Attachment B
March 8, 2016

Mr. Thomas Collins, Director
Citizens Clean Elections Commission
1616 W. Adams St., Suite 110
Phoenix, Arizona 85007

Re: Citizens Clean Elections Commission Five-Year-Review Report

Dear Director Collins:

The Council has scheduled submission of the Commission’s revised five-year-review report for May 31, 2016. If this date creates any difficulties for the Commission, we invite you to consult with our office. Please note that, by our calculations, R2-20-109(F)(2) – (F)(12) and (G) are set to automatically expire on August 2, 2016.

Sincerely,

Chris Kleminich
Staff Attorney
Attachment C
Via E-mail

March 17, 2016

Ms. Mary O’Grady
Osborn Maledon
2929 N. Central Ave., 21st Floor
Phoenix, AZ 85012

Re: Citizens Clean Elections Commission Five-Year-Review Report

Dear Ms. O’Grady:

Under A.R.S. § 41-1056(C), if the Council votes to return an agency’s report, the Council is required to schedule submission of a revised report in consultation with the agency. The May 31, 2016 date included in my March 8, 2016 letter to Director Collins was intended to start the consultation process between the Council and the Commission. The letter, by noting that the Commission should consult with the Council if any difficulties are created by that date, demonstrates the Council’s commitment to work with the Commission to establish a reasonable submission date for a revised report. If the Commission does not indicate otherwise, the Council will vote on finalizing the May 31, 2016 date at an upcoming meeting.

The August 2, 2016 date included in my letter is a reflection of the Council’s actions at its February 2, 2016 meeting, during which the Council voted to declare R2-20-109(F)(2) – (F)(12) and (G) materially flawed, and to require the Commission to propose the repeal of those provisions by a date no earlier than six months after the date of the meeting at which the Council considered the Commission’s report. See A.R.S. § 41-1056(E). Because the Council did not specify a different date, the aforementioned portions of R2-20-109 are set to automatically expire on August 2, 2016. To ensure procedural clarity, I will recommend that the Council affirm this date at an upcoming meeting.

Finally, with regard to the Commission’s public records request, I have forwarded your letter on to Megan Rose, the Department of Administration’s Communications Director, and she is working on the request.

If you have any questions, please let me know.

Sincerely,

Chris Kleminich
Staff Attorney
Attachment D
THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
June 12, 2017
2:02 p.m.

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Prepared by:
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Certificate No. 50699

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1. name before you ask.
2. COMMISSIONER KIMBLE: Mr. Acting Chairman,
3. this is Commissioner Kimble. I have a question.
5. COMMISSIONER KIMBLE: Tom, I would like to
6. do what we can in open session. Tell me if you can
7. answer this in open session. We have three distinctive
8. entities that we're dealing with here. It's the
9. Attorney General's Office and GRRC.
10. Can you talk a little bit about -- you
11. talked about where we stand with GRRC.
12. Can you talk about, in open session, where
13. we stand with the other two now?
14. MR. COLLINS: Mr. Chairman, Commissioner
15. Kimble, I mean, I'm assuming you mean the Attorney
16. General's Office and the Secretary's Office?
17. COMMISSIONER KIMBLE: That's correct.
18. MR. COLLINS: Yes, I think I can. With
19. respect to the Attorney General's Office, I want to be
20. a little careful because that relationship itself is an
21. attorney-client relationship. I can say that -- that
22. we are working on those issues to the extent that they
23. have any -- well, we're working on those issues, I
24. think, in a way that is respectful on both sides. And
25. I'll be able to get into a little more detail on that

1. in executive session, but nevertheless, I think that we
2. have a -- have a -- not necessarily an understanding
3. but at least a -- are coming at things from a mutually
4. respectful angle at this point. And I appreciate the
5. Attorney General's Office and the Solicitor General and
6. the members of the Solicitor General's Office efforts
7. in that respect.
8. In an ideal world -- well, I guess I'll
9. leave it there. Going forward we'll see where that
10. works at, but we are -- we are in a place where I think
11. we're having -- we're poised to have a conversation
12. subsequent to your all being read in and talking --
13. discussing this with our counsel to have a productive
14. conversation, I would say.
15. With respect to the Secretary of State's
16. office, we have not sought out additional communication
17. with the Secretary's office yet. Reading the press
18. accounts in the -- Mr. Duda's coverage in the -- in the
20. things at -- you know, at sort of a -- this is from
21. them -- their perspective, at least as Matt Roberts
22. articulated it, an odd set of circumstances. When and
23. if they require -- it's necessary for us to engage with
24. them on this specific set of facts, you know, we hope
25. we can do that in a -- in a productive way.

