

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:

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Certified Reporter (AZ 50127)

Miller Certified Reporting, LLC

<p>1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN 2 ELECTIONS COMMISSION, convened at 9:37 a.m. on November 3 20, 2014, at the State of Arizona, Clean Elections 4 Commission, 1616 W. Adams, Conference Room, Phoenix, 5 Arizona, in the presence of the following Board members: 6 Mr. Timothy Reckart, Chairperson 7 Mr. Louis Hoffman 8 Mr. Thomas J. Koester 9 Mr. Mitchell C. Laird</p> <p>10 OTHERS PRESENT:</p> <p>11 Thomas M. Collins, Executive Director 12 Paula Thomas, Executive Assistant 13 Sara Larsen, Financial Affairs Officer 14 Gina Roberts, Voter Education Manager 15 Steve Clawson, Moses Anshell 16 Joseph Kanefield, Ballard Spahr, LLP 17 Saman Golestan, Torres Law Group 18 Julia Shamway, The Arizona Republic 19 Jason Torchinsky, Legacy Foundation Action Fund 20 (Telephonic) 21 Brian Bergin, Legacy Foundation Action Fund 22 Paul Rubin, Self 23 Jeremy Duda, Capitol Times 24 Michael Becker, Governor's Office 25 Mary O'Grady, Osborn Maledon</p>	<p>2 3 P R Q C E E D I N G 4 CHAIRPERSON RECKART: All righty. The 5 November 20th meeting -- public meeting of the Arizona 6 Citizens Clean Elections Commission is called to order. 7 The Commission may vote to go into executive 8 session, which will not be open to the public, for 9 purposes of obtaining legal advice on any item listed on 10 the agenda. This is pursuant to A.R.S. Section 11 38-431.03(A)(3). And we also reserve the right to address 12 agenda matters in a different order than that outlined in 13 the agenda that was circulated to the public. 14 Possible action on any matter under review 15 identified in this agenda may include authorizing or 16 entering into a conciliation agreement, in addition to any 17 other actions such as: Finding reason to believe a 18 violation has occurred, finding probable cause to believe 19 a violation has occurred, applying penalties, ordering 20 repayment of monies to the Clean Elections fund, or 21 terminating the proceeding. 22 All right. With that, I'll invite the Commission 23 to direct its attention to the minutes, which Angela did 24 quite a job of transcribing a small book. It was 25 interesting reading. Are there any comments with regard to the minutes?</p> <p>26 Miller Certified Reporting, LLC</p>
<p>27 Miller Certified Reporting, LLC</p> <p>1 COMMISSIONER KOESTER: Mr. Chairman. 2 CHAIRPERSON RECKART: Yes, sir. 3 COMMISSIONER KOESTER: I just have one word 4 correction. It's on page 124 and it starts off by saying, 5 which I said: "I think there has been, I'll say an" -- 6 the word I used was "allegation," spelled 7 A-L-L-E-G-A-T-I-O-N. 8 CHAIRPERSON RECKART: Okay. 9 COMMISSIONER KOESTER: I think it came across as 10 "allocation." 11 CHAIRPERSON RECKART: Okay. 12 COMMISSIONER KOESTER: Small matter. 13 CHAIRPERSON RECKART: All righty. With that 14 correction, I'll take a motion to approve the minutes. 15 COMMISSIONER KOESTER: I move to approve. 16 CHAIRPERSON RECKART: All right. So moved. Is 17 there a second? 18 COMMISSIONER LAIRD: Second. 19 CHAIRPERSON RECKART: All right. Seconded. 20 Thank you, Commissioners. All in favor, please indicate 21 by saying "aye." 22 (Chorus of ayes.) 23 24 CHAIRPERSON RECKART: Any opposed? None. It 25 passes unanimously.</p> <p>26 Miller Certified Reporting, LLC</p>	<p>4 5 1 I note for the record also that Commissioner 2 Titla is not here. Is he going to participate by phone? 3 MS. THOMAS: He doesn't think so. 4 CHAIRPERSON RECKART: He doesn't. Okay. That's 5 fine. 6 I also note that Mr. Torchinsky, who is counsel 7 for the LFAF, will -- is participating by phone, and I 8 think he's there presently. So, when we get to that 9 matter, we'll -- we'll invite you to participate, 10 Mr. Torchinsky. 11 MR. TORCHINSKY: Thank you. 12 CHAIRPERSON RECKART: You're welcome, sir. 13 The next item on the agenda is the Executive 14 Director's report. Mr. Collins, please. 15 MR. COLLINS: Yes. Mr. Chairman, Commissioners, 16 just to -- briefly, the -- you'll see the announcements 17 there. We highlight there, you know, that the -- the -- 18 the -- the voter turnout from -- from November, which was 19 47 point -- 47 percent of voters, 48 percent of voters, 20 which is -- which is off from 2012, obviously the 21 presidential year in 2010. We will be taking that into 22 account, and then other data we -- we're able to gather, 23 as well as our -- looking at what we did this year in 24 terms of putting together a public voter education plan 25 for -- for 2015, which Gina is already working on.</p> <p>26 Miller Certified Reporting, LLC</p>

<p>1 You see the final candidate information for 2 this -- this year is there; both public financing, debate 3 participation, and other participation that is available 4 for Clean Elections.</p> <p>5 COMMISSIONER HOFFMAN: Tom, can you speak up?</p> <p>6 MR. COLLINS: Sure. All the -- all the various 7 ways in which candidates participated in Clean Elections 8 this -- this year.</p> <p>9 Where we are with the enforcement.</p> <p>10 There's some legal stuff. The miscellaneous, the 11 Supreme Court matter, the petition for special action, 12 that does relate to a later agenda item, you know, so that 13 may not -- assuming that agenda item is fulfilled, that 14 won't actually happen, the December 2nd consideration of 15 that special action petition.</p> <p>16 CHAIRPERSON RECKART: So, if we -- if we approve 17 the conciliation report and it gets signed --</p> <p>18 MR. COLLINS: Correct. Correct.</p> <p>19 CHAIRPERSON RECKART: -- that will -- okay. 20 Thank you.</p> <p>21 MR. COLLINS: But we can talk about that when we 22 get to that agenda item.</p> <p>23 That's really it. I don't -- unless you have 24 questions about these items, they're -- I guess they're 25 pretty self-explanatory.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p>6</p> <p>1 CHAIRPERSON RECKART: I -- I have a couple but 2 I'll -- I'll invite the other Commissioners. Any? 3 With regard to -- let me back up. I seem to 4 recall that we had some effort to enhance voting machines 5 and that kind of thing in various counties around the 6 State. Is that --</p> <p>7 MR. COLLINS: Sure.</p> <p>8 CHAIRPERSON RECKART: Okay. Being from Tucson, 9 we had considerable delay in certain things because of 10 issues at Cochise County and in --</p> <p>11 MR. COLLINS: Sure.</p> <p>12 CHAIRPERSON RECKART: -- with the CD2 race, which 13 is still, I guess, in the process of being recounted.</p> <p>14 MR. COLLINS: Apparently, yeah. So, you know, 15 we've done two things this -- in terms of voter education 16 this year and then we have some legislation we worked on 17 for last -- last session. The -- what we did with respect 18 to our voter education effort in coordination with the 19 County is to try to talk to folks about the need to get 20 their early ballot back quickly. Because what happens if 21 you vote in early ballot but you don't deliver it to the 22 County until election day, then they've got to tear that 23 open, check the signature, essentially, and it -- and it 24 becomes a backlog.</p> <p>25 So, for example, when the results are first Miller Certified Reporting, LLC</p>
<p>8</p> <p>1 announced on a given night, right, there's an immediate 2 analysis, says all -- all these votes have already been 3 tabulated, those are actually, as I understand it, early 4 votes that were already counted because they got back in a 5 timely manner; and then you get the voting machine that 6 day totals; and then finally you get the -- you get the -- 7 the last totals.</p> <p>8 So, there's a -- there's some -- and then on the 9 equipment front, and -- and just generally, we've talked 10 about trying to have some legislation passed to give us 11 some flexibility to assist the counties with technical 12 efforts that they may want to undertake in terms of making 13 the process more efficient. So, that's something next 14 month we're talking about more in terms of legislation, 15 but -- but -- so, we -- we do see those as sort of trying 16 to work hand-in-glove.</p> <p>17 Trying to get the public to understand that, you 18 know. They -- if they -- we're going -- if we're going to 19 have early voting set up the way it is, if they want to 20 also have the results on the day of the -- on election 21 day, they've got to help the counties out by getting 22 those -- getting those ballots back.</p> <p>23 On the other hand, to the extent that there are 24 technical or equipment issues out there, you know, that 25 we -- we have sought some legislative flexibility that</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p>9</p> <p>1 could -- that could try to address that.</p> <p>2 I'm not -- Gina actually is. And I don't know if 3 we can get into it, but Gina actually is more of an expert 4 on all of the things related to the technicalities of how 5 elections actually run than I am; and actually knows, 6 like, more about Cochise County than probably anybody in 7 terms of -- because she actually ran the -- helps run the 8 Secretary of State's election night reporting system. So, 9 Gina is an expert in this. We can -- I don't know if we 10 can within this context get into that level of detail, but 11 we certainly can get you more information.</p> <p>12 CHAIRPERSON RECKART: Yeah. I think, you know, 13 for a future meeting, let's talk about that just because 14 it seems to have been a reoccurring problem, especially 15 with Cochise. I don't know about the other counties, just 16 the CD2 was such a tight race that it was drawing 17 everyone's attention because of the difficulties they were 18 having.</p> <p>19 The other thing was is, as I recall, national 20 turnout was around 36 percent. So, actually I thought -- 21 I thought we did pretty well, if that's correct. So, 22 that's -- I don't know, we're doing something a little bit 23 better than the rest. Makes me wonder how bad some other 24 states might be in terms of turnout.</p> <p>25 But anyway, just -- no response needed. Thank Miller Certified Reporting, LLC</p>

