THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
September 11, 2014
9:42 a.m.

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

Miller Certified Reporting, LLC
A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN ELECTIONS COMMISSION, convened at 9:42 a.m. on September 11, 2014, at the State of Arizona, Clean Elections Commission, 1616 W. Adams, Conference Room, Phoenix, Arizona, in the presence of the following Board members:

Mr. Timothy Reckart, Chairperson
Mr. Louis Hoffman
Mr. Thomas J. Koester
Mr. Steve Titla

OTHERS PRESENT:
Thomas M. Collins, Executive Director
Paula Thomas, Executive Assistant
Sara Larsen, Financial Affairs Coordinator
Gina Roberts, Voter Education Manager
Christopher Munns, Solicitor General's office
Steve Clawson, Moses Anshell
Jason Torchinsky, LFAF (Telephonic)
Brian Bergin, LFAF
Mike Liburd, Snell & Wilmer
Mary O'Grady, Osborn Maledon
Joseph Kanefield, Ballard Spahr, LLP
Howie Fisher, Associated Press
Michael Becker, Governor's Office
Nancy Read, Office of the Secretary of State
Rob Elman, Solicitor General's Office
Paula Bickett, Solicitor General's Office
Lisa Hauser, Gammage & Burnham
Denis Wrenchik, Wrenchik & Bartness
Patricia Koester, Citizen
Thomas Ryan, Law office of Thomas M. Ryan
Jeremy Duda, Capitol Times
Steve Lemon, New Times

Chairperson Reckart: We'll call the September 11th, 2014, Clean Elections -- Arizona Citizens Clean Elections Commission meeting to order. Just to note, this is a day for us to remember with -- with great respect and sorrow for those that passed 13 years ago.

Pursuant to A.R.S. 38-431.02, notice is hereby given to the Commissioners -- notice is hereby given that there will be -- this is a general public meeting of the Citizens Clean Elections Commission. We may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item listed on the agenda, pursuant to A.R.S. 4-38-431.03(A)(3).

The Commission reserves the right at its discretion to address the agenda matters in an order different than outlined below in the agenda.

Okay. With that, let's get moving. I apologize for my tardiness and thank you for your indulgence. I seem to always be overly optimistic on my ability to transverse the Tucson-Phoenix I-10 corridor.

So with that, discussion and possible action on the Commission minutes of the August 21st, 2014, meeting.

By the way, I note that Commissioner Laird is not here. So, we have four, so we do have a quorum, but he will not be joining us either live or by telephone.

Commissioner Hoffman: Mr. Chair, I move that we approve the minutes of the August 21st, 2014 meeting.

Chairperson Reckart: I have a motion for approval of the minutes. Is there a second?

Commissioner Titla: Chairman, second.

Chairperson Reckart: Okay. Mr. Titla, thank you. Mr. Hoffman, thank you. I will ask for a vote on it.

All those in favor of approving the minutes, please indicate by saying "aye."

(Chorus of ayes.)

Chairperson Reckart: It carries unanimously.

Thank you.

The discussion of the Executive Director's report. Mr. Collins, if you would, please.

Mr. Collins: Chairman Reckart, Members, I don't want to -- I know we have a lot of business on the agenda. I do want to just note that our general election debates have begun and that those are available on our YouTube channel. We are now providing closed captioning of videos for individuals that are hard of hearing.

September 29th is the gubernatorial debate, which will be attended by all four candidates who are on the general election ballot. And we are also working with the O'Connor House on their "Debate Watch Arizona" effort to encourage voters to participate watching the debate; and then, of course, obviously, that's part of an effort that we have as an ongoing basis to educate voters for the purpose of having them participate in elections.

I also wanted to single out -- or, briefly for, you know, that -- that Sara Larsen, who you-all know has been -- her title for the past several years has been -- her title for the past several years has been campaign finance manager, but in recognition of the enhanced role and -- and that she has been -- she actually has been playing for the -- since -- for, really, the last year, we -- we finally have her promoted and appropriately titled as financial affairs coordinator. And we're -- I'm very pleased with that, and I think it recognizes that, you know, she has taken on a great deal of responsibility, has helped us to keep the Commission on track in terms of both campaign finance matters and our internal financial matters. So, we're really thrilled about that.

Chairperson Reckart: Yeah. Congratulations, Sara.

Mr. Collins: So, you can see the other information about voter education, the candidate statement pamphlet is going to press next week. We have worked to

Miller Certified Reporting, LLC

Miller Certified Reporting, LLC
This document contains a discussion about voter education efforts, particularly targeted at Native American communities in Arizona. The speaker mentions the use of radio stations and public meetings to inform voters about the Clean Elections Commission and other topics. The discussion includes a mention of Apache language and a request for outreach in Apache-speaking areas. The speaker also acknowledges the work of Mr. Collins and others in coordinating with different communities.
Mr. Collins, if you would introduce it, please.

MR. COLLINS: Yes. Thank you, Commissioners.

This is a follow-up on the last -- I guess want to say the last two agenda items. We have been working through a complaint that was filed respecting an advertisement in the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

My own view is that that doesn't factor significantly in at this point because there's no reason to believe that a violation of the -- the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

And that's where I am right now.

MR. TORCHINSKY: Yes, I'm still here.

CHAIRPERSON RECKART: Okay. Thank you.

MR. TORCHINSKY: Thank you again for letting me appear by telephone.

CHAIRPERSON RECKART: Yeah, our pleasure.

Mr. Collins, if you would introduce it, please.

MR. COLLINS: Yes. Thank you, Commissioners.

This is a follow-up on the last -- I guess want to say the last two agenda items. We have been working through a complaint that was filed respecting an advertisement in the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

My own view is that that doesn't factor significantly in at this point because there's no reason to believe that a violation of the -- the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

And that's where I am right now.

MR. TORCHINSKY: Yes, I'm still here.

CHAIRPERSON RECKART: Okay. Thank you.

MR. TORCHINSKY: Thank you again for letting me appear by telephone.

CHAIRPERSON RECKART: Yeah, our pleasure.

Mr. Collins, if you would introduce it, please.

MR. COLLINS: Yes. Thank you, Commissioners.

This is a follow-up on the last -- I guess want to say the last two agenda items. We have been working through a complaint that was filed respecting an advertisement in the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

My own view is that that doesn't factor significantly in at this point because there's no reason to believe that a violation of the -- the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

And that's where I am right now.

MR. TORCHINSKY: Yes, I'm still here.

CHAIRPERSON RECKART: Okay. Thank you.

MR. TORCHINSKY: Thank you again for letting me appear by telephone.

CHAIRPERSON RECKART: Yeah, our pleasure.

Mr. Collins, if you would introduce it, please.

MR. COLLINS: Yes. Thank you, Commissioners.

This is a follow-up on the last -- I guess want to say the last two agenda items. We have been working through a complaint that was filed respecting an advertisement in the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

My own view is that that doesn't factor significantly in at this point because there's no reason to believe that a violation of the -- the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

And that's where I am right now.

MR. TORCHINSKY: Yes, I'm still here.

CHAIRPERSON RECKART: Okay. Thank you.

MR. TORCHINSKY: Thank you again for letting me appear by telephone.

CHAIRPERSON RECKART: Yeah, our pleasure.

Mr. Collins, if you would introduce it, please.

MR. COLLINS: Yes. Thank you, Commissioners.

This is a follow-up on the last -- I guess want to say the last two agenda items. We have been working through a complaint that was filed respecting an advertisement in the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

My own view is that that doesn't factor significantly in at this point because there's no reason to believe that a violation of the -- the Republican gubernatorial primary. That matter has -- has essentially two components, as the agenda indicates.

There is a -- the complaint and addressing whether or not there is reason to believe a violation has occurred; and then there is a lawsuit that's been filed by the Legacy Foundation Action Fund, which Ms. O’Grady -- Ms. O’Grady is serving as counsel for -- essentially both purposes, she's here.

And that's where I am right now.
Chairperson Reckart: Okay.

Mr. Collins: And I -- and Mary is available to talk about the evidentiary standard, frankly, if -- if that's something that you would like more -- more detail on.

Chairperson Reckart: I think there's --

Mr. Collins: Or to correct me if I've stated it in any way that it is going to cause anything down the...

Chairperson Reckart: Okay. Commissioner Hoffman, you had a comment?

Commissioner Hoffman: Yeah, I -- Mr. Chair, I was going to analogize it to an indictment stage. It may be controverted, but if there's sufficient evidence to proceed, then we continue with the investigation and have a 14-day period to make a finding.

Mr. Collins: If -- if -- if I may -- can make one other observation here for the -- for the record. As is indicated in my -- in this -- in the administrative record for this matter, the question of what that investigation is, that investigation is not an inquiry into the subjective intent of the people who put together this ad. Okay? So, I just want -- I want to be clear about that. That -- that not that -- what an investigation is depends upon what the -- what the factual issues you need to make the legal determination here.

Chairperson Reckart: Commissioner Koester, do you have any questions?

Commissioner Koester: No.

Chairperson Reckart: No? Okay.

Mr. Torchinsky, did you want to say something, sir?

Mr. Torchinsky: Yes. I think the only thing I would like to do is just briefly respond to Mr. Collins' recommendation here. I still think that Mr. Collins is misreading the Committee for Justice and Fairness decision from the Court.

And, I, again, point out to the Commission that this ad was aired more than 120 days out from the Republican primary, which takes it outside of the Wisconsin Right to Life's mandatory bright-line time period; and it's well outside the time periods that the appeals court would review the Committee for Justice and Fairness, and I think that it has to be an overriding factor -- or, an overwhelming factor in determining whether this ad, which didn't contain any words of express advocacy, constitutes express advocacy.

It's -- it's almost like exactly -- as Chief Justice Roberts said in Wisconsin Right to Life, it's almost like Mr. Collins is suggesting here that the less the ad looks like an express advocacy ad, the more it must be an express advocacy ad.

Chairperson Reckart: Commissioner Koester, do you have any questions?

Commissioner Koester: No.

Chairperson Reckart: Okay.

Commissioner Hoffman: So, Mr. Chair, Mr. Collins, you would be looking into such issues as whether the ad presented the candidate in a favorable or unfavorable light and --

Mr. Collins: I think --

Commissioner Hoffman: -- and how it was targeted, and whether the -- what the placement and timing was, and whether an -- what the content in the ad was?

Mr. Collins: We would be -- we would be conducting that, but -- and -- and -- and then we -- and then ultimately what the amount of the purchase was and -- and -- and where it ran. And other ads.

Commissioner Hoffman: Thank you.

Mr. Collins: If there were other ads that -- that -- that were along those lines. But -- but I think that -- I think that that's fair.

Commissioner Hoffman: Thank you, Mr. Chair.

Thank you, Mr. Collins.

Chairperson Reckart: Commissioner Koester, do you have any questions?

Commissioner Koester: No.

Chairperson Reckart: Okay.

Mr. Hoffman, you had a comment?

Mr. Hoffman: Yes, Mr. Chair.

Chairperson Reckart: Okay.

Mr. Collins, you would be looking into such issues as whether the ad presented the candidate in a favorable or unfavorable light and --

Mr. Collins: If there were other ads that --

Chairperson Reckart: Commissioner Koester, do you have any questions?

