THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
November 20, 2014
9:37 a.m.

Reported By:
Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

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A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN ELECTIONS COMMISSION, convened at 9:37 a.m. on November 20, 2014, at the State of Arizona, Clean Elections Commission, 1616 W. Adams, Conference Room, Phoenix, Arizona, in the presence of the following Board members:

Mr. Timothy Reckart, Chairperson
Mr. Louis Hoffman
Mr. Thomas J. Koester
Mr. Mitchell C. Laird

OTHERS PRESENT:
Thomas M. Collins, Executive Director
Paula Thomas, Executive Assistant
Sara Larsen, Financial Affairs Officer
Gina Roberts, Voter Education Manager
Steve Clawson, Moses Anshell
Joseph Kanefield, Ballard Spahr, LLP
Saman Golestan, Torres Law Group
Julia Shamway, The Arizona Republic
Jason Torchinsky, Legacy Foundation Action Fund (Telephonic)
Brian Bergin, Legacy Foundation Action Fund
Paul Rubin, Self
Jeremy Duda, Capitol Times
Michael Becker, Governor's Office
Mary O'Grady, Osborn Maledon

CHAIRPERSON RECKART: All righty. The November 20th meeting -- public meeting of the Arizona Citizens Clean Elections Commission is called to order. The Commission may vote to go into executive session, which will not be open to the public, for purposes of obtaining legal advice on any item listed on the agenda. This is pursuant to A.R.S. Section 38-431.03(A)(3). And we also reserve the right to address agenda matters in a different order than that outlined in the agenda that was circulated to the public.

Possible action on any matter under review identified in this agenda may include authorizing or entering into a conciliation agreement, in addition to any other actions such as: Finding reason to believe a violation has occurred, finding probable cause to believe a violation has occurred, applying penalties, ordering repayment of monies to the Clean Elections fund, or terminating the proceeding.

All right. With that, I'll invite the Commission to direct its attention to the minutes, which Angela did quite a job of transcribing a small book. It was interesting reading. Are there any comments with regard to the minutes?

COMMISSIONER L Laird: Small matter.
COMMISSIONER KOESTER: I just have one word "allocation."
CHAIRPERSON RECKART: Okay.
CHAIRPERSON RECKART: Okay.
COMMISSIONER KOESTER: I just have one word correction. It's on page 124 and it starts off by saying, which I said: "I think there has been, I'll say an" -- the word I used was "allegation," spelled A-L-L-E-G-A-T-I-O-N.
CHAIRPERSON RECKART: Okay.
COMMISSIONER KOESTER: I move to approve.
CHAIRPERSON RECKART: All right. So moved. Is there a second?
COMMISSIONER LAIRD: Second.
CHAIRPERSON RECKART: All right. Seconded. Thank you, Commissioners. All in favor, please indicate by saying "aye."
(Chorus of ayes.)

CHAIRPERSON RECKART: Any opposed? None. It passes unanimously.

I note for the record also that Commissioner Titla is not here. Is he going to participate by phone?

MS. THOMAS: He doesn't think so.

CHAIRPERSON RECKART: He doesn't. Okay. That's fine.

I also note that Mr. Torchinsky, who is counsel for the LFAF, will -- is participating by phone, and I think he's there presently. So, when we get to that matter, we'll -- we'll invite you to participate, Mr. Torchinsky.

MR. TORCHINSKY: Thank you.

CHAIRPERSON RECKART: You're welcome, sir.

The next item on the agenda is the Executive Director's report. Mr. Collins, please.

MR. COLLINS: Yes. Mr. Chairman, Commissioners, just to -- briefly, the -- you'll see the announcements there. We highlight there, you know, that the -- the -- the -- the voter turnout from -- from November, which was 47 point -- 47 percent of voters, 48 percent of voters, which is -- which is off from 2012, obviously the presidential year in 2010. We will be taking that into account, and then other data we -- we're able to gather, as well as our -- looking at what we did this year in terms of putting together a public voter education plan for -- for 2015, which Gina is already working on.
We -- we have sought some legislative flexibility that technical or equipment issues out there, you know, that those -- getting those ballots back.

day, they've got to help the counties out by getting have early voting set up the way it is, if they want to know. They -- if they -- we're going to work hand-in-glove.

but -- but -- so, we -- we do see those as sort of trying efforts that they may want to undertake in terms of making some flexibility to assist the counties with technical about trying to have some legislation passed to give us equipment front, and -- and just generally, we've talked about trying to have some legislation passed to give us some flexibility to assist the counties with technical efforts that they may want to undertake in terms of making the process more efficient. So, that's something next month we're talking about more in terms of legislation, but -- but -- so, we -- we do see those as sort of trying to work hand-in-glove.

Trying to get the public to understand that, you know. They -- if they -- we're going if we're going to have early voting set up the way it is, if they want to also have the results on the day of the -- on election day, they've got to help the counties out by getting those -- getting those ballots back.

On the other hand, to the extent that there are technical or equipment issues out there, you know, that we -- we have sought some legislative flexibility that technical or equipment issues out there, you know, that we -- we have sought some legislative flexibility that

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All righty. Next agenda item is discussion and possible action on MUR 14-006 and 14-015, Tom Horne and Campaign Committee. We'll take that together with the Tom Horne 2014 Reasonable Cause Notice and Related Enforcement Proceeding, including a possible conciliation that -- that I think the Executive Director may have reached with Tom Horne.

And then, lastly, to the extent it is relevant, we can discuss the case now, I think Horne versus the Commission and Horne versus Bergin cases now pending before the Courts.

Mr. Collins, I'll ask you to introduce it, please.

MR. COLLINS: Sure. Mr. Chairman, Commissioners, thanks.

I want to make a couple prefatory remarks.

There's -- it doesn't appear that anybody representing Mr. Horne or Mr. Horne is here. You know, we have -- and Mr. Kanefield is here if we have legal questions, and if you, you know -- and I'm sure if he feels the need, he'll jump up and tell us we need to go into executive session.

But, I just want to, you know, we have Mr. Horne's word through his attorney that he'll sign this conciliation agreement. It has three principles in it.

So, I think you take those commitments in addition to the acknowledgments that are here; in addition to the fine; and in addition to the securing of the parameter of the future accounting, if the Gilbert County Attorney and Judge Barker come to the conclusion there is further accounting to be made; and the public's interest is secured; the Commission's interest in ensuring the Clean Elections Act is enforced and recognized; and that State employees cannot campaign on State time are all acknowledged here.

that I think are important: It acknowledges expressly that State employees cannot campaign on State time; it -- it pays a $10,000 fine, which to put in some perspective is the maximum fine that would be allowed under our rules for a rule violation, so it does have a metric associated with it. It's ten times the amount of the fine that the Corporation Commission candidates paid in our last -- our last MUR that we conciliated. It also ensures a public accounting because the investigation for enforcement that's been undertaken by the Gilbert Town Attorney and Judge -- former Judge Dan Barker is underway. And although, you know, that has yet to proceed to a final conclusion, when that is finally concluded, you know, with -- along with the procedures associated with it, Mr. Horne is -- is bound to follow any public accounting of in terms of campaign finance reports that are -- that are necessary to -- deemed necessary. So, the public's interest is secured there.