<p style="text-align: right;">10</p> <p>1 you.</p> <p>2 All righty. Next agenda item is discussion and 3 possible action on MUR 14-006 and 14-015, Tom Horne and 4 Campaign Committee. We'll take that together with the Tom 5 Horne 2014 Reasonable Cause Notice and Related Enforcement 6 Proceeding, including a possible conciliation that -- that 7 I think the Executive Director may have reached with Tom 8 Horne.</p> <p>9 And then, lastly, to the extent it is relevant, 10 we can discuss the case now, I think <u>Horne versus the</u> <u>Commission and Horne versus Bergin</u> cases now pending 12 before the Courts.</p> <p>13 Mr. Collins, I'll ask you to introduce it, 14 please.</p> <p>15 MR. COLLINS: Sure. Mr. Chairman, Commissioners, 16 thanks.</p> <p>17 I want to make a couple prefatory remarks. 18 There's -- it doesn't appear that anybody representing Mr. 19 Horne or Mr. Horne is here. You know, we have -- and Mr. 20 Kanefield is here if we have legal questions, and if you, 21 you know -- and I'm sure if he feels the need, he'll jump 22 up and tell us we need to go into executive session.</p> <p>23 But, I just want to, you know, we have 24 Mr. Horne's word through his attorney that he'll sign this 25 conciliation agreement. It has three principles in it</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">11</p> <p>1 that I think are important: It acknowledges expressly 2 that State employees cannot campaign on State time; it -- 3 it pays a \$10,000 fine, which to put in some perspective 4 is the maximum fine that would be allowed under our rules 5 for a rule violation, so it does have a metric associated 6 with it. It's ten times the amount of the fine that the 7 Corporation Commission candidates paid in our last -- our 8 last MUR that we conciliated. It also ensures a public 9 accounting because the investigation for enforcement 10 that's been undertaken by the Gilbert Town Attorney and 11 Judge -- former Judge Dan Barker is underway. And 12 although, you know, that has yet to proceed to a final 13 conclusion, when that is finally concluded, you know, with 14 -- along with the procedures associated with it, Mr. Horne 15 is -- is bound to follow any public accounting of in terms 16 of campaign finance reports that are -- that are necessary 17 to -- deemed necessary. So, the public's interest is 18 secured there.</p> <p>19 I also want to tell you, this doesn't have any 20 effect on any future criminal or civil investigation. And 21 I want to put this in perspective a little bit if I could, 22 because we've had -- there's been some public discussion, 23 I don't know if anyone would ultimately want to make 24 public comment but, you know.</p> <p>25 You know, I would concede that the word "guilt"</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">12</p> <p>1 is not in this document. Mr. Horne has argued in Court 2 that this process and this Agency are not legitimate; and 3 as an attorney for this Agency, he has had or his 4 spokesman has in our own Court -- I don't know which -- as 5 a State employee, attacked this process and the Commission 6 itself.</p> <p>7 This agreement acknowledges the Commission's 8 legitimacy; it acknowledges the Clean Elections Act; it an 9 acknowledges that it applies. It results in him not 10 appealing the judgment of Judge Bergin that makes clear -- 11 if there was any doubt, which I, of course, believe there 12 is none -- that the Commission has the authority to 13 enforce Clean Elections Act against candidates, whether 14 they participate in public financing or they do not.</p> <p>15 It also results in the withdrawal of his special 16 action at the Supreme Court.</p> <p>17 So, I think you take those commitments in 18 addition to the acknowledgments that are here; in addition 19 to the fine; and in addition to the securing of the 20 parameter of the future accounting, if the Gilbert County 21 Attorney and Judge Barker come to the conclusion there is 22 further accounting to be made; and the public's interest 23 is secured; the Commission's interest in ensuring the 24 Clean Elections Act is enforced and recognized; and that 25 State employees cannot campaign on State time are all</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">13</p> <p>1 acknowledged here.</p> <p>2 So, the agreement speaks for itself. And I would 3 say that anything else you would hear today is spin. And 4 I think we will -- undoubtedly, that is the way that these 5 things play out. That's -- that's the nature of 6 practicing and working in this arena. But, that's the 7 agreement that's been secured and that's why I recommend 8 it to you.</p> <p>9 So, I -- if you have any questions about it, I 10 am, obviously, more than happy to answer them. And -- and 11 Joe is here if there are any legal questions that -- or 12 other legal advice that you might seek. But that's -- 13 those are my comments.</p> <p>14 CHAIRPERSON RECKART: Okay. Thank you. Well 15 stated.</p> <p>16 I invite the Commissioners to ask Mr. Collins any 17 questions in regard to the proposed conciliation.</p> <p>18 MR. COLLINS: I can also tell you -- if you're 19 interested, I can tell you, I did hear from the 20 Complainant's attorney and he believes that the 21 conciliation is appropriate, for what it's worth.</p> <p>22 CHAIRPERSON RECKART: Okay. Well, that's good.</p> <p>23 There being no discussion, does anybody feel the 24 need to talk with Mr. Kanefield in executive session?</p> <p>25 All righty. Well, you're off the hook, sir.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">14</p> <p>1 With that, is there any more discussion with 2 regard to this -- this matter?</p> <p>3 I -- I'll say this, is that I studied it, I 4 talked to Mr. Collins about it, I've taken a look at the, 5 you know, both the role of this -- of this Commission and 6 the -- you know, the issues that have been raised in the 7 course of debating, resolving, fighting over the 8 allegations in this thing, and I think -- I endorse what 9 the Executive Director says with regard to the 10 effectiveness. I think it does give me comfort that the 11 -- in some regards to know that an actual fine has been -- 12 under our rules has been assessed and that there is no 13 preclusion of other proceedings going forward; and, 14 therefore, in some respects -- proceedings before a 15 competent authority, I might add. So, I -- I have comfort 16 with -- with going ahead with that.</p> <p>17 So, that being said, I'll entertain a motion with 18 regard to the Commission's entering into the conciliation 19 agreement. I think that's -- that's really what we want 20 here.</p> <p>21 MR. COLLINS: Well, I think, yeah, looking for a 22 motion to authorize me to -- to actually sign the thing.</p> <p>23 CHAIRPERSON RECKART: Yeah. Yeah, that's how I 24 took it. So, if someone is so disposed to move, I invite 25 that.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">15</p> <p>1 COMMISSIONER LAIRD: I make a motion that we 2 authorize the Executive Director to enter into the 3 conciliation agreement proposed today with Mr. Horne.</p> <p>4 COMMISSIONER HOFFMAN: Second the motion.</p> <p>5 CHAIRPERSON RECKART: Okay. We have -- thank 6 you, gentlemen. We have a motion and a second. Any 7 further discussion?</p> <p>8 There being none, all in favor, please indicate 9 by saying "aye."</p> <p>10 (Chorus of ayes.)</p> <p>11</p> <p>12 CHAIRPERSON RECKART: Okay. All opposed? It 13 passes unanimously. Thank you.</p> <p>14 I think listed Item No. V has been withdrawn from 15 the agenda.</p> <p>16 MR. COLLINS: Yeah. We have Mr. -- I heard from 17 Mr. Huppenthal -- or, Sarah heard from Mr. Huppenthal's 18 office yesterday and he's -- he's not available. We have 19 some stuff pending with him, so we're going to get 20 together next week and we'll bring that back hopefully in 21 December.</p> <p>22 CHAIRPERSON RECKART: Okay. Thank you. And then 23 probably for the most enjoyable part of the day here, 24 we're going to deal with Item VI, which is the Legacy 25 Foundation Action Fund, MUR 14-007. We have from last</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">16</p> <p>1 meeting a probable cause recommendation that, as I recall, 2 the Commission voted that there was reason to believe.</p> <p>3 MR. COLLINS: Yes.</p> <p>4 CHAIRPERSON RECKART: And then with that, 5 Mr. Collins has -- then there was response from the LFAF, 6 Mr. Torchinsky submitted that, which is in our packets; 7 and then there was a suggestion for an assessment of 8 penalties from Mr. Collins in the amount of \$201,240.</p> <p>9 So, Mr. Collins, if you would beyond that 10 introduce more of this and then we'll ask Mr. Torchinsky 11 to add his perspective.</p> <p>12 MR. COLLINS: And -- yeah. And there's one other 13 thing. I -- literally, this is just received. I haven't 14 had a chance to forward this to Mr. Torchinsky, 15 Mr. Bergin, or the Commission, for that matter, so I'm 16 going to tell you, and I will try to get this forwarded, 17 maybe Paula or Sara can forward the e-mail I just sent to 18 you to Jason and Brian and Mary, and everybody. But the 19 e-mail -- then we can print it.</p> <p>20 But an e-mail from -- or, a letter from Kory 21 Langhofer, who is the Complainant in the underlying 22 complaint. And he -- and I will just read it, if I could, 23 because I think it's relevant and probably a perfectly 24 appropriate time to read it into the record because it's 25 fairly brief.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">17</p> <p>1 He simply says that: On July 1st, in his 2 capacity as counsel for the gubernatorial campaign of 3 Scott Smith, he filed a complaint with the Commission 4 alleging campaign vio- -- finance violations by the Legacy 5 Foundation Action Fund and others.</p> <p>6 "After careful consideration in this matter in 7 consultation with Mayor Smith and his campaign 8 staff, I hereby withdraw this complaint. And I 9 respectfully request the Commission dismiss the 10 complaint and terminate any pending proceeding 11 relating to it."</p> <p>12 So, that is a thing that occurred.</p> <p>13 CHAIRPERSON RECKART: Okay.</p> <p>14 MR. COLLINS: Now that, I mean, we can talk about 15 if anybody wants to talk about what that means as a legal 16 matter. I'm certainly happy to do that.</p> <p>17 But you need to be aware of it. It came in at 18 9:41. So, the timing really, literally, couldn't have 19 been more appropriate.</p> <p>20 CHAIRPERSON RECKART: But I -- I think -- I think 21 that's nice, but the investigation, the action, the 22 jurisdiction has been -- has been asserted. We've taken 23 effort to do the investigation, et cetera. I don't think 24 it affects anything that we're planning to do today 25 whatsoever.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

1 MR. COLLINS: I -- I mean, I certainly think that
 2 we've gone past -- we've gone past that.
 3 CHAIRPERSON RECKART: Yeah. Just -- okay. Yeah.
 4 COMMISSIONER HOFFMAN: Mr. Chair?
 5 CHAIRPERSON RECKART: Yes, sir.
 6 COMMISSIONER HOFFMAN: I move we go into
 7 executive session to discuss that issue.
 8 CHAIRPERSON RECKART: Okay. All -- is there a
 9 second to that motion?
 10 COMMISSIONER LAIRD: Second.
 11 CHAIRPERSON RECKART: Okay, all in favor say
 12 "aye."
 13 COMMISSIONER HOFFMAN: Aye.
 14 COMMISSIONER LAIRD: Aye.
 15 COMMISSIONER KOESTER: Aye.
 16 CHAIRPERSON RECKART: All opposed?
 17 Nay.
 18 All right. Let's -- we go in executive session.
 19 Thank you, everyone.
 20 MR. TORCHINSKY: And I'll drop off the phone,
 21 then.
 22 CHAIRPERSON RECKART: Thank you.
 23 (Whereupon the public retires from the meeting
 24 room.)
 25 (Whereupon the Commission is in executive session
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1 consultation with Mayor Smith and that the decision was
 2 made to withdraw the complaint.
 3 COMMISSIONER HOFFMAN: Right. Okay. Well, we
 4 don't have any information indicating -- you know, in the
 5 letter, indicating that there was any, you know, error of
 6 any sort and/or any reason why, and I -- I for one believe
 7 that if we perceive a violation of the Clean Elections Act
 8 after having already done an investigation pursuant to a
 9 then-pending complaint, we actually have a duty to
 10 continue to remedy the -- any -- to find whether there was
 11 a violation and remedy any violation that we perceive.
 12 So, I believe we should proceed.

