

Attachment B

Douglas A. Ducey
Governor



Craig C. Brown
Director

ARIZONA DEPARTMENT OF ADMINISTRATION
GOVERNOR'S REGULATORY REVIEW COUNCIL
100 NORTH FIFTEENTH AVENUE, SUITE 402
PHOENIX, ARIZONA 85007
(602) 542-2058

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

16 MAR 11 PM 2:41 CCEC

Attachment C

Douglas A. Ducey
Governor



Craig C. Brown
Director

**ARIZONA DEPARTMENT OF ADMINISTRATION
GOVERNOR'S REGULATORY REVIEW COUNCIL
100 NORTH FIFTEENTH AVENUE, SUITE 402
PHOENIX, ARIZONA 85007
(602) 542-2058**

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,

A handwritten signature in black ink, appearing to read "Chris Klemmich".

Chris Klemmich
Staff Attorney

Attachment D

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THE STATE OF ARIZONA

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CITIZENS CLEAN ELECTIONS COMMISSION

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REPORTER'S TRANSCRIPT OF PUBLIC MEETING

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Phoenix, Arizona

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June 12, 2017

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2:02 p.m.

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Prepared by:

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02:11:54-02:13:30

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1 name before you ask.
2 COMMISSIONER KIMBLE: Mr. Acting Chairman,
3 this is Commissioner Kimble. I have a question.
4 ACTING CHAIRPERSON MEYER: Sure. Go ahead.
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

02:15:29-02:16:43

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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.

02:13:34-02:15:26

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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
19 Yellow Sheet Report of the Arizona News Service left
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.

02:16:44-02:18:10

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1 Before that, can we have any public comment on these
2 issues?
3 MR. COLLINS: Chris, did you want to
4 comment?
5 If you could introduce yourself for the
6 record just like you guys do.
7 MR. KLEMINICH: Acting Chairman Meyer,
8 members, my name is Chris Klemminich. I'm one of the
9 staff attorneys with the Governor's Regulatory Review
10 Council. My presence here today is simply to answer
11 any questions that you might have. I did want to, I
12 guess, shed some light on one detail that Director
13 Collins shared in his recitation of the facts.
14 Pertaining to the order -- the expiration order of
15 Rule 109 and 111, the question was when did that
16 happen?
17 GRRC's position is that that happened from
18 the beginning, from February 2nd, 2016, when the order
19 was initially made that has been extended or was
20 extended three times, but the order -- there's some
21 language involved and when we talk about requiring the
22 repeal of particular sections of Rule 109 and what was
23 at the time (F) 2 through 12 and (G), what we are
24 talking about as a legal matter is an amendment of
25 Rule 109, according to the Secretary of State's keeper

