

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

March 26, 2015

9:30 a.m.

Reported By:

Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 9:30 a.m. on March 26,
 3 2015, at the State of Arizona, Clean Elections Commission,
 4 1616 W. Adams, Conference Room, Phoenix, Arizona, in the
 5 presence of the following Board members:
 6 Mr. Thomas J. Koester, Chairperson
 7 Mr. Timothy Reckart (Telephonic)
 8 Mr. Mitchell C. Laird
 9 Mr. Steve Titla
 10 Mr. Damien R. Meyer

9 OTHERS PRESENT:

10 Thomas M. Collins, Executive Director
 11 Paula Thomas, Executive Officer
 12 Sara Larsen, Financial Affairs Officer
 13 Mike Becker, Policy Director
 14 Alec Shaffer, Executive Support Specialist
 15 James P. Driscoll-MacEachron, Assistant Attorney
 16 General
 17 John Lopez, Solicitor General
 18 Christopher Munns, Assistant Attorney General
 19 Mary O'Grady, Osborn Maledon
 20 Nancy Read, Office of the Secretary of State
 21 Brent Steffens, R&R Partners
 22 Joe Kanefield, Ballard Spahr, LLP
 23 Jason Torchinsky, Legacy Foundation Action Fund
 24 Brian Bergin, Legacy Foundation Action Fund
 25 Patricia Koester, Citizen

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P R O C E E D I N G

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 3 CHAIRPERSON KOESTER: The March 26th, 2015,
 4 Citizens Clean Elections Commission is called to order.
 5 It's possible today we may go into executive
 6 session and that's -- will not be open to the public for
 7 -- pursuant to A.R.S. 38-431.03(A)(3).
 8 First item on the agenda is a discussion and
 9 possible action on the minutes for the February 26th
 10 meeting. Any Commissioners have any revisions or
 11 comments?
 12 Okay. Perhaps, then, a -- a motion?
 13 COMMISSIONER TITLA: Chairman, I motion.
 14 CHAIRPERSON KOESTER: Yes. A second?
 15 COMMISSIONER LAIRD: Second.
 16 CHAIRPERSON KOESTER: Okay. Commissioner Titla
 17 made the motion and Commissioner Laird seconded. All in
 18 favor?
 19 (Chorus of ayes.)
 20
 21 CHAIRPERSON KOESTER: Opposed?
 22 Okay. Item III, discussion of the Executive
 23 Director's report. Mr. Collins?
 24 MR. COLLINS: Yes. Chairman Koester,
 25 Commissioners, I don't to belab- -- I don't want to -- I

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1 want to be as brief as possible, I think you can see
 2 the -- the written report. We -- and -- and I do want to
 3 highlight that Gina Roberts is out today in the -- the --
 4 in the northwest valley in Sun City with the League of
 5 Women Voters and the Maricopa County Recorder's office and
 6 the Yavapai County Recorder's office and Election
 7 Directors talking about different ways folks can increase
 8 voter -- voter turnout. So, it's a -- that's pretty
 9 exciting, and we were happy to be able to -- to work with
 10 the -- the League on putting that program together.
 11 They're going to be taping that and we should have a --
 12 a -- a -- a program -- a video program of the discussion
 13 available in the near future.
 14 I wanted to, real briefly -- it's up to you
 15 whether or not we do this now or if in the interest of
 16 time, you want to play with this on your own, but I wanted
 17 to highlight, if I could -- and I may not be able to.
 18 Right?
 19 MS. LARSEN: Yeah.
 20 MR. COLLINS: I may not be able to. Well, for
 21 those of you who are on the phone, it doesn't matter
 22 anyways, or -- for Commissioner Reckart.
 23 We -- we launched this month our "Find My Elected
 24 Officials" tool on our Website. We're excited about this
 25 for -- for a couple of different reasons. What this is is

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1 a conversion, essentially, of the candidate statement
 2 pamphlet to a -- a guide to allow folks to actually get in
 3 contact with their elected officials.
 4 One of the things that's amazing is that after
 5 20 years of the Internet, you still have to go to -- to
 6 multiple websites in order -- or, to make phone calls, in
 7 order to find out who -- what district you're in and who
 8 your legislator is at the same time.
 9 In other words, you -- you can -- if you do not
 10 know off the top of your head, if you've moved or what
 11 have you, you don't know what district you live in, there
 12 -- you would have to go to either the Maricopa County
 13 Recorder's website or the Independent Redistricting
 14 Commission's website and -- and -- and -- and use your
 15 address there to determine what your district is if you
 16 didn't have your voter registration card, and then go back
 17 to the legislature's website or call the legislature and
 18 have them give you that information.
 19 Now, with this website which you've -- is on our
 20 home page and you're free to look at it at any time, you
 21 can actually input your -- your home address, or any
 22 address, and find out what district is there and it calls
 23 up the legislators in that district, the -- all the
 24 statewide officials who are responsive in that district,
 25 and -- and in addition gives you their contact

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1 information.

2 So, if, like, I'm going to -- this is really

3 quick, but it -- it's -- it's a very simple thing. But I

4 just -- so let's just do this.

5 I am -- that's -- that's our address here.

6 And -- and hopefully this works; it's worked every other

7 time.

8 And so then you see, and -- and you might not be

9 able to make this out, and I -- I don't know that I can

10 blow this up. But you have your -- your State

11 Representative for the district that we are -- that we are

12 sitting in currently, and then you have their direct

13 contact information, their e-mail address, and their phone

14 number.

15 So, again, this is a simple tool. Right? This

16 is -- this is not rocket science. But, in 20 years since

17 the dawn of the Internet, this didn't exist until last

18 month. So, we're proud of it. We think it's a good

19 innovation. We think it's among the kinds of things that

20 this Commission has been showing leadership on in terms of

21 voter education. And -- and we are setting the pace and

22 people are following us and -- and that's good.

23 I mean, the -- you know, there -- I think we're

24 putting some pressure on other folks who are concerned

25 about voters to -- to -- to step up their game and we're

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1 'cause it is not tied to the ZIP Code. So, if -- if

2 you're -- so, it would have to be a street address. If

3 you have a -- a residential -- or, that is an issue in

4 terms of folks who are registered at P.O. Boxes or who

5 don't have street addresses. You can still enter your

6 district, the alternative version is still there; and in

7 addition to that, I think that if you -- if there is a

8 location within your district you are familiar with that

9 has a street address, that would call it up.

10 COMMISSIONER TITLA: Can you do a demonstration?

11 MR. COLLINS: Sure. I mean --

12 COMMISSIONER TITLA: Put in -- put in 245 South

13 Hill Street --

14 MR. COLLINS: All right. Let's hope that works.

15 COMMISSIONER TITLA: -- Globe, Arizona.

16 MR. COLLINS: Okay. We probably can add

17 functionality, I would hope, around ZIP Codes, but I don't

18 -- but the -- it becomes a precinct and where the dividing

19 line is if those don't match up.

20 So, 245 South Hill Street?

21 COMMISSIONER TITLA: Yeah. Globe.

22 MR. COLLINS: And I can't see what I'm typing,

23 so. At all. So, someone has -- is closer to the screen

24 and can actually tell me what is up there, that would be a

25 helpful thing.

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1 happy about that. So, that's -- this is an example of

2 what we're trying to do.

3 So, that is really all I have to say about the

4 Director's report. If anybody else has any ques- -- if

5 any of you have any questions, I'm happy to an- --

6 entertain them.

7 CHAIRPERSON KOESTER: Okay.

8 COMMISSIONER TITLA: Chairman?

9 CHAIRPERSON KOESTER: Mr. -- Commissioner Titla.

10 COMMISSIONER TITLA: Tom, so with this, you could

11 go to the different counties, the outlying counties, like

12 Apache County --

13 MR. COLLINS: You -- yep.

14 COMMISSIONER TITLA: -- or Navajo County --

15 MR. COLLINS: If you --

16 COMMISSIONER TITLA: -- or Gila County, Greenlee

17 County.

18 MR. COLLINS: Any -- any address.

19 COMMISSIONER TITLA: Put an address in?

20 MR. COLLINS: Any -- any address in the State.

21 COMMISSIONER TITLA: Street address?

22 MR. COLLINS: Yes.

23 COMMISSIONER TITLA: Not P.O. Box?

24 MR. COLLINS: That's a good question. If P.O.

25 Box, the ZIP Code would -- would not -- would not come up

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1 Okay. It work?

2 COMMISSIONER TITLA: Yeah, I can't see that far.

3 MR. COLLINS: It work?

4 COMMISSIONER TITLA: It looks all right.

5 MR. COLLINS: Please, please work. Ah-ha.

6 COMMISSIONER TITLA: There we go.

7 MR. COLLINS: All right. See. There we go.

8 There you have it.

9 COMMISSIONER TITLA: Very good. Excellent.

10 Yeah, I think that more people will have access to their

11 legislators, because when you don't have the website, you

12 don't know where to look, actually. If you go to the

13 different publications and you don't have access to the

14 publications, you have to go to the County. So, here, you

15 know, in the outlying counties, they can just put in their

16 address and, you know, get their legislative people that

17 they can call or e-mail or whatever. So, very good work.

18 Thank you.

19 CHAIRPERSON KOESTER: Thank you, Tom.

20 Next item is No. IV, discussion and possible

21 action on the final audit approval for the following

22 participating candidates for the 2014 election cycle. Ms.

23 Larsen, please.

24 MS. LARSEN: Good morning, Chairman,

25 Commissioners.

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1 CHAIRPERSON KOESTER: Good morning.
 2 COMMISSIONER MEYER: Good morning.
 3 MS. LARSEN: So we have -- we have our three
 4 remaining candidate audits. Unfortunately, these ones are
 5 not all clean as most of our previous ones were.
 6 But we have one primary audit, which was
 7 Mr. Huppenthal, who ran for Superintendent of Public
 8 Instruction. There were multiple findings in -- in his
 9 audit, and we did refer that to an enforcement matter, and
 10 so it's going to be on the agenda later today for those
 11 matters.
 12 If you have any questions about his audit, I'm --
 13 I'm happy to answer those.
 14 Janie Hydrick was a legislative candidate. We
 15 are working with her to obtain documentation to resolve
 16 that issue, so we're hoping not to have to refer that to
 17 an enforcement matter if we can get that resolved. I've
 18 been in contact with the vendor to get the documentation
 19 for that expenditure.
 20 And Mark Finchem is a representative who was
 21 elected; and he had two findings in his -- in his audit,
 22 and we're also hoping to work with him to obtain -- to be
 23 able to resolve those without sending them to an
 24 enforcement matter, either through a reimbursement or
 25 through some amendments to his campaign finance reports.

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1 So, we move on to No. V, discussion and possible
 2 action on MUR 14-025, Ken Bennett.
 3 Mr. Collins?
 4 MR. COLLINS: Yes. Chairman Koester,
 5 Commissioners. We have -- you know, we filed a brief
 6 respecting prob- -- moving to a probable cause stage on
 7 this. Subsequent to that brief being filed, we were able
 8 to -- to come to some terms that Mr. Bennett could agree
 9 to and that I could recommend to you, and that's in the
 10 form memorialized in the conciliation agreement that is in
 11 Item V.
 12 Effectively what this does is ensures that the
 13 campaign finance reports that will be available to the
 14 public, will tell the public from what bank accounts
 15 Mr. Bennett made the expenditures that he made, you know;
 16 and also accounts for the timeliness of the reporting
 17 respecting travel expenditures.
 18 And, essentially, all the information that we
 19 think the public ought to have had about how the campaign
 20 was making expenditures and -- and -- and what -- and
 21 where those expenditures originated from is -- is captured
 22 in the conciliation agreement. And with -- with that in
 23 mind, we have -- we would -- you know, I would simply
 24 recommend the conciliation.
 25 There are -- you know, we had the discussion at

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1 So, likely those will be resolved without going
 2 to enforcement.
 3 So, if you have any questions on them, I'm happy
 4 to answer.
 5 CHAIRPERSON KOESTER: Anyone have any questions
 6 for Sara?
 7 Okay.
 8 MS. LARSEN: All right.
 9 CHAIRPERSON KOESTER: Good.
 10 MS. LARSEN: I would just ask that you approve
 11 them, then. Thank you.
 12 CHAIRPERSON KOESTER: All right. Thank you. And
 13 I think if -- if we covered everything, then I'd like a
 14 motion to approve the audit portion.
 15 COMMISSIONER MEYER: So moved.
 16 CHAIRPERSON KOESTER: Second?
 17 COMMISSIONER LAIRD: Second.
 18 CHAIRPERSON KOESTER: Did I hear a second?
 19 COMMISSIONER RECKART: Second.
 20 CHAIRPERSON KOESTER: Great. It was moved and
 21 seconded to approve the audits. And all in favor, please
 22 say "aye."
 23 (Chorus of ayes.)
 24
 25 CHAIRPERSON KOESTER: It's unanimous.

