Transcript of Proceedings - October 17, 2019

Public Meeting

THE STATE OF ARIZONA

CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

October 17, 2019

9:31 a.m.

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CHAIRMAN KIMBLE: Good morning. I'm going to call to order the October 17th, 2019, meeting of the Citizens Clean Elections Commission. Commissioner Paton and Chairman Kimble are attending in person. Commissioner Chan, are you on the phone?

COMMISSIONER CHAN: Yes, I am. Good morning.

CHAIRMAN KIMBLE: Good morning. And, Commissioner Meyer, are you also, on the phone?

COMMISSIONER MEYER: I am. Good morning.

CHAIRMAN KIMBLE: Good morning.

Item II: Discussion and possible action on Commission minutes for the September 26th, 2019 meeting.

Are there any additions or corrections to the minutes?

(No response.)

CHAIRMAN KIMBLE: Hearing none --

COMMISSIONER CHAN: Can I make a motion?

CHAIRMAN KIMBLE: Commissioner Chan.

COMMISSIONER CHAN: Could I move that we approve the minutes as written?

CHAIRMAN KIMBLE: Is there a second?

COMMISSIONER PATON: Second.

CHAIRMAN KIMBLE: It's been moved and seconded to approve the minutes as written. We'll do a roll call.

Commissioner Paton?

COMMISSIONER PATON: Aye.

CHAIRMAN KIMBLE: Commissioner Chan?

COMMISSIONER CHAN: Aye.

CHAIRMAN KIMBLE: Commissioner Meyer?

COMMISSIONER MEYER: Aye.

CHAIRMAN KIMBLE: The Chair votes aye. The minutes are approved four to nothing.

Item III: Discussion and possible action on executive director's report and legislative report.

Mr. Collins?

MR. COLLINS: Mr. Chairman, Commissioners, thank you. A couple of quick announcements. Avery was accepted into the African-American Leadership Institute, which promotes civic leadership and public service. So that's -- we're excited about that. As soon as we -- that will be an opportunity for him and
The State of Arizona
Citizens Clean Elections Commission

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1 consolidated election date is, what, a week or two
2 after that? So, it's a very quick turnaround from the
3 PPE to the next election.
4 I want to, briefly, touch on the Legacy
5 Foundation Action Fund as outstanding legal matters.
6 You know, as you may know, we've successfully defended
7 a special action that the Legacy Foundation filed when
8 we filed to convert our administrative judgment, and
9 Legacy Foundation has taken an appeal. Some of you may
10 have heard or read Howie Fischer's story from Capitol
11 Media Services in the "Star" or on the radio.
12 If you haven't, I'm happy to send it along
13 to you, but basically, you know, this is -- the case,
14 you know, will go until there's some -- I guess, until
15 a finality is established to the satisfaction of the
16 Legacy Foundation Action Fund, which doesn't seem to be
17 possible. So -- and, then, AZAN v. State, we can talk
18 about in the next item.
19 Finally, I just want to -- I duly note that
20 we have been -- Paula and I have continued to be in
21 contact with the Governor's office on boards and
22 commissions. We do think that they're making
23 substantial progress toward an appointment, and we
24 appreciate their -- the Governor's office keeping us as
25 updated as they can on that process. So, I'm very

1 dealing with when we appear in front of -- in front
2 of -- in front of -- in front of them at the end of the
3 month and then at the beginning of November and then,
4 finally, just update you briefly on the AZAN v. State
5 case.
6 Altogether, you know, we -- you know, Mary
7 is here in the event that any of -- in the event that,
8 in the course of this discussion, we have -- you have
9 questions that are better addressed to -- to her
10 than -- than I -- than me. And so that's -- that's how
11 I'd like to start, if that's all right. So it's not
12 materials, per se, to review. It's really just an
13 update on the process and where we are.
14 The main reason I wanted to do this on this
15 agenda is in order to -- you know, when we first --
16 when our relationship with the Governor's Regulatory
17 Council changed -- and we -- and I mean changed the
18 first time when -- initiated by the Regulatory Review
19 Council's actions, that happened in a manner that --
20 post hoc matter. In other words, by the time I was
21 talking to the commissioners -- and I'm not sure -- I
22 don't know if any -- maybe only Commissioner Meyer was
23 here at the time, but -- or maybe not, but we were
24 caught off-guard in terms of what we were anticipating.
25 And so I thought it would be better to --