1. Again, I would say that over the course of
2. the last three months, we have done a great deal on
3. both our side and the Secretary of State's side with
4. Secretary Regan and Deputy Secretary Miller to develop,
5. I think, a closer working relationship. And so that --
6. you know, it's hard to predict that, but I think that
7. we're in -- you know, I don't know how much to predict
8. from that, but I don't want to -- but to the best -- I
9. haven't had further -- I haven't had communication with
10. them that would throw any of that work yet into any
11. kind of -- any kind of jeopardy.
12. Does that answer your question?
13. COMMISSIONER KIMBLE: Okay. Thank you. I
14. have some more detailed questions about that, but I
15. have a feeling that we should wait until executive
16. session.
17. MR. COLLINS: Okay.
18. ACTING CHAIRPERSON MEYER: Any other
19. commissioners have any questions for Tom on the factual
20. background?
21. (No response.)
22. ACTING CHAIRPERSON MEYER: Hearing none, is
23. there a motion to move into executive session?
24. MR. COLLINS: I think --
25. ACTING CHAIRPERSON MEYER: I'm sorry.
1 of the Administrative Code, and A.R.S. 41-1056(E).
2 technically what the council was doing
3 there is requiring the amendment of Rule 109 because it
4 found that the rule was materially flawed. So the
5 order -- the statute requires when the council makes
6 such a finding and requires a rule -- or portions of
7 the rule to be amended, if that is not followed, as was
8 the case here, the entire rule expires. So -- and I
9 wanted to be clear about that.
10 With regard to Rule 111, the council has
11 determined that the rule was simply renumbered. It was
12 not -- those provisions which were in Rule 109(G) were
13 simply moved to Rule 111, and the council feels that
14 there's no effect given to its order if compliance is
15 simply based upon renumbering rather than the removal
16 of the provision which it identified as materially
17 flawed. So I just wanted to be clear about that, and
18 I'm happy to answer questions about that or anything
19 else that the council has done.
20 ACTING CHAIRPERSON MEYER: Any
21 commissioners on the phone have any questions?
22 (No response.)
23 ACTING CHAIRPERSON MEYER: Okay. Hearing
24 none, it's Mr. Kleminich?
25 MR. KLEMINICH: Yes.

1 ACTING CHAIRPERSON MEYER: Kleminich.
2 MR. KLEMINICH: Sorry?
3 ACTING CHAIRPERSON MEYER: No,
4 Mr. Kleminich. I think you said, you know, when the
5 council makes such a finding,
6 When was that finding made? And then what
7 record is there of that finding that the rule is
8 materially flawed is the question I have.
9 MR. KLEMINICH: The finding was made at
10 the -- at the February 2nd meeting, February 2nd, 2016.
11 There's a difference of opinion between council staff
12 and Commission staff regarding -- and correct me if I'm
13 wrong, Director Collins, but I believe the Commission
14 has taken the position that the finding that a rule is
15 material flawed had to be included in a motion that was
16 made in that meet. That's not the council's position.
17 The statute only requires that after determining that a
18 rule is materially flawed, then the council can vote to
19 require amendment or repeal of a rule.
20 So there's no express requirement in
21 statute that there be an expressed determination that a
22 rule is materially flawed. Implicit in the council's
23 order to require the offending provisions to be
24 repealed was the determination made by the council that
25 the rules are materially flawed.
Attachment E
THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
February 23, 2017
9:31 a.m.

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10:54:04-10:54:58
1. COMMISSIONER KIMBLE: Okay.
2. MR. SUNDT: Without any great appellant
3. court caveat or anything. I'm just --
4. COMMISSIONER MEYER: And then we argue that
5. under the VPA, GRRC ever had any authority in the first
6. place and off we go. That's what -- that's what --
7. MR. SUNDT: It seems to me as a practical
8. matter that you're in the same spot that you are today.
9. I mean, what if it's -- if it's approved, if the report
10. is approved, I suppose there's another stick to add to
11. your argument of, well, GRRC didn't object.
12. CHAIRMAN TITLA: Is there any more comment?
14. MR. SUNDT: Mr. Kleminich, you want to
15. speak to the details?
16. MR. KLEMINICH: Yeah. Thank you,
17. Mr. Sundt.
18. Mr. Chair, members, Commissioner Kimble, to
19. speak to your question directly about the future of the
20. rule --
21. CHAIRMAN TITLA: Sir, can you identify
22. yourself for the record?
23. MR. AMES: Yeah. I'm sorry. Chris
24. Kleminich, lead Staff attorney for GRRC.
25. So the council did set an expiration date

10:55:01-10:56:17
1. initially of August 2nd of 2016. The council then
2. extended that expiration date given the passage of SB
3. 1516 and related matters to January 4, 2017, and then
4. again the council extended the expiration date of --
5. and we're speaking specifically about what was formerly
6. R2-20-109(F)(2) through 12 and (G). What is left of
7. that, at least in our view, is 109(B)(2), (B)(4) and
8. 111(A). So we're only speaking to those, not the
9. Commission's rules at large. The expiration date for
10. those provisions was then extended again to March 4,
11. 2017; in other words, two weeks from now.
12. So not to be -- Member Sundt doesn't speak
13. for the entire council, as you know.
14. COMMISSIONER KIMBLE: I understand.
15. MR. KLEMINICH: I just wanted to make clear
16. that caveat. So there is an expiration date set for
17. those provisions of March 4, and it will be up to the
18. council at its upcoming meeting to decide what action
19. will be taken from there.
20. CHAIRMAN TITLA: Thank you, sir.
21. Any questions, Commissioners?
22. COMMISSIONER MEYER: Mr. Chairman?
23. CHAIRMAN TITLA: Commissioner Meyer.
24. COMMISSIONER MEYER: I just want to clarify
25. for the record, in my conversation, Mr. Sundt, I'm not