13 CHAIRPERSON RECKART: All righty. Any other
 14 comments?

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

20 COMMISSIONER HOFFMAN: I want to say one other
 21 thing is we're not here as a -- as a tool of Mr. Langhofer
 22 or Mr. -- Mayor Smith or anyone else, we're here to uphold
 23 the public interest in enforcing the Clean Elections Act.
 24 And so just as, you know, we respond to citizen complaints
 25 when people perceive violations, and decide whether or not

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1 from 9:55 a.m. until 10:01 a.m.)
 2
 3 * * * * *
 4
 5 (Whereupon all members of the public are present
 6 and the Commission resumes in general session.)
 7 CHAIRPERSON RECKART: All righty. Let's go back
 8 into public session now. Okay. I don't know if there's
 9 any further discussion with regard to the letter from Mr.
 10 Langhofer.
 11 COMMISSIONER HOFFMAN: Yeah, I have a question,
 12 Mr. Chair.
 13 CHAIRPERSON RECKART: Please, Mr. -- yeah.
 14 Mr. Hoffman.
 15 COMMISSIONER HOFFMAN: Mr. Collins, did -- did
 16 you have any conversation with Mr. Langhofer about the
 17 letter? Specifically, was there any reason given for
 18 withdrawing?
 19 MR. COLLINS: I -- I did have a brief
 20 conversation with him telling me that there was going to
 21 be a letter, and the conversation is consistent with
 22 exactly what he says here.
 23 COMMISSIONER HOFFMAN: In other words, he hasn't
 24 stated any reason or any --
 25 MR. COLLINS: Beyond -- beyond that there was a
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1 they exist; but we're here to uphold the public interest,
 2 not Mr. Smith's private interest. So, while he -- Mayor
 3 Smith could withdraw a private legal complaint in court,
 4 like a court action that he had brought, this is an action
 5 that's not brought by -- by him, it's brought by the
 6 Commission once a complaint is made -- or, once an
 7 investigation is made.
 8 Also, our Executive Director could have initiated
 9 this complaint -- could have filed a complaint himself had
 10 information come to his attention for whatever reason, and
 11 that, you know, has been done through his investigation
 12 and findings. So, in effect, I think we should deal with
 13 it regardless of whether the genesis was the original
 14 complaint from Mr. Smith or -- or by our staff.

15 CHAIRPERSON RECKART: Okay.
 16 COMMISSIONER HOFFMAN: Thank you, Mr. Chair.
 17 CHAIRPERSON RECKART: Thanks, Mr. Hoffman. Any
 18 further comments? Mr. Laird? Mr. Koester? No?
 19 Okay. Then -- now, that we've gotten beyond that
 20 preliminary matter, Mr. Collins if I could hear from
 21 you --
 22 MR. COLLINS: Sure.
 23 CHAIRPERSON RECKART: -- a little bit more on
 24 this matter so we can proceed.
 25 MR. COLLINS: Sure. You know, and just to kind
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<p style="text-align: center;">22</p> <p>1 of update you on where we are. I think we've kind of gone 2 over this, I think it's been captured by other comments, 3 but just to reiterate here. We've got -- we have moved to 4 what we call the probable cause recommendation and -- and 5 we have before you a recommendation on probable cause and 6 -- and a recommendation on penalty.</p> <p>7 In effect, you know, the issues in this matter 8 have not really changed significantly during the course of 9 it, because, you know, for the most part this is a -- this 10 is a -- a legal question. And so the question is whether 11 or not this communication with respect to Scott Smith was 12 a -- met the definition of express advocacy that's set 13 forth in the -- in the Act, and whether or not that 14 results in the requirement to file reports.</p> <p>15 You know, we -- you know, my views are laid out 16 in some detail here, and they are that it -- it does meet 17 that statute. That that statute is itself constitutional. 18 We have had that reaffirmed recently by the Arizona Court 19 of Appeals. Our authority to enforce that statute has 20 been made express by the statutory interpretation of the 21 Arizona Supreme Court. So, those are binding authorities 22 on the interpretation of statutes if they weren't clear on 23 their face, which in this case they actually are. So, I 24 feel like that's belt-and-suspenders, as they say.</p> <p>25 I think that with respect to the question of the Miller Certified Reporting, LLC</p>	<p style="text-align: center;">23</p> <p>1 operation 16-942(B), you know, I -- I disagree with the 2 arguments that you see in the response, which -- which 3 have been in other responses we've received as to how the 4 phrases, you know, "on behalf of a candidate" and "the 5 joint and several liability" operate.</p> <p>6 I think that the -- as a matter of statutory 7 construction, if you were to interpret those phrases in 8 the manner that Mr. Torchinsky suggests, I think that 9 leads you to an absurd conclusion that the statute 10 which -- which, you know, we clearly enforce the reports 11 that are indisputably part of the Clean Elections Act 12 somehow would not be subject to the penalties that are 13 authorized by the Act, and that doesn't make a lot of 14 sense to me. So -- in fact, it makes -- doesn't make any 15 sense to me, I guess I...</p> <p>16 So, those are my highlights. I think, therefore, 17 that, you know, I would recommend we proceed with probable 18 cause. I'd also recommend we proceed with penalty. I've 19 said and I -- and I, you know, and I think in -- in all of 20 our proceedings, I always want to make clear that the 21 penalty is something I believe the Commission has 22 discretion on. And so, you know, I -- you know, we've 23 made a recommendation based on a calculation of what we 24 think the max penalty is for the failure to file here.</p> <p>25 You know, but I'm not -- and I -- and I -- just so with Miller Certified Reporting, LLC</p>
<p style="text-align: center;">24</p> <p>1 that, there is -- that's subject to discussion as well.</p> <p>2 So, I guess there's not really anything else I 3 think I have to -- to say. Unless you have questions, 4 that's my high-level summary of where we are at.</p> <p>5 CHAIRPERSON RECKART: Okay. I have some 6 questions, but I think I want to wait. There are some 7 things that the LFAF brief or response addresses that are 8 not addressed by the recommendation that once 9 Mr. Torchinsky presents those, I would ask that you be 10 ready to respond to some questions with regard to those 11 issues that he raises that are not addressed in our 12 recommendation.</p> <p>13 Are there any comments or questions before I move 14 -- for Mr. Collins before I move on to Mr. Torchinsky?</p> <p>15 No?</p> <p>16 Okay. Mr. Torchinsky, sir, you have the -- you 17 have the floor.</p> <p>18 MR. TORCHINSKY: Sure. I'll be -- I'll be as 19 brief as I possibly can. First, I want to address express 20 advocacy. With respect to whether the advertisement 21 constituted express advocacy, I think we fully laid out 22 that in our various written submissions.</p> <p>23 I want to highlight some information here. That 24 at the time LFAF acted, the definition of express advocacy 25 that's now being applied was not constitutional pursuant</p>	<p style="text-align: center;">25</p> <p>1 to a ruling of Maricopa County Superior Court. In fact, 2 it was after the complaint was filed that the Appeals 3 Court reversed that trial court's decision. So, I think 4 that's important for the Commission to keep in mind.</p> <p>5 And I think that certainty is key here, and I 6 just want the -- the Commission to consider the 7 constitutional implications of applying a statute that at 8 the time we acted, you know, had been held by a court of 9 competent jurisdiction to be unconstitutional and is now 10 applied because subsequent to the filing of the complaint, 11 that the Appeals Court reversed, you know, puts us in a 12 weird position, I think, as a constitutional matter.</p> <p>13 Second, with respect to the Commission's 14 jurisdiction, we reiterated our argument again as to why 15 we believe the Commission doesn't have jurisdiction over 16 this matter. And I think that the split of conclusions 17 between Maricopa County and the Executive Director's 18 recommendation shows that the advertisement had a -- a 19 reasonable interpretation other than express advocacy at 20 the time it was broadcast.</p> <p>21 On the penalty provisions, which is the 22 application of -- of -942(B), we have not previously 23 addressed this to the Commission verbally, but we do -- 24 but we do believe that the penalty provision that the 25 Executive Director is relying on here for the penalty</p>
<p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">26</p> <p>1 calculation is -- is simply inapplicable.</p> <p>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:</p> <p>6 "A civil penalty for a violation by or on behalf 7 of any candidate of any reporting requirement."</p> <p>8 And I guess the question that I would pose to the 9 Commission if you are going to apply this language is, 10 you know, which candidate was this by or on behalf?</p> <p>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.</p> <p>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."</p> <p>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?</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">27</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>25 So, I guess in conclusion, we would ask that the Miller Certified Reporting, LLC</p>
<p style="text-align: right;">28</p> <p>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.</p> <p>10 And with that, I'll guess I'll take any 11 questions.</p> <p>12 CHAIRPERSON RECKART: Do we have any questions 13 for Mr. Torchinsky?</p> <p>14 COMMISSIONER HOFFMAN: Yeah. I have -- I have a 15 couple if -- Mr. Chair.</p> <p>16 CHAIRPERSON RECKART: Please, Mr. Hoffman.</p> <p>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?</p> <p>25 MR. TORCHINSKY: Other than the submission that Miller Certified Reporting, LLC</p>	<p style="text-align: right;">29</p> <p>1 we made to them and the letter we received from them, 2 we've had no additional communication with them.</p> <p>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?</p> <p>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.</p> <p>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 placing the advertisement. 18 And I wondered, are you making any affirmative assertion 19 as to why the advertisement was run?</p> <p>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 23 National Conference of Mayors, no.</p> <p>24 COMMISSIONER HOFFMAN: Well, what -- 25 MR. TORCHINSKY: Because as I think I've said, Miller Certified Reporting, LLC</p>

1 we've pointed out before, the intent behind the ad is not
 2 a relevant factor that you're allowed to consider under
 3 Supreme Court precedent. You're allowed to look at the ad
 4 itself, but the inquiries into intent have been foreclosed
 5 by the U.S. Supreme Court.

6 COMMISSIONER HOFFMAN: Right. That -- that's the
 7 -- the issue that I was curious about. You -- I found the
 8 section. In your brief you wrote: "LFAF's advertisement
 9 sought to persuade the people of Mesa, Arizona,
 10 to oppose the U.S. Conference of Mayor's policy
 11 position."