I also want to tell you, this doesn't have any effect on any future criminal or civil investigation. And I want to put this in perspective a little bit if I could, because we've had -- there's been some public discussion, I don't know if anyone would ultimately want to make public comment but, you know, you know, I would concede that the word "guilt" isn't in this document. Mr. Horne has argued in Court that this process and this Agency are not legitimate; and as an attorney for this Agency, he has had or his spokesman has in our own Court -- I don't know which -- as a State employee, attacked this process and the Commission itself.

This agreement acknowledges the Commission's legitimacy; it acknowledges the Clean Elections Act; it acknowledges that it applies. It results in him not appealing the judgment of Judge Bergin that makes clear -- if there was any doubt, which I, of course, believe there is none -- that the Commission has the authority to enforce Clean Elections Act against candidates, whether they participate in public financing or they do not.

It also results in the withdrawal of his special action at the Supreme Court.

So, I think you take those commitments in addition to the acknowledgments that are here; in addition to the fine; and in addition to the securing of the parameter of the future accounting, if the Gilbert County Attorney and Judge Barker come to the conclusion there is further accounting to be made; and the public's interest is secured; the Commission's interest in ensuring the Clean Elections Act is enforced and recognized; and that State employees cannot campaign on State time are all acknowledged here.

So, I -- if you have any questions about it, I am, obviously, more than happy to answer them. And -- and Joe is here if there are any legal questions that -- or other legal advice that you might seek. But that's -- those are my comments.

CHAIRPERSON RECKART: Okay. Thank you. Well stated.

I invite the Commissioners to ask Mr. Collins any questions in regard to the proposed conciliation.

MR. COLLINS: I can also tell you -- if you're interested, I can tell you, I did hear from the Complainant's attorney and he believes that the conciliation is appropriate, for what it's worth.

CHAIRPERSON RECKART: Okay. Well, that's good.

There being no discussion, does anybody feel the need to talk with Mr. Kanefield in executive session?
With that, is there any more discussion with regard to this -- this matter?

I -- I'll say this, is that I studied it, I talked to Mr. Collins about it, I've taken a look at the, you know, both the role of this -- of this Commission and the -- you know, the issues that have been raised in the course of debating, resolving, fighting over the allegations in this thing, and I think -- I endorse what the Executive Director says with regard to the effectiveness. I think it does give me comfort that the -- in some regards to know that an actual fine has been -- under our rules has been assessed and that there is no preclusion of other proceedings going forward; and, therefore, in some respects -- proceedings before a competent authority, I might add. So, I -- I have comfort with -- with going ahead with that.

So, that being said, I'll entertain a motion with regard to the Commission's entering into the conciliation agreement. I think that's -- that's really what we want here.

MR. COLLINS: Well, I think, yeah, looking for a motion to authorize me to -- to actually sign the thing.

CHAIRPERSON RECKART: Yeah. Yeah, that's how I took it. So, if someone is so disposed to move, I invite that.

meeting a probable cause recommendation that, as I recall, the Commission voted that there was reason to believe.

MR. COLLINS: Yes.

CHAIRPERSON RECKART: And then with that, Mr. Collins has -- then there was response from the LFAF, Mr. Torchinsky submitted that, which is in our packets; and then there was a suggestion for an assessment of penalties from Mr. Collins in the amount of $201,240.

So, Mr. Collins, if you would beyond that introduce more of this and then we'll ask Mr. Torchinsky to add his perspective.

MR. COLLINS: And -- yeah. And there's one other thing. I -- literally, this is just received. I haven't had a chance to forward this to Mr. Torchinsky, Mr. Bergin, or the Commission, for that matter, so I'm going to tell you, and I will try to get this forwarded, maybe Paula or Sara can forward the e-mail I just sent to you to Jason and Brian and Mary, and everybody. But the e-mail -- then we can print it.

But an e-mail from -- or, a letter from Kory Langhofer, who is the Complainant in the underlying complaint. And he -- and I will just read it, if I could, because I think it's relevant and probably a perfectly appropriate time to read it into the record because it's fairly brief.

He simply says that: On July 1st, in his capacity as counsel for the gubernatorial campaign of Scott Smith, he filed a complaint with the Commission alleging campaign vio- -- finance violations by the Legacy Foundation Action Fund and others.

"After careful consideration in this matter in consultation with Mayor Smith and his campaign staff, I hereby withdraw this complaint. And I respectfully request the Commission dismiss the complaint and terminate any pending proceeding relating to it."

So, that is a thing that occurred.

CHAIRPERSON RECKART: Okay. Thank you. And then probably for the most enjoyable part of the day here, we're going to deal with Item VI, which is the Legacy Foundation Action Fund, MUR 14-007. We have from last December.

CHAIRPERSON RECKART: Okay. Thank you. And then I think listed Item No. V has been withdrawn from the agenda.

MR. COLLINS: Yeah. We have Mr. -- I heard from Mr. Huppenthal -- or, Sarah heard from Mr. Huppenthal's office yesterday and he's -- he's not available. We have some stuff pending with him, so we're going to get together next week and we'll bring that back hopefully in December.

CHAIRPERSON RECKART: Okay. All opposed? It passes unanimously. Thank you.

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**MR. COLLINS:** I -- I mean, I certainly think that we've gone past -- we've gone past that.

**CHAIRPERSON RECKART:** Yeah. Just -- okay. Yeah.

**COMMISSIONER HOFFMAN:** Mr. Chair?

**CHAIRPERSON RECKART:** Yes, sir.

**COMMISSIONER HOFFMAN:** I move we go into executive session to discuss that issue.

**CHAIRPERSON RECKART:** Okay. All -- is there a second to that motion?

**COMMISSIONER LAIRD:** Second.

**CHAIRPERSON RECKART:** Okay, all in favor say "aye."

**COMMISSIONER HOFFMAN:** Aye.

**COMMISSIONER LAIRD:** Aye.

**COMMISSIONER KOESTER:** Aye.

**CHAIRPERSON RECKART:** All opposed?

**Nay.**

**All right. Let's -- we go in executive session.**

**MR. TORCHINSKY:** And I'll drop off the phone, then.

**CHAIRPERSON RECKART:** Thank you.

(Whereupon the public retires from the meeting room.)

(Whereupon the Commission is in executive session Miller Certified Reporting, LLC)

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**consultation with Mayor Smith and that the decision was made to withdraw the complaint.**

**COMMISSIONER HOFFMAN:** Right. Okay. Well, we don't have any information indicating -- you know, in the letter, indicating that there was any, you know, error of any sort and/or any reason why, and I -- I for one believe that if we perceive a violation of the Clean Elections Act after having already done an investigation pursuant to a then-pending complaint, we actually have a duty to continue to remedy the -- any -- to find whether there was a violation and remedy any violation that we perceive. So, I believe we should proceed.

**CHAIRPERSON RECKART:** All righty. Any other comments?

**I think to second those thoughts, we have started the process, we've done the investigation, absent any compelling reason to suspend that -- and I have -- I have none here, even with this letter -- then I think we -- we are duty bound to continue, so.**

**COMMISSIONER HOFFMAN:** I want to say one other thing is we're not here as a -- as a tool of Mr. Langhofer or Mr. -- Mayor Smith or anyone else, we're here to uphold the public interest in enforcing the Clean Elections Act. And so just as, you know, we respond to citizen complaints when people perceive violations, and decide whether or not we have any further discussion with regard to the letter from Mr. Langhofer.

