or whatever outcome in the
9 2024 election, and then this PAC has money left over.
10 Fast forward to the 2026 election. This PAC
11 is looking for something to contribute its money to.
12 This ballot initiative is as close as you can get maybe
13 to this PAC, but it could be polarizing and not have
14 exactly the same sphere. So let's say you're a big
15 donor to PAC A, but you have objections to what PAC B
16 is doing, but you had previously contributed to PAC A.
17 Well, if they give all their leftover money, and the
18 traceable monies in that batch of monies happens to
19 trace back to you, now you are Donor Number 1 on ads
20 for PAC B on this potentially polarizing issue. And so
21 that's how monies can be transferred without maybe a
22 donor's knowledge or intent.
23 And the House Victory Fund also kind of gives
24 an example of this. What if they're an out-of-state
25 donor, they've never even heard of Prop 211, they don't

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1 know what's going on here, and they contributed to
2 potentially a federal PAC and that PAC gives, you know,
3 money to the state PAC and -- what happens then?
4 COMMISSIONER PATON: Okay.
5 CHAIRMAN KIMBLE: Thank you. You can
6 continue.
7 MS. OLSON: Thank you, Chair.
8 So, actually, if you advance it a couple
9 slides. This is the examples where it lists different
10 contribution amounts.
11 MR. COLLINS: Yeah, maybe 10. I think it's
12 10, actually. I'm sorry.
13 MS. OLSON: This is perfect.
14 CHAIRMAN KIMBLE: Back one.
15 MR. COLLINS: Back one.
16 MS. OLSON: Okay. So I propose changing two
17 facts of this to illustrate a different approach. So
18 instead of Dave Corporation, imagine that says Charley
19 Corporation. So Charley Corporation has contributed
20 both to GREAT and to BEST. Then consider Archie Real
21 Person gives another 5 million contribution directly to
22 the covered person.
23 Under those circumstances, here would be your
24 top three donors under our interpretation. It would be
25 Archie Real Person, with an aggregate contribution of

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1 \$10 million, both because Archie contributed directly
2 to the covered person and because GOOD PAC contributed
3 indirectly to the covered person. Then GOOD PAC, as an
4 indirect contributor -- or, a contributor of indirect
5 original monies, would be the second one, with another
6 \$10,000. And then finally, Charley Corporation would
7 be the third entity listed, with a total aggregate
8 contribution of 11.9 -- or, \$10.9 million. So under
9 those circumstances our interpretation would still
10 yield individual or corporate donors if they are in the
11 top three donor, but it would give meaning to every
12 word in the statutory provision.
13 And so unless there are any other questions,
14 I just would urge the Commission, this is far too
15 important of an issue to rush into. We urge the
16 Commission to consider the emergent timing, we're five
17 days before an election, the unintended First Amendment
18 consequences, and that we really should be paying
19 attention to the plain language without superimposing
20 potentially the intent of the Act.
21 And the intent of the entire Act is still
22 being met. All of the contributions are still being
23 put on the reports being sent to the Secretary of
24 State, so those purposes are still being met when you
25 look at the totality of the Act's provisions. And with

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1 that, we would ask you to decline issuing the advisory
2 opinion today.
3 CHAIRMAN KIMBLE: Thank you, Ms. Olson.
4 Any further questions from Members of the
5 Commission?
6 Commissioner Werther.
7 COMMISSIONER WERTHER: Thank you, Ms. Olson.
8 So, actually, just looking at this slide here -- and I
9 appreciate your sort of -- your other option as you
10 explained it. But looking at this one here, I mean, do
11 you agree that then that's what would actually be
12 listed, or essentially just the PACs and the 501(c)(4)s
13 and we'd never get to, I guess, sort of the -- the real
14 people listed on the slide?
15 MS. OLSON: Yes, Chair, Commissioner, thank
16 you for your question. I do agree that this would
17 accurately reflect perhaps the -- the overall framing
18 of the top three rule under -- under our
19 interpretation, but what I would take issue with on
20 this slide is that it says no original sources
21 identified.
22 The top three rule doesn't require you to
23 identify original sources, so I'd just emphasize that.
24 VRKA, as an Act, requires you to identify original
25 sources, and every single one of those original sources

