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4	THE STATE OF ARIZONA
5	CITIZENS CLEAN ELECTIONS COMMISSION
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10	REPORTER'S TRANSCRIPT OF PUBLIC MEETING
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14	Phoenix, Arizona
15	September 27, 2018
16	9:32 a.m.
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09:33:26-09:34:48 Page 2 PUBLIC MEETING BEFORE THE CITIZENS CLEAN
ELECTIONS COMMISSION convened at 9:32 a.m. on September
27, 2018, at the State of Arizona, Clean Elections
Commission, 1616 West Adams, Conference Room, Phoenix,
Arizona, in the presence of the following Board members:
Mr. Mark S. Kimble, Acting Chairperson
Mr. Damien R. Meyer (Telephonic)
Ms. Amy B. Chan
Mr. Galen D. Paton 1 1 unanimously. 2 Number III, discussion and possible action 3 on the executive director's report. 4 4 Mr. Collins? 5 MR. COLLINS: Yes. Mr. Chairman, 6 OTHERS PRESENT: Commissioners, real quick, the first thing I wanted to Thomas M. Collins, Executive Director Paula Thomas, Executive Officer Gina Roberts, Voter Education Director Mike Becker, Policy Director Alec Shaffer, Web Content Manager Stephanie Cooper, Executive Support Specialist Fanessa Salazar, Administrative Assistant Mary O'Grady, AZ Attorney General's Office Rivko Knox, AZ League of Women Voters Talei Hornback, RIESTER Ryan Wheelock, RIESTER James Barton, One Arizona Morgan Dick, AZAN Lindsay Cheatham, RIESTER Mike Liburdi, Greenberg Traurig Zack Dean, AZ Senate 7 Thomas M. Collins, Executive Director mention and -- you know, is that we'll be losing 8 Stephanie on October 5th, but Stephanie has gotten an 9 excellent new position at the -- with the Pinal County 10 elections department where she'll be the elections 11 supervisor. 11 12 12 She'll be working directly with the 13 elections director there, Michele Forney, who some 14 of -- some of you know was a longtime assistant AG in 15 elections. And she'll oversee the administration 16 elections, including ballot creation, tabulation, 17 managing the permanent staff and ensuring compliance 18 with election laws and procedures. 19 19 So this is a really great opportunity for 20 Stephanie. We're sad to see her go, but we're really 20 proud to see that she's going to have the opportunity 21 22 to move up and into such a great role in Pinal County. 22 23 So, you know, we have -- so I just wanted you to be 23 24 aware. We will hopefully be -- we'll hopefully make it 24 25 from October 5th to November -- sometime in November, 25 09:32:21-09:33:24 Page 3 09:34:52-09:35:54 PROCEEDING 1

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- ACTING CHAIRMAN KIMBLE: Good morning. I'm
- 4 going to call to order the September 27th, 2018,
- 5 meeting of the Citizens Clean Elections Commission.
- 6 I'm Commissioner Mark Kimble. Chairman Damien Meyer
- 7 is -- has a conflict. He may be calling in later
- 8 today, later during the meeting. Until then, we'll
- 9 carry on with Commissioner Paton and Commissioner Chan.
- 10 Item II on the agenda, discussion and
- 11 possible action on Commission minutes for the
- **12** July 19th, 2018 meeting.
- 13 Are there any corrections or additions to
- 14 the minutes? If not, can we have a motion?
- 15 COMMISSIONER CHAN: I would move that we
- 16 approve the minutes as written.
- 17 COMMISSIONER PATON: Second.
- ACTING CHAIRMAN KIMBLE: It's been moved 18
- 19 and seconded that we approve the minutes for the
- **20** meeting of July 19th, 2018.
- All in favor, say aye. 21
- 22 (Chorus of ayes.)
- 23 ACTING CHAIRMAN KIMBLE: Any opposed?
- 24 (No response.)
- 25 **ACTING CHAIRMAN KIMBLE: Passed**

- 1 but we'll be sad to see her go. And I don't know if
- 2 anyone -- if any of you have any comments about that,
- 3 obviously.
- ACTING CHAIRMAN KIMBLE: Well, just
- speaking for myself, I'm very sorry to see you go,
- Stephanie. I know this is an outstanding career
- opportunity, but nonetheless, it's going to be very
- difficult to replace you here at Clean Elections.
- COMMISSIONER CHAN: Mr. Chairman, I'd just
- 10 like to echo that. It's been wonderful having you in
- the office, and it was too short of a time, but I'm
- really happy for you to go out and really get some
- hands-on election experience. And, I guess, I can
- understand the timing. I think that's the entire early
- voting period is what they're bringing you in for. So
- 16 it will be a very exciting time for you. So best
- 17 wishes.
- MS. COOPER: Thank you. 18
- **ACTING CHAIRMAN KIMBLE: Commissioner** 19
- 20 Paton?
- COMMISSIONER PATON: And thank you for all 21
- your help. You personally helped me and my harebrained
- ideas to go to Tucson a lot, and I appreciate it. And
- good luck to you in the future.
- 25 MS. COOPER: Thank you.

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- 1 ACTING CHAIRMAN KIMBLE: Thank you and best
- 2 of luck.
- 3 Tom?
- 4 MR. COLLINS: The Voter Education Guide is
- 5 arriving beginning October 4th. We got our bulk
- 6 mailing yesterday. The digital version is available on
- 7 the Clean Elections website and, of course, if voters
- 8 want to tailor their viewing to their -- to their own
- 9 district, they can go to our Voter Dashboard on the
- 10 website and use their address and get their candidate
- 11 information that way.
- We're in the process of still -- we're in
- 13 the height of debate season. We've had debates both
- 14 statewide and local legislative this week and last week
- 15 and next week and next week after that. Gina will talk
- 16 some more about debates in the voter education
- **17** discussion. So I don't want to dwell too much on that.
- 18 Now -- although we did have the gubernatorial debate on
- 19 Monday, and I thought that was -- I thought that was --
- 20 I thought it was a very successful event.
- 21 We participated in the National Voter
- 22 Registration Day --
- 23 COMMISSIONER CHAN: Can I --
- 24 MR. COLLINS: Sure.
- 25 COMMISSIONER CHAN: Mr. Chairman, can I

- 1 was a really nice way to, kind of, break it down. And
- 2 I even posted on my Facebook page if you didn't have an
- 3 hour to watch the governor's debate, check it out; this
- 4 is a ten-minute breakdown with some seasoned
- 5 professionals.
- 6 So thank you for doing that.
- 7 MR. COLLINS: No problem.
- 8 COMMISSIONER CHAN: I think that was a
- 9 fabulous idea. And I think being an election nerd, to
- 10 me that's just as good as any sporting event would be
- 11 for an athletic, you know, sporting aficionado. So I
- 12 hope it will pull some more people into the election
- 13 nerd world who maybe wouldn't normally participate.
- 14 MR. COLLINS: Well, thank you.
- 15 ACTING CHAIRMAN KIMBLE: Okay.
- MR. COLLINS: Meanwhile, I mean, we -- just
- 17 as you can see through the voter education section
- 18 here, I mean, we're throughout -- we're around the
- 19 state. You know, we have the Take Flight mural which
- 20 is -- which has really become more -- has already taken
- 21 on, I think, more significance than -- timeless
- 22 significance than the 18 in 2018 Campaign of which that
- 23 is part of. You know, I think it's been launched in
- 24 the -- at MCC and SCC. We have a portal version we
- 25 displayed in Flagstaff yesterday.

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- 1 just interrupt?
- 2 I'm sorry, Tom.
- 3 MR. COLLINS: Yeah, sure.
- 4 COMMISSIONER CHAN: I don't want to disrupt
- 5 your flow, but I just wanted to say that sometimes I
- 6 can't watch the debates just when they're happening.
- 7 And so I really appreciate having them online, but I
- 8 know for the -- and I don't know if it happened for any
- 9 of the other debates, but definitely for the
- 10 gubernatorial debate, we had a preshow on our Facebook
- 11 Live. I think it was -- and I don't know. Maybe on
- 12 our website. I was looking at it on Facebook, I think,
- 13 and a post show as well.
- **14** So Tom gave everybody, kind of, a tour of
- 15 the PBS studio just for a few minutes. It wasn't too
- 16 long. And I was very impressed with his television
- 17 presence, actually, a very nice job. So I wanted to
- 18 just let everybody know that; that if you missed it, it
- 19 was fabulous. And then the post show was with a
- 20 gentleman named Billy?
- 21 MR. COLLINS: Yes, Billy Robb.
- 22 COMMISSIONER CHAN: -- Billy Robb, who has
- 23 a podcast, and he and Tom, kind of, did a postmortem of
- 24 the gubernatorial debate. So it was a 10-minute
- 25 breakdown of the hour-long session, and I thought it

- 1 Gina and Alec have been to -- we were out
- 2 at Glendale and then everybody was out at ASU or Alec
- 3 and Gina and Steff were out at ASU. I was in Flagstaff
- 4 yesterday. The -- so we're -- and then we're out at
- 5 the debates. So it's a very busy voter education
- 6 schedule, and -- and Gina will talk, as I say, more
- 7 about the details of that in the next agenda item.
- 8 The last thing I want -- the last two
- 9 things I wanted to note, one, former Secretary Bennett
- 10 failed to qualify for Clean Elections funding, and
- 11 under our rules, he's not a participating candidate at
- 12 this point. He had a couple of complaints filed
- 13 against him. We don't, at this point, anticipate
- 14 further action on those complaints because -- because
- 15 they relate to issues that, you know, while they might
- 16 exist for other folks, wouldn't -- wouldn't be of any
- 17 issue to us, him having failed to qualify.
- 18 I will say that since I wrote this part of
- 19 the report, we got an email from Mr. Bennett indicating
- 20 he's exploring the options he -- whatever options he
- 21 thinks may exist to talk to the Secretary and the
- 22 County Recorders about remedy to be -- remedying his --
- 23 his shortfall, but just to give you a sense, he filed24 slightly less than 100 more than the minimum and he
- 25 came in at, I think, 38/78 in terms of qualified

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- 1 contributions that were verified by the county
- 2 recorders around the state. It's actually a really
- 3 good percentage, but given the number of how low the
- 4 amount of qualifying contributions he had obtained in
- 5 the first place, it was a -- it was an uphill battle.
- 6 The last two things, just in case you
- 7 didn't -- it seemed kind of buried, we're working with
- 8 the Legacy Foundation Action Fund to resolve things at
- 9 the Superior Court level so that they can appeal
- 10 following the dismissal of their action against us and
- 11 the denial of their motion to dismiss our collections
- 12 suit.
- And then on October 3rd, next week, the
- 14 Arizona Advocacy Network, et al.'s, lawsuit against
- 15 Secretary Reagan, the Commission and the Governor's
- 16 Regulatory Review Council will have oral arguments.
- 17 Those were originally set for -- I think they were set
- 18 for the 13th and they -- we have a new judge now, and
- 19 now the oral argument is set for October 3rd. So let
- 20 me know if you want other details about that.
- You also have -- Mike has put together an
- 22 update on where we are in terms of our budget through
- 23 September 1st. Let me know if you have any questions
- 24 about -- about that. And -- or, actually, let Mike
- **25** know.

- 1 as you can see, we've -- the number has gone down, but
- 2 it always goes down during election season.
- 3 COMMISSIONER PATON: Right, because you're
- 4 putting --
- 5 MR. BECKER: Because we're putting out over
- 6 \$3 million for candidates.
- 7 COMMISSIONER PATON: Okay.
- 8 MR. BECKER: So the numbers are fine. In
- 9 the second -- when it comes to the revenues, the
- 10 average monthly revenue is actually above where we had
 - L1 anticipated it being. So that's a good sign. And we
- 12 didn't have the number of candidates in terms of the
- 13 statewide candidates -- Governor, Secretary of State,
- **14** Attorney General -- that we thought we might have. So
- 15 that has saved us some funds as well. So we're in fine
- 16 shape.
- 17 COMMISSIONER PATON: So -- can I continue?
- 18 ACTING CHAIRMAN KIMBLE: Yes.
- 19 COMMISSIONER PATON: So the thing -- the
- 20 thing about the courts, our deal with the courts, has
- 21 that made things better? Is that why it's gone up a
- 22 little bit, our revenues?
- MR. BECKER: Commissioner -- Mr. Chairman,
- 24 Commissioner Paton, that I don't know. I don't know
- 25 the exact numbers. Those come sporadically throughout

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- 1 And so that's, kind of -- that's, kind
- 2 of -- that's, kind of -- that's it, unless you have
- 3 questions on the executive director's report.
- 4 ACTING CHAIRMAN KIMBLE: Any questions for
- 5 Tom?
- 6 COMMISSIONER PATON: So you're going to --
- 7 Mike is going to speak about the budget?
- 8 MR. COLLINS: Well, he's available for
- 9 questions if you have any. We try to keep the memo
- 10 pretty short and -- short and sweet.
- MR. PATON: I was just wondering, could you
- 12 just speak? I know before we had somebody explain, you
- 13 know, how those budgets work. And I just want to know,
- 14 basically, are we in danger of depleting this too much
- 15 and all that.
- 16 MR. COLLINS: No.
- 17 COMMISSIONER PATON: I guess I didn't
- 18 really have a specific question. Could you explain
- 19 this to a laymen, really?
- 20 COMMISSIONER CHAN: Mr. Chairman, that is a
- 21 good question, actually, since that has been a concern.
- MR. BECKER: Mr. Chairman, Commissioner
- 23 Paton, no, we -- the budget is fine. We're in -- we're
- 24 in good shape. As you can see, in the first example,
- 25 we talk -- we're talking about the fund balance. And

- 1 the year. So it's hard to figure out exactly where we
- 2 are versus where we were last year until the end of the
- 3 year when we can really assemble everything and look at
- 4 it as a whole.
- 5 COMMISSIONER PATON: Okay.
- 6 MR. BECKER: So -- and we're working with
- 7 several other people in the department of
- 8 administration that helps us with the budget, and so
- 9 we'll be working with them at the end of the year to
- 10 get a full view of everything that's been going on.
- 11 COMMISSIONER PATON: Okay. Thank you.
- 12 ACTING CHAIRMAN KIMBLE: Any other
- 13 questions on the executive director's report?
- 14 (No response.)
- 15 ACTING CHAIRMAN KIMBLE: Thank you, Mike
- 16 and Tom.
- 17 Item IV, discussion and possible action on
- 18 Clean Elections Voter Education.
- **19** Gina'
- 20 MS. ROBERTS: Do you see the clicker over
- 21 there, Paula?
- MS. THOMAS: Is this the one?
- MS. ROBERTS: Yeah, I'll try that.
- 24 Okay. Mr. Chairman, Commissioners, good
- 25 morning.