02:18:13-02:19:55	Page 14	02:21:24-02:23:00	Page 16
<p>1 of the Administrative Code, and A.R.S. 41-1056(E).</p> <p>2 Technically what the council was doing</p> <p>3 there is requiring the amendment of Rule 109 because it</p> <p>4 found that the rule was materially flawed. So the</p> <p>5 order -- the statute requires when the council makes</p> <p>6 such a finding and requires a rule -- or portions of</p> <p>7 the rule to be amended, if that is not followed, as was</p> <p>8 the case here, the entire rule expires. So -- and I</p> <p>9 wanted to be clear about that.</p> <p>10 With regard to Rule 111, the council has</p> <p>11 determined that the rule was simply renumbered. It was</p> <p>12 not -- those provisions which were in Rule 109(G) were</p> <p>13 simply moved to Rule 111, and the council feels that</p> <p>14 there's no effect given to its order if compliance is</p> <p>15 simply based upon renumbering rather than the removal</p> <p>16 of the provision which it identified as materially</p> <p>17 flawed. So I just wanted to be clear about that, and</p> <p>18 I'm happy to answer questions about that or anything</p> <p>19 else that the council has done.</p> <p>20 ACTING CHAIRPERSON MEYER: Any</p> <p>21 commissioners on the phone have any questions?</p> <p>22 (No response.)</p> <p>23 ACTING CHAIRPERSON MEYER: Okay. Hearing</p> <p>24 none, it's Mr. Klemminich?</p> <p>25 MR. KLEMINICH: Yes.</p>	<p>1 MR. COLLINS: Mr. Chairman, commissioners,</p> <p>2 for what's worth, I think that's -- I think that</p> <p>3 largely captures our disagreement. We -- you know, in</p> <p>4 terms of the Commission staff's observations, the</p> <p>5 minute's of the February meeting itself, there's simply</p> <p>6 no way, in our view, to glean even that inference is</p> <p>7 our -- is our view, but yeah. So that's -- but that</p> <p>8 would -- in general terms, that's the -- one of the</p> <p>9 issues we've raised in the past and have -- well, and</p> <p>10 GRRC has responded as Chris has responded.</p> <p>11 ACTING CHAIRPERSON MEYER: I don't have any</p> <p>12 further questions.</p> <p>13 Do any of the commissioners on the phone</p> <p>14 have a follow-up question?</p> <p>15 (No response.)</p> <p>16 ACTING CHAIRPERSON MEYER: Okay. Thank</p> <p>17 you, Mr. Klemminich.</p> <p>18 MR. KLEMINICH: Thank you.</p> <p>19 ACTING CHAIRPERSON MEYER: Any other public</p> <p>20 comment at this time?</p> <p>21 MS. BICKETT: Commissioner Meyer, Chair,</p> <p>22 members of the Commission, I'm Paula Bickett on behalf</p> <p>23 of the Attorney General's Office. I just want to</p> <p>24 confirm and agree with the characterization of Director</p> <p>25 Collins' comments, and I don't have any further</p>		
02:19:57-02:21:18	Page 15	02:23:02-02:23:52	Page 17
<p>1 ACTING CHAIRPERSON MEYER: Klemminich.</p> <p>2 MR. KLEMINICH: Sorry?</p> <p>3 ACTING CHAIRPERSON MEYER: No,</p> <p>4 Mr. Klemminich. I think you said, you know, when the</p> <p>5 council makes such a finding.</p> <p>6 When was that finding made? And then what</p> <p>7 record is there of that finding that the rule is</p> <p>8 materially flawed is the question I have.</p> <p>9 MR. KLEMINICH: The finding was made at</p> <p>10 the -- at the February 2nd meeting, February 2nd, 2016.</p> <p>11 There's a difference of opinion between council staff</p> <p>12 and Commission staff regarding -- and correct me if I'm</p> <p>13 wrong, Director Collins, but I believe the Commission</p> <p>14 has taken the position that the finding that a rule is</p> <p>15 material flawed had to be included in a motion that was</p> <p>16 made in that meet. That's not the council's position.</p> <p>17 The statute only requires that after determining that a</p> <p>18 rule is materially flawed, then the council can vote to</p> <p>19 require amendment or repeal of a rule.</p> <p>20 So there's no express requirement in</p> <p>21 statute that there be an expressed determination that a</p> <p>22 rule is materially flawed. Implicit in the council's</p> <p>23 order to require the offending provisions to be</p> <p>24 repealed was the determination made by the council that</p> <p>25 the rules are materially flawed.</p>	<p>1 comments. Any questions, though, I'm available here to</p> <p>2 answer.</p> <p>3 ACTING CHAIRPERSON MEYER: Thank you,</p> <p>4 Ms. Bickett.</p> <p>5 Commissioners, any questions for</p> <p>6 Ms. Bickett from the AG's office?</p> <p>7 (No response.)</p> <p>8 ACTING CHAIRPERSON MEYER: Hearing none,</p> <p>9 thank you.</p> <p>10 Any other public comment?</p> <p>11 (No response.)</p> <p>12 ACTING CHAIRPERSON MEYER: Okay. Should we</p> <p>13 now move into the executive session?</p> <p>14 Commissioners, does anyone want to make a</p> <p>15 motion that we move to executive session?</p> <p>16 COMMISSIONER KIMBLE: This is Mark Kimble.</p> <p>17 I move we move into executive session.</p> <p>18 ACTING CHAIRPERSON MEYER: Is there a</p> <p>19 second?</p> <p>20 COMMISSIONER PATON: Second. Gale Paton.</p> <p>21 ACTING CHAIRPERSON MEYER: All right. We</p> <p>22 have a motion to move into executive session. There's</p> <p>23 been a first and a second.</p> <p>24 All in favor of moving into executive</p> <p>25 session say aye.</p>		

Attachment E

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THE STATE OF ARIZONA

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CITIZENS CLEAN ELECTIONS COMMISSION

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REPORTER'S TRANSCRIPT OF PUBLIC MEETING

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Phoenix, Arizona

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February 23, 2017

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9:31 a.m.