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1 will be in the reports submitted to the Secretary of
2 State's Office.
3 COMMISSIONER WERTHER: And then my other
4 question is, I guess, how like is your interpretation
5 then different than 16-925, which is essentially let's
6 just take the top? Like how does it -- you know what I
7 mean? How is this Act then distinguished from it?
8 MS. OLSON: Chair, Commissioner, thank you
9 for your question. It's different in a couple
10 different ways. The Act specifies that nobody would be
11 disclosed on any of the disclosure obligations if the
12 donor hasn't contributed more than \$5,000. And so in
13 this sense let's say GOOD PAC contributed 5,001, GREAT
14 is 5,001, and BEST is 5,001, or even if they were all
15 19,999, you know. Under the current disclosure
16 obligations of 16-925, no one would be a top donor
17 because none of them would go above that threshold.
18 And here it's anybody above 5,000, so -- and again,
19 this particular circumstance, yes, you're not going to
20 get an individual or an entity in your top three, but I
21 don't think that this should be taken as the general
22 rule. Every political action committee or (c)(4),
23 (c)(6) is going to be different in a naturalized
24 approach, and that could change from day to day, and so
25 those -- those are being updated.

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1 COMMISSIONER WERTHER: Okay. And then I just
2 have one last question. So I know like you've asked, I
3 guess, that we obviously not adopt the advisory opinion
4 today. Is that just because of -- I mean, I know you
5 have a different interpretation. We, you know, could
6 look back at this again. But is it just because of the
7 timing right now? So if like later we had another
8 meeting, another discussion about it, I mean, is
9 that -- is it just about the timing, or is it just, no,
10 we just completely disagree with this interpretation
11 and don't want you to adopt it?
12 MS. OLSON: Chair, Commissioner, thank you.
13 We do object to the reasoning inside the advisory
14 opinion, so we would urge that you -- you reconsider
15 it. And again, these are nuanced issues, I know we've
16 thrown a lot at you, and really kind of nuanced
17 arguments, and I just think that underscores that this
18 kind of consideration takes time. Again, appreciate
19 the 20 days.
20 However, I think if you are inclined to adopt
21 the interpretation that is in the advisory opinion, I'd
22 urge you to wait to adopt that until after the
23 elections are over, just given the fact that things
24 are -- if you're familiar at all with how political
25 committees go, things are changing on an hourly basis.

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1 You know, today is three days too late, and it would
2 just be very difficult for the vast regulatory
3 community to react to it.
4 COMMISSIONER WERTHER: Thank you.
5 CHAIRMAN KIMBLE: Thank you, Ms. Olson.
6 MS. OLSON: Thank you.
7 CHAIRMAN KIMBLE: Tom, before I ask you to
8 respond, should we hear from --
9 MR. COLLINS: Yeah.
10 CHAIRMAN KIMBLE: -- the other gentleman?
11 MR. COLLINS: I don't know if John has
12 anything he wants to add.
13 CHAIRMAN KIMBLE: Is there someone else who
14 would like to address this issue on Zoom?
15 MR. COLLINS: John, are you still there?
16 MR. BERKON: I'm here. Can you guys hear me?
17 CHAIRMAN KIMBLE: Yes, we can.
18 MR. BERKON: Excellent. Thank you so much.
19 And that was -- that was a really just
20 interesting back and forth and great presentation. I
21 think our --
22 CHAIRMAN KIMBLE: Excuse me. Could you
23 identify yourself?
24 MR. BERKON: Oh, I'm so sorry. My name is
25 Jonathan Berkon, and I'm here for Forward Majority

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1 Action, who is a -- one of the two -- or, the requestor
2 of one of the two advisory opinion requests that led to
3 the draft today.
4 CHAIRMAN KIMBLE: Okay. Thank you. Proceed,
5 John.
6 MR. BERKON: Excellent. Thank you.
7 I think our preeminent objective is to get
8 clarity on what the rule is, so we are -- that's
9 obviously the reason we sought the opinion, and so we
10 are urging the Commission to issue an opinion. I think
11 if the Commission wanted to essentially stay the
12 effectiveness of that opinion until July 31st so that
13 everyone has an opportunity to, you know, get ready for
14 the general election and not do anything five days
15 before the election, I don't think we would have an
16 objection to that, but I think we need clarity, right.
17 I think this discussion illustrates that we
18 need clarity, because the worst possible outcome is
19 different members of the regulated community, who are
20 oftentimes competing against one other in elections,
21 operating on different -- under a different set of
22 rules. That, I think, is what will lead to a loss of
23 confidence in the regulatory scheme and will lead to
24 the most kind of uncertainty around -- around how the
25 regulated community needs to act.