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1. at all advocating that we litigate. I was just sort of
2. playing out where this goes. I just want to make that
3. clear that I'm not supporting any litigation with GRRC
4. or anyone else at this time. And, you know, I really
5. appreciate your time and being here, your effort in
6. looking at this, and I take your points and they're
7. under consideration. So I very much appreciate that.
8. MR. SUNDT: Mr. Chairman, members of the
9. Commission, Commissioner Meyer, thank you very much.
10. And I am also happy to sit down and talk through it and
11. show how I walk through the statute at any time.
12. Thank you.
13. CHAIRMAN TITLA: Thank you, gentlemen, for
14. coming here to our meeting. We appreciate all the
15. information you've given us today, and I hope that we
16. can resolve this issue as we go down the road. Like
17. you, I feel that I don't want to crawlfish around in a
18. circle. I think -- I think we should move -- and I'm
19. from a ranching background. What we say is we need to
20. get this done while the branding iron is hot and we
21. need to dust off our chaps as we go forward is what we
22. say.
23. So -- but the crawlfish line is a good -- is
24. good. We don't want to do that here as commissioners.
25. I don't think we can agree today on anything, but as we
Attachment F
Via E-mail

March 22, 2016

Chris Kleminich
Arizona Department of Administration
Governor’s Regulatory Review Council
100 N. Fifteenth Ave., Suite 110
Phoenix, AZ 85007

Re: Clean Elections Commission Five-Year Review Report

Dear Chris:

Thanks for the prompt response regarding GRRC’s actions on its Five-Year Review of the Commission’s rules. Aside from the deadlines that were discussed in our previous correspondence, there are some additional issues that are important to resolve.

Regarding GRRC’s decision to return “in whole” the Commission’s five-year review report, there is a threshold problem that needs to be addressed by Council before the Commission submits a new report. Although the Council voted to return the report, it has not informed the Commission of “the manner in which its [five-year review] report is inadequate” as A.R.S. § 41-1056(C) requires. The minutes from the February 2, 2016 Council meeting describe the motion to return the report but show no Council action identifying why the report is inadequate. Council needs to provide that information to the Commission to fulfill its statutory responsibility.

Assuming Council provides the Commission with the information required by statute regarding the previous report’s inadequacies in a timely manner, the May 31, 2016 that you referenced in your letters should work for the Commission. We will make every effort to meet that deadline, but first we need the information the statute requires Council to provide regarding the report’s inadequacies.

There are also significant procedural problems with the Council’s vote to “require the Commission to repeal R2-20-109(F)(2) – (F)(12) and (G).” Your letter is wrong when it says that the Council “voted to declare R2-20-109(F)(2) - (F)(12) and (G) materially flawed” at its February 2, 2016 meeting. No such action was taken at that meeting. The minutes reflect that the Council voted to require the Commission to repeal certain rules, but there was no motion made to determine that the rules were materially flawed.

Council may require an agency “to propose an amendment or repeal” a rule by a date certain only after it “determines the agency’s analysis under Subsection A [of 41-1056] demonstrates that the rule is materially flawed.” A.R.S. § 41-1056(E). Council did not make that determination and needs to do so before it can set a deadline for Commission action.
It is incorrect to say that the Council’s failure to specify a date by which the aforementioned rules expire means that they “are set to expire on August 2, 2016,” or six months after the Council’s decision to require a repeal. A.R.S. § 41-1056(E) permits Council to require an agency to propose an amendment or repeal of a rule that has been determined to be materially flawed “by a date no earlier than the six months after the date on which the council considers the report” and determines that the rule is “materially flawed.” The Council has not yet taken action to determine that these rules are materially flawed, so the minimum six-month timeline in statute has not started to run. Council cannot, as you propose, “affirm” the August 2 date at a future meeting. It must first make the determination that the rules are materially flawed and then set a deadline for the Commission to propose an amendment or repeal of the rules that is at least six months from the date of that determination.

Because Council’s determination whether rules are materially flawed is based on the analysis in the Commission’s report and the Commission is going to be submitting a revised report, it makes sense for Council to consider the analysis of that revised report before making its determination regarding whether the rules are materially flawed. When that revised report is submitted, Council can then consider whether, based on that analysis, R2-20-109(F)(2) – (F)(12) and (G) are “materially flawed.”

Of course, as stated in previous correspondence, the Commission believes the Voter Protection Act precludes the Council from directing the amendment or repeal of Commission rules. The process described above is addressed because we recognize that Council disagrees with that position.

We invite you to discuss these issues with the Council and look forward to your response.

Sincerely,

Mary R. O’Grady

Mary R. O’Grady
Attachment G
GOVERNOR'S REGULATORY REVIEW COUNCIL (GRRC)

REPORTER'S TRANSCRIPT OF AUDIO RECORDED PUBLIC MEETING

May 5, 2016 COUNCIL MEETING

Agenda Item F

PRESENT:
Council Chairwoman Nicole A. Ong
Council Member Connie Wilhelm
Council Member John Sundt
Council Member Steve Voeller
Council Member Mike Lofton (Telephonic)
Council Member Brenda Burns (Telephonic)
Council Member Christopher Ames (Telephonic)

ALSO PRESENT:
Mr. Chris Kleminich, Staff Attorney
Mr. Joe Roth, Osborn Maledon, Counsel for the Citizens Clean Elections Commission
Ms. Samantha Pstross, Executive Director, Arizona Advocacy Network

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

Miller Certified Reporting, LLC
PROCEEDING

(Whereupon the requested portion of the agenda is transcribed as follows):

CHAIRWOMAN ONG: The next item on our agenda is the consideration of matters related to Council action on the Citizen Clean Elections Commission's five-year review report.

And Chris Klemich?

MR. KLEMINICH: All right. Thank you, Madame Chair, members of Council. I will be brief but, um, as all members have been apprised, as has the Commission, I have submitted a memo to you all on Friday recapposing what has transpired since the Council voted at its February 2nd meeting.