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Prepared by:

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10:54:04-10:54:58

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1 COMMISSIONER KIMBLE: Okay.
2 MR. SUNDT: Without any great appellant
3 court caveats 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?
13 Yes, sir.
14 MR. SUNDT: Mr. Klemminich, 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 Klemminich, lead Staff attorney for GRRC.
25 So the council did set an expiration date

10:56:21-10:57:38

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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 crawfish 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 crawfish 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

10:55:01-10:56:17

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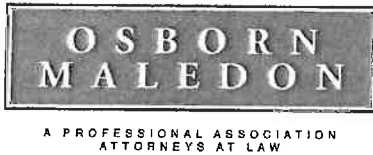
1 initially of August 2nd of 2016. The council then
2 extended that expiration date given the passage of SB
3 1516 and related matters to January 4, 2017, and then
4 again the council extended the expiration date of --
5 and we're speaking specifically about what was formerly
6 R2-20-109(F)(2) through 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

10:57:41-11:08:18

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1 go forward I hope that we can resolve it like adults
2 and see what happens down the road, but we really
3 appreciate your information. I know more today due to
4 what you have told us today than before. So thank you.
5 MR. SUNDT: Thank you very much.
6 CHAIRMAN TITLA: Director Collins, what do
7 we need to do next? Are we on A or what?
8 MR. COLLINS: What are we on?
9 CHAIRMAN TITLA: V.A.?
10 MR. COLLINS: We did V.A. and B.
11 CHAIRMAN TITLA: Okay.
12 MR. COLLINS: And so --
13 COMMISSIONER MEYER: Tom, can we take five
14 for our court reporter here to let her take a break?
15 MR. COLLINS: Yeah, sure. Absolutely.
16 CHAIRMAN TITLA: Okay. We are at recess
17 for five minutes.
18 (Whereupon, a recess was taken in the
19 proceedings.)
20 CHAIRMAN TITLA: Why don't we get back in
21 session.
22 Tom, on the agenda we've done IV, right, A
23 and B?
24 MR. COLLINS: We've done -- we are at -- we
25 are now at VI, which is the rules.

Attachment F



Mary R. O'Grady

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March 22, 2016

Via E-mail

Chris Klemminich
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.

Chris Klemminich
March 22, 2016
Page 2

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

MRO:pln
6570278

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 Klemminich, 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)

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<p style="text-align: center;">2</p> <p style="text-align: center;">P R O C E E D I N G</p> <p>(Whereupon the requested portion of the agenda is transcribed as follows:)</p> <p>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.</p> <p>And Chris Klemminich?</p> <p>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 recapping what has transpired since the Council voted at its February 2nd meeting.</p> <p>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).</p> <p>There has been some exchange correspondence between myself as the Council's senior staff attorney and the Commission's legal counsel. Um, that is summarized in -- in the memo. Very briefly, the timeline for that is</p> <p style="text-align: right;">Miller Certified Reporting, LLC</p>	<p style="text-align: center;">3</p> <p>on -- on March 8th of this year, I sent a letter to the Commission in an effort to start the process of scheduling submission of a revised report, and to inform the Commission that based upon Staff's reading of A.R.S. 41-1056, that the expiration date of the rules was August 2nd, 2016.</p> <p>The Commission responded on March 14th seeking clarification on both of these points; and I replied on March 17th with a letter noting that, um, the date I had proposed in my letter was simply to start the consultation process and that, of course, it would be up to the Council to set a final submission deadlight -- deadline in consultation with the Clean Elections Commission.</p> <p>And I also stated my position that, um, the August 2nd date for the expiration of the rules was provided simply because the Council did not specify a different expiration date at the time of the vote, and August 2nd is exactly six months after the Council's February 2nd vote, which required appeal of the aforementioned rules.</p> <p>But, um, you know, again to ensure procedural clarity, we wanted to, um, bring that to you for a -- for a vote as to whether that date should be affirmed at today's meeting.</p> <p>The Commission also responded, um, on March 22nd</p> <p style="text-align: right;">Miller Certified Reporting, LLC</p>
<p style="text-align: center;">4</p> <p>-- 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.</p> <p>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.</p> <p>I'm happy to answer any questions that you have, but I know the Commission has also asked for an opportunity to speak.</p> <p>CHAIRWOMAN ONG: We'll invite the Commission's representative to speak at this time.</p> <p>MR. ROTH: Thank you, Madame Chair and members of the Council. I appreciate your time. I don't know if this is on.</p> <p>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.</p> <p>I'm -- I'm here today to discuss the points largely that are raised in Mr. Klemminich'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</p> <p style="text-align: right;">Miller Certified Reporting, LLC</p>	<p style="text-align: center;">5</p> <p>Commission rules under the Voter Protection Act, and I know that 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.</p> <p>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.</p> <p>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. Klemminich'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. Klemminich to do that or discuss that today. We are open to that.</p> <p>But with respect to the -- I just want to make a couple points with respect to Mr. Klemminich's memo that the Commission disagrees with. I don't think that the</p> <p style="text-align: right;">Miller Certified Reporting, LLC</p>