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- 1 What we have for you today is a recap of
- 2 the efforts that the Commission has undertaken with
- 3 regards to the primary election, specifically about
- 4 voter education and outreach.
- Okay. Let's see. Let's just do this.
- 6 Okay.
- 7 So to start off, I'll go over some numbers
- 8 of the turnout from the primary, which was held on
- **9** August 28th. So you can see the voter registration
- 10 figures, those are the number of voters who were
- 11 actually eligible to participate in the primary. So we
- 12 had about 3.3 million voters, and the turnout ended up
- 13 being 33.26 percent. So if you take a look at the
- 14 graph over on the right, that's a graph that we pulled
- 15 from our voter crisis summary and, basically, it just
- 16 breaks down the percentage of turnouts over the years.
- And, you know, while 33 percent may not
- 18 seem like a great number, it actually broke records.
- 19 So we are very proud that the -- you know, we're in the
- 20 right direction in terms of voter turnout. So it's
- 21 really exciting to see that, you know, it was a 22
- 22 percent increase from the 2016 primary. So definitely
- 23 headed in the right direction, plus, you know, we are
- 24 also in the midterms. So you would typically see the
- 25 turnout even less than, you know, in a presidential

- 1 and running.
- 2 So that has been receiving some news
- 3 coverage. I just wanted to bring that point out to the
- 4 Commission to let you know that's one of the issues
- 5 that voters experienced on election day. Our staff, we
- 6 did receive inquiries and phone calls about that. So
- 7 we assisted voters as best we could.
- 8 COMMISSIONER CHAN: Mr. Chairman?
- 9 ACTING CHAIRMAN KIMBLE: Commissioner Chan.
- 10 COMMISSIONER CHAN: Gina, I just wanted to
- 11 ask -- and I don't know if you have this information,
- 12 but this is anecdotal. It was just one of my friends,
- 13 but she posted on Facebook on election day that she was
- 14 actually turned away from a voting location in Maricopa
- 15 County, even though they were open, because they were
- **16** having technical equipment -- which I was surprised to
- 17 hear because I thought there was always a backup plan.
- 18 And I wasn't sure if that was correct, if we had any
- 19 information about whether that was true, that people
- 20 were actually turned away from voting.
- MS. ROBERTS: Sure. So, Chairman and
- 22 Commissioner Chan, I can let you know that on election
- 23 day, I personally received phone calls from voters who
- 24 have said that they were turned away. At that point,
- 25 we assisted them in directing them to a vote center.

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- 1 election year.
- So, you know, a few things there, as we
- 3 mentioned, we broke some records with that turnout.
- 4 Seven of fifteen counties actually broke voter turnout
- 5 record, which is exciting. Just -- you know, it's a
- 6 good direction. And, you know, we're really excited to
- 7 see that, and we -- you know, as you'll see throughout
- 8 the rest of this presentation, the Commission had
- 9 significant efforts in educating voters across the
- 10 state about the primary election, about how to
- 11 participate and become informed on what's on the
- 12 ballot. And we had specific campaigns that I'll go in
- 13 more detail on but, you know, I think it's safe to say
- 14 that we had a hand in seeing that turnout increase.
- Just a brief overview, if you've been
- 16 watching the news or maybe you've heard a few things on
- 17 Primary Election Day, Maricopa County did experience
- 18 some difficulties, and they have released a report, an
- 19 internal report. And the Maricopa County Board of
- 20 Supervisors has authorized an audit to look into some
- 21 of the issues that they experienced, but the gist of it 22 is is that on election day, polls are supposed to open
- 23 at 6:00 a.m. And approximately, I think, 63 polling
- 24 locations did not open on time, but by 11:30 that day,
- 25 the county did have all of their voting locations up

- So a little bit more information is
- 2 Maricopa County had a hybrid election day voting system
- 3 where they had assigned polling places. So when you
- 4 have an assigned polling place, as a voter, you have to
- 5 go to that polling location, but they also had an
- 6 additional 40 vote centers and vote centers where any
- 7 voter can go to get their ballot.
- 8 One of the things Maricopa County
- 9 references -- the Recorder's office references in their
- 10 report is that the backup plan was to direct the voters
- 11 to the vote center in the event that there were any
- 12 issues at the specific polling locations. So when
- 13 staff received any of those phone calls of questions or14 concerns -- you know, and we were in communication with
- 15 the county that day, as well, who they were giving us
- 16 some information about, yes, there was a delay in some
- 17 of the polling locations being opened up -- we did our
- 18 best to direct them to vote centers and to let them
- 19 know that, you know, at the end of the day, you can go
- 20 to a vote center -- well, not at the end of the day,
- 21 but no matter what, you can go to a vote center and
- 22 you --
- 23 COMMISSIONER CHAN: Until 7 p.m.
- MS. ROBERTS: Yes. And you can receive a
- 25 ballot and, you know, even if there's any issues, you

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- 1 should always be afforded the right to vote a
- 2 provisional ballot. So that's, kind of, the experience
- 3 that we have a little bit. I believe there are -- you
- 4 know, a full report is coming from the auditor's
- 5 office. And we can -- staff is happy to share the
- 6 internal report from Maricopa County and the
- 7 preliminary report from the auditors if the Commission
- 8 is interested in reading that in detail.
- 9 COMMISSIONER CHAN: Thank you.
- 10 Mr. Chairman, I just -- that just really
- 11 concerned me because even though the voting center was
- 12 a possibility, I just don't know if it's realistic to
- 13 expect voters to make that -- I mean, it's important
- 14 enough that I think they should, but I just don't know
- 15 if it's realistic to expect voters to go to a different
- 16 location. And I don't know how far away those voting
- 17 centers were, and I just -- it just hurts me, my heart,
- 18 a little bit to hear what happened.
- And I'm really hoping that on the general,
- 20 they'll have all of this addressed and that -- and that
- 21 it will go much, much smoother for everybody,
- 22 especially because we're going to have much more
- 23 turnout for the general.
- 24 So thank you for the information, Gina.
- 25 ACTING CHAIRMAN KIMBLE: Gina, if I can ask

- 1 you, there should be some increase in the number of
- 2 registered voters out of that population, but I think
- 3 we'll have to -- we would have to -- we'll need more
- 4 time to get that analysis produced because that
- 5 requires a little bit of extrapolation.
- 6 ACTING CHAIRMAN KIMBLE: Okay. So -- but
- 7 it's probably accurate to say that maybe 16, 17, 18
- 8 percent of the eligible voters voted?
- 9 MR. COLLINS: It could be. I mean, we
- 10 could nail that down with Morrison --
- 11 ACTING CHAIRMAN KIMBLE: Okay. But if
- 12 that's a ballpark.
- MR. COLLINS: -- in therms of their
- 14 analysis. I mean, based on -- based on the total
- 15 potential voting population versus how many people cast
- 16 ballot, that seems like that's a logical extrapolation
- 17 from the numbers we have.
- L8 ACTING CHAIRMAN KIMBLE: Okay. Thank you.
- 19 MS. ROBERTS: And, Chairman Kimble, I would
- 20 estimate that as well. That sounds like it's in the
- 21 ballpark. And, also, once we get more in detail, too,
- 22 in the information, we can then look out what the
- 23 independent voter turnout rate was as well. We just
- 24 don't have that level yet of those figures, but we will
- 25 be looking forward to that.

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- 1 one question just to make something clear.
- 2 The turnout is based on the percent of
- 3 registered voters?
- 4 MS. ROBERTS: Mr. Chairman, yes, that is
- 5 correct.
- 6 ACTING CHAIRMAN KIMBLE: And do we have any
- 7 idea or do you have a ballpark estimate of how many --
- 8 what percent of eligible voters are registered.
- 9 MS. ROBERTS: Off the top --
- 10 ACTING CHAIRMAN KIMBLE: And firm.
- 11 MS. ROBERTS: Sure. Mr. Chairman, I'm
- **12** referring back to our voter crisis report.
- And, Tom, maybe you can help me with this
- 14 number, but off the top of my head, I believe we were
- 15 reporting that it would be about half. It was close to
- 16 half.
- 17 MR. COLLINS: Yeah. The total number of
- 18 folks who didn't participate, for example, in 2016 who
- 19 either were registered and didn't participate or were
- 20 not registered but could have participated, we set it
- 21 at about 48 percent in the -- in the 2016 general. So
- 22 there's still a substantial number of unregistered
- 23 potential voters out there. You know, there's always
- 24 in the run up to election and, perhaps, you know, based
- 25 on voter -- voter registration drives and what have

- 1 ACTING CHAIRMAN KIMBLE: Okay. Thank you.
- 2 MS. ROBERTS: All right. So what I'd like
- 3 to go over today is -- basically, is highlights of the
- 4 education campaigns that we've had throughout the
- 5 primary.
- 6 So the first was our Connections Campaign
- 7 and then, of course, the Voter Education Guide and
- 8 debates, and we did a specific education campaign to
- 9 independent voters, and then I'll talk a little bit
- 10 more about our 18 in 2018 Campaign, which Tom spoke a
- 11 little bit, too, in the ED report.
- So for Connections, if you'll recall, the
- 13 research that we have done in the past, we knew that we
- 14 needed to really showcase to voters how they connect
- 15 directly with the elections so they would be more
- 16 likely to participate, and this campaign just really
- 17 took on that look and feel. And we did a significant 18 effort to, again, showcase, you know, we're in the
- 19 midterms. We're in the local elections. We understand
- 20 this is not necessarily the Super Bowl of the
- 21 presidential elections, but these elections are
- 22 important. They're local. They can have a direct
- 23 impact on your life. And so the campaign was geared24 towards really showcasing that connection to voters in
- 25 the hopes that it would encourage them to want to

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- 1 participate more.
- 2 And so one of the things that we've
- 3 highlighted, of course, are the logistics of voting, as
- 4 well. So we highlighted key dates and deadlines, such
- 5 as voter registration deadline. You know, hey, don't
- 6 forget; you need to mail in your early ballot today,
- 7 that type of thing. So we made sure that we were
- 8 always informing voters of those key dates and
- 9 deadlines.
- 10 This is just some examples of what that
- 11 creative looked like. So we were in print and, again,
- 12 you know, we made use of, well, if you're in Maricopa
- 13 County, then you connect an arrow. I believe most
- 14 other counties use, you know, fill in the dot -- a
- 15 bubble, but again, we just wanted to show how the
- **16** actual person connects to the election.
- And I'll just quickly go through some of
- 18 these creative examples through digital just so you can
- 19 see -- you know, hopefully you actually have seen these
- 20 yourself as voters, but just so you can see what the
- 21 voter was seeing. And we're on social and, you know, a
- 22 very clear voter registration deadline, July 30th. You
- 23 know, early voting. It's happening now. Very clearcut
- 24 messaging to connect with the voters. We were on TV.
- 25 We had several TV spots that were running.

- 1 effect just so, you know, when it comes to a voter's
- 2 mailbox, it won't be intimidating and they won't want
- 3 actually look through it.
- 4 So we've received really great feedback on
- 5 the design from it, and we provide alternate formats.
- 6 We automatically send it out in English and Spanish,
- 7 but we also have large print. We translated certain
- 8 districts in the introduction into Navajo and, of
- 9 course, all the statewides. And we partnered with Sun
- 10 Sounds. So this is a partnership that the Commission
- 11 has had for several years now, and we partnered with
- 12 Sun Sounds of Arizona to provide an audio version of
- 13 the booklet. And this way folks who maybe have low
- 14 vision or, you know, difficulty seeing or are just
- 15 blind, they can actually call into this toll-free
- 16 number and have the guide read to them.
- 17 So we're really proud of that partnership,
- 18 and I'm just -- you know, it provides the voter guide
- 19 in a more accessible fashion. And, of course, we
- 20 provide plain text on our website, as well, for folks
- 21 that are using a screen reader.
- The key messaging that we were putting out
- there in our campaign was to let folks know when the
- 24 guide will be dropping, when it will be hitting their
- 25 households and what's in it. So you have, you know,

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- 1 So that's really just a high-level overview
- 2 of what the campaign looked like. Towards the end of
- 3 this presentation, I have statistics on the
- 4 performance, but I just wanted to go through briefly
- 5 and give you an idea, spark your memory of what these
- 6 campaigns looked like.
- 7 So for our Voter Education Guide, hopefully
- 8 everybody received theirs in the mail, but the goal of
- 9 this was to let people know this is coming. So our --
- 10 our education campaign was to let people know this tool
- 11 exists for you. You can hear directly from the
- 12 candidates. And we actually continued with our
- 13 district-specific method of mailing these out, which we
- 14 found to be very beneficial to voters but also served
- 15 as a cost-savings measure. And we emailed out over two
- 16 million pieces, so a guide went out to every household
- **17** with a registered voter.
- 18 So we're really, you know, happy to see
- 19 that most candidates participated in doing a
- 20 submission. And in terms of the format of the guide, I
- 21 believe I shared with the Commission that we were in
- 22 works with the Center for Civic Design to take a look
- 23 at how we can improve the layout, the format of the
- 24 guide, just to make it easier to read, you know, look25 at using more plain language style, everything to that

- 1 not only information in the introduction about the
 - 2 logistics of voting and key dates and deadlines, but
 - 3 this is your opportunity to hear directly from the
 - 4 candidates.
 - 5 I'm sure, you know, as voters, we all get
 - 6 our campaign materials in the mail. We see those
 - 7 glassy mailers. You know, things come out from the
 - 8 parties. And so this guide, we really try to let
 - 9 people know that it's coming from the Commission and
 - 10 the candidates themselves are the ones who are making
 - 11 this Commission. You are hearing directly from them.
 - 12 It's your direct connection to the candidates.
 - .3 And that's an example of the cover, which I
 - 14 believe you have the general election guide in front of
 - 15 you, so the same cover. We just updated the date.
 - And just briefly, I'll go through some of
 - 17 the examples of the creative. So we have digital. We
 - 18 have banner ads. On social medial, one of the things
 - 19 that we did was we highlighted the fact that -- so
 - 20 ballots go out 45 days before the election to our UOCAV
 - 21 voters. These are our military and overseas voters.
 - 22 So ballots go out a little bit earlier to them than
 - 23 they do to everybody else. We also make sure that our 24 guide goes out ahead of time for these specific voters,
 - 25 as well, so they get their guide before they get their

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- 1 ballot.
- 2 So we ran some ads just to let folks know,
- 3 hey, if you have a loved one who is serving or, you
- 4 know, is living overseas, please help us reach them and
- 5 give them a heads up that this guide is on its way to
- 6 them. And, of course, we let folks know, too, about
- 7 our partnership with Sun Sounds. Just some more
- 8 examples of the creative.
- 9 Debates. So debates is kind of, like, our
- 10 bread and butter, along with the Voter Education Guide.
- 11 We had a campaign to let folks know about when debates
- 12 will be coming to them in their district, what the
- 13 schedule is, when they can view the statewide debates
- 14 and how they can participate in them. So that was the
- 15 overall, you know, messaging of the campaign was to let
- 16 folks know about debates and, hopefully, we wanted to
- 17 drive that participation rate, increase attendance.
- 18 And as, I think, Commissioner Chan noted
- 19 earlier, we have these videos on our website, as well.
- 20 So if you can't attend in person, you can watch them
- 21 online.
- 22 So briefly, I wanted to go through some of
- 23 the partnerships and the pilot programs that we
- 24 instituted this year and talk about the numbers.
- 25 So for the primary election, we hosted 22

- 1 one of the things that we were able to do for our
- 2 gubernatorial debate -- and Tom was able to host a pre
- 3 and post debate analyst on Facebook Live. And so we
- 4 thought that went really well. We were seeing great
- 5 turnout and views on Facebook for that, and it's right
- 6 up Tom's alley. He's very charismatic when he's on
- 7 camera. So it worked really well. And we --
- MR. COLLINS: Exclusively.
- 9 MS. ROBERTS: But in addition to that
- 10 statewide and preview of the debate, Tom also recorded
- 11 some videos with "Arizona Capitol Times," the associate
- 12 editor there, Luige del Puerto, for specific districts
- 13 to also give a heads up. And this is really geared at,
- 14 you know, promoting interest in the debates and getting
- 15 voters to not only be informed about when the debate
- 16 was occurring but wanting to actually participate.
- And so that leads me into our partnership
- 18 that we have with the "Arizona Capitol Times." We --
- 19 earlier this year, we had a meeting with them, and we
- 20 came to a partnership where both Luige and another one
- 21 of their journalists, Ben Giles, would host or act as
- 22 moderators for a handful of our district debates. And
- 23 we felt that that would be really great for voters
- 24 because both of these individuals, they are very well
- 25 versed in the issues that are affecting the state