Commissioner Koester: No.

Chairperson Reckart: Okay.

Commissioner Hoffman: Thank you.

Chairperson Reckart: Okay.

Mr. Hoffman, you had a comment?

Mr. Hoffman: Yes, Mr. Chair.

Chairperson Reckart: Okay.

Commissioner Hoffman: Mr. Chair.

Mr. Torchinsky, could you explain that bit more clearly, the "heads I win, tails you lose" argument cannot be correct.

I think that's all I have to add at this point.

Chairperson Reckart: Okay.

Commissioner Hoffman: Mr. --

Chairperson Reckart: Thank you.

Yes, Mr. Hoffman.

Chairperson Reckart: Mr. Chair.

Mr. Torchinsky, you could explain that bit more clearly, the "heads I win, tails you lose" argument cannot be correct.

Sure. The -- in Wisconsin Right to Life, the FEC was essentially arguing that the more the ad -- that they were adding -- they were arguing that the ad was so clever and so artfully avoided magic words, that it therefore had to be express advocacy, and they had expert testimony analyzing the ad. And the Supreme Court said: This can't be; the ad itself either has another reasonable meaning other than to vote or for or against, or it doesn't.

It can't possibly be that you need someone with a Ph.D. to come in and analyze, you know, how the ad secretly urges someone to vote for or against a candidate in an election. And by the way, in this case, it is 120 days out from -- or more -- out from when the ad was going to analogize it to an indictment stage. It may be controverted, but if there's sufficient evidence to proceed, then we continue with the investigation and have a 14-day period to make a finding.
And Chief Justice Roberts said this standard just can't possibly be. In other words, Justice Roberts said, what the FEC is urging here is essentially something that said: The less an ad looks like an express advocacy ad, the more it must be express advocacy, and Chief Justice Roberts said that cannot stand.

And I also, once again, want you to -- you know, even the standards that the Chief set out in Wisconsin Right to Life, he also said -- and this is subject to the bright-line standard of the electioneering communications statute which is: Broadcast ads, 30 days before primary, and 60 days before general. And I point you back to the fact that this ad was aired 120 days out from the election while Mr. Smith was still the incumbent mayor.

COMMISSIONER HOFFMAN: Mr. Torchinsky, I am going to ask you a question about the -- with the Chair's permission, about the time period later. But how do you think Mr. Collins' analysis is parallel to what the FEC did?

MR. TORCHINSKY: I think Mr. Collins' analysis is essentially parallel to what the Supreme Court said it's a bright-line rule for ads that speak to Mr. Smith's policy position in an organization he was part of because he was mayor, that wouldn't be express advocacy because, depending on whether you criticized him, it must be express advocacy and essentially what Mr. Collins is saying.

COMMISSIONER HOFFMAN: You think -- do you think he's saying that in ever- -- for any ad in any time period?

MR. TORCHINSKY: I think he's coming pretty close to saying: Once someone is a candidate, you air advertisements criticizing them after they've declared themselves a candidate, it's going to be really tough to air an ad that doesn't meet the standard that Mr. Collins has laid out for express advocacy.

COMMISSIONER HOFFMAN: Okay. Well, thank you.

MR. TORCHINSKY: I mean --

COMMISSIONER HOFFMAN: No. I appreciate it.

That's -- that's helpful in -- in analyzing the -- the issue that has to be raised. And I guess in the investigation, assuming we vote to proceed, you know, we can try to have Mr. Collins clarify the particular characteristics that make this ad different from permissible commentary ads.

Let me ask you about the timing. Are you saying that the -- because the ad is longer than a certain period, it's -- it's like a bright-line thing, it can't be express advocacy? Or, are you saying that this is a factor that -- that we ought to consider?

MR. TORCHINSKY: I'm saying that in an ad -- in an advertisement that doesn't contain express words or even identify somebody as a candidate, the -- the timing of the ad, how far out from the election, the fact that it identifies the issues, really needs to be considered.

There were no --

COMMISSIONER HOFFMAN: Considered as a factor?

MR. TORCHINSKY: If we aired an ad in April that said: Defeat Mayor Smith in the upcoming election," I have no doubt that outside the 30-/60-day windows, you could reasonably conclude that that was an express advocacy advertisement.
satisfied that it’s a factor and you believe an important one?

MR. TORCHINSKY: I would have to say yes, incredibly important.

COMMISSIONER HOFFMAN: Okay. Thank you, Mr. Torchinsky. Thank you, Mr. Chair.

CHAIRPERSON RECKART: Any other questions?

Yes, Commissioner Koester.

COMMISSIONER KOESTER: For Mr. Torchinsky again.

If we take sort of your side, we’ll say, and say it isn’t express advocacy but there was in an ad run in a time period, I guess what I would like to hear you say is what was the purpose of the ad? Was it to remove him as mayor, although he was going to quit like a week later? Was it to criticize his stance as the president of the Mayors Conference, what happened eight or nine months previous?

I just want to understand, if it wasn’t to degrade his efforts as running for Governor, what was the purpose of the ad? It’s still unclear to me. Why was that ad run at all?

MR. TORCHINSKY: I think the text of the ad speaks for itself; and I, again, point you back to Wisconsin Right to Life. You’re again attempting to engage in the subjective analysis of why -- you know, subjective analysis of intent as to why an ad was run when

Miller Certified Reporting, LLC

MR. TORCHINSKY: I think the ad itself was calling -- I mean, the ad itself by its own terms was calling on Mayor Smith to adopt policies for the National Conference of Mayors that were more conservative than the positions that -- that he allowed to be adopted by the National Conference of Mayors during his tenure of president. I think that -- I think the text of the ad speaks for itself.

And they were clearly -- I mean, the ad didn’t refer to -- I mean, Mr. Collins’ position here is that there is no other reasonable interpretation of the ad.

The ad itself didn’t reference the election, didn’t mention that Mayor Smith was a candidate, didn’t talk about -- you know, didn’t talk about electoral voting. I mean, there was nothing in that ad that even suggested that anybody do anything with respect to the election.

It’s even -- it didn’t even identify the mayor as a Republican or Democrat.

COMMISSIONER TITLA: Chairman?

CHAIRPERSON RECKART: Yes, sir. Mr. Titla.

COMMISSIONER TITLA: I think that we watched the ads here on the screen a couple months ago. To refresh my memory, I wonder if we -- I would like to request that we watch it again if possible.

MR. COLLINS: We can -- if -- with the

Miller Certified Reporting, LLC
Justice Roberts said about what was subject to an 
objective interest overview, and this is specific to 
that.

And then lastly, you know, with respect to the 
last point that that -- that -- that Mr. Torchinsky 
made. In the original recommendation I detailed, 
notwithstanding what Maricopa County Elections did, we 
don't know what the authority they did that under is. We 
don't -- and -- and -- and we know that it was referred by 
the Secretary of State, but -- but there -- but I don't 
know what the authority for that referral was, so it's not 
clear to us what the basis for that decision was.

And then the second point is that that 16-941(D), does in fact say that: Notwithstanding any 
other law, a person who makes independent expenditure over 
the threshold must make report unless some other 
circumstances apply. But, you know, there's no 
that's -- that's -- you know, that is a question of what 
the compliance is. And determining compliance with 
16-941(D) is always and has to be inherently, under the 
Clean Elections Act, a question for the Clean Elections 
Commission to make. And I think that that -- that point, 
in effect, when the Commission previously determined it 
had jurisdiction over this complaint, has already -- is 
already subsumed in -- in this determination.

Miller Certified Reporting, LLC
I would like to invite a motion with regard to the recommendation of the Executive Director.

COMMISSIONER HOFFMAN: I would like to move, in MUR 14-007, Legacy Foundation Action Fund, that we find reason to believe that a violation of statute or rule over which the Commission has jurisdiction has occurred and that -- authorize Mr. Collins to conduct an administration [sic] pursuant to our rules.

CHAIRPERSON RECKART: Okay. Do I have a second?

COMMISSIONER TITLA: Chairman, I second the motion.

CHAIRPERSON RECKART: Okay. Thank you, Mr. Titla. Thank you, Mr. Hoffman. It's been moved and seconded. Is there any further discussion among the Commission?

COMMISSIONER HOFFMAN: I wanted to ask Mr. Collins, Mr. Chair, if we needed anything specific with regard to a subpoena or is there --

MR. COLLINS: I think -- if that were necessary, the way the rules are set up, is at this point it would be up to -- well, I think it would be up to my judgment whether or not anything would issue and with respect to -- so, no additional language to the motion, no.

COMMISSIONER HOFFMAN: Okay. Thank you.

CHAIRPERSON RECKART: Okay. All rightly. Then, Mr. Collins.

Mr. Collins.

Mr. Collins.

Mr. Collins.

Mr. Collins.

Mr. Collins.

Mr. Collins.

Mr. Collins.

Item V, discussion and possible action on independent expenditure reporting activities, political committees, and other entities. We will be looking at Rule R2-20-109 and related amendments.

Mr. Collins, if you would, please introduce it.

MR. COLLINS: Yeah. And I will try to move through this quickly, as quickly as I can. I know there's other -- other issues.

What I -- to -- to kick this off, we do have a PowerPoint that we're going to try to get back now. But to just kind of give you a sense of what this is about.

---

At our last meeting, I described to you some of what has been occurring with respect to independent expenditure reporting in the State of Arizona with respect to corporate entities making filings. And what -- what I said that I would do would be -- what we needed to do is take a step back and look at where we were in view of precisely the issue -- well, not -- in view of the issues related to where the Secretary of State is to make sure that we move forward in a manner that's -- that's effective.

That review, for the short term, resulted in the looking at the rules. I want to do the PowerPoint. I will try to move it through it just as quickly as humanly possible just to ground things a little bit, if that's okay. I'll try to move as quickly as --

CHAIRPERSON RECKART: Yes. Please, yes.

MR. COLLINS: Okay. So we're going to talk a little bit about the history of independent expenditure reports, the current status enforcement, the Clean Elections rules, and the recommendation that I made.

We're talking first about the Clean Elections Act reports, 16-941(D) and 16-958. These reports were added by voters in 1998 in the Clean Elections Act and they established more timely reporting of expenditures above a threshold set by the Act. And the rules require the reports of all persons, so the Commission rules made clear and the statute itself says this, but that "persons" included corporations and membership organizations.

So, at that time -- and this is in 1998 -- even if no statute authorized corporate and Union independent expenditures, they would have had to have been reported to the Clean Elections Commission if they had been made. And there -- and -- and I should be very clear here. When we talk about reporting to the -- to whom the report is made, the report is always made to the Secretary of State's office. The issue is, who has the authority to tell you to file the report? And under Article II of Chapter 6, Title 16, it is the Clean Elections Commission that has the authority to order people to file reports.

So, in that sense, the Secretary of State's office is the Post Office for purposes of the Clean Elections Act and we are the Clean Elections Commission. For purposes of other provisions of law, the Clean -- the Secretary of State's office is both the Post Office and the enforcer, but for us they're the Post Office.

The -- the -- and it also exempted -- and it's also important to make clear that this exempted internal communications that were expressly permitted by statute but were not independent expenditures.