12 That seems to me a statement -- you're making an
 13 affirmative statement of the LFAF's intention.

14 MR. TORCHINSKY: I think that's just a rephrasing
 15 of what Mr. Rants said in his affidavit.

16 COMMISSIONER HOFFMAN: And, yes, it is. And so,
 17 both you and Mr. Rants are asking us to -- yeah, his --
 18 his affidavit says, for example: "The purpose of the ads
 19 was to draw attention to the Mayor's involvement
 20 in support of the agenda promulgated by the U.S.
 21 Conference of Mayors."

22 So, again, do you want us to consider your
 23 intention?

24 You know, in other words, the Supreme Court has
 25 said -- your argument -- you've argued to us the Supreme
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1 question. You want us to ignore or consider evidence of
 2 your organization's purpose and intention?

3 MR. TORCHINSKY: I think -- I believe that
 4 evidence of intent is not a permissible consideration at
 5 all --

6 COMMISSIONER HOFFMAN: So, you would like us
 7 to --

8 MR. TORCHINSKY: -- from your perspective.

9 COMMISSIONER HOFFMAN: So, you would like us to
 10 ignore the statements that are in the record about your
 11 organization's intention; is that correct?

12 MR. TORCHINSKY: No. I'm saying that what
 13 Mr. Rants was saying was essentially rephrasing the -- the
 14 ad itself, and you're allowed to look at the ad itself to
 15 understand what it was that the ad was doing.

16 COMMISSIONER HOFFMAN: Okay. I don't mean to go
 17 over it, but that's just not true. He says that it -- he
 18 talks about the purpose and what it sought to do, and
 19 those are indications of -- of intention. And, you know,
 20 it's a very -- it seems double-sided, you know, to suggest
 21 that we're not allowed to -- to -- to consider that, but
 22 you get free rein to say whatever you want about the
 23 purpose.

24 And, you know, if those are just stray comments
 25 that you'd like us to ignore, we could understand that

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1 Court has said that we can't look into intention, but are
 2 we then obligated to let you make assertions about
 3 intention without investigation?

4 Or, do you want us to simply ignore the -- the
 5 intention of the -- of your organization and solely judge
 6 it based on the content of the advertisement?

7 MR. TORCHINSKY: I believe that what Mr. Rants
 8 was doing was simply restating what was in the
 9 advertisement itself. I think if you look at the -- if
 10 you look at what the ad says, the ad says, essentially:
 11 Change the position of the Conference of Mayors. I don't
 12 think that there's much that he -- you don't need to get
 13 into what was in anybody's head to read the -- you know,
 14 to look at the ad and look at what the ad asked people to
 15 do.

16 COMMISSIONER HOFFMAN: Well, you didn't say the
 17 ad drew attention to the Mayor's involvement in support of
 18 the agenda. He said: "The purpose of the ads was to
 19 draw."

20 I'm just asking, would you like us to consider
 21 your or disregard your organization's purpose?

22 MR. TORCHINSKY: I think you're allowed to look
 23 at the four corners of the ad in determining -- in
 24 determining whether the ad was express advocacy or not.

25 COMMISSIONER HOFFMAN: Okay. Again, answer my
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1 and -- and say that, you know -- and treat them as though
 2 they're not statements of purpose and, you know, not
 3 consider them. But if you want us to consider them, then,
 4 you know, I think we have the right to, you know, question
 5 the truthfulness of that, and in effect you've waived the
 6 constitutional protection that's involved. So --

7 MR. TORCHINSKY: I --

8 COMMISSIONER HOFFMAN: -- that's why I'm asking
 9 for a clear answer as to whether you want us to ignore any
 10 statements of intention or not. 'Cause they are clearly
 11 statements of intention, they're not just
 12 characterizations of the ad.

13 MR. TORCHINSKY: Well, I -- I mean, I think we
 14 have a disagreement then on that and take it how you --
 15 how you wish to take it. But I think the Supreme Court
 16 has made clear that inquiries into intent are not
 17 permissible in these kind of circumstances.

18 COMMISSIONER HOFFMAN: Yeah. Unless you
 19 intentionally waive your constitutional rights. So, you
 20 know, that's -- that's -- that's what I'm trying to find
 21 out if you intended to do that.

22 MR. TORCHINSKY: I am -- I am unaware of -- of
 23 any case where anybody -- where any investigator has made
 24 that argument or -- I just -- I'm unaware of any caselaw
 25 support for what you're asserting.