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- 1 legislative debates. So that's 22 out of 30, and we
- 2 had eight statewide debates. And from the videos that
- 3 we posted on our website, we had about 4,500 views.
- 4 And then from the statewide debates that were both
- 5 posted online and broadcast live, you can see the 6 online views, they were about 93,000, and then
- 7 broadcast was close to 91,000.
- 8 And then, in terms of the on-the-ground
- 9 legislative debates, we had approximately 500 folks
- 10 attend in person. So the broadcast capability, that is
- 11 facilitated through our partnership with Arizona PBS.
- 12 Again, for several years now the Commission has
- 13 partnered with AZ PBS to broadcast live our statewide
- 14 debates on the Arizona Horizon segment, which is
- 15 moderated by Ted Simons. And, you know, the Commission
- 16 and staff, we have been able to do that for several
- 17 years.
- 18 And the reason why we -- we appreciate this
- 19 partnership so much is because it's public television,
- 20 but, also, Ted is a veteran journalist. And we just --
- 21 we appreciate his ability to interact with the
- 22 candidates and pull out the information during those
- 24 voters.
- 25 As Commissioner Chan noted earlier, too,

23 debates, and we just think it's a great benefit to

- 1 capitol and what legislators have to deal with.
- 2 And so we thought it would be a benefit for
- 3 voters where if we had a moderator who had that
- 4 information, they could really, again, drive that
- 5 discussion during the debates and, you know, kind of,
- 6 pull some -- maybe a little bit more information out of
- 7 the candidates and some of their responses to get the
- 8 information that voters were looking for. We thought
- 9 those went off well. We were very happy with their LO skills and abilities as moderators. So we were very
- 11 proud of that partnership, and we will be continuing
- 12 that through the general election as well.
- Another component of that partnership
- 14 included the Commission sponsoring the Meet the
- 15 Candidates event. We felt that this was another
- 16 opportunity to engage voters directly with the
- 17 candidates, and the "Capitol Times" had about 222 folks
- 18 register for this event. So it was a great turnout
- 19 there.
- 20 MR. COLLINS: Yeah. And that was an
- 21 opportunity we saw because previously the "Capitol
- 22 Times" had made that an event where they charge
- 23 admissions, and it was -- and, essentially, that made
- 24 it an opportunity for lobbyists to meet candidates.
- 25 And so by, essentially, sponsoring it, we were able to

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- 1 opening it to the public. And we think that that
- 2 provided a unique opportunity to be meet with the
- 3 candidates, and it's the kind of thing we could start
- 4 to do, in addition to debates, around the state because
- 5 we were -- I mean, that was something we were, again,
- 6 playing around with, but it seemed like it was a
- 7 success.
- 8 MS. ROBERTS: And, finally, I wanted to
- 9 discuss our pilots that we've had with our high
- 10 schools, which was really spearheaded and championed by
- 11 Commissioner Paton.
- 12 The -- so for three of our legislative
- 13 district debates specific to Legislative District 2, 10
- 14 and 14, we worked with schools to host the debates on
- 15 the ground at their facilities and to really
- 16 communicate with the parents and the teachers and the
- students that this event is occurring in your community
- and, you know, come out and participate and how can we
- 19 further engage the students wanting to support, you
- 20 know, encouraging that student participation in our
- 21 next generation of voters but, also, you know, to make
- 22 the debates more inviting in that they're here in the
- 23 community and to really promote that attendance to get
- 24 folks to come out and want to participate and be
- 25 engaged and ask the candidates the questions.

- And then with the legislative districts --
- 2 at both LD 10 and 14, staff was there, and we had a
- voter education booth available where we had the voter
- 4 guides available. You know, we were accepting voter
- 5 registration forms, and we provided all of our voter
- education materials at that time.
- So that's a, you know, quick run-through of
- what we've done for debates in the primary.
- COMMISSIONER PATON: Mr. Chairman?
- ACTING CHAIRMAN KIMBLE: Yes, Mr. Paton --10
- 11 Commissioner Paton?
- COMMISSIONER PATON: I just would like to
- 13 commend the staff for those debates. If you haven't
- been to them, they're very well run. It's a little
- disheartening to see so few people attend some of them.
- That's what I'm really committed to try to do is
- improve the attendance. I mean, if you want to be
- involved and know the -- know the issues and the
- candidates, it's -- you know, it's -- we really need
- more attendance at those.
- 21 And I think we've, kind of, seen some bugs
- working with the schools. It is hard because they
- either just start school or they're in the summer
- during the primary. So there's some things that we
- 25 need to work out a little better. I would like to try

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- So with our Legislative District 2 debate,
- 2 we held that at Sahuarita High School. That ended up
- 3 being a 30-minute Q and A session. So one thing I
- 4 should note about our primary debates, those
- 5 typically -- we don't have as many as we do in the
- 6 general election. And, similar to how we see the
- 7 turnout rates, you know, it can be a little bit more
- 8 difficult to get people to attend the primary debates,
- 9 but the general election debates, we do see greater
- 10 participation.
- And then with Legislative District 10, we
- 12 partnered with Sahuaro High School, which I believe was
- 13 Commissioner Paton's alma matter. And so we were
- 14 seeing a high number of views there with the online
- 15 video, and we had about 80 to 90 folks participate in
- 16 person. We saw a few reporters there, I believe.
- 17 And then with Legislative District 14, we
- 18 partnered with Empire High School, which is in Vail.
- 19 And that was, you know, great attendance there, about
- 20 130. At LD 14, we actually hosted a meet-and-greet
- 21 afterwards where we partnered with the local chamber
- 22 and the parent networks and the school districts. So
- 23 the meet-and-greet, when the debate was over, it really
- 24 allowed the candidates and the voters to continue to
- 25 engage and speak one on one.

- 1 to do some of them during school time, like, with
- 2 juniors and seniors and their parents and the community
- 3 that can come in during the day. That way, obviously,
- 4 you'd get hundreds of people and expose the students to
- 5 how government operates and so on.
- So that's, kind of, what I would like to
- do, but everybody worked hard to try to improve all of
- that. And I'm really impressed with the
- professionalism.
- ACTING CHAIRMAN KIMBLE: Well, and I think, 10
- Commissioner Paton, that was -- it was an excellent
- idea to partner with high schools. The one I went to
- at Sahuarita with Tom, the attendance of ten, I think,
- 14 is a little generous, unless you're counting the
- candidate and the moderator and the TV person, but
- there was only one person there. So -- and I think
- that's somewhat understandable, but I think it's -- it

was really a good idea. And I hope that it's something

- 19 that we can continue working on to develop,
- particularly with an eye to get more young people
- 21 involved.
- MS. ROBERTS: Mr. Chairman and Commissioner
- 23 Paton, so we send out surveys at every on-the-ground
- 24 debate to all of those who participate, and what we do
- 25 is at the end of the year, we take a look at those

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- 1 surveys in detail. And we ask them questions about,
- 2 how did you hear about this debate? You know, what can
- 3 we improve? And, you know, similar things to that that
- 4 you would expect on a survey.
- 5 We did a preliminary review at the primary
- 6 surveys, and the things that we hear the most -- we
- 7 always hear in all the surveys are when -- you know,
- 8 more advertising of the debate schedule and, also, they
- 9 wished that more candidates would participate. And so
- 10 the thing to remember is in the primary, you know,
- 11 we're only hosting a debate if there is a candidate
- 12 who's in a contested election. And then, if they are a
- 13 participating candidate, they're required to, but
- 14 traditional candidates, it's upon their request.
- So -- but one positive thing I would note
- 16 from the reviews is we ask them, how did you hear about
- 17 this? And in the past, it's typically been we heard
- 18 from the candidate, directly from the candidate. You
- 19 know, the candidate is getting their supporters out
- 20 there, which is great, but this year we're really
- 21 seeing a wide range of they heard it from the
- 22 newspaper. They heard it from the radio. They heard
- 23 it from, you know, a banner ad. So -- and social
- 24 media.
- 25 So I think that's, you know, a positive

- 1 involved in the issues.
- 2 COMMISSIONER PATON: And during the
- 3 primaries, a lot of the people running, they're not
- 4 really engaging each other, I mean. And so it's a tad
- 5 dull. So, I mean, we kind of have the -- we need to
- 6 have something like Must See TV, as I was saying. By
- 7 the end of the fourth person, they would say, ditto, I
- 8 agree with those people. And so somehow we need to
- 9 have a real debate instead of just you answer the
- 10 question; you answer the question; you answer the
- 11 question.
- We need some more engagement between the
- 13 people. I mean, we won't -- we don't want fist fights
- 14 or anything, but it needs to be -- we need to see the
- 15 difference between these people, not just, oh, we all
- 16 agree. No, you -- no, you don't. You don't all agree.
- 17 So to make it more interesting for everybody and to be
- 18 more incisive to see what the differences are. Then we
- 19 need more incisive questions and more engagement
- 20 between the two people, I mean, the people involved.
- 21 And then, finally, some of these people
- 22 don't want to be involved that are the candidates, and
- 23 that is very aggravating. And, I mean, that's part of
- 24 American culture is to debate your opponent in politics
- 25 going back to the Lincoln/Douglas debates and so on, on

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- 1 marker there in the fact that the comprehensive
- 2 campaign that we have to inform people about the
- 3 schedule, we're reaching folks. And so we will
- 4 continue to look at ways that we can further increase
- 5 attendance, but I do appreciate the suggestions from6 the Commission because it's thinking outside of the box
- 7 a little bit, if you will, about how can we really
- 8 connect with the community to, you know, spark this
- 9 interest and promote that attendance.
- 10 So we'll definitely be looking, at the end
- 11 of the general election, about how can we improve these
- 12 debates and get the attendance up.
- 13 ACTING CHAIRMAN KIMBLE: Well, one
- 14 suggestion I've made -- and I've made this to Tom after
- 15 one of the debates -- is I think the debates are far
- **16** better when there is a media moderator or a moderator
- 17 who has some idea of what's going on, as opposed to the
- 18 other people, I guess, the professional moderators who
- 19 read a question and then wait for an answer and then
- 20 just read the next question without any follow-up or
- 21 anything. It -- it doesn't make for a very engaging
- 22 debate that way.
- 23 And I know you're limited by who you can
- 24 get to moderate them, but I noticed a big difference
- 25 when there's a media moderator or someone who's heavily

- 1 the stump, the actual stump that they were standing on
- 2 and so on. And I don't know how we can get everybody
- 3 involved. I guess they feel like it's not -- nobody is
- 4 holding their heels to the fire or something. I don't
- 5 know, but somehow we need to get more involvement with
- 6 those candidates.
- 7 MS. ROBERTS: Thank you.
- 8 ACTING CHAIRMAN KIMBLE: Thanks, Gina.
- 9 MS. ROBERTS: All right. Let's see here.
- 10 So these are just some examples of the creative that we
- 11 use to inform people that debates are occurring and,
- 12 again, you'll continue to see that connection the same,
- 13 as well.
- 14 I'll skip through this pretty quickly. Oh,
- 15 one thing I should note is that for every debate that
- 16 we held, we did create a Facebook event, and that was
- 17 really geared towards letting folks know this is
- 18 happening in your community. We would do it targeted
- 19 to those specific districts, and that helped in terms
- 20 of the share of set folks who view on social media and,
- 21 you know, discussion boards where we're available. So
- 22 it was really great to create those for each event.
- These are just some examples of those, you
- 24 know, pre-debates videos that we mentioned that Tom and
- 25 Luige were able to record.

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- 1 All right. We'll now jump in the
- 2 independent voters. So our goal here was to let
- 3 independent voters know that Arizona has an open
- 4 primary. So we really started out with -- you know,
- 5 that would -- that would be our target audience and,
- 6 again, the goal was to let them know that they can
- 7 participate in the primary.
- 8 And the way we did that was -- the message
- 9 that we put out there was, first and foremost, did you
- 10 know? Did you know that you can participate in the
- 11 primary? And now that you know, this is how. This is
- 12 the how-to. And we focused on that message, but then,
- 13 of course, we'd let them know, you know, certain key
- 14 dates, as well.
- 15 And two that I wanted to talk about a
- 16 little bit more would be the early ballot request
- 17 deadline for an independent voter. That deadline was
- 18 really important because, if you're an independent
- 19 voter and you're on the permanent early voting list,
- 20 you have to actively tell your county recorder which
- 21 party ballot you want mailed to you. And that was
- 22 important for voters to understand because sometimes
- 23 we'd hear from folks who said, well, I didn't get my
- 24 ballot; it wasn't mailed to me.
- Well, are you an independent? And we would

- 1 participate and this is -- this is the process? And we
- 2 ran those through digital. And we were on social, but
- 3 we were really trying to be, you know, eye-catching
- 4 here.
- 5 We had infographics available on our
- 6 website, but again, we just really pushed that message
- 7 through independent voters.
- 8 And our final --
- 9 COMMISSIONER PATON: I have a question.
- 10 ACTING CHAIRMAN KIMBLE: Yes, Commissioner
- 11 Paton.
- 12 COMMISSIONER PATON: So who -- where is
- 13 the -- who decides how independents can vote in this?
- 14 Would it -- is it -- I mean, who decides whether they
- 15 can't just get both votes in the mail and just choose
- 16 one or the other and send it in? Why couldn't that
- 17 happen?
- 18 MS. ROBERTS: Sure. Mr. Chairman,
- 19 Commissioner Paton, so we say Arizona has an open
- 20 primary, but it's technically a semiopen primary, if
- 21 you will. So I believe it was in 1998 in which voters
- 22 approved this method of voting. So it was a -- it was
- 23 a citizens' initiative in 1998 and, basically, it
- 24 allowed an independent voter, someone who is
- 25 nonaffiliated, the option to pick the party ballot.