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1 the last Commission meeting -- and I will say, Mr. Bennett
 2 couldn't be here today, and I will tell you that I -- said
 3 that I -- I made the decision that -- that it -- that --
 4 to say that that was okay. I took some liberty there,
 5 obviously. I -- so, I don't want it to be held against
 6 him that he's not here. It was on my, you know,
 7 permission, effectively, to say, look, we think we have a
 8 conciliation and we don't necessarily think -- but I did
 9 tell him if there was an issue with the conciliation, that
 10 I would recommend that we reset the matter until -- 'til
 11 the next month. So, that's just to understand why he's
 12 not here and -- and the discussion that I had with him
 13 around those issues.
 14 It's -- it -- basically, if you have questions
 15 about the conciliation that go to -- or have -- go to him
 16 or have questions that he has -- needs to answer for you,
 17 I'm -- I'm comfortable resetting this, because there's not
 18 really a time pressure to -- to -- to get this done. But
 19 on the other hand, in the event that this conciliation
 20 does meet -- and it certainly in -- in my view at this
 21 point meets the informational requirements that I think we
 22 were trying to hit at our last meeting, we -- we do that.
 23 I will say there's not a monetary penalty
 24 associated with this. And, you know, and there's -- and
 25 that's something that -- that, you know, we internally

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1 talked about quite a bit. But -- but, you know, our main
 2 goal is to get the reporting correct. And -- and -- and
 3 so in this particular case, you know, we're -- we're --
 4 you know, I'm -- I'm -- I endorse and fully embrace this
 5 as a -- this recommendation for -- for resolving this so
 6 we can move on to the -- to the next thing, I mean, this
 7 -- you know, and not have this hanging around.
 8 So, that's my basic view of the matter. I'm
 9 happy to answer any questions you have, obviously. And --
 10 and I -- I think I should be able to answer those
 11 questions, but if there are questions that for some reason
 12 you, you know, require further information, you know, feel
 13 free to tell me that and we can reset that. And I don't
 14 think that's -- I don't think that's a huge consequence,
 15 but I -- but I do think you can -- we can resolve this
 16 today.
 17 CHAIRPERSON KOESTER: Okay. So, basically, the
 18 information that was somewhat clouded because of the two
 19 bank accounts and the delay in -- in reporting the gas
 20 expenses or gas/mileage, has been sort of brought up to
 21 standards, if that's a good word, to allow anyone in the
 22 public to view it and say: Okay, yeah, I see what he did,
 23 I see what money he spent. And -- and it would have been
 24 better if he did it originally, but -- but he -- he
 25 explained to us that he had certain ideas, and we
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1 is -- the short answer to your question is yes.
 2 COMMISSIONER TITLA: Okay. Thank you.
 3 CHAIRPERSON KOESTER: Commissioner Meyer?
 4 COMMISSIONER MEYER: Sure. Mr. Chairman -- am I
 5 on or off?
 6 Okay. Thank you. Thank you.
 7 So, just -- just so I understand it, we -- we had
 8 all the reports and the mileage --
 9 MR. COLLINS: Yeah.
 10 COMMISSIONER MEYER: -- correct? They were
 11 just --
 12 MR. COLLINS: That's right.
 13 COMMISSIONER MEYER: -- not timely; and now we've
 14 fleshed out all the expenses from the constituent services
 15 account?
 16 MR. COLLINS: That -- Mr. Chairman, Commissioner
 17 Meyer, correct. That's what we -- that's what we believe
 18 this does.
 19 COMMISSIONER MEYER: So every dollar has been
 20 accounted for?
 21 MR. COLLINS: Actually, that's actually true.
 22 COMMISSIONER MEYER: Okay.
 23 MR. COLLINS: Yes.
 24 COMMISSIONER MEYER: Okay. And has -- has
 25 Commissioner Bennett reviewed this agreement?
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1 disagreed with that, basically. But, it's -- it's all
 2 there.
 3 MR. COLLINS: I -- Mr. Chairman, that's -- that's
 4 precisely correct.
 5 CHAIRPERSON KOESTER: Okay. Anyone else have a
 6 question for -- regarding Mr. Bennett?
 7 COMMISSIONER TITLA: Chairman?
 8 CHAIRPERSON KOESTER: Yes. Mr. Titla.
 9 COMMISSIONER TITLA: Mr. Collins, in this case,
 10 the Commission -- Commission's view of the facts and the
 11 law was that there may have been a violation in this area
 12 and Mr. Bennett disagreed with that.
 13 MR. COLLINS: Correct.
 14 COMMISSIONER TITLA: And so with this settlement,
 15 there's no more violation, then?
 16 MR. COLLINS: That -- that is correct. This --
 17 this -- this -- this -- Mr. Chairman, Commissioner Titla,
 18 this conciliation seeks to put an end to this -- those --
 19 those matters under review, so that there will -- we will
 20 not need to revisit them.
 21 There are provisions if for some reason it was
 22 revealed that we were misled in some way, there is a
 23 provision that essentially says that if the Commission was
 24 misled by the Respondent, you know, we can re-open it.
 25 But that's the -- that's the main -- it is -- yeah. It
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1 MR. COLLINS: Yes. He's -- in fact, he's
 2 already -- he -- he has signed it, pending our -- my
 3 authority to sign it. I mean, he understands obviously
 4 that I can't and by -- by rule and as a practical matter.
 5 He -- he hasn't completed the amendments to the
 6 campaign finance report, but he has agreed to -- to make
 7 those amendments if we -- if the Commission authorizes me
 8 to, you know, complete the agreement.
 9 CHAIRPERSON KOESTER: Okay. I'm -- I'm
 10 satisfied. Perhaps a motion to accept the conciliation
 11 pending signing the amendments would be in order.
 12 COMMISSIONER LAIRD: I make a motion --
 13 COMMISSIONER RECKART: So moved.
 14 COMMISSIONER LAIRD: -- that the Commission
 15 accept the conciliation agreement set forth in Tab 5 of
 16 our binder for today's meeting.
 17 CHAIRPERSON KOESTER: A second?
 18 COMMISSIONER RECKART: Second.
 19 CHAIRPERSON KOESTER: Thank you, Mr. Reckart.
 20 Moved and seconded. All in favor?
 21 (Chorus of ayes.)
 22 CHAIRPERSON KOESTER: Unanimous again. So, that
 24 takes care of Mr. Bennett for the time being.
 25 Item No. VI is discussion and possible action on
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1 MUR's 14-12 [sic], -13, and -26 concerning John
2 Huppenthal.

3 MR. COLLINS: Chairman Koester, Commissioners,
4 this is -- this is an item that has two components to it.
5 As Sara alluded to in the -- in the report on the audit,
6 we learned of a couple of -- of -- of -- of -- of
7 potential violations through the audit, and then in
8 addition to that we had an outstanding matter with
9 Mr. Huppenthal respecting a -- whether or not there was a
10 violation by virtue of a e-mail video message that he sent
11 out during the campaign that was -- that constituted a
12 campaign contribution.

13 So, what we've done to try to structure this is,
14 you know, identify those things that we think are
15 enforcement matters in the audit -- which is something we
16 agreed with Mr. Huppenthal to do, that we would wait until
17 the audit came in to bring this back to you; evaluate
18 those for -- as to whether or not there's reason to
19 believe a violation may have occurred; and then on the --
20 and then on the assumption that -- that -- that -- that
21 the Commissioners, that there's a conciliation to wrap up
22 all of those things with -- and -- and resolve the issue
23 and -- and move forward.

24 If you recall at the -- the -- the prior -- the
25 meeting on the -- what? -- I guess the -12 and -13, which
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1 writing non-campaign checks out of the campaign account,
2 as opposed to writing campaign accounts [sic] out of the
3 non-campaign account, but...

4 And -- and, reimbursements were made.

5 Additionally, there was a -- a -- a contribution
6 that looked like it was unreported, based on the way the
7 audit called it forth. In other words, it was a -- Mr.
8 Huppenthal -- an audit was select- -- a contribution was
9 selected for audit; the backup material for that
10 contribution showed that it was for greater than what was
11 reported, it -- but it turned out that that person -- it
12 was a -- it was a contribution from a couple. And the
13 second part of the second half of the couple -- I don't
14 remember if it was the husband or wife, I think it was a
15 married couple, but whichever one was reported on the next
16 campaign finance report. When if you were accounting for
17 it correctly, it should have been accounted for on that
18 campaign report as a contribution from both.

19 You know, again, it's a -- it's a -- it
20 ultimately ends up in a timeliness of reporting issue and
21 not a substantive ex- -- exceeding of the -- of the limits
22 that the participating candidates agreed to.

23 So, you know, like I said, those -- those are
24 fairly -- well, I don't want to -- I don't want to
25 initially characterize them as major or minor. We have --
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1 is really one consolidated complaint when you think about
2 it, you know, we -- you -- you, in your motion gave us a
3 specific direction to work out a conciliation agreement
4 without, you know, before moving forward with any sort of
5 real investigatory tools. So, we've taken that charge to
6 -- in an effort to try to get, again, all of Mr.
7 Huppenthal's campaign activity wrapped up in a report
8 that, you know, folks can understand, get the information
9 in front of the public, and -- and then move on.

10 So, we think that in order to make that
11 procedurally operate correctly, we -- we -- we would ask
12 you to approve the statement of reasons for MUR 14-026,
13 and then separately, if you're -- if you're so inclined,
14 approve the conciliation.

15 The -- and I don't -- so and in terms of your own
16 questions, I don't know how you want to structure it, but
17 I will -- I can certainly start, Mr. Chairman, if you'd
18 like, I can give you a brief summary of what's in the MUR.

19 Essentially what it appears happened is there was
20 a -- a deposit located in the -- in the bank account,
21 and -- and it looks like there was an expenditure to Cox
22 Communication for about \$2,700. There was -- you know,
23 Mr. Huppenthal explained that those -- basically, he wrote
24 checks out of the wrong -- wrong account. So, this is
25 sort of the inverse of the Bennett situation. This is
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1 we have rules that are in place that were supposed to be
2 followed that don't permit this to happen, so it's
3 appropriate to find that there may have been a violation.
4 But, on the other hand -- what am I -- I'm making -- oh.
5 I see what it is.

6 On the other hand -- so.

7 So, I guess I'll leave it there on the -- on the
8 MUR question. If you -- if you have questions about the
9 MUR itself, you know, I guess I would -- I would take
10 questions. If you -- if it seems appropriate, I could
11 take those questions now, and then I can talk through
12 the -- the -- the conciliation after that. How- --
13 whatever the Commission's pleasure is.

14 CHAIRPERSON KOESTER: Okay. On the Cox
15 Communication, it was a fairly large bill but it was paid
16 on July 7th and, of course, your statements go out
17 probably sometime in August, which would be the first time
18 you might catch an error like that. And it was caught; it
19 was paid back to the campaign account on August 25th. So,
20 if it was three or four or five months, you would really
21 wonder what was going on, but it seemed like a -- appears
22 to be an honest error. Again, the -- the amount of money
23 owed to Cox seems to be kind of high, but I don't know.

24 The other matter, about Esther Miller and the
25 \$160 and the husband/wife situation, I could see where
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1 that could happen very easily, so I'm personally not too
2 concerned about that.
3 I -- I don't really have any other questions. It
4 -- it seems like some mistakes were made and corrected.
5 So, I don't think there's any other facts there.
6 Any -- any other Commissioner want to ask Mr.
7 Collins?
8 Mr. Reckart, do you have any questions?
9 COMMISSIONER RECKART: The only thing I have is
10 trying to track the different MUR numbers --
11 MR. COLLINS: Sure.
12 COMMISSIONER RECKART: -- Mr. Collins --
13 MR. COLLINS: Yeah.
14 COMMISSIONER RECKART: -- but I -- I think
15 everything is consolidated for purpose of the conciliation
16 agreement, which is really, I think, the main focus here
17 right now. And I -- I agree with Chairman Koester's
18 thoughts. But -- so I'm fine. That's -- that's all, Tom.
19 CHAIRPERSON KOESTER: Okay. So, you -- sort of
20 looking for a motion to approve 14-026 and -- and -- and
21 perhaps the con- -- consolid- -- consolidation agreement?
22 Is that where we're -- where we're at right now?
23 MR. COLLINS: I think that's -- I think that's
24 right. I mean, you can -- I mean, you know, if you -- if
25 you want to move on the statement, that's -- that's --

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1 So, I think that will put that matter aside for
2 the present time. Go back to the --
3 MR. COLLINS: Okay.
4 CHAIRPERSON KOESTER: Okay. A long -- long No.
5 VII, it's a discussion and possible action regarding
6 procedural status, Commission interests, and related legal
7 actions of Gallasini versus Fountain Hills -- which took
8 place a long time ago -- related appellate and
9 post-judgment motions, HB 2649. And it says we may go
10 into executive session.
11 So, that's a lot of material there but, Tom,
12 could you introduce that?
13 MR. COLLINS: Of course. Yes. And -- and the
14 main purpose of this agenda item is to kind of give you an
15 update of the progress of this case called Gallasini v.
16 Fountain Hills. And to -- if you have any questions, to
17 kind of update you on where it is. I have a -- a brief
18 kind of public overview.
19 The -- John Lopez from the Attorney General's
20 office is here. Jim Driscoll from the Attorney General's
21 office is here. They've been working on the case and they
22 have -- they may -- if you have questions for them, they
23 can certainly update you on that.
24 There's an option to go into executive session if
25 for some reason the Commission was inclined to do that.

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1 that's -- I -- I think that's a good thing. And then if
2 you have separate questions about the conciliation, we're
3 certainly free to talk about that, you know, we can do
4 it -- that. That's how we sort of structured the -- the
5 decision in front of you.
6 CHAIRPERSON KOESTER: All right. Well, one of
7 the Commissioners like to make a motion then approving the
8 consolidation in MUR, I guess, 2014-026?
9 COMMISSIONER MEYER: Yeah. I move to --
10 COMMISSIONER RECKART: I'll move --
11 CHAIRPERSON KOESTER: Commissioner Reckart, go
12 ahead.
13 COMMISSIONER RECKART: Okay. I was going to make
14 two separate motions. One to approve MUR 14-026 and then
15 a second motion to approve the conciliation agreement
16 addressing MUR Nos. 14-012, -013, and -026.
17 CHAIRPERSON KOESTER: Very good. We have two
18 motions. Do we have a second for both of them?
19 COMMISSIONER MEYER: Second to both of them.
20 CHAIRPERSON KOESTER: Okay. So we've moved and
21 seconded on the two motions. All in favor, say "aye."
22 (Chorus of ayes.)
23
24 CHAIRPERSON KOESTER: All right. Unanimous
25 again.