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<p style="text-align: right;">34</p> <p>1 COMMISSIONER HOFFMAN: I'm unaware of any case in 2 which the Respondent has put in record evidence of their 3 intention and, you know, tried to rely on it.</p> <p>4 So, anyway, the -- the -- the point is that -- 5 we'll leave it at that. I -- I don't want to, you know, 6 waste too much time on this situation. But it seems 7 very -- it seems problematic to me that you make 8 statements of intention and then tell us we can't question 9 that.</p> <p>10 I honestly don't believe the -- the statements of 11 intention. And, you know, if there was permissible to 12 inquire into that, I would want to instruct our staff to 13 inquire into it. And if you opened the issue, you know -- 14 you know, I would want to do that, personally. But -- 15 because, you know, I believe that this is, you know, 16 thinly disguised at best, and that the -- that the 17 evidence would show, if we were permitted to inquire into 18 this, that your organization did intend to influence an 19 election; and your statements there, Mr. Torchinsky, give 20 the opening to allow that to happen.</p> <p>21 If on the other hand --</p> <p>22 MR. TORCHINSKY: Well, I believe --</p> <p>23 COMMISSIONER HOFFMAN: If on the other hand --</p> <p>24 MR. TORCHINSKY: I believe procedurally we're 25 past the investigation phase.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">35</p> <p>1 COMMISSIONER HOFFMAN: Yeah. If -- if you're -- 2 well, let me ask you another question. You -- during the 3 investigation stage, you were asked to provide certain 4 answers according to our rules which you declined to do, 5 correct?</p> <p>6 MR. TORCHINSKY: That is correct.</p> <p>7 COMMISSIONER HOFFMAN: And so -- so I'm not quite 8 so sure that we're done investigating, or -- and -- and, 9 Mr. Collins, what is the penalty for someone who doesn't 10 cooperate with an investigation?</p> <p>11 MR. COLLINS: I don't think anyone has ever asked 12 me that question before.</p> <p>13 MR. TORCHINSKY: You know, I -- we've asserted 14 from the beginning that we don't think the Commission has 15 jurisdiction here in the first place. So to assert that 16 we somehow are required to cooperate where we don't 17 believe the Commission has jurisdiction in the first 18 place, you know, if you want to issue a subpoena, then we 19 can tee it up for the Court and we can have the argument 20 or the -- the substance of the -- the merit argument that 21 I wanted to have back in July that the Commission objected 22 to on a procedural matter.</p> <p>23 So, if the Commission chooses to issue a 24 subpoena, we'll move to quash, and we can tee the issue up 25 to the Superior Court before going through the rest of</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">36</p> <p>1 this process.</p> <p>2 COMMISSIONER HOFFMAN: Mr. -- Mr. Torchinsky, you 3 talked about the status of cases as they stand before. As 4 the case stands now, the Court has ruled that this 5 Commission does have jurisdiction. And that your --</p> <p>6 MR. TORCHINSKY: Actually, that's not --</p> <p>7 COMMISSIONER HOFFMAN: -- your arguments -- your 8 arguments were wrong in that respect. So --</p> <p>9 MR. TORCHINSKY: Actually, that's not what the 10 Court said at the time. He basically said: I would have 11 the same opportunity to review this question after going 12 through the administrative process, so I'm going to deny 13 your Motion for an Injunction. He did not rule on the 14 merits of the injunction because he said, essentially, I 15 would have an opportunity to review the same question 16 after going through all of the procedural processes that 17 are contained in the Act of the Administrative Review 18 Procedure.</p> <p>19 So, I don't believe that the Court actually ruled 20 on the substance of whether the CCEC has jurisdiction. He 21 just said the procedural matter felt that -- that the 22 issuing the injunction was -- was not appropriate 23 procedurally.</p> <p>24 COMMISSIONER HOFFMAN: And -- and your --</p> <p>25 MR. TORCHINSKY: And that's what -- and that's,</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">37</p> <p>1 in fact, what your counsel argued in front of the Judge.</p> <p>2 COMMISSIONER HOFFMAN: Your argument in front of 3 the Court was that the -- because the Commission had no 4 jurisdiction that that should not be the ruling.</p> <p>5 MR. TORCHINSKY: That's correct. And the Judge 6 concluded as a procedural matter that -- that Mary's 7 argument about exhaustion of administrative remedies 8 before the Judge could brief the merits of the question 9 was required, kind of carried the day in that court case.</p> <p>10 COMMISSIONER HOFFMAN: Yeah. By --</p> <p>11 MR. TORCHINSKY: So, I think --</p> <p>12 COMMISSIONER HOFFMAN: By "as a procedural 13 matter," what we mean is that the Commission does have 14 jurisdiction. So, anyway, the -- the -- again, I don't 15 mean to -- to make this argumentative.</p> <p>16 The -- you know, Mr. Collins, I'll let you off 17 the hook on that question and we can consider it later.</p> <p>18 But with -- with regard to the question on the 19 issue advocacy message, could you state in just a sentence 20 what the reasonable alternative interpretation was of this 21 ad just relying rather than on intent -- or, relying 22 specifically on, you know, the -- the nature of the ad.</p> <p>23 That -- that -- which is -- which is the -- what 24 is the -- the -- the statute says that we're supposed to 25 look for whether there's a reasonable meaning other than</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">38</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>16 MR. TORCHINSKY: I'm not speaking to purpose. 17 I'm speaking to the ad --</p> <p>18 COMMISSIONER HOFFMAN: Yeah. The reasonable 19 interpretation --</p> <p>20 MR. TORCHINSKY: -- what the ad actually says.</p> <p>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?</p> <p>25 MR. TORCHINSKY: Correct.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">39</p> <p>1 COMMISSIONER HOFFMAN: Okay. Thank you for 2 clarifying that. 3 I think that's all I have at the moment.</p> <p>4 CHAIRPERSON RECKART: Okay. Yes, Mr. Laird.</p> <p>5 COMMISSIONER LAIRD: Yeah. This is Commissioner 6 Laird, Counselor. Let me make sure that I understand the 7 legal impact of the argument that I think you maybe raised 8 for the first time today, that at the time Legacy acted, 9 the statute was -- at that time had been declared 10 unconstitutional by a court of law and that decision had 11 not yet been overturned. Is that sort of a good faith 12 argument that the Commissioners ought to consider as a 13 mitigating factor in determining what an appropriate 14 penalty would be? Or, is there some other legal effect 15 with respect to that particular argument?</p> <p>16 MR. TORCHINSKY: I think there's two. I think 17 you can consider it in terms of whether or not it was 18 express advocacy at all, if you consider the law as it 19 actually stood at the time the ad aired, which was that 20 that definition of express advocacy that the Commission 21 now appears to be relying on was unconstitutional at the 22 time that Legacy Foundation Action Fund acted.</p> <p>23 And, second, you can certainly consider it as 24 evidence of mitigation and damages if you were going to 25 make any penalty assessment. So, I think you can consider</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">40</p> <p>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.</p> <p>8 COMMISSIONER LAIRD: Very good. Thank you.</p> <p>9 CHAIRPERSON RECKART: Mr. Koester?</p> <p>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.</p> <p>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?</p> <p>25 MR. TORCHINSKY: Yes. Let me -- let me read you</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">41</p> <p>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."</p> <p>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.</p> <p>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.</p> <p>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</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">42</p> <p>1 candidate.</p> <p>2 MR. TORCHINSKY: Well, Legacy Foundation Action</p> <p>3 Fund is certainly not a candidate.</p> <p>4 COMMISSIONER LAIRD: Right.</p> <p>5 MR. TORCHINSKY: So, yes. "By or on behalf of</p> <p>6 any candidate."</p> <p>7 I mean, look, if -- if the Commission had</p> <p>8 concluded that this was done in coordination with Ducey,</p> <p>9 you know, then you could have made an argument that this</p> <p>10 was on behalf of a particular candidate, but the</p> <p>11 Commission itself rejected that argument. So, with no</p> <p>12 candidate involved here, I don't -- I don't see how you</p> <p>13 get to the, you know, violation "by or on behalf of any</p> <p>14 candidate," because I don't see what candidate this was by</p> <p>15 or on behalf of laid out in anything that Mr. Collins has</p> <p>16 presented to the Commission.</p> <p>17 COMMISSIONER LAIRD: Thank you, Counsel.</p> <p>18 COMMISSIONER HOFFMAN: Mr. Torchinsky, do you</p> <p>19 think that if -- if -- and I want to give you a</p> <p>20 hypothetical. I realize it's counterfactual. But had</p> <p>21 Legacy Foundation acted on behalf of all candidates</p> <p>22 opposing Mr. Smith, do you think that would be "by or on</p> <p>23 behalf of a candidate"?</p> <p>24 MR. TORCHINSKY: You know, that would -- that</p> <p>25 would call for -- for an analysis of facts that, as you</p>	<p style="text-align: right;">43</p> <p>1 said, just aren't here. I'm not -- trying to answer that.</p> <p>2 I mean, if the Commission had found that the six other</p> <p>3 candidates had conspired together to have an outside group</p> <p>4 advertise to -- to promote the defeat of a particular</p> <p>5 candidate, so the Commission has gone after, you know, all</p> <p>6 six candidates, yeah, I think it could.</p> <p>7 COMMISSIONER HOFFMAN: Yeah. And -- and so "by</p> <p>8 or on behalf of a candidate" means one or more, right?</p> <p>9 MR. TORCHINSKY: I would think so, yes.</p> <p>10 COMMISSIONER HOFFMAN: Okay. Thank you. That's</p> <p>11 helpful.</p> <p>12 CHAIRPERSON RECKART: Mr. Torchinsky, this is</p> <p>13 Chairman Reckart. There is -- thank you.</p> <p>14 I'm going to make a series of statements here and</p> <p>15 you can either encourage me to pursue that line of</p> <p>16 thinking or dissuade me from it, but let me get through</p> <p>17 them and -- just to give you my dispositions as to certain</p> <p>18 things.</p> <p>19 One is, is I have sympathy for your concern</p> <p>20 regarding the state of the law at the time. I also am</p> <p>21 aware that the determination of whether or not something</p> <p>22 constitutes express advocacy is -- does not admit of a</p> <p>23 bright-line test, so that there is some uncertainty and it</p> <p>24 be in areas where there is grayness in making these</p> <p>25 decisions; you don't want to assess penalties that may</p>
<p>Miller Certified Reporting, LLC</p>	<p>Miller Certified Reporting, LLC</p>
<p style="text-align: right;">44</p> <p>1 chill speech, legitimate speech, of -- of other people.</p> <p>2 So, I -- I have some sympathy for that in the context of</p> <p>3 exercising First Amendment rights and -- and the like.</p> <p>4 Secondly, as I look at this ad, however, it is</p> <p>5 directed specifically to Mr. Smith, the comparisons are</p> <p>6 made to Mr. Smith, he appears with Mr. Obama, he is</p> <p>7 contrasted or -- or -- or lumped in with the policies of</p> <p>8 Mr. Obama, it is directed very much personally to Mr.</p> <p>9 Smith. It is not something directed to policies in the</p> <p>10 mayoral conference overall and I have a hard time</p> <p>11 believing that it isn't something intended to -- to cast</p> <p>12 Mr. Smith in negative light with a upcoming Republican</p> <p>13 primary for Governor.</p> <p>14 So, I -- I am not buying into this</p> <p>15 characterization that it is -- it is not express advocacy,</p> <p>16 just issue advocacy.</p> <p>17 Lastly, with regard to the application of the</p> <p>18 penalty, the way I look at this is the -- this notion of</p> <p>19 the candidate, of the candidate's account being liable,</p> <p>20 I -- I think it's still consistent to the idea that if</p> <p>21 someone acts to the benefit of a candidate and that --</p> <p>22 even though it may not be coordinated, but acts to benefit</p> <p>23 a candidate, that the liability still rests with the</p> <p>24 person who acts because, in effect, even though it may be</p> <p>25 an independent uncoordinated expenditure, it in effect</p>	<p style="text-align: right;">45</p> <p>1 serves in the same -- serves to benefit that candidate in</p> <p>2 the same way a candidate's account would have.</p> <p>3 So, I think we're still within the scope of the</p> <p>4 -- of Section -942(D), that that independent expenditure,</p> <p>5 if you will, could be characterized as falling within a,</p> <p>6 quote, "candidate account."</p> <p>7 So, anyway, with those three thoughts, you can</p> <p>8 respond and then we'll take anymore comments from the</p> <p>9 Commissioners and then try to get this thing to</p> <p>10 resolution. Thank you.</p> <p>11 MR. TORCHINSKY: I don't think I have any further</p> <p>12 response to that.</p> <p>13 CHAIRPERSON RECKART: Okay. Thank you.</p> <p>14 All righty. No more comments, then let's</p> <p>15 entertain a motion with regard to the -- actually --</p> <p>16 actually, I want to do one more thing.</p> <p>17 I want to raise with the Commission the amount of</p> <p>18 the -- the fine. I have asked Mr. Collins to provide me</p> <p>19 some information with regard to things that may determine</p> <p>20 when the fine calculation should commence. If we go from</p> <p>21 the date of the filing of the complaint, we have 141 days</p> <p>22 from July 1st to today, which would give us a fine in the</p> <p>23 range of anywhere to 42,000 to 121,000, depending on what</p> <p>24 rate we use, the \$300 original statutory rate or, you</p> <p>25 know, the doubling of the current rate, which would bring</p>
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1 it to \$860 a day.

2 Notice of the complaint was given on July 8th,
3 it's been 135 days, that would reduce it a little bit
4 more; and jurisdiction was asserted on July 31st.

5 Is that as a result of a meeting? I can't
6 remember.

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

12 CHAIRPERSON RECKART: Okay.

13 MR. COLLINS: And then we proceeded to reason to
14 believe in a subsequent meeting.

15 CHAIRPERSON RECKART: Okay. In any event, I
16 raise all this because the calculation provided in
17 Mr. Collins' request is from the date of the ads as I
18 recall, more to the point. And -- and I -- I think
19 Mr. Torchinsky raises a fair point with regard to the
20 state of the law at that point. We're also dealing with
21 an area that does not admit of a bright-line test, express
22 advocacy communications.

23 And so that there is not a -- an inappropriate
24 chilling of speech, I think, you know, we should allow for
25 people to have interaction with the Commission to

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

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

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

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

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

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

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

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

22 COMMISSIONER HOFFMAN: So, I -- I so move.
23 CHAIRPERSON RECKART: Okay.

24 COMMISSIONER KOESTER: I'll second.

25 CHAIRPERSON RECKART: All right. It's been moved
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1 announced a -- a gubernatorial campaign.

2 So -- so I -- you know, I think that's the -- the
3 bottom line on -- on this and, you know, with all the
4 other stuff.

5 If we are going to get into the question because
6 the Respondent puts it on the table of what their actual
7 subjective intent is, I'd sure like to look into that and
8 find out whether that was indeed -- what they're saying is
9 indeed true. As I said before, I doubt it.

