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Transcript of Proceedings - February 27, 2020
Public Meeting

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
February 27, 2020
9:31 a.m.

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PUBLIC MEETING BEFORE THE CITIZENS CLEAN ELECTIONS COMMISSION convened at 9:31 a.m. on February 27, 2020, at the State of Arizona, Clean Elections Commission, 1616 West Adams, Conference Room, Phoenix, Arizona, in the presence of the following Board Members:

Mr. Galen D. Paton, Chairperson  
Mr. Steven M. Titla  
Mr. Damien R. Meyer  
Mr. Mark S. Kimble  
Ms. Amy B. Chan  

OTHERS PRESENT:

Thomas M. Collins, Executive Director  
Paula Thomas, Executive Officer  
Gina Roberts, Voter Education Director  
Mike Becker, Policy Director  
Alec Shaffer, Web Content Manager  
Avery Oliver, Voter Education Specialist  
Julian Arndt, Executive Support Specialist  
Kara Karlson, Assistant Attorney General  
Rivko Know, Ariona League of Women Voters  
Joel Edman, Arizona Advocacy Network  
Travis Huber, Arizona Advocacy Network  
Bailey Mills, RIESTER  
Maria Dillan, RIESTER  

CHAIRMAN PATON: Good morning. It is 9:31, past our time, January 23rd, and I call this meeting of the Citizens Clean Elections Commission to order. And I will call our roll, so if you'll answer.

Commissioner Chan, are you here?

COMMISSIONER CHAN: Aye.

CHAIRMAN PATON: Commissioner Kimble.

COMMISSIONER KIMBLE: Aye.

CHAIRMAN PATON: Commissioner Meyer.

COMMISSIONER MEYER: Aye.

COMMISSIONER TITLA: Thank you. Here.

CHAIRMAN PATON: And I'm Galen Paton, the Chairman, and I am here.

All right. Agenda II: Discussion and possible action on Commission minutes for December 12th, 2019 meeting.

MR. COLLINS: Oops, sorry. That's my mistake. It's the January 23rd meeting.

COMMISSIONER CHAN: It would be the January 23rd, 2020.

CHAIRMAN PATON: Oh, Tom.

MR. COLLINS: Yeah, I know.


MR. COLLINS: I'm getting better, but not perfect.

CHAIRMAN PATON: Tom messed up.

MR. COLLINS: I know. This is the second time; there won't be a third time.

CHAIRMAN PATON: Tom.

COMMISSIONER CHAN: Mr. Chairman.

CHAIRMAN PATON: Yes.

COMMISSIONER CHAN: I move that we approve the minutes of our January 23rd, 2020 meeting as written.

CHAIRMAN PATON: Okay. We have a motion. Do we have a second?

COMMISSIONER KIMBLE: Second.

CHAIRMAN PATON: We have a second, and we'll call the roll.

Commissioner Chan.

COMMISSIONER CHAN: Aye.

CHAIRMAN PATON: Commissioner Kimble.

COMMISSIONER KIMBLE: Aye.

CHAIRMAN PATON: Commissioner Meyer.

COMMISSIONER MEYER: Aye.

CHAIRMAN PATON: Commissioner Titla.

COMMISSIONER TITLA: I abstain. I wasn't here for the meeting.

CHAIRMAN PATON: Okay. And Chair votes aye.

COMMISSIONER CHAN: Aye.

CHAIRMAN PATON: Commissioner Kimble.

COMMISSIONER KIMBLE: Aye.

CHAIRMAN PATON: Commissioner Meyer.

COMMISSIONER MEYER: Aye.

CHAIRMAN PATON: Commissioner Titla.

COMMISSIONER TITLA: Aye.

here for the meeting.
1 Recorder's Office itself. So I think that was a successful trip, and we really -- we really enjoyed being down there and getting to spend time with -- with the Santa Cruz County folks.

2 COMMISSIONER CHAN: Mr. Chairman, Tom.

3 MR. COLLINS: Yes.

4 CHAIRMAN PATON: Yes, Commissioner Chan.

5 COMMISSIONER CHAN: I just wanted to point out when I was reading this I noticed that it was local county candidates, and I just wanted to say that even though those are not candidates that we have jurisdiction over, I really appreciate the fact that you guys are still doing outreach with those counties.

6 And I think that it's really important and we still have something, obviously, that we can offer, if those election directors are reaching out to us, and especially it sounds like it went really well with those candidates, so --

7 MR. COLLINS: Yeah.

8 COMMISSIONER CHAN: -- that's excellent.

9 MR. COLLINS: Thank you. Thank you.

10 Mr. Chairman, Commissioners, just continuing, obviously we've -- we've got both -- two elections in the next -- coming up between now and the next meeting. One is a local election on March 10th, which affects the City of Douglas, the City of Tempe, and the City of Chandler. And then of course, the big -- bigger undertaking, that all State and County officials are -- are working on, which is the presidential preference election.

11 I just want to reiterate and ask you to reiterate this, if you can, to your friends and family, that only registered members of the Democratic party may participate in that election, and they would have had to have been registered by February 18th. So -- so if you are a no party or a Republican or a Libertarian, we would -- whatever your frustrations are, it does not help the process and the processing of election -- of ballots and the results to -- to appear.

12 And so as a matter of community service, frankly, given the law is what it is, we really just want to stress and have stressed, as have all of the -- both everyone from the League of Women Voters to the Secretary of State's office, you know, has been stressing that this is a Democratic party election.

13 I don't think I need to gainsay that Avery has been continuing to blanket the state and Valley as part of our outreach efforts. That's -- that's really been great, and I think is yielding some real good contacts and authentic interactions between our offices and local community members. And I think that Avery is getting more requests generated from his -- his visits.

14 I also want to thank Commissioner -- Commissioner Chan for participating in the 2020 Arizona election law CLE, which -- on the panel on campaign finance, which I think was successful.

15 I want to get into some matters that are a little more -- that take a little more detail. And I apologize, if you'll indulge me. The first issue I want to -- I want to -- you know, we have two cases that directly involve us that are outstanding. One, the Legacy Foundation Action Fund case, which I don't think I need to get into. In the case of Arizona Advocacy Network v State, the briefing is basically complete and we're awaiting an oral argument date.