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1 So I think the option of essentially kind of
2 not issuing an opinion is the worst possible outcome
3 here, because it essentially leaves the regulated
4 community with no direction on how it can comport
5 itself to avoid an enforcement action. Because this is
6 not one of those where any member of the regulated
7 community can simply comply by doing something, quote,
8 unquote, like less aggressive, right. You know, there
9 are certain things, I think -- you know, we ask if
10 something is -- something is permissible. And if the
11 Commission says, sorry, we can't come to an opinion,
12 there's some things we're like, okay, we won't do it,
13 and therefore we avoid any enforcement action.

14 Here we actually just need a methodology to
15 get to the top three. We are required to put a top
16 three in the disclaimer. And depending on what the
17 Commission says today or if it stays the opinion until
18 7-31, that's the -- that's the answer, right. Like we
19 are going to -- if we adopt the methodology that's laid
20 out in the current draft that Mr. Collins laid out,
21 that's one way. If we use the methodology that was,
22 you know, laid out in the House or Senate Victory Fund,
23 that's a different way. And both parties can't be
24 correct, right. Like there's a correct answer based on
25 how the Commission answers this question.

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1 And we're going to find ourselves in a
2 situation in which different people are doing different
3 things, and any member, then, of the regulated --
4 anyone in the public can file a complaint, and
5 definitionally someone will have broken the law. And
6 that's just a really bad -- and then, obviously, they
7 can go to court and enforce that under the VRKA.

8 So I don't think we can be in a situation in
9 which the Commission doesn't answer the question. Like
10 there is a -- there is an answer, it's going to lead
11 that everyone can do it the exact same way, whatever
12 the answer is, and follow that methodology. Otherwise,
13 we're going to be in a spot where people are taking
14 different interpretations, and definitionally one will
15 be right, one will be wrong, one will be subject to an
16 enforcement action, one won't be, and we won't know
17 that ahead of time. And I think that's obviously the
18 purpose of the advisory opinion process is to get
19 clarity on that ahead of time.

20 CHAIRMAN KIMBLE: Thank you, Mr. Berkon.
21 Are there any questions from Members of the
22 Commission?
23 (No response.)
24 CHAIRMAN KIMBLE: Okay. Tom, do you want
25 to --

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1 MR. COLLINS: Yeah. If I may, Mr. Chairman,
2 I just have a few quick things.

3 First, on this direct versus indirect
4 construction that Ms. Olson proposes, I think that is
5 just flat wrong on the interpretation of the word
6 indirect. The word indirect means not direct, such as
7 deviating from a direct line or course. That's a
8 dictionary definition. A PAC writing a check to the
9 covered person is not indirect. It is the definition
10 of direct. And to apply the word indirect in that way
11 would be applying an upside down definition of the word
12 indirect to the statute and is not possibly legally
13 sustainable under any school of text. I just think
14 that is dictionary wrong.

15 The conflation with enforcement that's
16 happening I think is problematic. We have a role in
17 enforcement. I've articulated in these meetings over
18 the course of 18 months how, for anybody who wants to
19 understand it, how we intend to approach those things.
20 So I would say that the only thing a stay would do here
21 would be to prevent the safe harbor from being created.
22 People -- this is not a -- this is not a -- this is not
23 a -- you know, if someone filed an enforcement action,
24 that is a different analysis in terms of all the steps
25 that go through it. The enforcing officer has to make

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1 determinations along those lines. They go under
2 different rules. You get different briefing, you get
3 different attorneys, all those things happen.

4 So it's critical that everyone understand
5 that that conflation is not valid under the -- under
6 the statute and is trying to draw us into a
7 constitutional problem of our own. So I am charged
8 with doing the enforcement, that is a separate thing
9 that I do, and that is important that everyone
10 recognize that is a separate thing that I do. And you
11 have a separate role under that as well.