1 optimistic that we'll have a new member joining us in
2 the near future based on the actions that they've
3 taken.
4 So, that's -- that is the end of the --
5 that's the entirety of the executive director's report.
6 CHAIRMAN KIMBLE: Thank you.
7 Any questions for Tom from any members of
8 the Commission?
9 (No response.)
10 CHAIRMAN KIMBLE: Okay. Item IV:
11 Discussion and possible action on Commission rules
12 submission to the Governor's Regulatory Review
13 Commission, Proposition 306 and the Arizona Advocacy
14 Network versus State. And let me, also, just note the
15 Commission may vote to go into executive session, which
16 will not be open to the public, for the purpose of
17 obtaining legal advice on this item.
18 Tom, is there material we want to discuss
19 first?
20 MR. COLLINS: Well, it's really -- to
21 discuss? It's really more of an update. What I wanted
22 to do was briefly discuss what we've done with respect
23 to filings with the Governor's Regulatory Review
24 Council or Commission and -- and then discuss -- and
25 then mention a couple of issues that we anticipate

1 knowing now what we didn't know then, to tee up the
2 issues we think are going to be there for your
3 knowledge now and then -- and then -- and then answer
4 any questions and take any direction that needs to be
5 taken.
6 So, as you all know, we have completed our
7 work on three rule amendments, one of which removes a
8 rule of limitation on repayment matters that, in our
9 view, is not consistent with the statute. Two, we have
10 advanced a rule to remove the language that the Part 1
11 of Proposition 306 requires to be removed. And, then,
12 the third piece we have there is a simplification of
13 the process for candidates submitting their candidate
14 statements for the candidate statement pamphlet.
15 Now, none of these rules --
16 COMMISSIONER CHAN: Tom?
17 MR. COLLINS: Yes.
18 COMMISSIONER CHAN: I would like to -- when
19 you say we have a rule to remove the --
20 CHAIRMAN KIMBLE: Excuse me, Commissioner
21 Chan. We're having some trouble understanding you.
22 COMMISSIONER CHAN: Oh, I'm sorry.
23 CHAIRMAN KIMBLE: I don't know if there's
24 any way you could get closer to the phone or something.
25 It's somewhat muffled.
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<th>09:41:39-09:42:28</th>
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<td>1 COMMISSIONER CHAN: You know, I'm as close as I can get. I wonder if I should just hang up and try calling back in.</td>
<td>1 not unvoter-protected measures in the provisions of the 2 Clean Elections Act are, you know, the direction to file an adopted rule with the Secretary of State's Office and the discretion, in the case of where the Commission does it unanimously, to make a rule immediately effective.</td>
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<td>2 CHAIRMAN KIMBLE: That's substantially better now.</td>
<td>3 To put this in some context, we have endeavored to try to make our rule-making process as predictable as we can. So, if you notice, over the last several years, after the legislative session and after an election -- so, it would be election, legislative session, rule-making. That's how we've done it, and then we try to get the rules effective at the time of the next period where candidates may be getting qualified. So, based on that authority in the statute, we did establish an effective date for the rules that I mentioned.</td>
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<td>3 COMMISSIONER CHAN: Oh, good. Okay. I'll try to get super close. Apologies for the technical difficulties.</td>
<td>4 And so the two issues that we think we're likely to have a discussion with the Governor's Regulatory Review Council about are those two. It's not clear to me what the council members' views are on that. I think there is a view that -- for example, there's the Game and Fish Commission. They use the words &quot;adopted rule&quot; and then they send it to GRRC, but there's no language in their statute that I can find.</td>
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<td>4 Tom, real quick, you mentioned a rule to remove that repayment rule?</td>
<td>5 MR. COLLINS: Yes.</td>
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<td>5 COMMISSIONER CHAN: But I thought we were going to revisit to try to rewrite that.</td>
<td>6 MR. COLLINS: Mr. Chairman, Commissioner Chan, that's with respect to a rule on loans that we --</td>
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<td>6 Is that still the plan?</td>
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<td>7 MR. COLLINS: Well, there's -- I mean, they're not completely unrelated. I mean, they both turn on similar issues.</td>
<td>8 MR. COLLINS: Okay.</td>
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<td>8 COMMISSIONER CHAN: Thank you, though.</td>
<td>9 MR. COLLINS: Anyway, so we submitted</td>
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<td>9 MR. COLLINS: Okay.</td>
<td>10 MR. COLLINS: That's substantially</td>
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<td>10 MR. COLLINS: Anyway, so we submitted those. We followed -- the folks who drafted Proposition 306 removed the sentence that had -- that had an exemption in it that had long been the view of the Commission and -- the informed view of the Commission that that exemption exempted the Commission from the Regulatory Review Council process. That exemption was removed from the statute by 306. The statute, however, left the leaving place procedural and other rule-related law in the -- in the Clean Elections Act, which was then, essentially, you know, all but reenacted by the voters because it was on the language of the measure they voted on. So, what we have done is submitted all of the paperwork to GRRC that is necessary to be on the agenda, which is the rule language, a statement of consumer business impact, any public comment we would have gotten. On those rules, we didn't get any public comment pro or con at all. So, the package is pretty -- pretty small. So, we have passed the threshold with GRRC to have provided the amount of information necessary to be on the agenda. So, that's one checkbox. We are, however, among the statutory provisions that were left in place by the voters or, you know, as I say, perhaps, reenacted but certainly</td>
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1 things we can certainly talk about, but the bottom line
2 is that that's what we think will be the principal
3 focus. And there may be other issues. I mean, I don't
4 know all the substantive issues with the rules
5 themselves. That's a whole other question.
6 So, that's -- that's an update on that.
7 So, if - if there are questions about that, I'm happy
8 to take them. And, again, if they're more legal, I'm
9 happy to defer to Mary.
10 CHAIRMAN KIMBLE: Well, Tom, I have one
11 question. So, going back in time, has GRRC ever
12 approved our five-year review that we submitted -- I
13 don't know -- almost five years ago, it seems like?
14 MR. COLLINS: No. The 2015 -- 2015 report
15 that they returned to us, we returned to them in 2017,
16 and it was on their internal -- they keep a -- on their
17 website, they keep an internal agenda of stuff they
18 have coming up. Sometime in, I want to say, the
19 summer, the Clean Elections five-year review report
20 disappeared from that list. And I inquired about it,
21 and I was told that they just -- they thought it had
22 gotten stale, or something, words to that effect. So,
23 no, they've never acted on that.
24 CHAIRMAN KIMBLE: So, is that likely to be
25 a point of contention?