Citizens United is a case you guys, I think, are Miller Certified Reporting, LLC
corporations that were making expenditures and essentially
detail, the Secretary of State identified several
it be enforced? What does that statute mean and how will
that statute is the turn -- is the -- is essentially the
law.
officer as a political committee as otherwise provided by
liability company, or labor organization that accepts
combination of corporations, limited liability companies
or labor organizations, or that is a corporation, limited
purpose of influence in an election and that is a
statute says that: Any entity that makes an independent
expenditure and that is organized primarily for the
statute previously did not include
independent expenditures but other matters. So, just to
really quickly click back through. When we started with
the Clean Elections Act that was passed by the voters,
those are very clearly included. And here we have an
issue, the legal question is, what happens when you add

Miller Certified Reporting, LLC

things.
And those statements reflect that. And those are
available for you to -- to -- to kind of think about.
We ended up with this language in statute. This
statute says that: Any entity that makes an independent
expenditure and that is organized primarily for the
purpose of influence in an election and that is a
combination of corporations, limited liability companies
or labor organizations, or that is a corporation, limited
liability company, or labor organization that accepts
donations or contributions, shall file with the filing
director as a political committee as otherwise provided by
law.
That statute is the statute that is effectively
-- and there are -- Mike Liburdi -- Mr. Liburdi, who, you
know, is here, and Lisa Hauser, both whom represent
 corporations that make IE's are here, and they can correct
me if I'm wrong on any of this stuff. But I think that
that statute is the turn -- is the -- is essentially the
subject of where the overall regime is in terms of
enforcement now. What does that statute mean and how will
it be enforced?
So, earlier this year, as I reported in less
detail, the Secretary of State identified several
corporations that were making expenditures and essentially
Miller Certified Reporting, LLC

Miller Certified Reporting, LLC

We have the impression, in my review of the
history of this, that legislators were told there was no
existing regulatory framework for these expenditures. And
I have a quote there from Secretary Bennett that something
had to be done immediately to report -- have these
reported.
And I -- and I simply would say that that's not
-- that was not correct. There was an emergency clause in
that -- that this bill passed unanimously or virtually
unanimously. But the statement that something had to be
done because Citizens United had created a world in which
there was not going to be reporting of these expenditures
was simply not true.
One of the debates -- and this is -- then this is
where we get into what's happening now with, as I
understand what's happening now with enforcement on the
Secretary of State's side was: What is a corporation and
what is a political committee?
And Mr. Bennett in the same testimony talked
about the fact that they had some desire to distinguish
between those that were political committees who were
subject to reporting requirements beyond the expenditures
themselves, and those that were corporations that were not
going to be, and a desire to distinguish between those two

Miller Certified Reporting, LLC

1 asked them to provide information about their
expenditures. And I've tried to characterize in a summary
fashion with more -- and, you know -- you know, probably
people would quibble about this, so I don't purport to
represent the positions of the entities identified here.
Only that I -- sort of this is the upshot, I think, of
what they responded to the Secretary's office by saying.
And there is a variety of responses, some of
which, for example, involved saying we're -- you know,
here is our -- why we're social wealth organization under
-501(C)(4) and here are our I-90 forms, you can look them
up if you want to. Some of which said: Here's all the
spending we've been doing on a variety of topics; and then
others that says: Here's what we're spending on this and
not that.
So what that indicates is that there are entities
out there that are making expenditures that they may have
different factual circumstances, but they're also
presenting very different perspectives on what the law
requires them to do and what they need to demonstrate in
order to show that they're complying with 16-941.0(K) and
that is -- creates, I think, what -- what -- the reason
they call it uncertainty in this part of -- of the regime.
CHAIRPERSON RECKART: Mr. Collins, can you just
say that again?
Miller Certified Reporting, LLC

Miller Certified Reporting, LLC
MR. COLLINS: That -- that -- that is what creates uncertainty in this part of the regime.

CHAIRPERSON RECKART: "That" is what?

MR. COLLINS: That is that there are multiple corporate independent expenditure entities that have been asked for this information and what they've been presented in terms of responses, demonstrates that they -- they all see a different target that they need to hit in order to determine whether or not they are meeting that very long sentence that's in 19- -- -914.02(K).

And what I describe as this coming close to --

COMMISSIONER HOFFMAN: Mr. Chairman?

CHAIRPERSON RECKART: Go ahead. Yes, please.

COMMISSIONER HOFFMAN: Just a quick question, it is also true that they might be a political committee be-

-- for other reasons because the definition of political committee is not limited to what you just shared -- wrote, right?

MR. COLLINS: That is correct. That's correct. -- well, that's correct. I mean, the statute says itself "that is otherwise provided by law." So, I mean, you know -- so...

COMMISSIONER HOFFMAN: So, we have the definition in -901 and subsidiary definitions associated with it?

MR. COLLINS: That's correct. So, it's a -- so...

Miller Certified Reporting, LLC

in the first place. They've made an extensive public records request from the Secretary of State and there's been indications reported that there may be litigation ensuing.

So -- so there's no enforcement at this -- with the Attorney General's office, which the Attorney General's office will be designating someone to -- to look at further, and then there's the possibility of litigation between Free Enterprise and someone. I, you know -- and, again, I don't mean again to over characterize what I understand from the available sort of media reports about Free Enterprise.

Mike is here. If he wants to talk about that more specifically, he can.

This is a long preface to say we have the -- the action of these various groups have created a situation in which we need to take some immediate action on our rules, because our rules have language in them that is related to -914.02(K) that's in -- in my view, unnecessary and the actions of these nominal committees -- or, could-be committees, triggers a need to take immediate action to do that.

But, first, we need to go back really briefly and talk about where we are. Back last year we amended Rule -109, we re-emphasized the issue, so if anybody

Miller Certified Reporting, LLC

it's a complicated -- it's a complicated analysis.

COMMISSIONER HOFFMAN: I have sympathy for them.

MR. COLLINS: So, what happens then is there's a reasonable cause finding made against the Arizona Free Enterprise Club, and so what that essentially says -- and we've now talked about roughly reasonable cause is in our context, and -- and what I think -- what I think the upshot of that again, I don't -- I'm trying to summarize this, was we disagree or we don't believe what the Free Enterprise Club has said they are doing. And the reasons for that -- I've reviewed the reasonable cause, it's not entirely clear to me, nor is it entirely clear to me which legal factors -- or any factors -- are applied to make this determination within this reasonable cause.

So, you now have multiple corporate independent expenditure groups who presented information to the Secretary's office and you have a reasonable cause finding that says some things, but it's hard to discern from what it says on its face, what -- relating back to the statute and the multiple interpretations that have come off of it, which one of those is actually in operation. At least, it's hard for me to determine that.

As a result, and my understanding is that the Free Enterprise Club has, you know, essentially questioned the authority of the Secretary to ask for this information

Miller Certified Reporting, LLC

understood -- didn't understand what the Clean Elections' role plays with IE's; we provided an easy option for corporations, LLC's, and Unions who could not have violated -914.02, to stipulate that they would only need to file those reports.

We believed that that would avoid litigation.

And we also -- we made this point -- I think -- I believe we made it on the record at the time, that this would avoid the situation where somebody says: I don't have to file anywhere at all.

And that to, frankly, Mr. Torchinsky's point in the last go-around. That is Mr. Torchinsky's position.

And our position is that -- that no matter what, the Clean Elections Act says that we get to decide if you need to file Clean Elections Act reports.

COMMISSIONER HOFFMAN: Mr. Chair?

CHAIRPERSON RECKART: Please.

COMMISSIONER HOFFMAN: Mr. Chair, Mr. Collins, there are certain entities that -- sorry. There are certain entities that -- that, in fact, don't have to file anywhere? In other words, if they don't make independent expenditures?


COMMISSIONER HOFFMAN: Okay.

Miller Certified Reporting, LLC
Mr. Collins: That's right. That's right.

Commissioner Hoffman: Didn't want that to be a mis-

Mr. Collins: No, that's right. That's right.

Under the assumption -- under the assumption. That's
correct. That's correct.

So -- so, here's where we end up with what I've
just already said. We -- we don't -- there's no reason
for this rule to be wrapped up in the Free Enterprise Club
matters. So, we -- so we -- the solution is to simplify
the certification to re-emphasize that the IE reports that
Clean Elections calls for do not determine political
commitee status.

We want to hold harmless the folks who are
already certified. In other words, we had really good
success. I would say we had -- I can't remember the final
number of how many people we have currently certified. I
think we only have three outstanding groups that aren't
certified. Or -- well, two that are -- yeah, two
outstanding groups that are -- are not certified.

So, there's no -- we don't know, frankly, whether
or not the -- the -- this would -- this change actually
substantially affects those groups that are already
certified, but there's no harm in just leaving them be.

And then -- and then there's some cleanup and
Miller Certified Reporting, LLC

-- from the political committee issue to -- and -- and
make that immediate, and then -- and then we will proceed
step-wise in consultation with as many folks as we can
consult with to provide an appropriate regulatory and/or
statutory response to the issues that have been identified
over the course of the last few months in the process.

So, with that, and that's a long preface, and I
-- and I -- and I, you know, we wanted to do this quickly
because it -- we think that this is a necessary thing to
do. We can revisit these rules at subsequent meetings but
we think that this change needs to be made immediately
effective and -- based on the actions of -- of -- of
candidates and committees.

And -- and that's -- that's kind of -- that's
kind of all I have.

Mary O'Grady is here also on this because this is
related to our other representation. So, if you have
legal questions, you can -- you can direct those to her, I
believe, and that's all I have.

Chairperson Reckart: Thank you, Mr. Collins. Is
there anyone here who would like to comment among the
public on the proposed change?

Mr. Liburdi, please.

Mr. Liburdi: Thank you, Mr. Chairman and
Commissioners. I just want to say one brief thing. I
Miller Certified Reporting, LLC

Chairperson Reckart: Okay. Wonderful.

Mr. Liburdi: Thank you.

Chairperson Reckart: Thank you.

Commissioner Titla: Chairman.

Chairperson Reckart: Oh. Yes, ma'am. I'm
sorry.

Ms. Hauser: Mr. Chairman, Lisa Hauser from
Gammage & Burnham, and I represent the 60 Plus
Association. I had a good conversation with Mr. Collins
yesterday to better understand exactly what was trying to
be accomplished here and look forward to the time when he
reaches the point where he is able to revise the form.

And I expect we'll be able to wrap thing -- things up with
respect to an exemption for 60 Plus at that time. So,
thank you.

Chairperson Reckart: So, just real quickly,
Ms. Hauser. So, you're -- I take it, same as Mr. Liburdi,
Miller Certified Reporting, LLC
Mr. Laird, the need for a unanimous -- we've -- my position when I was your counsel, which I am not currently, was that "unanimous" meant everybody here. That means, that is to say, of the people who are here.

Chairperson Reckart: Of the --

Mr. Collins: There is a question that the Commission needs to decide, I guess, how it wants to proceed in terms of being above -- above any question. The Commission can put this off. That will -- or -- well, that's really the question that the Commission would have to decide to put it off. There's nothing we can do to resolve the question today because the statute says what it says. Either you think unanimous means everybody's got to be here or you

Miller Certified Reporting, LLC

...
1. with regard to why language is deleted or why language is added?

