

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

2

1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 9:42 a.m. on September
 3 11, 2014, at the State of Arizona, Clean Elections
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,
 5 Arizona, in the presence of the following Board members:
 6
 7 Mr. Timothy Reckart, Chairperson
 8 Mr. Louis Hoffman
 9 Mr. Thomas J. Koester
 10 Mr. Steve Titla

11 OTHERS PRESENT:

12 Thomas M. Collins, Executive Director
 13 Paula Thomas, Executive Assistant
 14 Sara Larsen, Financial Affairs Coordinator
 15 Gina Roberts, Voter Education Manager
 16 Christopher Munns, Solicitor General's office
 17 Steve Clawson, Moses Anshell
 18 Jason Torchinsky, LFAF (Telephonic)
 19 Brian Bergin, LFAF
 20 Mike Liburdi, Snell & Wilmer
 21 Mary O'Grady, Osborn Maledon
 22 Joseph Kanefield, Ballard Spahr, LLP
 23 Howie Fisher, Associated Press
 24 Michael Becker, Governor's Office
 25 Nancy Read, Office of the Secretary of State
 Rob Ellman, Solicitor General's Office
 Paula Bickett, Solicitor General's Office
 Lisa Hauser, Gammage & Burnham
 Dennis Wilenchik, Wilenchik & Bartness
 Patricia Koester, Citizen
 Thomas Ryan, Law office of Thomas M. Ryan
 Jeremy Duda, Capitol Times
 Steve Lemon, New Times

Miller Certified Reporting, LLC

4

1 here. So, we have four, so we do have a quorum, but he
 2 will not be joining us either live or by telephone.

3 COMMISSIONER HOFFMAN: Mr. Chair, I move that we
 4 approve the minutes of the August 21st, 2014 meeting.

5 CHAIRPERSON RECKART: I have a motion for
 6 approval of the minutes. Is there a second?

7 COMMISSIONER TITLA: Chairman, second.

8 CHAIRPERSON RECKART: Okay. Mr. Titla, thank
 9 you. Mr. Hoffman, thank you. I will ask for a vote on
 10 it.

11 All those in favor of approving the minutes,
 12 please indicate by saying "aye."
 13 (Chorus of ayes.)

14 CHAIRPERSON RECKART: It carries unanimously.
 15 Thank you.

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

18 MR. COLLINS: Chairman Reckart, Members, I don't
 19 want to -- I know we have a lot of business on the agenda.
 20 I do want to just note that our general election debates
 21 have begun and that those are available on our YouTube
 22 channel. We are now providing closed captioning of videos
 23 for individuals that are hard of hearing.
 24 September 29th is the gubernatorial debate, which
 25

Miller Certified Reporting, LLC

3

P R O C E E D I N G

1 CHAIRPERSON RECKART: We'll call the
 2 September 11th, 2014, Clean Elections -- Arizona Citizens
 3 Clean Elections Commission meeting to order. Just to
 4 note, this is a day for us to remember with -- with great
 5 respect and sorrow for those that passed 13 years ago.
 6 Pursuant to A.R.S. 38-431.02, notice is hereby
 7 given to the Commissioners -- notice is hereby given that
 8 there will be -- this is a general public meeting of the
 9 Citizens Clean Elections Commission. We may vote to go
 10 into executive session, which will not be open to the
 11 public, for the purpose of obtaining legal advice on any
 12 item listed on the agenda, pursuant to A.R.S.
 13 4-38-431.03(A)(3).
 14 The Commission reserves the right at its
 15 discretion to address the agenda matters in an order
 16 different than outlined below in the agenda.
 17 Okay. With that, let's get moving. I apologize
 18 for my tardiness and thank you for your indulgence. I
 19 seem to always be overly optimistic on my ability to
 20 transverse the Tucson-Phoenix I-10 corridor.
 21 So with that, discussion and possible action on
 22 the Commission minutes of the August 21st, 2014, meeting.
 23 By the way, I note that Commissioner Laird is not
 24
 25

Miller Certified Reporting, LLC

5

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

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

21 CHAIRPERSON RECKART: Yeah. Congratulations,
 22 Sara.

23 MR. COLLINS: So, you can see the other
 24 information about voter education, the candidate statement
 25 pamphlet is going to press next week. We have worked to

Miller Certified Reporting, LLC

6

1 enhance that to ensure that we're covering the other
 2 materials that are out there. One of the things that
 3 we've talked about in the past is the fact that you have
 4 multiple voter education opportunities throughout the
 5 State. We have worked to ensure that the candidate
 6 statement pamphlet will include materials on how voters
 7 can find out about statewide ballot propositions and merit
 8 selection, which are things that are contained in a
 9 separate pamphlet, but that corresponds with time and
 10 mailing. So, we're -- we've -- we think that that's an
 11 additional -- additional material that helps make the
 12 candidate statement pamphlet a -- a better tool for
 13 voters.

14 I don't want to -- I guess I won't go over
 15 everything. That's -- that's the highlights. If anyone
 16 has any questions, I'm happy to take them.

17 CHAIRPERSON RECKART: Any questions for
 18 Mr. Collins?

19 COMMISSIONER TITLA: Mr. Chairman?

20 CHAIRPERSON RECKART: Yes, Commissioner Titla.

21 COMMISSIONER TITLA: Yeah. I'd like to express
 22 congratulations to Sara Larsen. Good job.

23 Mr. Collins, with regard to voter education
 24 outreach, remember last month we had a meeting on language
 25 issue.

Miller Certified Reporting, LLC

8

1 would be good for them to have this information.

2 I don't know with -- whether the information we
 3 have here reaches out there. It might appear in a small
 4 blurb in the news or in the paper, but -- but not to an
 5 extent where, you know, the citizens would know about this
 6 law and the area that we work on.

7 And then maybe some of the Indian Reservations.
 8 I speak Apache also, which is my first language. I'm
 9 fluent in that language. So, we could -- we could go into
 10 the Apache stations. In San Carlos Apache Reservation,
 11 they have a station called KYAY, K-Y-A-Y -- which is an
 12 Apache word, by the way. And, you know, they have open
 13 line there also where Apache-speaking people plus -- and
 14 other people can appear and give information to -- to
 15 Native Americans, whatnot. Apache has that, too.

16 And I know that one of the most population, the
 17 Native tribes in the state is Navajos, and they have that
 18 in Window Rock, Arizona also. So, I think that if we work
 19 more on this, I think that we can reach more and more
 20 citizens.

21 Although, I think you guys are doing a good job
 22 here, but we can -- I think there's room for improvement.
 23 Thank you.

24 MR. COLLINS: Mr. --

25 CHAIRPERSON RECKART: Please. Please.

Miller Certified Reporting, LLC

7

1 MR. COLLINS: Yes, sir.

2 COMMISSIONER TITLA: And I wonder if there was
 3 any follow up on that. And I would like to recommend
 4 that, you know, we go to some radio stations in our area.
 5 And maybe the rest of the Commissioners can do that within
 6 their respective areas.

7 MR. COLLINS: Sure.

8 COMMISSIONER TITLA: But I'm from Eastern
 9 Arizona, and I know that in Globe, Arizona, they have a
 10 radio station called KIKO, K-I-K-O. I don't know the
 11 numbers right offhand.

12 But on that station, they have a program called
 13 "Open Line," where different people appear for an hour, I
 14 think, and the -- they're interviewed about certain areas
 15 of interest to the public and the State. And I think that
 16 would be a good time for you and maybe I or anybody else
 17 that wants to come, to appear on that program and let the
 18 people know in Eastern Arizona about our program, the
 19 Clean Elections Commission. Because I think that this is
 20 very important information that should get out to the
 21 general public in all areas of the State.

22 And then I think that in Safford, Arizona, that
 23 would be another good area to do it, in Safford, because
 24 it's way out in Eastern Arizona. They have a sizable
 25 population over there of people, citizens, and I think it

Miller Certified Reporting, LLC

9

1 MR. COLLINS: Mr. Chairman, Commissioner Titla.
 2 Gina can give you an update about the progress on
 3 precisely those issues. And I think there is some, but it
 4 probably would be better do it at another -- I think we'd
 5 probably do it at another -- another time that you guys
 6 can coordinate getting that information.

7 CHAIRPERSON RECKART: Okay. And perhaps we --
 8 Commissioner Titla, you could do it, I know because we're
 9 getting into the election season, I don't want to be
 10 waiting the month. I think the -- the issue here is the
 11 urgency of it to get things moving, in light of the
 12 election coming up in less than two months now.

13 MR. COLLINS: And I think -- yeah. I think
 14 that -- I think Gina will be able to provide -- we can
 15 provide to the Commission in an -- after this meeting via
 16 e-mail or whatever, an update on where we are with
 17 progress -- progress is being made and -- and -- on
 18 those -- those particular issues and without getting
 19 beyond the -- what's actually in this report, I -- that
 20 we'll do that.

21 CHAIRPERSON RECKART: Okay. Great. Thank you.

22 COMMISSIONER HOFFMAN: Mr. Chair, Mr. Collins,
 23 would you copy all of us Commissioners?

24 MR. COLLINS: Yeah. Yes, that's no problem.

25 COMMISSIONER HOFFMAN: Thank you.

Miller Certified Reporting, LLC

10

1 CHAIRPERSON RECKART: All righty. Any other
 2 questions for Mr. Collins?
 3 Okay. There being none, let's go to item --
 4 Agenda Item No. IV, discussion and possible action on MUR
 5 14-007, Legacy Foundation Action Fund. I understand that
 6 Mr. Torchinsky is on the phone. Sir, is that -- are you
 7 still there?
 8 MR. TORCHINSKY: Yes, I'm still here.
 9 CHAIRPERSON RECKART: Okay. Thank you.
 10 MR. TORCHINSKY: Thank you again for letting me
 11 appear by telephone.
 12 CHAIRPERSON RECKART: Yeah, our pleasure.
 13 Mr. Collins, if you would introduce it, please.
 14 MR. COLLINS: Yes. Thank you, Commissioners.
 15 This is a follow-up on the last -- I guess want to say the
 16 last two agenda items. We have been working through a
 17 complaint that was filed respecting an advertisement in
 18 the Republican gubernatorial primary. That matter has --
 19 has essentially two components, as the agenda indicates.
 20 There is a -- the complaint and addressing whether or not
 21 there is reason to believe a violation has occurred; and
 22 then there is a lawsuit that's been filed by the Legacy
 23 Foundation Action Fund, which Ms. O'Grady -- Ms. O'Grady
 24 is serving as counsel for -- essentially both purposes,
 25 she's here.

Miller Certified Reporting, LLC

12

1 be aware of that.
 2 My own view is that that doesn't factor
 3 significantly in at this point because there's no reason
 4 to believe that the -- that the Supreme Court will take
 5 review on that, but -- but that is -- that is also
 6 information that I thought I would share. And I don't
 7 think I have anything else unless -- I mean, unless you
 8 want to talk about the express advocacy issue or jump into
 9 it, however you want to...
 10 CHAIRPERSON RECKART: Just before Mr. Torchinsky
 11 is given the floor. Again, just where we are
 12 procedurally --
 13 MR. COLLINS: Sure.
 14 CHAIRPERSON RECKART: -- and I think this is
 15 relevant both here and for the Horne matter, is what we
 16 are looking at is a reason-to-believe standard. We -- we
 17 are not making finding of fact; we are not making
 18 conclusions of law; we are not doing any definitive
 19 administrative action with respect to the -- the matter
 20 before us, MUR 14-007. What we are simply doing is
 21 deciding whether or not, given the facts as you've put
 22 them, if they are uncontroverted -- as you put them in the
 23 report, Mr. Collins, if they are uncontroverted, does that
 24 give us a reason to believe that a violation of the
 25 statute has occurred. And that's all we're doing.

Miller Certified Reporting, LLC

11

1 The thought I had today was to essentially
 2 have -- the -- the Committee for Justice and Fairness case
 3 having been decided, to look at the recommendation that
 4 we'd made, which I had previously indicated I believed
 5 that the -- under the legal standard, that this was
 6 express advocacy, evaluate that in view of the CJE case
 7 and the supplemental materials that were provided by -- by
 8 Mr. Torchinsky and Mr. Bergin, and then -- and then decide
 9 whether or not to move ahead with that.
 10 That's -- so, that's the substance of the memo
 11 that's in front of you, which is my assessment of the --
 12 how the CJE case works within this framework, what it
 13 says, and whether or not that changes the prior
 14 recommendation that I made as far as express advocacy.
 15 And then -- because in my view it does not, I would
 16 recommend moving ahead to -- to a reason-to-believe stage.
 17 The thought I would -- well, I think that
 18 that's -- that kind of leaves things.
 19 I will men- -- I will mention -- I should
 20 mention, late this week or maybe -- maybe it was -- well,
 21 not -- I guess we are late this week. Earlier this week
 22 we learned that -- that the Committee for Justice and
 23 Fairness did, in fact, file a petition for review with the
 24 Arizona Supreme Court that I think -- I want to say was
 25 filed on Tuesday. I have a copy of it. You -- you should

Miller Certified Reporting, LLC

13

1 And that would then trigger an investigation into
 2 further matters to do further fact finding that would then
 3 be presented to the Commission for its own decision with
 4 regard to whether or not -- what those facts are and what
 5 the violations are, but we are not at the point of making
 6 a final determination. Is that a fair statement?
 7 MR. COLLINS: I think -- I think the -- I think
 8 it depends. I mean, I would -- the only -- and I don't --
 9 the only -- I think that's correct. I think the question
 10 of -- I think the word "uncontroverted" is not quite
 11 exactly what -- what we mean. I think the question is
 12 what's the evidentiary standard that's hit here. It's not
 13 an issue whether or not it's controverted; it's an issue
 14 whether or not there's a reason to believe.
 15 But that's a -- that's something that Mary is
 16 here to -- can advise on, and then subsequently Joe can
 17 advise on the evidentiary standard, but I believe
 18 that's -- I think that's roughly correct.
 19 And I think that I would just amplify in that
 20 context that the rules that we have themselves say that --
 21 that a reason to believe is not an appealable agency
 22 action. So, it's -- it's -- it's -- it's, in fact, the
 23 case that the rules, by their very terms, mean that this
 24 is not a final determination. And -- and so, you know, I
 25 think that's -- so I think that's right.

Miller Certified Reporting, LLC

14

1 CHAIRPERSON RECKART: Okay.

2 MR. COLLINS: And I -- and Mary is available to

3 talk about the evidentiary standard, frankly, if -- if

4 that's something that you would like more -- more detail

5 on.

6 CHAIRPERSON RECKART: I think there's --

7 MR. COLLINS: Or to correct me if I've stated it

8 in any way that it is going to cause anything down the...

9 CHAIRPERSON RECKART: Okay. Commissioner

10 Hoffman, you had a comment?

11 COMMISSIONER HOFFMAN: Yeah, I -- Mr. Chairman, I

12 was going to analogize it to an indictment stage. It may

13 be controverted, but if there's sufficient evidence to

14 proceed, then we continue with the investigation and have

15 a 14-day period to make a finding.

16 MR. COLLINS: If -- if -- if I may -- can make

17 one other observation here for the -- for the record. As

18 is indicated in my -- in this -- in the administrative

19 record for this matter, the question of what that

20 investigation is, that investigation is not an inquiry

21 into the subjective intent of the people who put together

22 this ad. Okay? So, I just want -- I want to be clear

23 about that. That -- not that -- what an investigation is

24 depends upon what the -- what the factual issues you need

25 to make the legal determination here.

Miller Certified Reporting, LLC

16

1 Commissioner Titla, do you have any questions?

2 COMMISSIONER KOESTER: No.

3 CHAIRPERSON RECKART: No? Okay.

4 Mr. Torchinsky, did you want to say something,

5 sir?

6 MR. TORCHINSKY: Yes. I think the only thing I

7 would like to do is just briefly respond to Mr. Collins'

8 recommendation here. I still think that Mr. Collins is

9 misreading the Committee for Justice and Fairness decision

10 from the Court.

11 And I, again, point out to the Commission that

12 this ad was aired more than 120 days out from the

13 Republican primary, which takes it outside of the

14 Wisconsin Right to Life's mandatory bright-line time

15 period; and it's well outside the time periods that the

16 appeals court would review the Committee for Justice and

17 Fairness, and I think that it has to be an overriding

18 factor -- or, an overwhelming factor in determining

19 whether this ad, which didn't contain any words of express

20 advocacy, constitutes express advocacy.

21 It's -- it's almost like exactly -- as Chief

22 Justice Roberts said in Wisconsin Right to Life, it's

23 almost like Mr. Collins is suggesting here that the less

24 the ad looks like an express advocacy ad, the more it must

25 be an express advocacy ad.