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- 1 go through that conversation with them. This is what
- 2 you have to do, the steps you need to take. That date
- 3 was very highly publicized across the state from -- you
- 4 know, from our efforts but also from the media and
- 5 other election official offices.
- 6 We just really saw that date being pushed
- 7 out there, which is great, but one of the things that
- 8 the Commission started to see -- maybe there's a little
- 9 bit of confusion from some folks -- is that once that
- 10 date passed, we were hearing that maybe independents
- 11 thought, oh, I missed that date; I can't participate in
- 12 the primary anymore. So we made sure that we continued
- 13 our messaging, of course, all the way up through
- 14 election day.
- 15 If you're an independent voter and you
- 16 didn't get an early ballot, if you missed the deadline
- 17 to request one, it's okay. You still can come to the
- 18 polls. You can still tell your poll worker which party
- **19** ballot that you'd like to vote.
- 20 So that was the messaging that we
- 21 undertook, and this is an example of the creative.
- 22 You'll see it's a little bit different than what we've
- 23 done so far, but I kind of liken this to a street
- 24 caution sign. You know, it really captures their
- 25 attention. Stop. You know, did you know you can

- 1 So in our primary, it's a partisan
- 2 election, and the purpose of the primary is to -- for
- 3 the voters within that political party to select their
- 4 nominees that will advance to the general election. So
- 5 ballots are created, you know, in accordance with
- 6 statute, but they're created by party type. So you
- 7 have a -- one ballot for Republican -- for the
- 8 Republican party candidates and then you have one
- 9 ballot for the Democratic party, you know, and so on.
- And so you only get one ballot as a voter,
- 11 and so you have to pick which one you want. And
- 12 oftentimes the feedback that we get from independent
- 13 voters are, well, why isn't there one ballot that has
- 14 who all the candidates are? Well, in the general
- 15 election, you'll get that, but the primary -- the
- 16 purpose of the primary is for the voters that belong to
- 17 that political party to select their nominees to
- **18** advance to the general election.
- 19 And then, of course, as we know, sometimes
- 20 in the primary that's really when the candidate is
- 21 elected because there's maybe not another opponent in
- 22 the other party. So that is something that independent
- 23 voters need to consider as they want to participate.
- The other factor to consider there is so

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- 1 recognized political parties. We have the Democrats,
- 2 the Republicans, the Greens and the Libertarians. The
- 3 Libertarians actually have a closed primary, which
- 4 means an independent cannot request a Libertarian party
- 5 ballot in 2018. In 2016, the Libertarians opened their
- 6 primary. So then an independent voter could have
- **7** selected that party ballot.
- 8 So, you know, it's a constant -- we need to
- 9 know the rules for this election and communicate that
- 10 to the voters. And so that's part of the struggle is
- 11 that voters say, well, I don't remember doing it that
- 12 way or, you know, we're having to constantly share with
- 13 them these are the rules now.
- 14 COMMISSIONER PATON: So this would be the
- 15 early ballots because when they go to the polls, they
- 16 can just choose one or the other. So it's not that big
- 17 of a deal. So it's really the early balloting which
- 18 makes things so much easier for the rest of us.
- 19 Thank you, Gina.
- 20 MS. ROBERTS: Mr. Chairman, Commissioner,
- 21 correct. That's why that deadline was so critical to
- 22 inform independent voters about that you're going to
- 23 have to actively contact your recorder if you want to
- 24 select a party ballot. And there are some local
- 25 nonpartisan ballots available, too. So if maybe --

- 1 participation from this age group, we can't expect them
- 2 to come to us looking for this information. We've got
- 3 to find them. We've got to go to them and we have to
- 4 connect with them.
- 5 And so, you know -- and I'm sorry. I
- 6 should have actually mentioned this earlier at the very
- 7 beginning of this presentation, but of course, all of
- 8 this was done in conjunction with our partnership with
- 9 RIESTER. They are our agency, our trusted partners
- 10 that we've worked with to really get all of these
- 11 campaigns off the ground. And so when RIESTER came up
- 12 with this -- this idea, we were all very excited about
- 13 it.
- 14 So the goal, again, was to encourage our
- 15 next generation of voters to get registered and to
- 16 really activate their political power by registering
- 17 and to take flight and to actually get out there and
- 18 vote, and these are some examples of our logos and our
- 19 creative campaign that we did here. You'll see it's a
- 20 little bit different than maybe our other artwork that
- 21 we've had, a little bit more bolder, something to
- 22 actually connect with this age group.
- And I'll jump through those pretty quickly,
- 24 but I want to showcase the mural itself. So the mural
- 25 was installed -- we hired a local artist, and it was

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- 1 there's maybe, like, a city or town election and if an
- 2 independent just doesn't want to vote in any of those
- 3 partisan elections but maybe their local city council
- 4 race is happening, they can select a local nonpartisan
- 5 ballot only.
- 6 Okay. Our 18 in 2018 Campaign, this is the
- 7 last campaign I'll go through and then I'll highlight
- 8 very quickly some stats, but this is my favorite
- 9 campaign, if I could just have an opinion on that. It
- 10 was very fun, and I think we were all very surprised
- 11 and excited about how much this campaign has grown.
- 10 And so our 10 in 2010 Commaion was good
- And so our 18 in 2018 Campaign was geared
- 13 at motivating Arizona youth to participate in the
- 14 electoral process, to get them to register to vote.15 And so we were looking at our, you know, potential
- 16 voters, the folks who would be 18, you know, by the
- 17 next general election who could actually preregister
- 18 now and our, you know 18- to 24-year-olds, so this
- 19 younger demographic.
- 20 If you'll recall from our roundtable that
- 21 we had in 2017, that kind of helps spark this
- 22 discussion a little bit where our keynote speaker,
- 23 Jamie Kasper, talked about how, you know, for this
- 24 demographic, we have got to go to them, this Gen Z. If
- 25 we want to encourage them and promote this

- 1 painted on a wall down on Roosevelt Row in downtown
- **2** Phoenix. And we didn't just stop there. We took
- 3 another layer of adding augmented realty.
- And the purpose for this was now that we
- 5 have this digital component to it, when someone goes
- 6 out and they scan the QR code through the Shazam
- 7 application, not only do they get to have fun and
- 8 interact with the mural, but we present them, through
- 9 that application, a register-to-vote button. So right
- 10 then and there, they can click register to vote and
- 11 they can, you know, go through the minute or two it
- 12 takes to go through the screens and get registered.
- So with this mural, the original
- 14 installation was done on Roosevelt Row. We brought a
- 15 wheat pasting to Tucson, and as we mentioned in the ED
- 16 report, we had installations done at Scottsdale
- 17 Community College and Mesa Community College. And, you
- **18** know, those -- they reach out directly to us. We are
- 19 hearing positive feedback from the community about this
- 20 is amazing. We love its purpose. That is really
- 21 inspiring folks to get registered.
- We have a partnership right now that we're
- 23 working with with the School for the Arts in downtown
- 24 Phoenix where we are going to be hosting a voter
- 25 registration drive on October 5th, which is going to be

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- 1 right before the deadline down here on Roosevelt Row at
- 2 the mural, and it's going to be our first Friday. And
- 3 the School for the Arts, they are coming out. These
- 4 are students here, and they are very excited about this
- 5 campaign. And they are creating their own materials to
- 6 help promote this registration event and get their
- 7 classmates out here.
- 8 They're coming out with a video. I think
- 9 they're going to be singing in it. It's really
- 10 exciting to see the positive reaction from, you know,
- 11 not only the students but the community members. We've
- 12 heard from -- we've heard from the arts community.
- 13 We've heard from other government organizations. I've
- **14** heard from government organizations from California.
- 15 People have been really taking interest in this mural
- 16 and really utilizing this street art to promote that
- 17 civic participation.
- So, again, it kind of goes back to that
- 19 maybe thinking outside of the box a little bit about
- 20 how can we connect with the community and inspire
- 21 people to get registered to vote.
- 22 Just, again, I'll go quickly through some
- 23 of the examples. You know, we had digital ads. We
- 24 were on social just to further encourage people to go
- 25 out and interact with the mural.

- 1 positive and it showcases the success of the website
- 2 redesign, but it also speaks to the content that we're
- 3 putting out there. You know, Alec's job is primarily
- 4 to manage the website and our social media accounts.
- 5 So it is a full-time job to keep this information up
- 6 and current for voters.
- 7 And, you know, anecdotal, we hear from
- 8 people all the time we love your website. It's great.
- **9** We link to it on our site. Staff is hearing that from
- 10 the community. So we're very proud of the website
- 11 itself.
- 12 Just some visual charts to, again, showcase
- 13 the performance improvement from the website, and our
- 14 top pages were the 18 in 2018 Campaign, which is great,
- 15 and folks are interested in the debates and our voter
- 16 guide, of course, our home page and then looking for
- 17 their candidates.
- One thing I wanted to show here, you can
- **19** see the spike in that graph on election day. People
- 20 are looking at our website and, also, when key items
- 21 hit. So maybe when the voter education is available or
- 22 when debates are commencing, we'll see those spikes on
- 23 our website.
- 24 The Dashboard. The Dashboard is a tool
- 25 that we launched earlier this year, and the Dashboard

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- 1 All right. So I can -- very quickly, I
- 2 just want to highlight a few things on performance
- 3 that, I think, are important to share with the
- 4 Commission.
- 5 Our website. We launched a new website
- 6 earlier this year, and the reasoning behind that was
- 7 because our previous platform, it just did not support
- 8 the amount of content that we were producing and
- 9 supplying to voters. And with our new website, I
- 10 wanted to showcase that the average time on our website
- 11 is almost two minutes. And if you really think about
- 12 it, two minutes is a long time to sit there, you know,
- 13 and interact with a web page for two minutes.
- And this is higher than what we've seen on
- 15 any of our other websites before in terms of
- 16 engagement. So we really are proud to see that number
- 17 go up, and it shows that people are engaging with the
- **18** site. And the other thing to note is that 73 percent
- 19 of people are visiting our website from their mobile
- 20 applications, and that's important because, when we did
- 21 the redesign, we really invested a lot of time and
- 22 energy in ensuring that our website was responsive so
- 23 it looked well on any of the platforms and screen sizes
- 24 that folks may be using to get to our site.25 So we think that this number is very

- 1 was really geared towards, as a voter, you have to go
- 2 to so many different places to capture the information
- 3 that you're looking for, whether it's the logistics of
- 4 voting or finding out what's on your ballot or
- 5 understanding, you know, what the idea of the poll's
- 6 requirements are or even how to run for office or what
- 7 does this office that I am voting on for actually do?
- 8 What's the responsibility of it? So how government
- 9 works.
- 10 We have all of that information on our
- 11 website, but, you know, we really wanted to capture
- 12 everything in a one-stop shop application where a voter
- 13 either enters in their address or they just hit the
- 14 location pin and then we provide them everything they
- 15 need to know. We've demoed the Dashboard before for
- 16 the Commission, but just a brief overview.
- We show them the candidates that are
- 18 specific to their districts. We can show them their
- 19 legislative district, their congressional district,
- 20 their school board district if they're in Maricopa
- 21 County. We can all the way -- go all the way to
- 22 justice of the peace. And, again, we show them those23 specific candidates that are, you know, in their
- 24 district and then we show them their debates. Here's
- 25 your debate schedule. Here's all of the statewides.

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- 1 Here's your Legislative District 15 debate, when it's
- 2 occurring, and if you already missed it, here's the
- 3 video.
- 4 And then we show them -- you know, we
- 5 partner with Maricopa County where we can, through our
- 6 website, show them their voter registration
- 7 information. So if somebody wanted to confirm whether
- 8 they're registered, we have links to verify, or track
- 9 your early ballot and your provisional ballot. All of
- 10 that is housed in the Dashboard, and it's really
- 11 promising to see the fact that 32,000 people used this
- 12 tool, you know, this year for the primary, which we've
- 13 just talked about the number -- you know, the time that
- **14** people are interacting on the site, that two minutes,
- 15 and folks are interacting the Dashboard for four and a
- 16 half minutes. And we think that's really great because
- 17 it shows that they are absorbing the information that
- 18 we're providing.
- 19 Let's see. One more stat that I'll share
- 20 from our website. We allow people to connect with
- 21 Service Arizona so they can get registered, and then
- 22 we, also -- again, I mentioned for our 18 in 2018
- 23 Campaign, we had our Shazam application. So for the
- 24 primary, we saw about 3,000 clicks to get registered to
- 25 vote, which is exciting to see.

- 1 giving a presentation to Glendale Community College
- 2 students or, you know, maybe it's traveling up to
- 3 Prescott and talking to a specific group there. Staff
- 4 is constantly being sought after to provide this voter
- 5 education directly to the communities. So I wanted to
- 6 share that.
- All right. And then, you know, a lot of
- 8 the things that we've done so far have been highlighted
- 9 in the media. We talked about the 18 in 2018, and one
- 10 thing I would like to note is I appreciate how the
- 11 Commission has been available to support these efforts.
- 12 You know, whether that's giving an interview or
- 13 providing an op-ed, we think that really helps connect
- 14 all of that information that we're putting out there to
- 15 the public.
- So, for the most part, again, these are
- 17 just really detailed stats. Unless the Commission has
- 18 any questions on those, I'm happy to take questions if
- 19 you have further questions about our performance for
- 20 the primary.
- 21 ACTING CHAIRMAN KIMBLE: Well, I just want
- 22 to say that I think a lot of people forget that voter
- 23 education is one of the most important things that we
- 24 do, and all of this data really shows that a lot of
- 25 people are considering the Clean Elections website and

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- You know, I think the rest of this
- 2 information is very detailed that you have in your
- 3 report, if you're really interested in the statistics
- 4 and the performance. I'll skip through most of that.
- 5 One thing I did want to highlight from the
- 6 PR side, one of the things that the Commission has
- 7 done -- and, of course, with Tom's background and with
- 8 our partnering with RIESTER, we've -- you know, all of
- 9 the efforts that we take to inform people about the
- 10 debates and the voter guide, you know, that's important
- 11 and its helpful to get that information out there, but
- 12 it's also great to partner with the media to, again,
- 13 further this message.
- And, also, this -- I'm going to include in
- 15 here our grassroots efforts. One thing that I didn't
- 16 have, really, maybe the time or the space to put into
- 17 this presentation is how often Commission staff is
- 18 contacted to go out and give speeches or talk to folks
- 19 about, you know, the upcoming elections and to really
- 20 engage one on one with the community. And I think that
- 21 showcases that the Commission is being positioned as a
- 22 thought leader and an expert on elections where we are
- 23 a neutral nonpartisan agency.
- 24 So folks are connecting and reaching out
- 25 directly to us to come out and, you know, maybe it's

- 1 the Clean Elections personnel and the Clean Elections
- 2 Guide as their go-to source for independent, unbiased
- 3 information on issues and on how to vote, where to vote
- 4 and all that kind of stuff. And I'm very impressed
- 5 with what you and what RIESTER has done in all these
- 6 things. There's some very, very innovative ideas
- 7 there, and I'm really in awe.
- 8 Thank you.
- 9 Any other commissioners want to say
- 10 anything?
- 11 COMMISSIONER CHAN: Mr. Chairman, if I
- 12 could just add, I wanted to thank Gina and Tom and
- 13 Stephanie and Alec and Mike because I actually -- I
- 14 think I've been inspired by the voter outreach that you
- 15 guys as staff do, and I reached out to both of my sons'
- 16 schools to just see if there were any faculty or staff
- 17 that would be interested in me coming and just giving18 an overview of how to get registered and what to expect
- 19 to see on your ballot for the general.
- 20 And so they supported me in giving me some,
- 21 you know, folders with -- and a little bit of swag --
- 22 to hand out and make sure that people can get
- 23 registered if they want to. And I -- I say that I
- 24 think it was inspirational to me because it's so much
- 25 easier to go out and do that kind of outreach for your

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- 1 own, small, you know, piece of your community because
- 2 of the resources that you guys and RIESTER have made
- 3 our website become.
- 4 I included in -- I made my own little
- 5 handout and just put a screenshot of the Voter
- 6 Dashboard and explained to them exactly how helpful
- 7 that is with regard to seeing, what are your issues?
- 8 Where are you located? What are your deadlines for
- 9 your election?
- And so I think that I just can't overstate
- 11 it enough how impressed I am with you guys -- you, Tom,
- 12 the whole staff. I mean, you guys have really done an
- 13 excellent job. And especially when I think back to
- 14 being at the Secretary of State's Office so long ago, I
- 15 mean, the best we could do -- and it was wonderful and
- 16 it still is wonderful -- was we've got online voter
- 17 registration, but other than that, it's not that you're
- 18 on your own. We get a publicity pamphlet, but it
- 19 wasn't really -- there was no one-stop shop.
- 20 And I feel like our website has really done
- 21 that for people, and the more outreach we can get out
- 22 there to let the public know, I think we'll continue to
- 23 see ourselves as a Commission and the website enhance
- 24 and encourage people to participate in our democracy.
- 25 ACTING CHAIRMAN KIMBLE: Thank you.