   I think it's fairly clear on its face what we're trying to accomplish with it, so I have none. But I'll invite any Commissioner.

   Mr. Hoffman?

   COMMISSIONER HOFFMAN: Yes. Mr. Chair, I have two minor matters with regard to the language. First of all, in R2-20-109(F)(3)(C), there's some matter underlined and part (D) entirely is underlined. I thought those -- that's the way it was. Is -- is -- is that an -- an error?

   MR. COLLINS: That is an error. That is an error we're trying to correct. The language should track the statutes, was intended to track the statute. You were informed it would track the statute when the rule passed, but it doesn't actually track the statute. That is when I said cleanup, that is cleanup.

   COMMISSIONER HOFFMAN: I see. So, the purpose of the underlining was to put in stuff that we thought was there, but in the administrative code is -- doesn't show up?

   MR. COLLINS: That is correct.

   COMMISSIONER HOFFMAN: Ah. Thank you for explaining that. I was very confused at that.

   MR. COLLINS: Okay. Thank you. Appreciate it. This is one sentence that is in addition to everything that -- yeah.

   COMMISSIONER HOFFMAN: So this would insert the language "unless an exemption is obtained pursuant to this Subsection (F)" at the very beginning.

   MR. COLLINS: Yeah.

   COMMISSIONER HOFFMAN: I can't remember. That was the only change, was it?

   MR. COLLINS: What's that?

   COMMISSIONER HOFFMAN: That was the only change, right?

   MR. COLLINS: Yeah. That was the only change in this from the document you already had. And that's -- and that's -- I mean, that's up to you.

   COMMISSIONER HOFFMAN: Right. Okay. So, that was the other comment that I had, Mr. Chair.

   CHAIRPERSON RECKART: Okay. Thank you, Mr. Hoffman. And just -- since we're going over some of the particulars. In -109(F)(4), the addition of "a" is really because you could be a political committee that complies with 16-920(A)(6) or 16-914, but you still should do your reporting?

   MR. COLLINS: It's -- yeah. The folks who are -- who are contemplated here are folks who are not political committees, that's -- that's correct.

   CHAIRPERSON RECKART: Yeah.

   MR. COLLINS: So, we're talking about -- again, we're talking about going from a model that implies could not possibly be a political committee, to a model that says: Are not political committees, but if you are in fact a political committee and have so declared, there -- this is not something that you need to be concerned about.

   CHAIRPERSON RECKART: Or not available to, yeah.

   MR. COLLINS: Yeah.

   CHAIRPERSON RECKART: Yeah. Okay. With that, I'll entertain a motion.

   Mr. Hoffman.

   COMMISSIONER HOFFMAN: Yeah. Mr. Chair, I'd like to move that we conclude that the actions of the committees described by Mr. Collins require that we immediately change rule R2-20-109 and that we, therefore, adopt R-20-109 [sic], the amendments thereto as indicated by the paper entitled "Hoffman Amended Version" that was just passed around.

   CHAIRPERSON RECKART: Okay. Do I have a second?

   COMMISSIONER KOESTER: I second.

   CHAIRPERSON RECKART: Okay. Mr. Koester,
you know, the fact of the matter is that we -- we will --
are steps that are in addition to be taken. I think that,
does, you know, demonstrate that -- that there -- there
response to the extent that you consider it at this point
analysis I think speaks for itself. I think that the
the -- I think the -- I think the -- the -- the
purpose of this vote is to permit me to move forward.
And -- and I'll be -- and I think I'll -- I think I want
to be clear here that this will involve the authorization
to subpoena documents, to put people under oath, and I
would recommend that any motion make that specific so
we're clear.

Just to highlight a couple of points. I think
the -- I think the -- I think the -- the -- the
analysis I think speaks for itself. I think that the
response to the extent that you consider it at this point
does, you know, demonstrate that -- that there -- there
are steps that are in addition to be taken. I think that,
you know, the fact of the matter is that we -- we will
need those tools -- subpoena, and -- and -- and putting
folks under oath -- in order to get to additional steps.
And I think that it is impossible, however, to

MR. COLLINS: Yeah. Thank you. Mr. Chairman,
Commissioners, and just briefly, you know, Mr. Kanefield
is here if you have legal or procedural questions related
to this process.

I think that, Mr. Chairman, you laid out the
procedural posture that we're in correctly. I think that
the -- the -- the recommendation here is that there -- is
that we -- is that we move forward and that you find
reason to believe a violation may have occurred. The
purpose of this vote is to permit me to move forward.
And -- and I'll be -- and I think I'll -- I think I want
to be clear here that this will involve the authorization
to subpoena documents, to put people under oath, and I
would recommend that any motion make that specific so
we're clear.

Just to highlight a couple of points. I think
the -- I think the -- I think the -- the -- the
analysis I think speaks for itself. I think that the
response to the extent that you consider it at this point
does, you know, demonstrate that -- that there -- there
are steps that are in addition to be taken. I think that,
you know, the fact of the matter is that we -- we will
need those tools -- subpoena, and -- and -- and putting
folks under oath -- in order to get to additional steps.

So, with that, I'll ask Mr. Collins to introduce
the -- well, the follow-up.

CHAIRPERSON RECKART: Two questions, at least on
my part. One is, is laying out the timing of things at
this point. We -- there's reference in your memo to, you
know, certain 14-day time periods. And I would -- if you

Miller Certified Reporting, LLC
Okay? It's not like he doesn't want to get you at the DOA. It's in the State system. So Mr. Horne understanding, because I've checked into that quickly, are and I think you were just referring to in part. It's my which is something that's noted I believe in a footnote which has been clarified through discussions I've had with reason to believe itself, subject to his own decision to file a lawsuit to enjoin, and subject to the fact that the Attorney General's office for example has not been able to provide to us documents quickly; was not able to confirm, for example, the salaries of these employees for essentially a month and a half, subject to a pretty

Miller Certified Reporting, LLC

as you probably saw from some e-mails, thought that this was going to be an actual hearing for some reason. And I'm not sure as I looked at it briefly why he thought that and looked at the rules, but that's the communication, essentially.

So, I think that is what resulted in the preparation of the document you received last night. And so, I didn't mean to -- because I got involved late, I didn't mean to put you all to the trouble of having to read all that, and -- and -- and I apologize honestly for that. Because I think there was some misunderstanding, which has been clarified through discussions I've had with not only Mr. Collins but with your counsel who you are represented well by.

Let me just say a couple quick things and I'll sit down. In light of the fact that I -- sorry. In light of the fact that I acknowledged your comments earlier so I won't belabor it.

But I do want to say that the time sheet issue, which is something that's noted I believe in a footnote and I think you were just referring to in part. It's my understanding, because I've checked into that quickly, are at the DOA. It's in the State system. So Mr. Horne doesn't have any control over some of these documents, okay? It's not like he doesn't want to get you

Miller Certified Reporting, LLC

emphatic letter from me asking for that information.

So, you know, we've done everything we can within the structure of this -- of the prior to reason to believe to -- to be efficient, to be effective, subject to those -- those events. And we'll -- and we'll continue to do that, but 14 days is not the -- is not the deadline.

Chairperson Reckart: Okay. Great. Thank you. I'll -- I'll hold my other comment for later.

Questions from the Commissioners for Mr. Collins?

No. Okay.

I understand -- Mr. Wilenchik, are -- are you here? Okay. Sir, please, if you'd like to say something, you're -- you have the podium.

Mr. Wilenchik: I thank you for that. I understand the -- the low threshold that you're dealing with, Mr. Chairman and members of the Commission. I just want to make it clear that I got involved in this actually late yesterday, so don't hold it against me. But, because of that --

Chairperson Reckart: The practice of law is wonderful, isn't it?

Mr. Wilenchik: Yes. It's always -- it's always a joy, but -- and an honor to be here.

But what I was just wanting to make clear is I think what happened was is that the counsel, Mr. LaSota, think that was basically in response to Mr. Horne's request for those -- those events. And we'll -- and we'll continue to believe to -- to be efficient, to be effective, subject to reason to believe itself, subject to his own decision to file a lawsuit to enjoin, and subject to the fact that the Attorney General's office for example has not been able to provide to us documents quickly; was not able to confirm, for example, the salaries of these employees for essentially a month and a half, subject to a pretty

Miller Certified Reporting, LLC

as you probably saw from some e-mails, thought that this was going to be an actual hearing for some reason. And I'm not sure as I looked at it briefly why he thought that and looked at the rules, but that's the communication, essentially.

So, I think that is what resulted in the preparation of the document you received last night. And so, I didn't mean to -- because I got involved late, I didn't mean to put you all to the trouble of having to read all that, and -- and -- and I apologize honestly for that. Because I think there was some misunderstanding, which has been clarified through discussions I've had with not only Mr. Collins but with your counsel who you are represented well by.

Let me just say a couple quick things and I'll sit down. In light of the fact that I -- sorry. In light of the fact that I acknowledged your comments earlier so I won't belabor it.

But I do want to say that the time sheet issue, which is something that's noted I believe in a footnote and I think you were just referring to in part. It's my understanding, because I've checked into that quickly, are at the DOA. It's in the State system. So Mr. Horne doesn't have any control over some of these documents, okay? It's not like he doesn't want to get you

Miller Certified Reporting, LLC

everything. I think you can see he's trying to get you all information. We have 11 witness statements, as an example.

So, it would be unfair to characterize, I think, with all due respect to Mr. Collins, that Mr. Horne's office is somehow stalling you or stonewalling. And I'm not suggesting he said those words. But if there was any inference of that, I want to make clear that's not our intent. We would like to get this done as soon as possible. That's why you have all those witness statements. If you want to put those people under oath, we're happy to do that.

We may have some disagreement as things go with certain documents. For example, I'm not sure how important it is to know what people earn. But, you know, if that's something you're interested in and you think is important, I'm sure we'll get through those kinds of, you know, issues.

I do want to say two things as -- before I sit down, though, as to why I don't think you should proceed to continue this investigation, which is why we do have the witness statements in front of you. Basically what I see here, and I'll try to sum this up in the interest of time, is one witness who has stated things as to that

witness and to things relevant to her.
And, in fairness, I don't believe -- and, again, I haven't had all the time in the world as I just said to go through this. But what I have gone through quickly and stayed up late last night reading, I can -- I can say with conviction, does not appear that she either alleged or is even producing any evidence of what everybody else in the office was doing. And I think it's presumptuous, to say the least, in fairness to her. And in fairness to Mr. Horne, though, that it's a little presumptuous for her to extrapolate, and -- and basically -- if that's what she was doing. And I'm, frankly, not even clear if she was doing it, because I couldn't even find last night an allegation, in effect, about the others specifically.

So, I think on the issue it's a little overbroad. If the investigation proceeded as to this one woman, Ms. Beattie, I could appreciate that and I wouldn't even argue it. We'll deal with that and hopefully we can have a hearing. And that's another issue I want to address before I sit down, because I do wish to have a hearing here -- not necessarily at the OAH, but we could do that, too.