Miller Certified Reporting, LLC

15

1 So, I just -- I also want to make clear on the

2 record, which is also in the all of the written materials

3 that -- that have -- that have been presented thus far,

4 that the evidentiary issue is not the subjective intent of

5 the people who -- who frame this ad.

6 COMMISSIONER RECKART: Okay.

7 COMMISSIONER HOFFMAN: So, Mr. Chair,

8 Mr. Collins, you would be looking into such issues as

9 whether the ad presented the candidate in a favorable or

10 unfavorable light and --

11 MR. COLLINS: I think --

12 COMMISSIONER HOFFMAN: -- and how it was

13 targeted, and whether the -- what the placement and timing

14 was, and whether an -- what the content in the ad was?

15 MR. COLLINS: We would be -- we would be

16 conducting that, but -- and -- and -- and then we -- and

17 then ultimately what the amount of the purchase was and --

18 and -- and where it ran. And other ads.

19 COMMISSIONER HOFFMAN: Thank you.

20 MR. COLLINS: If there were other ads that --

21 that -- that were along those lines. But -- but I think

22 that that's -- I think that that's fair.

23 COMMISSIONER HOFFMAN: Thank you, Mr. Chair.

24 Thank you, Mr. Collins.

25 CHAIRPERSON RECKART: Commissioner Koester,

Miller Certified Reporting, LLC

17

1 I point you back to Justice Roberts' quote where

2 he says the "heads I win, tails you lose" argument cannot

3 be correct.

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

5 CHAIRPERSON RECKART: Okay.

6 COMMISSIONER HOFFMAN: Mr. --

7 CHAIRPERSON RECKART: Thank you.

8 Yes, Mr. Hoffman.

9 COMMISSIONER HOFFMAN: Mr. Chair.

10 Mr. Torchinsky, could you explain that bit more clearly,

11 the "heads I win, tails you lose" thing?

12 MR. TORCHINSKY: Sure. The -- in Wisconsin Right

13 to Life, the FEC was essentially arguing that the more the

14 ad -- that they were adding -- they were arguing that the

15 ad was so clever and so artfully avoided magic words, that

16 it therefore had to be express advocacy, and they had

17 expert testimony analyzing the ad. And the Supreme Court

18 said: This can't be; the ad itself either has another

19 reasonable meaning other than to vote or for or against,

20 or it doesn't.

21 It can't possibly be that you need someone with a

22 Ph.D. to come in and analyze, you know, how the ad

23 secretly urges someone to vote for or against a candidate

24 in an election. And by the way, in this case, it is

25 120 days out from -- or more -- out from when the ad

Miller Certified Reporting, LLC

18

1 aired.

2 And Chief Justice Roberts said this standard just

3 can't possibly be. In other words, Justice Roberts said,

4 what the FEC is urging here is essentially something that

5 said: The less an ad looks like an express advocacy ad,

6 the more it must be express advocacy, and Chief Justice

7 Roberts said that cannot stand.

8 And I also, once again, want you to -- you know,

9 even the standards that the Chief set out in Wisconsin

10 Right to Life, he also said -- and this is subject to the

11 bright-line standard of the electioneering communications

12 statute which is: Broadcast ads, 30 days before primary,

13 and 60 days before general. And I point you back to the

14 fact that this ad was aired 120 days out from the election

15 while Mr. Smith was still the incumbent mayor.

16 COMMISSIONER HOFFMAN: Mr. Torchinsky, I am going

17 to ask you a question about the -- with the Chair's

18 permission, about the time period later. But how do you

19 think Mr. Collins' analysis is parallel to what the FEC

20 did?

21 MR. TORCHINSKY: I think Mr. Collins' analy- -- I

22 mean, first of all, the FEC ads were run close in time to

23 the election; this ad was not. And I think that is a

24 signi- -- probably the most significant distinction

25 between --

Miller Certified Reporting, LLC

20

1 MR. TORCHINSKY: I mean --

2 COMMISSIONER HOFFMAN: No. I appreciate it.

3 That's -- that's helpful in -- in analyzing the -- the

4 issue that has to be raised. And I guess in the

5 investigation, assuming we vote to proceed, you know, we

6 can try to have Mr. Collins clarify the particular

7 characteristics that make this ad different from

8 permissible commentary ads.

9 Let me ask you about the timing. Are you saying

10 that the -- because the ad is longer than a certain

11 period, it's -- it's like a bright-line thing, it can't be

12 express advocacy? Or, are you saying that this is a

13 factor that -- that we ought to consider?

14 MR. TORCHINSKY: I'm saying that in an ad -- in

15 an advertisement that doesn't contain express words or

16 even identify somebody as a candidate, the -- the timing

17 of the ad, how far out from the election, the fact that it

18 identifies the issues, really needs to be considered.

19 There were no --

20 COMMISSIONER HOFFMAN: Considered as a factor?

21 MR. TORCHINSKY: If we aired an ad in April that

22 said: "Defeat Mayor Smith in the upcoming election," I

23 have no doubt that outside the 30-/60-day windows, you

24 could reasonably conclude that that was an express

25 advocacy advertisement.

Miller Certified Reporting, LLC

19

1 COMMISSIONER HOFFMAN: I'll come back to the --

2 MR. TORCHINSKY: -- Mr. Collins' analysis and --

3 COMMISSIONER HOFFMAN: I'll come back to the --

4 I'm going to come back to the timing -- I'm going to give

5 you a chance to talk about timing in a second.

6 Just -- but how is Mr. Collins doing a, you know,

7 heads-I-win-tails-you-lose kind of analysis here? That's

8 what I'm having trouble understanding.

9 MR. TORCHINSKY: Because what he's saying is

10 120 days out from the election, you couldn't have aired an

11 ad that spoke to Mr. Smith's policy position in an

12 organization he was part of because he was mayor, that --

13 that wouldn't be express advocacy because, depending on --

14 because you criticized him, it must be express advocacy is

15 essentially what Mr. Collins is saying.

16 COMMISSIONER HOFFMAN: You think -- do you think

17 he's saying that in ever- -- for any ad in any time

18 period?

19 MR. TORCHINSKY: I think he's coming pretty close

20 to saying: Once someone is a candidate, if you air

21 advertisements criticizing them after they've declared

22 themselves a candidate, it's going to be really tough to

23 air an ad that doesn't meet the standard that Mr. Collins

24 has -- has laid out for express advocacy.

25 COMMISSIONER HOFFMAN: Okay. Well, thank you.

Miller Certified Reporting, LLC

21

1 COMMISSIONER HOFFMAN: Okay. So --

2 MR. TORCHINSKY: That's not what happened.

3 COMMISSIONER HOFFMAN: So, just -- just to

4 clarify, you view it as a particularly important factor?

5 MR. TORCHINSKY: Exactly.

6 COMMISSIONER HOFFMAN: Okay.

7 MR. TORCHINSKY: I would point you to the

8 language in footnote 7 in Wisconsin Right to Life where

9 the Chief Justice said this is subject to the bright-line

10 rule in Section 203 in BCRA, which was that it had to be

11 broadcast ad within 30 days from the primary or 60 days

12 from the general.

13 So, the Court viewed it as kind of -- I mean, the

14 Court viewed it as a bright-line rule. I'm telling you I

15 think it's probably going to be a factor, but I'm telling

16 you the Supreme Court said it's a bright-line rule for ads

17 that don't include express advocacy.

18 COMMISSIONER HOFFMAN: Okay. You're --

19 MR. TORCHINSKY: I'm sorry. For ads that don't

20 use magic words, express advocacy.

21 COMMISSIONER HOFFMAN: Yeah, you're -- that's the

22 original comment that kind of confused me about it,

23 because you're talking about this bright-line comment by

24 the Supreme Court and then yet referring to this as a

25 factor. But it -- for purposes of our analysis, you're

Miller Certified Reporting, LLC

22

1 satisfied that it's a factor and you believe an important
 2 one?
 3 MR. TORCHINSKY: I would have to say yes,
 4 incredibly important.
 5 COMMISSIONER HOFFMAN: Okay. Thank you,
 6 Mr. Torchinsky. Thank you, Mr. Chair.
 7 CHAIRPERSON RECKART: Any other questions?
 8 Yes, Commissioner Koester.
 9 COMMISSIONER KOESTER: For Mr. Torchinsky again.
 10 If we take sort of your side, we'll say, and say it isn't
 11 express advocacy but there was in an ad run in a time
 12 period, I guess what I would like to hear you say is what
 13 was the purpose of the ad? Was it to remove him as mayor,
 14 although he was going to quit like a week later? Was it
 15 to criticize his stance as the president of the Mayors
 16 Conference, what happened eight or nine months previous?
 17 I just want to understand, if it wasn't to
 18 degrade his efforts as running for Governor, what was the
 19 purpose of the ad? It's still unclear to me. Why was
 20 that ad run at all?
 21 MR. TORCHINSKY: I think the text of the ad
 22 speaks for itself; and I, again, point you back to
 23 Wisconsin Right to Life. You're again attempting to
 24 engage in the subjective analysis of why -- you know,
 25 subjective analysis of intent as to why an ad was run when
 Miller Certified Reporting, LLC

24

1 MR. TORCHINSKY: I think the ad itself was
 2 calling -- I mean, the ad itself by its own terms was
 3 calling on Mayor Smith to adopt policies for the National
 4 Conference of Mayors that were more conservative than the
 5 positions that -- that he allowed to be adopted by the
 6 National Conference of Mayors during his tenure of
 7 president. I think that -- I think the text of the ad
 8 speaks for itself.
 9 And they were clearly -- I mean, the ad didn't
 10 refer to -- I mean, Mr. Collins' position here is that
 11 there is no other reasonable interpretation of the ad.
 12 The ad itself didn't reference the election, didn't
 13 mention that Mayor Smith was a candidate, didn't talk
 14 about -- you know, didn't talk about electoral voting. I
 15 mean, there was nothing in that ad that even suggested
 16 that anybody do anything with respect to the election.
 17 It's even -- it didn't even identify the mayor as
 18 a Republican or Democrat.
 19 COMMISSIONER TITLA: Chairman?
 20 CHAIRPERSON RECKART: Yes, sir. Mr. Titla.
 21 COMMISSIONER TITLA: I think that we watched the
 22 ads here on the screen a couple months ago. To refresh my
 23 memory, I wonder if we -- I would like to request that we
 24 watch it again if possible.
 25 MR. COLLINS: We can -- if -- with the
 Miller Certified Reporting, LLC

23

1 you have the ad in front of you. And the Supreme Court
 2 said you're really supposed to look at the ad itself and
 3 not inquire as to the subjective intent.
 4 I mean, you know, a number of people were
 5 probably involved in the production of that ad. Each
 6 person might have had a different thought in their head.
 7 So, how do you get to one particular overriding intent? I
 8 don't know how you would do that without a massive
 9 investigation that included depositions of everybody
 10 involved in producing the ad, financing the ad, editing
 11 the ad.
 12 I mean, you're -- you're asking me to tell you
 13 what the subjective intent is of what was probably a --
 14 quite a number of people, and I don't know that I'm in a
 15 position to do that or that you would have the authority
 16 to inquire.
 17 COMMISSIONER HOFFMAN: What is the -- to ask
 18 Mr. -- Mr. Koester's question a different way, Mr. Chair,
 19 Mr. Torchinsky, what would you say you would like us to
 20 consider as the alternative meaning of the ad?
 21 In other words, we have no reasonable mean- -- no
 22 reasonable meaning other than to advocate election. What
 23 are the reasonable meanings other that you would like us
 24 to consider during the -- either the current hearing or
 25 the -- the investigation?
 Miller Certified Reporting, LLC

25

1 Chairman's --
 2 CHAIRPERSON RECKART: Do you have them?
 3 MR. COLLINS: We can -- yeah, we can get them.
 4 CHAIRPERSON RECKART: Okay. Let's do it.
 5 COMMISSIONER HOFFMAN: While we're waiting,
 6 Mr. Chair, I would like to re- -- to request that staff
 7 send a copy of the Petition for Review that was filed on
 8 the CJE case, to circulate it to the Commissioners.
 9 CHAIRPERSON RECKART: You mean the Court of
 10 Appeals?
 11 COMMISSIONER HOFFMAN: The Petition for Review of
 12 the Court of Appeals' decision, yeah.
 13 CHAIRPERSON RECKART: Right. Okay.
 14 COMMISSIONER HOFFMAN: I don't know -- I don't
 15 know if staff heard that.
 16 CHAIRPERSON RECKART: Yeah, I was just -- I was
 17 just looking to see. Paula, did you catch that? Yeah?
 18 Okay. Thanks.
 19 MR. COLLINS: There's staff everywhere.
 20 (Brief silence.)
 21 MR. TORCHINSKY: While we're waiting, can I ask
 22 to make one other -- can I ask to make one other point?
 23 CHAIRPERSON RECKART: Sure. Please. Go ahead.
 24 MR. TORCHINSKY: -941 Sub (D), exempts from --
 25 exempts from reporting with the Clean Elections Commission
 Miller Certified Reporting, LLC

26

1 any ads that were done in compliance with the section in
 2 -901 that requires reporting of independent expenditure
 3 ads, and the Secretary of State's office concluded that
 4 this wasn't express advocacy.
 5 So, you know, what we're really saying to
 6 anybody that -- if the Commission goes forward and says:
 7 This is express advocacy, what the Commission is really
 8 doing is setting up the situation where every ad to get
 9 there if somebody makes a complaint, is going to be
 10 subject to two independent determinations about whether an
 11 ad was an express advocacy ad or not. And, you know, we
 12 already have a case here where the Secretary of State's
 13 office, you know, in -- with the Maricopa County sort of
 14 substituting for them, concluded that this was not an
 15 express advocacy ad, and ads that are done in compliance
 16 with the express advocacy, you know, rules and reporting
 17 are not subject to disclosure with the -- with the
 18 Commission.
 19 MR. COLLINS: Mr. -- Mr. Chairman?
 20 CHAIRPERSON RECKART: Yes, sir.
 21 MR. COLLINS: I -- this is not going -- it's
 22 on -- assuming the ad is still on YouTube, it's there.
 23 I'm not going to be able --
 24 CHAIRPERSON RECKART: Okay. Let's not hold up
 25 the meeting more. We'll have a chance I'm sure,
 Miller Certified Reporting, LLC

28

1 Justice Roberts said about what was subject to an
 2 objective inter- -- overview, and this is specific to
 3 that.
 4 And then lastly, you know, with respect to the
 5 last point that -- that -- that -- that Mr. Torchinsky
 6 made. In the original recommendation I detailed,
 7 notwithstanding what Maricopa County Elections did, we
 8 don't know what the authority they did that under is. We
 9 don't -- and -- and -- and we know that it was referred by
 10 the Secretary of State, but -- but there -- but I don't
 11 know what the authority for that referral was, so it's not
 12 clear to us what the basis for that decision was.
 13 And then the second point is that -- that
 14 16-941(D), does in fact say that: Notwithstanding any
 15 other law, a person who makes independent expenditure over
 16 the threshold must make report unless some other
 17 circumstances apply. But, you know, there's no --
 18 that's -- that's -- you know, that is a question of what
 19 the compliance is. And determining compliance with
 20 16-941(D) is always and has to be inherently, under the
 21 Clean Elections Act, a question for the Clean Elections
 22 Commission to make. And I think that that -- that point,
 23 in effect, when the Commission previously determined it
 24 had jurisdiction over this complaint, has already -- is
 25 already subsumed in -- in -- in this determination.
 Miller Certified Reporting, LLC

27

1 Commissioner Titla, to look at it later.
 2 And -- and, again, I want to emphasize what we're
 3 looking at here is a reason to believe whether or not an
 4 investigation should commence. We aren't making a final
 5 decision and --
 6 MR. COLLINS: Can I have one --
 7 CHAIRPERSON RECKART: Sure, Mr. Collins.
 8 MR. COLLINS: I think there is just -- and I
 9 don't want to necessarily -- with the Commission's
 10 indulgence, I just -- there are three legal points I think
 11 I need to briefly make in response to Mr. Torchinsky.
 12 First, the Wisconsin Right to Life case involves
 13 an absolute ban on corporate communications that met --
 14 that -- under -- under the BCRA. There is nothing in our
 15 statute that suggests that this is -- this is a disclosure
 16 issue. So, the analogy of WRL on its face is simply
 17 not -- it's not as persuasive as -- as -- as -- one would
 18 say.
 19 CHAIRPERSON RECKART: As I recall from your memo,
 20 what we're talking about is a very lower standard because
 21 it's disclosure, not one in which it's a ban on speech
 22 altogether.
 23 MR. COLLINS: And then -- and then -- and then
 24 related to that, I think we've laid out the objective
 25 factors, we've -- we've -- we've specifically cited what
 Miller Certified Reporting, LLC