16 With respect to the case of State ex rel Bnoovich versus Arizona Board of Regents, which we have discussed in front of the Commission many times and that we've had on our Executive Director's Report for the past few months, the bullet points there outline the basics. Although the case is nominally about whether or not the Board of Regents' process for tuition setting is consistent with the Arizona's Constitution's mandates related to that, the AG's position stands, and based on the concurrence in the Court of Appeals, is that the -- the major issue, potentially, has become whether or not a case known as McFate will be overruled.

17 McFate stands for the proposition that under the statute it construed the Attorney General does not have a sort of free-standing right to sue State agencies that, in his or her view, are violating some -- some law. Were that case overturned, after 60 years with both the case and the statute having been unchanged, it would have very clear implications for all executive branch agencies. Nevertheless --

18 So as part of my effort to provide the Commission and Commissioners the opportunity to contemplate whether or not to enter into this issue -- this case as a -- as an amicus, in theory on the side of -- of the Board of Regents on the McFate issue, I did request outside counsel from the Attorney General's Office.

19 Before I get into the details of this, I wanted to first just ask the indulgence of the General's Office, if they later review or -- this tape or the written transcript, to allow me to discuss some of the ramifications of Eryn McCarthy's e-mail without taking any precipitous action.
This is an issue now between the Commission and the Attorney General's Office; it's not between the Executive Director's Office and the Attorney General's Office. This is a legal issue, but it's not a legal issue about legal advice; it's a legal issue between a law firm that has withdrawn from our representation and, at the same time, has declared that we ought not have access to outside counsel.

As is apparent from the terms of Ms. McCarthy's e-mail, the AG, after declaring -- the AG's Office, I should say, after declaring a conflict, administratively barred the Commission from contemplating an amicus brief with outside counsel in the appropriate confidential context, and substituted the Attorney General's Office judgment for any judgment, including the Elections Commission, might have made, but had not yet made.

Two, there are consequences associated with Ms. McCarthy's e-mail. When the Attorney General says, you may not use public resources for something that includes an implicit -- and, frankly, the statute's explicit -- potential of personal civil and criminal penalties -- those of us who were here when the Goldwater Institute sued the Commissioners and Staff personally over their objections to our voter education program will recall that.

Third, this is, frankly, of a piece with prior actions of the Attorney General's Office, where, for example, it leveraged a conflict between Secretary Reagan and the Commission over Commission rules to have its then chief deputy come before the Commission and object to those rules and provide legal analysis against those rules in -- in front of the Commission.

So because of all of those things, I think this raises some serious issues that we will have to address at some point. I'm happy to take questions on this matter now, if anyone has any.

CHAIRMAN PATON: Any questions?

COMMISSIONER KIMBLE: Mr. Chairman.

COMMISSIONER KIMBLE: Yes.

COMMISSIONER KIMBLE: So is it a problem with this specific case at this point, or is it a problem that you're concerned about for the future?

MR. COLLINS: Mr. Chairman, Commissioner Kimble, it's not clear to me. If this was the first instance in which we had had this Attorney General's Office leverage its conflicts to take administrative advantage of them, I would say it's a one-off. I can certainly tell you that public comments that I have made about why overruling McFate was problematic -- is problematic were not greeted with particular joy by the Attorney General's Office.

But that having been said, I think it's a question for the Attorney General's Office what the scope of this issue is. And I think that I certainly could take a direction to try to arrange to have the Attorney General's Office here, with an appropriate representative, at the next meeting, with one caveat: This is not an issue -- attorney-client issue that should be in executive session. This is an administrative dispute that under no circumstances is appropriate for an executive session.

COMMISSIONER CHAN: Mr. Chairman.

CHAIRMAN PATON: Yes, go ahead.

COMMISSIONER CHAN: Tom, a few points that I wanted to raise, and maybe you can elaborate or correct me if I'm wrong. First of all, what you're saying is that the Attorney General cannot represent us, is there not a statute that provides, when we need an attorney, that they shall provide that we have outside counsel?

MR. COLLINS: The Attorney General, in fact -- the Attorney General's Office, I should say, after declaring a conflict, has a conflict; is that correct?

MR. COLLINS: That -- Mr. Chairman, Commissioner Chan, that had been my understanding.

COMMISSIONER CHAN: Is there -- is there still a question about that? Is that kind of an open question or...?

MR. COLLINS: Honestly, because this is an administrative decision by the Attorney General's Office, what authority they're operating under is something that they have -- I mean, there's nothing in Ms. McCarthy's -- and I should be clear. I don't think that Ms. McCarthy necessarily drafted that e-mail on her own. But regardless, just the McCarthy e-mail does not really, I don't think, explain what the basis is.

I guess there's an argument that says that since this is part of the way the procurement law works, perhaps they have an administrative hole card.

Certainly they've -- certainly that's -- that's the impression I have. But that would be a -- we'd be better served asking that question directly.

COMMISSIONER CHAN: Okay. Mr. Chairman, Tom, I would just say that, based on my previous experience...
Mr. Chairman, and I don't know if Tom needs us to do anything more official. But I would just say, you know, for the Attorney General, who is nominally our lawyer, and obviously not in this case, now that we have a conflict, to leave us in the lurch like this is, I don't want to say unethical, but that's kind of the only word I'm left with.

And I -- I feel very awkward saying this in front of Kara, because she is extremely ethical and a very capable lawyer and I leave her out of this entirely, other than to say I feel extremely bad even talking about the big boss in front of her like this.

Mr. Collins, Commissioner Chan, no, I think that I have -- throughout this process I think -- I think Ms. Karlson understands the respect that the Staff and Commission have for her work.

COMMISSIONER TITLA: Chairman.

CHAIRMAN PATON: Yes, Mr. Titla.

COMMISSIONER TITLA: Mr. Collins, so to -- to understand this more, so the Attorney General is saying that he has a conflict of interest and cannot represent us?

MR. COLLINS: That's correct.