But before this thing gets further, because of the nature of it, I think in fairness a hearing is appropriate, so that you can assess the witnesses and you can speak to them and determine whether or not these documents that I could find last night that indicate what she was doing, such as an invitation, but that invitation isn't necessary. I think that's one of the essence and I know that you don't want to take a whole bunch of time today. But I do think you should seriously question this, because you've got 11 witnesses that are very clear that will go under oath if you want it.

Page 8, which purports to set forth the various, quote, unquote, "evidence" -- excuse me, I'm suffering, Commissioner, from the same thing you are.

CHAIRPERSON RECKART: Yeah. Yeah.

MR. WILENCHIK: So apologize. But, anyway --

CHAIRPERSON RECKART: I'm off purgatory.

MR. WILENCHIK: Yeah. Page 8, which purports to list out some of the alleged evidence, actually has nothing to do with anything to do with quid pro quo that I can understand, and it has to do with whether people are volunteering or not.

So, the bottom line is, you know, the way I read this thing, it makes Mr. Horne the policeman of the office; he's supposed to go around and check everybody's time sheets.

And the final thing is, if in fact these time sheets were altered by Ms. Beattie, there's no evidence anybody else altered them. But if Ms. Beattie altered time sheets at the time -- and I know this may not be a convincing argument at this stage, but one certainly has to seriously question what she was doing with those six

Miller Certified Reporting, LLC

people are stating the truth or not. And that's why we submitted additional statements yesterday from Ms. Dugan, as an example.

So, on the one hand I think it's a little overbroad with respect to everybody else who has given you statements. And it's almost assuming that all those people are not telling the truth, which I also think is an unfair thing to do, and that one person is.

Furthermore, the second thing that I said I would want to raise here before I sit down in terms of whether you proceed further is this quid pro quo issue. Those of you that don't speak Latin, like me, but learned this in law school a long time ago, I can't even tell you exactly what that means, but someone here I'm sure can tell me.

But -- but --

CHAIRPERSON RECKART: This for that.

MR. WILENCHIK: What?

CHAIRPERSON RECKART: This for that.

MR. WILENCHIK: This for that. Yes. Okay. Very well. I didn't pass my Latin course, obviously.

But I understand the concept and I understand what's being alleged. And all I can say on that is, is that I looked at that carefully, too, last night. I do want to point out a couple of quick things as I say on that, first of all, I think are just wrong.

If you look at page 12 and 13 of -- of Mr. Collins' report, there really is nothing by way of any reason to believe that any position was expressly tied to campaign work or campaign work requirement.

Page 8, which purports to set forth the various, quote, unquote, "evidence" -- excuse me, I'm suffering, Commissioner, from the same thing you are.

CHAIRPERSON RECKART: Yeah. Yeah.

MR. WILENCHIK: So apologize. But, anyway --

CHAIRPERSON RECKART: I'm off purgatory.

MR. WILENCHIK: Yeah. Page 8, which purports to list out some of the alleged evidence, actually has nothing to do with anything to do with quid pro quo that I can understand, and it has to do with whether people are volunteering or not.

So, the bottom line is, you know, the way I read this thing, it makes Mr. Horne the policeman of the office; he's supposed to go around and check everybody's time sheets.

And the final thing is, if in fact these time sheets were altered by Ms. Beattie, there's no evidence anybody else altered them. But if Ms. Beattie altered time sheets at the time -- and I know this may not be a convincing argument at this stage, but one certainly has to seriously question what she was doing with those six

Miller Certified Reporting, LLC
allegations and -- and they need to be dealt with, I understand. We're happy to do that based on what I know of this case.

I think if you push this case forward based on the allegations here as broadly as they were stated, it's a mistake. I think -- and I'm not trying to tell you guys what to do, but I think that what would be appropriate here would be to say we'll reasonably investigate Ms. Beattie's allegations in terms of what she knows, what she stated about herself; and if in that course of that investigation, it turns out that there's any evidence to reasonably suggest or believe under the same standard that she does have evidence about other people other than an anecdotal evidence, but real evidence that she can present or even allege -- because I haven't even seen it alleged -- then maybe there's a reason to investigate the entire office there. I would even agree with that. But that hasn't happened.

And so, my suggestion to you, of course you'll do what you want, but I think in fairness to Mr. Horne, based on the fact that he has gone out and given you a full response. And -- and -- and to question that response by saying he hasn't proven his case in the response, which is how I read some of the comments made, is -- is very unfair. It's putting the burden on him to be in his situation.

And that's all I ask you to do is to seriously consider the scope of where you proceed and to take it one step at a time. And if there is some credible evidence to support Mr. Collins' allegations, which right now I don't believe there is, when you go forward on Ms. Beattie's own allegations, specific allegations of her activity, and you find in that that there's reason to suggest that other people have misstated things in their statements or have lied or have done inappropriate things that are in violation of the law, I have no problem at that point with expanding this investigation further.

And I will tell you that I will assist, because we've given you statements, in any information that he wants. But I think this investigation needs some lid on it, because right now it's very ambiguous as to what exactly you -- you are going after Mr. Horne for in terms of everybody else's activity in an office. He is not in charge of daily looking at people's sheets and -- and that kind of thing.

Now, if he is aware of campaign activity being rub out of that office, I understand fully that that's something he's going to have to be responsible for and answer about, and he will. But this -- these allegations are so broad that they seem to make him an ensurer,
on yesterday afternoon?

MR. WILENCHIK: Well, I was advised yesterday earlier, but I was unavailable personally, that our office would be involved, so I had some other people working on it; but then I personally was able to focus on it toward the end of the day.

COMMISSIONER TITLA: Okay. I’m glad you are on now. I was looking at the material and the -- Mr. Collins and Sara Larsen, our staff, wrote letters to the Attorney General’s office requesting for information --

MR. WILENCHIK: Right.

COMMISSIONER TITLA: -- and I was concerned because there was a lack of response from the office. And it seems like it took them a long time to respond until Mr. Collins had to write them a letter. So, since you’re on now, if this goes further, will you try to ensure from your client that the request for information is done, you know?

MR. WILENCHIK: Yes, sir. Absolutely. And I just want to apologize if that was the case. I -- again, I had nothing to do with that.

I intend, if you do go forward, to fully cooperate a hundred percent. As I said, there -- there could be good faith issues, you know, on certain items, which, as I said, you are well represented by Miller Certified Reporting, LLC

to statements that can be reasonably construed to her having any evidence of what anybody else in that office is doing other than herself. And further that there’s no issue on the quid pro quo.

I can’t even find it in the -- in the statements, and if I’m missing that, I apologize, but -- but I couldn’t find it under page 8, and page 12 and 13. And based on, again, what I know of the case at this point, I don’t understand the quid pro quo argument at all.

There’s never anyone that has said that Mr. Horne conditioned a job based upon having to -- in fact, to the contrary we know, there’s policy issue that’s very clear that Ms. Dugan again reaffirmed last night that she -- she enforced that it’s very clear that it’s against company policy -- State policy and that -- and that Attorney General Horne made it a point when that came up to be very hard on that. That’s the only evidence that I’ve seen. I haven’t seen any evidence where he told anyone to do anything other than follow the law.

So, I think these allegations have gone overboard. I think they’ve gotten a lot of unfortunate publicity that’s hurt him. That’s why I think at this point he wants to clear his name of this.

But I will tell you, there’s not going to be, from what I know, any evidence that Attorney General Horne would have any?
COMMISSIONER KOESTER: I think Mr. Hoffman was first --

CHAIRPERSON RECKART: Okay.

COMMISSIONER KOESTER: -- but I do have couple comments though.

CHAIRPERSON RECKART: All righty.

COMMISSIONER KOESTER: Go ahead.

CHAIRPERSON RECKART: Thank you. Mr. Hoffman.

MR. WILENCHIK: If you don't have any other questions, though...

COMMISSIONER KOESTER: No, you can...

CHAIRPERSON RECKART: Yeah.

COMMISSIONER HOFFMAN: If you had something, please go.

COMMISSIONER KOESTER: Well, just in general I know with -- you didn't have much time, and this is more or less my read of what you presented is that Sarah Beattie made certain statements about time and time on the campaign and time in the office, and these other employees said more or less the opposite. And it's sort of like you're saying she said/he said/whoever said, and if it was just this alone, it would be very hard for us to come to any conclusions other than to bring your people in and have them say again what -- what they made statements about.

And another thing that is out there, too, is she was given a rather substantial raise. I'm talking about Ms. -- Ms. Beattie --

MR. WILENCHIK: Right.

COMMISSIONER KOESTER: -- during her employment. And all of a sudden, it's like if she's not doing a good job, why such a huge raise in salary halfway through or three months after or four months after, and she becomes employed or watched over by someone else other than -- I think it was Ms. Dugan or -- if my memory is right. So, there's a lot of questions out there --

MR. WILENCHIK: Can I respond to that one?

COMMISSIONER KOESTER: Besides -- yeah. Go ahead.

MR. WILENCHIK: Oh. Thanks. Well, there's -- there's a lot of response but let me keep it brief. You'd have to almost assume just logically that everybody then would have been large raises in the same scenario if everybody was doing what she claims they were doing without any evidence of it.

I think he did respond and the original response as I read it yesterday that -- explained that that raise, of course, had nothing to do with anything other than the fact that she had a low-paid position, she was put in a -- a better position. I don't think Mr. Horne said that she
1 but he didn't do anything to enforce it. Well, that's
2 what policies are. You -- you have them so that they will
3 be enforced. And where there was an infraction known, it
4 was enforced.
5
6 The problem here is Sarah Beattie left and then
7 made these allegations. So, that's the issue we have
8 here. There's nothing contemporaneous with her working
9 where it was indicated that she complained to somebody and
10 somebody did say, you know what, forget it, we're not
11 going to enforce those policies. That wasn't in the
12 facts. So that's why I say it's a little more complicated
13 than it appears.
14
15 And I -- I recognize your point, finally. I do
16 recognize your point that there are a lot of people
17 working up there that are working on this campaign as
18 well. I get that point. I acknowledge that point, it's
19 obvious. But I don't know that that means that anything
20 was violated when they use their own time to do it.
21
22 CHAIRPERSON RECKART: Let me just jump in real
23 quick before I turn it over to Mr. Hoffman. To follow on
24 Mr. Koester's point that -- it's just -- it's messy. The
25 fact that you had four senior members of the office -- or,
26 prominent members of the office also being senior members
27 of the campaign, it's just messy.
28
29 MR. WILENCHIK: We can agree on that.