29

1 So, I think that -- I think that taken together,
 2 I would just make those three -- those three points.
 3 CHAIRPERSON RECKART: And I think to second the
 4 last point is that I -- I mean, we've heard a lot about
 5 being subject to two masters with regard to this, one
 6 being the Secretary of State and the other being us in a
 7 lot of context, this being one.
 8 But I was just looking at the statute and, again,
 9 16-941 was expressly within the Clean Elections statute,
 10 clearly within our jurisdiction. So, I'm not -- I'm not
 11 that concerned about there being a, quote, type of "double
 12 jeopardy" here on that.
 13 Yes, Mr. -- Mr. Hoffman?
 14 COMMISSIONER HOFFMAN: Mr. Chair, I -- I wanted
 15 to ask Mr. Collins if as part of the investigation,
 16 assuming again that we pass this motion, that he inquire
 17 of the Maricopa County officials who made a determination
 18 that it was not express advocacy and find out what the
 19 stated reasoning was so that that can be taken into
 20 consideration.
 21 MR. COLLINS: That's -- I don't see --
 22 Mr. Chairman, Commissioner Hoffman, I don't see any reason
 23 why I couldn't do that.
 24 CHAIRPERSON RECKART: Okay. All right. I think
 25 we've discussed this plenty. Everybody has had their say.
 Miller Certified Reporting, LLC

30

1 I would like to invite a motion with regard to the
 2 recommendation of the Executive Director.
 3 COMMISSIONER HOFFMAN: I would like to move, in
 4 MUR 14-007, Legacy Foundation Action Fund, that we find
 5 reason to believe that a violation of statute or rule over
 6 which the Commission has jurisdiction has occurred and
 7 that -- authorize Mr. Collins to conduct an administration
 8 [sic] pursuant to our rules.
 9 CHAIRPERSON RECKART: Okay. Do I have a second?
 10 COMMISSIONER TITLA: Chairman, I second the
 11 motion.
 12 CHAIRPERSON RECKART: Okay. Thank you,
 13 Mr. Titla. Thank you, Mr. Hoffman. It's been moved and
 14 seconded. Is there any further discussion among the
 15 Commission?
 16 COMMISSIONER HOFFMAN: I wanted to ask
 17 Mr. Collins, Mr. Chair, if we needed anything specific
 18 with regard to a subpoena or is there --
 19 MR. COLLINS: I think -- if that were necessary,
 20 the way the rules are set up, is at this point it would be
 21 up to -- well, I think it would be up to my judgment
 22 whether or not anything would issue and with respect to --
 23 so, no additional language to the motion, no.
 24 COMMISSIONER HOFFMAN: Okay. Thank you.
 25 CHAIRPERSON RECKART: Okay. All righty. Then,
 Miller Certified Reporting, LLC

32

1 At our last meeting, I described to you some of what has
 2 been occurring with respect to independent expenditure
 3 reporting in the State of Arizona with respect to
 4 corporate entities making filings. And what -- what I
 5 said that I would do would be -- what we needed to do is
 6 take a step back and look at where we were in view of
 7 precisely the issue -- well, not -- in view of the issues
 8 related to where the Secretary of State is to make sure
 9 that we move forward in a manner that's -- that's
 10 effective.
 11 That review, for the short term, resulted in the
 12 -- looking at the rules. I want to do the PowerPoint. I
 13 will try to move it through it just as quickly as humanly
 14 possible just to ground things a little bit, if that's
 15 okay. I'll try to move as quickly as --
 16 CHAIRPERSON RECKART: Yes. Please, yes.
 17 MR. COLLINS: Okay. So we're going to talk a
 18 little bit about the history of independent expenditure
 19 reports, the current status enforcement, the Clean
 20 Elections rules, and the recommendation that I made.
 21 We're talking first about the Clean Elections Act
 22 reports, 16-941(D) and 16-958. These reports were added
 23 by voters in 1998 in the Clean Elections Act and they
 24 established more timely reporting of expenditures above a
 25 threshold set by the Act. And the rules require the
 Miller Certified Reporting, LLC

31

1 there being no further discussion, we'll call for a vote.
 2 All those in favor of the motion as seconded, please
 3 indicate by saying "aye."
 4 (Chorus of ayes.)
 5
 6 CHAIRPERSON RECKART: The motion carries
 7 unanimously.
 8 Thank you, Mr. Torchinsky. Thank you,
 9 Mr. Collins.
 10 MR. TORCHINSKY: Thank you.
 11 CHAIRPERSON RECKART: Bye-bye.
 12 Item -- (coughing) -- excuse me. I apologize for
 13 the coughs. I had a flu with a capital "F" and it has not
 14 left me yet.
 15 Item V, discussion and possible action on
 16 independent expenditure reporting activities, political
 17 committees, and other entities. We will be looking
 18 at Rule R2-20-109 and related amendments.
 19 Mr. Collins, if you would, please introduce it.
 20 MR. COLLINS: Yeah. And I will try to move
 21 through this quickly, as quickly as I can. I know there's
 22 other -- other issues.
 23 What I -- to -- to kick this off, we do have a
 24 PowerPoint that we're going to try to get back now. But
 25 to just kind of give you a sense of what this is about.
 Miller Certified Reporting, LLC

33

1 reports of all persons, so the Commission rules made clear
 2 and the statute itself says this, but that "persons"
 3 included corporations and membership organizations.
 4 So, at that time -- and this is in 1998 -- even
 5 if no statute authorized corporate and Union independent
 6 expenditures, they would have had to have been reported to
 7 the Clean Elections Commission if they had been made.
 8 And there -- and -- and I should be very clear
 9 here. When we talk about reporting to the -- to whom the
 10 report is made, the report is always made to the Secretary
 11 of State's office. The issue is, who has the authority to
 12 tell you to file the report? And under Article II of
 13 Chapter 6, Title 16, it is the Clean Elections Commission
 14 that has the authority to order people to file reports.
 15 So, in that sense, the Secretary of State's office is the
 16 Post Office for purposes of the Clean Elections Act and we
 17 are the Clean Elections Commission. For purposes of other
 18 provisions of law, the Clean -- the Secretary of State's
 19 office is both the Post Office and the enforcer, but for
 20 us they're the Post Office.
 21 The -- the -- and it also exempted -- and it's
 22 also important to make clear that this exempted internal
 23 communications that were expressly permitted by statute
 24 but were not independent expenditures.
 25 Citizens United is a case you guys, I think, are
 Miller Certified Reporting, LLC

34

1 now pretty familiar with and have heard about it, it was
2 decided in January 2010. It said the corporation -- how
3 the corporation could not be prohibited from making
4 independent expenditures for or against candidates.
5 And that's a typo in there. "Elections" should
6 be "expenditures." I should have caught that, but that's
7 what that means.
8 But the disclosure itself remains
9 constitutionally appropriate.
10 We get to 2010, and the -- the -- and this is --
11 brings us to the -- sort of the policy -- or, where the
12 policy issues start to kick in. 2010, a bill called --
13 which is called 2788 was passed. It's the Citizens United
14 Reaction Bill. And it created new disclosure reports for
15 corporate and Union independent expenditures. There's a
16 higher threshold and they -- and they have less frequency
17 than -- than Clean Elections. That bill also purported to
18 legalize these expenditures and/or to -- or to make them
19 expressly permitted under 16-920.
20 That statute previously did not include
21 independent expenditures but other matters. So, just to
22 really quickly click back through. When we started with
23 the Clean Elections Act that was passed by the voters,
24 those are very clearly included. And here we have an
25 issue, the legal question is, what happens when you add
Miller Certified Reporting, LLC

36

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

35

1 that in -- in -- in 2788?
2 We have the impression, in my review of the
3 history of this, that legislators were told there was no
4 existing regulatory framework for these expenditures. And
5 I have a quote there from Secretary Bennett that something
6 had to be done immediately to report -- have these
7 reported.
8 And I -- and I simply would say that that's not
9 -- that was not correct. There was an emergency clause in
10 that -- that this bill passed unanimously or virtually
11 unanimously. But the statement that something had to be
12 done because Citizens United had created a world in which
13 there was not going to be reporting of these expenditures
14 was simply not true.
15 One of the debates -- and this is -- then this is
16 where we get into what's happening now with, as I
17 understand what's happening now with enforcement on the
18 Secretary of State's side was: What is a corporation and
19 what is a political committee?
20 And Mr. Bennett in the same testimony talked
21 about the fact that they had some desire to distinguish
22 between those that were political committees who were
23 subject to reporting requirements beyond the expenditures
24 themselves, and those that were corporations that were not
25 going to be, and a desire to distinguish between those two
Miller Certified Reporting, LLC

37

1 asked them to provide information about their
2 expenditures. And I've tried to characterize in a summary
3 fashion with more -- and, you know -- you know, probably
4 people would quibble about this, so I don't purport to
5 represent the positions of the entities identified here.
6 Only that I -- sort of this is the upshot, I think, of
7 what they responded to the Secretary's office by saying.
8 And there is a variety of responses, some of
9 which, for example, involved saying we're -- you know,
10 here is our -- why we're social wealth organization under
11 -501(C)(4) and here are our I-90 forms, you can look them
12 up if you want to. Some of which said: Here's all the
13 spending we've been doing on a variety of topics; and then
14 others that says: Here's what we're spending on this and
15 not that.
16 So what that indicates is that there are entities
17 out there that are making expenditures that they may have
18 different factual circumstances, but they're also
19 presenting very different perspectives on what the law
20 requires them to do and what they need to demonstrate in
21 order to show that they're complying with 16-941.0(K) and
22 that is -- creates, I think, what -- what -- the reason
23 they call it uncertainty in this part of -- of the regime.
24 CHAIRPERSON RECKART: Mr. Collins, can you just
25 say that again?
Miller Certified Reporting, LLC

38

1 MR. COLLINS: That -- that -- that is what
 2 creates uncertainty in this part of the regime.
 3 CHAIRPERSON RECKART: "That" is what?
 4 MR. COLLINS: That is that there are multiple
 5 corporate independent expenditure entities that have been
 6 asked for this information and what they've been presented
 7 in terms of responses, demonstrates that they -- they all
 8 see a different target that they need to hit in order to
 9 determine whether or not they are meeting that very long
 10 sentence that's in 19- -- -914.02(K).
 11 And what I describe this as coming close to --
 12 COMMISSIONER HOFFMAN: Mr. Chairman?
 13 CHAIRPERSON RECKART: Go ahead. Yes, please.
 14 COMMISSIONER HOFFMAN: Just a quick question, it
 15 is also true that they might be a political committee be-
 16 -- for other reasons because the definition of political
 17 committee is not limited to what you just shared -- wrote,
 18 right?
 19 MR. COLLINS: That is correct. That's correct.
 20 -- well, that's correct. I mean, the statute says itself
 21 "that is otherwise provided by law." So, I mean, you
 22 know -- so...
 23 COMMISSIONER HOFFMAN: So, we have the definition
 24 in -901 and subsidiary definitions associated with it?
 25 MR. COLLINS: That's correct. So, it's a -- so
 Miller Certified Reporting, LLC

40

1 in the first place. They've made an extensive public
 2 records request from the Secretary of State and there's
 3 been indications reported that there may be litigation
 4 ensuing.
 5 So -- so there's no enforcement at this -- with
 6 the Attorney General's office, which the Attorney
 7 General's office will be designating someone to -- to look
 8 at further, and then there's the possibility of litigation
 9 between Free Enterprise and someone. I, you know -- and,
 10 again, I don't mean again to over characterize what I
 11 understand from the available sort of media reports about
 12 Free Enterprise.
 13 Mike is here. If he wants to talk about that
 14 more specifically, he can.
 15 This is a long preface to say we have the -- the
 16 action of these various groups have created a situation in
 17 which we need to take some immediate action on our rules,
 18 because our rules have language in them that is related to
 19 -914.02(K) that's in -- in my view, unnecessary and the
 20 actions of these nominal committees -- or, could-be
 21 committees, triggers a need to take immediate action to do
 22 that.
 23 But, first, we need to go back really briefly and
 24 talk about where we are. Back last year we amended Rule
 25 -109, we re-emphasized the issue, so if anybody
 Miller Certified Reporting, LLC

39

1 it's a complicated -- it's a complicated analysis.
 2 COMMISSIONER HOFFMAN: I have sympathy for them.
 3 MR. COLLINS: So, what happens then is there's a
 4 reasonable cause finding made against the Arizona Free
 5 Enterprise Club, and so what that essentially says -- and
 6 we've now talked about roughly reasonable cause is in our
 7 context, and -- and what I think -- what I think the
 8 upshot of that again, I don't -- I'm trying to summarize
 9 this, was we disagree or we don't believe what the Free
 10 Enterprise Club has said they are doing. And the reasons
 11 for that -- I've reviewed the reasonable cause, it's not
 12 entirely clear to me, nor is it entirely clear to me which
 13 legal factors -- or any factors -- are applied to make
 14 this determination within this reasonable cause.
 15 So, you now have multiple corporate independent
 16 expenditure groups who presented information to the
 17 Secretary's office and you have a reasonable cause finding
 18 that says some things, but it's hard to discern from what
 19 it says on its face, what -- relating back to the statute
 20 and the multiple interpretations that have come off of it,
 21 which one of those is actually in operation. At least,
 22 it's hard for me to determine that.
 23 As a result, and my understanding is that the
 24 Free Enterprise Club has, you know, essentially questioned
 25 the authority of the Secretary to ask for this information
 Miller Certified Reporting, LLC

41

1 understood -- didn't understand what the Clean Elections'
 2 role plays with IE's; we provided an easy option for
 3 corporations, LLC's, and Unions who could not have
 4 violated -914.02, to stipulate that they would only need
 5 to file those reports.
 6 We believed that that would avoid litigation.
 7 And we also -- and we made this point -- I think -- I
 8 believe we made it on the record at the time, that this
 9 would avoid the situation where somebody says: I don't
 10 have to file anywhere at all.
 11 And that to, frankly, Mr. Torchinsky's point in
 12 the last go-around. That is Mr. Torchinsky's position.
 13 And our position is that -- that no matter what, the Clean
 14 Elections Act says that we get to decide if you need to
 15 file Clean Elections Act reports.
 16 COMMISSIONER HOFFMAN: Mr. Chair?
 17 CHAIRPERSON RECKART: Please.
 18 COMMISSIONER HOFFMAN: Mr. Chair, Mr. Collins,
 19 there are certain entities that -- sorry. There are
 20 certain entities that -- that, in fact, don't have to file
 21 anywhere? In other words, if they don't make independent
 22 expenditures?
 23 MR. COLLINS: Yeah. Yeah. That's right. Yeah,
 24 of course. I mean, that's right.
 25 COMMISSIONER HOFFMAN: Okay.
 Miller Certified Reporting, LLC

42

1 MR. COLLINS: That's right. That's right.
 2 COMMISSIONER HOFFMAN: Didn't want that to be a
 3 mis- --
 4 MR. COLLINS: No, that's right. That's right.
 5 Under the assumption -- under the assumption. That's
 6 correct. That's correct.
 7 So -- so, here's where we end up with what I've
 8 just already said. We -- we don't -- there's no reason
 9 for this rule to be wrapped up in the Free Enterprise Club
 10 matters. So, we -- so we -- the solution is to simplify
 11 the certification to re-emphasize that the IE reports that
 12 Clean Elections calls for do not determine political
 13 committee status.
 14 We want to hold harmless the folks who are
 15 already certified. In other words, we had really good
 16 success. I would say we had -- I can't remember the final
 17 number of how many people we have currently certified. I
 18 think we only have three outstanding groups that aren't
 19 certified. Or -- well, two that are -- yeah, two
 20 outstanding groups that are -- are not certified.
 21 So, there's no -- we don't know, frankly, whether
 22 or not the -- the -- this would -- this change actually
 23 substantially affects those groups that are already
 24 certified, but there's no harm in just leaving them be.
 25 And then -- and then there's some cleanup and
 Miller Certified Reporting, LLC

44

1 -- from the political committee issue to -- and -- and
 2 make that immediate, and then -- and then we will proceed
 3 step-wise in consultation with as many folks as we can
 4 consult with to provide an appropriate regulatory and/or
 5 statutory response to the issues that have been identified
 6 over the course of the last few months in the process.
 7 So, with that, and that's a long preface, and I
 8 -- and I -- and I, you know, we wanted to do this quickly
 9 because it -- we think that this is a necessary thing to
 10 do. We can revisit these rules at subsequent meetings but
 11 we think that this change needs to be made immediately
 12 effective and -- based on the actions of -- of -- of
 13 candidates and committees.
 14 And -- and that's -- that's kind of -- that's
 15 kind of all I have.
 16 Mary O'Grady is here also on this because this is
 17 related to our other representation. So, if you have
 18 legal questions, you can -- you can direct those to her, I
 19 believe, and that's all I have.
 20 CHAIRPERSON RECKART: Thank you, Mr. Collins. Is
 21 there anyone here who would like to comment among the
 22 public on the proposed change?
 23 Mr. Liburdi, please.
 24 MR. LIBURDI: Thank you, Mr. Chairman and
 25 Commissioners. I just want to say one brief thing. I
 Miller Certified Reporting, LLC