<p style="text-align: center;">6</p> <p>1 February 2nd actions can be cured and have the timelines 2 that were purported to be put in place by the February 2nd 3 actions can be cured today by a ministerial motion to -- 4 to reaffirm or to say, yes, we -- we meant that date. 5 And the reason is, it's twofold. With respect to 6 the return of the report, the statute 41-1056(C) requires 7 that the Council, quote, "shall" inform the agency of the 8 manner in which the report is inadequate. That -- that 9 has not been done. I understand because of technical 10 difficulties there's no recording of the February 2nd 11 meeting; we have meeting minutes that simply reflect that 12 the report was returned. 13 We are working diligently to revise the report, 14 although we are in the dark. And we believe that the -- 15 not only for effective collaboration between government 16 agencies and efficient governance the Council should 17 articulate reasons, we believe that the statute requires 18 the Council to articulate reasons why. 19 And, um, similarly with respect to the repeal of 20 the Commission's rules, it is the Commission's position 21 that the Council has failed to follow steps necessary 22 to -- to get the result of a repeal, and that is a finding 23 that the Agency's report is materially flawed in some 24 respect and the statute will state reasons. And the 25 reason for that is that those eight reasons and that --</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: center;">7</p> <p>1 and the fact that reasons and a finding of material -- 2 reasons for the rule being materially flawed, need to be 3 articulated to constrain the Council's decisionmaking and 4 to disincentives arbitrary and capricious decisionmaking. 5 It also, as I said, before promotes efficient 6 governance so that we could work collaboratively to 7 understand what should we revise in the report? Should 8 there be something reconsidered? 9 So, in the Commission's -- the Commission's view 10 is that the August 2nd date, which was the earliest date 11 for there to be an effective repeal under -1056(C) -- the 12 order from this Council -- would have been August 2nd. 13 That has not happened and we don't think that the implicit 14 argument being made in -- in the memo from Mr. Klemmich 15 is correct: That by making a motion to repeal, implicit 16 in that motion was a finding of materially flawed. That's 17 not what the statute says. It says it has to be 18 materially flawed for a reason and it lists reasons. And 19 we think that has to happen before the Council can -- 20 can -- can -- can order the repeal of a -- of an agency's 21 rules. 22 Finally, I think in terms of what would be 23 efficient going forward, setting aside the Voter 24 Protection Act issues, which -- which are of serious 25 concern -- setting those aside, we think the prudent</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: center;">8</p> <p>1 approach would be have our -- wait for our revised report 2 that this Council has asked for that we are preparing, and 3 consider it in light of whatever concerns the Council 4 articulates as reasons for the report being inadequate, 5 and then take action as -- as -- based on that record, 6 which will be much more complete than the record we have 7 right now. 8 And if there are no questions, I mean, I can sit 9 down, but I'm happy to entertain any questions from the 10 Council. 11 CHAIRWOMAN ONG: Sure. Mr. Roth, the five-year 12 review report and the action regarding requiring repeal of 13 the rules are -- are separate issues. Um, the -- the 14 authority and the action taken under -- under -1056(C) and 15 -1056(E), are -- are separate. Um, and, so, um -- so 16 while I -- I understand your argument is that -- that -- 17 you know, that with regards to the five-year review 18 report, that -- that we, um, you know, should -- should -- 19 should explain and identify, um, inform you as to why -- 20 as to why the report is inadequate, um, that's separate 21 from our determination from under -1056(E), which -- 22 where -- where we required repeal of the rules. 23 So -- so, it seems to me that -- that you're 24 confusing the two actions and the two statutes, um, 25 blending them together, when it -- when, in fact, they're</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: center;">9</p> <p>1 two separate actions. Um, so, that -- that was the first 2 thing I wanted to address. 3 And -- and, um, secondly, when you mentioned 4 collaboration, um, you know, I thought that was, you know, 5 an interesting choice of word, because, you know, that -- 6 I think from the get-go we have been emphasizing 7 collaboration and our staff attorney has -- has gone out 8 of the way to try to be collaborative with the Clean 9 Elections Commission, but we -- we've been met with either 10 silence or with -- with -- with, you know, legal notices. 