12 The First Amendment implications, you know, I
13 would just say that even if signs are different than
14 the reports, the disclosure is disclosure for
15 First Amendment purposes. And indeed we have -- that
16 argument, the courts thus far in the litigation around
17 Prop 211 have rejected that exact argument.

18 Finally, two other quick things. Nowhere
19 does the arguments being made here address the
20 structure of the Act other than to talk about this
21 mis- -- sort of misunderstand -- understood definition
22 -- use of the word indirect, to change the word
23 indirect to mean direct. There's no discussion really
24 of the structure of the Act, what the Act is getting
25 at.

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1 And every single argument that we heard from
2 Ms. Olson, unfortunately, turned on why an original
3 source should be concealed: They're entitled to be
4 concealed because they don't know; they're entitled to
5 be concealed because they don't keep track of their own
6 business affairs; they're entitled to be concealed
7 because the fundraiser can't find their phone number.
8 Those are not -- those are policy arguments that have
9 nothing to do with the VRKA, and all are directly
10 contrary to both the language of the text and obviously
11 the purpose and intent.
12 So I feel more confident of our analysis in
13 the AO having had the chance to digest a little more of
14 -- of the Victory Fund's arguments. I think they
15 create language issues that we will not be able to get
16 out from under. Once we start saying that a person who
17 -- an entity that writes a check to a covered person is
18 making an indirect contribution --
19 When I write a check at Fry's, which I may
20 have done recently, you know, I'm older than you all --
21 well, not all of you, some of you -- you know, when I
22 write a check at Fry's, I am directly paying Fry's,
23 even if that money came from, you know -- from, you
24 know, my parents or something like that, I mean,
25 whatever it is. You know what I mean? The word

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1 indirect cannot possibly mean that if I write a check
2 to someone, that's indirect. That's just not possible.
3 So all that having been said, Commissioners,
4 I -- my encouragement at this point would be that you
5 approve the AO, you know, because I do think we've got
6 it right. I think that if we go the alternative way,
7 we are running right into lawsuits that we've already
8 won. And some of these arguments are simply better
9 made at the Legislature or in those lawsuits, perhaps,
10 but this is consistent with our position across all of
11 the -- all of the litigation that we're involved in and
12 does the best to actually implement the statute and
13 does the best job, of the alternatives in front of you,
14 of actually dealing with the terms in their ordinary
15 meaning.
16 CHAIRMAN KIMBLE: Tom, can I ask you to
17 respond to the suggestion that if we approve this
18 advisory opinion we make it effective the day after the
19 primary election?
20 MR. COLLINS: Mr. Chairman, I am -- I have a
21 problem with that in this sense. All that would do
22 would be preventing the safe harbor. That is
23 conflating the enforcement process with this process.
24 This process says, if you do this, you won't have an
25 enforcement issue. Why would we withhold someone not

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1 having an enforcement issue? That seems like an odd
2 way to do a stay.
3 The different question, which is the question
4 that would be in front of me in my enforcement
5 capacity, would be should you do an enforcement against
6 somebody who, under these circumstances, their signs
7 identify the wrong people prior to, you know -- that's
8 a different question. And that's a question -- again,
9 I would point to the record we've made over the past 18
10 months about how we're going to approach compliance
11 versus enforcement issues, right.
12 So, you know, I would say that staying this
13 would have the -- I take, you know, Mr. Berkon's point,
14 and I think it's a -- I think it's made in good faith.
15 I just think that I want to avoid, as much as possible,
16 conflating the safe harbor issue with my decisions on
17 what I think enforcement should be pursued on and then
18 your separate role on determining how to deal with
19 those in a -- in a -- in a set of circumstances where
20 that's -- where that's set up. And I think those are
21 separate things. So while -- and I think --
22 And, again, the reason I'm pointing at all my
23 prior statements about our approach to enforcement is
24 because anyone who looks at that should be reassured
25 that our approach to enforcement in this context,