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1 And -- and so just with that high-level, I just wanted to
2 very briefly, as briefly as possible, highlight where this
3 case was and is. We've talked about it in some Executive
4 Director reports.
5 Essentially five -- four years ago now, a -- a
6 person in Fountain Hills was -- was going to go out on the
7 street corner in Fountain Hills and hold some handmade
8 signs that said, you know, that they were against -- that
9 she was against a -- a bond that the City had put on the
10 ballot in an all-mail election.
11 She received a letter from the Town saying,
12 essentially, that -- advising her there were laws related
13 to campaign finance and that if she decided she wanted to
14 raise money or make expenditures for the campaign, she
15 might have some legal obligations.
16 That letter gave rise to a -- a -- a lawsuit
17 filed on behalf of this person by the Institute for
18 Justice seeking to essentially -- well, do a lot of
19 things. It started as a case about whether or not there
20 was a State interest in any kind of disclosure around
21 ballot measures and whether or not there was a State
22 interest at this very small, sort of grass-roots level,
23 and where there may not be financial activity.
24 Over time, the case morphed into a decision about
25 the constitutionality of the definition of the word

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1 "political committee" in Arizona statutes. And that
 2 definition, as we've talked about from time to time, is a
 3 definition on which some but not all campaign finance laws
 4 are hinged. In other words, once you're a committee, then
 5 certain things -- certain responsibilities flow from that
 6 status as a political committee.
 7 The net result is that a -- a federal judge
 8 issued a declaratory order stating that at least insofar
 9 as Ms. Gallasini was concerned that -- that this statute
 10 was vague and overbroad, this political committee
 11 definition.
 12 Our "political committee" definition is a quite
 13 long sentence, it's a 183-word sentence. I think we've
 14 talked about that in prior meetings. So, it's a very long
 15 sentence. It's also been applied routinely for, you know,
 16 many, many years by State agencies and State courts.
 17 So, you know, I -- and I will tell you, in all
 18 candor, I am an incredible skeptic of this -- of this
 19 Judge's ruling, to say the least.
 20 That having been said, the net result is that the
 21 State, which is a party in the litigation, is concerned
 22 that, you know, that that -- that that declaratory relief
 23 for an individual is, in fact, akin to an injunction
 24 against all of the State, so perhaps -- and it's, you
 25 know, perhaps, you know, everyone -- no one can enforce
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1 problem. And that solution, as we've talked about in the
 2 past, significantly narrows who is a political committee
 3 in such a way that it -- the net result will be more --
 4 would be -- probably be less or potentially less
 5 disclosure of campaign finance information than it would
 6 occur were Judge Tielborg's order reversed or stayed. And
 7 so, you know, the concern -- so, that raises a concern.
 8 And then down the road, the new definition itself
 9 has -- and we'll be talking about this, I think, coming
 10 back to you from time to time with this. The new
 11 definition itself has language in it that itself may be
 12 subject to interpretation. And -- and we -- and the
 13 Commission, I think as we've talked about in the fall,
 14 will -- will want to consider how it can be helpful in
 15 guiding the -- the new definition towards a resolution
 16 that -- that -- that has some clarity.
 17 So, that's a very complicated preview. This is
 18 really an effort to try to make sure that you-all are
 19 aware that this exists, that we do have an interest in it.
 20 The -- that there are changes being made at the
 21 legislature that we're -- that -- that on your behalf I
 22 have been on record in opposition to because of the
 23 narrowing of the disclosure definition.
 24 You know, we -- I -- again, in other words, I
 25 presented it as we're all in favor of fixing the thing and
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1 anything related to committees until this is resolved.
 2 Maybe that's true; maybe that's not. But that's --
 3 that's -- that's -- and that's certainly been the position
 4 that the Secretary of State's office has put out publicly.
 5 Why do you-all need to know this?
 6 The reason you-all need to know this is because
 7 our statute and our reporting requirements, some of them,
 8 may be tied to that political committee definition. Not
 9 all of them. Certainly we have language in our statute
 10 that applies to any person who makes independent
 11 expenditures; we have violations of the Act by any person;
 12 we have violations of the Act by candidates; and we have
 13 violations of the Act by a narrower set of political
 14 committees, that's candidates' campaign committees.
 15 But there may be some political committees out
 16 there that we would be in a position where it would be
 17 difficult to bring an enforcement, at least under the
 18 current thinking, and -- and the way in which this has
 19 been presented to the public by -- essentially by the
 20 Secretary of State's office and some other enforcers.
 21 So, that is on appeal, the order is on appeal.
 22 Not withstand -- and -- and I think and -- and John and
 23 Jim can talk to you about what may happen on appeal.
 24 Notwithstanding the fact that it's on appeal, the
 25 legislature is moving forward with a solution to this
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1 not having to go on appeal, but not in favor of fixing it
 2 in a way that -- that essentially stipulates to an order
 3 that we think is wrong that ought to be appealed, if that
 4 makes any sense. That's -- that's -- that's my concern.
 5 The appeal will go forward, I know. Tactically,
 6 I don't know what the State will do. But that's -- that's
 7 really my effort to try to make sure that, you know,
 8 you're -- you're informed. You know, we've gotten to a
 9 point where I feel like I'm -- I'm at the -- have been
 10 able to piecemeal describe this to you over time in the
 11 Executive Director's report and legislative reports, but
 12 this is the bigger picture that we're working with. And
 13 so that's -- that's my kind of report on it.
 14 It's a lot of information, I know. But -- but
 15 the -- the upshot is that -- that, you know, that -- that
 16 you know, over time, you know, I think we're going to have
 17 to continue to revisit this issue from a regulatory
 18 perspective to make sure that -- that there is an
 19 appropriate clarity in the laws that are being passed.
 20 CHAIRPERSON KOESTER: Does someone else want to
 21 make a comment?
 22 MR. COLLINS: Yeah.
 23 MR. DRISCOLL-MACEACHRON: To the extent that you
 24 have any questions, I think we would be happy to address
 25 -- I apologize.
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1 To the extent that you have any questions,
 2 Mr. Chairman and Commission, we'd be happy to address
 3 them. To the extent they do involve the pending
 4 litigation, excuse me, I think our recommendation would be
 5 to go into executive session to discuss them. But we, of
 6 course, leave that to your discretion.
 7 CHAIRPERSON KOESTER: Okay. Would any
 8 Commissioner like to go into executive session at this
 9 time for purposes of obtaining advice? Or, can we just
 10 kind of --
 11 COMMISSIONER TITLA: Chairman. Motion for
 12 executive session.
 13 COMMISSIONER MEYER: Second.
 14 CHAIRPERSON KOESTER: All right. We do have a
 15 motion and a second for executive session to obtain some
 16 attorney advice. So, I'll just say: All in favor, say
 17 "aye."
 18 COMMISSIONER TITLA: Aye.
 19 COMMISSIONER MEYER: Aye.
 20 COMMISSIONER LAIRD: Aye.
 21 CHAIRPERSON KOESTER: Okay. We have three, so I
 22 guess we're going to go into executive session, hopefully
 23 for a very short period. So, thank you.
 24 (Whereupon the public retires from the meeting
 25 room.)

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1 Christopher Munns from the Attorney General's office is
 2 here, he can describe for you what -- well, any advice you
 3 need in terms of the Administrative Law Judge, what the
 4 procedure is at that point. Mary O'Grady is here, who
 5 represented the Commission in front of the Administrative
 6 Law Judge. Jason Torchinsky and Brian Bergin are here
 7 representing the Legacy Foundation Action Fund, as they
 8 have been. My -- and -- and then -- so, that's -- so
 9 that's it.
 10 So, the -- you know, the -- the -- the -- the
 11 procedural question here really is whether or not to
 12 adopt, revise, or reject the att- -- the Administrative
 13 Law Judge's opinion. And -- and so that's -- that's the
 14 issue that's in -- in front of you. And it does arise
 15 from the -- the -- the ad that related to -- well, the
 16 Scott Smith ad.
 17 So, I -- I don't have any other prefatory
 18 comments beyond that at this point. I'm happy to defer to
 19 Mary and Jason to make their points and if you have
 20 questions for me, I'm happy to answer them. And then
 21 obviously -- and Chris is here. And just as a point of
 22 reference for everyone in the room, you know, Chris is
 23 here because Mary represented us at the ALJ in a -- in a
 24 cont- -- in essentially an adversary proceeding, so Chris
 25 is here to provide you advice separate from that -- that

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1 (Whereupon the Commission is in executive session
 2 from 10:06 a.m. until 10:24 a.m.)
 3
 4 * * * * *
 5
 6 (Whereupon all members of the public are present
 7 and the Commission resumes in general session.)
 8
 9 CHAIRPERSON KOESTER: I think everybody is back
 10 so we're going to move on to Item No. VII -- or, excuse
 11 me, No. VIII, discussion and possible action on the
 12 Administrative Law Judge decision, CCE15F-001-CCE ALJ,
 13 Legacy Foundation Action Fund versus Arizona Citizens
 14 Clean Elections Commission, in the matter of MUR 14-007,
 15 Legacy Foundation Action Fund.
 16 So, I think we have the parties here to go over
 17 again for the third or fourth time this -- this discussion
 18 MUR.
 19 Tom, you want to start --
 20 MR. COLLINS: Yeah.
 21 CHAIRPERSON KOESTER: -- and give us a little...
 22 MR. COLLINS: Yep. Commissioners, Chairman
 23 Koester, you have it exactly right. This is the -- this
 24 is on return from the Administrative Law Judge. You have
 25 the Administrative Law Judge's decision in front of you.

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1 counsel.
 2 CHAIRPERSON KOESTER: All right. Well, perhaps
 3 Ms. O'Grady wants to start the discussion. Is that all
 4 right?
 5 Or, you want to say something.
 6 MR. MUNNS: Well, Ms. O'Grady, representing the
 7 Commission, would bear the burden of proof and go first
 8 and then --
 9 CHAIRPERSON KOESTER: Yes.
 10 MR. MUNNS: -- the Respondent would respond.
 11 CHAIRPERSON KOESTER: All right. Sounds fine.
 12 MS. O'GRADY: Mr. Chair, Commissioners, as -- as
 13 everyone has said, we've been through this frequently and
 14 so I don't know that it makes sense to walk through it
 15 again. The issues are express advocacy and -- and
 16 penalties, and LFAF has also challenged the Commission's
 17 jurisdiction. And that -- on that issue, the Comm- -- the
 18 ALJ sided with the Commission; and on the other issues,
 19 the ALJ sided with the -- with LFAF.
 20 But the Commission -- that's just a recommended
 21 decision, it comes back to the Commission and the
 22 Commission is free to accept, reject, or modify the ALJ's
 23 decision. And so, I -- I made a recommendation that is in
 24 the papers that basically would accept the jurisdictional
 25 decision but reject the express advocacy and reject the --

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1 the fines analysis. But, again, its up to the Commission
 2 in terms of how you want to proceed at this point.
 3 I will say, if the Commission -- well, if you
 4 have any questions, happy to answer them. I don't think
 5 -- I don't think I'm going to run through the pitch again
 6 because I think you've heard it before.
 7 There are some other scenarios and options for
 8 the Commission in terms of, you know, you can accept or
 9 reject different pieces of it than what I recommended. If
 10 the Commission, for example, finds express advocacy but is
 11 not comfortable imposing a penalty, I think that would be
 12 an option that they might -- that the Commission could
 13 consider.
 14 Again, and then there's also if the Commission --
 15 even if the Commission wants to accept the express
 16 advocacy conclusion, I would advise that the language
 17 should be modified in the -- in the Commission's -- in the
 18 ALJ's decision. So, it shouldn't just accept it as is but
 19 would need to make additional modifications because I
 20 thought the analysis didn't get to the bottom line of:
 21 Was there another alternative reasonable meaning? And so,
 22 I wouldn't want the Commission to accept a decision that
 23 histor- -- in future years might cause problems for the
 24 Commission analytically when you're looking at other
 25 cases.

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1 MS. O'GRADY: Yes?
 2 COMMISSIONER MEYER: I understand. I understand.
 3 MS. O'GRADY: The other -- oh.
 4 The alternative that I was describing that even
 5 if the Commission wanted to accept the -- was inclined to
 6 accept the recommendation that it -- of the ALJ's
 7 recommendation on that point, I would suggest that the
 8 language be modified to have a better analysis. And I do
 9 have some language along those lines if the -- if the
 10 Commission is inclined in that direction. And one of that
 11 would be --
 12 COMMISSIONER MEYER: Is that in the brief? Is
 13 that in the motion?
 14 MS. O'GRADY: No.
 15 COMMISSIONER MEYER: It's not. Okay.
 16 MS. O'GRADY: I'm just mentioning this verbally.
 17 My motion is the -- my -- my primary --
 18 COMMISSIONER MEYER: Sure.
 19 MS. O'GRADY: -- that I would encourage the
 20 Commission to do, which would be to reject the ALJ's
 21 decision and find express advocacy and also reject the
 22 analysis of the penalty provision.
 23 And I will note, as I did in my papers, that's
 24 it's -- the analysis of the penalty provision is
 25 particularly harmful to the Commission because it goes

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1 So, happy to answer any questions at this point
 2 regarding the procedural status or the rationale, whatever
 3 the Chair and the Commission would like.
 4 COMMISSIONER MEYER: Mr. Chairman?
 5 CHAIRPERSON KOESTER: Yes, Commissioner Meyer.
 6 COMMISSIONER MEYER: Ms. O'Grady, can you just
 7 expound on the last point you had there in the -- you'd
 8 like to -- or, you would recommend modifying the language
 9 on the express advocacy finding?
 10 MS. O'GRADY: Well, my -- my primary
 11 recommendation. Those were sort of other alternatives I
 12 was mentioning.
 13 COMMISSIONER MEYER: Sure.
 14 MS. O'GRADY: My primary recommendation is to
 15 reject the express advocacy finding because I think the
 16 better reasoning is the reasoning of the Commission
 17 initially that this is express advocacy. That is the only
 18 -- in context, the only reasonable alternative meaning for
 19 this advertisement. That the other alternatives, which
 20 are perhaps to influence the Conference of Mayors or
 21 influence his -- Mr. Smith's behavior as Mayor of Mesa
 22 aren't reasonable alternatives when you look at it in
 23 context and look at the content of the ad.
 24 So, that's my primary recommendation.
 25 COMMISSIONER RECKART: What --