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

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

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<p style="text-align: right;">50</p> <p>1 So, that was -- for those reasons, I'd -- I'd 2 like to urge we support that -- the motion. 3 CHAIRPERSON RECKART: Okay. Mr. Koester, do you 4 have any comments? 5 COMMISSIONER KOESTER: Just to quickly add to 6 what Commissioner Hoffman said. I -- the money spent, 7 which was close to \$300,000, and the -- and the Legacy 8 Foundation said they're going after the leadership, that 9 is three people: The president, the vice president, and I 10 guess the secretary or treasurer. But the vast amount of 11 the money, which is about 95 percent, was directed against 12 Mayor Smith in the Phoenix/Mesa area. So, it doesn't 13 sound like it was quite so much the leadership but 14 Mr. Smith himself, which adds to what Commissioner Hoffman 15 said. It looks like express advocacy to me, too. 16 CHAIRPERSON RECKART: Mr. Laird, any comment? 17 COMMISSIONER LAIRD: No. I think the statements 18 made by my fellow Commissioners are -- including yours, 19 Mr. Chairman, are well put. 20 CHAIRPERSON RECKART: Okay. All righty. 21 Following on that motion then, I'll call for a vote. All 22 those in favor, please indicate by saying "aye." 23 (Chorus of ayes.) 24 25 CHAIRPERSON RECKART: Okay. All those opposed? </p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">51</p> <p>1 Okay. It passes unanimously. 2 Now, I think per Commissioner Hoffman's very good 3 suggestion, let's take a look at the penalty aspects of 4 this. Again, I -- I -- I made the point here that I am 5 sympathetic to some of the concerns raised by 6 Mr. Torchinsky. And, again, I just want to open it up for 7 discussion as well, what is an appropriate time given, you 8 know, some -- some of the grayness of the law, given the 9 state of the law at the time, to start assessing fines? 10 And I -- I, for one, do not think it's the date 11 of the ad, I think it should be at some point later. I -- 12 I haven't determined that yet, I'm -- I'm inclined to go 13 with the jurisdictional decision by this Commission, so. 14 But, I welcome other thoughts. 15 COMMISSIONER HOFFMAN: Mr. Chair, I -- I have a 16 thought on that subject. What -- when would they have 17 been required to report the -- the ad? 18 MR. COLLINS: The next day after the expenditure 19 was made. 20 COMMISSIONER HOFFMAN: Just one day? 21 MR. COLLINS: Yeah. 22 COMMISSIONER HOFFMAN: And that's pursuant to 23 which time? 24 MR. COLLINS: 16-941(D) and 16-958 and 16-942(B). 25 COMMISSIONER HOFFMAN: Say that again slower. </p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">52</p> <p>1 MR. COLLINS: 16-941(D), -958, and -942(B). 2 You'd think I'd have these things come to mind faster. 3 I'll let you ask the next question. 4 COMMISSIONER HOFFMAN: Okay. So -941(D) says 5 that you have to -- if you exceed \$500, you have to 6 report. 7 MR. COLLINS: Right. So, when you exceed 500 -- 8 COMMISSIONER HOFFMAN: Then you go to -958, which 9 says any time you reach it -- you have to file a report 10 any time it's above -- you reach that amount or go above 11 an extra \$1,000. And then it's -- 12 MR. COLLINS: Let me -- let me -- let me stop you 13 there, if I may, Commissioner. I don't mean to interrupt 14 you, but the question is: When did you reach the 15 threshold? And the threshold is reached and then you 16 file. That is -- and -- and I think the most natural 17 reading is to start the clock on the day after the 18 threshold is reached because to make you file it at the 19 very minute you reach the threshold would be difficult to 20 administrate, so -- 21 COMMISSIONER HOFFMAN: I'm just -- 22 MR. COLLINS: So there is nothing -- nothing in 23 the statute that says it starts on the day, it is implied 24 by the fact that the threshold is set and once you meet 25 the threshold you are required to report.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">53</p> <p>1 COMMISSIONER HOFFMAN: Okay. I'm wondering 2 about -- 3 CHAIRPERSON RECKART: (B)(2). 4 COMMISSIONER HOFFMAN: -- (B)(1), which says 5 before the beginning of the primary -- oh. I'm sorry. 6 (B)... 7 CHAIRPERSON RECKART: (B)(2) and (B)(3). 8 COMMISSIONER HOFFMAN: (B)(2) and (B)(3), yeah. 9 MR. COLLINS: Those are -- I don't -- 10 CHAIRPERSON RECKART: It says -- 11 MR. COLLINS: What -- what do you want to -- what 12 are you trying to -- 13 CHAIRPERSON RECKART: Any person -- 14 COMMISSIONER HOFFMAN: I'm just wondering, the 15 following Tuesday or... 16 MR. COLLINS: Are we talking now about the 17 reports of the expenditures? 18 COMMISSIONER HOFFMAN: The one business day -- 19 the one business day is -- is only for the last two weeks 20 before the general election or primary election. 21 MR. COLLINS: We're not talking -- I don't think 22 we're talking about the same thing, okay? That's what I'm 23 trying to say. 24 COMMISSIONER HOFFMAN: That's why I'm trying to 25 understand what you're saying.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">54</p> <p>1 MR. COLLINS: Okay. 16-941(D) says you must file 2 a report; 16-958 says once those -- that report is filed, 3 subsequent reports are due at certain times if you make 4 additional expenditures. It's our understanding here that 5 there is a single expenditure for the amount of this ad 6 buy. We have no other facts than that, so there are no 7 other trigger reports, so called, or Clean Elections --</p> <p>8 CHAIRPERSON RECKART: Okay.</p> <p>9 MR. COLLINS: -- independent expenditure reports. 10 It is merely the threshold of -941(D) was exceeded, and 11 the initial report was never filed and it has not been 12 filed since that time.</p> <p>13 That -- that's -- that's how I understand it. 14 Mary is here if you want to -- Mary has worked with these 15 statutes longer than I have, so she -- I will look to her 16 for --</p> <p>17 COMMISSIONER HOFFMAN: Okay. So you read --</p> <p>18 MR. COLLINS: -- for more authoritative guidance 19 than that.</p> <p>20 COMMISSIONER HOFFMAN: So you read -958(B) as 21 applying to supplemental reports, not the original report?</p> <p>22 MR. COLLINS: That is the presumption that is 23 behind the recommendation that I have made to you, yes.</p> <p>24 COMMISSIONER HOFFMAN: Okay. And the -- the 25 original report, you think there's no specific statement</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">55</p> <p>1 of timing in the statute, but that the -- but that the -- 2 and -- and, therefore, you come up with the next day? 3 MR. COLLINS: Right. Yeah. The threshold was 4 exceeded and then you file the next day. That's been my 5 assumption. That's my understanding, frankly, of how it's 6 operated for 15 years.</p> <p>7 COMMISSIONER HOFFMAN: Was this before the 8 beginning of the primary election period or no? It was 9 not, right? It was?</p> <p>10 MS. LARSEN: Yes.</p> <p>11 COMMISSIONER HOFFMAN: I'm sorry?</p> <p>12 MR. COLLINS: Yes.</p> <p>13 COMMISSIONER HOFFMAN: "Yes" what?</p> <p>14 MS. LARSEN: It was before the primary election 15 period started.</p> <p>16 COMMISSIONER HOFFMAN: Before the primary 17 election period started?</p> <p>18 MS. LARSEN: Right.</p> <p>19 COMMISSIONER HOFFMAN: Okay. So -- so, help me 20 understand this. If -- if -- if they had spent \$500 and 21 reported it, and then spent \$300,000 on the ad, they would 22 -- in that scenario, the report would have been due the 23 1st of the following month? True?</p> <p>24 MR. COLLINS: I -- I believe -- well, we can -- 25 let me -- let me get the schedule out. I -- I really</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">56</p> <p>1 appreciate -- I'm not -- just let me try to get this 2 correct.</p> <p>3 I believe that what our position has been and 4 what we have told people who have to file reports is that 5 if you have to file an original report under 16-941(D), 6 that is one thing; and then if you have previously 7 unreported amounts, you have to file on the schedule 8 delineated by 16-958(B), and we identify those dates for 9 folks and publish them.</p> <p>10 COMMISSIONER HOFFMAN: Right.</p> <p>11 MR. COLLINS: So, I believe that if there was an 12 initial filing and then there were additional 13 expenditures, that those would have to be caught up on the 14 schedule that we have provided, that's correct.</p> <p>15 COMMISSIONER HOFFMAN: Okay. And the -- the -- 16 this was advertised in -- the updated advertisement was 17 April -- ended April 14th?</p> <p>18 MR. COLLINS: That's the best information we 19 have. That's the information we have. Let me put it this 20 way: We have evidence of that and that evidence has not 21 been, you know, denied by -- in anything that we have ever 22 seen from Mr. Torchinsky, Mr. Rants, or anybody.</p> <p>23 COMMISSIONER HOFFMAN: You pay this -- it says 24 the advertising campaign commenced on or about March 31st 25 and concluded April 14th?</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">57</p> <p>1 MR. COLLINS: Right. I'm sorry. Did I 2 misunderstand your question?</p> <p>3 COMMISSIONER HOFFMAN: Well, I'm just wondering 4 when the payment is. Does that mean it was paid for 5 before the start?</p> <p>6 MR. COLLINS: Yes. That's correct.</p> <p>7 COMMISSIONER HOFFMAN: So -- so, in normal 8 course --</p> <p>9 MR. COLLINS: I would have said March -- whatever 10 the initial date of the run, I think. I mean...</p> <p>11 COMMISSIONER HOFFMAN: So, you would have set it 12 at March 31st plus one day, basically?</p> <p>13 MR. COLLINS: I believe that's what we based the 14 calculation off of. I -- I --</p> <p>15 COMMISSIONER HOFFMAN: And if it was the 16 beginning, as it just so happens March 31st, the beginning 17 of the following month is April 1st, anyway, right? So, 18 even under -- yeah. Okay.</p> <p>19 I'm sorry. We went around in a big giant circle 20 there, but ended up at the same date, April 1st.</p> <p>21 CHAIRPERSON RECKART: All right.</p> <p>22 COMMISSIONER HOFFMAN: Okay. Also, could you 23 remind me when the Superior Court ruling was?</p> <p>24 MR. COLLINS: The Superior Court ruling?</p> <p>25 COMMISSIONER HOFFMAN: Yeah. In the -- in the</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">58</p> <p>1 I believe that what our position has been and 2 what we have told people who have to file reports is that 3 if you have to file an original report under 16-941(D), 4 that is one thing; and then if you have previously 5 unreported amounts, you have to file on the schedule 6 delineated by 16-958(B), and we identify those dates for 7 folks and publish them.</p> <p>8 COMMISSIONER HOFFMAN: Right.</p> <p>9 MR. COLLINS: So, I believe that if there was an 10 initial filing and then there were additional 11 expenditures, that those would have to be caught up on the 12 schedule that we have provided, that's correct.</p> <p>13 COMMISSIONER HOFFMAN: Okay. And the -- the -- 14 this was advertised in -- the updated advertisement was 15 April -- ended April 14th?</p> <p>16 MR. COLLINS: That's the best information we 17 have. That's the information we have. Let me put it this 18 way: We have evidence of that and that evidence has not 19 been, you know, denied by -- in anything that we have ever 20 seen from Mr. Torchinsky, Mr. Rants, or anybody.</p> <p>21 COMMISSIONER HOFFMAN: You pay this -- it says 22 the advertising campaign commenced on or about March 31st 23 and concluded April 14th?</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">59</p> <p>1 I believe that what our position has been and 2 what we have told people who have to file reports is that 3 if you have to file an original report under 16-941(D), 4 that is one thing; and then if you have previously 5 unreported amounts, you have to file on the schedule 6 delineated by 16-958(B), and we identify those dates for 7 folks and publish them.</p> <p>8 COMMISSIONER HOFFMAN: Right.</p> <p>9 MR. COLLINS: So, I believe that if there was an 10 initial filing and then there were additional 11 expenditures, that those would have to be caught up on the 12 schedule that we have provided, that's correct.</p> <p>13 COMMISSIONER HOFFMAN: Okay. And the -- the -- 14 this was advertised in -- the updated advertisement was 15 April -- ended April 14th?</p> <p>16 MR. COLLINS: That's the best information we 17 have. That's the information we have. Let me put it this 18 way: We have evidence of that and that evidence has not 19 been, you know, denied by -- in anything that we have ever 20 seen from Mr. Torchinsky, Mr. Rants, or anybody.</p> <p>21 COMMISSIONER HOFFMAN: You pay this -- it says 22 the advertising campaign commenced on or about March 31st 23 and concluded April 14th?</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