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1 especially in this election cycle, has been stated
2 publicly from the Executive Director's Office now
3 repeatedly for the last 18 months. And so I would
4 suggest that no one should be concerned that the -- any
5 person in the enforcement side of the house is
6 interested in unnecessarily indulging in unnecessary
7 enforcements and -- rather than working with people on
8 compliance.
9 In fact, I just spent the beginning of this
10 meeting talking about how we want to work with
11 compliance on the forms. I think that those things
12 should be taken at face value, because I have earned
13 that, quite honestly, from the regulated community.
14 And if you don't have it at face value, then people
15 need to bring up -- tell me why. But the bottom line
16 is that --
17 The other thing we run into is, we need to
18 keep that process separate, because to do otherwise is
19 attempting to lead us into a universe in which we will
20 have litigation around what is enforcement and what is
21 advisory opinion and what did you say then and what did
22 you do now. And I think all of those are extremely
23 complicated administrative law questions that I would
24 prefer not to get into. So I'm really kind of opposed
25 to the -- I recognize what Mr. Berkon is saying and I

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1 appreciate it, but I just -- I am personally -- I think
2 that a stay is unnecessary here and will cause more
3 problems than just letting the enforcement process play
4 out however -- however it would, recognizing everything
5 that I have put on the record in these meetings for the
6 past 18 months.
7 CHAIRMAN KIMBLE: Okay. Thank you.
8 Have we heard from every member of the public
9 who wishes to speak on this issue? Is there anyone
10 else in the Zoom universe?
11 (No response.)
12 CHAIRMAN KIMBLE: Thank you.
13 Okay. Any other comments, questions from
14 Commissioners?
15 COMMISSIONER CHAN: Mr. Chairman.
16 CHAIRMAN KIMBLE: Yeah.
17 COMMISSIONER TITLA: Chair.
18 CHAIRMAN KIMBLE: Commissioner Chan.
19 I'm sorry. Did someone else speak besides
20 Commissioner Chan?
21 COMMISSIONER CHAN: I think
22 Commissioner Titla as well.
23 CHAIRMAN KIMBLE: I'm sorry. Go ahead,
24 Commissioner Chan.
25 COMMISSIONER TITLA: Go ahead, Commissioner.

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1 CHAIRMAN KIMBLE: Commissioner Chan.
2 COMMISSIONER CHAN: Oh, thank you,
3 Mr. Chairman and Commissioner Titla.
4 I just wanted to state, you know, to you all
5 Commissioners that I do agree with the reasoning in the
6 draft advisory opinion and I -- as I was listening to
7 Ms. Olson, I think I understand where she's coming
8 from, but I don't agree, I think, with that legal
9 reasoning, and I -- so I just wanted to put that out
10 there. You know, it is a lot to take in, especially
11 overnight, but I think the conversation has been good
12 and helped shed some light on the questions we've all
13 had. And so I'm ready to vote when you all are.
14 CHAIRMAN KIMBLE: Okay. Thank you,
15 Commissioner Chan.
16 Commissioner Titla.
17 COMMISSIONER TITLA: Yes, Chairman. I'd like
18 to make a motion to approve the advisory opinion as put
19 forth by the Executive Director.
20 CHAIRMAN KIMBLE: Okay. You broke up a
21 little bit. I just want to make sure I understand.
22 You're making a motion to approve the advisory opinion
23 as submitted by the Director, is that correct?
24 COMMISSIONER TITLA: Yes, sir.
25 CHAIRMAN KIMBLE: Thank you,

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1 Commissioner Titla.
2 Is there a second to Commissioner Titla's
3 motion?
4 COMMISSIONER WERTHER: I'll second.
5 CHAIRMAN KIMBLE: Thank you. The motion is
6 seconded by Commissioner Werther.
7 Any discussion among Commissioners?
8 (No response.)
9 CHAIRMAN KIMBLE: Okay. The motion is to
10 approve the Executive Director's advisory opinion as
11 submitted. I'll call the roll. Commissioner Chan.
12 COMMISSIONER CHAN: Aye.
13 CHAIRMAN KIMBLE: Commissioner Titla.
14 COMMISSIONER TITLA: Aye.
15 CHAIRMAN KIMBLE: Commissioner Paton.
16 COMMISSIONER PATON: Aye.
17 CHAIRMAN KIMBLE: Commissioner Werther.
18 COMMISSIONER WERTHER: Aye.
19 CHAIRMAN KIMBLE: Chair votes aye.
20 The advisory opinion is approved
21 5-to-nothing.
22 Thank you very much to everyone who came and
23 commented on this. We appreciate your time.
24 Item VI, discussion and possible action on
25 notice of claim by Bob Branch and The Power of Fives,