<table>
<thead>
<tr>
<th>80</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 both his personal and official capacities?</td>
</tr>
<tr>
<td>2 MR. WILENCHIK: Yeah.</td>
</tr>
<tr>
<td>3 COMMISSIONER HOFFMAN: Okay. So, that's helpful</td>
</tr>
<tr>
<td>4 because of the issue that --</td>
</tr>
<tr>
<td>5 MR. WILENCHIK: Yes. I understand.</td>
</tr>
<tr>
<td>6 COMMISSIONER HOFFMAN: -- Commissioner Titla</td>
</tr>
<tr>
<td>7 raised with regard to responding to the subpoena -- the</td>
</tr>
<tr>
<td>8 public records request. Just picking -- starting with</td>
</tr>
<tr>
<td>9 that, and I'd like to take these in sort of little cabined</td>
</tr>
<tr>
<td>10 positions.</td>
</tr>
<tr>
<td>11 MR. WILENCHIK: Sure.</td>
</tr>
<tr>
<td>12 COMMISSIONER HOFFMAN: It disturbed me that --</td>
</tr>
<tr>
<td>13 also that there's been two months since the public records</td>
</tr>
<tr>
<td>14 request was made on July 3rd, and by my count four pieces</td>
</tr>
<tr>
<td>15 of paper produced. I -- I may have that slightly wrong</td>
</tr>
<tr>
<td>16 and maybe there's pieces that I don't know about it.</td>
</tr>
<tr>
<td>17 But it is at least a partial response and it</td>
</tr>
<tr>
<td>18 seemed very partial to me, and that was accompanied with a</td>
</tr>
<tr>
<td>19 sort of attack on Mr. Collins for daring to, you know,</td>
</tr>
<tr>
<td>20 raise the issue that things had been delayed. And I, you</td>
</tr>
<tr>
<td>21 know, would encourage if, in fact, your client does want</td>
</tr>
<tr>
<td>22 to, you know, get everything, as you've said and</td>
</tr>
<tr>
<td>23 invest- -- and, you know, allow an investigation to go</td>
</tr>
<tr>
<td>24 forward in -- in a meaningful way, that perhaps we can</td>
</tr>
<tr>
<td>25 look into this.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>81</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 MR. WILENCHIK: If I may --</td>
</tr>
<tr>
<td>2 COMMISSIONER HOFFMAN: Let me ask -- let me be</td>
</tr>
<tr>
<td>3 more specific on what I have in mind. You've raised the</td>
</tr>
<tr>
<td>4 question of if, you know, she worked six hours a day,</td>
</tr>
<tr>
<td>5 Ms. Beattie, on campaign business, where's the work</td>
</tr>
<tr>
<td>6 product?</td>
</tr>
<tr>
<td>7 Well, wouldn't that be all -- all of her e-mails</td>
</tr>
<tr>
<td>8 and all of her documents that she did on her computer</td>
</tr>
<tr>
<td>9 would tell us the answer to that, what she was doing every</td>
</tr>
<tr>
<td>10 day, right?</td>
</tr>
<tr>
<td>11 MR. WILENCHIK: Which she has and she's produced.</td>
</tr>
<tr>
<td>12 And if you added all of that up...</td>
</tr>
<tr>
<td>13 COMMISSIONER HOFFMAN: Well, I assume that what's</td>
</tr>
<tr>
<td>14 on the State computers is going to be far more than what</td>
</tr>
<tr>
<td>15 she happened to take with her and print out or whatever,</td>
</tr>
<tr>
<td>16 too. So -- so --</td>
</tr>
<tr>
<td>17 MR. WILENCHIK: As I indicated earlier, I think</td>
</tr>
<tr>
<td>18 some of that may be -- the problem may be, Commissioner,</td>
</tr>
<tr>
<td>19 that some of that may be subject to DOA, so I'll look into</td>
</tr>
<tr>
<td>20 that.</td>
</tr>
<tr>
<td>21 COMMISSIONER HOFFMAN: Yeah. Well, I mean, I --</td>
</tr>
<tr>
<td>22 I think -- I'm not sure what you mean by &quot;subject to DOA.&quot;</td>
</tr>
<tr>
<td>23 MR. WILENCHIK: Well, my understanding was -- I</td>
</tr>
<tr>
<td>24 got a message actually, because my question was very --</td>
</tr>
<tr>
<td>25 was actually the same question you had: What have you</td>
</tr>
</tbody>
</table>

Miller Certified Reporting, LLC
Mr. Horne and his staff.

MR. WILENCHIK: Let me just answer that as quickly as I can.

COMMISSIONER HOFFMAN: I'm sorry. Mr. Collins and his staff.

MR. WILENCHIK: Part of the problem, I have to be very candid with you and the reason why I suggested the scope issue is, let -- let's just assume for the sake of the argument that that's true --

COMMISSIONER HOFFMAN: I'm going to talk about the scope issue later with you, I'd like to do that, but --

MR. WILENCHIK: But let me just answer.

COMMISSIONER HOFFMAN: I don't want you to repeat it, but whether it's Ms. -- Ms. Beattie herself only or all of them, you know, the issue is, you know, let's look at their computers and let's look at the quantity of work, right? Relative quantity of work.

MR. WILENCHIK: The issue, I think -- and this is why I brought it up. And that's why this is not an easy issue; it is messy. The issue is, is Mr. Horne being charged -- or potentially being charged -- with something relating to what an individual does on --

COMMISSIONER HOFFMAN: Well, that's another question.

MR. WILENCHIK: I don't have a problem with that, but I'm not sure you'll get a great answer to it, but I'm happy... COMMISSIONER HOFFMAN: So -- so, my -- my point with regard to the documentation is that, you know, it's, you know, I think it's important that there is a willingness to promptly, you know, disclose the documents of employees, whichever set we talk about, from the State computers, including e-mail and including work product, and appropriate confidentiality provisions --

MR. WILENCHIK: Yeah.

COMMISSIONER HOFFMAN: -- can be negotiated, I'm sure.

And, you know, I -- I wanted to say I appreciated your comment earlier that said, you know, we want to get everything out there and want to make sure that that information is provided. It has not to date --

MR. WILENCHIK: Okay.

COMMISSIONER HOFFMAN: -- it's been two months.

Mr. Horne has now lost the election, so, you know, the issue of stalling doesn't come into it. Whether he stalled or not, doesn't matter. You know --

MR. WILENCHIK: May I comment?

COMMISSIONER HOFFMAN: -- let's get it done, right?
MR. WILENCHIK: Yeah.

COMMISSIONER HOFFMAN: Okay.

MR. WILENCHIK: No. Look, I don’t disagree with a lot of what you just said, okay?

COMMISSIONER HOFFMAN: Okay. Good. Well, I’m glad we’re on the same overall page.

MR. WILENCHIK: We are.

COMMISSIONER HOFFMAN: Let me turn to the -- well, while we’re on the subject there’s -- in Mr. Horne’s responses there are a lot of personal attacks on Ms. Beattie and on our Executive Director. I wanted to express --

MR. WILENCHIK: He would consider there were a lot of personal attacks on him, but I -- I understand your point.

COMMISSIONER HOFFMAN: I -- I agree with that, too. But in terms of saying people are a liar, you know, Mr. Horne has said Ms. -- Ms. Beattie is a liar and also said our Executive Director is biased.

MR. WILENCHIK: Can I make that clear?

COMMISSIONER HOFFMAN: Yeah.

MR. WILENCHIK: Okay. Thank you for that. What I think Mr. Horne is saying and what I -- what I would say -- I can’t say everything he said, but what I -- what I would say is this in response: The only point that our Executive Director is biased.

MR. WILENCHIK: Yes, it's -- it's it's irrelevant. What I'd like to do -- to do is that to the extent during the investigation -- I'd like to ask this. To me, personally, and I'm speaking for myself, not the Commission.

COMMISSIONER HOFFMAN: -- any argument you want.

MR. WILENCHIK: Otherwise I agree it's irrelevant in some ways.

COMMISSIONER HOFFMAN: So, as far as I'm concerned on my watch, that's not like it, but that's the reality of it -- either she was telling the truth when she was filling out those time sheets or she wasn’t; if she -- and it can only be one or the other.

And so, today if she’s saying: Well, when I filled them out, I wasn’t telling the truth on those certifications. That the only issue that I know of.

COMMISSIONER HOFFMAN: I hear you, but --

MR. WILENCHIK: Otherwise I agree it's irrelevant.

COMMISSIONER HOFFMAN: It's relevant if, you know, if you have a point. If you -- challenging someone's credibility is fine if you tie it to a statement that the person made that you believe is untrue. So if

Miller Certified Reporting, LLC

you say: She's lying about "X" because she's --

MR. WILENCHIK: Absolutely.

COMMISSIONER HOFFMAN: -- not credible about that subject.

MR. WILENCHIK: That's a good point.

COMMISSIONER HOFFMAN: Then, you know, sure.

You're free to make --

MR. WILENCHIK: That's wrong.

COMMISSIONER HOFFMAN: -- any argument you want.

But --

MR. WILENCHIK: Ad hominem attacks are not welcome and I agree.

COMMISSIONER HOFFMAN: Right. But, you know --

MR. WILENCHIK: And -- by the way, I didn’t write -- just so you know --

COMMISSIONER HOFFMAN: I get that. I don’t think you would have. But -- but I wanted to --

MR. WILENCHIK: But I agree with you.

COMMISSIONER HOFFMAN: I wanted to just express some comments going forward that as to what the, you know --

MR. WILENCHIK: Appreciate.

COMMISSIONER HOFFMAN: -- what the stuff I care about is.

MR. WILENCHIK: I appreciate that.

Miller Certified Reporting, LLC

COMMISSIONER HOFFMAN: And -- and -- and I might care if it's relevant to a particular fact that you're disputing of what she says --

MR. WILENCHIK: Correct.

COMMISSIONER HOFFMAN: -- and -- but -- and if the attack is -- is somehow tied to it.

MR. WILENCHIK: Otherwise I agree with you.

COMMISSIONER HOFFMAN: I -- I know Mr. Collins well enough to say that I doubt personal attacks are going to be productive regardless.

MR. WILENCHIK: And, listen, I -- I want to say very clearly before you even go on. I'm glad I have the opportunity, actually.

This is not about Mr. Collins to me. I have nothing against Mr. Collins. I'm sure he does a great job for you. I've sat on boards myself, I understand the relationship; you have to have trust in him. I don't think he's out in a vendetta or anything like that, so.

There is none of that coming from me.

COMMISSIONER HOFFMAN: I'm glad you said that.

MR. WILENCHIK: And I -- absolutely. And I believe also your counsel is somebody of the highest integrity. So, as far as I'm concerned on my watch, that ain't going to happen, okay? If that helps you at all.

COMMISSIONER HOFFMAN: Well, that's helpful and
thank you for saying those comments. If, in fact, there are any problems with the way your side feels treated or -- or -- or the other side if -- if, you know, assuming people or representatives are here, you know, please bring it to attention of the Chair, and -- and -- I'd be certainly interested in that.

COMMISSIONER HOFFMAN: But -- but if there's not --

MR. WILENCHIK: I hear you.

COMMISSIONER HOFFMAN: -- let's -- let's -- let's tone it appropriately.

The -- all right. So, the -- the other thing I wanted to say is with regard to what we're looking at, as I understand it, and -- and I'd like your comments if you agree or disagree on that. There's -- even if somebody works 40 hours a day -- a week on State business, so one issue is if they're not getting the full services -- a particular person, whatever that is, an employee, if they're not providing their full services to the State because they're off volunteering, that's a problem, problem number one.

Problem number two, even if they're providing 40 hours a week of State service, if they're using State facilities for campaign purposes, that's a problem too.

I'm saying is --

COMMISSIONER HOFFMAN: Right.

COMMISSIONER HOFFMAN: Policies.