1 MR. COLLINS: You know, Mr. Chairman,
2 Counsel -- or Commission members, I don't think so. In
3 my view, you know, in a lot of ways, the Prop 306,
4 essentially, by existing acknowledges that the
5 Commission wasn't ever subject to the five-year review
6 process in the first place and that the fact that the
7 Commission submitted five-year reviews in 2005, 2010,
8 2015, 2017 clearly wasn't necessary; otherwise, Prop
9 306 wouldn't have been, although we did it.
10 So, I think that at this point, I'm
11 assuming the council is just going to move on, but I
12 don't -- you know, that's dependent on their
13 discretion. It just seems like a staff action to just
14 take it off their internal planning. So, I'm not
15 expecting to hear more about that. When we get to our
16 next five-year review, I guess, we'll have to figure
17 out what -- well, where we are with respect to that,
18 but that -- the ball on the five-year report from 2015
19 and 2017 is in GRRC's court if they want to do anything
20 else with it. We've done our -- we've done our bit.
21 CHAIRMAN KIMBLE: And when is GRRC taking
22 up the rules?
23 MR. COLLINS: We will appear at their study
24 session on October 29th and then their business session
25 will be the following -- a week -- a week from that,
oversimplifying, but you didn't do anything to try to
basically -- I mean, I'm paraphrasing and vastly
the -- in the Superior Court.  Superior Court said,
get to the end of the -- end of the session, beginning
judge -- on the Superior Court judge's injunction.  We
for a stay at that time.  They went through a
month away, or so.  Yeah.  And, then, there will be an
oral argument and we'll go from there.  As things stand
whatever time -- I think that's probably going to be a
month away, or so.  Yeah.  And, then, there will be an
oral argument and we'll go from there.  As things stand
with that case, there's no -- there was no stay
granted.  The State and Secretary of State -- you know,
it was an -- the Superior Court issued an injunction.
So, it was immediately appealable.  It was also signed.
So, it was immediately -- it was appealable at that
point.