Mr. Chairman --

there are times that the legislature has said the AG can do these things, and that's appropriate. I don't think it's a good idea to have an AG that can just willy-nilly sue State agencies. And I say this knowing that I personally think that the Regents charge too much tuition. So I'm aligned with the AG in that argument, that this case --

That's the case that he's --

MR. COLLINS: Correct.

COMMISSIONER CHAN: -- suing on, right?

Okay. I just wanted to make sure I -- I don't have my cases mixed up.

So it's -- it's kind of ironic that I agree with the AG in what he's doing in this case, but I think he's going about it the wrong way. He should have found a plaintiff.

CHAIRMAN PATON: Or --

COMMISSIONER CHAN: Anyway --

CHAIRMAN PATON: Or a private party --

COMMISSIONER CHAN: Right, right.

CHAIRMAN PATON: -- should be suing.

COMMISSIONER CHAN: Exactly. There could have been a private party found.

So having said all that, I'm extremely troubled by this. And Tom, for my part --

COMMISSIONER CHAN: -- there's a little nuance to that. And this is -- there was a --

MS. THOMAS: Speak a little louder, please.

MR. COLLINS: I'm sorry.

There was an initial e-mail, which is in your materials. Subsequent to that e-mail, I was informed that there was a conflict. And subsequent to that e-mail, I was given direction on how to request outside counsel, and I did. So that second e-mail is included in your materials.

So as I read the e-mail, it denies any request I made. It says that if the Commission were to make a request in its own name, it would also be denied. I think that's -- I think that's -- I don't think -- I don't think there's any -- I don't think it's ambiguous about that.

COMMISSIONER TITLA: Yeah. I'm concerned about this issue with the Attorney General. Because the Clean Elections Commission is, you know, a voter initiative by the citizens of the state of Arizona. So we, as Commissioners of Clean Elections, we represent the citizens of Arizona. And the people of Arizona.
declared, in their intent and the findings and declaration of the clean elections law, that they would encourage citizen participation in the political process. And they found the -- that the people of Arizona find that our current election financing system effectively suppresses the voices and influences of the vast majority of Arizona citizens in favor of a small number of wealthy special interests, and also that it undermines public confidence in the integrity of public officials. I think that those findings are at play here.

If we represent the citizens of Arizona, and we cannot go forward on the litigation matters and we represent the State of Arizona -- I mean, the citizens, and the citizens have initiated the clean election initiative for more citizen participation and that -- saying that our voices should not be suppressed and that this undermines public confidence in the integrity of public officials, I think that that is at play here and I'm very concerned about that. I think the Attorney General's Office is in conflict itself. Aren't they in conflict themselves by their view, conceptually, for those to be in conflict independent of that, make administrative decisions or, the Commission, or any State agency, and also, authority to both be the exclusive representative of the Commission, or any State agency, and also, independent of that, make administrative decisions or, quote, unquote, policy decisions that may affect those agencies, and that there is no -- there is no way, in their view, conceptually, for those to be in conflict with one another. I personally, because they are a law firm and because they are mandated to be our law firm, have a -- and we are in this relationship forever together -- have a difficult time reconciling those in view of underlying principles of legal -- of just professional relationships between attorneys, their law firms, and their clients. COMMISSIONER KIMBLE: Mr. Chairman.

CHAIRMAN PATON: Yes.

COMMISSIONER KIMBLE: So Mr. Collins, is it your understanding that -- if we decide to go ahead and hire an outside law firm, what would happen? Would --
1 And I haven't been here at a meeting for the past few months, and I apologize for that, but my term has ended. But I understand that my term continues until somebody appoints somebody in my place, and that's okay.
2 But the term that comes to mind initially is we're being bullied, and you cannot -- you have to stand up to bullies. That's my impression here. And we need to do something here and get an attorney; otherwise, we might be personally liable for who knows what. I don't know what. Thank you, Chairman.
3 Mr. Collins: Mr. Chairman, if I may, just to -- just to sort of -- there are some questions implicit in Commissioner Titla's statement.
4 First, I'd like to commend Commissioner Titla for continuing to be involved with the Commission. We -- he was in the office not more than a couple of weeks ago, and we have been in communication with him throughout this period of time.
5 I would also -- but I would say two things about that. With respect to the pro bono, again, I'm not your attorney, but as I read the procurement code, you can't simply go with someone who is free, to the exclusion of people who have competed and been accepted into a procurement. That's not how the procurement code works, in my view. That's my view.
6 So what I would recommend at this point, and no vote is necessary, is simply that -- I think I have direction from any Member or the Chairman to request outside counsel on the meta representation question, which I know, because I have done that, is we need an attorney to help us talk to our attorney. And I'm not sure how that request -- I'm happy to make that request, if you were direct -- if you were to direct me to do so. I do not know how that would be received. But I -- in fact, I think we might -- should. I mean, I don't know what -- what the consensus is here.
7 Chairman, maybe we could have Tom write an e-mail.
8 Commissioner Chan: So Mr. Chairman, maybe we could have Tom write an e-mail.
9 And Tom, I just want to be clear. I -- I appreciate your cautious approach, I really do, because, you know, personal liability is not something that's okay. I don't know what. Thank you, Chairman.
10 I think the other meta conflict issue here that this raises is, I think you've identified it precisely, is we need an attorney to help us talk to our attorney. And I'm not sure how that request -- I'm happy to make that request, if you were direct -- if you were to direct me to do so. I do not know how that would be received. But I -- in fact, I think we might -- should. I mean, I don't know what -- what the consensus is here.
11 Chairman: So what do we need to do to invite the Attorney General to send somebody?
12 Mr. Collins: Just write an e-mail.
13 Commissioner Chan: So Mr. Chairman, maybe we could have Tom write an e-mail.
14 And Tom, I just want to be clear. I -- I appreciate your cautious approach, I really do, because, you know, personal liability is not something that's okay. I don't know what. Thank you, Chairman.
15 Commissioner Titla: Chairman.
16 Chairman: Commissioner Titla.
17 Commissioner Titla: So if we have no attorney, then who is going to give us legal advice? I think before this, the Attorney General represented us, and I think, and now they're out, so -- and they're saying, we're not going to give you any money to hire any attorneys. Attorneys are not free, I don't think. So unless we can do a request for a free attorney in the state of Arizona, see if somebody will represent us -- so that way we're put in a, you know, crazy situation here.
18 Commissioner Chan: I think -- Commissioner Titla: We have no attorney. So I share the concerns of Commissioner Chan in that she used the word maybe this is unethical.
1 communications about this, whether they be verbal,  
2 meetings, anything else beyond these e-mails?  
3 And then the other -- I guess the observation  
4 is, in Tom's e-mail the deadline for filing an amicus  
5 brief is March 17th, which is, I believe, after the  
6 date of our next meeting. So -- so it could be too  
7 late to deal with that at that point.  
8 MR. COLLINS: Mr. Chairman, Commissioner  
9 Meyer, I have answers to both those questions. As part  
10 of the process of the request, I initially, as you can  
11 see, sent the e-mail to Ms. Karlson related to the  
12 house bill that is referenced in the legislative  
13 session and to this particular issue.  
14 After that, there was a communication  
15 relating to how to -- that, yes, there was a conflict,  
16 and how to proceed to request -- that a request for  
17 outside counsel -- a more formal request for outside  
18 counsel would be necessary. That request is the e-mail  
19 from me to Kelly -- Kelly -- Kelly Gillilan-Gibson.  
20 That is because, as I learned from their e-mail and had  
21 been informed by Ms. Karlson, Ms. McCarthy was not in  
22 that week.  
23 So I followed the procedure I was given for  
24 the request. Why Ms. McCarthy chose not to  
25 acknowledge, let alone respond to, the formal request  