1 case about -941 -- -9- --
 2 CHAIRPERSON RECKART: In regards to jurisdiction?
 3 MR. COLLINS: That would have been back in May of
 4 2013, May of -- April of 2013. I mean --
 5 COMMISSIONER HOFFMAN: Okay. Got it.
 6 CHAIRPERSON RECKART: The CJF [sic] case.
 7 MR. COLLINS: CJF, yeah. I mean, that was
 8 something like -- some -- 2013, spring of 2013.
 9 COMMISSIONER HOFFMAN: Okay. I just have one
 10 other brief comment about that subject. You know, I think
 11 there are -- it is certainly appropriate to consider it in
 12 the penalty, but I -- I would be surprised if there was
 13 real reliance on that opinion, given its nature and given
 14 the --
 15 CHAIRPERSON RECKART: It was a minute entry,
 16 basically, as I recall.
 17 COMMISSIONER HOFFMAN: Yeah. But it was also --
 18 you know, we often ask people to make complicated
 19 decisions based on -- you know, with a -- with interim
 20 rulings. But -- but, anyway.
 21 Okay. I think I understand the date issue. So,
 22 your suggestions, Mr. Chair?
 23 CHAIRPERSON RECKART: August. My suggestion is
 24 going to be August 1st. At just the point in which we
 25 took jurisdiction, we asserted that there was an issue

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1 Larsen.
 2 MS. LARSEN: 95,460.
 3 CHAIRPERSON RECKART: 95,460.
 4 COMMISSIONER HOFFMAN: Well, on the -- I'm sorry
 5 to keep putting off your suggestions because I'm having
 6 trouble with it a little bit myself. I did want to say
 7 with regard to the argument about the candidate and
 8 candidate's campaign account jointly and severally
 9 responsible for any penalty imposed pursuant to the
 10 Subsection, that that does not mean that they're jointly
 11 and severally responsible for penalties imposed on people
 12 other than the candidate and the candidate campaign
 13 committee.
 14 CHAIRPERSON RECKART: Okay.
 15 COMMISSIONER HOFFMAN: So --
 16 CHAIRPERSON RECKART: I want to deal with the
 17 penalty right now.
 18 COMMISSIONER HOFFMAN: Yeah. That is a penalty
 19 issue, but anyway.
 20 I -- you know, I feel we ought -- we ought to
 21 impose the penalty that's statutorily required and, you
 22 know, if there's conciliation, I'd certainly be open to
 23 considering a conciliation agreement. But, you know,
 24 but -- but I think the -- the statute is pretty clear and
 25 I don't know -- I think we ought to just, you know, follow

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1 that needed to be examined. I think at that point the --
 2 I think at that point the position of the Commission could
 3 be anticipated and that, you know, a responsible act would
 4 have been to file the report to -- to ensure compliance
 5 with the law. And, of course, pending any -- pending any
 6 further determinations by the Commission. So, my thinking
 7 is, is if we started it from August 1st, it would be the
 8 first -- the day after the July 1st determination.
 9 Again, I'm sympathetic to the idea as to whether
 10 or not something is express advocacy. I -- I have a hard
 11 time saying that this is that hard a call. As I expressed
 12 earlier, to me, it's fairly clear, and I think as we've
 13 all agreed that it is -- it is -- this one is far enough
 14 in the gray zone that it was express advocacy. So,
 15 whether that warrants the doubling of the -- of
 16 the amount -- the daily amount, the per diem, is -- is a
 17 question I could be convinced one way or the other.
 18 But my suggestion would be to start the
 19 calculation from August 1st. We would do it at the rate
 20 -- the doubling rate of 860 per day and then assess the
 21 fine based on that basis.
 22 COMMISSIONER KOESTER: What would the fine be,
 23 Mr. Chairman?
 24 CHAIRPERSON RECKART: The amount would be just
 25 short of 80- -- of \$96,000 -- and I'm looking at Ms.

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1 what it says and impose the penalty it says. And if
 2 there's -- if there's conciliation, other factors can be
 3 taken into account. But I don't necessarily feel
 4 comfortable with just making up a different date.
 5 CHAIRPERSON RECKART: Well, I know. I take --
 6 COMMISSIONER HOFFMAN: I don't mean to --
 7 CHAIRPERSON RECKART: I take issue with that
 8 characterization. There is a very good basis for that,
 9 that's what I was trying to convey. The point I'm getting
 10 to is I -- I -- also, this Commission has on a regular
 11 basis not imposed the statutory amounts. They've imposed
 12 other amounts. In fact, I think it's more -- it's more
 13 the exception to -- to the rule that we apply the
 14 statutory amount. So, I think it makes sense for us to
 15 consider this. And also --
 16 COMMISSIONER HOFFMAN: You're saying waive some
 17 penalties?
 18 CHAIRPERSON RECKART: Well, no. Assess a penalty
 19 different than what the statutes mandates -- or, not --
 20 doesn't mandate, but the statute suggests. We -- we
 21 regularly do that, so.
 22 COMMISSIONER HOFFMAN: Yeah, you have a point
 23 there. I mean, we have --
 24 CHAIRPERSON RECKART: I -- I can't remember a
 25 time we actually did impose it in my tenure, so.