The State and the Secretary of State and
GRRC declined to appeal at that time, declined to ask
for a stay at that time.  They went through a
legislative session.  There was no action taken on the
judge -- on the Superior Court judge's injunction.  We
get to the end of the -- end of the session, beginning
of election season.  They move for a stay in the -- in
the -- in the Superior Court.  Superior Court said,
basically -- I mean, I'm paraphrasing and vastly
oversimplifying, but you didn't do anything to try to
fix the problems I had and you didn't ask me for a stay
until a year has gone by.  So -- and then the Court of
Appeals, likewise, declined to issue a stay with no
comment.
So -- so, that's where were.  We have -- I
think this is related enough. We've been -- you know,
we have been working and had an opportunity to talk
with the Secretary of State's Office about their
campaign finance guidance that they'll be putting out,
and that's been -- I think that's pretty -- that's been
a good experience, and I think that's all pretty solid.
So, I think, in general, you know -- you
know, it's just -- to the extent that, you know, there
was some crossover between the two mainly because GRRC
was named and, in part, because, you know, one of the
issues -- the hold -- one of the issues that
precipitated the fact that the five-year review took
five years to not complete was the Commission's -- or
the view -- or, as the statute puts it, the Agency's
view of its authorization to have rules that are now in
Rule R2-20-109 and R2-20-111.  So -- or 110.
CHAIRMAN KIMBLE: So, is there any need to
go into executive session on anything else on this
item?

MR. COLLINS: Only if you have questions

CHAIRMAN KIMBLE: Okay.

COMMISSIONER PATON: No.

COMMISSIONER MEYER: This is Commissioner
Meyer.  I do not.

CHAIRMAN KIMBLE: Okay.  Commissioner Chan?

COMMISSIONER CHAN: I don't either.

CHAIRMAN KIMBLE: Okay.

COMMISSIONER CHAN: No.

CHAIRMAN KIMBLE: Okay.  Commissioner Paton?

COMMISSIONER PATON: No.

CHAIRMAN KIMBLE: Okay.

MR. COLLINS: Okay.

CHAIRMAN KIMBLE: Okay.  Thank you.

Item V:  Public comment.  Is there anyone
who wants to tell us anything?

MR. COLLINS: Okay.

COMMISSIONER CHAN: No.

COMMISSIONER MEYER: This is Commissioner
Meyer.  I do not.

CHAIRMAN KIMBLE: Okay.  Commissioner Chan?

COMMISSIONER CHAN: I don't either.

CHAIRMAN KIMBLE: Okay.

COMMISSIONER CHAN: No.

CHAIRMAN KIMBLE: Okay.  Commissioner Paton?

COMMISSIONER PATON: No.

CHAIRMAN KIMBLE: Okay.

MR. COLLINS: Okay.

CHAIRMAN KIMBLE: Okay.  Thank you.

Item V:  Public comment.  Is there anyone
who wants to tell us anything?

(No response.)

CHAIRMAN KIMBLE: Okay.  Item VI:
Adjournment.

Is there a motion to adjourn?

COMMISSIONER PATON: I make a motion to
adjourn.

CHAIRMAN KIMBLE: Is there a second?
COMMISSIONER CHAN: I will second that motion.
CHAIRMAN KIMBLE: Okay. We'll do a roll call vote.
Commissioner Chan?
COMMISSIONER CHAN: Aye.
CHAIRMAN KIMBLE: Commissioner Meyer?
COMMISSIONER MEYER: Aye.
CHAIRMAN KIMBLE: Commissioner Paton?
COMMISSIONER PATON: Aye.
CHAIRMAN KIMBLE: The Chair votes aye. The motion to adjourn is approved four to nothing.

Thank you.
(Whereupon, the proceedings concluded at 10:00 a.m.)

STATE OF ARIZONA )
COUNTY OF MARICOPA )

BE IT KNOWN the foregoing proceedings were taken by me; that I was then and there a Certified Reporter of the State of Arizona; 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 nor am I in any way interested in the outcome hereof.

DATED at Phoenix, Arizona, this 20th day of October, 2019.

LILIA MONARREZ, RPR, CR #50699