At that meeting, the Council voted to take two actions: First, the Council voted to return in whole the Commission's five-year review report; and, secondly, the Commission [sic] voted to require the Commission to propose the repeal of R2-20-109(F)(2) through (F)(12)(A) and (G).

There has been some exchange correspondence between myself as the Council's senior staff attorney and the Council's legal counsel. Um, that is summarized in -- in the memo. Very briefly, the timeline for that is:

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-- and I don't want to -- I don't want to speak for them but, again, um, the summary of that letter is provided in my memo.

So, very simply, Staff feels it is important for the Council and the Commission to use today's meeting to go through the issues identified in these four letters subsequent to the Commission's dec- -- or, excuse me, the Council's decision on February 2nd.

I'm happy to answer any questions that you have, but I know the Commission has also asked for an opportunity to speak.

CHAIRWOMAN ONG: We'll invite the Commission's representative to speak at this time.

MR. ROTH: Thank you, Madame Chair and members of the Council. I appreciate your time. I don't know if this is on.

Okay. Sorry. For those on the phone: Thank you, Madame Chair and members of the Council. My name is Joe Roth, I'm with Osborn Maledon and I represent the Clean Elections Commission.

I'm -- I'm here today to discuss the points largely that are raised in Mr. Klemich's memo that was sent on April 29th to the Council. But before I do that, I would reiterate that the Commission's position is that the Council lacks authority to require the repeal of

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Commission rules under the Voter Protection Act, and I know that has been discussed at prior meetings with prior memos, but I -- I want to reiterate that that is the Commission's position; I would ask the Council to reconsider, that the action that moving forward in the repealing -- in repealing portions of the Commission's rules.

Our position is that the legislature cannot directly repeal the rules of the Commission and it cannot delegate that authority to some other council to do that either.

But, moving on, with respect to the revised report date, as -- as we understand it right now, a date of May 31st has been set. From Mr. Klemich's memo, my understanding is that the Council may consider articulating reasons why the five-year report was considered inadequate. In light of -- if that is -- is to happen, in light of whatever those reasons are, we may submit a written request for an extension pursuant to the rule providing for that, and we're happy to work with Mr. Klemich to do that or discuss that today. We are open to that.

But with respect to the -- I just want to make a couple points with respect to Mr. Klemich's memo that the Commission disagrees with. I don't think that the

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1. approach would be to wait for our revised report, which is done. We have prepared the report and the comments. We have had the press conference.

2.  the same thing in terms of what would be effective, going forward. Setting aside the Vorel Protection Act issues, which are of critical concern, setting those aside, we think the report points in the right direction.

3.  to see if there's something we should review in the report?

4.  the December 13th 2002, which was the earliest date for there to be an effective repeal under 1056(C) - the order has not been done and we don't think that the implicit intent in the Agreement and the Appropriations Act is correct. By reading a motion to repeal, it's not explicit how it's being done. So, in the Commissioner's view, the language is flawed, also as said, before prior Service's view is that the language is flawed and this statute is material.

5.  not only for effective repeal, is the Commission's position. And, similarly, with respect to the repeal of the Commission's rules, it is the Commission's position that the Agency's report is materially flawed in some respects.

6.  the return of the report, if the report, which is consistent with the January 12th, 2002, meeting, we have meeting minutes that simply reflect that the return of the report, if the report is not forthcoming, because of technical difficulties there has been no recording of the February 2nd meeting.
| 1 | five-year review report, um, the -- the statute, you know, |
| 2 | does require us to in -- inform the agency of the manner |
| 3 | in which its report is inadequate, and in consultation |
| 4 | with the agency schedule submission of the revised report. |
| 5 | And -- and that’s what we -- we tried to do with regards |
| 6 | to the staff attorney’s letter was to, um, consult with |
| 7 | the Clean Elections Commission as to scheduling of this |
| 8 | revised report, and we’re here now today to -- to actually |
| 9 | set that date. |
| 10 | Um, and so when it -- when it comes to the manner |
| 11 | in which the report is inadequate, um, you know, I think |
| 12 | that given the now five public meetings we’ve had on -- on |
| 13 | the agenda, um, with regards to the Clean Elections |
| 14 | Commission, that we’ve made it very clear that the |
| 15 | portions of the report that we’ve found in -- inadequate |
| 16 | are the text related to Rule 109, specifically the |
| 17 | portions of Rule 109 which the Council deemed to be |
| 18 | materially flawed and that eventually voted to repeal. |
| 19 | And so there are, you know, portions of the |
| 20 | report with regards to the authorizing statutes, the |
| 21 | estimated economic report, least burden and costs, you |
| 22 | know, which -- which the Council discussed at length, you |
| 23 | know, throughout these, you know, past five meetings. Um, |
| 24 | and, you know, without going line-by-line through the |
| 25 | report, um, I think that you -- we would ask that you work |