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<p style="text-align: right;">62</p> <p>1 MR. COLLINS: In your tenure, I think that's 2 actually right.</p> <p>3 CHAIRPERSON RECKART: Yes.</p> <p>4 MR. COLLINS: I mean, in the -- this -- I mean, 5 it's been a long while.</p> <p>6 CHAIRPERSON RECKART: In my four years here.</p> <p>7 COMMISSIONER LAIRD: I'm sympathetic to that.</p> <p>8 And -- and -- and I think the -- Mr. Chairman, I have a 9 lot of sympathy for the comments that you made about 10 freedom of speech and -- and -- and maybe a more 11 appropriate way to calculate it, I'm just not sure we have 12 the discretion to do that. I read this statute as saying 13 "shall be" and -- and that being the case, I don't know 14 that we have discretion to assess a different penalty than 15 what is statutorily prescribed.</p> <p>16 CHAIRPERSON RECKART: And, again, I make the 17 point we have not in my tenure ever assessed the statutory 18 penalty. It's clearly, I think, something within our 19 discretion. It's not been challenged, so.</p> <p>20 Anyway, I'll -- I'll call for a motion on it so 21 we can move it on. It's -- let's get this behind us.</p> <p>22 I'll -- I'll move -- I'll make my motion, if no 23 one seconds it, then someone else can make another motion 24 with regard to the penalty. I'll move that the statutory 25 -- that the penalty assessed by the Commission in light of</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">63</p> <p>1 its reasonable cause -- finding that there is a reasonable 2 cause to believe a violation has occurred --</p> <p>3 COMMISSIONER HOFFMAN: Probable cause.</p> <p>4 CHAIRPERSON RECKART: Probable cause. Thank 5 you -- be assessed from April 1st until through 6 November 20th at the rate of \$860 per day. Is there a 7 second?</p> <p>8 MR. COLLINS: You meant August, right?</p> <p>9 CHAIRPERSON RECKART: I'm sorry. What did I say?</p> <p>10 COMMISSIONER KOESTER: You said --</p> <p>11 MR. COLLINS: You said April instead of August.</p> <p>12 COMMISSIONER KOESTER: -- April.</p> <p>13 CHAIRPERSON RECKART: I'm sorry. August 1st.</p> <p>14 Yeah, I correct the motion. August 1st. Thank you.</p> <p>15 Yeah.</p> <p>16 Is there a second?</p> <p>17 COMMISSIONER KOESTER: I second that. I like 18 that idea.</p> <p>19 CHAIRPERSON RECKART: Okay. Are there -- I think 20 we've discussed this enough so I'm going to call for the 21 vote. Any -- any -- all those in favor, please indicate 22 by saying "aye."</p> <p>23 COMMISSIONER KOESTER: Aye.</p> <p>24 COMMISSIONER LAIRD: Aye.</p> <p>25 CHAIRPERSON RECKART: Aye.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">64</p> <p>1 All --</p> <p>2 COMMISSIONER HOFFMAN: Aye.</p> <p>3 CHAIRPERSON RECKART: -- opposed? Oh. Okay.</p> <p>4 Sorry. It passes unanimously.</p> <p>5 We've got that done. So, the amount then will be 6 95,460, per Ms. Larsen's thing.</p> <p>7 Okay. Thank you, Mr. --</p> <p>8 MR. TORCHINSKY: Thank you. Thank you very much.</p> <p>9 CHAIRPERSON RECKART: Thank you, Mr. Torchinsky.</p> <p>10 Take care.</p> <p>11 MR. TORCHINSKY: Bye-bye.</p> <p>12 CHAIRPERSON RECKART: Bye-bye.</p> <p>13 AUTOMATED VOICE: Leaving the meeting. Jason 14 Torchinsky.</p> <p>15 CHAIRPERSON RECKART: All right. Discussion --</p> <p>16 all right. Now, we get to some fun stuff, I think.</p> <p>17 Discussion and possible action on random audits.</p> <p>18 Selection of participating candidates for the 2014 cycle</p> <p>19 from the general election.</p> <p>20 And we have our trusty little thing here, is that</p> <p>21 what we're going to do?</p> <p>22 MR. COLLINS: Yes.</p> <p>23 MS. LARSEN: Okay. I'm going to have Gina 24 draw -- I'm going to have Gina draw two statewide 25 candidates 'cause we only have three eligible statewide</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">65</p> <p>1 candidates for -- for audit in the general election, so.</p> <p>2 Let's let her draw two balls out of there.</p> <p>3 MS. ROBERTS: We have number three, Doug Little.</p> <p>4 MS. LARSEN: Okay. Doug -- Doug Little.</p> <p>5 MS. ROBERTS: And Diane Douglas.</p> <p>6 MS. LARSEN: And Diane Douglas.</p> <p>7 And then we're -- and then we're going to draw</p> <p>8 eight legislative candidates for audit.</p> <p>9 MS. ROBERTS: So, we have number 13, and that is</p> <p>10 Mark Fincham; and number 29, and that is Andrew Sherwood;</p> <p>11 17, Janie Hydrick; 14, Rosanna Gabaldon; 20, Joseph</p> <p>12 Longoria; 2, John Ackerley; 35 is Larry Woods; and the</p> <p>13 last one is number 16, that is Steve Hansen.</p> <p>14 CHAIRPERSON RECKART: All righty. Thank you.</p> <p>15 Takes me back to my bingo days at college. So,</p> <p>16 anyway. All right. Final -- thank you.</p> <p>17 Item VII(B), final audit approval for the</p> <p>18 following participating candidates of the primary</p> <p>19 election: Terry Goddard, Patrice Kennedy, Juan Mendez,</p> <p>20 and Jose Suarez. And, Mr. Collins?</p> <p>21 MR. COLLINS: Yeah, Commissioner -- Chairman</p> <p>22 Reckart, Commissioners, we got these back right on I guess</p> <p>23 I want to say Monday, or -- right?</p> <p>24 MS. LARSEN: Yeah.</p> <p>25 MR. COLLINS: So, we tried to get them on the</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">64</p> <p>1 All --</p> <p>2 COMMISSIONER HOFFMAN: Aye.</p> <p>3 CHAIRPERSON RECKART: -- opposed? Oh. Okay.</p> <p>4 Sorry. It passes unanimously.</p> <p>5 We've got that done. So, the amount then will be 6 95,460, per Ms. Larsen's thing.</p> <p>7 Okay. Thank you, Mr. --</p> <p>8 MR. TORCHINSKY: Thank you. Thank you very much.</p> <p>9 CHAIRPERSON RECKART: Thank you, Mr. Torchinsky.</p> <p>10 Take care.</p> <p>11 MR. TORCHINSKY: Bye-bye.</p> <p>12 CHAIRPERSON RECKART: Bye-bye.</p> <p>13 AUTOMATED VOICE: Leaving the meeting. Jason 14 Torchinsky.</p> <p>15 CHAIRPERSON RECKART: All right. Discussion --</p> <p>16 all right. Now, we get to some fun stuff, I think.</p> <p>17 Discussion and possible action on random audits.</p> <p>18 Selection of participating candidates for the 2014 cycle</p> <p>19 from the general election.</p> <p>20 And we have our trusty little thing here, is that</p> <p>21 what we're going to do?</p> <p>22 MR. COLLINS: Yes.</p> <p>23 MS. LARSEN: Okay. I'm going to have Gina 24 draw -- I'm going to have Gina draw two statewide 25 candidates 'cause we only have three eligible statewide</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">65</p> <p>1 candidates for -- for audit in the general election, so.</p> <p>2 Let's let her draw two balls out of there.</p> <p>3 MS. ROBERTS: We have number three, Doug Little.</p> <p>4 MS. LARSEN: Okay. Doug -- Doug Little.</p> <p>5 MS. ROBERTS: And Diane Douglas.</p> <p>6 MS. LARSEN: And Diane Douglas.</p> <p>7 And then we're -- and then we're going to draw</p> <p>8 eight legislative candidates for audit.</p> <p>9 MS. ROBERTS: So, we have number 13, and that is</p> <p>10 Mark Fincham; and number 29, and that is Andrew Sherwood;</p> <p>11 17, Janie Hydrick; 14, Rosanna Gabaldon; 20, Joseph</p> <p>12 Longoria; 2, John Ackerley; 35 is Larry Woods; and the</p> <p>13 last one is number 16, that is Steve Hansen.</p> <p>14 CHAIRPERSON RECKART: All righty. Thank you.</p> <p>15 Takes me back to my bingo days at college. So,</p> <p>16 anyway. All right. Final -- thank you.</p> <p>17 Item VII(B), final audit approval for the</p> <p>18 following participating candidates of the primary</p> <p>19 election: Terry Goddard, Patrice Kennedy, Juan Mendez,</p> <p>20 and Jose Suarez. And, Mr. Collins?</p> <p>21 MR. COLLINS: Yeah, Commissioner -- Chairman</p> <p>22 Reckart, Commissioners, we got these back right on I guess</p> <p>23 I want to say Monday, or -- right?</p> <p>24 MS. LARSEN: Yeah.</p> <p>25 MR. COLLINS: So, we tried to get them on the</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">66</p> <p>1 agenda. There's -- they're all -- there's no findings in 2 any of these audits, but our rules require us to get a 3 final blessing from you. So, they're -- they are clean 4 audits. We thought we'd get them on the agenda and get 5 them off the docket as soon as we could and that's why 6 they are here.</p> <p>7 So, we don't have -- I have nothing to add to 8 them. I think Sara provided a -- a highlight. I want to 9 say I think you got a memo summary telling you what the 10 auditors actually did review and where -- where they -- we 11 found one thing, I will just note, we asked them to 12 identify whether or not they had any legal defense funds, 13 and none of them said they had legal defense funds. So, 14 just an interesting thing. We've never asked that before, 15 but there's this AG opinion out there about legal defense 16 funds, so we thought we might see if anybody actually has 17 one and these guys didn't.</p> <p>18 MS. LARSEN: Chairman, Commissioners, if you have 19 any questions on the audits, I'm happy to answer them, but 20 we actually got these back in record time, so we thought 21 we would get them on the agenda and get them done, so.</p> <p>22 CHAIRPERSON RECKART: Boy. I hear that.</p> <p>23 COMMISSIONER HOFFMAN: Mr. Chair, I move we 24 accept the audits for the four candidates listed on Item 25 VII(B).</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">67</p> <p>1 CHAIRPERSON RECKART: Is there a second? 2 COMMISSIONER LAIRD: Second. 3 CHAIRPERSON RECKART: All right. Mr. Laird, 4 thank you. Mr. Hoffman, thank you. All those in favor, 5 please indicate by saying "aye." 6 (Chorus of ayes.)</p> <p>7</p> <p>8 CHAIRPERSON RECKART: All opposed? Carries 9 unanimously.</p> <p>10 Okay. Meeting dates. Item VIII, on attachment 11 VIII to our agenda here, we have the proposed meeting 12 dates. I think the only one up -- up for actual decision 13 is the April one.</p> <p>14 Paula, I'm sorry to jump in here, but was 15 everybody available on either of those dates and we've 16 just got to choose out of an abundance of caution?</p> <p>17 MS. THOMAS: Yeah. The majority --</p> <p>18 CHAIRPERSON RECKART: Okay.</p> <p>19 MS. THOMAS: -- was available either way.</p> <p>20 There -- there was no preference on -- in April.</p> <p>21 CHAIRPERSON RECKART: Okay. So, it -- I'd like 22 to just discuss, does anyone have a preference for -- so 23 we're all agnostic?</p> <p>24 COMMISSIONER KOESTER: Well, the 23rd would make 25 a little more sense only because May is the 14th and shove</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">68</p> <p>1 those kind of together.</p> <p>2 CHAIRPERSON RECKART: That's a -- that's a good 3 point. And since you're likely to be running things, I'll 4 leave that up to you. So -- all righty. Let's go with 5 the 23rd. And then let's adopt -- see if we can adopt the 6 slate. It will be: January 29th, February 26th, 7 March 26th, April 23rd, May 14th, and June 25th for the 8 scheduled meeting dates the first half of 2015.</p> <p>9 All those in favor, please indicate by saying 10 "aye."</p> <p>11 (Chorus of ayes.)</p> <p>12</p> <p>13 CHAIRPERSON RECKART: Okay. Carries unanimously.</p> <p>14 Thank you.</p> <p>15 All righty. Then, discussion and possible action 16 for selection of Chairman for 2015. I'll note that I 17 think, unless I abdicate earlier and I don't think anyone 18 would let me, that I -- I carry the chairmanship until 19 January -- the January meeting.</p> <p>20 MR. COLLINS: Yes. And when we were putting 21 together the agenda, we know already we have a pretty 22 heavy agenda for December, so we thought that it would 23 be -- it might be -- you know, we're talking about might 24 be a good idea to -- if you're comfortable doing this now, 25 to do it now and -- and -- and that way it's one less</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">69</p> <p>1 thing to do in -- in December.</p> <p>2 CHAIRPERSON RECKART: Okay.</p> <p>3 MR. COLLINS: And, you know. But, that's -- it's 4 all -- obviously, you know, I just -- this is not for me 5 to participate in.</p> <p>6 CHAIRPERSON RECKART: Okay. I don't think -- and 7 our custom has been, and it's worked quite well, maybe 8 with the exception of this tenure, but it's worked quite 9 well that we -- the -- the most senior-ranking person who 10 has -- who meets the qualification and requirements under 11 the rules be elected and I -- I believe that's you, 12 Mr. Koester.</p> <p>13 COMMISSIONER KOESTER: Thanks a lot.</p> <p>14 CHAIRPERSON RECKART: I know. I tried 15 desperately to get out of it, too.</p> <p>16 But anyway, with that, I would nominate Mr. 17 Koester to assume the chairmanship in -- for the -- 18 beginning with the expiration of my chairmanship at the 19 end of the January [sic] meeting.</p> <p>20 COMMISSIONER LAIRD: I second that. I like that.</p> <p>21 CHAIRPERSON RECKART: Okay. I'm sure Mr. Laird 22 will. So -- so all those in favor, please indicate by 23 saying "aye."</p> <p>24 COMMISSIONER LAIRD: Aye.</p> <p>25 COMMISSIONER HOFFMAN: Aye.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

1 CHAIRPERSON RECKART: Aye.
 2 All those opposed? All righty, it carries.
 3 COMMISSIONER HOFFMAN: Mr. Koester didn't vote
 4 "oppose," so.
 5 CHAIRPERSON RECKART: Yeah. Yeah, I'm assuming
 6 he's in shock.
 7 COMMISSIONER KOESTER: I was outnumbered anyway.
 8 CHAIRPERSON RECKART: All righty. This is the
 9 time for public comment. Consideration of comments and
 10 suggestions anyone here who has been brave enough to
 11 endure may want to make. Action taken as a result of
 12 public comment will be limited to directing staff to study
 13 the matter or rescheduling the matter for further
 14 consideration and decision at a later date or responding
 15 to criticism.
 16 Do we have any people who want to comment?
 17 It appears not.
 18 With that, I'll entertain a motion to adjourn.
 19 I'll move it.
 20 COMMISSIONER HOFFMAN: I move we -- or, I'll
 21 second it then.
 22 CHAIRPERSON RECKART: All right. Great. All in
 23 favor?
 24 (Chorus of ayes.)
 25

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1 CHAIRPERSON RECKART: Okay. We are adjourned.
 2 Well done. Thank you, everyone.
 3 (Whereupon the proceeding concludes at 11:13
 4 a.m.)
 5
 6 * * * * *
 7
 8 C E R T I F I C A T E
 9
 10 I, Angela Furniss Miller, Certified Reporter, do
 11 hereby certify that the foregoing pages numbered 1 through
 12 70, inclusive, constitute a full and accurate printed
 13 record of my stenographic notes taken at said time and
 14 place, all done to the best of my skill and ability.
 15 DATED, at LITCHFIELD PARK, Arizona, this 25th
 16 day of November, 2014.
 17
 18
 19 _____
 20 Angela Furniss Miller, RPR, CR
 21 Certified Reporter (AZ50127)
 22
 23
 24
 25

Miller Certified Reporting, LLC