10:03:22-10:04:44

1 that I was asked to provide is a question I don't have  
2 the answer to, I think.  
3 And secondly, I have learned, in the last 24  
4 hours, from other parties interested in this matter,  
5 that the amicus deadline has been extended to  
6 March 30th. I don't know when our next meeting is, off  
7 the top of my head, but I think it's before then. But  
8 nevertheless, that would give us --  
9 COMMISSIONER MEYER: That's not a lot of  
10 time --  
11 MR. COLLINS: Right.  
12 COMMISSIONER MEYER: -- for a lawyer to get  
13 up to speed and draft a brief.  
14 MR. COLLINS: And to be honest, Mr. Chairman,  
15 Commissioner Meyer, the question of whether or not to  
16 actually do this is what's been pretermitted by the  
17 Attorney General's decision. That's part of the  
18 problem here. There's no -- the goal of counsel in  
19 this instance is to have a confidential setting in  
20 which the Commission can discuss the pros, cons, legal  
21 cons, pros, how to best articulate why the -- you know,  
22 the Commission's interest as an amicus, the  
23 Commission's viewpoint, and then whether to proceed at  
24 all.  
25 So I would say that if you read the heading  

10:06:19-10:07:42

1 documentation in this potential case that we're talking  
2 about? Let's say we have a meeting next month, and the  
3 time frame is too short between that meeting and the  
4 date to file any documentation. If something is  
5 decided at our next meeting, and we have a green light  
6 to hire a firm to represent us, and the firm says,  
7 yeah, we recommend that you file something in this  
8 case, and there's only a short time frame between that  
9 period, then what do we do, you know? So we need to  
10 take the time under consideration, I think.  
11 CHAIRMAN PATON: Tom.  
12 MR. COLLINS: Mr. Chairman, Commissioner  
13 Titla, the next meeting is March 26th. And as I said,  
14 my understanding is that the next -- that the amicus  
15 deadline is March 30th.  
16 So if the Commission is interested in  
17 contemplating, as a body, filing something, and  
18 requesting in some manner that the Attorney General  
19 discuss this with us, I guess I would have to recommend  
20 that we schedule an interim meeting.  
21 COMMISSIONER TITLA: Chairman, I recommend we  
22 have a special meeting, just so that, in the event that  
23 we have to go forward, that we have time to hire  
24 somebody and somebody can get the necessary  
25 documentation. But if it's only four days to get
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10:07:45-10:08:55

1 ready, I don't think --
2 CHAIRMAN PATON: Yeah.
3 COMMISSIONER TITLA: -- they have time to do
4 that.
5 MR. COLLINS: I can -- I take that --
6 Mr. Chairman, Commissioner Titla, I take that as a
7 direction for me and Paula on working on getting an
8 interim meeting set up, if that's -- if that's -- if
9 I'm correct.
10 CHAIRMAN PATON: Okay. Do we need to vote on
11 that?
12 MR. COLLINS: Absolutely not.
13 CHAIRMAN PATON: And I have to say that, I
14 mean, this case -- I mean, as Commissioner Chan, I
15 think they charge too much for tuition myself too. I
16 mean, I remember -- I'll date myself -- but I went to
17 school at the University of Arizona at $275 a semester.
18 So the difference between $275 a semester to 11,000 --
19 I have a stepdaughter that goes there now -- is
20 incredible. And I graduated in 1980, but it started
21 out at 225 a semester, actually, in 1976. So -- so I
22 think it's a good thing for him to challenge that. I'm
23 kind of worried about getting embroiled in something
24 that, for this case, I don't know how much standing we
25 really have in it. It's down the road, I think, is the

10:09:00-10:10:32

1 problem, correct, Tom?
2 MR. COLLINS: Mr. Chairman, I think that's --
3 I think that's correct. And frankly, again, the entire
4 purpose of requesting outside counsel is to contemplate
5 that question. The Attorney General has arrogated,
6 administratively, that decision to itself. That's the
7 discussion that the Commission is -- ought to have been
8 entitled to have in the proper context with
9 conflict-free counsel; instead, we are not.
10 CHAIRMAN PATON: Okay. So I guess we'll have
11 a special meeting; you'll let us know when that is.
12 MR. COLLINS: Yes. Yes, I will.
13 And if I could just really quickly hit the
14 rest of this report, unless there are other questions.
15 CHAIRMAN PATON: Yeah. This was going to be
16 short, I thought, Tom.
17 MR. COLLINS: Well, you know, I should never
18 say a thing.
19 The two -- the two big legislative issues we
20 have are HB 2054 and HB 2055. HB 2054 is a bill we saw
21 last year where the Free Enterprise Club would like to
22 add additional requirements to the Commission in terms
23 of treating us like a licensing board, and they believe
24 that Prop 306 authorizes this. The House Rules
25 attorney disagrees with them; but nevertheless, the