- 1 to how they filed their -- accounted for their
- 2 independent expenditures through their standard
- 3 campaign finance reports, and then they didn't timely
- 4 file their Clean Elections reports.
- We -- there's a newer version of the
- 6 conciliation agreement draft that you got in the packet
- 7 that cleans up some non-substantial issues and adds
- 8 some language that -- but it doesn't change any of the
- 9 substance of it, in effect. We are asking for a minor
- 10 financial consequence, but we did get the reports once
- 11 we notified the PAC very quickly, as the conciliation
- 12 agreement notes. So this all went very smoothly.
- .3 And so I just would ask your approval of
- 14 the conciliation agreement that -- that was on top of
- 15 your packet this morning. I -- Brad Lyon, who is the
- 16 chairman of the committee, can't -- wasn't able to
- 17 appear by phone today, but I personally didn't think it
- 18 was necessary. The process and communicating with them
- 19 has been very smooth, and they've been very responsive.
- 20 And -- and so unless you have questions
- 21 about that, either the complaint or the conciliation, I
- 22 would just simply ask that you approve the conciliation
- 23 that I'm recommending.
- 24 ACTING CHAIRMAN KIMBLE: Okay. Any
- 25 commissioners have any questions or comments on the

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- 1 COMMISSIONER CHAN: So thank you.
- 2 ACTING CHAIRMAN KIMBLE: Commissioner
- 3 Paton, anything else?
- 4 COMMISSIONER PATON: And I already said I
- 5 thank you for all your help and innovations and being
- 6 willing to try something new. And we all have
- 7 different perspectives and you have to deal with all of
- 8 our little idiosyncrasies and so on, but I'm really
- 9 impressed by all your efforts and professionalism. And
- 10 the voters are being informed.
- 11 ACTING CHAIRMAN KIMBLE: Very well said.
- 12 MS. ROBERTS: Thank you.
- 13 ACTING CHAIRMAN KIMBLE: Thank you very
- 14 much, Gina.
- Does anyone need a break before we move on?
- 16 (No response.)
- 17 ACTING CHAIRMAN KIMBLE: Okay. Item V,
- 18 discussion and possible action on MUR 18-12 American
- **19** Strong PAC.
- 20 Tom?
- 21 MR. COLLINS: Yes. Commissioners, we
- 22 should be able to move very quickly through this item.
- The American Strong PAC is a -- is a PAC
- 24 that made expenditures in the LD 23 primary. They had
- 25 some difficulties with their filings, both with respect

- 1 American Strong issue?
- 2 COMMISSIONER PATON: Mr. Commissioner -- I
- 3 mean, Chairman.
- 4 ACTING CHAIRMAN KIMBLE: Commissioner
- 5 Paton.
- 6 COMMISSIONER PATON: I would just say they
- 7 emailed you back within 23 minutes and that for some of
- 8 these other people that just stall us and stall us for
- **9** years, I would certainly agree to this conciliation.
- 10 ACTING CHAIRMAN KIMBLE: Thank you.
- 11 Is there anyone here who wants to be heard
- 12 on this matter?
- 13 (No response.)
- 14 ACTING CHAIRMAN KIMBLE: Okay. Anyone else
- 15 want to make a comment or a motion?
- 16 COMMISSIONER CHAN: Mr. Chairman, I would
- 17 move that we accept -- approve or accept?
- 18 MR. COLLINS: Approve for me to sign.
- 19 COMMISSIONER CHAN: Okay. Mr. Chairman, I
- 20 would move that we approve the conciliation agreement
- 21 as drafted for our executive director to sign.
- 22 ACTING CHAIRMAN KIMBLE: Okay. Is there a
- 23 second?
- 24 COMMISSIONER PATON: I second.
- 25 ACTING CHAIRMAN KIMBLE: Okay. There's

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- 1 been a motion made and a second to approve the
- 2 agreement with American Strong MUR 18-12.
- All those in favor say aye.
- 4 (Chorus of ayes.)
- ACTING CHAIRMAN KIMBLE: Anyone opposed? 5
- 6 (No response.)
- 7 ACTING CHAIRMAN KIMBLE: Approved
- 8 unanimously. Thank you.
- Item VI, discussion and possible action on
- 10 MUR 18-07 One Arizona dba Sunlight Arizona.
- 11 Tom?
- 12 MR. COLLINS: Yes. Commissioners, with
- 13 your -- with your indulgence, what I'd like to do is we
- 14 have both the complainants' attorney, Mike Liburdi, is
- 15 here, and the respondent's attorney, Jim Barton, is
- 16 here. What I thought I'd do is -- and you have my memo
- 17 on reason to believe. You have -- you should have
- 18 Jim's response to that memo, as well as the complaint
- 19 and the initial response.
- 20 What I thought I'd do is outline some of
- 21 the legal standards and, then, unless you have further
- 22 questions for me at that time, you know, ask Mike to
- 23 present, you know, his -- the complainants' argument
- 24 and then give Jim an opportunity to respond. And,
- 25 then -- and, then, if you have -- and, then, if you

- COMMISSIONER MEYER: I can hear you. Thank
- 2 you.
- 3 MR. COLLINS: Okay.
- 4 ACTING CHAIRMAN KIMBLE: Okay.
- 5 Commissioner, just as a point of information, we're on
- Item VI now. We've just got started on that.
- 7 COMMISSIONER MEYER: Okay. Thank you. My
- 8 apologies for -- for being late to the meeting.
- 9 ACTING CHAIRMAN KIMBLE: No worries.
- MR. COLLINS: So the first -- the first 10
- 11 issue -- the first way to look at this is there are
- 12 levels of disclosure required or levels of restrictions
- on -- and levels of burden on political actors that are
- different across different cases. So, you know, in
- the -- in the materials, you'll see a case referenced a
- lot called Wisconsin Right to Life. That dealt with an
- absolute ban on a corporation making expenditures
- during a blackout period that then existed for those
- 19 advertisements. So that had the highest level of
- 20 scrutiny.
- 21 The CJF case, the Committee for Justice and
- 22 Fairness case, dealt with when a requirement for a
- political committee to register as a political
- 24 committee kicked in, which requires that group to then
- 25 not only report their expenditures but their donors.

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- 1 have questions for them, obviously, they'll -- I think
- 2 they'll be available for those. And, then, if you have
- 3 any other further questions for me after that, I'm
- 4 happy to -- I'm happy to answer those.
- So that's how I recommend we proceed --
- 6 ACTING CHAIRMAN KIMBLE: Okay. That sounds 7 good.
- 8
- MR. COLLINS: -- without any objection from
- 9 anybody.
- So just to put this in context, this is 10
- 11 a -- sort of a three-level analysis. The first is what
- 12 is the context of the 16-940(d) report --
- (Whereupon, Commissioner Meyer joins the 13
- **14** meeting at 10:39 a.m.)
- 15 THE OPERATOR: Joining the meeting.
- MR. COLLINS: Oh, and I think we may 16
- 17 have --
- COMMISSIONER MEYER: Damien Meyer. 18
- 19 MR. COLLINS: And Commissioner Meyer is now
- 20 on the phone.
- MS. THOMAS: Hello, sir. We have you on. 21
- 22 I actually have you on the speakerphone, so hopefully
- 23 you can hear us. We've got you on a smaller
- 24 speakerphone.
- MR. COLLINS: So can you hear us? 25

- 1 And then the 16-940(d) standard is merely spending
- 2 report. So it's the most minimal burden that you can
- 3 place on someone who may or may not be engaged in
- 4 political activity that's reportable.
- 5 The standard is whether or not under -- and
- 6 the statutory standard that applies across CJF and
- 16-940(d) is whether or not the communication in
- context has no reasonable meaning, other than to
- advocate for or against a candidate for election taken
- 10 in context.
- The Commission is entitled to consider the
- 12 timing. We know from Mortal that the courts are not
- 13 required to ignore basic background facts, including
- 14 whether the ad describes a legislative issue currently
- subject to legislative scrutiny or likely to be in the
- future. And we also are entitled to look at the
- favorable or unfavorable light in which the candidate
- **18** is -- is presented.
- So that's kind of the -- that's the broad
- strokes of the framework here. One, the minimal -- the
- 21 burden here is merely spending. So it's the most
- 22 minimal burden of reporting that could be required.
- 23 Second, under the statute 16-901, which is part of the 24 Clean Elections Act, it's no reasonable meaning,
- 25 other -- other than to advocate for or against the

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- 1 candidate, but that is a contextual or fact-specific
- 2 determination. And timing context and favorability or
- 3 unfavorability light of the advertisements are all
- 4 factors that the Commission can consider in reaching a
- 5 determination.
- In this context, it's only -- the standard
- 7 is whether or not there's reason to believe a violation
- 8 may have occurred. So that's the -- that's the
- 9 framework. So this is a preliminary inquiry, not a
- 10 final inquiry. And I think I'll leave it there for
- 11 now, unless anyone has specific questions about my memo
- 12 now, and kick it over to Mr. Liburdi, if he's -- if
- 13 he's ready to -- or if he wants to present.
- ACTING CHAIRMAN KIMBLE: Okay. Do any of 14
- 15 the commissioners have questions of Mr. Collins?
- COMMISSIONER CHAN: Mr. Chairman, I just 16
- 17 have a quick question.
- 18 ACTING CHAIRMAN KIMBLE: Commissioner Chan.
- COMMISSIONER CHAN: I was just reviewing, 19
- 20 while you were talking, Tom, so I may have missed
- 21 something, but I just wanted to make sure.
- So this is for us to -- when we take a vote 22
- 23 on this, we'll be voting on whether you proceed with an
- 24 investigation?
- 25 MR. COLLINS: Yes. That's correct. Yes.

- 1 affiliation for the record?
- MR. LIBURDI: Good morning, Mr. Chairman
- and commissioners. My name is Michael Liburdi. I am a
- 4 lawyer at the firm of Greenberg Traurig, and it's an
- 5 honor to be with you here this morning. It's nice to
- see some of you again and to meet some new faces.
- I represent the complainants here, Brett
- Moll and Michael Francis. They are the ones who
- 9 submitted the complaint to you, and we thank staff and
- you for giving us this opportunity.
- We agree with the executive director's
- 12 analysis and recommendation. This matter does meet the
- threshold for a reason to believe finding under the --
- under both the facts, circumstances and the law as it
- applies to this case.
- I would begin by asking this one question
- 17 to all of you: If -- if Sunlight Arizona wished to
- influence legislation, then they should have exercised
- their right to influence legislation during the
- legislative session while -- while the actual
- legislation was pending. Instead, they chose to wait
- until after the legislature had adjourned by a month,
- after legislation had been voted on and passed by a
- month, a couple of months, and then target certain
- 25 legislators in reelection campaigns in competitive

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- COMMISSIONER CHAN: Even though there's
- 2 already quite a bit of information from both sides?
- MR. COLLINS: That's correct. And I don't
- 4 think it's -- I mean, I don't think there's any -- any 5 ball to hide here. The investigation phase here would
- 6 be focused on establishing the amount of the
- 7 expenditure. We don't --
- COMMISSIONER CHAN: Thank you.
- MR. COLLINS: -- we don't have an intention
- 10 to go into, you know, intent. You know, this is an
- 11 objective test. So we don't plan discovery into the
- 12 subject of intent of the -- of the Speaker, if he were
- 13 to agree with my recommendation, for example, but we
- 14 don't know what the amount of the expenditure is. So,
- 15 yes, that would be a subject of further inquiry if you
- 16 were to agree with my recommendation.
- 17 COMMISSIONER CHAN: Thank you.
- ACTING CHAIRMAN KIMBLE: Any more questions 18
- 19 from any of the commissioners?
- 20 (No response.)
- ACTING CHAIRMAN KIMBLE: Okay. 21
- 22 MR. COLLINS: We're going to have Mike go
- 23 first and then Jim.
- ACTING CHAIRMAN KIMBLE: Okay. Sir, could
- 25 you come up to the podium and state your name and

- 1 districts.
- And based on the information that we have
- 3 been able to ascertain, their targeting was specific to
- 4 high-propensity voters, to voters in competitive
- districts. And as a result, it is our belief that One
- 6 Arizona sought to influence, perhaps, the primary
- election and, most certainly, the general election in a
- way that favors their preferred candidates.
- We are fortunate to have a statute that
- applies here. The statute is Section 16-901.01, which
- is identified in the executive director's report. This
- statute was part of the Clean Elections Act when it was
- enacted in 1998, and it applies to the Act's reporting
- 14 requirements. And that's the basis of our complaint.
- 15 So I think that there can be no dispute
- that the first three factors apply, and what we're
- looking at here is whether the fourth factor applies,
- whether, in this context, there's no other reasonable
- 19 meaning than to advocate for or against the election of
- 20 certain clearly identified candidates.
- The respondents rely heavily on a case 21
- 22 called Wisconsin vs. -- Wisconsin Right to Life. That
- was a U.S. Supreme Court case decided in 2007. That 24 case is wholly distinguishable from what we have in
- 25 play here. In Wisconsin Right to Life, a group was

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- 1 seeking to get certain senators, the two senators from
- 2 the state of Wisconsin, to hold hearings on President
- 3 Bush's judicial nominees.
- 4 Now, that was a fact back in those days
- 5 that the Senate was not moving forward on the
- 6 President's judicial nominees, and it's also a fact
- 7 that United States Congress is in session all year. So
- 8 they may go out of session and return to their
- 9 districts, but the congressional session usually lasts
- 10 from early January of an odd-numbered year to the next
- 11 odd-numbered year.
- So the Senate is continually doing business
- 13 during that two-year period and nominations for
- 14 judicial vacancies are continually submitted to the
- 15 Senate for confirmation and, you know, if we weren't
- 16 here today, I think most of us would be watching a
- 17 Senate confirmation proceeding right now.
- 18 The Arizona legislature is different. The
- 19 Arizona legislature convenes on the second Monday of
- 20 every year -- in January and then adjourns usually
- 21 after 100 days, plus or minus. And then during that,
- 22 legislators may work on interim committees or, in
- 23 even-numbered years, like this year, they campaign.
- 24 They run for office, and that's what's going on here.
- 25 So -- so I feel like respondent's reliance

- 1 Representatives. And Kate Brophy McGee is a senator,
- 2 and she isn't -- she wasn't even eligible to vote for
- 3 that, and neither was Senator Sylvia Allen, neither was
- 4 Senator Frank Pratt, who were also targeted by this
- 5 advertisement.
- 6 So when you think about the timing, when
- 7 you think about the way that the -- these candidates
- 8 were presented, when you think about the way that, you
- 9 know, we've just -- the minimal amount of evidence that
- 10 we've been able to uncover about the targeted
- 11 electorate, there is no reasonable explanation, other
- 12 than this was intended to influence the result of
- 13 elections by bringing these candidates in disfavorable
- 14 light
- Now, as the executive director mentioned,
- 16 Mr. Collins mentioned, this is one step in the process.
- 17 We feel like if the Commission were to vote, we think
- 18 it would be appropriately so to find that reasonable --
- 19 the reasonable belief to move forward.
- 20 If the Commission chose, the Commission
- 21 could look at more data. It could figure out, well,
- 22 did they plan on doing -- when did they begin planning
- 23 these communications? Did One Arizona begin planning
- 24 these communications in early January or early
- 25 February? Because that certainly would be more

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- 1 on Wisconsin Right to Life is wholly misplaced for
- 2 those reasons, legally speaking, but drilling down on
- 3 the facts here -- more facts -- these -- the
- 4 legislation that was referenced, again, passed or
- 5 defeated months prior to the mailers, the mailers
- **6** criticized all of the legislators who were targeted.
- 7 And we put all of the -- as many as we could find --
- 8 all of the communications in our document.
- 9 You have mailers. You have Facebook10 advertisements that the members were all criticized.
- 11 They were criticized on issues that are hot-button
- 12 issues in those districts, in those races. And the
- 13 call to action -- in fact, in one of them, what the
- 14 call to action is: Vote for lower class sizes in 2019.
- 15 The year is wrong, but I think our casual reader,
- 16 somebody who reads it quickly, vote for limited class
- 17 sizes, that is something that would apply to the
- 18 impending elections.
- 19 The other matter that I would refer you to
- 20 is -- and this is exhibit -- I'm going to refer
- 21 specifically to one of our exhibits here -- Exhibit 3,
- 22 targeting Senator Kate Brophy McGee: Smaller class
- 23 sizes equal better education. And it cites an
- 24 amendment proposed for House Bill 2663. Well, that was
- 25 an amendment proposed in the Arizona House of

- 1 evidence that they timed it in a way that would
- 2 influence the result of an election. Or is this
- 3 something that they planned on later? Why did they
- 4 choose to do it at that time?
- 5 If they planned it later, why didn't they
- 6 plan on doing it in the next legislative session? Why
- 7 didn't they contact the governor's office to seek a
- 8 veto of any of these bills? Why didn't they contact
- 9 any legislators to see if they could offer amendments
- 10 or, you know, actually during the time that the
- 11 legislation was under consideration? So these are all
- 12 questions that could be asked at the next stage to see
- 13 if a violation had occurred and to determine whether a
- 14 monetary penalty is appropriate.
- 15 So, Mr. Chairman and members, that's our
- 16 position. We support moving forward with this
- 17 complaint, and I'd be more than happy to answer any
- **18** questions that you might have.
- 19 ACTING CHAIRMAN KIMBLE: Thank you.
- 20 Do any Commission members have questions
- 21 for Mr. Liburdi?
- 22 COMMISSIONER CHAN: Mr. Chairman, I just
- 23 have --
- 24 ACTING CHAIRMAN KIMBLE: Commissioner Chan.
- 25 COMMISSIONER CHAN: -- one question.