| 1 | -- work with and collaborate our staff attorney. If you |
| 2 | would like to submit, you know, drafts of a revised |
| 3 | report, um, he’d be happy to collaborate with you on that. |
| 4 | Um, and -- and if there aren’t any other |
| 5 | questions or comments with regards to the manner in which |
| 6 | the report we request be revised, um, we can discuss it -- |
| 7 | a deadline for that. |
| 8 | Any other questions or comments from the Council |
| 9 | Members? |
| 10 | MEMBER SUNDT: I don’t at the moment, Madame |
| 11 | Chair. |
| 12 | CHAIRWOMAN ONG: Okay. Um -- I’m sorry. Go |
| 13 | ahead. |
| 14 | MEMBER SUNDT: No. Go ahead, please. |
| 15 | CHAIRWOMAN ONG: I’m sorry. Go ahead. |
| 16 | MR. ROTH: Well, um, thank you, Madame Chair, |
| 17 | Members. I was wondering if I could just address the |
| 18 | points you raised initially. Um, I don’t want to take too |
| 19 | much time because it doesn’t sound like -- it sounds like |
| 20 | conclusions have been reached with respect to the meaning |
| 21 | of the statute but, respectfully, I disagree. I don’t |
| 22 | understand what the purpose of a revised report would be |
| 23 | if it was going to go on a parallel track with a repeal. |
| 24 | It -- it seems to me that there is no productive end |
| 25 | result to that process if a conclusion with respect to |

| 1 | repeals happened. |
| 2 | And, additionally, I would just clarify that the |
| 3 | Commission does not think that there has been a finding |
| 4 | that any portion of the rule is materially flawed and that |
| 5 | is one of the objections we had to the legal effect of the |
| 6 | action taken on February 2nd. |
| 7 | CHAIRWOMAN ONG: We can address the separate |
| 8 | action with regards to requiring of the re- -- repeal of |
| 9 | the rule. Um, but when it comes to the five-year report, |
| 10 | the reason why it’s important to the Council is because it |
| 11 | -- it is a public record. And we -- we have reviewed the |
| 12 | report, um, we’ve had, you know, an economic impact |
| 13 | statement prepared on the report, which is part of the |
| 14 | public record; and the -- the draft that was provided to |
| 15 | the Council that Council has voted to -- to return it and |
| 16 | require revisions pursuant to its authority under |
| 17 | -1056(C). |
| 18 | MR. ROTH: Just -- thank you, Madame -- Madame |
| 19 | Chair. Just so I understand, a reason that the report is |
| 20 | considered inadequate is -- is the absence of an adequate |
| 21 | economic impact analysis? |
| 22 | I’m sorry. I just didn’t understand -- understand |
| 23 | the last part of what you said. |
| 24 | CHAIRWOMAN ONG: Um, with regards to the economic |
| 25 | impact analysis, I’m saying that it’s part of the public |

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other agencies, generally it -- it's a different tone, a different spirit of collaboration and wanting to work together and, you know, really, um -- really keeping, you know, sort of a open, you know, chan- -- channels and -- and not a, you know, defensive attitude. And so I think that's really more of what -- what I speak to with regards to collaboration.

MR. ROTH: Thank you, Madame Chair. And I would say that, that I appreciate the respectful tone between all members that we've -- we've dealt with -- and Counsel, Mr. Klemich, has been highly respectful and I think productive in developing the positions and arguments that are in play here.

I would say with comparison to other agencies and other five-year reports, my understanding is that this Council before -- there was another matter today with respect to a repeal, because of the -- the animating statute had been repealed, but my understanding is that no agency's rules have ever been requested to be repealed by this Council before this Commission's rules. And so I think that -- that the posture is just quite different in this context, particularly when at the meeting where the action is ordered we are left wondering what it is considered materially flawed or what is left -- what is considered inadequate about the Commission's five-year extension. Um, but, um, would June 30th be a date by which the five -- five-year revised report could be returned?

MR. ROTH: Madame Chair, I think so. Um, what I would say is that with the proviso that we consider whatever is articulated today by this meeting about if we have more specificity, in which you've provided some, on -- on what we need to address in the revised report, and that we would consult. And I don't want to commit to it for -- for my client without at least discussing it, but I think that would be fine, the June 30 would be fine. And if you would give permission for us to work directly with Mr. Klemich if that needs to be changed and we will send a written request if it needs to be.

CHAIRWOMAN ONG: That would be fine. And that's, you know, what we've been desiring all along is that you work collaboratively with our staff attorneys. Um, and as we mentioned before, um, you can submit your drafts to the staff attorneys and consult with them, um, they're happy to collaborate with you.

MR. ROTH: Thank you.

CHAIRWOMAN ONG: Are there any questions or comments with regards to the five-year review report from the Council?

UNKNOWN MALE SPEAKER: I (inaudible).

Chair, Council requiring the rules to be repealed, um, under its authority under 41-1056(E), we've -- we've heard Mr. Roth's position as to whether -- whether, um -- whether the Council made a determination that the rule is materially flawed; but, as was pointed out in the -- in the staff attorney's memo, there's no particular motion language that is needed for the Council to take action.

Um, the statute does not -- not require a particulate -- a particular language or a declaration. Um, this isn't, you know, a court of law where the Council is required to issue a, you know, detailed written decision setting forth its reasons line-by-line. Um, and even then I don't think any attorney would question that, a Judge's minute entry order, once they've -- once they've ordered something. Um, the statute simply grants the Council authority to require a repeal if they've made a determination that the rule is materially flawed, um, when considering those factors under -1056(E), which include the eight factors. But I -- those are not the only factors that the Council needs to consider; um, it's including that the rule is materially flawed under those factors.