**MR. COLLINS:** I -- I did have a motion to -- to withdraw.

**CHAIRPERSON RECKART:** All righty. Let's go back into public session now. Okay. I don't know if there's any further discussion with regard to the letter from Mr. Langhofer.

**COMMISSIONER HOFFMAN:** Yeah, I have a question, Mr. Chair.

**CHAIRPERSON RECKART:** Please, Mr. -- yeah.

**MR. COLLINS:** Mr. Hoffman.

**COMMISSIONER HOFFMAN:** Mr. Collins, did -- did you have any conversation with Mr. Langhofer about the letter? Specifically, was there any reason given for withdrawing?

**MR. COLLINS:** And I'll drop off the phone, then.

**CHAIRPERSON RECKART:** Okay. All opposed?

**COMMISSIONER KOESTER:** Aye.

**COMMISSIONER LAIRD:** Aye.

**COMMISSIONER HOFFMAN:** Aye.

(Whereupon all members of the public are present and the Commission resumes in general session.)

**CHAIRPERSON RECKART:** All righty. Let's go back into public session now. Okay. I don't know if there's any further discussion with regard to the letter from Mr. Langhofer.

**COMMISSIONER HOFFMAN:** Yeah, I have a question, Mr. Chair.

**CHAIRPERSON RECKART:** Please, Mr. -- yeah.

**MR. COLLINS:** Mr. Hoffman.

**COMMISSIONER HOFFMAN:** Mr. Collins, did -- did you have any conversation with Mr. Langhofer about the letter? Specifically, was there any reason given for withdrawing?

**MR. COLLINS:** I -- I did have a brief conversation with him telling me that there was going to be a letter, and the conversation is consistent with exactly what he says here.

**COMMISSIONER HOFFMAN:** In other words, he hasn't stated any reason or any --

**MR. COLLINS:** Beyond -- beyond that there was a letter from Mr. Smith or --

**COMMISSIONER HOFFMAN:** In other words, he hasn't stated any reason or any --

**MR. COLLINS:** Beyond -- beyond that there was a letter from Mr. Smith or --

**COMMISSIONER HOFFMAN:** Right. Okay. Well, we're here to uphold the public interest, not Mr. Smith's private interest. So, while he -- Mayor Smith could withdraw a private legal complaint in court, like a court action that he had brought, this is an action that's not brought by -- by him, it's brought by the Commission once a complaint is made -- or, once an investigation is made.

**Also, our Executive Director could have initiated this complaint -- could have filed a complaint himself had information come to his attention for whatever reason, and that, you know, has been done through his investigation and findings. So, in effect, I think we should deal with it regardless of whether the genesis was the original complaint from Mr. Smith or -- or by our staff.**

**CHAIRPERSON RECKART:** Okay.

**COMMISSIONER HOFFMAN:** Thank you, Mr. Chair.

**CHAIRPERSON RECKART:** Thanks, Mr. Hoffman. Any further comments? Mr. Laird? Mr. Koester? No?

**Okay. Then -- now, that we've gotten beyond that preliminary matter, Mr. Collins if I could hear from you --

**MR. COLLINS:** Sure.

**CHAIRPERSON RECKART:** -- a little bit more on this matter so we can proceed.

**MR. COLLINS:** Sure. You know, and just to kind Miller Certified Reporting, LLC
that, there is -- that's subject to discussion as well.

So, I guess there's not really anything else I

think I have to -- to say. Unless you have questions,

that's my high-level summary of where we are at.

CHAIRPERSON RECKART: Okay. I have some

questions, but I think I want to wait. There are some

things that the LFAF brief or response addresses that are

not addressed by the recommendation that once

Mr. Torchinsky presents those, I would ask that you be

ready to respond to some questions with regard to those

issues that he raises that are not addressed in our

recommendation.

Are there any comments or questions before I move

-- for Mr. Collins before I move on to Mr. Torchinsky?

No?

Okay. Mr. Torchinsky, sir, you have the -- you

have the floor.

MR. TORCHINSKY: Sure. I'll be -- I'll be as

brief as I possibly can. First, I want to address express

advocacy. With respect to whether the advertisement

constituted express advocacy, I think we fully laid out

that in our various written submissions.

I want to highlight some information here. That

at the time LFAF acted, the definition of express advocacy

that's now being applied was not constitutional pursuant

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MR. TORCHINSKY: Other than the submission that
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1. calculation is -- is simply inapplicable.
2. We had some correspondence with the Executive
3. Director in late September and early October where we
4. addressed the following pieces of -942 Sub (B). The
5. language in -942 Sub (B) says -- provides for:
6. "A civil penalty for a violation by or on behalf
7. of any candidate of any reporting requirement."
8. And I guess the question that I would pose to the
9. Commission if you are a going to apply this language is,
10. you know, which candidate was this by or on behalf?
11. The Commission itself dismissed the coordination
12. allegation contained in the original complaint. The
13. statute -- the statutory language provides for a penalty
14. for candidates for a statewide office of $300 per day, but
15. says nothing about any other type of actor; and there's no
16. doubt that the Legacy Foundation Action Fund was not a
17. candidate for any elected office in Arizona.
18. The statute goes on to say that, quote: "The
19. candidate and the candidate campaign account
20. shall be joint- -- jointly and severally
21. responsible for any penalty imposed pursuant to
22. this section."
23. So, my question to the Commission is, which
24. candidate or candidate campaigns are -- are jointly and
25. severally liable here if you apply this statute?