10:10:34-10:11:57

1 bill passed out of the House on a party line vote.
2 House Bill 2055 -- and here I want to take a
3 moment and thank the League of Women Voters, and Rivko
4 especially, for being our allies in this. We faced the
5 possibility of going into this completely alone,
6 because we had no support from anyone else publicly,
7 but the League of Women Voters and Rivko's analysis
8 helped us tremendously.
9 On HB 2055 the goal is to notwithstand all of
10 the existing law and allow a judge to sentence, for
11 lack of a better word -- better word, a person to a
12 term of community restitution at $10 an hour to pay off
13 any civil fines or penalties. Civil fines and
14 penalties are, at this point, because of legislative
15 action, the vast majority of our revenue. In addition,
16 the notwithstanding clause, applied to a
17 voter-protected act, is the sine qua non of violating
18 the Voter Protection Act.
19 On this issue, the House Rules attorney did
20 not agree with us, for reasons that are not entirely
21 clear to me. But nevertheless, we are -- we have --
22 that is one of the other matters alluded to where
23 outside counsel was approved. That one, I think, is
24 unfortunate. We would have -- we would have hoped we
25 could have worked with the AG's office on that issue.

10:12:00-10:13:42

1 But nevertheless, we -- we are opposed to post bills. We
2 are trying to prevent them from getting a three-quarter
3 vote. We -- we don't know yet what kind of -- you
4 know, how this will play out. We are -- we are hopeful
5 that we can do more work with the Senate, and that's
6 where that is.
7 So we did take the initiative in asking for
8 counsel on this -- or, asking if we needed outside
9 counsel on this, and then having it -- having outside
10 counsel appointed, because we're not sure, honestly --
11 we want to have guidance on what kind of facts and
12 those kinds of things we need to be looking for.
13 Because, you know, these are the kinds of actions that
14 you often need to pull the trigger quickly on.
15 Now, granted, I know there are other members
16 of the community that recognize that this puts the
17 Clean Elections funding source in jeopardy and violates
18 the VPA. It's just that when it came to having -- when
19 it came to convincing the -- most of the Democratic
20 caucus to vote against this, you know, a large
21 number of folks signed in from the League of Women
22 Voters.
23 Finally, on HB 2055 the policy does not match
24 the law proposed. The purported policy is to allow
25 people who are poor or indigent or otherwise to be able
1 to, quote, work off their fine, rather than to pay it.
2 And rather than helping, frankly -- and I -- and I say
3 this as a former public defender who has worked with
4 involved people before and worked with them on issues
5 related to community service specifically. Community
6 service involves people more in the criminal justice
7 system, not less. Community service -- this bill does
8 not set up an apparatus for what will have to be a new
9 probation department, essentially, to monitor these
10 folks.
11 And third, it's a sentence, in a civil
12 context, to work off something at $10 an hour, which is
13 below the minimum wage. So it's, frankly -- so it's --
14 it's -- if you were a person who, as the sponsor notes,
15 you know, is working two jobs and has kids and stuff,
16 you are going to be sentenced to work for the State at
17 $10 an hour, without any regard for your transportation
18 cost, your work, your inconsistent scheduling if you --
19 or your gig economy job. So it is a law that by policy
20 purports to help the poor, but, in fact, punishes the
21 poor in favor of those who have easier access to cash.
22 And so the policy and the law don't match at
23 all. And that's something I have said to members of
24 the legislature and would say to members of the
25 community in favor of civil justice reform. I don't

1 have any problem with civil justice reform. I have a
2 problem with civil justice reform that punishes the
3 people that it's supposed to be helping. So that's
4 that. That's just the last thing I think you needed to
5 be absolutely aware of. And I guess with that, I'll --
6 if you have any other questions...
7 CHAIRMAN PATON: Any other questions by the
8 Commissioners?
9 COMMISSIONER KIMBLE: Mr. Chairman.
10 CHAIRMAN PATON: Yes, Commissioner Kimble.
11 COMMISSIONER KIMBLE: Mr. Collins, I know
12 that we're mostly focused on bills here affecting the
13 Commission, but part of our mission is to encourage
14 citizen participation in the political process. And
15 this year, as in a number of recent years, there's a
16 number of bills that I wonder if we ought to be
17 involved in that have to do with the initiative
18 process, that have to do with early voting, that do not
19 necessarily impact the Commission directly, but seems
20 like our general charge to increase citizen
21 participation would -- would argue against some of
22 these -- some of these bills that make it more
23 difficult for initiatives to be on the ballot, that
24 make it more onerous for people to turn in an early
25 ballot at a polling place on election day. Are those

1 things that we -- that, in your opinion, we ought to be
2 involved in?
3 MR. COLLINS: Mr. Chairman, Commissioner
4 Kimble, sort of a two-part answer, of course, to that.
5 First, I absolutely think it's within the Commission's
6 charter to take positions on those matters.
7 However, the perception of the Commission at
8 the capitol, among both Republicans and moderate
9 Democrats, continues to be, notwithstanding all
10 evidence to the contrary, that the Commission is a
11 lightning rod. And so my general sense is that
12 advocates against restrictions on participation by
13 voting would prefer the Commission stay away because of
14 the potential for driving off moderate Republican votes
15 they might be trying to seek.
16 And so notwithstanding the fact the
17 Commission has a voice and is the State's agency for
18 purposes of voter education and promoting
19 participation, the antipathy that we face at the
20 legislature practically prevents us from acting in that
21 way without potentially jeopardizing the very thing we
22 seek to advance.
23 COMMISSIONER KIMBLE: Well, it just seems --
24 these bills, I know, are important to the League, as
25 well as to many citizens. And the League has been