And I think as was expressed before, that throughout those five public meetings, that Council has
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| 1. discussed -1056(E) at length, has referenced its factors 
2. and expressed its authority under the statute to require 
3. repeal. Um, I think that the Council has discussed the 
4. -1056(E) and its factors ad nauseam it seems at this 
5. point. And so -- so to say now that the -- that the 
6. Council didn't, you know, properly pursue -- you know, 
7. take action when the statute simply requires that -- or, 
8. simply allows that we can vote to require repeal if we've 
9. determined. Not, you know, declared or issued a written 
10. decision or set forth its -- its reasoning in detail. 
11. It's that the Council can require repeal if they've 
12. determined that the rule is materially flawed. And by 
13. taking its vote, I think that the Council has made clear 
14. that -- that it has determined those portions of Rule 109 
15. are materially flawed and have voted to require repeal. 
16. MR. ROTH: May I make a statement, Madame Chair? 
17. CHAIRWOMAN ONG: Please. 
18. MR. ROTH: Thank you, Madame Chair, Members. 
19. Respectfully, the statute's requirement that there be a 
20. determination I don't think is a --something that can be 
21. implied through an order, and it is meant to constrain the 
22. discretion that the broad range of action -- excuse me, 
23. the broad range of power that the Council has under the 
24. statute. 
25. And, secondly, as I mentioned earlier, my 
26. Miller Certified Reporting, LLC |

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| 1. understanding is that the key meeting on February 2nd 
2. where the action was taken, there is no record aside from 
3. the minutes that we have that indicate that a motion to 
4. repeal was -- was passed. So, we are left with a record 
5. to both on -- on which collaborations be based or a 
6. challenge can be based of a staff attorney recommendation 
7. that the five-year plan be app-- report be approved, an 
8. economic impact analysis study that said -- that 
9. recommended the same, and then we have a -- a motion that 
10. is devoid of any reasons given for -- for the decision. 
11. So, I think under these circumstances, it 
12. highlights the need for determinations to be made on the 
13. record for why it is that one agency is going to be 
14. telling another agency, particularly one that is -- is an 
15. Act pursuant to a voter-approved initiative, um, should be 
16. repealing its rules that are enacted to enforce its own 
17. statute. 
18. CHAIRWOMAN ONG: Mr. Roth, I don't know if you 
19. were present at the February 2nd meeting or the -- the 
20. other meetings, but the Council discussed -1056(E) at 
21. length. Um, you know, unfortunately we don't have a -- an 
22. audio recording of the -- the hearing, but the -- the 
23. hearing lasted for an hour and a half, two hours, and 
24. the -- the minutes are simply an abbreviated summary of 
25. the action that was taken at the meeting and the motion 
26. Miller Certified Reporting, LLC |

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| 1. was made pursuant to -1056(E). And so to say now that 
2. there is no -- the Council didn't take any action, is -- 
3. it -- it -- that just seems -- seems a little odd to me 
4. here. 
5. MR. ROTH: Thank you, Madame Chair. I 
6. understand. I think the -- I think the difference of -- 
7. of opinion on the statute we have here is that our view is 
8. that the key action to be taken under -1056(E) is that 
9. there is a determination that a rule is materially flawed, 
10. and the result of that determination is an amendment or a 
11. repeal. And I understand the Council's position to be the 
12. inverse and there may be an impasse here and that happens 
13. from time to time. 
14. MEMBER SUNDT: Madame Chair, may I ask a 
15. question? 
16. CHAIRWOMAN ONG: Please. 
17. MEMBER SUNDT: Um, Mr. Roth, and just I'm looking 
18. at 41-1056(E). Can you help me find in there where it has 
19. an expressed requirement that the Council make findings? 
20. MR. ROTH: The -- thank you, Member Sundt. The 
21. -1056(E) states that the Council can only require -- it 
22. says: "May require." It can only require an amendment or 
23. repeal and then the condition for that when that power is 
24. authorized if the Council determines the agency's 
25. analysis. 
26. Miller Certified Reporting, LLC |

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| 1. And it -- I think as I said before, I understand 
2. the staff attorney's position in the memo to be that 
3. that -- that determination is implicit in the fact that a 
4. motion was made. I think that is an inaccurate reading of 
5. what the statute requires. 
6. MEMBER SUNDT: So, if I can go back and go 
7. through it again, there's no specific requirement under 
8. (E) that -- I don't see any express language stating that 
9. findings -- quote, unquote, "findings" shall be a made. 
10. "Council may require the agency to propose an 
11. amendment or repeal of the rule by a date no 
12. earlier than six months" -- which is the date set 
13. "In which the Council considers the agency's 
14. report -- the agency's report on its rule" -- 
15. which I believe we did consider it -- "if the 
16. Council determines the agency's analysis 
17. demonstrates the rule is materially flawed." 
18. And I believe we concluded that and we 
19. invited the Clean Elections Commission to work with us and 
20. work through what could be done in -- in a fashioning -- 
21. say, through theory, there could be fashioned a revised 
22. rule. 
23. MR. ROTH: Well, to -- to address your question 
24. again, I believe the language: "If the Council determines 
25. the agency's analysis" -- dot, dot, dot -- "that the rule 
26. Miller Certified Reporting, LLC |
1. understand you need to -- to speak with Mr. Collins and
2. consult with your client on the June 30th date, but I
3. think that -- that we've extended the invitation, we're
4. happy to work with it.
5. I -- I guess the best way that I can understand
6. what the Commission's position is is something to the
7. effect of: We don't think you have any authority to
8. review our rules; we think we're protected by the Voter
9. Protection Act and not subject to review; we reserve all
10. of our arguments to continue to contest your jurisdiction
11. over our rulemaking, but we'd be willing to sit down and
12. talk through it. Is that a fair estimate of the
13. situation?
14. MR. ROTH: Well, there was a lot of estimates
15. made in that statement, I would say, Member Sundt. But I
16. think that you have overstated the position a little. I
17. would say that the Commission disputes that the -- that
18. this Council has authority to require an amendment or
19. repeal of the Commission's rules.
20. MEMBER SUNDT: May -- may I? Did you say, yes,
21. we do have the authority?
22. Are you saying that the Commission agrees that
23. the Governor's Regularity Review Council does have the
24. authority to require this?
25. MR. ROTH: To require an amendment or repeal?