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1. You know, our understanding is that there were
2. about six candidate for the Republican nomination for
3. Governor other than Mayor Smith at the time that Legacy
4. Foundation aired -- or, Legacy Foundation Action Fund
5. aired the ad in question.
6. So, the application of the statute by the plain
7. words is inconsistent with -- with what the -- with what
8. the Executive Director is saying this statute means here.
9. So, you know, in that case, you know, this goes
10. -- this ties back into our argument that the Commission
11. doesn't have jurisdiction here in the first place. I know
12. Mr. Collins says, look, it's observed that the Commission
13. clearly does have jurisdiction. Our point is if the
14. Commission so clearly had jurisdiction, there would be an
15. applicable -- a clearly applicable penalty provision.
16. You can't just say: Oh, we have jurisdiction, so
17. we've got to flip the statute and -- and, you know, render
18. superfluous various phrases and sentences in the statute
19. in order for us to exercise the jurisdiction that we think
20. we clearly have.
21. So, I think that the sort of absence of a clear
22. penalty provision ties back into our argument that the
23. Commission doesn't have jurisdiction here in the first
24. place.
25. So, I guess in conclusion, we would ask that the
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1. Commission find that there is no probable cause to believe
2. the advertisement was express advocacy under the law as it
3. existed at the time LFAF acted; and we further ask if the
4. Commission does find probable cause that the advertisement
5. constituted express advocacy, that it decline the
6. Executive Director's request to authorize the penalty of
7. over $200,000 in light of the facts of the law at the time
8. Legacy Foundation Action Fund acted, and in the absence of
9. any clearly applicable penalty provision in Title II.
10. And with that, I'll guess I'll take any
11. questions.
12. CHAIRPERSON RECKART: Do we have any questions
13. for Mr. Torchinsky?
14. COMMISSIONER HOFFMAN: Yeah. I have -- I have a
15. couple if -- Mr. Chair.
16. CHAIRPERSON RECKART: Please, Mr. Hoffman.
17. COMMISSIONER HOFFMAN: I -- the Messing letter
18. doesn't provide any analysis or any statement of the
19. reason why the Department, which was the Maricopa County
20. Elections Department, determined there was no reasonable
21. cause to believe a violation had occurred. Do you have
22. any solid information from Mr. Messing or the Elections
23. Department? Have they told you why they don't believe a
24. violation occurred?
25. MR. TORCHINSKY: Other than the submission that
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1. we made to them and the letter we received from them,
2. we've had no additional communication with them.
3. COMMISSIONER HOFFMAN: All right. Well, I find
4. an unreasoned statement kind of hard to put any weight in.
5. And I -- I -- I wonder, also, that -- I assume that you
6. agree that they did not investigate whether there was any
7. violation of Article II -- i.e., the Clean Elections
8. Act -- correct?
9. MR. TORCHINSKY: I -- the only information that
10. I -- the only communications I've had with them was the
11. submission that we made to them, which I believe we
12. provided you a copy of, and the letter from Mr. Messing.
13. I don't know what else they might have looked at.
14. COMMISSIONER HOFFMAN: Okay. In the -- in your
15. brief, and I'm -- I'm trying to -- to find it, you had a
16. sentence in which you stated that -- what the intention of
17. your client was in -- in -- in placing the advertisement.
18. And I wondered, are you making any affirmative assertion
19. as to why the advertisement was run?
20. MR. TORCHINSKY: No. Other than what was in --
21. other than what was in Mr. Rants' affidavit about, you
22. know, about the organization's attempt to influence the
24. COMMISSIONER HOFFMAN: Well, what --
25. MR. TORCHINSKY: Because as I think I've said,
that you'd like us to ignore, we could understand that purpose.
you get free rein to say whatever you want about the it's a very -- it seems double-sided, you know, to suggest those are indications of -- of intention. And, you know, it's a very -- it seems double-sided, you know, to suggest that we're not allowed to -- to -- to consider that, but you get free rein to say whatever you want about the purpose.

And, you know, if those are just stray comments that you'd like us to ignore, we could understand that
COMMISSIONER HOFFMAN: I'm unaware of any case in which the Respondent has put in record evidence of their intention and, you know, tried to rely on it. So, anyway, the -- the -- the point is that -- we'll leave it at that. I -- I don't want to, you know, waste too much time on this situation. But it seems very -- it seems problematic to me that you make statements of intention and then we can't question that.

I honestly don't believe the -- the statements of intention. And, you know, if there was permissible to inquire into that, I would want to instruct our staff to inquire into it. And if you opened the issue, you know -- you know, I would want to do that, personally. But --

COMMISSIONER HOFFMAN: Yeah. By --

MR. TORCHINSKY: That's correct. And the Judge concluded as a procedural matter that -- that Mary's arguments were wrong in that respect. So --

MR. TORCHINSKY: Actually, that's not what the Court said at the time. He basically said: I would have the same opportunity to review this question after going through the administrative process, so I'm going to deny your Motion for an Injunction. He did not rule on the merits of the injunction because he said, essentially, I would have an opportunity to review the same question after going through all of the procedural processes that are contained in the Act of the Administrative Review Procedure.

So, I don't believe that the Court actually ruled on the substance of whether the CCEC has jurisdiction. He just said the procedural matter felt that -- that the issuing the injunction was -- was not appropriate procedurally.

COMMISSIONER HOFFMAN: And -- and your --

MR. TORCHINSKY: And that's what -- and that's, in fact, what your counsel argued in front of the Judge.

COMMISSIONER HOFFMAN: Your argument in front of the Court was that the -- because the Commission had no jurisdiction that that should not be the ruling.

MR. TORCHINSKY: That's correct. And the Judge concluded as a procedural matter that -- that Mary's argument about exhaustion of administrative remedies before the Court should brief the merits of the question was required, kind of carried the day in that court case.

COMMISSIONER HOFFMAN: Yeah. By --

MR. TORCHINSKY: So, I think --

COMMISSIONER HOFFMAN: By "as a procedural matter," what we mean is that the Commission does have jurisdiction. So, anyway, the -- the -- again, I don't mean to -- to make this argumentative.

The -- you know, Mr. Collins, I'll let you off the hook on that question and we can consider it later. But with -- with regard to the question on the issue advocacy message, could you state in just a sentence what the reasonable alternative interpretation was of this ad just relying rather than on intent -- or, relying specifically on, you know, the -- the nature of the ad. That -- that -- which is -- which is the -- what is the -- the -- the statute says that we're supposed to look for whether there's a reasonable meaning other than...
1 to advocate the defeat of Mayor Smith. And, so, could you
2 please state in just a sentence or two what you believe
3 the reasonable meaning other than calling for Mr. Smith's
4 defeat is?
5 MR. TORCHINSKY: Sure. If you look at the
6 language of the ad, the ad asks the viewers to call Mayor
7 Smith and change the position of the Conference of Mayors.
8 That's what the ad asks people to do and that's the
9 totally reasonable interpretation, other than to vote for
10 or against Mayor Smith. Whose -- by the way, whose
11 election wasn't until almost 150 days after this
12 advertisement ran.
13 COMMISSIONER HOFFMAN: Okay. So, you are saying
14 that the purpose of it was to ask Mayor Smith to influence
15 the position of the Conference of Mayors?
16 MR. TORCHINSKY: I'm not speaking to purpose.
17 I'm speaking to the ad --
18 COMMISSIONER HOFFMAN: Yeah. The reasonable
19 interpretation --
20 MR. TORCHINSKY: -- what the ad actually says.
21 COMMISSIONER HOFFMAN: I'm sorry. The reasonable
22 interpretation that we should consider of the ad is to ask
23 Mr. Smith to -- to change the position of the Conference
24 of Mayors?
25 MR. TORCHINSKY: Correct.