1 helpful -- well, the League had a large role in setting
2 up the Commission and -- and is very helpful in some of
3 our legislation. And if we think we can be helpful in
4 some other legislation that's important to them and is
5 also important to the voters of Arizona, I hate to see
6 us take a pass on it. But I think you make an
7 interesting strategic point.
8 COMMISSIONER TITLA: Chairman.
9 CHAIRMAN PATON: Yes, Commissioner Titla.
10 COMMISSIONER TITLA: Yeah, I share the views
11 of my esteemed colleague, Commissioner. If these
12 various actions -- the impact of these various actions
13 go to suppress the vote of the people in the state of
14 Arizona, and the people it's going to impact is the
15 poor people. And these are going to be -- the first
16 impact is going to be on the Native Americans in the
17 state of Arizona, in the four corners of the state of
18 Arizona, it's going to impact upon them. It's going to
19 impact upon the Hispanic people in Arizona. It's going
20 to impact upon the African American people in Arizona.
21 It's going to impact upon the poor people in Arizona.
22 And the ultimate aim may be to suppress that vote
23 because you don't want them to vote, because if they
24 vote all together then you're afraid your position in
25 the state of Arizona legislature -- is that what the
The State of Arizona Citizens Clean Elections Commission
Public Meeting
Transcript of Proceedings
February 27, 2020


1 CHAIRMAN PATON: I would just caution, just as I did with the GRRC -- the GRRC mess, that the more that we're painted as being liberal left or whatever, the more hassles we get from -- I mean, even though I don't believe we are, we're painted that way. And if we want legislation to get through this legislature that we want, we have to pick our spots, I believe. And if we don't pick our spots, then we get GRRC embroiled in the middle of where they did that -- that -- oh, what's the word?

11 COMMISSIONER CHAN: 306.

12 CHAIRMAN PATON: Yeah, where they got mad and did that, and then now a lot of our input is -- is messed up. So I would agree with Tom that we need to choose our battles.

16 COMMISSIONER CHAN: Mr. Chairman, I was going to --

18 CHAIRMAN PATON: Yes.

19 COMMISSIONER CHAN: I was about to say the same thing. Even though I really value what Commissioners Kimble and Titla are saying, and I feel strongly also about access and about our mission, sadly, I think, when politics are at play, I do think sometimes discretion is the better part of value -- of valor. Sorry, I misspake. And I think that if Tom, in
Okay. So -- well, good morning, Chairman, Commissioners. My name is Julian, for those of you who haven't met and have met. I'm going to be giving the 2019 Annual Report.

I just chose this picture because this was from our We the Voters conference, and I thought it was just one great picture and that it kind of encapsulates what we're trying to do here with getting everybody involved in the process from all walks of life.

And if you move on, this page just says we're submitting our Annual Report that we have to do every year. We have the table of contents here that we'll be going through. And this is just our letter to the Governor saying, here is our Annual Report.

So the first page is going to be voter and public education, which, just to give an overview, we have -- did the We the Voters conference this year, which we've talked about quite a bit. But that was really my first event here at the Commission, and I know it's something that everybody on Staff, especially Gina, worked very hard on. And I just wanted to highlight, because it really -- I think the idea behind it was to be an open forum between voters and election officials, and I think it really accomplished that job very well.

And then we also continued our Take Flight campaign, election, continually updating information on the web page, grassroots outreach, which everybody knows Avery has been all over the place, continuing candidate training, and updating our website and social media.

If we move on. So We the Voters conference, like I said, it was the first event I have been a part of, and just wanted to highlight that. I think it was a really great step in the right direction. But basically the point of it was in order to educate voters on how to participate in the 2020 elections. Topics included: An overview of kind of the statewide elections; what's going to be on the ballot; how the media plays a role; how to take part and how to participate. Also, my favorite was probably the data analytics, one, I wish I could have watched the whole thing. But that one was really good, and I hope we do that again next year.

And then on to election information. We're continually updating the website with information on elections, deadlines, how to get the ballot. What's mainly on there right now is discussing the PPE and how citizens and voters can participate in that. And we often supplement these election information web pages with voter education tools, like videos and infographics, bonds and override questions. I know Tom did, and it turned out really great.

So on to our Take Flight campaign. You all know a lot about this, I'm sure. But just to highlight, we did see 1,435 users register using this this year. And I did the math; that's about four people every single day that walked by it and actually take a look at it, pull out their phones, and register to vote using it. So I think that's really great.

And we also developed a pop-up, which you can see in the picture there, version of the wings, that we see in the picture there, version of the wings, that we can bring to events. I'm pretty sure it just lives in Avery's car now.

And we have -- on to achievements. We were actually nationally recognized for that Take Flight -- Take Flight campaign by PR Week. We won best in public sector for a marketing campaign. We beat out the CDC, Procter & Gamble, Ogilvy, I don't even know how to say that, but they're 70-year-old campaign --

COMMISSIONER CHAN: Ogilvy.

MR. ARNDT: Ogilvy. 70-year-old campaign agency --

COMMISSIONER CHAN: Because I'm older than
MR. ARNDT: Yes, but -- yeah. They've been doing this for a while, so it's pretty great we could beat them on that.

And even one judge, when they were discussing it, said, you know, it brought amazing creativity, a focused message to the target audience, and it really makes an impact. And I think you can see that in the numbers.

And grassroots outreach. Once again, you know, we have an ongoing effort to increase outreach to Arizona voters.

Picture there, we were at a national voter registration day at ASU. And we do tons of those events -- well, Avery does tons of those events and registration drives across the county.

And we also -- in the next picture you can see the Pinal County Recorders, we partnered with them to create the first ever Arizona mobile outreach -- voter outreach van. And this is going to be mainly hoping to reach voters in rural parts of Arizona, just hosting early events and register voters and more.

COMMISSIONER CHAN: Can I ask a question, Mr. Chairman and Julian?

CHAIRMAN PATON: Yes, go ahead.

MR. ARNDT: -- defer to Gina on that one.

COMMISSIONER CHAN: I just curious if -- because it was such a fabulous, creative idea. And now that they've rolled it out, I wondered what their experience has been and if any other counties were interested.

COMMISSIONER CHAN: Thank you. Thank you.

MR. ARNDT: Thank you.

COMMISSIONER CHAN: Sorry to interrupt, Julian.

MR. ARNDT: No, thank you.

And then on to the -- that's just a snapshot of outreach events, but you guys have been briefed on a list longer than that every single month from stuff that's been going on.