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<th>MEMBER SUNDT: Yes.</th>
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<td>MR. ROTH: Absolutely not.</td>
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<td>MEMBER SUNDT: Okay.</td>
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<td>MR. ROTH: That -- that part was clear.</td>
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<td>MEMBER SUNDT: So, that's not an overstatement on my part. That the positions -- that the position taken by the Commission is: We don't have the authority to require a repeal or an amendment of the rule?</td>
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<td>MR. ROTH: That is more accurate than the previous statement. What I would -- with respect to overstatement, I was -- there's a lot of process that this Council undertakes; and, frankly, I've not analyzed where it starts and stops. But I wouldn't say my position right now -- the Commission's position is not that there is no role of collaboration or that the five-year report is a bad idea, I'm not taking a position either way on that. What I am saying is the position that has been taken is that because of the Voter Protection Act, this Council lacks the authority to require an amendment or repeal of the Commission's rules. The other overstatement I -- I would say, um, is my -- I am not implying that findings of fact are required. That would be one way to satisfy it. What I am saying is that when you only have an order action taken that says we require repeal, that is not sufficient to carry the commission.</td>
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| MEMBER SUNDT: Thank you, sir. |
| MR. ROTH: Thank you. |
| MR. KLEMINICH: Madame Chair, I'm sorry, I just have a couple questions. |
| Number one, I'm curious as to, um, you say you're working on a revised report. What exactly have you -- have you done so far? |
| MR. ROTH: Well, we are expanding on some of the
MR. KLEMINICH: Well, I appreciate that. What I would say is that I think the changes that the Council would request of the report are -- are much simpler perhaps than what the Commission is thinking. So, I would really ask that before you take any more of your time on -- on this revised report you've been working on, that you do consult with me. Because I think, you know, as -- as Chairwoman Ong noted, um, the amount of revisions necessary are really only related to aspects of, you know, Rule 109 and potential related economic impacts. But I don't want the -- again, in the nature of being fair, I don't want the Commission to go above and beyond on -- on areas where the analysis was already

---

Mr. Roth: Sorry, Madame Chair ---

Chairwoman Ong: Mm-hm.

Mr. Roth: -- can I just -- I want to clarify something, a comment that I made very early as to what I would suggest that the Council do. I just want to clarify that and bring it back to the front because this was more in the spirit of collaboration that we would -- we would suggest the Council await the revised report that we are working on and delay decision with respect to -1056(E)

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Mr. Klemich and, we look forward to working with you as well.

Chairwoman Ong: I think the last comment that I wanted to make was that, um -- that, you know, I
1. already discussed that, we've already taken action under
2. action on -1056(E)?
3. MR. ROTH: So, let me clarify then. I'm sorry to
4. interrupt. Let me clarify so that our -- our lines
5. of disagreement and agreement can be clear.
6. I -- what I would propose is that -- my
7. understanding is that a recommendation by the staff
8. attorney has been made that the Council take action today
9. for a procedural clarity -- whatever the description is --
10. to affirm or to make effective an August 2nd date. We,
11. obviously disagree as to the validity of the August 2nd
12. date; we can set that aside -- excuse me -- set that
13. aside.
14. I would say delay that further action in making
15. or confirming the August 2nd date until you have a chance
16. to review the revised report that the Commission intends
17. to submit; and -- and at that time, the -- a decision
18. regarding what is or is not materially flawed regarding
19. the revised report can be made.
20. MEMBER SUNDT: Madame Chairman? Just on that
21. line of clarity, my understanding was that one of the
22. Commission's objections was there was no, um, official
23. vote on setting the date and that was the nature of the
24. complaint. Some of us may view it as self-executing, that
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1. So, I think the prudent course of action in terms
2. of efficiency would be to set aside or delay the
3. determination about the "whether something is materially
4. flawed," which, as you know, we don't think happened, and
5. consider the revised report. Because, why else would --
6. would it be requested?
7. MR. KLEMINICH: If I can -- so, if I can try to
8. clarify in the interest of time, um, I think, again,
9. the -- the issue is that some of the -- the lines are
10. being blurred here, is that when the Council talks about
11. the Rule 109 being materially flawed, whether or not the
12. report is amended or otherwise, if the rule is not
13. changing, then the report or the contents thereof have no
14. impact on the actual rule itself, the text of the rule
15. which the Council voted on. Right?
16. So, there were two actions taken at the
17. February 2nd meeting: One related to the rule itself and
18. whether it's materially flawed; and the second being the
19. report and that being inadequate.
20. So, I think if I can summarize, the -- the
21. Council's point is that the -- there's no bearing on the
22. actual text of the rule itself found within the report.
23. CHAIRWOMAN ONG: So, in other words, if the
24. Council determines that a rule is materially flawed, um,
25. what -- you know, what would be the benefit of continuing
26. Miller Certified Reporting, LLC
very confused as to what's happening and I'm really surprised to hear your viewpoint on collaboration. Um, so, I -- I think there's three main issues that -- that need to be clarified. So, the first is why the five-year review needed to be returned. Um, I think it's clear that it was never really explained what was wrong with the five-year review, and, um, the Commission has been trying to understand, um, from my understanding, what was wrong and how they can fix it because they have been trying to collaborate. Um, in fact, they don't really even need to take part in the five-year review because they are a voter-protected, independent agency. At least from our perspective, the Arizona Advocacy Network's perspective. However, they've always been in the spirit of goodwill and collaboration, they have taken part in this five-year review. Um, so, I think that's the first question: What was wrong with the five-year review; what needs to be changed? My second question is: Why -- why does -- why do the parts of 109, why are they materially flawed? I -- I find that deeply concerning. I mean, if the Commission has rules that are materially flawed, I as a member of the public would want to know why they're Miller Certified Reporting, LLC.