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1 against the -- the rule that provides for penalties in
 2 independent expenditure context. So -- so that has some
 3 long-term consequences in terms of the Commission's
 4 authority.
 5 So, I think it's important, whatever the
 6 Commission does, to make sure that it rejects the analysis
 7 of the penalty provision.
 8 COMMISSIONER RECKART: Can I just jump in?
 9 CHAIRPERSON KOESTER: Yes, Commissioner Reckart.
 10 Go ahead.
 11 COMMISSIONER RECKART: Thank you. I didn't want
 12 to step all over Commissioner Meyer. If you -- if you --
 13 are you done?
 14 COMMISSIONER MEYER: Yes, I am. Thank you.
 15 COMMISSIONER RECKART: Okay. One -- in reading
 16 the Administrative Law Judge's decision, I -- I sort of --
 17 I had -- was left with the impression that there was a
 18 conclusory approach to the whole question about whether it
 19 was express advocacy or not. So, I -- I like exactly your
 20 analysis as you laid down the brief and as you talked
 21 about here. So, I think that's really good.
 22 I also second your concerns regarding the
 23 interpretation, because it really would limit us
 24 considerably and -- and drag people into a punitive
 25 position that otherwise really shouldn't be. And I -- I

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1 just -- I can't see the reading the way the ALJ has done
2 that.
3 So, I think those -- exactly, those are the two
4 things that bothered me the most about the ALJ's position.
5 Obviously, the others went our way, but I think the -- I
6 -- I heartily endorse what you're suggesting, Mary. So,
7 that would be my -- my approach in addressing these
8 things.
9 CHAIRPERSON KOESTER: Thank you, Commissioner.
10 COMMISSIONER RECKART: Thank you.
11 CHAIRPERSON KOESTER: Well, if there's no further
12 questions, maybe we'll hear the other side and come back
13 and kind of go back and forth a little bit, which I think
14 we will before we make a decision. So, just --
15 MS. O'GRADY: Okay. Thank you. I'll stay --
16 CHAIRPERSON KOESTER: -- be available.
17 MS. O'GRADY: I'll stay close.
18 CHAIRPERSON KOESTER: And you are?
19 MR. TORCHINSKY: Thank you, Commissioners. Jason
20 Torchinsky, once again appearing before you on behalf of
21 Legacy Foundation Action Fund.
22 The first thing I want to address is the -- the
23 ALJ's conclusion on jurisdiction. The ALJ concluded that
24 the Commission has jurisdiction to address the violations
25 of the Clean Elections Act. I don't think that the ALJ
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1 here. We have the Commission saying "ah-ah," you -- you
2 know, you violated the reporting rule and the Secretary of
3 State's office, through Maricopa County Clean Elections,
4 saying, nope, no violation here.
5 And so you have potentially conflicting
6 judgments. And it -- it's not rational to believe that
7 the legislature -- or, in this case, the People acting
8 through initiative -- intended to create that kind of dual
9 enforcement process.
10 This is an argument we've maintained from the
11 beginning. And should this matter, you know, should you
12 accept Ms. O'Grady's motion, we intend to bring this up in
13 front of the Superior Court. It's what we tried to bring
14 up in front of the Superior Court in our first lawsuit;
15 but, again, the Court in that -- in -- in rendering its
16 decision dismissing that lawsuit, essentially said we can
17 revisit that question if you come out of the
18 administrative appeals process.
19 So, I -- I want to make clear that we do not
20 agree that the -- the Administrative Law Judge concluded
21 that you have jurisdiction over independent expenditure
22 reporting.
23 That said, I think that ties directly in with
24 the -- with the analysis of the penalty provision. Again,
25 the penalty provision in the Clean Elections Act was to go
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1 necessarily found as broadly about the Commission's
2 jurisdiction here as -- as -- as Ms. O'Grady suggested.
3 Our position on -- with respect to jurisdiction
4 is that, you know, if you look at the history of the
5 independent expenditure reporting requirements in the
6 Arizona statutes, they pre-existed the Clean Elections
7 Act. The Clean Elections Act did not change the place of
8 reporting, nor did it change the -- the -- the agency with
9 authority to actually police, you know, violations of
10 non-reporting of express advocacy.
11 All the Clean Elections Act really did was
12 provide for the Secretary of State to send copies of the
13 report to the Commission so that the Commission could
14 implement the matching funds provision in the independent
15 expenditure -- in the matching funds and the independent
16 expenditures.
17 So, our view is that, you know, while he said you
18 have jurisdiction to enforce the Act, namely, you know,
19 the things related to the matching funds provisions
20 connected with independent expenditures, the actual
21 enforcement of independent expenditure reporting
22 violations still rests with the Secretary of State.
23 Otherwise, you know, what you -- what you have is
24 essentially dual enforcement on this where you could have
25 conflicting judgments, which is basically what we had
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1 after candidates who misused or misreported or had errors
2 in their reporting of their use of public funds, or evaded
3 the public funds' requirements. So, it makes sense that
4 the purpose of the statute and that the penalty provisions
5 in the statute apply to the candidates who violate rules
6 related to the use of the public funds.
7 What the Commission is trying to do is take a
8 sentence that says, you know, the candidate and the
9 candidate's committee shall be jointly and severally
10 liable for all penalties imposed pursuant to this section,
11 and say: No, no, no. That really shouldn't apply in --
12 in this case because we just don't like how that actually
13 affects our jurisdiction.
14 And we think that is a -- an incorrect reading
15 and an abuse of discretion of the Commission. And, so,
16 for that reason, we think that the Administrative Law
17 Judge's decision with respect to the penalty provision
18 should be accepted in whole.
19 Going back to express advocacy. And we -- we've
20 had this argument, I think this is my fifth appearance now
21 in front of the Commission. I think I've had two in
22 person, two by phone, and now I think this is my third in
23 person.
24 We believe that the Administrative Law Judge
25 correctly applied the Wisconsin Right to Life standard for
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1 express advocacy, which is there has to be no other
 2 reasonable interpretation. And you are now setting up a
 3 situation where an Administrative Law Judge has concluded
 4 there is some other reasonable interpretation; Maricopa
 5 County Elections must have concluded that there was some
 6 other reasonable interpretation; and the only agency that
 7 seems to be saying: No, no, no, there's no other
 8 reasonable interpretation, is this one.

9 And when a Superior Court Judge gets this and
 10 says, well, there has to be no other reasonable
 11 interpretation and the ALJ says there is some other
 12 reasonable interpretation, and Maricopa County Elections
 13 dismissed, meaning they may must have concluded there was
 14 some other reasonable interpretation. You guys appear to
 15 be the only governmental agency that thinks there's no
 16 other reasonable interpretation.

17 And I think the Administrative Law Judge put it
 18 well when he said: Just saying that, you know, that --
 19 that there is an interpretation that -- that the ad could
 20 be construed as express advocacy doesn't mean that there's
 21 no other reasonable interpretation. And I think the
 22 Commission should consider that very, very carefully if it
 23 decides to proceed as Ms. O'Grady suggests, because I
 24 think that is one of the critical areas where this
 25 Commission is likely to lose on appeal if it persists in

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1 really chills speech in the State of Arizona. And we
 2 think it's time to sort of end this quest, dismiss this
 3 case, and reject the motion.

4 And with that, I guess I'll take any questions.
 5 CHAIRPERSON KOESTER: Any questions?
 6 MR. TORCHINSKY: Okay.
 7 CHAIRPERSON KOESTER: Okay. Thank you, Mr.
 8 Torchinsky.

9 Well, everyone knows we've been through this
 10 before, and I think I can say somewhat confidently that,
 11 first of all, if we stay the course, we vote like we did
 12 last time, I know we have a new Commissioner and one less
 13 that did vote before, that it will probably be appealed to
 14 the Superior Court. I think that's a -- kind of an
 15 evident statement.

16 I also think that the penalty phase which
 17 Ms. O'Grady mentioned, the amount, I don't think is of
 18 paramount importance. I think if the -- if the penalty
 19 was 10,000 or 500,000, there would still be the same
 20 process, and that would be to take it to -- take it to the
 21 end because of the matter of express advocacy versus,
 22 perhaps, issue advocacy.

23 But, I think I -- I'll have to say, I don't feel
 24 any different. I think we have the same information over
 25 and over again. However, we do have a new Commissioner,

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1 pursuing this action.

2 So, we would respectfully request that the Agency
 3 reject the motion.

4 The other thing that the Commission needs to
 5 consider if it accepts this motion is that the Superior
 6 Court could further constrain the jurisdiction of this
 7 agency in -- in other matters. You know, the judge that
 8 is likely to hear the appeal based on the current judicial
 9 assignments in the Superior Court is the same judge that
 10 denied this Commission's motion to intervene in the CJF
 11 case; and is, by the way, the same judge that found the --
 12 the definition of express advocacy to be unconstitutional
 13 in the CJF case.

14 The Court could also invalidate the regulation
 15 that you are relying on here. The Court could invalidate
 16 that regulation on appeal, because the regulation is
 17 inconsistent with the statutory language on which it -- it
 18 relies.

19 So, I think the answer is -- the Court could, you
 20 know, if you proceed in this matter, given the facts and
 21 the law, I think you could actually have your jurisdiction
 22 even further hamstrung if you persist in -- in pursuing
 23 this action.

24 So, you know, for -- for nearly a year, the
 25 Commission now has proceeded with this action that -- that

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1 we did have what the ALJ did say and I think that can be
 2 considered, sure. Perhaps -- I mean, I'm ready to --
 3 to -- to hear from maybe Commissioner -- perhaps we could
 4 start with Commissioner who was the Chairman at the time
 5 that took us through this, Commissioner Reckart, on his
 6 feelings; and -- and then we'll just go around the table
 7 and see if anyone has any different thoughts than -- than
 8 the thoughts we had before and the decision we already
 9 have made.

10 Commissioner Reckart, would you like to give us a
 11 little feedback?

12 COMMISSIONER RECKART: Well -- thanks. Thanks,
 13 Chairman. I haven't changed my perspective on the -- the
 14 whole matter. I appreciate what the ALJ has provided, but
 15 I -- I think it's -- it's -- the analysis of the message
 16 that is the subject of this, the advertisement wasn't --
 17 wasn't as robust as it should have been at the conclusory
 18 and I didn't find it persuasive. I still, I think,
 19 endorse the position that the Commission took originally.
 20 There really is not any other reason for this, given the
 21 timing of it, the content of it, other than to provide
 22 some sort of impermissible advocacy.

23 The -- I think the position taken in the papers
 24 with regard to the interpretation of the -- of the rules
 25 and the Act is correct, is that 16-947(D) and the

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1 administrative rules that we have do apply apart from the
 2 16-942(B) joint and several language. And I think that
 3 Ms. O'Grady has dealt with that properly in her paper.
 4 So, I -- I would advocate that we stay the
 5 course. That we -- we confirm what we earlier decided.
 6 We adopt as just that the -- those decisions by the ALJ
 7 that are consistent with not only in this case but in all
 8 other cases the positions we've taken with regard to
 9 jurisdiction.
 10 So, with that, I -- I don't think there's any
 11 change. And I welcome Commissioner Meyer's thoughts on it
 12 since he's sort of the -- brings the new perspective, but
 13 I haven't found anything to change where I am. I
 14 appreciate Mr. Torchinsky's efforts, but I don't find them
 15 compelling.
 16 So, thank you.
 17 CHAIRPERSON KOESTER: Thank you, Commissioner
 18 Reckart.
 19 Maybe Commissioner Laird, maybe you're kind of
 20 next in line. Do you have any thoughts on top of --
 21 COMMISSIONER LAIRD: I'll reserve my comments.
 22 CHAIRPERSON KOESTER: Okay. That's fine. We've
 23 already voted once.
 24 Commissioner Titla, do you have anything to add
 25 to what Commissioner Reckart has already said?

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1 Exhibit 6 and also there are excepts in the motion that we
 2 filed. And the -- that advertisement began with, you
 3 know: "Obama's favorite Mayor, Scott Smith," and is -- is
 4 basically a series of video and -- and pictures with Obama
 5 and Scott Smith, linking them and linking Scott Smith with
 6 President Obama's policies. The policies such as
 7 ObamaCare, limits on gun rights, Obama's tax-and-spend
 8 proposals. And -- and, so that's the substance of -- of
 9 the ad.
 10 It does not identify Smith as a candidate, but we
 11 know from Committee of Justice and Fairness at the Court
 12 of Appeals, it doesn't have to. It just has to identify
 13 him and he has to be a candidate, which was true when the
 14 time -- this -- he had announced his candidacy when
 15 this -- when this ran.
 16 And then he resigned April 15th from -- from
 17 office as -- as Mayor. But he announced in Jan- -- when
 18 he announced his candidacy in January, he also announced
 19 his -- that he would be resigning soon from his position
 20 as Mayor. So --
 21 COMMISSIONER TITLA: Mary. Excuse me. So, Smith
 22 -- Mr. Smith was a Republican, right?
 23 MS. O'GRADY: Yes. That's right.
 24 COMMISSIONER TITLA: Is. Is a Republican.
 25 MS. O'GRADY: That's right.

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1 COMMISSIONER TITLA: Yes, Chairman. If we can
 2 refresh our memory on the facts of this case, I think the
 3 -- the basis of the whole case is LEAF's [sic]
 4 advertisements. Right, Mary?
 5 CHAIRPERSON KOESTER: Yeah, they had.
 6 COMMISSIONER TITLA: Yeah. Can I have Mary give
 7 us the facts of the case again to refresh our memory? Is
 8 that okay?
 9 CHAIRPERSON KOESTER: Well, yes. I mean, the ad
 10 was run and -- and was run in Pima --
 11 COMMISSIONER TITLA: But can I have Mary --
 12 CHAIRPERSON KOESTER: Sure.
 13 COMMISSIONER TITLA: -- stand up here?
 14 CHAIRPERSON KOESTER: Go ahead. Go ahead.
 15 MS. O'GRADY: Sure.
 16 COMMISSIONER TITLA: What happened here, Mary?
 17 MS. O'GRADY: Okay. In January -- and these were
 18 stipulated facts, primarily. In January of 2014, Scott
 19 Smith, who was then Mayor of Mesa and also then head of
 20 the U.S. Conference of Mayors, announced that he would be
 21 running for the -- for Governor in Arizona. So, seeking
 22 the Republican nomination for Governor.
 23 At the end of March, from March 31st to
 24 April 14th, there were television advertisements ran
 25 throughout Maricopa County that are in the record in

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1 COMMISSIONER TITLA: And the Republican Party
 2 was -- had these ads attacking his candidacy?
 3 MS. O'GRADY: No. The advertisement was from the
 4 Legacy Foundation Action Fund, the -- the -- Mr.
 5 Torchinsky's clients.
 6 COMMISSIONER TITLA: Are they Republicans?
 7 MS. O'GRADY: I don't know their political
 8 affiliation. It's by this organization. And the purpose
 9 of this proceeding was that they -- they ran this ad and
 10 the Commission -- the question was: Should they have
 11 filed an independent expenditure report? Was this express
 12 advocacy that in context has no reasonable meaning other
 13 than to advocate for the defeat of Scott Smith?
 14 And so the analysis is to look at the ad, look at
 15 the timing, look at the context and see if there is
 16 another reasonable meaning. And I think -- and the
 17 position that the Commission was defending before the ALJ
 18 and the position that I am suggesting the Commission
 19 maintain, was that the only reasonable meaning of this ad
 20 was indeed to advocate for Smith's defeat; and, therefore,
 21 it was express advocacy and therefore he -- they should
 22 have filed the disclosure report that applies to
 23 independent expenditures under the Clean Elections Act.
 24 And so that's the context.
 25 To -- and in terms of the --

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1 COMMISSIONER TITLA: Mary?