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1 it for -- for both reasons.
2 And I think there's also sort of a -- a
3 constitutional argument where, you know, people are only
4 supposed to comply with laws that are on the books and in
5 effect; and the Maricopa County Superior Court had held
6 that that provision to be unconstitutional at the time we
7 acted.
8 COMMISSIONER LAIRD: Very good. Thank you.
9 CHAIRPERSON RECKART: Mr. Koester?
10 COMMISSIONER KOESTER: Yes. I'd like to ask, at
11 one point you were making about that this should be tied
12 to a campaign, whether it's Ducey's campaign or let's say
13 Christine Jones' campaign, because it -- it should be
14 favoring somebody. I don't quite understand. I mean, in
15 our -- I think our -- Mr. Collins' opinion, it was -- it
16 was -- was saying: "Don't vote for Scott Smith," which
17 automatically means that any other candidate or candidates
18 at the time, which could be four, five, six, whatever,
19 would benefit. Of course, mainly the leading candidates,
20 which might be Ducey or Christine Jones at the time.
21 So, I don't -- I don't quite understand why
22 you're saying a campaign has to be identified or who would
23 benefit from. Could you explain that again a little bit
24 further?
25 MR. TORCHINSKY: Yes. Let me -- let me read you

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1 the sentence that I'm pointing to.
2 "The candidate and the candidate's campaign
3 account shall be jointly and severally liable
4 for any penalties imposed pursuant to this
5 Subsection."
6 So, if you don't have a candidate or candidate
7 campaign account, I don't believe Subsection (B) can be
8 applied. I mean, otherwise -- otherwise what you're
9 saying is simply: Okay, well, we don't believe that that
10 sentence has any meaning and you're basically declaring
11 legislative language superfluous, and I don't think as --
12 as an administrative agency, you have the authority to do
13 that.
14 You know, again, under the canons of statutory
15 interpretation, legislators don't enact superfluous
16 language. There has to be meaning to that sentence.
17 COMMISSIONER LAIRD: And, Counselor, this is
18 Commissioner Laird again. Similarly, you had argued
19 that's consistent with the provision that provides that
20 the violation has to be "by or on behalf of any
21 candidate." So, I guess you're -- you're -- you're
22 arguing that that -- the language you just read later in
23 that same provision is consistent with it has to be a
24 violation "by a candidate or on behalf of a candidate."
25 And I take it to mean -- that to mean a specific

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MR. TORCHINSKY: Well, Legacy Foundation Action Fund is certainly not a candidate.

COMMISSIONER LAIRD: Right.

MR. TORCHINSKY: So, yes. "By or on behalf of any candidate."

I mean, look, if -- if the Commission had concluded that this was done in coordination with Ducey, you know, then you could have made an argument that this was on behalf of a particular candidate, but the Commission itself rejected that argument. So, with no candidate involved here, I don't -- I don't see how you get to the, you know, violation "by or on behalf of any candidate," because I don't see what candidate this was by or on behalf of laid out in anything that Mr. Collins has presented to the Commission.

COMMISSIONER LAIRD: Thank you, Counsel.

COMMISSIONER HOFFMAN: Mr. Torchinsky, do you think that if -- if -- and I want to give you a hypothetical. I realize it's counterfactual. But had Legacy Foundation acted on behalf of all candidates opposing Mr. Smith, do you think that would be "by or on behalf of a candidate"?

MR. TORCHINSKY: You know, that would -- that would call for -- for an analysis of facts that, as you know, the doubling of the current rate, which would bring the rate we use, the $300 original statutory rate or, you know, the range of anywhere to 42,000 to 121,000, depending on what date of the filing of the complaint, we have 141 days actually, I want to do one more thing.

Commissioners and then try to get this thing to resolution. Thank you.

COMMISSIONER HOFFMAN: Okay. Thank you. That's helpful.

CHAIRPERSON RECKART: Mr. Torchinsky, this is Chairman Reckart. There is -- thank you.

I'm going to make a series of statements here and regarding the state of the law at the time. I also am aware that the determination of whether or not something constitutes express advocacy is -- does not admit of a bright-line test, so that there is some uncertainty and it be in areas where there is grayness in making these decisions; you don't want to assess penalties that may serve in the same -- serves to benefit that candidate in the same way a candidate's account would have.

MR. TORCHINSKY: I don't think I have any further response to that.

CHAIRPERSON RECKART: Okay. Thank you.

All righty. No more comments, then let's entertain a motion with regard to the -- actually -- actually, I want to do one more thing. I want to raise with the Commission the amount of the -- the fine. I have asked Mr. Collins to provide me some information with regard to things that may determine when the fine calculation should commence. If we go from the date of the filing of the complaint, we have 141 days from July 1st to today, which would give us a fine in the range of anywhere to 42,000 to 121,000, depending on what rate we use, the $300 original statutory rate or, you know, the doubling of the current rate, which would bring
it to $860 a day.

Notice of the complaint was given on July 8th, it's been 135 days, that would reduce it a little bit more; and jurisdiction was asserted on July 31st. Is that as a result of a meeting? I can't remember.

MR. COLLINS: Yeah. Mr. Chairman, Commissioners, we -- I can't remember. The complaint was filed, the lawsuit was filed, we had a meeting, and then we had a -- we had an initial question about whether or not there was even jurisdiction and we had a vote on that at that point.

CHAIRPERSON RECKART: Okay. MR. COLLINS: And then we proceeded to reason to believe in a subsequent meeting.

CHAIRPERSON RECKART: Okay. In any event, I raise all this because the calculation provided in Mr. Collins' request is from the date of the ads as I recall, more to the point. And -- and I -- I think Mr. Torchinsky raises a fair point with regard to the state of the law at that point. We're also dealing with an area that does not admit of a bright-line test, express advocacy communications. And so that there is not a -- an inappropriate chilling of speech, I think, you know, we should allow for people to have interaction with the Commission to Miller Certified Reporting, LLC

and seconded. Thank you, gentlemen. All those in favor, please indicate -- any further discussion?

COMMISSIONER HOFFMAN: Yeah. I was hoping to just comment. To me, the -- the -- when you put aside all the chaff, it seems that the question comes down to whether the -- we meet this whether there's a reasonable meaning other than the -- the one that should have been reported of asking people to vote against Mr. Smith for Governor or let -- not let his candidacy get off the ground.

And when I look at the text of the ad, and in -- in the context of the timing that -- of the ad, this ad was run two weeks before -- after it was made known that he was resigning as mayor of Mesa and therefore wouldn't be positioned as the president or the -- officer -- yeah, president of the Council of Mayors for an additional two weeks. And I just don't think it's reasonable to believe that the -- that that the purpose of the ad was to have Mr. Smith influence conference -- long-standing conference policy in a very short time period. You know, had this ad been run when he was just elected as the president of the Conference of Mayors, maybe the answer would have been different. But -- but I don't think we're permitted or should ignore the timing. And I -- I feel confident that it -- that this ad would not have been run had he not Miller Certified Reporting, LLC

understand that the Commission may take a view different from theirs with regard to whether or not something constitutes express advocacy.

For that reason, I'm willing to entertain and -- and would invite comment from the other Commissioners with regard to determination of the fine based on a date other than the date of the running of the ad, and would like to open that up for discussion and see if people have thoughts when that date should be. Perhaps the date we assert jurisdiction or -- or maybe even later.

But I -- looking at that, I just -- I think it's something that I'm compelled to raise in light of my sensitivities with respect to the First Amendment issues that it creates. So, I invite Commissioners to weigh in on it, please.

COMMISSIONER HOFFMAN: Mr. Chair, if I may, I guess I'd like to move that there's probable cause to believe that Respondent has violated the Act and then talk about the penalty thereafter.

CHAIRPERSON RECKART: Sure. I think that's -- that's a good thought.

COMMISSIONER HOFFMAN: So, I -- I so move.

CHAIRPERSON RECKART: Okay.

COMMISSIONER KOESTER: I'll second.

CHAIRPERSON RECKART: All right. It's been moved and seconded. Thank you, gentlemen. All those in favor, please indicate -- any further discussion?