clarify these questions: What -- what was wrong with the five-year review; why these specific rules; um, and -- yeah. So, I don't know if I can -- if -- if you can answer those questions for me, I would really appreciate it. Thank you.

CHAIRWOMAN ONG: Well, as to your first question about why it was returned and what, um, we are requesting be revised, I think that we've just discussed that at length this morning. And -- and it goes to -- to your point about collaboration is that we've emphasized from the start that, you know, our -- our staff attorneys were -- were happy to collaborate with the Commission. And, um, I understand that -- that -- that you've only, you know, seen the submissions and the discussions at the meetings, but, um, what you don't see behind the scenes is that there really hasn't been a lot of inter- -- interaction since the February 2nd meeting between the Commission and our staff attorneys, other than these four letters that were really more legal arguments rather than collaborative discussions. Um, and so -- so that goes to your first question.

Um, as to your second question about why it was materially flawed, um, as was pointed out earlier, you know, we discussed Rule 109 and the Clean Elections Commission's five-year review report at length over the Miller Certified Reporting, LLC.

past, you know, five couple of meetings, and -- um, and -- and discussed the various factors under -1056(E), um, with regards to why, you know, we -- we believe that the rule was materially flawed. There was a lot of discussion about -- about the economic impact, whether the rule imposed the least burden, um, on the public. And -- and -- and as was discussed earlier, we're not the court of law, we're -- we're not a judge issuing a written decision that needs to set forth findings of fact and conclusions of law. I think that we were -- we discussed more so than with any other item our reasoning with regards to Rule 109, and -- and we made a determination that the rule was materially flawed at the February 2nd meeting. Um, and -- and, finally, when it comes to the Voter Protection Act that, you know, I think -- we, you know, can agree to disagree there.

But I do want to comment on -- on your statement that -- that we are a partisan agency when, in fact, we are not a partisan agency, we are a council made up of members of the public. All -- all the members except myself are, um, you know, while -- while they receive, you know, incentives for their travel time and whatnot and time out of their day, they are essentially volunteers, members of the public, who are, you know, recommended, um, Miller Certified Reporting, LLC.
then why -- I mean, why have it be voter protected at all, right? You know. So, um -- I suppose you don't know.

Um, but I --

MEMBER SUNDT: I'll respond.

MS. PISTROSS: Okay.

MEMBER SUNDT: May I, Madame Chair?

CHAIRWOMAN ONG: Please.

MEMBER SUNDT: Um, in keeping in mind the last time you and I spoke you gave me that caveat, you said I'm not a lawyer.

MS. PISTROSS: Mm-hm.

MEMBER SUNDT: So, um, with that caveat in mind, I don't believe the Voter Protection Act which relates to this voter referendum protects rulemaking performed by an agency under the statutes that we're talking about. I don't believe that the Voter Protection Acts grants the authority to an agency to rewrite legislation or expand its authority beyond what was granted in -- in the referendum. So, that's where I'm hung up.

I understand that the Voter Protection Act requires that if there's going to be a legislative change, that you have to have a two-thirds vote. But we're not talking about the statute, we're talking about rules issued under the statute, and that's where I'm finding the disconnect.

I think we've invited -- and I would invite again, perhaps Mr. Roth knows, if he can cite some authority to me, a case to review that says a Voter Protection Act shelters the rulemaking process, then I'll certainly read -- read through that. I -- but I don't think it goes that far.

MS. PISTROSS: Okay. Um, Council Member Sundt, I -- I understand what you're saying. I -- I guess that what it comes down to and what we've all discussed at length is, you know, we don't believe the Commission has overstated anything, that they -- that their rulemaking is completely in line with what the voters gave them, the power that they gave them with the Clean Elections Act, um, and with -- with parts of statute.

Um, and also, you know, just to talk about partisanship and what's partisan/non-partisan. You know, I think it's wonderful that the Clean Elections Commission has five commissioners and no more than two can be from the same political party so that it's definitely, you know, as non-partisan as possible.

I -- I'm not sure, do you guys have the same rules with, um -- with GRRC members?

CHAIRWOMAN ONG: Our requirements are set forth in -- in statute, so you can review those there. But, um, but there are certain members who are required to be...
CERTIFICATE

I, Angela Furniss Miller, Certified Reporter, do hereby certify that the foregoing pages numbered 1 through 41, inclusive, constitute a printed record of the audio recording, as provided to me, all done to the best of my skill and ability.

Further, I was not present at the aforementioned proceeding nor did I control the audio recording of said proceeding.

DATED, at LITCHFIELD PARK, Arizona, this 9th day of May, 2016.

Angela Miller

Angela Furniss Miller, RPR, CR
Certified Reporter (AZ50127)