2 MS. O'GRADY: Yes.

3 COMMISSIONER TITLA: What does LEAF [sic] say in

4 this on express advocacy? Why are they saying that?

5 What's their rationale? What reasons are they giving

6 right now?

7 MS. O'GRADY: The -- the Legacy Foundation Action

8 Fund?

9 COMMISSIONER TITLA: Legacy, yeah.

10 MS. O'GRADY: Well, they can certainly address

11 that issue, but I think the altern- -- and the -- one of

12 the holes in the ALJ's analysis was that he doesn't really

13 identify the alternative reasonable explanation.

14 I think the surface-level alternatives would be

15 to advo- -- to impact his behavior as Mayor of Mesa, but

16 in context that did not seem reasonable and the ad really

17 doesn't focus on his Mayor of Mesa -- his role as Mayor.

18 It focuses on the Conference of Mayors, also to influence

19 the Conference of Mayors. But it doesn't make sense, it

20 didn't seem reasonable to conclude that that's the meaning

21 of the ad when he has announced his resignation, everybody

22 knows he's resigning from office, everybody knows he's

23 running for Governor.

24 And the -- the argument was posed that, well,

25 this is part of a national effort that -- that LFAF has

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1 well, if -- if he has anything to add.

2 CHAIRPERSON KOESTER: Sure, sure. But I think

3 Commissioner Meyer had a question first.

4 COMMISSIONER MEYER: I did have a question.

5 Normally you get a chance to file a reply in briefing, at

6 least that's how it works in the commercial world.

7 MS. O'GRADY: Yes.

8 COMMISSIONER MEYER: Is there any reply I guess

9 you would have to the response to their motion? And,

10 specifically, could you reply to the argument made

11 regarding jurisdiction and the concern about narrowing --

12 the narrowing of the Commission's authority that was made

13 by your -- sorry, Mr. --

14 MS. O'GRADY: Torchinsky?

15 COMMISSIONER MEYER: Torchinsky, yes. Thank you.

16 MS. O'GRADY: Sure. In terms of his arguments

17 about the Commission's jurisdiction over independent

18 expenditures generally, I think it's wrong. It's

19 inconsistent with the rules. It's inconsistent with the

20 statute. We have a specific statute, 16-941(D), that is

21 undeniably part of the Clean Elections Act that undeniably

22 imposes a responsibility to file reports for independent

23 expenditures. So, that's part of the Act.

24 And the argument that there's dual enforcement,

25 well, the Commission is the only entity with jurisdiction

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1 committed to to influence the Conference of Mayors. But

2 the stipulated facts show that the -- they ran these ads,

3 these television ads in Arizona that were -- spent more

4 than \$260,000 on those; and in other states spent, where

5 people who were not resigning, but were current officers

6 and going to remain in office, they ran, for example, in

7 Kev- -- in Sacramento where Kevin Johnson is Mayor and he

8 was going to succeed Smith as president of the Conference,

9 they spent \$3,395 on radio advertisements. And in

10 Baltimore, where there was another officer, they spent

11 \$2,595 on radio advertisements. There were no television

12 advertisements.

13 So, again, in context, it didn't look reasonable

14 to view this ad as a part of a national effort to

15 influence the Conference of Mayors. Again, it looked

16 reasonable -- the only reasonable explanation in context

17 seemed to be that this was to advocate for his defeat in

18 the Republican primary.

19 MR. MUNNS: Mr. Chair, Commissioners?

20 CHAIRPERSON KOESTER: Yes.

21 MR. MUNNS: Since Mr. Titla asked questions --

22 or, Commissioner Titla asked questions of the State's

23 counsel, I would recommend allowing the Respondent --

24 CHAIRPERSON KOESTER: Sure.

25 MR. MUNNS: -- to respond to the question as

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1 to enforce that requirement in the Clean Elections Act,

2 and so there's not dual enforcement over that requirement.

3 The Secretary of State may have jurisdiction over, you

4 know, other statutes in Article 1 and -- but, certainly,

5 the Clean Elections Act -- the Clean Elections Commission

6 has jurisdiction over violations of the Clean Elections

7 Act.

8 And there are circumstances, too, where there are

9 reporting requirements in Article 1 that the Commission

10 has jurisdiction over. But we don't even need to get to

11 that point here, because we have a specific Clean

12 Elections Act that's been -- statute that's been violated.

13 The argument that, you know, this will -- they'll

14 raise this in their appeal and we may get the same judge,

15 well, again, that judge was reversed in Committee of

16 Justice and Fairness by unanimous Court of Appeal's

17 decision. So, I think he would -- if he is the judge

18 assigned, would take that in -- you know, in consideration

19 when he's ruling. And there's also, you know, other

20 procedural avenues in terms of, you know, when judges are

21 assigned to the case when you -- you review to make sure

22 that you get an appropriate judicial assignment.

23 And so if they make those arguments, they make

24 those arguments, and we would just, you know, defend those

25 arguments.

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1 COMMISSIONER MEYER: Any other issues in the --
2 in the response to your motion that you would --
3 MS. O'GRADY: Well, their main argument --
4 COMMISSIONER MEYER: -- like to address outside
5 of your motion?
6 MS. O'GRADY: Yeah. Their main argument was, you
7 know, we've -- there's nothing new here. And --
8 COMMISSIONER MEYER: Okay. It's new to me, so --
9 MS. O'GRADY: -- that's true.
10 COMMISSIONER MEYER: It's -- so I apologize.
11 It's new to me because I -- I was just appointed.
12 MR. COLLINS: And so -- so I was just responding
13 to that. That's not really a substantive argument, that's
14 just the reality is that's true, this isn't new.
15 The Commission has spent a lot of time, and --
16 and I know that you're new to this, and I -- and -- and
17 whatever I can do to help since this is the first time
18 you've -- you've seen it. But they didn't really, you
19 know, add anything to the analysis.
20 The idea that -- that others -- that the
21 Commission is sort of an outlier here. Well, the
22 Commission is a five-member deliberative body that, you
23 know, has spent multiple meetings reviewing this. And --
24 and so I think that, you know, the Commission, as a body,
25 carries great weight.

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1 passage of the Clean Elections Act committed enforcement
2 and -- and violations of that section to the Secretary of
3 State's office.
4 So, the Secretary of State's office, through
5 Maricopa County Elections, declined to take any action
6 here, and we believe the Commission should -- should do
7 the same. And I -- I think, you know, anything else would
8 just be rehashing what we've already said in -- in
9 briefings, unless you have any other questions that I
10 could address.
11 COMMISSIONER LAIRD: Mr. Torchinsky, do you know
12 the nature of and the content of the radio ads in
13 Sacramento and -- and Baltimore?
14 Did they also try to tie Kevin Johnson and
15 Stephanie Rawlings-Blake as favorites of -- or, buddies of
16 President Obama and/or address the same three policy
17 issues that are mentioned in the \$260,000 worth of
18 television advertising here in Arizona?
19 MR. TORCHINSKY: I don't have -- I don't have --
20 I don't have in my possession any information about the
21 content of those ads. I could -- I'm sure I could get it,
22 but I don't have it at the moment.
23 COMMISSIONER LAIRD: Thank you.
24 CHAIRPERSON KOESTER: Ms. O'Grady, do you have
25 any on the ads themselves?

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1 We don't know what the -- what the Maricopa
2 County Clean Elec- -- or, excuse me, the Maricopa County
3 Elections Director concluded when their outside counsel
4 assigned to this case, because the Secretary of State had
5 recused, we don't know any reasoning and what their
6 reasoning for not proceeding with this enforcement was.
7 We have the ALJ's de- -- reasoning. And,
8 candidly, I was not -- I did not find it persuasive. I
9 found much more persuasive the reasoning that this
10 Commission adopted in the course of its deliberations and
11 the recommendations and the probable cause recommendation
12 of the Executive Director in terms of why this is -- why
13 the only reasonable meaning in context, is that this is
14 advocating for the defeat of Scott Smith as a Republican
15 candidate for Governor.
16 COMMISSIONER MEYER: Thank you.
17 MS. O'GRADY: Thank you.
18 CHAIRPERSON KOESTER: Mr. Torchinsky, please, if
19 you would like.
20 MR. TORCHINSKY: Sure. You know, I -- I think
21 I'd like to point the Commissioners to what -941 sub (D)
22 actually says. It actually says: Independent expenditure
23 reports shall be filed with the Secretary of State. So,
24 again, it sort of reinforces what I said from the
25 beginning, which is the statute that pre-existed the

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1 MS. O'GRADY: No, we don't have the content. We
2 know the dollar amount spent; we know they were radio not
3 television. And at this point, too, I think the record is
4 the record. And so I'm not even sure that we can add
5 additional stuff -- factual information, to the record.
6 CHAIRPERSON KOESTER: Okay.
7 MR. TORCHINSKY: I also want to just -- just add
8 one final point. I'm not sure what the relevance of that
9 is. The Supreme Court said in Wisconsin Right to Life,
10 you're supposed to consider the content of the
11 communication itself.
12 I think Ms. O'Grady's insistence that the
13 Commission should look to what was spent in other places
14 or -- or the Commissioner's suggestion that what might
15 have been said in other places impacts the -- what the --
16 you know, what the -- the text of this ad says, is
17 actually not a relevant or -- or even sort of even a
18 permissible factor under Wisconsin Right to Life.
19 I mean -- and the -- the Administrative Law Judge
20 repeated what we have insisted in front of this Commission
21 multiple times is: You cannot use these things as a proxy
22 for subjective intent. The Supreme Court has said:
23 Intent is not relevant, what is relevant is what the ad
24 itself says. And I think that -- that the Commission's,
25 you know, continuing search for some intent as a proxy for

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1 what the -- you know, as a proxy for what the ad says is,
 2 I think, impermissible.
 3 The Administrative Law Judge confirmed what we've
 4 been telling you. And I really urge the Commission to
 5 listen to what the Administrative Law Judge said and
 6 listen to what the Supreme Court said -- or, read
 7 carefully what the Supreme Court said in Wisconsin Right
 8 to Life. You have to look at the content of the ad
 9 itself, not all these extraneous factors that Ms. O'Grady
 10 keeps pointing to and that the Commission seems to be
 11 searching for to somehow try to divine what the intent of
 12 the ad might have been based on what it spent in other
 13 places or what it might have even said outside of the
 14 State. I think those are just irrelevant factors for the
 15 Commission's consideration.

16 COMMISSIONER MEYER: Well, I'm correct that you
 17 stipulated to have those facts in the record, correct?

18 MR. TORCHINSKY: We stipulated that ads were
 19 spent related to other mayors, but the content of those
 20 ads was not part of the record.

21 And, in fact, I believe -- actually, I don't even
 22 think the Commission inquired of that when it issued its
 23 administrative request for -- for information back in
 24 September or October of last year. I don't think that was
 25 part of even the request.

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1 on multiple times what the intent of this ad was.

2 COMMISSIONER TITLA: Yeah. Just -- just to let
 3 you know that I disagree with your statement there and --
 4 just to let you know that.

5 MR. TORCHINSKY: Okay. Thank you, Commissioner.

6 CHAIRPERSON KOESTER: Okay. Yes?

7 MS. O'GRADY: May I have one more point --

8 CHAIRPERSON KOESTER: Sure.

9 MS. O'GRADY: -- just to clarify the record?

10 CHAIRPERSON KOESTER: Ms. O'Grady.

11 MS. O'GRADY: Some of this discussion of the --
 12 the ads in the other cities, was the result of the
 13 affidavit that LFAF submitted by Christopher Rants in July
 14 when they filed their response to this complaint. And --
 15 and they introduced this idea that -- and they said in the
 16 declaration: "The purpose of the ads was to draw
 17 attention to the Mayor's involvement slash
 18 support of the agenda supported by the U.S.
 19 Conference of Mayors."

20 So, they introduce this sort of his subjective
 21 intent and mentioned the ads in the other areas. And so,
 22 you know, the Commission's approach was not to look at the
 23 subjective -- at what Mr. Rants says his subjective intent
 24 was, but to focus on the content of the ad and the limited
 25 context, which is he was a candidate for Governor, what's

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1 COMMISSIONER TITLA: Chairman?

2 CHAIRPERSON KOESTER: Commissioner Titla.

3 COMMISSIONER TITLA: Yeah, I disagree with your
 4 statement that the Commission is trying to search for, you
 5 know, other rationale here. So, I don't know if it's
 6 proper for you to insinuate that I am a Commissioner, that
 7 I'm searching for other avenues or other -- other
 8 rationale here. So, I would -- I would request that you
 9 not in- -- insinuate that I as a Commissioner am searching
 10 for something here. So, I don't think that's proper,
 11 Counselor.

12 MR. TORCHINSKY: Commissioner, I respectfully
 13 disagree. In the November hearing I was pressed by -- and
 14 I don't recall which Commissioner was pressing me. I was
 15 pressed by the Commissioner about what the intent of the
 16 ad was, and even one of the Commissioners suggested that
 17 you would subpoena Mr. Rants, who is the president of the
 18 organization, and question him with respect to the intent
 19 of the ad; and I indicated at that time that we would move
 20 to quash any such subpoena.