43

1 some what I would call scrivener's problems that we want
 2 to cleanup.
 3 And then the recommendation for an emergency is
 4 based on the fact that under our statute if the actions of
 5 a candidate or committee demand immediate action, we may
 6 take immediate action to make this revision. And we
 7 believe -- or, I believe that standard is satisfied here.
 8 And I have -- and I haven't -- I think that's -- well...
 9 So, back to just the recommendation. The
 10 recommendation is we passed these amendments; we make the
 11 currently outstanding corporations, LLC's, and Unions
 12 aware of the amendments. We've already done a little bit
 13 of informal outreach to the attorneys for those
 14 corporations to see if we can move them through the
 15 certification process. I would also have to modify the
 16 form itself, which is something the rules delegate to my
 17 authority, and then come back to the Commission.
 18 And then -- and then we look at the Free Ent- --
 19 continue to monitor the Free Enterprise Club enforcement
 20 matter; and then whether it's a rulemaking or we get into
 21 a position where we make a more comprehensive statutory
 22 suggestion going -- after the election, you know, we can
 23 do that.
 24 So, the goal here is to, again, decouple the
 25 rule. It's extended -- to the extent it is coupled at all
 Miller Certified Reporting, LLC

45

1 want to commend Mr. Collins and the Commission for
 2 reacting to the situation as it has developed. I -- I
 3 agree with Mr. Collins, it has been confusing. And the
 4 Secretary of State's office has not provided with -- the
 5 regulated community with any guidelines to follow.
 6 So, with that expression of gratitude, I would
 7 just like to add by saying I look forward to working with
 8 Mr. Collins on the revised form.
 9 CHAIRPERSON RECKART: Okay. Wonderful.
 10 MR. LIBURDI: Thank you.
 11 CHAIRPERSON RECKART: Thank you.
 12 COMMISSIONER TITLA: Chairman.
 13 CHAIRPERSON RECKART: Oh. Yes, ma'am. I'm
 14 sorry.
 15 MS. HAUSER: Mr. Chairman, Lisa Hauser from
 16 Gammage & Burnham, and I represent the 60 Plus
 17 Association. I had a good conversation with Mr. Collins
 18 yesterday to better understand exactly what was trying to
 19 be accomplished here and look forward to the time when he
 20 reaches the point where he is able to revise the form.
 21 And I expect we'll be able to wrap thing -- things up with
 22 respect to an exemption for 60 Plus at that time. So,
 23 thank you.
 24 CHAIRPERSON RECKART: So, just real quickly,
 25 Ms. Hauser. So, you're -- I take it, same as Mr. Liburdi,
 Miller Certified Reporting, LLC

46

1 favorably disposed to what is being -- what -- what the
 2 Commission is going to try to do here? What Mr. Collins
 3 is suggesting the Commission do here with these rules?
 4 MS. HAUSER: Yes, Mr. Chairman.
 5 CHAIRPERSON RECKART: Okay. Thank you.
 6 Ms. O'Grady, did you want to say anything to the
 7 Commission?
 8 MS. O'GRADY: It's okay.
 9 MR. COLLINS: Well, I think --
 10 CHAIRPERSON RECKART: Go ahead, Mr. Collins.
 11 MR. COLLINS: We have a -- well, we have a -- we
 12 have a question about whether or not in the absence of
 13 Mr. Laird, the need for a unanimous -- we've -- my
 14 position when I was your counsel, which I am not
 15 currently, was that "unanimous" meant everybody here.
 16 That means, that is to say, of the people who are here.
 17 CHAIRPERSON RECKART: Of the --
 18 MR. COLLINS: There is a question the Commission
 19 needs to decide, I guess, how it wants to proceed in terms
 20 of being above -- above any question. The Commission can
 21 put this off. That will -- or -- well, that's really the
 22 question that the Commission would have to decide to put
 23 it off. There's nothing we can do to resolve the question
 24 today because the statute says what it says. Either you
 25 think unanimous means everybody's got to be here or you
 Miller Certified Reporting, LLC

48

1 you open for public comment, then 60 days hence you would
 2 vote to finalize this rule and you could do that and we'd
 3 be where we are.
 4 As a practical matter, I think it's pretty clear
 5 what my direction will be in terms of trying to manage the
 6 enforcement of this rule.
 7 COMMISSIONER HOFFMAN: Okay. Now --
 8 MR. COLLINS: I don't -- maybe I'm not
 9 understanding the question.
 10 COMMISSIONER HOFFMAN: So -- no, you've answered
 11 my question to the extent possible in open meeting.
 12 I would like to move we go into executive session
 13 to discuss the issue.
 14 CHAIRPERSON RECKART: Okay. Do I have a second?
 15 COMMISSIONER KOESTER: I second.
 16 CHAIRPERSON RECKART: Okay. Moved and seconded
 17 to go into executive session. All in favor?
 18 (Chorus of ayes.)
 19
 20 CHAIRPERSON RECKART: All opposed?
 21 Okay. I was an "aye" vote. I'm sorry.
 22 Okay. We'll go into executive session. I hope
 23 to be brief, so.
 24 COMMISSIONER HOFFMAN: Would Ms. O'Grady and --
 25 as well as the Attorney General be available for that?
 Miller Certified Reporting, LLC

47

1 think unanimous means everybody who is here.
 2 COMMISSIONER HOFFMAN: Mr. Chair?
 3 CHAIRPERSON RECKART: Yes, sir.
 4 COMMISSIONER HOFFMAN: I would like to move we go
 5 into executive session to address that issue. But before
 6 we do, I wanted to ask a question of whether we -- whether
 7 we -- I'm sorry. I have lost my train of thought here.
 8 What would the procedure be if we're comfortable
 9 with proceeding on an emergency basis? Does that mean
 10 that we have -- does it -- is it a requirement that it be
 11 put out for public comment or does the emergency eliminate
 12 that step?
 13 MR. COLLINS: Well, that -- we could do one of
 14 two things. We could -- we could -- we could -- we could
 15 file it for public comment and make it an emergency. In
 16 other words, we can do both. We can take public comment
 17 and have it effective. There's nothing in the statute
 18 that prevent -- that requires you to select a path between
 19 those two. So, one -- you know, I don't -- at least I
 20 don't think there's anything in the statute that -- I
 21 mean, at this point -- I mean --
 22 COMMISSIONER HOFFMAN: Okay.
 23 MR. COLLINS: My reading of the statute is there
 24 is no -- is that there is -- you know, there is no reason
 25 you have to pick between those two. So, if you move -- if
 Miller Certified Reporting, LLC

49

1 MR. COLLINS: I think Ms. O'Grady is available.
 2 COMMISSIONER HOFFMAN: Not the Attorney General?
 3 MR. COLLINS: I think that Ms. -- I don't think
 4 we -- well, the Attorney General's boss is in the room so
 5 they can figure that out. I think it's Ms. O'Grady, for a
 6 lack of a better way of proceeding.
 7 MR. ELLMAN: I agree.
 8 MR. COLLINS: If you guys want to come in.
 9 MR. ELLMAN: Thank you for the invitation,
 10 though.
 11 COMMISSIONER HOFFMAN: Okay.
 12 CHAIRPERSON RECKART: Thank you.
 13 (Whereupon the public retires from the meeting
 14 room.)
 15 (Whereupon the Commission is in executive session
 16 from 10:39 a.m. until 10:53 a.m.)
 17
 18 * * * * *
 19
 20 (Whereupon all members of the public are present
 21 and the Commission resumes in general session.)
 22 CHAIRPERSON RECKART: We're back in public
 23 session. Is there -- Mr. Collins has -- has briefly gone
 24 through the proposed rule change. Are there any questions
 25 of the Commissioners on the particulars of the amendments
 Miller Certified Reporting, LLC

50

1 with regard to why language is deleted or why language is
 2 added?
 3 I think it's fairly clear on its face what we're
 4 trying to accomplish with it, so I have none. But I'll
 5 invite any Commissioner.
 6 Mr. Hoffman?
 7 COMMISSIONER HOFFMAN: Yes. Mr. Chair, I have
 8 two minor matters with regard to the language. First of
 9 all, in R2-20-109(F)(3)(C), there's some matter underlined
 10 and part (D) entirely is underlined. I thought those --
 11 that's the way it was. Is -- is -- is that an -- an
 12 error?
 13 MR. COLLINS: That is an error. That is an error
 14 we're trying to correct. The language should track the
 15 statutes, was intended to track the statute. You were
 16 informed it would track the statute when the rule passed,
 17 but it doesn't actually track the statute. That is when I
 18 said cleanup, that is cleanup.
 19 COMMISSIONER HOFFMAN: I see. So, the purpose of
 20 the underlining was to put in stuff that we thought was
 21 there, but in the administrative code is -- doesn't show
 22 up?
 23 MR. COLLINS: That is correct.
 24 COMMISSIONER HOFFMAN: Ah. Thank you for
 25 explaining that. I was very confused at that.

Miller Certified Reporting, LLC

52

1 this morning.
 2 COMMISSIONER HOFFMAN: Thank you. Appreciate it.
 3 MR. COLLINS: This is one sentence that is in
 4 addition to everything that -- yeah.
 5 COMMISSIONER HOFFMAN: So this would insert the
 6 language "unless an exemption is obtained pursuant to this
 7 Subsection (F)" at the very beginning.
 8 MR. COLLINS: Yeah.
 9 COMMISSIONER HOFFMAN: I can't remember. That
 10 was the only change, was it?
 11 MR. COLLINS: What's that?
 12 COMMISSIONER HOFFMAN: That was the only change,
 13 right?
 14 MR. COLLINS: Yeah. That was the only change in
 15 this from the document you already had.
 16 And that's -- and that's -- I mean, that's up to
 17 you.
 18 COMMISSIONER HOFFMAN: Right. Okay. So, that
 19 was the other comment that I had, Mr. Chair.
 20 CHAIRPERSON RECKART: Okay. Thank you,
 21 Mr. Hoffman. And just -- since we're going over some of
 22 the particulars. In -109(F)(4), the addition of "a" is
 23 really because you could be a political committee that
 24 complies with 16-920(A)(6) or 16-914, but you still should
 25 do your reporting?

Miller Certified Reporting, LLC

51

1 MR. COLLINS: No, and we did get questions about
 2 that after we circulated the -- the -- the -- the rule --
 3 the draft, and I do want to make that clear that that is
 4 cleanup, because of a, you know -- because, you know, it's
 5 cleanup. Period.
 6 COMMISSIONER HOFFMAN: Yeah. Got it. Cleanup.
 7 May I proceed to the second question --
 8 CHAIRPERSON RECKART: Please.
 9 COMMISSIONER HOFFMAN: -- Mr. Chair?
 10 CHAIRPERSON RECKART: Yeah. Please.
 11 COMMISSIONER HOFFMAN: With regard to -109(F)(1),
 12 it says that: "Any person making independent expenditures
 13 cumulatively exceeding the amount prescribed
 14 shall file campaign finance reports."
 15 That is intended, however, to be anyone other
 16 than somebody who gets the exemption, correct?
 17 MR. COLLINS: Yeah. Yes. We think that that's
 18 -- we think that that's correct. We think that we -- we
 19 think that we can still -- yes. We think that's true.
 20 COMMISSIONER HOFFMAN: So I had a suggestion for
 21 some language to make that more explicit so that it
 22 doesn't appear to be in conflict I believe asked you to
 23 type up -- yeah.
 24 MR. COLLINS: So, yeah. Mr. Chairman,
 25 Mr. Hoffman, I did get a chance to very briefly do this

Miller Certified Reporting, LLC

53

1 MR. COLLINS: It's -- yeah. The folks who are --
 2 who are contemplated here are folks who are not political
 3 committees, that's -- that is correct.
 4 CHAIRPERSON RECKART: Yeah.
 5 MR. COLLINS: So, we're talking about -- again,
 6 we're talking about going from a model that implies could
 7 not possibly be a political committee, to a model that
 8 says: Are not political committees, but if you are in
 9 fact a political committee and have so declared, there --
 10 this is not something that you need to be concerned about.
 11 CHAIRPERSON RECKART: Or not available to, yeah.
 12 MR. COLLINS: Yeah.
 13 CHAIRPERSON RECKART: Yeah. Okay. With that,
 14 I'll entertain a motion.
 15 Mr. Hoffman.
 16 COMMISSIONER HOFFMAN: Yeah. Mr. Chair, I'd like
 17 to move that we conclude that the actions of the
 18 committees described by Mr. Collins require that we
 19 immediately change rule R2-20-109 and that we, therefore,
 20 adopt R-20-109 [sic], the amendments thereto as indicated
 21 by the paper entitled "Hoffman Amended Version" that was
 22 just passed around.
 23 CHAIRPERSON RECKART: Okay. Do I have a second?
 24 COMMISSIONER KOESTER: I second.
 25 CHAIRPERSON RECKART: Okay. Mr. Koester,

Miller Certified Reporting, LLC

54

1 Mr. Hoffman, thank you. Any further discussion?
2 There being none, I'll call for a vote. All
3 those in favor, please indicate by saying "aye."
4 (Chorus of ayes.)
5
6 CHAIRPERSON RECKART: Passes unanimously. Thank
7 you.
8 All righty. Item VI on the agenda. Discussion
9 and possible action regarding MUR 14-006, Tom Horne and
10 campaign committees. And we'll deal with (A), first item;
11 I don't know if there's anything to talk about (B) at this
12 point.
13 I realized that late last night we received a
14 letter from Mr. Horne, whether or not that should be
15 considered in terms of being procedurally correct, I am
16 not going to comment on; although, the question is there
17 whether it should be considered by the Commission at this
18 late point.
19 I would like to frame it, however -- take the
20 prerogative to frame the whole issue. Is what we're
21 dealing with here is, again, a statement of reasons that
22 there is -- there is a reason to believe that a violation
23 has occurred. And, again, it's a, in my view, a fairly
24 low standard. We are looking at facts or matters that has
25 been evaluated by the Executive Director that suggest to
Miller Certified Reporting, LLC

56

1 MR. COLLINS: Yeah. Thank you. Mr. Chairman,
2 Commissioners, and just briefly, you know, Mr. Kanefield
3 is here if you have legal or procedural questions related
4 to this process.
5 I think that, Mr. Chairman, you laid out the
6 procedural posture that we're in correctly. I think that
7 the -- the -- the recommendation here is that there -- is
8 that we -- is that we move forward and that you find
9 reason to believe a violation may have occurred. The
10 purpose of this vote is to permit me to move forward.
11 And -- and I'll be -- and I think I'll -- I think I want
12 to be clear here that this will involve the authorization
13 to subpoena documents, to put people under oath, and I
14 would recommend that any motion make that specific so
15 we're clear.
16 Just to highlight a couple of points. I think
17 the -- I think the -- I think the -- the -- the -- the
18 analysis I think speaks for itself. I think that the
19 response to the extent that you consider it at this point
20 does, you know, demonstrate that -- that there -- there
21 are steps that are in addition to be taken. I think that,
22 you know, the fact of the matter is that we -- we will
23 need those tools -- subpoena, and -- and -- and putting
24 folks under oath -- in order to get to additional steps.
25 And I think that it is impossible, however, to
Miller Certified Reporting, LLC

55

1 us that if they bear out as they are presented to us, that
2 there would be a violation that we conclude at this point
3 to believe that one has occurred and ask for a further
4 investigation.
5 It is not a finding on the factual matters, no
6 conclusions of laws, there are no fines being assessed by
7 this action whatsoever.
8 In reading Mr. Horne's -- I've been through all
9 the papers that Executive Director put together, which is
10 quite an effort, and I read Mr. Horne's letter last night.
11 And I had a sense -- I -- I'm not here to debate it, but I
12 had a sense there was a misapprehension of what this
13 action is today. It is not a final action. It's not an
14 action for which any amendment will be -- I mean, any
15 appeal can be taken with regard to we are looking to do an
16 administrative investigation.
17 And so, I just advise the Commissioners of that.
18 That, you know, when we get to a point where we have to
19 take action in terms of determining whether definitively a
20 violation has occurred, there need to be a -- a good
21 vetting of the facts and a set of finding of facts and
22 application of law for those purposes. This is not that
23 action.
24 So, with that, I'll ask Mr. Collins to introduce
25 the -- well, the follow-up.
Miller Certified Reporting, LLC

57

1 do, quote, unquote, "interviews" until you have obtained
2 all of the documents you would need to frame those
3 interviews properly. That's not how you do an
4 investigation.
5 And so I think to the extent that the arguments
6 that are in the response you received last night and --
7 and, frankly, the -- the original response themselves,
8 seem to say that you have to have the evidence, all of the
9 evidence to -- in order to investigate that you would
10 obtain through the investigation. Well, that's simply not
11 how the Clean Elections Act and rules are structured.
12 The question is whether or not there's reason to
13 believe a violation may have occurred and then subsequent
14 to that we will be able to obtain all the information
15 necessary.
16 And so, for example, although you operate subject
17 to a compliance order and we've incorporated the numbers
18 that could -- would go on that compliance order, those
19 numbers are subject to revision as we move forward, and
20 that's -- I think that's explicit in the document you have
21 in front of you.
22 CHAIRPERSON RECKART: Two questions, at least on
23 my part. One is, is laying out the timing of things at
24 this point. We -- there's reference in your memo to, you
25 know, certain 14-day time periods. And I would -- if you
Miller Certified Reporting, LLC

58

1 could lay that out a little more specifically, because I,
2 in looking at this, I think a 14-day time period to
3 complete an investigation is inappropriate and is
4 insufficient. And I think the law -- the rules allow us
5 to extend for whatever we may need. That 14-day period is
6 not an absolute.