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- 1 I was just curious -- hi, Mike.
- 2 MR. LIBURDI: Hi, Commissioner Chan.
- 3 COMMISSIONER CHAN: -- whether you had also
- 4 filed a complaint with the Secretary of State's Office
- 5 and, if so, had that office taken any action on it at
- 6 this point. I was just looking at the date to make
- 7 sure -- I don't know -- to see if it was filed too
- 8 recently, but was there a complaint also filed with the
- **9** Secretary's Office?
- 10 MR. LIBURDI: So, Mr. Chairman and
- 11 Commissioner Chan, the answer to that question is yes.
- 12 There was a complaint filed with the Secretary's Office
- 13 at about the same time that the complaint was filed
- 14 with the Commission. I am not aware of any action
- 15 taken by the Secretary of State. I am -- I can tell
- 16 you I am aware that the Secretary asked for a response
- 17 from One Arizona's counsel, and I believe it was
- 18 provided. However, I'm sure Mr. Barton or Mr. Collins
- **19** could provide you with more up-to-date information.
- 20 COMMISSIONER CHAN: Okay. Mr. Chairman and
- 21 Mr. Liburdi, that doesn't influence, really, my
- 22 decision here today. I was just curious whether it had
- 23 only been filed with our Commission or if it had been
- 24 filed in both places. I know in the past when I was at
- 25 the Secretary's office, we had done some global

- 1 501(c)(3), and its mission is to improve the lives of
- 2 Latinos, young people and single women by building a
- 3 culture of civic participation.
- 4 And that was the purpose of these ads was
- 5 to encourage civic participation. It was not lobbying
- 6 against any particular legislation. If it was
- 7 lobbying, it was doing lobbying, then actually they
- 8 would have another set of reporting requirements they
- 9 would have to make. It wasn't lobbying against
- 10 legislation. It certainly wasn't trying to get someone
- 11 elected or stop getting someone elected. It was
- 12 reaching out to voters and saying here's an issue that
- 13 is important to you. You need to contact this
- 14 representative -- I said voters. I should say
- 15 constituents.
- 16 It's really reaching out to constitutes and
- 17 saying, you need to contact your represented official.
- 18 It gave the phone number. It reached out to talk to
- 19 them. And the point of One Arizona is it's not good
- 20 enough to just get people elected. It's not good
- 21 enough to just give people money. You also have to
- 22 stay connected, and so they're encouraging -- the
- 23 reason that they're established and the reason they're
- 24 established as a 501(c)(3) is that they aren't about
- 25 campaigning or even primarily lobbying. They're about

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- 1 conciliation agreements in cases with the -- you know,
- 2 the Secretary and Clean Elections. I was just
- 3 wondering about the posture there. So thank you.
- 4 MR. LIBURDI: Thank you.
- 5 ACTING CHAIRMAN KIMBLE: Thank you,
- 6 Commissioner Chan.
- 7 Any other questions from the Commission for
- 8 Mr. Liburdi?
- 9 (No response.)
- 10 ACTING CHAIRMAN KIMBLE: Commissioner
- **11** Meyer, do you have anything?
- 12 COMMISSIONER MEYER: No questions.
- 13 ACTING CHAIRMAN KIMBLE: Okay. Thank you.
- 14 Thank you, Mr. Liburdi.
- 15 MR. LIBURDI: Thank you, Mr. Chairman.
- 16 ACTING CHAIRMAN KIMBLE: Yes, sir. Could
- 17 you state your name and affiliation for the record,
- 18 please?
- 19 MR. BARTON: Thank you, Mr. Chair. My name
- 20 is Jim Barton. I'm an attorney with the Torres Law
- 21 Group, and I'm here today on behalf of One Arizona.
- 22 I think it's important to give you a frame
- 23 of the mission of One Arizona. One Arizona is an
- 24 Arizona nonprofit corporation. It has tax-exempt
- 25 status from the Internal Revenue Service as a

- 1 encouraging engagement.
- 2 And, in fact, what this group saw was that
- 3 sometimes, you know, folks get elected and they forget
- 4 about you and that we need to make sure that the
- 5 community stays engaged. And so they stay engaged with
- 6 our elected representatives, and that's why this mailer
- 7 had a call to action. It gave you the phone number.
- 8 It said reach out to this elected official because it's
- 9 important.
- So I want to talk now about the specific
- 11 details, and first I want to talk about the timing
- 12 because I think the timing is really important in this
- 13 matter. These -- this mailer was 60 days before the
- 14 primary. So surely they can tell constitutes to
- 15 contact their elected officials 60 days before. It
- 16 was -- the whole program was finished 60 days before.
- 17 If 60 days before is too close -- and these aren't --
- 18 these are -- I think all these people are going to get
- 19 reelected, by the way, but I mean, it's pretty far away
- 20 from -- that's 60 days ahead of their primary.
- 21 So how far out do they have to go? I think
- 22 I heard the complainants' counsel say, geez, even if we
- 23 were planning in January, that would be too close.24 When do we -- when can they communicate to the
- 25 electorate and not be accused of campaigning, if not 60

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- 1 days before?
- 2 I will point out that the example we have
- 3 in Arizona is the Committee for Justice and Fairness
- 4 case, and that was a case of where there was an ad
- 5 which admittedly did try to masquerade as an issue ad.
- 6 They tried to dress it up to say contact Horne as --
- 7 Mr. Horne in his capacity as the superintendent of
- 8 public instruction even though he was running for AG.
- 9 And the timing on that case in Committee for Justice
- 10 and Fairness was days before the election.
- 11 This is what the case says: Shortly before
- 12 the November general election. Another place, it calls
- 13 it immediately before the general election. It was
- 14 right up against the general election. This is 60 days
- 15 before. So, for example, I mean, I think Wisconsin
- 16 Right to Life is a pretty close case.
- 17 I understand it's not -- it is -- as
- 18 Mr. Collins said, it is dealing with a different
- **19** situation. It's dealing with a -- a blackout that has
- 20 since been overruled by other supreme court cases, but
- 21 in that Wisconsin Right to Life case, that was -- it
- 22 was done well ahead of the August 15 blackout. It was
- 23 done on July 26. So it was done ahead. Well, that's
- 24 the Wisconsin Right to Life case. Our case deals with
- 25 timing 60 days in advance of the primary.

- 1 interim committees happen, too. I mean, there's
- 2 other -- you know, when you want to tell your
- 3 legislator we share this value, you represent me and
- 4 this is my value, there are all ways that can manifest
- 5 other than casting a vote in a bill. I mean, there's
- 6 all kinds of ways that can manifest.
- 7 So the timing, I think, is very strongly in
- 8 favor of finding this to not be express advocacy and
- 9 that there's no reason to believe it is.
- The next component is -- what I think is
- 11 really important is the content, okay? And, you know,
- 12 if you look at these ads and they are -- you know,
- 13 they've done a good job, I think, in the complaint,
- 14 that's Exhibit 30 forward -- or page 30 forward in the
- 15 exhibits. You know, these are important issues:
- 16 education, predatory lending, the environment. I mean,
- 17 these are all real issues that One Arizona wants to
- 18 tell constituents contact your voter about.
- 19 And I want to say something, too, that
- 20 there seems to be some confusion. In the call to
- 21 action, it tells you to call the senator or the
- 22 representative, whoever, you know, and tell them to
- 23 vote -- you know, tell them to support our values. So
- 24 when you tell Brophy McGee vote to reduce class sizes
- 25 in 2019, that's evidently assuming she's going to be in

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- 1 Another -- and, again, this is why in
- 2 analogy, it's very hard sometimes to say what's a long
- 3 time, what's a little time. The Federal Elections
- 4 Commission regulates electioneering communication when
- 5 you're broadcasting, and they use a rule of 30 days
- 6 ahead of the primary. So if you mention a candidate at
- 7 all 30 days ahead of a primary, within 30 days of the
- 8 primary or within 60 days of the general, that converts9 it to election communication, electioneering. It's
- 10 different, understandingly, but my point is that the
- 11 timing of this, one of the things you consider strongly
- 12 demonstrates that this was not express advocacy 60 days
- 13 ahead of the primary.
- Also, yeah, it's true that there wasn't --
- 15 this is -- this is about values. It's about issues
- 16 and, no, there weren't any bills being considered.
- 17 They were out of session, but again, that's the same
- **18** thing as we had in the federal election case with the
- 19 Wisconsin Right to Life. There were no judges being
- 20 filibustered at the time. If you look at the case,
- 21 you'll see there were no judges being filibustered.
- You know, the Supreme Court said, well,
- 23 they're allowed to advocate against filibustering even
- 24 if there isn't an active filibuster going on at that
- 25 minute. And so, you know, we -- I mean, we heard that

- 1 office in 2019. That's telling her. It's not
- 2 saying -- it's not telling the recipient to vote. It's
- 3 telling Brophy McGee to vote.
- 4 So I don't -- I mean, this is assuming that
- 5 this -- these people are going to be in office. So, in
- 6 any case, it's certainly not saying vote against it,
- 7 but that's the -- that's part of the content is that it
- 8 sort of shows these important issues and it asks you to
- 9 connect to the representative.
- 10 So now let's talk about is this closer to
- 11 what we saw in the Committee for Justice and Fairness
- 12 or is this closer to the kind of ad that we saw in
- 13 Wisconsin Right to Life? And I'd like to, just because
- 14 I think it's helpful to just to look at it, to show the
- 15 ad from the Committee on Justice and Fairness. And I
- 16 understand that that's running in the background
- 17 someplace.
- 18 Do you guys know how I can --
- MR. COLLINS: Anyone have it? I think we
- 20 have it set up.
- 21 MR. BARTON: Oops. I messed it up.
- MS. ROBERTS: You got it? You want to try?
- MR. BARTON: I'll let you try.
- 24 MS. ROBERTS: Is this --
- 25 MR. BARTON: That's it. If you click the

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- 1 box? What if we click the green box? I think that's
- 2 it, then play. Awesome.
- 3 (Video playing.)
- 4 MR. BARTON: Okay. So what's the issue in
- 5 that ad? Anti-statutory rape and child -- I mean,
- 6 that's a straight hit piece against Tom Horne and was
- 7 launched days before his election, and he was no longer
- 8 going to be superintendent of public instruction. Our
- 9 ads are about issues that are real issues that are up
- 10 for this conversation right now. When of our ads say
- 11 call this legislator, that's a legislator who's going
- 12 to be in office when they went out for a long time and
- 13 they're addressing -- and they're real, honest ads
- 14 addressing honest issues that are important to One
- **15** Arizona as a 501(c)(3).
- So I think that when you talk about that
- 17 ad, I mean, that is a ridiculous hit piece that sort
- 18 of -- obviously, sort of tags on at the end, in a very
- 19 cynical way, call Tom Horne. These ads are doing just
- 20 what the committee is supposed to do, which is to
- 21 advocate and to encourage civic participation, to
- 22 encourage constituents to contact their elected
- 23 officials.
- 24 So here's the ad in Wisconsin Right to
- 25 Life. In Wisconsin -- I don't have a video of it, but

- 1 Folks who supported Senator Feingold said,
- 2 this is nonsense. You're just trying to attack Senator
- 3 Feingold. That's what you're really doing with this.
- 4 And the Supreme Court said, no, that's not how you do
- 5 it. What did the ad say? The ad has an important
- 6 issue. The ad has a call to action. This is not
- 7 express advocacy. That's what the United States
- 8 Supreme Court said, and I think that's what you have to
- 9 look at in this case when you look at these ads.
- Now, maybe, you know, Senator McGee and
- 11 others felt that they were being attacked and -- okay.
- 12 I would rather they feel like this is your constituent
- 13 reaching out and it's talking about an issue and maybe
- 14 think about you need to change your positions on that
- 15 issue, in general, but what we do as regulators is you
- 16 have to look at the image. You have to think about
- 17 things like the content and the timing.
- 18 I think the content of this is plainly more
- 19 like the Wisconsin Right to Life ad. I mean, it's
- 20 talking about a real issue and it's asking for
- 21 really -- it's making a sincere ask. We give the phone
- 22 number to make it a sincere ask to contact the elected
- 23 official.
- Also, I think the timing is plainly in our
- 25 favor, and I think it's important, finally, that the

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- 1 I tried and couldn't find it. So they have a radio ad,
- 2 and this is how this ad runs.
- 3 Pastor: Who gives this woman to be married
- 4 to this man?
- 5 Bride's father: Well, as farther of the
- 6 bride, I certainly could, but instead, I'd like to
- 7 share a few tips on how to properly drywall. Now, you
- 8 put the drywall up -- and then that sort of trails off.
- 9 And then, voiceover, sometimes it's just not fair to
- 10 delay an important decision but Washington -- in
- 11 Washington it's happening. A group of senators'
- 12 filibuster tactic is delaying and blocking the federal
- 13 judicial nominees from a simple yes or no vote so
- 14 qualified candidates don't get a chance to serve. It's
- 15 politics at work causing gridlock and backing up some
- 16 of our courts to a state of emergency. Contact
- 17 Senators Feingold and Cole and tell them to oppose the
- 18 filibuster. Visit befair.org.
- 19 So it was an important issue to Wisconsin
- 20 Right to Life, which was to get these judges a fair
- 21 hearing. They said in the ad contact the senators
- 22 because it was important to them. There was no
- 23 filibuster going on when this ad was running. That's
- 24 important, and that's in the opinion. There was no
- 25 filibuster going on in the ad.