11 And so, um, that being said, I know that the 12 Council and that our staff attorney, um, you know, are 13 more than happy to collaborate with you with regards to 14 the re- -- revisions to the five-year review report. And 15 today we can also discuss scheduling the submission of the 16 revised five-year review report. 17 And, um, you know, we're -- you know, I -- I'm 18 speaking on behalf of the Council here, but I presume that 19 we're -- we're open to considering, um, an extension of 20 the -- the May 31st deadline. 21 Um, and -- and so with -- with that, we can start 22 by discussing the five-year review report because, um, 23 that's separate from the action under -1056(E), which is 24 the, you know, repeal of the rule. 25 Um, so with regards to the revisions to the</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">10</p> <p>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.</p> <p>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.</p> <p>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</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">11</p> <p>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.</p> <p>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.</p> <p>8 Any other questions or comments from the Council 9 Members?</p> <p>10 MEMBER SUNDT: I don't at the moment, Madame 11 Chair.</p> <p>12 CHAIRWOMAN ONG: Okay. Um -- I'm sorry. Go 13 ahead.</p> <p>14 MEMBER SUNDT: No. Go ahead, please.</p> <p>15 CHAIRWOMAN ONG: I'm sorry. Go ahead.</p> <p>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</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">12</p> <p>1 repeals happened.</p> <p>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.</p> <p>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).</p> <p>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?</p> <p>22 I'm sorry. I just didn't under- -- understand 23 the last part of what you said.</p> <p>24 CHAIRWOMAN ONG: Um, with regards to the economic 25 impact analysis, I'm saying that it's part of the public</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">13</p> <p>1 record, and so -- so we -- we want the report to reflect, 2 you know, the accuracy of -- of the -- you know, the 3 factors that are supposed to be considered in the report.</p> <p>4 MR. ROTH: I understand. And one other point I 5 wanted to make -- thank you, Madame Chair, Member. With 6 respect to the suggestion that -- that the Commission has 7 not approached this process with a straight-up 8 collaboration, what I would say is that I think the record 9 suggests otherwise in terms of the written record in 10 taking enormous labor to explain the position, and I think 11 beyond probably what is seen with other five-year reports 12 the depth of analysis and serious consideration to -- 13 to -- and the length of public comment, for example, with 14 respect to some of the rules that are subject to the -- 15 the Council's decisions here. And -- and so I would just 16 disagree that there has been an absence of collaboration.</p> <p>17 Um, and then in terms of the economic analysis 18 report, I -- I understand your point now. Thank you for 19 addressing that.</p> <p>20 CHAIRWOMAN ONG: I don't think there's any 21 dispute that there's been, you know, a large number of 22 documents that have been filed and a lot of information 23 for the record. But I -- I -- I think when I speak of 24 collaboration, generally, I -- I think that when the 25 Council has -- and its staff attorneys -- have worked with</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">14</p> <p>1 other agencies, generally it -- it's a different tone, a 2 different spirit of collaboration and wanting to work 3 together and, you know, really, um -- really keeping, you 4 know, sort of a open, you know, chan- -- channels and -- 5 and not a, you know, defensive attitude. And so I think 6 that's really more of what -- what I speak to with regards 7 to collaboration.</p> <p>8 MR. ROTH: Thank you, Madame Chair. And I would 9 say that, that I appreciate the respectful tone between 10 all members that we've -- we've dealt with; and Counsel, 11 Mr. Klemmich, has been highly respectful and I think 12 productive in developing the positions and arguments that 13 are in play here.</p> <p>14 I would say with comparison to other agencies and 15 other five-year reports, my understanding is that this 16 Council before -- there was another matter today with 17 respect to a repeal, because of the -- the animating 18 statute had been repealed, but my understanding is that no 19 agency's rules have ever been requested to be repealed by 20 this Council before this Commission's rules. And so I 21 think that -- that the posture is just quite different in 22 this context, particularly when at the meeting where the 23 action is ordered we are left wondering what it is is 24 considered materially flawed or what is left -- what is 25 considered inadequate about the Commission's five-year</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">15</p> <p>1 report or its rules.