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1 LLC against Commissioners in Branch versus Collins,
2 CV2024-004136, Maricopa County. The Commission may
3 choose to go into executive session on this item for
4 discussion and consultation with its attorneys to
5 consider its position and instruct its attorneys
6 regarding its position regarding contracts, in pending
7 or contemplated litigation, or in settlement
8 discussions conducted in order to avoid or resolve
9 litigation.
10 Given that this item has to do with
11 litigation, I would entertain a motion to go into
12 executive session.
13 COMMISSIONER PATON: I would make that
14 motion.
15 CHAIRMAN KIMBLE: Is there a second to
16 Commissioner Paton's motion to go into executive
17 session?
18 COMMISSIONER WERTHER: I second.
19 CHAIRMAN KIMBLE: Second by
20 Commissioner Werther.
21 I will call the roll. Commissioner Chan.
22 COMMISSIONER CHAN: Aye.
23 CHAIRMAN KIMBLE: Commissioner Titla.
24 COMMISSIONER TITLA: Aye.
25 CHAIRMAN KIMBLE: Commissioner Paton.

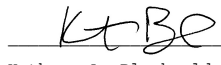
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1 COMMISSIONER PATON: Aye.
2 CHAIRMAN KIMBLE: Commissioner Werther.
3 COMMISSIONER WERTHER: Aye.
4 CHAIRMAN KIMBLE: Chair votes aye.
5 We're going to go into executive session. No
6 staff members will be joining the executive session.
7 We're going to take just a couple minutes to get this
8 set up now.
9 (The following section of the meeting is in
10 executive session and bound under separate cover.)
11 * * * * *
12 (End of executive session. Public meeting
13 resumes at 11:52 a.m.)
14 CHAIRMAN KIMBLE: Okay. We're back in
15 regular session with Item VII. This is the time for
16 consideration of comments and suggestions from the
17 public. Action taken as a result of public comment
18 will be limited to directing staff to study the matter
19 or rescheduling the matter for further consideration
20 and decision at a later date or responding to
21 criticism. Please limit your comment to no more than
22 two minutes.
23 Does anyone on Zoom wish to make a comment?
24 (No response.)
25 CHAIRMAN KIMBLE: Seeing no one, the public

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1 may also send comments to the Commission by e-mail at
2 ccec@azcleanelections.gov.
3 Item VIII, adjournment. At this time, I
4 would entertain a motion to adjourn.
5 COMMISSIONER PATON: I'll make a motion to
6 adjourn.
7 CHAIRMAN KIMBLE: Commissioner Paton has
8 motion -- made a motion adjourn. Is there a second?
9 COMMISSIONER WERTHER: I second.
10 CHAIRMAN KIMBLE: Second by
11 Commissioner Werther.
12 I will call the roll. Commissioner Chan.
13 COMMISSIONER CHAN: Aye.
14 CHAIRMAN KIMBLE: Commissioner Titla.
15 COMMISSIONER TITLA: Aye.
16 CHAIRMAN KIMBLE: Commissioner Paton.
17 COMMISSIONER PATON: Aye.
18 CHAIRMAN KIMBLE: Commissioner Werther.
19 COMMISSIONER WERTHER: Aye.
20 CHAIRMAN KIMBLE: Chair votes aye.
21 We are adjourned. Thank you.
22 (The proceedings concluded at 11:54 a.m.)
23
24
25

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1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)
3
4 BE IT KNOWN that the foregoing proceedings
5 were taken by me; that I was then and there a Certified
6 Reporter of the State of Arizona; that the proceedings
7 were taken down by me in shorthand and thereafter
8 transcribed into typewriting under my direction; that
9 the foregoing pages are a full, true, and accurate
10 transcript of all proceedings had and adduced upon the
11 taking of said proceedings, all to the best of my skill
12 and ability.
13
14 I FURTHER CERTIFY that I am in no way related
15 to nor employed by any of the parties hereto nor am I
16 in any way interested in the outcome hereof.
17
18 DATED at Tempe, Arizona, this 28th day of
19 July, 2024.
20
21
22 
23 Kathryn A. Blackwelder, RPR
Certified Reporter #50666
24
25

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