7 MR. COLLINS: I -- I believe that that is
8 correct. And we would -- we would certainly -- I think we
9 want to continue to move with -- expe- -- expeditiously.
10 But that -- that 14 days is -- is -- is -- that's correct.
11 It is -- it is essentially 14 days, but we're in the midst
12 of the investigation -- and there will be an explanation
13 -- that 14 days is going to -- is going to move,
14 inherently.

15 The most important thing I think is that -- that
16 the Commissioners understand that we have taken every step
17 we can to move it as expeditious- -- and Mr. Horne,
18 frankly, as well -- we've taken every step we can to move
19 as expeditiously as possible within the confines of the
20 reason to believe itself, subject to his own decision to
21 file a lawsuit to enjoin, and subject to the fact that the
22 Attorney General's office for example has not been able to
23 provide to us documents quickly; was not able to confirm,
24 for example, the salaries of these employees for
25 essentially a month and a half, subject to a pretty

Miller Certified Reporting, LLC

60

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

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

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

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

Miller Certified Reporting, LLC

59

1 emphatic letter from me asking for that information.

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

7 CHAIRPERSON RECKART: Okay. Great. Thank you.
8 I'll -- I'll hold my other comment for later.

9 Questions from the Commissioners for Mr. Collins?
10 No. Okay.

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

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

20 CHAIRPERSON RECKART: The practice of law is
21 wonderful, isn't it?

22 MR. WILENCHIK: Yes. It's always -- it's always
23 a joy, but -- and an honor to be here.

24 But what I was just wanting to make clear is I
25 think what happened was is that the counsel, Mr. LaSota,

Miller Certified Reporting, LLC

61

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

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

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

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

Miller Certified Reporting, LLC

62

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

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

22 But before this thing gets further, because of
 23 the nature of it, I think in fairness a hearing is
 24 appropriate, so that you can assess the witnesses and you
 25 can speak to them and determine whether or not these

Miller Certified Reporting, LLC

64

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

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

8 CHAIRPERSON RECKART: Yeah. Yeah.

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

10 CHAIRPERSON RECKART: I'm off purgatory.

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

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

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

Miller Certified Reporting, LLC

63

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

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

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

16 CHAIRPERSON RECKART: This for that.

17 MR. WILENCHIK: What?

18 CHAIRPERSON RECKART: This for that.

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

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

Miller Certified Reporting, LLC

65

1 hours a day for the campaign. Because we certainly
 2 haven't received anything by way of allegations or any
 3 documents that I could find last night that indicate what
 4 she was doing six hours a day for all these days for all
 5 of these months.

6 We have some little snippets of things she said
 7 she was doing, such as an invitation, but that invitation
 8 takes you about five minutes from prior invitations that
 9 you just stick in different names.

10 So, these are issues that -- again, I don't want
 11 to belabor this because I know, you know, time -- time is
 12 of the essence and I know that you don't want to take a
 13 whole bunch of time today. But I do think you should
 14 seriously question this, because you've got 11 witnesses
 15 that are very clear that will go under oath if you want
 16 them to, but have given statements which are important
 17 and -- and -- and stated to you: This is what I know;
 18 this is what I saw; this is what I saw about Ms. Beattie.

19 You have to consider that strongly in terms of
 20 what we're talking about here when you're going after a
 21 sitting Attorney General, albeit one that won't be sitting
 22 long, but one that is sitting.

23 (Coughing.)

24 MR. WILENCHIK: God bless you.

25 So -- so, this is -- these are serious

Miller Certified Reporting, LLC

66

1 allegations and -- and they need to be dealt with, I
 2 understand. We're happy to do that based on what I know
 3 of this case.
 4 I think if you push this case forward based on
 5 the allegations here as broadly as they were stated, it's
 6 a mistake. I think -- and I'm not trying to tell you guys
 7 what to do, but I think that what would be appropriate
 8 here would be to say we'll reasonably investigate
 9 Ms. Beattie's allegations in terms of what she knows, what
 10 she stated about herself; and if in that course of that
 11 investigation, it turns out that there's any evidence to
 12 reasonably suggest or believe under the same standard that
 13 she does have evidence about other people other than an
 14 anecdotal evidence, but real evidence that she can present
 15 or even allege -- because I haven't even seen it
 16 alleged -- then maybe there's a reason to investigate the
 17 entire office there. I would even agree with that. But
 18 that hasn't happened.
 19 And so, my suggestion to you, and of course
 20 you'll do what you want, but I think in fairness to
 21 Mr. Horne, based on the fact that he has gone out and
 22 given you a full response. And -- and -- and to question
 23 that response by saying he hasn't proven his case in the
 24 response, which is how I read some of the comments made,
 25 is -- is very unfair. It's putting the burden on him to
 Miller Certified Reporting, LLC

68

1 be in his situation.
 2 And that's all I ask you to do is to seriously
 3 consider the scope of where you proceed and to take it one
 4 step at a time. And if there is some credible evidence to
 5 support Mr. Collins' allegations, which right now I don't
 6 believe there is, when you go forward on Ms. Beattie's own
 7 allegations, specific allegations of her activity, and you
 8 find in that that there's reason to suggest that other
 9 people have misstated things in their statements or have
 10 lied or have done inappropriate things that are in
 11 violation of the law, I have no problem at that point with
 12 expanding this investigation further.
 13 And I will tell you that I will assist, because
 14 we've given you statements, in any information that he
 15 wants. But I think this investigation needs some lid on
 16 it, because right now it's very ambiguous as to what
 17 exactly you -- you are going after Mr. Horne for in terms
 18 of everybody else's activity in an office. He is not in
 19 charge of daily looking at people's sheets and -- and that
 20 kind of thing.
 21 Now, if he is aware of campaign activity being
 22 rub out of that office, I understand fully that that's
 23 something he's going to have to be responsible for and
 24 answer about, and he will. But this -- these allegations
 25 are so broad that they seem to make him an insurer,
 Miller Certified Reporting, LLC

67

1 prove a negative.
 2 I would think this Commission has some burden of
 3 its own to establish the allegations and the evidence to
 4 suggest that he did something inappropriate. Instead,
 5 what I saw was allegations by this Commission through
 6 Mr. Collins that were not substantiated in the allegations
 7 of Ms. Beattie, and they aren't substantiated by any
 8 actual evidence at all. And every reasonable inference is
 9 taken against Mr. Horne, as if all these statements are
 10 false, everything he said is false.
 11 And I think that's a very unfortunate state, if
 12 that's where are in the State of Arizona, that our sitting
 13 Attorney General is -- is considered in some way his word
 14 doesn't mean anything, but someone who left the office and
 15 is disgruntled, her word means something. And even if you
 16 find that it does for purposes of today's hearing, I have
 17 no problem with that, we'll deal with Ms. Beattie's
 18 allegations, but why is this Commission even considering
 19 this widespread dragnet investigation?
 20 And I don't mean that to disparage you, but
 21 that's what it is. Where Mr. Collins intends to go off on
 22 this sweeping investigation based on an allegation that
 23 Mr. Horne's office somehow was his campaign headquarters
 24 when, in fact, he had campaign headquarters. That to me
 25 is not fair to him and it's not fair to anybody who would
 Miller Certified Reporting, LLC

69

1 guarantor of what everybody's doing every day of their --
 2 every minute of their life. They've said they used their
 3 own time.
 4 If he has any reason to believe otherwise after
 5 he starts conducting Ms. Beattie's allegations and
 6 investigation into those, that's fine. But right now you
 7 don't have that; you don't really even have an allegation
 8 from her on that; and you don't even have an allegation on
 9 this *quid pro quo* issue; and you don't have any evidence
 10 to support it.
 11 So, that's the only thing I would ask the
 12 Commission today, with due respect to -- sorry -- to take
 13 a look at and to -- and to seriously consider.
 14 CHAIRPERSON RECKART: Thank you.
 15 MR. WILENCHIK: Thank you for your time.
 16 CHAIRPERSON RECKART: Thank you very much,
 17 Mr. Wilenchik.
 18 Are there any comments or questions of the
 19 Commissioners? None?
 20 COMMISSIONER HOFFMAN: Yeah. I got lots.
 21 COMMISSIONER TITLA: Chairman?
 22 CHAIRPERSON RECKART: Yes, Commissioner Titla.
 23 COMMISSIONER TITLA: Are you Dennis Wilenchik?
 24 MR. WILENCHIK: I am, sir.
 25 COMMISSIONER TITLA: Okay. Dennis, you just got
 Miller Certified Reporting, LLC

70

1 on yesterday afternoon?

2 MR. WILENCHIK: Well, I was advised yesterday

3 earlier, but I was unavailable personally, that our office

4 would be involved, so I had some other people working on

5 it; but then I personally was able to focus on it toward

6 the end of the day.

7 COMMISSIONER TITLA: Okay. I'm glad you are on

8 now. I was looking at the material and the -- Mr. Collins

9 and Sara Larsen, our staff, wrote letters to the Attorney

10 General's office requesting for information --

11 MR. WILENCHIK: Right.

12 COMMISSIONER TITLA: -- and I was concerned

13 because there was a lack of response from the office. And

14 it seems like it took them a long time to respond until

15 Mr. Collins had to write them a letter. So, since you're

16 on now, if this goes further, will you try to ensure from

17 your client that the request for information is done, you

18 know?

19 MR. WILENCHIK: Yes, sir. Absolutely. And I

20 just want to apologize if that was the case. I -- again,

21 I had nothing to do with that.

22 I intend, if you do go forward, to fully

23 cooperate a hundred percent. As I said, there -- there

24 could be good faith issues, you know, on certain items,

25 which, as I said, you are well represented by

Miller Certified Reporting, LLC

72

1 to statements that can be reasonably construed to her

2 having any evidence of what anybody else in that office is

3 doing other than herself. And further that there's no

4 issue on the *quid pro quo*.

5 I can't even find it in the -- in the statements,

6 and if I'm missing that, I apologize, but -- but I

7 couldn't find it under page 8, and page 12 and 13. And

8 based on, again, what I know of the case at this point, I

9 don't understand the *quid pro quo* argument at all.

10 There's never anyone that has said that Mr. Horne

11 conditioned a job based upon having to -- in fact, to the

12 contrary we know, there's policy issue that's very clear

13 that Ms. Dugan again reaffirmed last night that she -- she

14 enforced that it's very clear that it's against company

15 policy -- State policy and that -- and that Attorney

16 General Horne made it a point when that came up to be very

17 hard on that. That's the only evidence that I've seen. I

18 haven't seen any evidence where he told anyone to do

19 anything other than follow the law.

20 So, I think these allegations have gone

21 overboard. I think they've gotten a lot of unfortunate

22 publicity that's hurt him. That's why I think at this

23 point he wants to clear his name of this.

24 But I will tell you, there's not going to be,

25 from what I know, any evidence that Attorney General Horne

Miller Certified Reporting, LLC

71

1 Mr. Kanefield, who I have great respect for. And -- and I

2 think we can probably work all of those out. I will try

3 to get whatever he needs if you do go forward on anything.

4 I will tell you, just on or off the record or

5 otherwise, that we'll -- we want this investigation to

6 proceed. I do. I -- I think, you know, he's either right

7 or he's wrong and we'll soon enough find out. But I've

8 seen enough thus far based on the statements that I think

9 are pretty clear, and the evidence that I have seen, to

10 suggest it should not. And I am not suggesting here that

11 you shouldn't go forward on Ms. Beattie's own allegations.

12 I do think that's probably -- if I were in your position,

13 I would vote to do that. I'm not going to lie to you on

14 that.

15 But I do think if you look carefully at her

16 allegations, I do, with all due respect to -- to -- to

17 your Director, I do believe that they've gone a little bit

18 awry and afar from even what she alleges in terms of what

19 is being looked into.

20 And that's the only criticism I have at this

21 point, okay? I understand your criticism. It 's well

22 taken. And -- and I'll to do what I can to -- to try to

23 rectify that. But I would ask you to sincerely listen to

24 what I am saying on the scope of the investigation, only

25 because I do think that the allegations don't even amount

Miller Certified Reporting, LLC

73

1 ever told anyone, implied, winked his eye or anything else

2 to hire anybody to -- to do campaign work at the office.

3 If he -- when he -- when and if he learned about anything

4 that was even close to being even a minor infraction, he

5 was always very clear on his position on that. And I

6 think it's just been an unfortunate series of events where

7 everybody has just sort of assumed, including the press,

8 that he's guilty of something. And -- and I'm not

9 suggesting you guys have done that. But I'm just saying

10 the press, with all due respect to them, take things -- I

11 think that's one of the reasons why, frankly, now that I

12 have the opportunity to elaborate, I think it's one of the

13 reasons why there was some confusion actually as to what

14 today's hearing was about because of some of the things

15 the press had -- had -- had written.

16 CHAIRPERSON RECKART: Okay. Thank you.

17 MR. WILENCHIK: Anyway, I'm sorry to take the

18 time.

19 CHAIRPERSON RECKART: No.

20 COMMISSIONER TITLA: Thank you.

21 CHAIRPERSON RECKART: Mr. Hoffman -- were you

22 done, Mr. Titla?

23 COMMISSIONER TITLA: Yeah.

24 CHAIRPERSON RECKART: Thank you. Mr. Koester, do

25 you have any?

Miller Certified Reporting, LLC

74

1 COMMISSIONER KOESTER: I think Mr. Hoffman was
2 first --
3 CHAIRPERSON RECKART: Okay.
4 COMMISSIONER KOESTER: -- but I do have couple
5 comments though.
6 CHAIRPERSON RECKART: All righty.
7 COMMISSIONER KOESTER: Go ahead.
8 CHAIRPERSON RECKART: Thank you. Mr. Hoffman.
9 MR. WILENCHIK: If you don't have any other
10 questions, though...
11 COMMISSIONER KOESTER: No, you can...
12 CHAIRPERSON RECKART: Yeah.
13 COMMISSIONER HOFFMAN: If you had something,
14 please go.
15 COMMISSIONER KOESTER: Well, just in general I
16 know with -- you didn't have much time, and this is more
17 or less my read of what you presented is that Sarah
18 Beattie made certain statements about time and time on the
19 campaign and time in the office, and these other employees
20 said more or less the opposite. And it's sort of like
21 you're saying she said/he said/whoever said, and if it was
22 just this alone, it would be very hard for us to come to
23 any conclusions other than to bring your people in and
24 have them say again what -- what they made statements
25 about.

Miller Certified Reporting, LLC

76

1 And another thing that is out there, too, is she
2 was given a rather substantial raise. I'm talking about
3 Ms. -- Ms. Beattie --
4 MR. WILENCHIK: Right.
5 COMMISSIONER KOESTER: -- during her employment.
6 And all of a sudden, it's like if she's not doing a good
7 job, why such a huge raise in salary halfway through or
8 three months after or four months after, and she becomes
9 employed or watched over by someone else other than -- I
10 think it was Ms. Dugan or -- if my memory is right.
11 So, there's a lot of questions out there --
12 MR. WILENCHIK: Can I respond to that one?
13 COMMISSIONER KOESTER: Besides -- yeah. Go
14 ahead.
15 MR. WILENCHIK: Oh. Thanks. Well, there's --
16 there's a lot of response but let me keep it brief. You'd
17 have to almost assume just logically that everybody then
18 would have been large raises in the same scenario if
19 everybody was doing what she claims they were doing
20 without any evidence of it.
21 I think he did respond and the original response
22 as I read it yesterday that -- explained that that raise,
23 of course, had nothing to do with anything other than the
24 fact that she had a low-paid position, she was put in a --
25 a better position. I don't think Mr. Horne said that she

Miller Certified Reporting, LLC

75

1 But there's a little more to it, at least in my
2 mind --
3 MR. WILENCHIK: Okay.
4 COMMISSIONER KOESTER: -- besides who said this
5 and who said that. And one thing is it's kind of out
6 there is the fact that he's running a statewide
7 campaign --
8 MR. WILENCHIK: Yes.
9 COMMISSIONER KOESTER: -- normally you would
10 think that he'd have full-time volunteers or at least
11 volunteers apart from the Attorney General's office
12 itself.
13 MR. WILENCHIK: Right.
14 COMMISSIONER KOESTER: I remember one comment
15 that someone said: Who are the volunteers? Like, we're
16 all working on this campaign, where is everybody else at?
17 And it's like, yeah, that's true.
18 Same way with the campaign headquarters,
19 apparently there's Rock Corporation is out there a few
20 blocks away, but as far as the money spent on using the
21 office and the telephone calls made, you don't see too
22 much of that, at least I didn't.
23 MR. WILENCHIK: You mean from Rock Products?
24 COMMISSIONER KOESTER: Rock Products, yeah.
25 Whatever the company is called.