- 1 Commission vote now to find no reason to believe
- 2 because if we get into a situation where we can't make
- 3 this kind of communication even 60 days ahead of the
- 4 primary, I mean, it makes it very difficult for me to
- 5 advise my clients.
- 6 That's my concern about -- that's my
- 7 concern about giving any -- any slack to this -- to
- 8 this attack at all is because I'm very worried about
- 9 the chilling effect that happens if even making and ad
- 10 60 days out, even making an ad as a plain call to
- 11 action that states an issue, if that's not good enough
- 12 to keep you on the safe side of things, I think it
- 13 really makes it -- you know, and a group -- a 501(c)(3)
- 14 doesn't do politics. And so it makes it very difficult
- 15 for them to, you know, do what their purpose is, I'm 16 afraid.
- 17 ACTING CHAIRMAN KIMBLE: Okay. Mr. Barton,
- 18 let me make sure I understand the timing right. So
- 19 this ad was done -- what? Late June? Something like
- **20** that?
- MR. BARTON: The last ads were finished
- 22 late June.
- 23 ACTING CHAIRMAN KIMBLE: Okay. So it's
- 24 your point that you were not trying to influence an
- 25 election that was 60 days away but were trying to

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- 1 influence the next legislative session, which was seven
- 2 months away?
- 3 MR. BARTON: We were trying to influence
- 4 the legislator. We were trying to connect the
- 5 legislator to its constituents.
- 6 ACTING CHAIRMAN KIMBLE: Right, but the
- 7 legislature was not going to be in session until
- 8 January.
- 9 MR. BARTON: Sure.
- 10 ACTING CHAIRMAN KIMBLE: So they should
- 11 call now to influence their legislator about an issue
- 12 seven months ---
- MR. BARTON: The legislator does work other
- 14 than just vote on legislation. I mean, you know,
- 15 there's interim committees. There's other work that
- 16 they do. The legislator can -- they could have come
- 17 out for or against Red for Ed. They could have done --
- 18 there's all kinds of things that a legislator does
- 19 besides influence. This isn't lobbying for a specific
- 20 piece of legislation. It's connecting it. It's trying
- 21 to promote civic engagement and asking the constituents
- 22 to contact their elected.
- 23 So I guess I understand what you're saying,
- 24 Commissioner -- Mr. Chair, but -- that the legislature
- 25 wouldn't come back into session until January, but

- 1 more with the complainants' position on this, and I'll
- 2 tell you why and you can disagree with me.
- 3 And I wanted to -- I did check with Tom
- 4 because if I -- if we do take a vote and we do vote to
- 5 go forward with allowing an investigation or
- 6 authorizing an investigation, I just wanted to make
- 7 sure that at the end of the day when that's complete,
- 8 if the Commission as a whole decides there's not, you
- 9 know, reason to believe there was a violation, you
- 10 know, could we vote today to go forward with an
- 11 investigation and then, at the ultimate end of the day,
- 12 decide there's not reasonable cause. And Tom said yes.
- 13 So --
- 14 MR. COLLINS: Probable cause.
- 15 COMMISSIONER CHAN: Probable cause.
- So I just wanted to mention that because I
- 17 don't want to cement us in unfairly depending on what
- 18 comes out. If we -- I don't know how these guys are
- **19** going to vote, but a couple of things.
- You mentioned, you know, the group is a
- 21 501(c)(3), but that doesn't exempt a group from
- 22 registering as a political committee if that group does
- 23 engage in express advocacy, does it?
- MR. BARTON: Well, an entity that's a
- 25 501 -- or any 501(c) that's in good standing with the

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- 1 legislators do things other than when they're not in
- 2 session. The point of this is to connect the
- 3 constituents with the elected official.
- 4 ACTING CHAIRMAN KIMBLE: Okay.
- 5 Any questions from commissioners?
- 6 COMMISSIONER CHAN: Mr. Chairman, I have
- 7 some questions for Jim.
- 8 It's very nice to see you.
- 9 MR. BARTON: Nice to see you.
- 10 COMMISSIONER CHAN: And I hate to tell you
- 11 that I disagree with your position, but I do -- having
- 12 said that, I do want to ask you some questions about
- 13 it. And I really hate to be on the opposite side from
- 14 you because -- Jim used to represent the Secretary of
- 15 State's Office, and I think you might have been there
- 16 when we did the Committee for Justice and Fairness ad.
- And I don't disagree with you that there
- 18 are always differences with regard to, you know, the
- 19 timing of that ad. And, you know, I don't -- I can't
- 20 refute your point with regard to that ad versus these,
- 21 but I'll just, kind of, lay out for you where I am.
- 22 I'm just reading it from the perspective
- 23 of -- even though I'm a lawyer, I try to read things
- 24 from the perspective of me as a regular person, as
- 25 well, because I think I'm both. And I think I agree

- 1 IRS right now is exempt from the definition of
- 2 political action committee under Arizona -- current
- 3 Arizona law. However, we're not talking about -- no
- 4 one said we had to register for anything. We're saying
- 5 that we -- that we had to disclose this.
- The committee's concern is a 501(c)(3)
- 7 can't make a political speech. They can't engage in
- 8 political speech, and so the -- we could not -- we
- 9 strongly believe this is not a political speech but --
- 10 based on our exemption. So if this kind of speech is
- 11 forbidden, if this kind of speech is political speech,
- 12 then 501(c)(3)s can't do it. They would be completely
- 13 barred from doing it. Just -- I mean, it would be a
- 14 complete bar from a 501(c)(3) engaging in that, if this
- 15 kind of thing, asking someone to contact their
- 16 legislator, is political -- is express advocacy.
- So it's not really a registration issue.
- 18 It has to do with the fact that --
- 19 COMMISSIONER CHAN: Just the speech?
- MR. BARTON: -- what they can use, yeah.
- 21 COMMISSIONER CHAN: Okay. The timing being
- 22 60 days before the primary, I appreciated
- 23 Mr. Chairman's question about that because I don't find
- 24 that it being 60 days before the primary is
- 25 dispositive, even though, obviously, if it was two days

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- 1 before the primary, it would probably be a more
- 2 clearcut case. I still find that 60 days before the
- 3 primary is still -- and particularly, perhaps, you
- 4 know, because it was after the legislative session and
- 5 it does seem to paint, you know, the targeted members
- 6 in a -- in a negative light, I mean, just reading the
- 7 plain language.
- So I think the fact that, you know, it does
- 9 highlight issues that are important issues almost maybe
- 10 works against the position of the Sunlight 501(c)(3).
- 11 So -- and now I think I'm understanding more about what
- 12 you said, you know, if your clients can't do this as a
- 13 501(c)(3). I'm not super familiar with how 501(c)(3)s
- 14 work. My understanding was that -- and maybe they have
- 15 to be a 501(c)(4) or something, but how do these -- if
- 16 they can't engage in political speech, then what are we
- 17 even doing with the independent expenditures? I guess
- 18 maybe I'm missing something.
- MR. BARTON: So --19
- 20 COMMISSIONER CHAN: Am I missing something?
- 21 MR. BARTON: Mr. Chair, Commissioner Chan,
- 22 so, yes, C(4)s -- any corporation can do a political
- 23 speech now but not a 501(c)(3). A 501(c)(3)
- 24 corporation, under its -- in order to maintain its
- 25 tax-exempt status, cannot engage in political speech.

- 1 us turning over to Tom this is how much we spent, and
- 2 then we'll say we don't agree. And we'll have to --
- 3 you know, we'll have to do the process or whatever.
- So, I mean, that's why I think this is a
- vote. I think all the -- all the issues that you
- 6 mentioned -- how brief it is. I mean, all of the
- issues that are of interest that you're going to have
- to actually decide are out before you. So as I'm
- 9 sitting here thinking how do I tell a client if I don't
- know how far out it is and I -- and if you can't just
- say these ads are important to us; call your senator
- 12 about it.
- This is not lobbying. There's no 13
- 14 legislation identified here. That's not the point of
- 15 it. The point of it is to encourage civic engagement.
- 16 So --
- 17 COMMISSIONER CHAN: And maybe this --
- MR. BARTON: I don't know how far we've had 18
- 19 to go. I mean, I'm not sure. I don't know how far I
- would have to go, and I guess we're almost saying you
- can't mention the name of an elected official, which I
- 22 don't think is a great standard.
- COMMISSIONER CHAN: And, Mr. Chairman,
- 24 Mr. Barton, I guess I feel where you are coming from.
- 25 I just -- again, just looking at it from the plain

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- 1 So that's really, kind of, an our-problem, not a
- 2 your-problem thing.
- I mean -- but it is -- it is a fact that
- 4 when we -- when we take the definition of "express
- 5 advocacy" and we let it grow all the way out to now
- 6 encompass calling your senator, calling your
- 7 representative, that does -- as we expand the
- 8 definition of express advocacy, that does push (c)(3) 9 organizations out of it because they cannot engage in
- 10 express advocacy. And so, again, that's really more of
- 11 an our-problem thing than a your-problem thing.
- 12 I'm not sure -- so it sounds to me that
- 13 what we're -- what we are moving towards is a ruling
- 14 that I don't know what -- so any mention of -- I'm
- 15 trying to construct the rule now. I mean, this is --
- 16 this is an issue that's important to them. They're
- 17 trying to connect the voter with the representative,
- 18 and if we're saying that even 60 days -- I mean, I
- 19 don't know how far in advance you have to do it now.
- 20 And I guess what we're saying is that you're not
- 21 allowed to use the name of an elected official.
- 22 I mean, I'm honestly trying to think about
- 23 if I went back to this -- and this is why -- this is
- 24 why I think that the vote is now and not afterwards. I
- 25 mean, the investigation is just going to be a matter of

- 1 language of the mailers. And having been briefed on
- 2 the law by the executive director -- I know Mr. Liburdi
- 3 and you both, you know, made your arguments -- that's
- 4 just, kind of, where I'm at right now, but I feel your
- 5 pain. I do, because I know it's, like -- it's, like, a
- nightmare law school exam question, right, with these
- facts, perhaps, that it's kind of somewhere maybe in 8 the middle. It's not as clearcut as CJF. I don't know
- 9 that it's quite Wisconsin Right to Life either.
- 10 So, Mr. Chairman, thank you.
- 11 ACTING CHAIRMAN KIMBLE: Thank you,
- **12** Commissioner Chan.
- Any other questions from Commission 13
- 14 members?
- 15 (No response.)
- **ACTING CHAIRMAN KIMBLE: Commissioner** 16
- 17 Meyer, do you have any questions?
- COMMISSIONER MEYER: I do not. Thank you. 18
- 19 ACTING CHAIRMAN KIMBLE: Mr. Collins, is
- 20 there anything you want to add?
- 21 MR. COLLINS: I mean, I have a couple quick
- 22 things I wanted to -- I wanted to, kind of, address, I
- guess, that go to the -- that go to the response to the 24 reason to believe memo. I've been in -- I mean, I
- 25 guess I'll say these and, Jim, if you want to respond

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- 1 to them, that's obviously fine.
- 2 MR. BARTON: Okay.
- 3 MR. COLLINS: I mean, I think there's a --
- 4 I mean, as I said earlier, I think that part of the
- 5 question here is what's the burden, and the burden in
- 6 the -- in the context here is what's the state law
- 7 burden. And the state law burden under 16-940(d) is
- 8 just not just very significant.
- So I don't -- so in order to get to the
- 10 position that I understood the response to the reason
- 11 to believe memo to take that this is, in effect, a
- 12 moratorium, you'd have to -- you'd have to take
- 13 16-940(d) and 16-901.01 and read them together with
- 14 what standards apply to 501(c)(3)s, but when you get
- 15 into what the IRS looks at in terms of its factors in
- 16 determining whether or not something is a political
- 17 campaign in intervention, you know, they have a sort of
- 18 non- -- a non- -- an inclusive, kind of, list that's
- 19 also multifactor that includes, you know, whether the
- 20 statement identifies one or more candidates for a given
- 21 office, whether the statement expresses approval or
- 22 disapproval of one of the candidate's positions or
- 23 actions.
- 24 It does consider the closeness in time of
- 25 the election. It does consider whether the statement

- 1 different -- a different timeframe. So I don't know.
- 2 Those are a couple of reasons why I, in considering
- 3 your response to the reason to believe memo, didn't
- 4 find myself persuaded to change the recommendations.
- 5 One, I think that the IRS is looking at --
- to the extent the IRS looks at any of these things at
- 7 all, which is the ultimate question, it seems to be
- 8 saying tread cautiously here and to identify some
- 9 factors that are narrow factors, like timing, and some
- 10 factors that are even broader with respect to the
- 11 purposes of legislation pending that are -- that would
- 12 not -- that are not necessarily worldal issues -- you
- 13 know, wordal issues. And wordal -- I don't think it's
- **14** more fact-specific than that.
- 15 And then -- and then -- and then the issue
- 16 of, really, when did -- when did the election begin for
- 17 purposes of the timing? If you think it begins on
- 18 August -- does the election begin the day it ends or
- 19 does it begin the day that voting begins?
- 20 ACTING CHAIRMAN KIMBLE: Before --
- 21 Mr. Barton, I apologize, but before we go into this,
- 22 could we take a five-minute break for our court
- 23 reporter, please?
- MR. COLLINS: Oh, yeah.
- 25 ACTING CHAIRMAN KIMBLE: And then we'll

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- 1 makes reference to voting or election, you know,
- 2 whether it's an ongoing series of communication by an
- 3 organization on the same issue that are made
- 4 independent of the timing of the election and
- 5 whether -- or whether the timing of the communication
- 6 are related to a non-electoral event such as a
- 7 scheduled vote on specific legislation.
- 8 So there are similar factors. The point
- **9** being that a 501(c)(3) that gets into identifying
- 10 candidates, you know, from the -- from the job, whether
- 11 it's in the voter guide or a mailer or whatever is
- 12 already in a place where the IRS is sort of saying, you
- 13 know, there's -- there's some warning lights there.
- 14 And it's not necessarily clear as the VIN diagram of
- 15 what the IRS would do and what campaign -- state
- 16 campaign finance will do is identical, but it's
- 17 certainly not outside of the realm of caution for a
- 18 501(c)(3) to -- when candidates are the subject of the
- 19 communication.
- You know, the other thing I think is worth
- 21 noting on the timing is that with respect to the time
- 22 from the primary -- and we've talked about this in
- 23 other context. The election, for all intents and
- 24 purposes, ends -- ended on August 28th, but it began,
- 25 you know, essentially, on August 1st, which is a

- 1 come back and you can address these issues that
- **2** Mr. Collins brought up.
- 3 Okay. We're going to take a five-minute
- 4 break.
- 5 (Whereupon, a recess was taken in the
- 6 proceedings.)
- 7 ACTING CHAIRMAN KIMBLE: Okay. We'll be
- 8 back in session.
- 9 I apologize, Mr. Barton, for -- for
- 10 interrupting your response to Mr. Collins.
- MR. COLLINS: And if you want me to, I can
- 12 kind of restate the question. The basic questions
- 13 were, one, you know, how do you -- how do you reconcile
- 14 with the IRS's guidance to 501(c)(3)s with respect to
- 15 candidate-related statements with -- you know, with
- 16 what 16-901 says and does that really create a
- 17 moratorium? And, two, you know, what do you see as the
- **18** election period here? Does the fact that the
- 19 election -- does the election begin and end on August
- 20 28th or does the election begin on the day of, really,
- 21 voting and end on August 28th for purposes of the
- 22 timing assertion were the two questions I had.
- MR. BARTON: Sure. So, first off, the standard that you're evaluating -- and by the way, this
- 25 doesn't matter what the penalty is. The standard is

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- 1 the same no matter how weak or strong the penalty is.
- 2 The standard is that the communication referring to one
- 3 or more clearly identified candidates and targeted to
- 4 the electorate of the candidates in context can have no
- 5 reasonable meaning other than to advocate the election
- 6 or defeat of the candidates.
- 7 So, first off, the standard is a high
- 8 standard as put in place by the legislature. It's not
- 9 a judicial document. It's not about district
- 10 compliance versus substantial compliance. The
- 11 legislature said this can have no reasonable meaning
- 12 other than to advocate the election or defeat. So
- 13 that's the standard we're talking about. That's what
- 14 you would have to find reason to believe is you would
- 15 have to find this does that.
- So to answer the executive director's
- 17 question, if a communication literally can have no
- 18 reasonable meaning other than to advocate or defeat the
- 19 election of a candidate, well, then, that is absolutely
- 20 with -- under the umbrella of the 501(c) prohibition.
- 21 The 501(c) prohibition is -- the conventional wisdom is
- 22 a 501(c) political activity prohibition is more broad
- 23 than express advocacy. So, in other words, all express
- 24 advocacy is political activity. Not all political
- 25 activity is express advocacy.