21 So, this Commission is asking what the intent is
 22 of this ad instead of looking at the content of the ad.
 23 And I refer you back to the November transcript if you
 24 have any questions about what was said during that
 25 hearing. So, I do think that this Commission has asked me

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1 the timing, and then look -- let's look at the content of
 2 the ad.

3 We also did look at the -- what the Conference of
 4 Mayors had said and when they said it, and that -- and
 5 that's in the record as well. And -- and the ads really
 6 were not connected to, by and large, Mr. Smith.

7 CHAIRPERSON KOESTER: Thank you.

8 Well, if no one has any further questions for
 9 Ms. O'Grady and Mr. Torchinsky, I think it's evident that,
 10 like I said, we've been through this three or four times
 11 or more, and that we've reached a conclusion based on the
 12 ad that it was express advocacy, and we could not find any
 13 other reasonable reason why that ad was run, other than to
 14 advocate against Mr. Smith for the benefit of whoever --
 15 Ducey, Jones, Bennett -- as a more conservative candidates
 16 than Mr. Smith was shown to be by the ad that had a number
 17 of things in there that, frankly, Mr. Smith was not even a
 18 part of.

19 In other words, some of these things took place
 20 before he was the president of the Mayor's Conference.
 21 And it was just, like, thrown together. To me, I still
 22 remember the picture of -- of Mr. Vice President and the
 23 President and Mr. Smith all smiling and laughing like
 24 they're friends and whatnot, and a picture of -- a little
 25 sign of ObamaCare in the background, and I can't get that

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1 out of my mind. It just feels like that one purpose of
 2 that ad was to make Mr. Smith look quite liberal in a
 3 Republican primary that was apt to be fairly conservative.
 4 Now, it's just my opinion. I know everybody has
 5 opinions and I might as well state mine.
 6 But I -- I don't see anything new that came in
 7 today or from the ALJ report, his -- his feelings. So, I
 8 -- I would like to see if we have the votes or don't have
 9 the votes. And -- and -- and I guess I'm looking for a
 10 motion to perhaps reaffirm our -- our feeling that it was
 11 express advocacy. And -- and I think the fine is fine
 12 where it is because I don't think that's -- needs to be
 13 discussed.
 14 So, Commissioner Reckart, you kind of started us
 15 off, if you want to make a motion or -- or not, I think we
 16 can go -- go from here.
 17 MR. MUNNS: Mr. Chair, Commissioners. I'm sorry.
 18 CHAIRPERSON KOESTER: Yes.
 19 MR. MUNNS: Since you have a recommended decision
 20 in front of you, you will need -- your motions will need
 21 to address whether you're going to adopt, reject, or
 22 modify the decision.
 23 CHAIRPERSON KOESTER: Okay.
 24 MR. MUNNS: So, if you agree with --
 25 COMMISSIONER RECKART: That's where I was going
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1 be a typographical error as to a statutory reference in
 2 the draft. Adminis- -- administrative decision on page 7,
 3 I guess it's starting at line -- at line 10: 16-957(D).
 4 I don't -- I'm not sure. There's no (D) in that statute.
 5 So, I don't know if it was supposed be a reference to (B)
 6 or a different -- Ms. O'Grady is indicating that that
 7 should be (B).
 8 CHAIRPERSON KOESTER: (B) instead of (D)?
 9 MR. MUNNS: Yes.
 10 CHAIRPERSON KOESTER: All right.
 11 COMMISSIONER MEYER: Which page -- which page is
 12 that?
 13 MR. MUNNS: It's on page 7, line 10.
 14 COMMISSIONER RECKART: Okay. Should --
 15 CHAIRPERSON KOESTER: Now, I see it. Yeah.
 16 MR. MUNNS: Oh, is that the draft? Oh.
 17 CHAIRPERSON KOESTER: Yeah.
 18 MR. MUNNS: It's the draft that she pre- -- the
 19 draft administrative decision.
 20 COMMISSIONER MEYER: I'm not -- I'm not sure I
 21 have a copy of that.
 22 MR. MUNNS: It's right -- it should be right
 23 after the --
 24 COMMISSIONER RECKART: It's at the end of her
 25 papers.
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1 to go.
 2 MR. MUNNS: Okay. I was going to suggest, if you
 3 agree with Ms. O'Grady's argument, she's presented a
 4 proposed decision --
 5 CHAIRPERSON KOESTER: Okay.
 6 MR. MUNNS: -- to adopt. And if you agree with
 7 Mr. Torchinsky's argument, it would just essentially be to
 8 deny Ms. O'Grady's. But it sounds like he would ask that
 9 you adopt the ALJ decision as is.
 10 CHAIRPERSON KOESTER: I see. Okay. Mr. Reckart,
 11 do you have that information?
 12 COMMISSIONER RECKART: Yes. Yes. I just -- I
 13 think attached to Ms. O'Grady's papers is a form of a
 14 suggested order. Trying to find it right now. I just had
 15 it.
 16 And I would propose -- I would move that we adopt
 17 that because it lays out in detail exactly how we deal
 18 with each of the -- each of the issues that are raised by
 19 the ALJ's order. And on that basis, would ask that the
 20 Commission approve -- I would move that the Commission
 21 approve the final administrative order that is now in
 22 draft form attached to Ms. O'Grady's paper and make that
 23 -- adopt that as our final order.
 24 MR. MUNNS: And, Mr. Chair, members of the
 25 Commission, I -- I did notice there -- I think there might
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1 MR. MUNNS: Right. Right after the ALJ decision.
 2 Here. You can -- here's my copy.
 3 COMMISSIONER MEYER: Yeah. All I have is the
 4 opinion. Okay.
 5 MR. MUNNS: It basically encapsulates --
 6 COMMISSIONER RECKART: Correct.
 7 MR. MUNNS: -- the arguments as reasoning -- the
 8 arguments she made in her motion as reasoning into an
 9 order for the -- for the Commission.
 10 COMMISSIONER MEYER: Okay.
 11 CHAIRPERSON KOESTER: Okay, then. Mr. Reckart,
 12 you're just stating that with --
 13 COMMISSIONER RECKART: I would restate the motion
 14 but with the modification that the typographical error be
 15 -- be corrected to indicate (B).
 16 CHAIRPERSON KOESTER: (D) to (B), yeah.
 17 COMMISSIONER RECKART: Yes.
 18 CHAIRPERSON KOESTER: Gotcha. All right. Do we
 19 have a second?
 20 COMMISSIONER MEYER: Second.
 21 CHAIRPERSON KOESTER: Any discussion or...
 22 Then, all in favor, respond with an "aye."
 23 (Chorus of ayes.)
 24
 25 CHAIRPERSON KOESTER: Opposed?
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1 Okay. Carries unanimously and we're staying the
 2 course.
 3 Next item is Item IX, discussion and possible
 4 action on legislative matters relating to elections,
 5 including proposed legislation involving elections and
 6 campaign finance and public administration.
 7 So, Mr. Collins, if you would.
 8 MR. COLLINS: Yes. Commissioners, thank you.
 9 And I -- I appreciate your patience in this rather lengthy
 10 meeting today. Lengthier than I think we'd hoped last
 11 month.
 12 Roughly where we are in the legislative session
 13 is that the legislature supposedly would like to adjourn
 14 within the next two weeks. The status of items directly
 15 related to the Commission's existence is that there is
 16 a -- the -- the so-called repealer, which is really an
 17 amendment of the Clean Elections Act and a
 18 re-appropriation of the Clean Elections Fund to other
 19 purposes is pending in the House; it has passed out of
 20 committee and can go to the floor and be passed. If it
 21 has to be altered somewhat if -- for it to be finally
 22 passed, or it may have to go to -- back to the Senate for
 23 an additional vote.
 24 You may recall that at one point, the bill
 25 appropriated the Clean Elections Fund to K-12 education.

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1 available for candidates to run campaigns.
 2 And then third, and the point that -- that --
 3 that -- that the sec- -- that the staff members of the
 4 House would like us to focus on, is that the only reason
 5 why this is happening is because the Commission continues
 6 to state that it has authority to enforce the Clean
 7 Elections Act as it applies to candidates for State and
 8 legislative office who are not in the public financing
 9 program. And a -- a -- a new wrinkle, additionally,
 10 enforcement of the Clean Elections Act against folks such
 11 as the Legacy Foundation Action Fund who have independent
 12 expenditure obligations.
 13 So -- so, the -- the -- the initial foray, and --
 14 and I'm -- I'm being more candid with you, I guess, in
 15 open session than I otherwise would be because of the
 16 interest of time.
 17 The initial foray was simply strikethrough in the
 18 Act every piece of the Act that relates to traditional
 19 candidates and independent expenditures, and in return for
 20 that strikethrough being approved with a three-quarter
 21 vote of the legislature, a -- a ballot measure won't be
 22 placed on the ballot. Which is a little hard to -- it's
 23 not much of a -- it's not much of a compromise.
 24 And the assumption being, look, we -- the
 25 Republican majority -- and it happens to be a Republican

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1 It currently appropriates the Clean Elections Fund back to
 2 the general -- appropriates the Clean Elections Fund to
 3 the General Fund. Whether or not, you know, the -- from a
 4 legal perspective and a policy perspective, that's --
 5 doesn't make a hill of beans. There are some folks who
 6 are interested in this who think it makes a political
 7 difference, and so we don't know where that progress is.
 8 That having been said, we've had some preliminary
 9 discussions, Joe Kanefield and -- and myself with the
 10 staff of the majority -- of the majority of the House
 11 respecting what kind of compromise could occur to forego
 12 having the ballot measure go on the ballot.
 13 And the -- and -- and we've heard three different
 14 things overall -- or, at least I've heard three different
 15 things from legislators overall this session around why
 16 the impetus to put forward a -- a -- an amendment and
 17 re-appropriation in the way that it's being done.
 18 One is that members continue to insist that other
 19 members of the body are marginal figures who shouldn't be
 20 in the legislature, and that they believe for reasons that
 21 are, I believe, folk wisdom at this point rather than
 22 fact, that the public financing part of the program causes
 23 people to be elected who are -- who are marginal.
 24 Second, we have heard that there is a principal
 25 point of some folks that we shouldn't have public money

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1 majority, but the majority has, I guess, I've -- my own
 2 view, is that given what Clean Elections does, if there
 3 was a Democratic majority, you would have the same
 4 problem, because the issue is the independence not the
 5 party. But the majority has the -- you know, you know,
 6 can vote this on the ballot whenever they want to. That's
 7 the nature of being the majority.
 8 So -- so, okay. So -- so, we then came back and
 9 said, well, what if we did this, what if we did some
 10 things to we think improve the public financing program,
 11 you know, give us some more ability to do some more voter
 12 education to build on all the efforts we've made over the
 13 past few years to -- to do that?
 14 We really -- what we proposed is really a -- a
 15 comprehensive overhaul of the public financing piece. Not
 16 necessarily focused on increasing the amount of money
 17 available to public candidates from public money, although
 18 that's part of it, but really increasing the flexibility
 19 they have in allowing it to -- allowing the program to --
 20 to -- to evolve in that sense, and also allowing us to
 21 continue our efforts, which you-all have endorsed and been
 22 -- frankly, are the leaders in this State on of getting
 23 more information out to voters about -- about how to
 24 participate, what the issues are on the ballot so the
 25 voters can go to the ballot informed. And that's the

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1 nature of a -- of a compromise that is closer to something
2 like a compromise, in -- in my view.
3 So, there's really two questions that are baked
4 into this, right? One is, what is the nature of the Act?
5 What is the nature of the Commission?
6 If, in fact, as we've now reaffirmed for quite
7 some time, and we have an Arizona Supreme Court case in
8 case anyone ever wants to read it, the Clean Elections v.
9 Brewer that says we do these functions related to
10 independent expenditures and -- and traditional
11 candidates, independent of the public financing piece.
12 That's what the opinion says.
13 Is it for the Commission to say, well, that's
14 part of -- that's what the Act is and, therefore --
15 therefore, it's up to the voters if they want to strip
16 that out, not up to us to make that compromise, that's one
17 question.
18 And then the other question is, on the assumption
19 that the Commission can be the people who make that
20 decision or ought to make that decision, can you
21 compromise with the legislature in a way that allows the
22 legislature or someone to argue that an amendment that
23 removes those provisions related to independent
24 expenditures in traditional candidates, you know, advances
25 the purpose of the Clean Elections Act in a subsequent

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1 So, so -- that's how we've -- that's how we've
2 done it historically, that's how we've been working on it
3 this session, that's been the strategy is to try to say,
4 look, yeah, we would -- we think that if you're going to
5 frame the -- the ballot question the way you are in a way
6 that we think is misleading, and I think personally even
7 no matter how you cut it is probably illegal, but that's
8 subject to litigation itself. You know, you know, maybe
9 its better to -- to come up with some kind of compromise
10 that gets us something, that allows us to do work on
11 behalf of voters in a way that -- that -- that can be
12 effective if we get there.
13 So, I mean, that's really the -- that's really
14 the -- the discussion point. So, the -- the -- the policy
15 choice that I think is -- is, you know, is -- is -- has
16 been lurking behind a lot of the decisions we've been
17 making for the last year is: Do you believe that the --
18 that the pieces of the Act that relate to traditional
19 candidates, and independent expenditures especially, are
20 intrinsic enough in the Act that it's something you want
21 to continue with regardless?
22 Or, should we explore further an option that
23 emphasizes other pieces of the Act, be the -- be it, you
24 know, trying to get some more flexibility to improve the
25 public financing program, which we do think has -- you

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1 Voter Protection Act challenge.
2 Historically, what the Commission has done
3 through the -- acting through the Executive Director, is
4 taken a position that said, yes, can we can make those
5 kind of agreements. That we can say: We'll give a little
6 here and take a little there; and the rough analysis is
7 that it will further the purpose. It will get a
8 three-quarter vote, which is, you know, there is two
9 prongs for a Voter Protection Act analysis, if you will,
10 just to rehearse this again for -- especially for
11 Commissioner Meyer, who is new. When it comes to the
12 Clean Elections Act and anything else that is voter
13 protected, you've got to get a three-quarter vote and
14 further the purpose.
15 If you get a three-quarter vote, the -- the
16 person who thinks the purpose wasn't furthered probably
17 was on -- was in -- it sorts of everybody gets in the boat
18 and you all go over the side together. And there's
19 probably not someone to sue on the further-the-purpose
20 prong if you get a three-quarter vote, because if you can
21 get a three-quarter vote, there's not a whole heck of a
22 lot of people left out there to sue.
23 But it still doesn't change the fact that there's
24 a legal question out there nevertheless if there's -- you
25 know.