And if we go to the next one here, training and guides. I mean, we're just continuing our trainings with the candidates in order to keep them up to date on new procedures, rules, and just how to run as a Clean Elections candidate and more.

And if you go to website and social media.

COMMISSIONER CHAN: Did any other counties have interest in doing that? I mean, has that worked well for Pinal?

MR. ARNDT: Well, Chairman, Commissioner, I don't -- I don't know the answer to that. I'd have to --

COMMISSIONER CHAN: Oh, okay.

MR. ARNDT: -- defer to Gina on that one.

COMMISSIONER CHAN: I was just curious if -- because it was such a fabulous, creative idea. And now that they've rolled it out, I wondered what their experience has been and if any other counties were interested.

MS. ROBERTS: Mr. Chairman, Commissioner Chan, my understanding is, yes, a lot of the counties have been quite interested. When we did the public unveiling, the launch for the van, several counties from across the state did have representatives to come down and see it. The Secretary of State herself came down. And yes, I've heard great things from other counties that that is something that they would like to do.

Pinal County -- the Pinal County Recorder, yeah, I would like to commend her, Virginia Ross, she really took a lot of initiative and creativity into...
MR. ARNDT: Good morning.  We haven't met yet, Julian.  Thanks for the report.

COMMISSIONER MEYER: Good morning.  We know each other pretty well, though, I'm sure.  Staff, we've got the bios of everybody.  And you guys think we currently have 58 candidates running.  And the next pages are just Commissioners and Staff, we're got the bios of everybody.  And you guys know each other pretty well, though, I'm sure.

But that's my Annual Report.  Thanks.  Any questions?

CHAIRMAN PATON: Any questions from the Commissioners?

COMMISSIONER MEYER: Mr. Chairman.

CHAIRMAN PATON: Yes, Commissioner Meyer.

COMMISSIONER MEYER: Good morning.  We haven't met yet, Julian.  Thanks for the report.

MR. ARNDT: Good morning.

of our job so far is just making people aware that if they did want to participate, they had to be registered as a Democrat, and making sure they know all the dates and answering anybody's questions.

And for the election cycle and candidate information, candidates began collecting $5 donations on August 1st of 2019; they have until July 28th of 2020.  And just those are the two races we're hosting right now, so anybody running for Corp Commission needs the minimum of 1,500, legislature requires 200.  And I did want to note that we do kind of have a higher-than-average participation rate.  Right now I think we currently have 58 candidates running.

And the Staff, we've got the bios of everybody.  And you guys know each other pretty well, though, I'm sure.

But that's my Annual Report.  Thanks.  Any questions?

CHAIRMAN PATON: Any questions from the Commissioners?

COMMISSIONER MEYER: Mr. Chairman.

CHAIRMAN PATON: Yes, Commissioner Meyer.

COMMISSIONER MEYER: Good morning.  We haven't met yet, Julian.  Thanks for the report.

MR. ARNDT: Good morning.
10:41:19-10:42:46

1. amendments to A.A.C. R2-20-701, 702.01, and 703.01.
2. Mr. Collins, can you make sense out of that?
3. MR. COLLINS: I can. Absolutely. Basically, I'll just cut to the chase, we had our latest meeting in front of the GRRC study session on Tuesday.
4. It was -- it was fine, it was good. We got some good questions on a rule change we were making, and we think that that was progress.
5. We also recently filed our first rules that had been formally approved by GRRC, and so that was also done.
6. All we're asking for on these three rules, 702.01, 703.01, and 701 -- 702.01, 703.01, and 701 are that you -- we have two recommended brief -- motions. One is that we approve them. And then two, I would like a -- I'm recommending a separate motion on making them effective immediately.
7. The reason for that is that, in working with the GRRC, it's been helpful to -- for us to say we would like them effective immediately, because then it triggers GRRC making them effective immediately on their calendar. There's some tension between those dates, but right now we have a work around for that.
8. I think it is effective, given the election cycle. Just a real brief reminder on these rules.