COMMISSIONER HOFFMAN: Yeah. I was hoping to just comment. To me, the -- the -- when you put aside all the chaff, it seems that the question comes down to whether the -- we meet this whether there's a reasonable meaning other than advocating having to put that statute in front of me to -- to make it indeed true. As I said before, I doubt it.

But my -- I believe the -- just looking at the text of the ad and the timing of it and the -- it says that the stated alternative reason -- alternative purpose -- or, not purpose, the alternative -- I keep having to put that statute in front of me to -- to make it right. The alternative meaning other than advocating Mr. Smith's defeat is -- is not a reasonable one based on the way the ad is -- is worded.

I also think the appearance and juxtaposition of Mr. Smith with Mr. Obama and certain policies of Mr. Obama make that clear as well. We're not required to ignore the fact that that was the main Republican position in -- in this election, to tie -- the main strategy was to tie candidates that they wanted to oppose to what they viewed as an unpopular president and particularly unpopular among Republican voters.

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<td>So, that was -- for those reasons, I'd -- I'd</td>
<td>Okay. It passes unanimously.</td>
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<td>like to urge we support that -- the motion.</td>
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<td>CHAIRPERSON RECKART: Okay. Mr. Koester, do you</td>
<td>Now, I think per Commissioner Hoffman's very good</td>
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<td>have any comments?</td>
<td>suggestion, let's take a look at the penalty aspects of</td>
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<td>COMMISSIONER KOESTER: Just to quickly add to</td>
<td>this. Again, I -- I -- I made the point here that I am</td>
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<td>what Commissioner Hoffman said. I -- the money spent,</td>
<td>sympathetic to some of the concerns raised by</td>
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<td>which was close to $300,000, and the -- and the Legacy</td>
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<td>Foundation said they're going after the leadership, that</td>
<td>Mr. Torchinsky. And, again, I just want to open it up for</td>
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<td>is three people: The president, the vice president, and I</td>
<td>discussion as well, what is an appropriate time given, you</td>
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<td>guess the secretary or treasurer. But the vast amount of</td>
<td>know, some -- some of the grayness of the law, given the</td>
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<td>the money, which is about 95 percent, was directed against</td>
<td>state of the law at the time, to start assessing fines?</td>
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<td>Mayor Smith in the Phoenix/Mesa area. So, it doesn't</td>
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<td>sound like it was quite so much the leadership but</td>
<td>And I -- I, for one, do not think it's the date</td>
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<td>Mr. Smith himself, which adds to what Commissioner Hoffman</td>
<td>of the ad, I think it should be at some point later. I --</td>
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<td>said. It looks like express advocacy to me, too.</td>
<td>I haven't determined that yet, I -- I'm inclined to go</td>
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<td>CHAIRPERSON RECKART: Okay. Mr. Laird, any comment?</td>
<td>with the jurisdictional decision by this Commission, so.</td>
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<td>COMMISSIONER LAIRD: No. I think the statements</td>
<td>But, I welcome other thoughts.</td>
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<td>made by my fellow Commissioners are -- including yours,</td>
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<td>Mr. Chairman, are well put.</td>
<td>COMMISSIONER HOFFMAN: Mr. Chair, I -- I have a</td>
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<td>Following on that motion then, I'll call for a vote. All</td>
<td>thought on that subject. What -- when would they have</td>
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<td>those in favor, please indicate by saying &quot;aye.&quot;</td>
<td>been required to report the -- the ad?</td>
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<td>(Chorus of ayes.)</td>
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<td>CHAIRPERSON RECKART: Okay. All those opposed?</td>
<td>MR. COLLINS: The next day after the expenditure</td>
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<td>Miller Certified Reporting, LLC</td>
<td>was made.</td>
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<td>MR. COLLINS: 16-941(D) and 16-958 and 16-942(B).</td>
<td>COMMISSIONER HOFFMAN: Just one day?</td>
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<td>CHAIRPERSON RECKART: Okay. All those opposed?</td>
<td>MR. COLLINS: Yeah.</td>
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<td>Miller Certified Reporting, LLC</td>
<td>COMMISSIONER HOFFMAN: And that's pursuant to</td>
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<td>CHAIRPERSON RECKART: Okay. All those opposed?</td>
<td>which time?</td>
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<td>Miller Certified Reporting, LLC</td>
<td>MR. COLLINS: 16-941(D) and 16-958 and 16-942(B).</td>
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<td>COMMISSIONER HOFFMAN: Okay. I'm wondering</td>
<td>COMMISSIONER HOFFMAN: Say that again slower.</td>
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<td>about --</td>
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<td>MR. COLLINS: (B)(2), which says</td>
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<td>that you have to -- if you exceed $500, you have to</td>
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<td>report.</td>
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<td>MR. COLLINS: Right. So, when you exceed 500 --</td>
<td>COMMISSIONER HOFFMAN: Okay. I'm wondering</td>
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<td>COMMISSIONER HOFFMAN: Then you go to -958, which</td>
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<td>says any time you reach it -- you have to file a report</td>
<td>about --</td>
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<td>any time it's above -- you reach that amount or go above</td>
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<td>an extra $1,000. And then it's --</td>
<td>CHAIRPERSON RECKART: (B)(2).</td>
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<td>MR. COLLINS: Let me -- let me -- let me stop you</td>
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<td>there, if I may, Commissioner. I don't mean to interrupt</td>
<td>COMMISSIONER HOFFMAN: -- (B)(1), which says</td>
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<td>you, but the question is: When did you reach the</td>
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<td>threshold? And the threshold is reached and then you</td>
<td>before the beginning of the primary -- oh. I'm sorry.</td>
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<td>file. That is -- and -- and I think the most natural</td>
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<td>reading is to start the clock on the day after the</td>
<td>(B)...</td>
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<td>threshold is reached because to make you file it at the</td>
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<td>very minute you reach the threshold would be difficult to</td>
<td>CHAIRPERSON RECKART: (B)(2) and (B)(3).</td>
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<td>administrate, so --</td>
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<td>COMMISSIONER HOFFMAN: I'm just --</td>
<td>MR. COLLINS: Those are -- I don't --</td>
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<td>MR. COLLINS: So there is nothing -- nothing in</td>
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<td>the statute that says it starts on the day, it is implied</td>
<td>CHAIRPERSON RECKART: It says --</td>
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<td>by the fact that the threshold is set and once you meet</td>
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<td>the threshold you are required to report.</td>
<td>MR. COLLINS: What -- what do you want to -- what</td>
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<td>Miller Certified Reporting, LLC</td>
<td>are you trying to --</td>
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<td>CHAIRPERSON RECKART: Any person --</td>
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<td>COMMISSIONER HOFFMAN: I'm just wondering, the</td>
<td>MR. COLLINS: Are we talking now about the</td>
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<td>following Tuesday or...</td>
<td>reports of the expenditures?</td>
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<td>MR. COLLINS: Are we talking now about the</td>
<td>COMMISSIONER HOFFMAN: The one business day --</td>
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<td>reports of the expenditures?</td>
<td>the one business day is -- is only for the last two weeks</td>
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<td>COMMISSIONER HOFFMAN: I'm just wondering, the</td>
<td>before the general election or primary election.</td>
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<td>following Tuesday or...</td>
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<td>MR. COLLINS: We're not talking -- I don't think</td>
<td>MR. COLLINS: We're not talking -- I don't think</td>
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<td>we're talking about the same thing, okay? That's what I'm</td>
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<td>trying to say.</td>
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<td>COMMISSIONER HOFFMAN: That's why I'm trying to</td>
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<td>understand what you're saying.</td>
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MR. COLLINS: Okay. 16-941(D) says you must file a report; 16-958 says once those -- that report is filed, subsequent reports are due at certain times if you make additional expenditures. It's our understanding here that there is a single expenditure for the amount of this ad buy. We have no other facts than that, so there are no other trigger reports, so called, or Clean Elections --

CHAIRPERSON RECKART: Okay.