Miller Certified Reporting, LLC

77

1 was doing a bad job. I think if I recall, he had a
2 meeting with her in which they discussed her doing
3 something that was more interesting for her.
4 There's nothing in that meeting that suggests
5 that she indicated that she was going -- I mean, there's
6 just no evidence of it, no objective evidence, that she
7 indicated that: Now I need more money to do full-time
8 campaign work.
9 And then what is that work? That's the part that
10 I'm at a loss at. No one has ever even begun to allege,
11 let alone explain, what she's doing for six hours a day
12 for all those months; there's no product to show for it.
13 And so, what I'm saying is it is possible that
14 you have a rogue employee in any organization that decides
15 to do what they want to do every day and that is possible,
16 or decides to do volunteer work on company time, if you
17 will, and not on her own time. I -- I recognize that's
18 always a possibility.
19 The issue is, did Mr. Horne approve that, did he
20 encourage it, and did he sustain it? That's where,
21 Commissioner, I -- I have to say that there's just no
22 evidence of that and it's just not true.
23 So, that's where we have this issue. There was a
24 policy and, yet, when we say there was a policy, your
25 Executive Director counters, well, yes, there was a policy

Miller Certified Reporting, LLC

78

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 The problem here is Sarah Beattie left and then
6 made these allegations. So, that's the issue we have
7 here. There's nothing contemporaneous with her working
8 where it was indicated that she complained to somebody and
9 somebody did said, you know what, forget it, we're not
10 going to enforce those policies. That wasn't in the
11 facts. So that's why I say it's a little more complicated
12 than it appears.

13 And I -- I recognize your point, finally. I do
14 recognize your point that there are a lot of people
15 working up there that are working on this campaign as
16 well. I get that point. I acknowledge that point, it's
17 obvious. But I don't know that that means that anything
18 was violated when they use their own time to do it.

19 CHAIRPERSON RECKART: Let me just jump in real
20 quick before I turn it over to Mr. Hoffman. To follow on
21 Mr. Koester's point that -- it's just -- it's messy. The
22 fact that you had four senior members of the office -- or,
23 prominent members of the office also being senior members
24 of the campaign, it's just messy.

25 MR. WILENCHIK: We can agree on that.

Miller Certified Reporting, LLC

80

1 both his personal and official capacities?
2 MR. WILENCHIK: Yeah.

3 COMMISSIONER HOFFMAN: Okay. So, that's helpful
4 because of the issue that --

5 MR. WILENCHIK: Yes. I understand.

6 COMMISSIONER HOFFMAN: -- Commissioner Titla
7 raised with regard to responding to the subpoena -- the
8 public records request. Just picking -- starting with
9 that, and I'd like to take these in sort of little cabined
10 positions.

11 MR. WILENCHIK: Sure.

12 COMMISSIONER HOFFMAN: It disturbed me that --
13 also that there's been two months since the public records
14 request was made on July 3rd, and by my count four pieces
15 of paper produced. I -- I may have that slightly wrong
16 and maybe there's pieces that I don't know about it.

17 But it is at least a partial response and it
18 seemed very partial to me, and that was accompanied with a
19 sort of attack on Mr. Collins for daring to, you know,
20 raise the issue that things had been delayed. And I, you
21 know, would encourage if, in fact, your client does want
22 to, you know, get everything, as you've said and
23 invest- -- and, you know, allow an investigation to go
24 forward in -- in a meaningful way, that perhaps we can
25 look into this.

Miller Certified Reporting, LLC

79

1 CHAIRPERSON RECKART: Yeah. And -- and -- and,
2 again, what we're looking at here is a very low standard
3 of -- of, you know, reason to believe that a violation has
4 occurred. We're not making any conclusions regarding
5 it --

6 MR. WILENCHIK: I understand.

7 CHAIRPERSON RECKART: -- but there's enough dust
8 in the air as a result of the messiness. And given her
9 allegations that it -- it suggests to me that wherever the
10 factual determinations may come out, it still suggests to
11 me that an investigation needs to go forward.

12 You have a fair point on the scope of it, but I
13 think that's something that we can deliberate on a little
14 bit more on.

15 But I think to -- to piggyback on Mr. Koester's
16 comment, I -- I think that here is what brings me to
17 decide -- and I'm telegraphing my vote here. Brings me to
18 decide that we probably need to go ahead with an
19 investigation or we do need to go ahead with an
20 investigation.

21 Okay. Mr. Hoffman?

22 COMMISSIONER HOFFMAN: Yes. Mr. Wilenchik, you
23 represent Mr. Horne?

24 MR. WILENCHIK: Uh-huh.

25 COMMISSIONER HOFFMAN: Do you represent him in
Miller Certified Reporting, LLC

81

1 MR. WILENCHIK: If I may --

2 COMMISSIONER HOFFMAN: Let me ask -- let me be
3 more specific on what I have in mind. You've raised the
4 question of if, you know, she worked six hours a day,
5 Ms. Beattie, on campaign business, where's the work
6 product?

7 Well, wouldn't that be all -- all of her e-mails
8 and all of her documents that she did on her computer
9 would tell us the answer to that, what she was doing every
10 day, right?

11 MR. WILENCHIK: Which she has and she's produced.
12 And if you added all of that up...

13 COMMISSIONER HOFFMAN: Well, I assume that what's
14 on the State computers is going to be far more than what
15 she happened to take with her and print out or whatever,
16 too. So -- so --

17 MR. WILENCHIK: As I indicated earlier, I think
18 some of that may be -- the problem may be, Commissioner,
19 that some of that may be subject to DOA, so I'll look into
20 that.

21 COMMISSIONER HOFFMAN: Yeah. Well, I mean, I --
22 I think -- I'm not sure what you mean by "subject to DOA."

23 MR. WILENCHIK: Well, my understanding was -- I
24 got a message actually, because my question was very --
25 was actually the same question you had: What have you
Miller Certified Reporting, LLC

82

1 produced and so forth? Because I'm in agreement with you.

2 I'm not -- I'm not fighting and arguing about it, I think

3 you should have whatever you need.

4 The time sheets in particular, which would be --

5 COMMISSIONER HOFFMAN: Well, I'm not talking

6 about time sheets. I almost don't care about -- I mean --

7 well, I shouldn't say I don't care about them. I don't

8 know if I care about the time sheets.

9 What I'm interested in is there is allegations

10 that this collection of employees was doing a lot of

11 campaign work on -- on not only State time, meaning their

12 salaries, but also on State facilities. And, you know, so

13 it seems like -- and -- and the response from Mr. Horne

14 seems to be: Well, they put in full eight hours days and

15 did a lot of work on various tasks for the State and -- in

16 addition to the campaign materials. And, you know, and on

17 the other hand, there's -- Mr. Horne says, the response is

18 that there's no evidence of lots of work being done on

19 campaign-related activities.

20 Well, that's testable, right? I mean, the

21 entirety of the e-mails and the entirety of the documents

22 that are produced on the computers -- on State computers

23 at the State offices during the entire period ought to

24 tell us the answer to that question if it were produced or

25 made available for inspection to -- to, you know,

Miller Certified Reporting, LLC

84

1 MR. WILENCHIK: Well, that's a big question here.

2 COMMISSIONER HOFFMAN: Okay. But -- but you

3 raised --

4 MR. WILENCHIK: -- question.

5 COMMISSIONER HOFFMAN: Mr. Horne has raised the

6 question of whether these employees actually were doing

7 lots of campaign business.

8 MR. WILENCHIK: Mr. Horne isn't raising it,

9 Mr. Horne is trying to respond to it.

10 COMMISSIONER HOFFMAN: Right. But Mr. Horne's

11 response says that, you know, that people --

12 MR. WILENCHIK: Their response says.

13 COMMISSIONER HOFFMAN: No. Mr. Horne's response

14 says that these people put in -- well, okay. He's

15 supported by affidavits, yes, but -- or, statements.

16 MR. WILENCHIK: Statements.

17 COMMISSIONER HOFFMAN: Statements. They all say,

18 if I understand correctly, that these guys put in full

19 eight-hour day on State business.

20 MR. WILENCHIK: That's right.

21 COMMISSIONER HOFFMAN: Well, let's -- let's --

22 let's check that.

23 MR. WILENCHIK: That's what they represented.

24 COMMISSIONER HOFFMAN: Let's check that. Right?

25 So --

Miller Certified Reporting, LLC

83

1 Mr. Horne and his staff.

2 MR. WILENCHIK: Let me just answer that as

3 quickly as I can.

4 COMMISSIONER HOFFMAN: I'm sorry. Mr. Collins

5 and his staff.

6 MR. WILENCHIK: Part of the problem, I have to be

7 very candid with you and the reason why I suggested the

8 scope issue is, let -- let's just assume for the sake of

9 the argument that that's true --

10 COMMISSIONER HOFFMAN: I'm going to talk about

11 the scope issue later with you, I'd like to do that,

12 but --

13 MR. WILENCHIK: But let me just answer.

14 COMMISSIONER HOFFMAN: I don't want you to repeat

15 it, but whether it's Ms. -- Ms. Beattie herself only or

16 all of them, you know, the issue is, you know, let's look

17 at their computers and let's look at the quantity of work,

18 right? Relative quantity of work.

19 MR. WILENCHIK: The issue, I think -- and this is

20 why I brought it up. And that's why this is not an easy

21 issue; it is messy. The issue is, is Mr. Horne being

22 charged -- or potentially being charged -- with something

23 relating to what an individual does on --

24 COMMISSIONER HOFFMAN: Well, that's another

25 question.

Miller Certified Reporting, LLC

85

1 MR. WILENCHIK: I don't have a problem with that,

2 I'm not sure you'll get a great answer to it, but I'm

3 happy...

4 COMMISSIONER HOFFMAN: So -- so, my -- my point

5 with regard to the documentation is that, you know, it's,

6 you know, I think it's important that there is a

7 willingness to promptly, you know, disclose the documents

8 of employees, whichever set we talk about, from the State

9 computers, including e-mail and including work product,

10 and appropriate confidentiality provisions --

11 MR. WILENCHIK: Yeah.

12 COMMISSIONER HOFFMAN: -- can be negotiated, I'm

13 sure.

14 And, you know, I -- I wanted to say I appreciated

15 your comment earlier that said, you know, we want to get

16 everything out there and want to make sure that that

17 information is provided. It has not to date --

18 MR. WILENCHIK: Okay.

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

20 Mr. Horne has now lost the election, so, you know, the

21 issue of stalling doesn't come into it. Whether he

22 stalled or not, doesn't matter. You know --

23 MR. WILENCHIK: May I comment?

24 COMMISSIONER HOFFMAN: -- let's get it done,

25 right?

Miller Certified Reporting, LLC

86

1 MR. WILENCHIK: Yeah.

2 COMMISSIONER HOFFMAN: Okay.

3 MR. WILENCHIK: No. Look, I don't disagree with

4 a lot of what you just said, okay?

5 COMMISSIONER HOFFMAN: Okay. Good. Well, I'm

6 glad we're on the same overall page.

7 MR. WILENCHIK: We are.

8 COMMISSIONER HOFFMAN: Let me turn to the --

9 well, while we're on the subject there's -- in Mr. Horne's

10 responses there are a lot of personal attacks on Ms.

11 Beattie and on our Executive Director. I wanted to

12 express --

13 MR. WILENCHIK: He would consider there were a

14 lot of personal attacks on him, but I -- I understand your

15 point.

16 COMMISSIONER HOFFMAN: I -- I agree with that,

17 too. But in terms of saying people are a liar, you know,

18 Mr. Horne has said Ms. -- Ms. Beattie is a liar and also

19 said our Executive Director is biased.

20 MR. WILENCHIK: Can I make that clear?

21 COMMISSIONER HOFFMAN: Yeah.

22 MR. WILENCHIK: Okay. Thank you for that. What

23 I think Mr. Horne is saying and what I -- what I would

24 say -- I can't say everything he said, but what I -- what

25 I would say is this in response: The only point that

Miller Certified Reporting, LLC

88

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

2 MR. WILENCHIK: Absolutely.

3 COMMISSIONER HOFFMAN: -- not credible about that

4 subject.

5 MR. WILENCHIK: That's a good point.

6 COMMISSIONER HOFFMAN: Then, you know, sure.

7 You're free to make --

8 MR. WILENCHIK: That's wrong.

9 COMMISSIONER HOFFMAN: -- any argument you want.

10 But --

11 MR. WILENCHIK: *Ad hominem* attacks are not

12 welcome and I agree.

13 COMMISSIONER HOFFMAN: Right. But, you know --

14 MR. WILENCHIK: And -- by the way, I didn't

15 write -- just so you know --

16 COMMISSIONER HOFFMAN: I get that. I don't think

17 you would have. But -- but I wanted to --

18 MR. WILENCHIK: But I agree with you.

19 COMMISSIONER HOFFMAN: I wanted to just express

20 some comments going forward that as to what the, you

21 know --

22 MR. WILENCHIK: Appreciate.

23 COMMISSIONER HOFFMAN: -- what the stuff I care

24 about is.

25 MR. WILENCHIK: I appreciate that.

Miller Certified Reporting, LLC

87

1 we're raising there is Ms. Beattie did have to fill out

2 time sheets and certify them.

3 COMMISSIONER HOFFMAN: Yeah.

4 MR. WILENCHIK: I think the only point that I

5 know of in which that came up was saying -- and you may

6 not like it, but that's the reality of it -- either she

7 was telling the truth when she was filling out those time

8 sheets or she wasn't; if she -- and it can only be one or

9 the other.

10 And so, today if she's saying: Well, when I

11 filled them out, I wasn't telling the truth on those

12 certifications. That the only issue that I know of.

13 COMMISSIONER HOFFMAN: I hear you, but --

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

15 in some ways.

16 COMMISSIONER HOFFMAN: Well, I'm not saying

17 it's -- it's -- it's irrelevant. What I'd like to -- to

18 do is that to the extent during the investigation -- I'd

19 like to ask this. To me, personally, and I'm speaking for

20 myself, not the Commission.

21 MR. WILENCHIK: I understand.

22 COMMISSIONER HOFFMAN: It's relevant if, you

23 know, if you have a point. If you -- challenging

24 someone's credibility is fine if you tie it to a statement

25 that the person made that you believe is untrue. So if

Miller Certified Reporting, LLC

89

1 COMMISSIONER HOFFMAN: And -- and -- and I might

2 care if it's relevant to a particular fact that you're

3 disputing of what she says --

4 MR. WILENCHIK: Correct.

5 COMMISSIONER HOFFMAN: -- and -- but -- and if

6 the attack is -- is somehow tied to it.

7 MR. WILENCHIK: Otherwise I agree with you.

8 COMMISSIONER HOFFMAN: I -- I know Mr. Collins

9 well enough to say that I doubt personal attacks are going

10 to be productive regardless.

11 MR. WILENCHIK: And, listen, I -- I want to say

12 very clearly before you even go on. I'm glad I have the

13 opportunity, actually.

14 This is not about Mr. Collins to me. I have

15 nothing against Mr. Collins. I'm sure he does a great job

16 for you. I've sat on boards myself, I understand the

17 relationship; you have to have trust in him. I don't

18 think he's out in a vendetta or anything like that, so.

19 There is none of that coming from me.

20 COMMISSIONER HOFFMAN: I'm glad you said that.

21 MR. WILENCHIK: And I -- absolutely. And I

22 believe also your counsel is somebody of the highest

23 integrity. So, as far as I'm concerned on my watch, that

24 ain't going to happen, okay? If that helps you at all.