MR. WILENCHIK: -- official, he can't be running around making sure Ms. Beattie is filling out her time sheets correctly.

COMMISSIONER HOFFMAN: Right.

MR. WILENCHIK: That's all.

COMMISSIONER HOFFMAN: But if he hires her specifically to do --

MR WILENCHIK: Absolutely.

COMMISSIONER HOFFMAN: -- campaign business --

MR. WILENCHIK: Then that's quid pro quo.

COMMISSIONER HOFFMAN: -- you know, and pays her a State salary, then that's what you're talking about.

MR. WILENCHIK: That's quid pro quo. And what I'm saying is --

COMMISSIONER HOFFMAN: Right.
finding and -- that there were allegations that each of
those people did proscribed things with regard to working
on campaigns; and many of those responses were -- sort of
admit that the -- or not deny the allegation but merely
provide an explanation of some sort.
You're asking us to make a -- a finding of
reasonable cause that is a narrower scope than the --
MR. WILENCHIK: Yes.
COMMISSIONER HOFFMAN: -- than -- than this, and
-- and -- am I right?
MR. WILENCHIK: Yeah -- yes. Thank you. What
I'm saying is this: If you actually look at all the
allegations that Secretary of State made, I don't know
that Ms. Beattie actually made them but that can be
debated, but I don't read it that way. But taking a look
at what you just looked at, there is nothing that I could
find at least -- and I'm not, you know, when I say
nothing, there's always something that can come up and --
and -- and surprise me.
But there's nothing that I saw of any substance
that would support that Mr. Horne, first of all, should be
responsible for any of that; secondly, that they did
anything inappropriate that was specific; and third, the
reason why Mr. Horne gave you the 11 statements of these
people, which by the way we were going to have those

But what I'm saying is it may not be a problem
with Beattie's allegations. I repeat. But her
allegations do not establish probable cause in the
slightest degree for you to proceed right now against
Mr. Horne that somehow everybody else in that wing was
somehow doing something illegally at his instance, at his
knowledge, his condoning it, and -- or his wanting it
done.
And that you have no evidence at any time any
infraction was brought to his attention he didn't
absolutely say it's inappropriate. He did. In fact,
there's a statement, as I recall, from -- gosh, the names
are a little hard on me right now, but the technical guy
--
MR. RYAN: Garret Archer.
MR. WILENCHIK: Yeah. Thanks. Garret Archer.
Thank you. And I believe he affirmed, in fact, this very
point --
COMMISSIONER HOFFMAN: Well, listen. I don't
mean to say that you don't have any evidence or that these
issues are made up in my mind, they are not, but -- by the
way, I should have said starting with page 4.
But I'm -- I'm looking at this with respect to

Mr. Horne specifically and it says that, you know, just
some of the allegations, that Mr. Horne asked Ms. Beattie
to meet at Molina Fine Jewelry during work hours to
discuss a fundraiser.
MR. WILENCHIK: That was at a lunch hour.
COMMISSIONER HOFFMAN: I don't want to hear your
responses. I'm just -- the question is whether we have
enough to investigate Mr. Horne, his personal activities
as well, his -- as what he did himself as opposed -- it
says here that Ms. Beattie alleged Mr. Horne routinely
discussed the campaigns of opponents with executive office
staff during regular office hours or not lunch or breaks;
and Mr. Horne admits to that but refers to them as water
cooler.
There's the allegation that Horne -- that there
were weekly meetings held for business and including cam-
-- review of campaign events and he says they're just
scheduled.
MR. WILENCHIK: And Ms. Grisham would attest to
that.
COMMISSIONER HOFFMAN: Again, you know, Mr. Horne
discussed a proposed robocall during work hours; Mr. Horne
discussed a negative of Rotellini memo; Mr. Horne e-mailed
a memo about his achievements to two other employees.
Again, doesn't directly address them, but -- according to
1 the secretary, but responds that there is water cooler gossip.
2  
3 MR. WILENCHIK: No, that's just --
4 COMMISSIONER HOFFMAN: My point is -- my point is just that not that you don't have answers to all these things, but it seems like there's enough allegations there to make our -- our investigation -- to investigate all of these and see whether -- how much, you know, how much was done.
5  
6 There is also I believe the allegation, which I can't find right now, that -- that he actually made calls from his office using that mislabeled binder. So, you know --
7 COMMISSIONER HOFFMAN: There are a lot of allegations, which is what made it messy when Chairman brought that up and I didn't disagree. However, what we have done -- not me personally, but what has been done, is you have been given before this determination an opportunity of statements from every one of those people, to have explanations if you read them correctly --
8 COMMISSIONER HOFFMAN: Sure.
9 MR. WILENCHIK: -- about every one of those supposed hearsay allegations, which would only be hearsay.

Miller Certified Reporting, LLC

10 COMMISSIONER HOFFMAN: Well, okay.
11 MR. WILENCHIK: If I can just answer that quickly?
12 COMMISSIONER HOFFMAN: Yeah. We have. And the point I am getting to is simply this. I don't want to belabor it, but the point I'm getting to is a memo was -- or, excuse me, achievements were prepared in the office. I believe if I recall correctly, Ms. Winn and somebody else -- don't hold me to that, I think it was Ms. Winn primarily who was in charge at the time of being in charge of Ms. Beattie -- did I think state in one of those statements that I saw that it was prepared. But that's what they did, they were a community outreach and they had to go out and tell people the accomplishments of the office.
13  
14 You can argue, I suppose, that's political. But, you know, in fairness that's what they do. That's what anybody does in political office is go out and talk to people and tell them what they've done.
15 COMMISSIONER HOFFMAN: That may be permissible is what you're saying?
16 MR. WILENCHIK: Yeah. So, what I'm saying is you have to look at that and say: Is there evidence here to -- to raise the standard to get over the hump, if you will, of -- I'll use the term "probable cause," there may be another term that you use. To get over that hump based on what you have in front of you, not what's hypothetical, but you have statements of these people who have stated what they stated. Now, if you're going to conclude that those statements are just irrelevant, they're false, or we're just not going to take them into consideration because we don't believe them, I suppose you have the power to do that.
17 CHAIRPERSON RECKART: And just let me jump in.
18 We're not here, again, weighing the 11 versus the 1. We're deciding whether there's a reason to believe based on what has been said. I understand that there is a he said/she said element. I think Tom said that earlier. That's what we've got to get into.
19 You know, we're not here to resolve merits. I -- I hear all of what you're saying. I truly believe you're going to have a chance to make that argument --
20 COMMISSIONER HOFFMAN: Right.
21 CHAIRPERSON RECKART: -- to us at some point.
22 COMMISSIONER HOFFMAN: I haven't concluded that anybody's statement is -- is false.
23 MR. WILENCHIK: Okay. I guess I just wonder --
24 I'll leave it at this --
25 CHAIRPERSON RECKART: Yeah. Well, we are not --
MR. WILENCHIK: How do we --

CHAIRPERSON RECKART: It's just that we've --

we've -- I think, you know, at least the disposition from

what I'm hearing is -- there's not been a vote, is that we

believe we need to go in and find more out, okay? And

that's what we're going to do. I think one of the

questions I want to have executive session over is what is

the scope of that because I think you raise a decent

point. And we also have some other stuff related to

client privilege.

MR. WILENCHIK: Okay.

CHAIRPERSON RECKART: But I -- I mean -- and

just -- and not cut in on Commissioner Hoffman's --

COMMISSIONER HOFFMAN: I was substantially done.

CHAIRPERSON RECKART: Okay. But I -- I think we

aren't -- I -- I appreciate all you're saying and -- and

there is a lot to be said when 11 people come and they --

they say: This ain't the case --

MR. WILENCHIK: Right.

CHAIRPERSON RECKART: -- and that's something we

will weigh, I guess, as part of, I guess, the finder of

fact, if you will, at some point here as to what is the

truth and what happened.

And, you know, there's -- in my mind, just so you

know, there's a long way to go before we get to where Mr.

Mr. Wilenchik.

MR. WILENCHIK: The -- the Office of

Administrative Hearing stage. In other words, if you

conduct an investigation, which sounds like you're going

to do and that's fine and we'll cooperate, and -- I would

appreciate a more in-depth discussion and, you know, I

feel like I'm almost taking your time here and I don't

want to do that.

CHAIRPERSON RECKART: No, and I -- let me -- from

my own standpoint in terms of my own heart and conscience,

I want that.

MR. WILENCHIK: Okay. Great.

CHAIRPERSON RECKART: I can't make a decision on

this. There's enough messiness here that I can't make a

decision until I get my head into this a lot more.

MR. WILENCHIK: Okay. That's all I ask.

CHAIRPERSON RECKART: I mean, I've gotten -- I've

been through a lot of papers, but there's a lot more work

to do here.

MR. WILENCHIK: Okay.

CHAIRPERSON RECKART: And I think Mr. Collins

recognizes that. I mean, for my -- speaking for myself

only, I -- I can't make a decision based on what's before

me right now.

MR. WILENCHIK: Got it. I appreciate you raising

Miller Certified Reporting, LLC

MR. WILENCHIK: Before we get to a what

Miller Certified Reporting, LLC
Mr. Ryan, you -- you are here and I recall that you are Ms. Beattie's attorney. Did you have something you wanted to say?

MR. RYAN: Only briefly. I wanted to address the issue of the -- working on the 17 points of achievement as community outreach. Those also turned out to be the very same things that he put on his campaign website and all of his campaign literature, but that's for you to weigh down the road.

With respect to the argument now made about the concept of scope of the investigation and that, you know, you can't really expect Tom Horne to supervise his whole staff, I would bring this to the attention of the Commission. Mr. Horne is not a manager in a widget shop; he's a lawyer. He is monitored by the State Bar and under the duties of the State Bar of Arizona, and that means he's subject to the provisions of ER 5.3, which mandates that lawyers in an office -- and it includes the Attorney General of the State of Arizona -- have an obligation of oversight and supervision of anybody in that office that is assigned duties in that office, and it's very specific.

And I would point out specifically Comment 2, which requires someone like the Attorney General to specifically speak to somebody about when they're violating the law and violating their ethical duties and of Ethics, it's so that you don't violate the law, period. It's not just the Rules apply to these -- these things. It's not just the Rules of Ethics, it's so that you don't violate the law, period.

COMMISSIONER TITLA: What is the title?

MR. RYAN: It's ER 5.3. It's under --

COMMISSIONER TITLA: Sir, what was the ER again?

MR. RYAN: The -- the scope of the investigation that is suggested by -- or, recommended by your Executive Director Tom Collins.

COMMISSIONER HOFFMAN: It's ER 5.3. It's under --

COMMISSIONER TITLA: What is the title?

COMMISSIONER HOFFMAN: It is under Arizona Rules of Supreme Court, it is Rule 42 or -3. It is ER 5.3. And, specifically, the information you'll find is under Comment 2.

COMMISSIONER TITLA: And what was the subject matter of that?
the reference. All right, we're in executive session.

(Whereupon the public retires from the meeting room.)

(Whereupon the Commission is in executive session from 11:57 a.m. until 12:19 p.m.)

* * * * *

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

CHAIRPERSON RECKART: We're back in public session. Thank you for everyone's patience. We've gotten Mr. Kanefield's advice on some things.