MR. COLLINS: -- independent expenditure reports.

It is merely the threshold of -941(D) was exceeded, and the initial report was never filed and it has not been filed since that time.

That -- that's -- that's how I understand it.

Mary is here if you want to -- Mary has worked with these statutes longer than I have, so she -- I will look to her for --

COMMISSIONER HOFFMAN: Okay. So you read --

MR. COLLINS: -- for more authoritative guidance than that.

COMMISSIONER HOFFMAN: So you read -958(B) as applying to supplemental reports, not the original report?

MR. COLLINS: That is the presumption that is behind the recommendation that I have made to you, yes.

COMMISSIONER HOFFMAN: Okay. And the -- the original report, you think there's no specific statement

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appreciate -- I'm not -- just let me try to get this right.

I believe that what our position has been and what we have told people who have to file reports is that if you have to file an original report under 16-941(D), that is one thing; and then if you have previously unreported amounts, you have to file on the schedule delineated by 16-958(B), and we identify those dates for folks and publish them.

COMMISSIONER HOFFMAN: Right.

MR. COLLINS: So, I believe that if there was an initial filing and then there were additional expenditures, that those would have to be caught up on the schedule that we have provided, that's correct.

COMMISSIONER HOFFMAN: Okay. And the -- the this was advertised in -- the updated advertisement was April -- ended April 14th?

MR. COLLINS: That's the best information we have. That's the information we have. Let me put it this way: We have evidence of that and that evidence has not been, you know, denied by -- in anything that we have ever seen from Mr. Torchinsky, Mr. Rants, or anybody.

COMMISSIONER HOFFMAN: You pay this -- it says the advertising campaign commenced on or about March 31st and concluded April 14th?

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COMMISSIONER HOFFMAN: I'm sorry. Did I misunderstand your question?

COMMISSIONER HOFFMAN: Well, I'm just wondering when the payment is. Does that mean it was paid for before the start?

MR. COLLINS: Yes. That's correct.

COMMISSIONER HOFFMAN: So -- so, in normal course --

MR. COLLINS: I would have said March -- whatever the initial date of the run, I think. I mean...

COMMISSIONER HOFFMAN: So, you would have set it at March 31st plus one day, basically?

MR. COLLINS: I believe that's what we based the calculation off of. I -- I --

COMMISSIONER HOFFMAN: And if it was the beginning, as it just so happens March 31st, the beginning of the following month is April 1st, anyway, right? So, even under -- yeah. Okay.

I'm sorry. We went around in a big giant circle there, but ended up at the same date, April 1st.

CHAIRPERSON RECKART: All right.

COMMISSIONER HOFFMAN: Okay. Also, could you remind me when the Superior Court ruling was?

MR. COLLINS: The Superior Court ruling?

COMMISSIONER HOFFMAN: Yeah. In the -- in the
I don't know -- I think we ought to just, you know, follow

if there's conciliation, I'd certainly be open to

impose the penalty that's statutorily required and, you

issue, but anyway.

CHAIRPERSON RECKART: I want to deal with the

penalty right now.

COMMISSIONER HOFFMAN: Okay.  That is a penalty

issue, but anyway.

I -- you know, I feel we ought -- we ought to

impose the penalty that's statutorily required and, you

know, if there's conciliation, I'd certainly be open to

considering a conciliation agreement.  But, you know,

but -- but I think the -- the statute is pretty clear and

I don't know -- I think we ought to just, you know, follow

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what it says and impose the penalty it says. And if

there's -- if there's conciliation, other factors can be

taken into account. But I don't necessarily feel

comfortable with just making up a different date.

CHAIRPERSON RECKART: Well, I know. I take --

CHAIRPERSON HOFFMAN: I don't mean to --

CHAIRPERSON RECKART: I take issue with that

characterization. There is a very good basis for that,

that's what I was trying to convey. The point I'm getting

to is I -- I -- also, this Commission has on a regular

basis not imposed the statutory amounts. They've imposed

other amounts. In fact, I think it's more -- it's more

the exception to -- to the rule that we apply the

statutory amount. So, I think it makes sense for us to

consider this. And also --

COMMISSIONER HOFFMAN: You're saying waive some

penalties?

CHAIRPERSON RECKART: Well, no. Assess a penalty

different than what the statutes mandates -- or, not --
doesn't mandate, but the statute suggests. We -- we

regularly do that, so.

COMMISSIONER HOFFMAN: Yeah, you have a point

there. I mean, we have --

CHAIRPERSON RECKART: I -- I can't remember a

time we actually did impose it in my tenure, so.
MR. COLLINS: In your tenure, I think that's actually right.

CHAIRPERSON RECKART: Yes.

MR. COLLINS: I mean, in the -- this -- I mean, it's been a long while.

CHAIRPERSON RECKART: In my four years here.

COMMISSIONER LAIRD: I'm sympathetic to that.

And -- and -- and I think the -- Mr. Chairman, I have a lot of sympathy for the comments that you made about freedom of speech and -- and -- and maybe a more appropriate way to calculate it, I'm just not sure we have the discretion to do that. I read this statute as saying "shall be" and -- and that being the case, I don't know that we have discretion to assess a different penalty than what is statutorily prescribed.

CHAIRPERSON RECKART: And, again, I make the point we have not in my tenure ever assessed the statutory penalty. It's clearly, I think, something within our discretion. It's not been challenged, so.

Anyway, I'll -- I'll call for a motion on it so we can move it on. It's -- let's get this behind us.

I'll -- I'll move -- I'll make my motion, if no one seconds it, then someone else can make another motion with regard to the penalty. I'll move that the statutory penalty assessed by the Commission in light of its reasonable cause -- finding that there is a reasonable cause to believe a violation has occurred -- is not challenged.

MR. COLLINS: So, we tried to get them on the ballot.

CHAIRPERSON RECKART: Commissioner -- Chairman Laird.

COMMISSIONER LAIRD: I'm sorry.

MR. COLLINS: It's not been challenged, so.

COMMISSIONER HOFFMAN: Probable cause.

CHAIRPERSON RECKART: Probable cause.

Thank you.

November 20th at the rate of $860 per day. Is there a second?

MR. COLLINS: You meant August, right?

CHAIRPERSON RECKART: I'm sorry. What did I say?

COMMISSIONER KOESTER: You said August.

MR. COLLINS: You said April instead of August.

COMMISSIONER KOESTER: -- April.