- 1 in any communication because we don't have another end
- 2 of when the -- I mean, 30 to 60 days before the primary
- 3 election. That's -- if I'm trying to find a number for
- 4 somebody, that's the number I can find for them.
- 5 So I don't know what number I would say
- 6 because, I guess -- I don't know. I would have to have
- 7 some deep thoughts on it. And, frankly, if we're
- 8 saying this kind of communication -- these ads
- 9 literally can have no reasonable meaning, other than to
- 10 advocate, I don't know what -- I mean, I just don't
- L1 think you can mention a legislator. And so if at the
- 12 end of the day that gets -- that's the standard, that
- 13 this kind of ad satisfies that requirement, then we
- **14** just -- then in Arizona, we would just -- 501(c)(3)s
- 15 wouldn't be able to safely do these communications.
- So I think that's, kind of, how I would
- 17 remedy those two.
- 18 ACTING CHAIRMAN KIMBLE: Okay. Thank you,
- 19 Mr. Barton.
- 20 Any other questions from Commission
- 21 members?
- 22 COMMISSIONER PATON: I have a question for
- 23 Tom.
- 24 MR. COLLINS: Commissioner?
- 25 COMMISSIONER PATON: So, I mean, I have a

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- 1 So if the Commission is to find that this
- 2 satisfies that, then, I mean, I don't think that
- 3 finding is necessarily binding on the IRS. I don't
- 4 know how it works, but I mean, just logically, if it's
- 5 true that this can have no reasonable meaning other
- 6 than to advocate for the election or defeat of the
- 7 candidate, if it meets that high bar, then it clearly
- 8 is -- satisfies 501(c)(3) restriction on political
- 9 activity. So that's how those two jive.
- As far as whether you go by the date when
- 11 the election is finalized or whether you go by the date
- 12 of early mailing, obviously, when we were saying 60
- 13 days, we were counting from the day of the election.
- 14 If you count from the day of early mailing, I guess
- 15 it's 30 days. I think in either -- I mean, that's
- 16 interesting that the 30-day requirement -- just, again,
- 17 for reference, the FEC uses that as when naming a
- 18 candidate makes it electioneering communication, the 30
- **19** days from a primary.
- 20 In any case, I think my concern in both
- 21 cases is that if we get done with all the process here
- 22 and it's determined that a communication like this done
- 23 at this time satisfies express advocacy, then it would
- 24 mean that in Arizona 501(c)(3)s would not be -- it 25 would be reckless for them to even mention candidates

- 1 problem with the fact that they have the picture, the
- 2 name of the candidate. And this is from your thing
- 3 that you handed out, Tom, on page 6.
- 4 MR. COLLINS: Yeah.
- 5 COMMISSIONER PATON: And it says, State
- 6 Senator Brophy McGee voted for a budget that failed to
- 7 cap class sizes and then asked the recipient of the
- 8 mail piece to vote to reduce class sizes in 2019. To
- 9 me that is -- would this be different, in your
- 10 opinion -- I'm not a lawyer, but I'm just -- but it
- 11 seems to advocate if she's not going to do it, then to
- 12 vote for somebody else. And that -- it's got her
- 13 picture on it and so on.
- And if her picture wasn't on there and her
- 15 name and phone number wasn't on it and they're just
- 16 advocating to reduce class sizes in 2019, to me that
- 17 would be much different. I'm asking your opinion on
- **18** that.
- 19 MR. COLLINS: Sure.
- 20 COMMISSIONER PATON: Since you are a
- 21 lawyer.
- 22 MR. COLLINS: Right. So I think that -- I
- 23 think that there's -- there's a couple of different
- 24 things going on in the context of just the four corners
- 25 of the -- of the Brophy McGee -- Senator

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- 1 Brophy McGee-related mailer that -- we focused in on
- 2 one of them. I think -- but I think they're -- one,
- 3 Mr. Liburdi has already mentioned which is they're --
- 4 in making an objective determination of this, we're not
- 5 required to ignore legitimate background facts such as
- 6 how this session in Arizona works, which is different
- 7 from how it works in the congressional level, which may
- 8 be different from how it works in other states.
- 9 So I think that -- I think that -- you
- 10 know, I think that that is an issue. I -- we didn't
- 11 highlight the reason to believe, but -- but the
- 12 citation that Mike mentioned being to an amendment that
- 13 wasn't offered in the Senate gets into an issue of, you
- 14 know -- you know, when you're talking about whether or
- 15 not something is issue advocacy or whether something is
- 16 a form of, you know, electioneering, you know, the fact
- 17 that this amendment wasn't offered for her to vote on
- 18 casts the whole ad in a different light. In other
- 19 words, you are asking her to do something that she
- 20 didn't have an opportunity to do which, you know --
- 21 COMMISSIONER PATON: Because it was a House
- 22 bill, not a Senate.
- 23 MR. COLLINS: Right. So I think that
- 24 that's -- and I think that that goes, again, to the --
- 25 to the question of, you know, are you addressing her

- 1 legislative -- our legislative session is run, taken
- 2 together, it's difficult for me to see how a reasonable
- 3 person would conclude that this is not expressly
- 4 advocating for this person's defeat, you know.
- 5 I mean, you're basically saying this
- 6 candidate who is on the ballot for the primary is not
- 7 representing the interests of the state. You're saying
- 8 it 30 to 60 days before the election, depending upon
- 9 what clock you want to -- where you want to start the
- LO clock, and you're presenting it, you know, in -- and
- 11 just putting the contact number on there is not -- is
- 12 not a get out of -- is not a get-out-of-disclosure-free
- 13 card. And so that's how I analyzed it.
- L4 COMMISSIONER PATON: So if the person is
- 15 not identified and they just -- they just said, you
- 16 know, this is -- this is -- this is the way you should
- 17 be interested in; some people are against this, but if
- 18 you're interested in this, you know, this is something
- 19 that you can do something about, basically.
- 20 MR. COLLINS: Well, in fact, the Act -- I
- 21 need the statutory -- the Act says that -- the Clean
- 22 Elections Act, in fact, says that a communication that
- 23 would otherwise be expressly advocating is not when it
- 24 presents information about the voting record or
- 25 position on a campaign issue of three or more

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- 1 record or are you addressing -- are you -- or are you
- 2 addressing -- are you addressing just throwing out
- 3 there that this person doesn't support the class sizes?
- 4 And that coupled with the -- I think one of the key
- 5 statements is the fact that state lawmakers should
- 6 represent our interests.
- 7 I feel -- I know that the response from
- 8 the -- the post reason to believe memo response, you
- 9 know, sort of dismisses the state lawmakers should
- 10 represent our interests part of this as -- as being
- 11 not -- not meaningful, but I think that the implication
- 12 of the fact that you say that Senator Brophy McGee
- 13 voted for a budget that failed to cap class sizes and
- 14 state lawmakers should represent our interests, that
- 15 comes very close to a clear call to action to vote
- 16 against this person for election.
- 17 And -- and, I mean, it gets very close -- I
- 18 should say very close to an express -- very close to a
- 19 magic words type call to vote against this person, and
- 20 that's the functional equivalent test we're dealing
- 21 with. I think if you say Senator X voted against this 22 or voted for this budget that failed to do these things
- 23 and state lawmakers should do what we tell them to do
- 24 or what represents our interest and there's no way for
- 25 this lawmaker to do that in the context of the way our

- 1 candidates so long as it's not made in coordination
- 2 with a candidate, political party, agent of the party
- 3 or person who is coordinating with the candidate or
- 4 candidate's agent.
- 5 So to your point, you could identify a
- 6 number of candidates who are -- who are -- perhaps, you
- 7 think need to be informed by their constituents about
- 8 this and the law. I think 16-901 allows for that,
- **9** expressly allows for that in Subsection B. So it's
- 10 just not the case that there's a -- that there would be 11 a moratorium.
- What it would -- what it -- I guess, if you
- 13 accept Mr. Barton's argument, which I'm still not
- 14 convinced by, at worst a 501(c)(3) would have to
- 15 identify more than one candidate in a mailing but, you
- 16 know, the whole point is that if they're targeting the
- 17 constituency of the vote of the -- of that candidacy --
- 18 of that candidate, you know, 30 to 60 days before
- **19** election in a negative light where there's no
- 20 likelihood of a vote and, perhaps, a vote -- on a vote
- 21 that the person to even take, you know -- you know, you
- 22 get to -- you can see how there's no reasonable
- 23 meaning.
- So there's no way out for these 501(c)(3)s,
- 25 if they want -- if they want to play in this arena,

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- 1 that even -- even if a different ad -- even if a
- 2 different ad with Senator Brophy McGee would have not
- 3 been express advocacy, there's an even easier way,
- 4 which is an express exemption for certain
- 5 communications, provided they are designed to reach,
- 6 you know, a broader set of candidates. I mean, we have
- 7 an express exemption for that.
- So it's not -- it's just not as simple as,
- 9 I think, that -- as if this is -- if this can be -- if
- 10 this is -- has no other reasonable meaning, then
- 11 501(c)(3)s can't weigh in on communicating to
- 12 constituents at all. That's not true.
- COMMISSIONER PATON: Okay. 13
- ACTING CHAIRMAN KIMBLE: I'm sorry. Were 14
- 15 you going to say anything, Commissioner Paton?
- One of the things I wanted to say is I 16
- guess I would also be more persuaded if this was done
- differently. As opposed to educating people about an
- 19 issue, we're educating people about how a specific
- 20 legislator voted on three specific issues, which makes
- 21 it seem a lot more focused on the person than on any
- 22 one issue. And it just -- it does not really seem like
- 23 it is genuinely looking for a way to tell people to
- 24 contact your elected officials.
- 25 But is there anyone else who wants to

- 1 would have been there to actually influence the
- 2 legislation instead of influencing an election. And
- 3 why say things like is in our Exhibit 4, the Kate
- 4 Brophy McGee ad about, quote, predatory lenders? Why
- 5 use -- why say things -- call Kate Brophy McGee and
- 6 tell her to stop putting Arizona's families future at
- risk? Why -- why target in that manner?
- And then I would also like to just end on
- 9 this point. These mailers were being sent out in
- sequence. They weren't all done at one time. They
- were done in a sequence. The Facebook ads were put up
- and on for a while. I would ask but for this complaint
- and but for the Commission taking this seriously, would
- that have continued? So, you know, it very well could
- have gone later and closer to the election, but this
- 16 complaint was filed. The Commission took it seriously,
- 17 and it stopped.
- So unless there's any further questions, 18
- 19 Mr. Chairman, thank you for this opportunity.
- ACTING CHAIRMAN KIMBLE: Okay. Thank you. 20
- 21 Any questions for Mr. Liburdi?
- 22 (No response.)
- 23 ACTING CHAIRMAN KIMBLE: Is there anyone
- 24 else who wants to be heard on this matter?
- 25 (No response.)

11:42:12-11:43:33 Page 103 11:45:00-11:46:03 Page 105

- 1 address this?
- Mr. Liburdi, did you -- is there anything
- 3 else you felt you should say about this?
- MR. LIBURDI: Thank you, Mr. Chairman.
- 5 I'll be very brief and to the point here because I feel
- 6 like the Commission understands the issues.
- What I would just focus on is the statutory
- 8 test. There's no other reasonable meaning for -- for 9 these advertisements, and when you look -- you know,
- 10 it's helpful to look at federal law for precedent
- 11 for -- it's helpful to look at federal law, but it is
- 12 not dispositive because this is an Arizona issue. It's
- 13 helpful to look at past advertisements, but that's not
- 14 dispositive because every advertisement is going to be
- 15 different, but if you look at the Wisconsin Right to
- 16 Life advertisement that's been talked about, the two
- 17 United States senators that were targeted were one
- 18 Democrat, Russ Feingold, and one Republican, Herb Cole.
- 19 And it was on an issue that was continually before the
- 20 United States Senate.
- So I would ask here why target four 21
- 22 Republicans in four competitive legislative races by
- 23 targeting high-propensity voters on issues that are
- 24 front and center on this election campaign and doing it
- 25 after the legislative session when the opportunity

- ACTING CHAIRMAN KIMBLE: Do we have any
- 2 more comments from commissioners or a motion on MUR
- 3 18-07 One Arizona dba Sunlight Arizona?
- Commissioner Chan?
- COMMISSIONER CHAN: Mr. Chairman, I'll make
- 6 a motion that we find reason to believe that there was
- a violation of a statute or rule over which we have
- 8 jurisdiction and authorize the executive director to
- 9 conduct an investigation.
- 10 COMMISSIONER PATON: Second.
- ACTING CHAIRMAN KIMBLE: A motion has been 11
- 12 made and seconded.
- Any discussion on the motion? 13
- 14 (No response.)
- 15 ACTING CHAIRMAN KIMBLE: All those in
- 16 favor, say aye.
- 17 (Chorus of ayes.)
- 18 ACTING CHAIRMAN KIMBLE: Anyone opposed?
- 19 (No response.)
- 20 **ACTING CHAIRMAN KIMBLE: Motion carries 4**
- 21 to 0. Thank you.
- Item VII, public comment, anyone want to
- 23 comment on anything we haven't discussed yet?
- MR. COLLINS: I don't know if I'm allowed
- 25 to take a point of personal privilege here, but Rivko,

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Citizens Clean Elections Commission 11:46:05-11:46:51 Page 106 1 who often publicly comments, has been given an award by 2 the Protecting Arizona's Families Coalition, which --3 as, I think, advocate of the year is, I think the 4 award. MS. KNOX: Yeah, more or less. MR. COLLINS: Yeah. And so I'd just -- as 7 a matter of my public comment, I just would 8 congratulate Rivko for her award. And we're always 9 happy to see her here and proud that she's been 10 recognized for her advocacy. 11 11 MS. KNOX: Thank you. 12 12 ACTING CHAIRMAN KIMBLE: Thank you and 13 13 congratulations. 14 14 MS. KNOX: Thank you. 15 ACTING CHAIRMAN KIMBLE: Anyone else want 16 16 to make any comments? 17 (No response.) 17 ACTING CHAIRMAN KIMBLE: Do I hear a motion 18 18 **19** to adjourn? 19 20 COMMISSIONER CHAN: I'll move that we 20 21 adjourn, Mr. Chairman. 21 COMMISSIONER PATON: I will second. 22 23 ACTING CHAIRMAN KIMBLE: Anyone object? 23 24 (No response.) 24 25 ACTING CHAIRMAN KIMBLE: Okay. We are 25 11:46:52-11:46:53 Page 107

1 STATE OF ARIZONA 2 COUNTY OF MARICOPA 3 BE IT KNOWN the foregoing proceedings were taken by me; that I was then and there a Certified 5 Reporter of the State of Arizona, and by virtue thereof 6 authorized to administer an oath; that the proceedings were taken down by me in shorthand and thereafter transcribed into typewriting under my direction; that the foregoing pages are a full, true, and accurate transcript of all proceedings and testimony had and adduced upon the taking of said proceedings, all done to the best of my skill and ability. I FURTHER CERTIFY that I am in no way related to nor employed by any of the parties thereto 15 nor am I in any way interested in the outcome hereof. DATED at Phoenix, Arizona, this 29th day of September, 2018. LILIA MONARREZ, RPR, CR #50699 22

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