All righty. I -- I think we have exhausted our desire to discuss this and would entertain any motions in regard to item agenda No. VI -- agenda item number. Said that backwards, Agenda Item No. VI.

Mr. Hoffman?

COMMISSIONER HOFFMAN: Mr. Chair, I'll --

Mr. Chair, thank you. I -- I'd like to move to find reason to believe that Mr. Horne and his campaign have violated the Act with regard to failure to report certain in-kind contributions, and that there's reason to believe that there's a violation of statutes over with -- over which the Commission has jurisdiction, to authorize

Miller Certified Reporting, LLC

legal advice pursuant to 38-431.03(A)(4).

Mr. Collins?

MR. COLLINS: Yeah. Chairman Reckart,

Commissioners, really briefly, this is -- was added at the very last minute, and I apologize for it coming late.

When the Petition for Review was filed, I think Joe just wanted to make sure that we could file an amicus brief as we have in the past in this case. If Joe had anything else he wanted to ask, he's not here. He has stepped outside for the moment, so...

We -- we under- -- I understand, Mr. Kanefield, you would like us to authorize -- you would like to ask the Commission if they would authorize you to -- to file an amicus brief at -- in -- in response to the Petition for Review in the CJF case or to have that option?

MR. KANEFIELD: Mr. Chair, members of the Commission, yeah, if that -- if you wouldn't mind, I would appreciate that authorization. As you know, we filed an amicus brief on behalf of the Commission when the case was at the Court of Appeals, which we think was helpful to the Court.

We'd also like to weigh in. This is an important issue for the Commission at the Supreme Court, urging the Court to deny review. And if I am correct with the timeline, I think that would put our resp- -- our amicus

Miller Certified Reporting, LLC

brief due around October 29th, pending on when the response is filed to the Petition to Review.

CHAIRPERSON RECKART: All righty. And really that's the scope of this agenda item?

MR. COLLINS: Yeah. That's it.

CHAIRPERSON RECKART: Okay. All righty. Well, let's -- let's move this along because I want to get back home. So is there -- are there any questions for him?

COMMISSIONER HOFFMAN: I have a question. Is --

I -- I just got handed the Petition earlier which I am appreciative of having. But the -- as I recall, the previous -- (beeping.)

I don't know if I did that. As I recall the --

MR. COLLINS: There's nothing we can do about it, I don't know.

COMMISSIONER HOFFMAN: Okay. Maybe it's telling me I'm talking too much.

As -- as I was -- as I recall, there was the issue of whether this was -- whether this was actually --

do you know what that is?

MS. THOMAS: I know. Somebody is trying to call this line.

COMMISSIONER HOFFMAN: I see. At least it's not me.

There was two issues in the case: Whether this
<table>
<thead>
<tr>
<th>114</th>
<th>115</th>
</tr>
</thead>
<tbody>
<tr>
<td>was actually express advocacy, this particular ad, and --</td>
<td>Okay. Well, we've come to the fun part -- oh. I'm sorry.</td>
</tr>
<tr>
<td>and the legal standards relating to whether the statute</td>
<td>MR. COLLINS: Almost.</td>
</tr>
<tr>
<td>was constitutional in effect. Are both of those issues</td>
<td>COMMISSIONER HOFFMAN: Yes, we have.</td>
</tr>
<tr>
<td>raised by the Petition?</td>
<td>CHAIRPERSON RECKART: We said one more thing. I</td>
</tr>
<tr>
<td>MR. KANEFIELD: Yes.</td>
<td>got -- yeah, those kind people over there have been so</td>
</tr>
<tr>
<td>COMMISSIONER HOFFMAN: Okay. That's all I needed</td>
<td>patient.</td>
</tr>
<tr>
<td>to know. Thank you.</td>
<td>Item No. VIII, discussion and possible action on</td>
</tr>
<tr>
<td>COMMISSIONER TITLA: Chairman, I make a motion.</td>
<td>Attorney General's office representation of Commission</td>
</tr>
<tr>
<td>CHAIRPERSON RECKART: Yes, sir.</td>
<td>Interagency Services Agreement between the Commission and</td>
</tr>
<tr>
<td>COMMISSIONER TITLA: To approve the filing of the</td>
<td>Attorney General's office. Mr. Collins and then I think</td>
</tr>
<tr>
<td>amicus by Mr. Kanefield.</td>
<td>we -- the Solicitor General is here.</td>
</tr>
<tr>
<td>Mr. Titla. Commissioner Titla has so moved. Is there a</td>
<td>MR. COLLINS: He is. And Chairman Reckart,</td>
</tr>
<tr>
<td>second?</td>
<td>Commissioners, really briefly, we've had this sort of</td>
</tr>
<tr>
<td>COMMISSIONER HOFFMAN: I second.</td>
<td>discussion about what we do going forward for the next</td>
</tr>
<tr>
<td>CHAIRPERSON RECKART: Okay. Thank you,</td>
<td>year. Mr. Ellman has a proposal for at least the short</td>
</tr>
<tr>
<td>Mr. Hoffman. We've moved and seconded to authorize</td>
<td>term, which I think is -- is reasonable. I don't want to</td>
</tr>
<tr>
<td>Mr. Kanefield to prepare an amicus brief in connection</td>
<td>get in the way of it. I want you guys to have the</td>
</tr>
<tr>
<td>with the Petition for Review with the Arizona -- in the</td>
<td>opportunity to discuss that with him.</td>
</tr>
<tr>
<td>case Arizona Secretary of State's office versus CJF.</td>
<td>The agenda item is set up for you to ask him</td>
</tr>
<tr>
<td>All those in favor, please indicate by saying</td>
<td>other questions. I think he and Ms. Bickett are here,</td>
</tr>
<tr>
<td>&quot;aye.&quot;</td>
<td>they're comfortable -- and Mr. Munns -- together they will</td>
</tr>
<tr>
<td>(Chorus of ayes.)</td>
<td>decide whether to recommend you go into executive session</td>
</tr>
<tr>
<td>CHAIRPERSON RECKART: It passes unanimously.</td>
<td>I think based on your questions.</td>
</tr>
<tr>
<td>Miller Certified Reporting, LLC</td>
<td>And I have nothing else to add other than to turn</td>
</tr>
<tr>
<td></td>
<td>it over to Rob, with your permission.</td>
</tr>
<tr>
<td></td>
<td>Miller Certified Reporting, LLC</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>116</th>
<th>117</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHAIRPERSON RECKART: Okay. And one thing I</td>
<td>sometimes privileged.</td>
</tr>
<tr>
<td>wanted to point out is during agenda Item No. VI,</td>
<td>CHAIRPERSON RECKART: Well, is it -- let me just</td>
</tr>
<tr>
<td>Mr. Munns was not -- he was in the public domain, not --</td>
<td>ask -- go ahead, Mr. Munns.</td>
</tr>
<tr>
<td>not up here in capacity as counsel. So, just to cover</td>
<td>MR. MUNNS: All right. And Mr. Chair, members of</td>
</tr>
<tr>
<td>you.</td>
<td>the Commission, if -- it does involve attorney/client</td>
</tr>
<tr>
<td>All right. Thank you.</td>
<td>privileged information.</td>
</tr>
<tr>
<td>COMMISSIONER HOFFMAN: One question. When is</td>
<td>CHAIRPERSON RECKART: Okay.</td>
</tr>
<tr>
<td>fiscal year '15 be, please?</td>
<td>MR. MUNNS: So if the Commission would like to</td>
</tr>
<tr>
<td>MR. COLLINS: Fiscal '15? We're in fiscal '15.</td>
<td>and would like to be able to speak fully and frankly about</td>
</tr>
<tr>
<td>COMMISSIONER HOFFMAN: Okay. So mid year to mid</td>
<td>confidential issues, that's available to you, but...</td>
</tr>
<tr>
<td>year?</td>
<td>CHAIRPERSON RECKART: Okay. Yeah, that was my</td>
</tr>
<tr>
<td>MR. COLLINS: Yes. That's right. The State</td>
<td>question, is this -- purpose of receiving legal advice and</td>
</tr>
<tr>
<td>calendar is mid year to mid year; our -- our budget</td>
<td>matters that may be privileged or subject to work product.</td>
</tr>
<tr>
<td>calendar runs January to January.</td>
<td>Okay. I'll entertain a motion to go into</td>
</tr>
<tr>
<td>COMMISSIONER HOFFMAN: Okay. Thank you.</td>
<td>public -- I mean, into executive session.</td>
</tr>
<tr>
<td>CHAIRPERSON RECKART: Please, sir.</td>
<td>COMMISSIONER TITLA: I motion, Chairman.</td>
</tr>
<tr>
<td>MR. ELLMAN: Thank you, Commissioner Reckart,</td>
<td>CHAIRPERSON RECKART: Okay. Mr. Titla has moved.</td>
</tr>
<tr>
<td>members of the Commission. Actually, I think we -- you</td>
<td>Thank you, sir.</td>
</tr>
<tr>
<td>may want to go into executive session for this. And</td>
<td>I'll second. Okay.</td>
</tr>
<tr>
<td>before I say anything more, I just wanted to know if -- if</td>
<td>COMMISSIONER HOFFMAN: Is there discussion on the</td>
</tr>
<tr>
<td>that's what you wanted to do. Otherwise, I'll -- I'll</td>
<td>motion?</td>
</tr>
<tr>
<td>just proceed.</td>
<td>CHAIRPERSON RECKART: No, no.</td>
</tr>
<tr>
<td>I don't -- I'm not going to go into the substance</td>
<td>All those in favor?</td>
</tr>
<tr>
<td>of the merits of any pending case, of course, but it</td>
<td>(Chorus of ayes.)</td>
</tr>
<tr>
<td>does -- it does concern representation generally, which is</td>
<td>Miller Certified Reporting, LLC</td>
</tr>
</tbody>
</table>
COMMISSIONER HOFFMAN: I vote nay.

CHAIRPERSON RECKART: Okay. Passes three/one.

We're in executive session. Thank you.

(Whereupon the public retires from the meeting room.)

(Whereupon the Commission is in executive session from 12:28 p.m. until 12:37 p.m.)

* * * *

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

CHAIRPERSON RECKART: Okay. We're back in public session. Now's the time for public comment. I don't think there's anybody here who wants to do it, so I'll entertain a motion to adjourn.

COMMISSIONER TITLA: Motion.

COMMISSIONER KOESTER: Second.

CHAIRPERSON RECKART: All right. Moved and seconded to adjourn the meeting. All those in favor?

(Chorus of ayes.)

CHAIRPERSON RECKART: It passed unanimously.

We're done. Thank you.

(Whereupon the proceeding concludes at 12:38 p.m.)

Miller Certified Reporting, LLC

I, Angela Furniss Miller, Certified Reporter, do hereby certify that the foregoing pages numbered 1 through 118, inclusive, constitute a full and accurate printed record of my stenographic notes taken at said time and place, all done to the best of my skill and ability.

DATED, at LITCHFIELD PARK, Arizona, this 16th day of September, 2014.

Angela Miller, RPR, CR

Certified Reporter (AZ50127)

Miller Certified Reporting, LLC