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1 know, we have -- has its own benefit to voters in terms of
2 voter interaction and stuff like that, and the voter
3 education piece in the hopes -- and, again, and then
4 there's -- then there's this last wrinkle in this, is the
5 hope that -- and this really is an issue -- that we're not
6 just going to come back and do this again next year.
7 And -- and -- and to -- and that point is a point
8 Joe can talk a little bit about what he thinks we can do
9 on that -- that issue maybe more than I can.
10 Because that's the "X" factor in all of this.
11 For years now the Commission has time and again, the
12 legislature says: We don't like "X"; and the Commission
13 says: Okay, well, we'll give you "X"; and they say:
14 Well, this time we won't threaten the ballot. And then
15 year after year the ballot threat comes back, the ballot
16 threat comes back, and even in this year 2015. 2016
17 ballot, there is a whole other legislative session that
18 occurs between now and then.
19 So, that's -- that's the -- so, how we can be
20 assured that nothing will happen at least before 2016, how
21 long this -- the peace can be bought for is the question,
22 if you will. And then the question is, if there is peace
23 to be -- to be brought, what are the terms of that would
24 be.
25 So, that's -- that's really what we're trying to

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1 -- trying to refresh you on, trying to get in front of you
 2 is the idea that, first of all, if you want to continue
 3 doing the thing that I think continues to be our legal
 4 position, you know, if you think that's intrinsic in the
 5 Act completely and so we oughtn't compromise on it, that's
 6 the thing I need to know.

7 On the other hand, if -- if there's a -- if there
 8 is a -- if there's an agreement to be reached that
 9 improves the public financing program, improves the voter
 10 education program, and provides some -- something like a
 11 guarantee that we're not simply going to whittle away at
 12 what the voters passed, without asking the voters ever
 13 what they, in fact, want, then -- then that's -- that's a
 14 choice that's in front of you.

15 So, that's really -- that's where we're at. I
 16 mean, we -- we think that in the event that we can reach a
 17 decent compromise, you know, we can -- that -- that does
 18 actually account for those factors that I've just
 19 identified, you know, that's something we can go forward
 20 with, the nuance of that. And -- and -- and -- you
 21 know -- and then -- so that's kind of the -- kind of
 22 the -- it's a tough decision is -- I guess is what it
 23 comes down to. And there's a lot of things that we've
 24 been working on that are -- that are going to be
 25 controversial.

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1 Or, if you would prefer to simply say, you know
 2 what, it's -- it's -- it's time to have this -- you know,
 3 time to this have out.

4 And, unfortunately, the way the legislature has
 5 put together the ballot measure -- again, the caveat
 6 here -- is not straightforward. It is misleading. It
 7 says that there is a thing called the Clean Elections Fund
 8 and it will be re-appropriated in such a way that not one
 9 dime goes to elections.

10 So, it's a -- it's a -- it's a complicated
 11 question like all of them. But, that's kind of how --
 12 that's kind of how the -- how things shape up. And so I
 13 -- I guess that's kind of -- I mean, I don't know how to
 14 summarize it anymore than that. It's -- it's -- for
 15 Commissioner Meyer, who is new, but for the other four of
 16 you, this is really just a bringing together of all the
 17 things we've been talking about for the last -- together
 18 for the last 18 months. And -- and so, I mean, that's
 19 about as frank as I can be about it, frankly.

20 CHAIRPERSON KOESTER: Okay. Joe, would you like
 21 to comment?
 22 You're welcome.

23 MR. KANEFIELD: Mr. Chair, members of the
 24 Commission, I think Tom accurately stated the current
 25 status of the proceedings of the legislature with respect

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1 Having a person who is elected in office say: I
 2 would prefer it if there was one less person who might
 3 hold me accountable for how I am conducting myself in an
 4 election or office, it's not rocket science to think that
 5 a bunch of folks who have been elected would object to
 6 that.

7 I mean, it's sort of like if you ask -- and I say
 8 this with as much humor as I can possibly say it -- it's
 9 sort of like asking a bunch of -- a bunch of, you know,
 10 drug dealers if you'd rather there weren't any drug laws.
 11 You know? I mean, it's not a great analogy, but you get
 12 my point.

13 It's like -- it -- it -- it's sort of like, you
 14 know, there's not -- it's just natural if you're in
 15 politics to want to do what you do without anybody poking
 16 around at what -- what you're doing. That's just --
 17 that's human nature is what it is.

18 So, that's -- that's -- that's sort of where we
 19 are. I don't necessarily need a vote or anything like
 20 that, but I -- but I -- but I do need to know if -- if
 21 you -- if you want us to pursue something with those three
 22 factors: Improving the public financing program,
 23 improving the voter education program, and getting a -- a
 24 real assurance that we're not going to do this dance again
 25 in the immediate future.

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1 to the Commission. I think, as looking back at the
 2 direction that you gave me and Tom as your legislative
 3 team towards the end of the year in terms of the goals
 4 that you wanted us to pursue including opposing any
 5 efforts to defund, eliminate, or limit the Act in any way;
 6 and also to improve the public financing program; and to
 7 improve the code; and to improve access, voter access,
 8 voter involvement, voting, all these kinds of things.

9 So, we think that the current status of things,
 10 just -- just to be clear, is that this bill, SCR 1001,
 11 which would refer to the voters in 2016 the question of:
 12 Do you wish to repeal the Clean Elections Act and divert
 13 all of its funding to public education is -- is -- didn't
 14 have the support -- narrow support of the majority of the
 15 Senate. It's currently in the House of Representatives.
 16 It was amended in the Elections Committee, but only to the
 17 extent that instead of diverting the funding source to
 18 public education, it would divert it to the General Fund.

19 We've obviously opposed that. We've raised
 20 questions about whether that presented two questions to
 21 the voters, which -- which the legislature can't do under
 22 the single-subject provision. But also, of course, we
 23 just think it's bad policy. If -- if -- if this going to
 24 go back to the voters, it should just be a straight-up
 25 question: Do you want to continue the program?

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1 And we've heard arguments about, well, this --
 2 it's been in existence for 15 years, it's time for the
 3 voters to decide whether they want to continue it and it
 4 should be debated. Well, you know, we -- obviously, we
 5 don't want to see that happen, but if it's going to
 6 happen, it should just be a straightforward question,
 7 not -- not diverting the voters' attention with -- or
 8 clouding the issue with: Do you want to increase the
 9 surcharge on civil and criminal penalties for public
 10 education, or anything else for that matter? Which,
 11 really, in our minds is two separate questions.
 12 So, on -- with respect to this, the posture of
 13 course is it's in the House, it -- it got through the
 14 Elections Committee on a narrow vote, and now the next
 15 step would be to go to the Rules Committee and ultimately
 16 to the Committee of the Whole, and then to -- for third
 17 read. And then -- and then once that happens, if it stays
 18 in its current form, the -- the Senate would have to
 19 concur with the amendment or not; or, they could strip the
 20 amendment out and it could go back to the original form,
 21 and then it's on the ballot.
 22 So, we're -- and as Tom said, that we're looking
 23 at a session -- the session ending in the next two to
 24 three weeks, so there's not much time to either prevent
 25 this from happening or -- or to reach some kind of

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1 discussion with the Commission and -- and other
 2 stakeholders, of course, about whether there may be other
 3 changes. I don't -- I don't -- it was pretty clear last
 4 night, the vote was 8 to 6, so in its current form it
 5 could -- could not likely receive support of
 6 three-quarters of the legislature. So, it -- it would
 7 have to change if -- and -- and our opposition was -- was
 8 soft in that we recognized that there's room for some
 9 compromise here and that's what we're going to do over the
 10 next couple weeks.
 11 And I think the purpose of this long discussion
 12 is to make sure that you're aware of what's happening,
 13 because things are very fluid in the legislature and
 14 things are going to happen very quickly, and they may very
 15 well be done before your next meeting, and -- and so we
 16 want to make sure you're fully informed. We're sticking
 17 to the guidelines that you gave us last year.
 18 And unless there's some other direction or
 19 comments you have that we -- that could give us some
 20 insight as to what else you would want us to do.
 21 CHAIRPERSON KOESTER: Thank you. I guess we all
 22 express our opinions.
 23 My opinion is I don't think we should change
 24 course very much, if at all. I know all State
 25 legislatures have ethics committees that look at the

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1 compromise.
 2 Senate Bill 1237 was advanced out of the
 3 Appropriations Committee at 3 o'clock in the morning. And
 4 I was there on your behalf. I pulled an all-nighter for
 5 you. And what that did was --
 6 MR. COLLINS: He took a break. He went home and
 7 came back.
 8 MR. KANEFIELD: I did go home but I came back at
 9 2:00 in the morning.
 10 This was a -- it was a -- the Appropriations, a
 11 lot of times towards the end of the session, the
 12 Appropriations Committee ends up picking up a lot of
 13 different issues and -- that maybe failed and other
 14 legislation get tacked on as amendments. This is what's
 15 called a striker to a different bill.
 16 It -- it's wholly replacing the substance of the
 17 bill and it puts in place proposed changes to the Clean
 18 Elections Act that would -- that would remove the
 19 Commission's jurisdiction over non-participating
 20 candidates and independent expenditure committees. That's
 21 what the current form of it -- that's what advanced last
 22 night -- or, early this morning out of the Appropriations
 23 Committee.
 24 We, as Tom also said, this -- this was presented
 25 to us as a vehicle for potential conversation and

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1 conduct of those who already been elected if they follow
 2 certain procedures, and it could be a committee could look
 3 at them.
 4 And election procedure, I've -- I've did a little
 5 research, not that I'm any expert, but 41 states have
 6 ethics commissions to basically look at what goes on in
 7 elections. And they're an independent, normally
 8 five-seven member Commission that are appointed, not
 9 elected. And it seems like it's important to have
 10 something. If it wasn't Clean Elections, then something
 11 else.
 12 And if you're just saying let's do away with the
 13 actions from Clean Elections, then we'll let the -- for
 14 instance, the Attorney Generals or the State -- I mean,
 15 the Secretary of State, we had a recent process where Tom
 16 Horne, as everyone knows, had some problems, and -- and it
 17 was the Clean Elections Commission that really set things
 18 straight, more or less. At least my -- my feeling was the
 19 two attorneys that looked at it from the State
 20 Attorneys -- excuse me, Secretary of State's office,
 21 didn't find anything and everything was fine.
 22 So, I -- I -- I'm really very reluctant to -- to
 23 say that we should kind of give in. Because I think there
 24 should be re- -- if we do, there should be some kind of a
 25 replacement. Now, if there was an ethics commission in

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1 the State of Arizona that looked at these things, and
2 maybe we wouldn't be called "Clean Elections," we might
3 just be called "Voter Education Commission" or something
4 else, which would be fine, we probably wouldn't need
5 commissioners or someone like Tom Collins, but definitely
6 a Sara Larsen and Gina Roberts, or somebody, sure.
7 But I -- I wonder why.
8 In fact, after Watergate, States started coming
9 up with ethics commissions, because they realized that
10 there's problems. Of course with Clean Elections, I think
11 it started with Fife Symington and some of the problems we
12 had back in the '90s.
13 So, I -- I'm one that feels like, yes, I -- I
14 realize the pressure we're under and I realize what the --
15 the legislature being what they are and who they are, is a
16 problem. But I -- I sure would be -- I think reluctant.
17 And I think we should point out the purpose. And
18 if it needs to be somehow improved -- or, perhaps we
19 should have more authority or more oversight.
20 Just part of the reason why we don't have as many
21 participating candidates and part of the reason why the
22 comment was made, well, they're kind of out there
23 somewhere, is because the matching funds and whatnot.
24 So, it -- it's -- it's all not really our doing,
25 but we have to face reality and I think I, for one, don't

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1 people like the League of Women Voters, and there are a
2 lot of citizens who are very interested in this. So, any
3 compromise reached would have to be one that had consensus
4 among all of the stakeholders, and it wouldn't -- it
5 wouldn't advance if that wasn't the case for the reasons
6 we saw at 3:00 in the morning, which is that it won't get
7 a three-quarter vote.
8 So, the legislature, at least certain members,
9 have made it clear to us, Tom and I, at least recently,
10 that the one thing that -- that they find very troubling
11 is the Commission's assertion of jurisdiction over
12 non-participating candidates and independent expenditure
13 committees. They -- and I'm not -- this is -- I'm just
14 characterizing the arguments, I'm not saying this is
15 what -- how we feel.
16 They -- they feel that the Commission had not
17 asserted that authority for the first decade of its
18 existence and that they characterize it as a new-found
19 power, and one that is embraced by the Commission to keep
20 itself relevant in light of declining participation and no
21 matching funds, that kind of thing.
22 So, our position, of course, is that that's
23 patently false. The Commission has always retained that
24 jurisdiction, it's just that it hasn't arisen and maybe
25 it's arising now because of the different factors and

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1 want to give up too much. That's my feeling. Anyone else
2 could chime in, but I'd rather go down in flames than just
3 say: Okay, take what you want.
4 MR. KANEFIELD: Sure.
5 CHAIRPERSON KOESTER: Okay.
6 COMMISSIONER LAIRD: Yeah, I -- I tend to agree
7 with those comments.
8 CHAIRPERSON KOESTER: Commissioner Reckart, are
9 you still on?
10 COMMISSIONER RECKART: I am. Yeah. No, I --
11 you -- you were saying my sentiments exactly, so.
12 CHAIRPERSON KOESTER: All right.
13 COMMISSIONER RECKART: No need to add into it.
14 CHAIRPERSON KOESTER: Well, I guess you can only
15 do what we can do. And -- and good luck.
16 MR. KANEFIELD: Well, so -- just so we have the
17 appropriate guidance here at least. All right, the
18 legislature has put on the table -- I mean, we'll just be
19 a little bit more straightforward about all this.
20 I mean, we -- we recognize that these are
21 preliminary discussions and that there are many
22 stakeholders involved in this process in addition to
23 Commission. Now, the Commission, obviously, is probably
24 the most important stakeholder, but there are others,
25 including the proponents of the Clean Elections Act,

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1 changing circumstances involving Arizona campaign finance
2 law. And that we have fought this fight. I have fought
3 this fight for you as your counsel in the Tom Horne matter
4 and we have prevailed on -- on the question of whether the
5 Commission has this jurisdiction or not and the Court has
6 very clearly said: You do.
7 So, the question would be if the Commission felt
8 that it could in good conscience and in -- and in
9 furtherance of the purpose of the Act, you know, give up
10 that authority or qualify it in some way, if we could
11 figure out a way that would be acceptable to those that
12 oppose the Commission's enforcement jurisdiction, but in
13 exchange, you know, get other pieces that advance and
14 further the Act even more, such as more flexibility for --
15 for participating candidate funding, expanding the voter
16 education role of the Commission, which was the -- which
17 was a -- a bill that we have advanced both last session
18 and this session with the sponsorship of Rep- --
19 then-Representative Kavanagh and now Senator Kavanagh,
20 which -- which has a lot of support, but we haven't been
21 able to get it over that three-quarter hurdle. And
22 we're -- you know, we continue to try. So, we would, of
23 course, want that to be considered.
24 So, if you wrap all this stuff up, if we could
25 figure out a way to do this, perhaps not eliminate the

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1 Commission's jurisdiction as -- as it -- as set forth in
2 the Act, but maybe qualify it in a way that would provide
3 comfort. And I'm not -- I don't know what that is.
4 But -- but I hate to stop the process in its tracks and --
5 and if -- unless...