25 COMMISSIONER HOFFMAN: Well, that's helpful and

Miller Certified Reporting, LLC

90

1 thank you for saying those comments. If, in fact, there
 2 are any problems with the way your side feels treated
 3 or -- or -- or the other side if -- if, you know, assuming
 4 people or representatives are here, you know, please bring
 5 it to attention of the Chair, and -- and -- I'd be
 6 certainly interested in that.
 7 MR. WILENCHIK: Okay.
 8 COMMISSIONER HOFFMAN: But -- but if there's
 9 not --
 10 MR. WILENCHIK: I hear you.
 11 COMMISSIONER HOFFMAN: -- let's -- let's -- let's
 12 tone it appropriately.
 13 The -- all right. So, the -- the other thing I
 14 wanted to say is with regard to what we're looking at, as
 15 I understand it, and -- and I'd like your comments if you
 16 agree or disagree on that. There's -- even if somebody
 17 works 40 hours a day -- a week on State business, so one
 18 issue is if they're not getting the full services -- a
 19 particular person, whatever that is, an employee, if
 20 they're not providing their full services to the State
 21 because they're off volunteering, that's a problem,
 22 problem number one.
 23 Problem number two, even if they're providing
 24 40 hours a week of State service, if they're using State
 25 facilities for campaign purposes, that's a problem too,
 Miller Certified Reporting, LLC

92

1 respect --
 2 MR. WILENCHIK: Well, what I'm saying, just to be
 3 clear if I may --
 4 COMMISSIONER HOFFMAN: Yeah.
 5 MR. WILENCHIK: -- is he set up policies and he
 6 made it clear to Ms. Dugan who ran the office that those
 7 policies would be enforced. My only point was I think
 8 anyone here can appreciate that as a high-ranking
 9 government --
 10 COMMISSIONER HOFFMAN: Policies.
 11 MR. WILENCHIK: -- official, he can't be running
 12 around making sure Ms. Beattie is filling out her time
 13 sheets correctly.
 14 COMMISSIONER HOFFMAN: Right.
 15 MR. WILENCHIK: That's all.
 16 COMMISSIONER HOFFMAN: But if he hires her
 17 specifically to do --
 18 MR. WILENCHIK: Absolutely.
 19 COMMISSIONER HOFFMAN: -- campaign business --
 20 MR. WILENCHIK: Then that's *quid pro quo*.
 21 COMMISSIONER HOFFMAN: -- you know, and pays her
 22 a State salary, then that's what you're talking about.
 23 MR. WILENCHIK: That's *quid pro quo*. And what
 24 I'm saying is --
 25 COMMISSIONER HOFFMAN: Right.
 Miller Certified Reporting, LLC

91

1 right? Independent.
 2 MR. WILENCHIK: I will say this. I agree with
 3 99 percent of what you just said except I will say this.
 4 I think it's reality, that in any office, if we were to go
 5 in and audit any political office today of anyone --
 6 COMMISSIONER HOFFMAN: Minus trivia.
 7 MR. WILENCHIK: Huh?
 8 COMMISSIONER HOFFMAN: Minus trivia. I'll agree
 9 with you on that.
 10 MR. WILENCHIK: Yes. Yeah. I think you'd find
 11 that people do talk about things, that's all.
 12 COMMISSIONER HOFFMAN: Sure.
 13 MR. WILENCHIK: Or may send a quick e-mail or
 14 something.
 15 COMMISSIONER HOFFMAN: Sure. And I -- I.
 16 MR. WILENCHIK: That's all I'm saying. But I
 17 agree with your comment.
 18 COMMISSIONER HOFFMAN: But -- and I accept your
 19 qualification.
 20 But -- but those are two issues. And then the
 21 third issue which you raised is Mr. Horne's own activity
 22 and whether he has the duty to supervise and whether he
 23 set up these issues and whether he did it himself,
 24 correct?
 25 So those -- those are the three issues with
 Miller Certified Reporting, LLC

93

1 MR. WILENCHIK: -- I don't read here any
 2 allegation.
 3 COMMISSIONER HOFFMAN: I'm not getting into the
 4 merits yet of whether I agree with that.
 5 MR. WILENCHIK: Okay.
 6 COMMISSIONER HOFFMAN: I'm just trying to
 7 identify three categories of concern.
 8 MR. WILENCHIK: Yes. Correct.
 9 COMMISSIONER HOFFMAN: With regard to your issue
 10 about other -- other employees, I'm looking at the --
 11 while you were talking, I was looking at the Secretary of
 12 State's reasonable cause notice. And from page 5 through
 13 the end of the document. The first four pages are talking
 14 about Ms. Beattie and her own work schedule, but page --
 15 around the middle of page 5, there's discussions of
 16 allegations and response, allegation and response,
 17 allegation and response is the form of the document. And
 18 they talk about allegations with respect to Ms. Dugan --
 19 well, I'm not sure if they're -- if they're "Mrs." or
 20 "Ms."
 21 MR. WILENCHIK: Yeah. Sure.
 22 COMMISSIONER HOFFMAN: So, let me just say:
 23 Dugan, Beattie, Winn -- I know that's a Ms. -- Scordato,
 24 Mecum, Archer, and Horne himself. And all of those people
 25 are identified in the Secretary's reason to -- to believe
 Miller Certified Reporting, LLC

94

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

96

1 lot of these arguments arguing that the standard was very
2 low. I get that.
3 But what I'm saying is it may not be a problem
4 with Beattie's allegations. I repeat. But her
5 allegations do not establish probable cause in the
6 slightest degree for you to proceed right now against
7 Mr. Horne that somehow everybody else in that wing was
8 somehow doing something illegally at his instance, at his
9 knowledge, his condoning it, and -- or his wanting it
10 done.
11 And that you have no evidence at any time any
12 infraction was brought to his attention he didn't
13 absolutely say it's inappropriate. He did. In fact,
14 there's a statement, as I recall, from -- gosh, the names
15 are a little hard on me right now, but the technical guy
16 --
17 MR. RYAN: Garret Archer.
18 MR. WILENCHIK: Yeah. Thanks. Garret Archer.
19 Thank you. And I believe he affirmed, in fact, this very
20 point --
21 COMMISSIONER HOFFMAN: Well, listen. I don't
22 mean to say that you don't have any evidence or that these
23 issues are made up in my mind, they are not, but -- by the
24 way, I should have said starting with page 4.
25 But I'm -- I'm looking at this with respect to
Miller Certified Reporting, LLC

95

1 people here today, by the way, but -- but I'm glad we
2 didn't when last -- late last night I kind of figured out
3 what the scope of this was. But they're -- they're happy
4 to come here and talk to you, put their hand on a Bible
5 and -- and tell you under oath everything they told you in
6 the statement.
7 The fact of the matter is we made very clear, we
8 tried before this hearing to make it very clear, that
9 those people have said there is nothing that was done
10 inappropriately. Ms. Beattie has no evidence of that.
11 What Ms. Beattie has as to herself, we can deal
12 with. But there is no evidence that she has substantiated
13 anything to give you even the lowest probable cause
14 standard that Mr. Horne has done anything inappropriate in
15 his office with respect to any of these people:
16 Encouraging them to do campaign work there; hiring them to
17 do campaign work as a condition; or even condoning any
18 campaign work. When it came to his attention, he was
19 always resolute that it shouldn't be. And Ms. Dugan has
20 now reaffirmed that as of late last -- or yesterday in a
21 separate statement, even -- making it even clearer.
22 So, what I'm saying is when you are looking at a
23 reasonable cause standard, I think you even -- you know, I
24 was a prosecutor many, many moons ago and we had probable
25 cause hearings and I, you know, was on the other side of a
Miller Certified Reporting, LLC

97

1 Mr. Horne specifically and it says that, you know, just
2 some of the allegations, that Mr. Horne asked Ms. Beattie
3 to meet at Molina Fine Jewelry during work hours to
4 discuss a fundraiser.
5 MR. WILENCHIK: That was at a lunch hour.
6 COMMISSIONER HOFFMAN: I don't want to hear your
7 responses. I'm just -- the question is whether we have
8 enough to investigate Mr. Horne, his personal activities
9 as well, his -- as what he did himself as opposed -- it
10 says here that Ms. Beattie alleged Mr. Horne routinely
11 discussed the campaigns of opponents with executive office
12 staff during regular office hours or not lunch or breaks;
13 and Mr. Horne admits to that but refers to them as water
14 cooler.
15 There's the allegation that Horne -- that there
16 were weekly meetings held for business and including cam-
17 -- review of campaign events and he says they're just
18 scheduling.
19 MR. WILENCHIK: And Ms. Grisham would attest to
20 that.
21 COMMISSIONER HOFFMAN: Again, you know, Mr. Horne
22 discussed a proposed robocall during work hours; Mr. Horne
23 discussed a negative of Rotellini memo; Mr. Horne e-mailed
24 a memo about his achievements to two other employees.
25 Again, doesn't directly address them, but -- according to
Miller Certified Reporting, LLC

98

1 the secretary, but responds that there is water cooler
 2 political gossip.
 3 MR. WILENCHIK: No, that's just --
 4 COMMISSIONER HOFFMAN: My point is -- my point is
 5 just that not that you don't have answers to all these
 6 things, but it seems like there's enough allegations there
 7 to make our -- our investigation -- to investigate all of
 8 these and see whether -- how much, you know, how much was
 9 done.
 10 There is also I believe the allegation, which I
 11 can't find right now, that -- that he actually made calls
 12 from his office using that mislabeled binder. So, you
 13 know --
 14 MR. WILENCHIK: May I just say this?
 15 COMMISSIONER HOFFMAN: Yeah. Please.
 16 MR. WILENCHIK: There are a lot of allegations,
 17 which is what made it messy when Chairman brought that up
 18 and I didn't disagree. However, what we have done -- not
 19 me personally, but what has been done, is you have been
 20 given before this determination an opportunity of
 21 statements from every one of those people, to have
 22 explanations if you read them correctly --
 23 COMMISSIONER HOFFMAN: Sure.
 24 MR. WILENCHIK: -- about every one of those
 25 supposed hearsay allegations, which would only be hearsay

Miller Certified Reporting, LLC

100

1 COMMISSIONER HOFFMAN: Well, okay.
 2 MR. WILENCHIK: If I can just answer that
 3 quickly?
 4 COMMISSIONER HOFFMAN: Yeah.
 5 MR. WILENCHIK: We have. And the point I am
 6 getting to is simply this. I don't want to belabor it,
 7 but the point I'm getting to is a memo was -- or, excuse
 8 me, achievements was prepared in the office. I believe if
 9 I recall correctly, Ms. Winn and somebody else -- don't
 10 hold me to that, I think it was Ms. Winn primarily who was
 11 in charge at the time of being in charge of Ms. Beattie --
 12 did I think state in one of those statements that I saw
 13 that it was prepared. But that's what they did, they were
 14 a community outreach and they had to go out and tell
 15 people the accomplishments of the office.
 16 You can argue, I suppose, that's political. But,
 17 you know, in fairness that's what they do. That's what
 18 anybody does in political office is go out and talk to
 19 people and tell them what they've done.
 20 COMMISSIONER HOFFMAN: That may be permissible is
 21 what you're saying?
 22 MR. WILENCHIK: Yeah. So, what I'm saying is you
 23 have to look at that and say: Is there evidence here
 24 to -- to raise the standard to get over the hump, if you
 25 will, of -- I'll use the term "probable cause," there may

Miller Certified Reporting, LLC

99

1 at the -- on the -- of the worst order.
 2 COMMISSIONER HOFFMAN: But some of them can be
 3 checked with documents, right?
 4 MR. WILENCHIK: Not necessarily, no. That's the
 5 problem.
 6 COMMISSIONER HOFFMAN: Okay.
 7 MR. WILENCHIK: Some of them depend on
 8 credibility of 11 people versus 1.
 9 COMMISSIONER HOFFMAN: Well, if that turns out to
 10 be the case, then, you know, that may not be specific
 11 pieces that pass the muster.
 12 MR. WILENCHIK: How do you put documentation when
 13 somebody says that there's water cooler talk about Mr.
 14 Horne saying I'm going to a campaign event or something?
 15 I mean, what is that? How do you defeat the negative?
 16 That's my point.
 17 COMMISSIONER HOFFMAN: There's an -- there's an
 18 -- see, I don't think that's the burden. But, you know,
 19 if there's an allegation that Mr. Horne e-mailed a memo
 20 about his achievements during work hours via e-mail to
 21 employees, then we can look at their employee -- those
 22 e-mails.
 23 MR. WILENCHIK: We have.
 24 COMMISSIONER HOFFMAN: We can look at the --
 25 MR. WILENCHIK: But we have.

Miller Certified Reporting, LLC

101

1 be another term that you use.
 2 To get over that hump based on what you have in
 3 front of you, not what's hypothetical, but you have
 4 statements of these people who have stated what they
 5 stated. Now, if you're going to conclude that those
 6 statements are just irrelevant, they're false, or we're
 7 just not going to take them into consideration because we
 8 don't believe them, I suppose you have the power to do
 9 that.
 10 CHAIRPERSON RECKART: And just let me jump in.
 11 We're not here, again, weighing the 11 versus the 1.
 12 We're deciding whether there's a reason to believe based
 13 on what has been said. I understand that there is a he
 14 said/she said element. I think Tom said that earlier.
 15 That's what we've got to get into.
 16 You know, we're not hear to resolve merits. I --
 17 I hear all of what you're saying it. I truly believe
 18 you're going to have a chance to make that argument --
 19 COMMISSIONER HOFFMAN: Right.
 20 CHAIRPERSON RECKART: -- to us at some point.
 21 COMMISSIONER HOFFMAN: I haven't concluded that
 22 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 --

Miller Certified Reporting, LLC

102

1 MR. WILENCHIK: How do we --

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

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

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

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

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

7 questions I want to have executive session over is what is

8 the scope of that because I think you raise a decent

9 point. And we also have some other stuff related to

10 client privilege.

11 MR. WILENCHIK: Okay.

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

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

14 COMMISSIONER HOFFMAN: I was substantially done.

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

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

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

18 they say: This ain't the case --

19 MR. WILENCHIK: Right.

20 CHAIRPERSON RECKART: -- and that's something we

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

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

23 truth and what happened.

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

25 know, there's a long way to go before we get to where Mr.
Miller Certified Reporting, LLC

104

1 stage?

2 MR. WILENCHIK: The -- the Office of

3 Administrative Hearing stage. In other words, if you

4 conduct an investigation, which sounds like you're going

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

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

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

8 want to do that.

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

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

11 I want that.

12 MR. WILENCHIK: Okay. Great.

13 CHAIRPERSON RECKART: I can't make a decision on

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

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

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

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

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

19 to do here.

20 MR. WILENCHIK: Okay.

21 CHAIRPERSON RECKART: And I think Mr. Collins

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

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

24 me right now.

25 MR. WILENCHIK: Got it. I appreciate you raising
Miller Certified Reporting, LLC

103

1 Collins came out in terms of what his assessments are

2 before I'm comfortable agreeing that those are what's

3 happened.

4 MR. WILENCHIK: Understood.

5 CHAIRPERSON RECKART: There's a -- you know,

6 there's a long way to go.

7 MR. WILENCHIK: Can I ask one question before I

8 sit down, if you don't mind?

9 CHAIRPERSON RECKART: Sure.

10 MR. WILENCHIK: I'm okay, honestly, with that

11 approach. I don't know how anybody stops a reasonable

12 cause finding, but then when I was a prosecutor I never

13 did either. So, I'm not being critical.

14 CHAIRPERSON RECKART: Right. You can indict a

15 ham sandwich on a warm summer day, and that's --

16 MR. WILENCHIK: Yeah. I'm not being critical

17 because I understand that it's almost impossible. But let

18 me just say this -- all I'm asking for, the only thing I

19 would ask -- and you don't have to grant it -- but the

20 only thing I would ask for is this -- other than what I've

21 asked already -- I would like an opportunity before we

22 even get to an OAH stage to convince you all of what I

23 just -- I'm saying. And if I'm wrong on that, then you'll

24 find me wrong.

25 COMMISSIONER HOFFMAN: Before we get to a what
Miller Certified Reporting, LLC

105

1 things because it gives me an opportunity to know what's

2 on your mind and to respond to it during this process, and

3 I will. Whether I convince you of it or not, that's -- of

4 course, remains to be seen.

5 CHAIRPERSON RECKART: No, and these are serious

6 things. And -- and -- and I'm not -- having been on the

7 other side in some of these things in my own capacity

8 representing clients, I -- I don't like things not being

9 taken very seriously because of what they can do to

10 people's lives. So, you -- you have that from me

11 personally.

12 MR. WILENCHIK: Thank you. That's all I can ask.

13 CHAIRPERSON RECKART: But, yeah. And the thing

14 is, we just -- you know, we have to go through process.

15 MR. WILENCHIK: I understand.

16 CHAIRPERSON RECKART: Part of what I need to do

17 is I need to find out those facts, and that's why I want

18 to go ahead with this so I can find them out.