10:41:20-10:42:46

1. Rule 701 was drafted by John Sundt, of GRRC, to reiterate what his view of Prop 306 is. And then the amendments to 703.01 and 702.01 were written by me in response to other comments by Council Member Sundt, again, to reiterate his view of Prop 306. So I would simply recommend that the Commission vote to approve them, and then that the Commission also vote to make them effective immediately.
2. COMMISSIONER CHAN: Mr. Chairman.
3. CHAIRMAN PATON: Yes, Ms. Chan.
4. COMMISSIONER CHAN: Can we just approve them as a slate then?
5. MR. COLLINS: Yes. Mr. Chairman,
6. Commissioner Chan, I believe that is appropriate.
7. COMMISSIONER CHAN: Mr. Chairman, I move that we approve -- make final approval of amendments to R2-20-701, 702.01, and 703.01.
8. CHAIRMAN PATON: Do we have a second?
10. CHAIRMAN PATON: Okay. So we will have roll vote.
11. Commissioner Chan.
12. COMMISSIONER CHAN: Aye.
15. CHAIRMAN PATON: Okay. So we have roll vote.
16. Commissioner Chan.
17. COMMISSIONER CHAN: Aye.
18. CHAIRMAN PATON: Aye.
| CHAIRMAN PATON: Commissioner Meyer. | MR. COLLINS: There was a mistake on the agenda. |
| COMMISSIONER MEYER: Aye. | CHAIRMAN PATON: Okay. |
| CHAIRMAN PATON: Commissioner Titla. | COMMISSIONER KIMBLE: Okay. |
| COMMISSIONER TITLA: Aye. | MS. KARLS: Correct. |
| CHAIRMAN PATON: And I'm the Chairman and I vote aye as well. So that -- that goes. | COMMISSIONER CHAN: Oh, what a bummer. Okay, I see. Because it's not properly agendaed? |
| COMMISSIONER CHAN: And then Mr. Chairman. | MS. KARLS: Correct. |
| CHAIRMAN PATON: Yes. | MR. COLLINS: Correct. |
| COMMISSIONER KIMBLE: Before you -- you move, one point of clarification, Mr. Collins. Our agenda says 703.03. That is not correct, is that? | CHAIRMAN PATON: Okay. So we're leaving off 703.01. |
| MR. COLLINS: Well, yeah, so -- | COMMISSIONER CHAN: Oh, what a bummer. Well, we're going to have a special meeting anyway in a couple weeks; I guess we can do it then. |
| COMMISSIONER KIMBLE: It's 703.01, as stated in the motion, right? | CHAIRMAN PATON: All right. Commissioner Chan. |
| MR. COLLINS: You're right. | COMMISSIONER CHAN: All right. |
| COMMISSIONER KIMBLE: Okay. | CHAIRMAN PATON: Fire it up. |
| MR. COLLINS: So I guess -- | COMMISSIONER CHAN: Mr. Chairman, I move that we make final approval of the amendments to R2-20-701 and 702.01. |
| COMMISSIONER CHAN: Mr. Chairman, I looked -- | CHAIRMAN PATON: Do I have a second? |
| Tom, I looked at the rule itself just to make sure. | COMMISSIONER KIMBLE: Second. |
| Because you said 703.01 when you spoke to us of it -- | CHAIRMAN PATON: We have a second. We have a motion and a second. |
| MR. COLLINS: Yeah. | COMMISSIONER CHAN: We have a second. We have a motion and a second. |
| COMMISSIONER CHAN: -- and I noticed it was different on the agenda. That's okay. | |
| MR. COLLINS: No, I think -- | |
| COMMISSIONER CHAN: I just wanted to make sure I made the correct motion, so I looked at the rules, and it was 703.01. | And the roll is: Commissioner Chan. |
| MR. COLLINS: Well, I think in the abundance of caution I guess I would -- I would -- I would suggest that we revote on -- | COMMISSIONER CHAN: I'm the Chairman and I vote aye as well, so that passes. |
| COMMISSIONER KIMBLE: Okay. | COMMISSIONER CHAN: And Mr. Chairman, I move that we make those amendments effective immediately. |
| MR. COLLINS: So I guess -- | CHAIRMAN PATON: Do I have a second? |
| COMMISSIONER CHAN: Mr. Chairman, I looked -- | COMMISSIONER KIMBLE: Second. |
| Tom, I looked at the rule itself just to make sure. | CHAIRMAN PATON: And we will vote again. |
| Because you said 703.01 when you spoke to us of it -- | Commissioner Chan. |
| MR. COLLINS: Yeah. | CHAIRMAN PATON: And Mr. Chairman, I move that we make those amendments effective immediately. |
| COMMISSIONER CHAN: -- and I noticed it was different on the agenda. That's okay. | CHAIRMAN PATON: Do I have a second? |
| MR. COLLINS: No, I think -- | COMMISSIONER KIMBLE: Second. |
| COMMISSIONER CHAN: I just wanted to make sure I made the correct motion, so I looked at the rules, and it was 703.01. | CHAIRMAN PATON: And we will vote again. |
| MR. COLLINS: Well, I think in the abundance of caution I guess I would -- I would -- I would suggest that we revote on -- | Commissioner Chan. |
| COMMISSIONER KIMBLE: Okay. | CHAIRMAN PATON: And Mr. Chairman, I move that we make those amendments effective immediately. |
| MR. COLLINS: So I guess -- | CHAIRMAN PATON: Do I have a second? |
| COMMISSIONER CHAN: Mr. Chairman, I looked -- | COMMISSIONER KIMBLE: Second. |
| Tom, I looked at the rule itself just to make sure. | CHAIRMAN PATON: And we will vote again. |
| Because you said 703.01 when you spoke to us of it -- | Commissioner Chan. |
| MR. COLLINS: Yeah. | CHAIRMAN PATON: And Mr. Chairman, I move that we make those amendments effective immediately. |
| COMMISSIONER CHAN: -- and I noticed it was different on the agenda. That's okay. | CHAIRMAN PATON: Do I have a second? |
| MR. COLLINS: No, I think -- | COMMISSIONER KIMBLE: Second. |
| COMMISSIONER CHAN: I just wanted to make sure I made the correct motion, so I looked at the rules, and it was 703.01. | CHAIRMAN PATON: And we will vote again. |
| MR. COLLINS: Well, I think in the abundance of caution I guess I would -- I would -- I would suggest that we revote on -- | Commissioner Chan. |
| COMMISSIONER KIMBLE: Okay. | CHAIRMAN PATON: And Mr. Chairman, I move that we make those amendments effective immediately. |
And Item VI: Public comment.

Does any member of the public wish to make a comment at this time?

(No response.)

CHAIRMAN PATON: I see no visible hands.

So do we have a motion to adjourn?

COMMISSIONER CHAN: I move -- Mr. Chairman, I move we adjourn our meeting.

CHAIRMAN PATON: Do I have a second?

COMMISSIONER KIMBLE: Second.

CHAIRMAN PATON: And the roll call is:

Commissioner Chan.

COMMISSIONER CHAN: Aye.

CHAIRMAN PATON: Commissioner Kimble.

COMMISSIONER KIMBLE: Aye.

CHAIRMAN PATON: Commissioner Meyer.

COMMISSIONER MEYER: Aye.

CHAIRMAN PATON: Commissioner Titla.

COMMISSIONER TITLA: Aye.

CHAIRMAN PATON: And I'm the Chairman, I vote aye as well.

We are adjourned.

(The proceedings concluded at 10:47 a.m.)

1 STATE OF ARIZONA  
) ss.
2 COUNTY OF MARICOPA  

BE IT KNOWN that the foregoing deposition was taken by me pursuant to stipulation of counsel; that I was then and there a Certified Reporter of the State of Arizona, and by virtue thereof authorized to administer an oath; that the witness before testifying was duly sworn by me to testify to the whole truth; that notice was given that the transcript was available for review and signature; that the questions propounded by counsel and the answers of the witness thereto 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 deposition, all 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 hereto nor am I in any way interested in the outcome hereof.

DATED at Tempe, Arizona, this 2nd day of March, 2020.

[Signature]

Kathryn A. Blackwelder, RPR  
Certified Reporter #50666
The State of Arizona Citizens Clean Elections Commission

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