CHAIRPERSON RECKART: I'm sorry. August 1st.

Yeah, I correct the motion. August 1st. Thank you.

Yeah.

Is there a second?

COMMISSIONER KOESTER: I second that. I like that idea.

CHAIRPERSON RECKART: Okay. Are there -- I think we've discussed this enough so I'm going to call for the vote. Any -- any -- all those in favor, please indicate by saying "aye."

COMMISSIONER KOESTER: Aye.

COMMISSIONER LAIRD: Aye.

CHAIRPERSON RECKART: Aye.

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All --

COMMISSIONER HOFFMAN: Aye.

Sorry. It passes unanimously.

We've got that done. So, the amount then will be 95,460, per Ms. Larsen's thing.

Okay. Thank you, Mr. --

MR. TORCHINSKY: Thank you. Thank you very much.

CHAIRPERSON RECKART: Thank you, Mr. Torchinsky.

Take care.

MR. TORCHINSKY: Bye-bye.

CHAIRPERSON RECKART: Bye-bye.

AUTOMATED VOICE: Leaving the meeting. Jason Torchinsky.

CHAIRPERSON RECKART: All right. Discussion -- all right. Now, we get to some fun stuff, I think. Discussion and possible action on random audits.

Selection of participating candidates for the 2014 cycle from the general election.

And we have our trusty little thing here, is that what we're going to do?

MR. COLLINS: Yes.

MS. LARSEN: Okay. I'm going to have Gina draw -- I'm going to have Gina draw two statewide candidates 'cause we only have three eligible statewide candidates for -- for audit in the general election, so.

Let's let her draw two balls out of there.

COMMISSIONER KOESTER: We have number three, Doug Little.

MS. LARSEN: Okay. Doug -- Doug Little.

MS. LARSEN: And Diane Douglas.

MS. LARSEN: And Diane Douglas.

And then we're -- and then we're going to draw eight legislative candidates for audit.

MS. ROBERTS: So, we have number 13, and that is Mark Finchem; and number 29, and that is Andrew Sherwood; 17, Janie Hydrick; 14, Rosanna Gabaldon; 20, Joseph Longoria; 2, John Ackerley; 35 is Larry Woods; and the last one is number 16, that is Steve Hansen.

CHAIRPERSON RECKART: All right. Thank you. Takes me back to my bingo days at college. So, anyway. All right. Final -- thank you.

Item VII(B), final audit approval for the following participating candidates of the primary election: Terry Goddard, Patrice Kennedy, Juan Mendez, and Jose Suarez. And, Mr. Collins?

MR. COLLINS: Yeah, Commissioner -- Chairman Reckart, Commissioners, we got these back right on I guess I want to say Monday, or -- right?

MS. LARSEN: Yeah.

MR. COLLINS: So, we tried to get them on the ballot.
agenda. There's -- they're all -- there's no findings in any of these audits, but our rules require us to get a final blessing from you. So, they're -- they are clean audits. We thought we'd get them on the agenda and get them off the docket as soon as we could and that's why they are here.

So, we don't have -- I have nothing to add to them. I think Sara provided a -- a highlight. I want to say I think you got a memo summary telling you what the auditors actually did review and where -- where they -- where they found one thing, I will just note, we asked them to identify whether or not they had any legal defense funds, and none of them said they had legal defense funds. So, just an interesting thing. We've never asked that before, but there's this AG opinion out there about legal defense funds, so we thought we might see if anybody actually has one and these guys didn't.

MS. LARSEN: Chairman, Commissioners, if you have any questions on the audits, I'm happy to answer them, but we actually got these back in record time, so we thought we would get them on the agenda and get them done, so.

CHAIRPERSON RECKART: Boy. I hear that.

COMMISSIONER KOESTER: Thanks a lot.

CHAIRPERSON RECKART: Okay. I move we accept the audits for the four candidates listed on Item VII(B).

Those kind of together.

CHAIRPERSON RECKART: That's a -- that's a good point. And since you're likely to be running things, I'll leave that up to you. So -- all righty. Let's go with the 23rd. And then let's adopt -- see if we can adopt the slate. It will be: January 29th, February 26th, March 26th, April 23rd, May 14th, and June 25th for the scheduled meeting dates the first half of 2015.

All those in favor, please indicate by saying "aye."

(Chorus of ayes.)

CHAIRPERSON RECKART: Okay. Carries unanimously.

Thank you.

All righty. Then, discussion and possible action for selection of Chairman for 2015. I'll note that I think, unless I abdicate earlier and I don't think anyone would let me, that I -- I carry the chairmanship until January -- the January meeting.

MR. COLLINS: Yes. And when we were putting together the agenda, we know already we have a pretty heavy agenda for December, so we thought that it would be -- it might be -- you know, we're talking about might be a good idea to -- if you're comfortable doing this now, to do it now and -- and -- and that way it's one less thing to do in -- in December.

CHAIRPERSON RECKART: Okay.

MR. COLLINS: And, you know. But, that's -- it's all -- obviously, you know, I just -- this is not for me to participate in.

CHAIRPERSON RECKART: Okay. I don't think -- and our custom has been, and it's worked quite well, maybe with the exception of this tenure, but it's worked quite well that we -- the -- the most senior-ranking person who has -- who meets the qualification and requirements under the rules be elected and I -- I believe that's you, Mr. Koester.

COMMISSIONER KOESTER: Thanks a lot.

CHAIRPERSON RECKART: I know. I tried desperately to get out of it, too.

But anyway, with that, I would nominate Mr. Koester to assume the chairmanship in -- for the -- beginning with the expiration of my chairmanship at the end of the January [sic] meeting.

COMMISSIONER LAIRD: I second that. I like that.

CHAIRPERSON RECKART: Okay. I'm sure Mr. Laird will. So -- so all those in favor, please indicate by saying "aye."

COMMISSIONER LAIRD: Aye.

COMMISSIONER HOFFMAN: Aye.

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CHAIRPERSON RECKART: Aye.

All those opposed? All righty, it carries.

COMMISSIONER HOFFMAN: Mr. Koester didn't vote "oppose," so.

CHAIRPERSON RECKART: Yeah. Yeah, I'm assuming he's in shock.

COMMISSIONER KOESTER: I was outnumbered anyway.

CHAIRPERSON RECKART: All righty. This is the time for public comment. Consideration of comments and suggestions anyone here who has been brave enough to endure may want to make. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism.

Do we have any people who want to comment?

It appears not.

With that, I'll entertain a motion to adjourn.

I'll move it.

COMMISSIONER HOFFMAN: I move we -- or, I'll second it then.

CHAIRPERSON RECKART: All right. Great. All in favor?

(Chorus of ayes.)

Well done. Thank you, everyone.

(Whereupon the proceeding concludes at 11:13 a.m.)

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CERTIFICATE

I, Angela Furniss Miller, Certified Reporter, do hereby certify that the foregoing pages numbered 1 through 70, inclusive, constitute a full and accurate printed record of my stenographic notes taken at said time and place, all done to the best of my skill and ability.

DATED, at LITCHFIELD PARK, Arizona, this 25th day of November, 2014.

Angela Miller
Certified Reporter (AZ50127)

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