6 MR. COLLINS: Mr. Chairman and Commissioners, if
7 I could interject on that point. And I think -- I think
8 -- I think and -- I think that the
9 stopping-the-process-in-its-tracks question for you is
10 straight up, give up the enforcement power for just no
11 repealer. Right? That's -- that's the stop in the
12 tracks. If you really want us to say that that is a good
13 deal, we'll go and take it, because we can get that deal
14 right now. And I -- and I want to make -- I wanted to
15 make clear in this conversation that that deal is there.

16 I think it's a bad deal. But that deal, if you
17 want that deal, that deal is there. We can take it
18 tomorrow -- today, really.

19 MR. KANEFIELD: Well, except that, Mr. Chair, I'm
20 not sure that that could get out of the body with --

21 MR. COLLINS: No, no. From our perspective.
22 From our perspective. I'm not saying that it will get out
23 of the legislature.

24 I'm saying from the Commission's position
25 perspective. From your policy per- -- if you were to say
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1 continue the conversation, with the -- with the concern
2 being we may have to -- procedurally have to put together
3 a meeting for you to vet something because I don't know
4 that, you know, we -- we'll have to -- we'll have to play
5 that out a little more and see where we get to. And I
6 think we can put that together. We can put together a
7 meeting in 24-hour's notice. All of you are available on
8 phone regularly. And that would be, I'm talking about a
9 10 minute: This is what it is, walk away or not, if we
10 had to do that.

11 And I'm -- I'm more than happy to work with Joe
12 to continue that conversation.

13 To get back to Joe's first point just to
14 encapsulate all this, the guidance we asked you for at the
15 beginning of this year, this is bringing those two things
16 together. Right?

17 In other words, we asked for enhancement. We
18 always want enhancement of the Act, we always want
19 enhancement of all the aspects of the Act, and we don't
20 want to lose, right? So, the -- the -- so, that's the --
21 this is the -- this is the ultimate compromise. You are
22 the -- the -- the policy maker with respect to the Clean
23 Elections Act.

24 And so, you know, I think -- I think what Joe and
25 I are seeing is you are encouraging us to have a
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1 that, there would be people who would embrace us saying
2 that. If you want us to say that, you know, now is the
3 time to say, yes, we should push for that.

4 I think that's a bad thing. I don't think we
5 want to do that. I want to make sure that's clear.

6 What Joe is talking about in terms of what
7 develops, taking Mr. Koester's comments, Mr. Laird's, and
8 Mr. Reckart's, I think -- I think what we would -- what we
9 would -- what we would simply ask is that knowing that the
10 guidance is to be weather [sic] about giving up too much,
11 we can get you guys together on the phone -- we don't need
12 five to do it, we can get three together if you-all -- you
13 all work together well, you guys all represent one's
14 another's interests well enough that we can -- we can get
15 together enough people, if we needed to, if we had a
16 specific proposal that we really felt was worth bringing
17 to you for your consideration, we'll do that.

18 But we wanted to -- but for today, we wanted to
19 know, if you want us to just strike -- try to strike a
20 compromise that is not really a compromise but is a
21 stripping of power for election, you should tell us that.

22 The sense I'm getting is that's -- the answer to
23 that is no.

24 The next sense I get is that the answer is: Try
25 not to give up very much, continue the conver- -- but
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1 conversation. We wanted to take your temperature to know
2 where you are on that and then we can take that into
3 consideration, it can help us with talking to the
4 legislative staff about where we are coming from. And
5 then if we get something that comes back that is --
6 warrants your attention, it's my commitment that we will
7 get that in front of you, we will make that work. We
8 can -- even if we have to notice a public meeting, 24
9 hours. We -- all we need is 24 hours and we can get a
10 meeting together with a single agenda item for your review
11 and -- and we can make that happen.

12 MR. KANEFIELD: Mr. Chair, members of the
13 Commission, I think that that's -- would be a good
14 approach if we, you know, do have direction from you to
15 continue the conversation. And -- and if we do reach some
16 kind of a compromise, at least that Tom and I believe is
17 fair to bring back to you, we'd -- we'd ask you to be
18 available on short notice in accordance with the open
19 meeting law.

20 But -- but this process, like I said, is probably
21 going to wrap itself up in the next two to three weeks.
22 There's not -- I don't think there's going to be another
23 opportunity for us to weigh in at the legislature, you
24 know, because the committee process is over. So, all this
25 is going to really be taking place behind the scenes. And
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1 -- and in theory, if there was a compromise reached, it
2 would be in the form of an amendment that would be offered
3 by a member on the floor of the House during the Committee
4 of the Whole debate, and then that -- then that would
5 become the bill up through third read, and then eventually
6 over to the Senate.

7 So, we would have our work cut out for us even if
8 we did reach that agreement, you know, to pull in the
9 stakeholders to make sure that -- that there was a
10 three-quarter vote. And then, of course, always what
11 would be guiding us as we have these discussions is that
12 anything that we would agree to, there has to be an
13 argue- -- a colorful argument that the change furthers the
14 purpose of the Act or else it's -- it's not -- it's
15 unconstitutional.

16 MR. COLLINS: If I could make -- and if I may,
17 Mr. Chairman, one last point, this is -- which is a --
18 which is a -- we should all think about this for a moment.
19 If we do this in a way that we end up bringing this back
20 for a meeting, what that actually allows, the legislature
21 -- notwithstanding the fact that they meet in committees
22 and they have a process, they prefer to do things at the
23 last minute, they prefer to do things in a way that the
24 public is obscured from finding out what's going on.

25 The benefit of doing this in the way we've just
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1 CHAIRPERSON KOESTER: Sure. Commissioner
2 Reckart.

3 COMMISSIONER RECKART: I guess there's a sense
4 that I have that I -- I really don't like the negotiating
5 posture or position that we're putting ourselves in. But,
6 I mean the Act is what the Act is. If they want a change,
7 you know, they have the voting -- minimum voting
8 requirement. As a result of that, you know, they'll have
9 to go back to the voters to explain that.

10 I really don't like an approach where we -- we
11 negotiate, in effect, on behalf of the voters to change
12 our powers in order to get continued viability for other
13 purposes that we may have.

14 I mean, that being said, I -- I understand what
15 the realities of it are, but I'm not in this just to
16 preserve our position at the legislature's accord if the
17 legislature decides that we're not there, you know, that
18 we're not to be -- that we're not to continue in our
19 present role. Then they'd have to answer to the voters.

20 And I just don't think I have a proxy for the
21 voters to start saying, well, if you guys keep us going --
22 you know, my term is at an end at any time now, so I -- I
23 don't have a vested interest in this. But if you keep us
24 going, you know, we'll -- we'll -- we'll step away from
25 some of the authority we've asserted before on behalf of
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1 suggested is it actually creates an opportunity for the
2 public to see what's happening on the compromise. So,
3 there is a valid role for the Commission here to have
4 whatever legislation, if there is such a thing that we can
5 come up with, vetted in an open session that people could
6 attend. Because that won't happen at the legislature
7 because that's not how the legislature prefers to do
8 things.

9 And there's a value in how the Commission's
10 structure works in terms of open government that's
11 actually represented in doing this the way we're
12 proposing, as opposed to sort of a -- as opposed to just
13 sort of saying, well, we'll come back to you with whatever
14 happens in a back room. If I may.

15 CHAIRPERSON KOESTER: Maybe I should ask if
16 anyone is going to be out of the country in the next two
17 weeks?

18 We're all available, I guess. So, we --
19 everybody will be available?

20 COMMISSIONER MEYER: Yes.

21 CHAIRPERSON KOESTER: All right. Well, it sounds
22 reasonable to me to -- to do what we can do and go from
23 there.

24 COMMISSIONER RECKART: Well, if I might,
25 Mr. Chair.
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1 the public, the voting public.

2 So, it's -- and the whole process, I think, is a
3 little troubling to me in terms of the way it's going
4 and -- and the thinking, but I understand the political
5 realities of it. And it's -- I'm not -- I'm not
6 condemning or I'm not criticizing it, I'm just saying that
7 it's frustrating to me.

8 But all other things said, is I think more calm
9 and prudent heads will prevail here by telling us that,
10 you know, there are going to be situations in which we
11 should discuss, you know, some sort of compromise to
12 preserve for the voters the benefits that we think we --
13 we provide, at least in some respect, if not in all
14 respects. And I'd be available for it, I just -- I just
15 got to say my initial reaction is to say not only no, but
16 hell, no.

17 But I -- you know, I -- I've often said -- I'm
18 channelling my inner Patton here, so. But go ahead and
19 continue to make your effort and I'll be available in a
20 calm way to deal with these things, so.

21 CHAIRPERSON KOESTER: Thank you, Commissioner
22 Reckart. I kind of feel the same way, but -- but I think
23 that we're available and we'll see what -- what you come
24 up with --

25 MR. KANEFIELD: Okay.
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1 CHAIRPERSON KOESTER: -- and we'll decide.

2 MR. KANEFIELD: So, Mr. Chair, just so I -- I

3 think what the guidance we're getting is to continue the

4 conversation to try to reach some kind of a compromise

5 that's in the best interests of the Commission, the Clean

6 Elections Act, the voters who put the Act on the book, and

7 that furthers the purpose of the Act; and Tom and I can

8 creatively do everything we can to try to reach some kind

9 of meeting of the minds with those that want to get rid of

10 the Commission's -- some of the Commission's jurisdiction.

11 And if we can do that in some way that we feel is

12 appropriate to bring back to you, then we will.

13 And that may be on short notice over the next two

14 weeks to get direction from you so we have formal approval

15 of -- of any agreement that's reached from you, we're not

16 just doing this, you know, taking a guess. But -- but we

17 do -- this was very helpful. Thank you for this

18 discussion. It gives -- gives Tom and I a lot of help as

19 we continue these conversations, so.

20 Unless there's any further questions, I'm going

21 to go get some sleep.

22 CHAIRPERSON KOESTER: Commissioner Titla has a

23 comment.

24 COMMISSIONER TITLA: Yeah. So, the direction

25 provided to these two esteemed attorneys is to try to
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1 time for some public comment. Would anyone like to? I

2 don't really see too many public, but...

3 In any case, hearing none, we'll -- one final,

4 No. XI is adjournment. Can I have a motion there?

5 COMMISSIONER LAIRD: Motion to adjourn.

6 CHAIRPERSON KOESTER: Motion to adjourn. A

7 second?

8 COMMISSIONER MEYER: Second.

9 COMMISSIONER RECKART: Second.

10 CHAIRPERSON KOESTER: All right. Two seconds and

11 a -- and a movement. So all in favor, say "aye."

12 (Chorus of ayes.)

13

14 CHAIRPERSON KOESTER: Opposed?

15 Okay. We're done.

16 (Whereupon the proceeding concludes at 11:44

17 a.m.)

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1 reach some sort of a compromise, some sort of deal, then

2 they'll come back to us propose it to us?

3 CHAIRPERSON KOESTER: Yeah. They can't do

4 anything on their own --

5 COMMISSIONER TITLA: Right. And then --

6 CHAIRPERSON KOESTER: -- other than talk to the

7 legislature. And we'll have the final say, but --

8 COMMISSIONER TITLA: And the final say, if we

9 don't like it, we can always reject it?

10 CHAIRPERSON KOESTER: That's it.

11 COMMISSIONER TITLA: Yeah. My -- my -- my

12 tendency is to agree with my esteemed colleague on the

13 telephone. That, you know, I don't think we should

14 compromise. I think this is a Voter Protection Act and

15 it's voted in by the people. And I'm having a hard time

16 thinking how can we compromise what the people voted in

17 and that they're trying to change. So, I'm sort of

18 standing in the no-compromise area right now.

19 But in order to see what comes up, I guess we'll

20 proceed and -- and see what happens there. But that's --

21 that's my -- my thinking right now. Thank you.

22 CHAIRPERSON KOESTER: Yes. Thank you. Thank

23 you, Joe.

24 MR. KANEFIELD: Thank you.

25 CHAIRPERSON KOESTER: Okay. Well, I guess it's
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C E R T I F I C A T E

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3 I, Angela Furniss Miller, Certified Reporter, do

4 hereby certify that the foregoing pages numbered 1 through

5 96, inclusive, constitute a full and accurate printed

6 record of my stenographic notes taken at said time and

7 place, all done to the best of my skill and ability.

8 DATED, at LITCHFIELD PARK, Arizona, this 31st

9 day of March, 2015.

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Angela Furniss Miller, RPR, CR
Certified Reporter (AZ50127)

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