19 MR. WILENCHIK: Okay. I appreciate that. I do.

20 CHAIRPERSON RECKART: Okay. All right.

21 MR. WILENCHIK: Thanks so much.

22 CHAIRPERSON RECKART: Thank you.

23 MR. WILENCHIK: Thanks for the opportunity.

24 CHAIRPERSON RECKART: No, thank you very much,

25 Mr. Wilenchik.
Miller Certified Reporting, LLC

106

1 Mr. Ryan, you -- you are here and I recall that
 2 you are Ms. Beattie's attorney. Did you have something
 3 you wanted to say?
 4 MR. RYAN: Only briefly. I wanted to address the
 5 issue of the -- working on the 17 points of achievement as
 6 community outreach. Those also turned out to be the very
 7 same things that he put on his campaign website and all of
 8 his campaign literature, but that's for you to weigh down
 9 the road.
 10 With respect to the argument now made about the
 11 concept of scope of the investigation and that, you know,
 12 you can't really expect Tom Horne to supervise his whole
 13 staff, I would bring this to the attention of the
 14 Commission. Mr. Horne is not a manager in a widget shop;
 15 he's a lawyer. He is monitored by the State Bar and under
 16 the duties of the State Bar of Arizona, and that means
 17 he's subject to the provisions of ER 5.3, which mandates
 18 that lawyers in an office -- and it includes the Attorney
 19 General of the State of Arizona -- have an obligation of
 20 oversight and supervision of anybody in that office that
 21 is assigned duties in that office, and it's very specific.
 22 And I would point out specifically Comment 2,
 23 which requires someone like the Attorney General to
 24 specifically speak to somebody about when they're
 25 violating the law and violating their ethical duties and
 Miller Certified Reporting, LLC

108

1 MR. RYAN: The subject matter is the duty of a
 2 lawyer to supervise non-lawyers within that lawyer's
 3 office, and it includes even independent contractors. So,
 4 whether it's a paralegal or a legal secretary or even an
 5 independent contractor, because the independent contractor
 6 and the non-lawyers are not subject to potential
 7 discipline with the State Bar, it is incumbent upon that
 8 lawyer which includes the Attorney General of the State of
 9 Arizona to ensure that the law is fully complied with.
 10 That is a very serious violation that somewhere
 11 down the line the State Bar is also going to have to deal
 12 with in this case, but it does apply in this case based
 13 upon the argument that Mr. Wilenchik is advancing here.
 14 COMMISSIONER TITLA: So, you're saying that
 15 because of the -- the rule here, these rules, ER 5.3 and
 16 Rule 42, that Mr. Horne had the obligation to supervise
 17 his office so that with respect to all these allegations
 18 here on Exhibit D in our material on the reasonable cause
 19 notice, that he should have supervised all these
 20 activities going on?
 21 MR. RYAN: Yes. Yes, Commissioner. You have
 22 correctly stated the obligation under ER 5.3. And it does
 23 apply to these -- these things. It's not just the Rules
 24 of Ethics, it's so that you don't violate the law, period.
 25 COMMISSIONER TITLA: Thank you.
 Miller Certified Reporting, LLC

107

1 it does apply in this case, even though you aren't the
 2 State Bar. He does have that obligation of oversight.
 3 There's no basis upon which this Commission -- I
 4 apologize -- should in any way limit the scope other than
 5 what is suggested by Mr. Collins.
 6 Those are my only comments. And if anybody has
 7 any questions.
 8 COMMISSIONER HOFFMAN: Other than suggested by
 9 Mr. Collins in what respect?
 10 MR. RYAN: The -- the scope of the investigation
 11 that is suggested by -- or, recommended by your Executive
 12 Director Tom Collins.
 13 COMMISSIONER HOFFMAN: I see.
 14 COMMISSIONER TITLA: Chairman?
 15 CHAIRPERSON RECKART: Yes, Mr. Titla.
 16 COMMISSIONER TITLA: Sir, what was the ER again?
 17 5.3?
 18 MR. RYAN: It's ER 5.3. It's under --
 19 COMMISSIONER TITLA: What is the title?
 20 MR. RYAN: It is under Arizona Rules of Supreme
 21 Court, it is Rule 42 or -3. It is ER 5.3. And,
 22 specifically, the information you'll find is under
 23 Comment 2.
 24 COMMISSIONER TITLA: And what was the subject
 25 matter of that?
 Miller Certified Reporting, LLC

109

1 MR. RYAN: Thank you.
 2 CHAIRPERSON RECKART: Anything else?
 3 MR. RYAN: Thank you.
 4 CHAIRPERSON RECKART: All right. Thank you.
 5 Mr. Collins, anything in response? There's a lot
 6 here. So, you'll have your chance, I think.
 7 MR. COLLINS: Yeah. I -- yeah. I mean, if you
 8 -- you had an interest in getting some advice from Joe.
 9 CHAIRPERSON RECKART: I would like to propose --
 10 I would like to move that we go into executive session.
 11 I -- I have some questions here on a couple things I want
 12 to get resolved in my head that require advice of counsel.
 13 So, if I could --
 14 COMMISSIONER TITLA: Chairman, I move for
 15 executive session.
 16 CHAIRPERSON RECKART: -- if you would indulge me,
 17 I'd -- I would make that motion if I can get someone to
 18 second. Thank you, Mr. Titla.
 19 So, all those in favor to go into executive
 20 session, please say "aye."
 21 (Chorus of ayes.)
 22
 23 CHAIRPERSON RECKART: Three?
 24 COMMISSIONER HOFFMAN: I'll abstain.
 25 CHAIRPERSON RECKART: Abstain. Okay. Three is
 Miller Certified Reporting, LLC

110

1 the reference. All right, we're in executive session.
 2 (Whereupon the public retires from the meeting
 3 room.)
 4 (Whereupon the Commission is in executive session
 5 from 11:57 a.m. until 12:19 p.m.)
 6
 7 * * * * *
 8
 9 (Whereupon all members of the public are present
 10 and the Commission resumes in general session.)
 11 CHAIRPERSON RECKART: We're back in public
 12 session. Thank you for everyone's patience. We've gotten
 13 Mr. Kanefield's advice on some things.
 14 All righty. I -- I think we have exhausted our
 15 desire to discuss this and would entertain any motions in
 16 regard to item agenda No. VI -- agenda item number. Said
 17 that backwards, Agenda Item No. VI.
 18 Mr. Hoffman?
 19 COMMISSIONER HOFFMAN: Mr. Chair, I'll --
 20 Mr. Chair, thank you. I -- I'd like to move to find
 21 reason to believe that Mr. Horne and his campaign have
 22 violated the Act with regard to failure to report certain
 23 in-kind contributions, and that there's reason to believe
 24 that there's a violation of statutes over with -- over
 25 which the Commission has jurisdiction, to authorize
 Miller Certified Reporting, LLC

112

1 legal advice pursuant to 38-431.03(A)(4).
 2 Mr. Collins?
 3 MR. COLLINS: Yeah. Chairman Reckart,
 4 Commissioners, really briefly, this is -- was added at the
 5 very last minute, and I apologize for it coming late.
 6 When the Petition for Review was filed, I think Joe just
 7 wanted to make sure that we could file an amicus brief as
 8 we have in the past in this case. If Joe had anything
 9 else he wanted to ask, he's not here. He has stepped
 10 outside for the moment, so...
 11 We -- we under- -- I understand, Mr. Kanefield,
 12 you would like us to authorize -- you would like to ask
 13 the Commission if they would authorize you to -- to file
 14 an amicus brief at -- in -- in response to the Petition
 15 for Review in the CJF case or to have that option?
 16 MR. KANEFIELD: Mr. Chair, members of the
 17 Commission, yeah, if that -- if you wouldn't mind, I would
 18 appreciate that authorization. As you know, we filed an
 19 amicus brief on behalf of the Commission when the case was
 20 at the Court of Appeals, which we think was helpful to the
 21 Court.
 22 We'd also like to weigh in. This is an important
 23 issue for the Commission at the Supreme Court, urging the
 24 Court to deny review. And if I am correct with the
 25 timeline, I think that would put our resp- -- our amicus
 Miller Certified Reporting, LLC

111

1 Mr. Collins to conduct an investigation -- Mr. Collins and
 2 his staff -- and to subpoena -- to issue subpoenas to find
 3 out more facts concerning the allegations, and to conduct
 4 sworn interviews to support that investigation.
 5 CHAIRPERSON RECKART: Okay. Do I have a second
 6 for that motion?
 7 COMMISSIONER KOESTER: I second.
 8 CHAIRPERSON RECKART: Okay. Mr. Koester has
 9 seconded. Thank you, sir. Thank you, Mr. Hoffman.
 10 Is there any further discussion?
 11 Okay. All those in favor, please indicate by
 12 saying "aye."
 13 (Chorus of ayes.)
 14
 15
 16 CHAIRPERSON RECKART: It passes unanimously.
 17 Thank you very much.
 18 Okay. Item No. VII, discussion and possible
 19 action regarding procedural status, Commission interest,
 20 and related legal actions in Arizona Secretary of
 21 State's office -- in the case Arizona Secretary of State's
 22 office versus CJF, Commission For Jus- -- Committee For
 23 Justice and Fairness.
 24 We may again, as before, go into executive
 25 session to consult with our attorney regarding matters of
 Miller Certified Reporting, LLC

113

1 brief due around October 29th, pending on when the
 2 response is filed to the Petition to Review.
 3 CHAIRPERSON RECKART: All righty. And really
 4 that's the scope of this agenda item?
 5 MR. COLLINS: Yeah. That's it.
 6 CHAIRPERSON RECKART: Okay. All righty. Well,
 7 let's -- let's move this along because I want to get back
 8 home. So is there -- are there any questions for him?
 9 COMMISSIONER HOFFMAN: I have a question. Is --
 10 I -- I just got handed the Petition earlier which I am
 11 appreciative of having. But the -- as I recall, the
 12 previous -- (beeping.)
 13 I don't know if I did that. As I recall the --
 14 MR. COLLINS: There's nothing we can do about it,
 15 I don't know.
 16 COMMISSIONER HOFFMAN: Okay. Maybe it's telling
 17 me I'm talking too much.
 18 As -- as I was -- as I recall, there was the
 19 issue of whether this was -- whether this was actually --
 20 do you know what that is?
 21 MS. THOMAS: I know. Somebody is trying to call
 22 this line.
 23 COMMISSIONER HOFFMAN: I see. At least it's not
 24 me.
 25 There was two issues in the case: Whether this
 Miller Certified Reporting, LLC

114

1 was actually express advocacy, this particular ad, and --

2 and the legal standards relating to whether the statute

3 was constitutional in effect. Are both of those issues

4 raised by the Petition?

5 MR. KANEFIELD: Yes.

6 COMMISSIONER HOFFMAN: Okay. That's all I needed

7 to know. Thank you.

8 COMMISSIONER TITLA: Chairman, I make a motion.

9 CHAIRPERSON RECKART: Yes, sir.

10 COMMISSIONER TITLA: To approve the filing of the

11 amicus by Mr. Kanefield.

12 CHAIRPERSON RECKART: Okay. Thank you,

13 Mr. Titla. Commissioner Titla has so moved. Is there a

14 second?

15 COMMISSIONER HOFFMAN: I second.

16 CHAIRPERSON RECKART: Okay. Thank you,

17 Mr. Hoffman. We've moved and seconded to authorize

18 Mr. Kanefield to prepare an amicus brief in connection

19 with the Petition for Review with the Arizona -- in the

20 case Arizona Secretary of State's office versus CJF.

21 All those in favor, please indicate by saying

22 "aye."

23 (Chorus of ayes.)

24

25 CHAIRPERSON RECKART: It passes unanimously.

Miller Certified Reporting, LLC

116

1 CHAIRPERSON RECKART: Okay. And one thing I

2 wanted to point out is during agenda Item No. VI,

3 Mr. Munns was not -- he was in the public domain, not --

4 not up here in capacity as counsel. So, just to cover

5 you.

6 All right. Thank you.

7 COMMISSIONER HOFFMAN: One question. When is

8 fiscal year '15 be, please?

9 MR. COLLINS: Fiscal '15? We're in fiscal '15.

10 COMMISSIONER HOFFMAN: Okay. So mid year to mid

11 year?

12 MR. COLLINS: Yes. That's right. The State

13 calendar is mid year to mid year; our -- our budget

14 calendar runs January to January.

15 COMMISSIONER HOFFMAN: Okay. Thank you.

16 CHAIRPERSON RECKART: Please, sir.

17 MR. ELLMAN: Thank you, Commissioner Reckart,

18 members of the Commission. Actually, I think we -- you

19 may want to go into executive session for this. And

20 before I say anything more, I just wanted to know if -- if

21 that's what you wanted to do. Otherwise, I'll -- I'll

22 just proceed.

23 I don't -- I'm not going to go into the substance

24 of the merits of any pending case, of course, but it

25 does -- it does concern representation generally, which is

Miller Certified Reporting, LLC

115

1 Okay. Well, we've come to the fun part -- oh. I'm sorry.

2 MR. COLLINS: Almost.

3 COMMISSIONER HOFFMAN: Yes, we have.

4 CHAIRPERSON RECKART: We said one more thing. I

5 got -- yeah, those kind people over there have been so

6 patient.

7 Item No. VIII, discussion and possible action on

8 Attorney General's office representation of Commission

9 Interagency Services Agreement between the Commission and

10 Attorney General's office. Mr. Collins and then I think

11 we -- the Solicitor General is here.

12 MR. COLLINS: He is. And Chairman Reckart,

13 Commissioners, really briefly, we've had this sort of

14 discussion about what we do going forward for the next

15 year. Mr. Ellman has a proposal for at least the short

16 term, which I think is -- is reasonable. I don't want to

17 get in the way of it. I want you guys to have the

18 opportunity to discuss that with him.

19 The agenda item is set up for you to ask him

20 other questions. I think he and Ms. Bickett are here,

21 they're comfortable -- and Mr. Munns -- together they will

22 decide whether to recommend you go into executive session

23 I think based on your questions.

24 And I have nothing else to add other than to turn

25 it over to Rob, with your permission.

Miller Certified Reporting, LLC

117

1 sometimes privileged.

2 CHAIRPERSON RECKART: Well, is it -- let me just

3 ask -- go ahead, Mr. Munns.

4 MR. MUNNS: All right. And Mr. Chair, members of

5 the Commission, if -- it does involve attorney/client

6 privileged information.

7 CHAIRPERSON RECKART: Okay.

8 MR. MUNNS: So if the Commission would like to

9 and would like to be able to speak fully and frankly about

10 confidential issues, that's available to you, but...

11 CHAIRPERSON RECKART: Okay. Yeah, that was my

12 question, is this -- purpose of receiving legal advice and

13 matters that may be privileged or subject to work product.

14 Okay. I'll entertain a motion to go into

15 public -- I mean, into executive session.

16 COMMISSIONER TITLA: I motion, Chairman.

17 CHAIRPERSON RECKART: Okay. Mr. Titla has moved.

18 Thank you, sir.

19 I'll second. Okay.

20 COMMISSIONER HOFFMAN: Is there discussion on the

21 motion?

22 CHAIRPERSON RECKART: No, no.

23 All those in favor?

24 (Chorus of ayes.)

25

Miller Certified Reporting, LLC

1 COMMISSIONER HOFFMAN: I vote nay.
 2 CHAIRPERSON RECKART: Okay. Passes three/one.
 3 We're in executive session. Thank you.
 4 (Whereupon the public retires from the meeting
 5 room.)
 6 (Whereupon the Commission is in executive session
 7 from 12:28 p.m. until 12:37 p.m.)
 8
 9 * * * * *
 10
 11 (Whereupon all members of the public are present
 12 and the Commission resumes in general session.)
 13 CHAIRPERSON RECKART: Okay. We're back in public
 14 session. Now's the time for public comment. I don't
 15 think there's anybody here who wants to do it, so I'll
 16 entertain a motion to adjourn.
 17 COMMISSIONER TITLA: Motion.
 18 COMMISSIONER KOESTER: Second.
 19 CHAIRPERSON RECKART: All right. Moved and
 20 seconded to adjourn the meeting. All those in favor?
 21 (Chorus of ayes.)
 22
 23 CHAIRPERSON RECKART: It passed unanimously.
 24 We're done. Thank you.
 25 (Whereupon the proceeding concludes at 12:38
 Miller Certified Reporting, LLC

1 p.m.)
 2
 3 * * * * *
 4
 5 C E R T I F I C A T E
 6
 7 I, Angela Furniss Miller, Certified Reporter, do
 8 hereby certify that the foregoing pages numbered 1 through
 9 118, inclusive, constitute a full and accurate printed
 10 record of my stenographic notes taken at said time and
 11 place, all done to the best of my skill and ability.
 12 DATED, at LITCHFIELD PARK, Arizona, this 16th day
 13 of September, 2014.
 14
 15
 16 _____
 17 Angela Furniss Miller, RPR, CR
 18 Certified Reporter (AZ50127)
 19
 20
 21
 22
 23
 24
 25
 Miller Certified Reporting, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25