</p> <p>2 CHAIRWOMAN ONG: You know, I -- I understand your 3 perspective. Um, when it requires to requiring repeal of 4 the rules, I mean, we've -- the Council frequently has 5 taken that action, you know, throughout, um -- throughout 6 its existence. And, so, this is not the first time that a 7 rule has been required to be repealed.</p> <p>8 Um, but, you know, when it comes to the five-year 9 review report that we're still discussing, um, you know, 10 I -- you know, we understand as the -- as was pointed out 11 in our staff attorney's memo, that the Commission was 12 wanting to know more of why the Council, um -- Council 13 desire -- desired the report to be revised.</p> <p>14 And with regards to that, you know, that the 15 statute says that it's in consultation with the agency, 16 and -- and it wasn't until, you know, our staff attorney 17 reached out, that -- that we really heard anything back 18 from your Commission. And so -- so, I think that's, you 19 know, more of what we're sort of discussing today and, you 20 know, moving forward how do we, um, you know, continue to 21 consult and collaborate. And -- and I think that there's 22 not really much left to be said about that except to now 23 just schedule submission of the revised report.</p> <p>24 Um, and so -- so with that in mind, um, I'm not 25 sure exactly what time frame you're proposing for</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">16</p> <p>1 extension. Um, but, um, would June 30th be a date by 2 which the five -- five-year revised report could be 3 returned?</p> <p>4 MR. ROTH: Madame Chair, I think so. Um, what I 5 would say is that with the proviso that we consider 6 whatever is articulated today by this meeting about if we 7 have more specificity, in which you've provided some, on 8 -- on what we need to address in the revised report, and 9 that we would consult. And I don't want to commit to it 10 for -- for my client without at least discussing it, but I 11 think that would be fine, the June 30 would be fine. And 12 if you would give permission for us to work directly with 13 Mr. Klemmich if that needs to be changed and we will send 14 a written request if it needs to be.</p> <p>15 CHAIRWOMAN ONG: That would be fine. And that's, 16 you know, what we've been desiring all along is that you 17 work collaboratively with our staff attorneys. Um, and as 18 we mentioned before, um, you can submit your drafts to the 19 staff attorneys and consult with them, um, they're happy 20 to collaborate with you.</p> <p>21 MR. ROTH: Thank you.</p> <p>22 CHAIRWOMAN ONG: Are there any questions or 23 comments with regards to the five-year review report from 24 the Council?</p> <p>25 UNKNOWN MALE SPEAKER: I (inaudible).</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">17</p> <p>1 CHAIRWOMAN ONG: Moving on to the separate issue 2 of the Council requiring the rules to be repealed, um, 3 under its authority under 41-1056(E), we've -- we've heard 4 Mr. Roth's position as to whether -- whether, um -- 5 whether the Council made a determination that the rule is 6 materially flawed; but, as was pointed out in the -- in 7 the staff attorney's memo, there's no particular motion 8 language that is needed for the Council to take action.</p> <p>9 Um, the statute does not -- not require a particulate -- a 10 particular language or a declaration. Um, this isn't, you 11 know, a court of law where the Council is required to 12 issue a, you know, detailed written decision setting forth 13 its reasons line-by-line. Um, and even then I don't think 14 any attorney would question that, a Judge's minute entry 15 order, once they've -- once they've ordered something.</p> <p>16 Um, the statute simply grants the Council 17 authority to require a repeal if they've made a 18 determination that the rule is materially flawed, um, when 19 considering those factors under -1056(E), which include 20 the eight factors. But I -- those are not the only 21 factors that the Council needs to consider; um, it's 22 including that the rule is materially flawed under those 23 factors.</p> <p>24 And I think as was expressed before, that 25 throughout those five public meetings, that Council has</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">18</p> <p>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 Miller Certified Reporting, LLC</p>	<p style="text-align: right;">19</p> <p>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 Miller Certified Reporting, LLC</p>
<p style="text-align: right;">20</p> <p>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. Miller Certified Reporting, LLC</p>	<p style="text-align: right;">21</p> <p>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 Miller Certified Reporting, LLC</p>

<p style="text-align: right;">22</p> <p>1 is materially flawed," that is the constraining language 2 that constrains the power of the Council. And I 3 understand that -- that staff attorney disagrees and says 4 that that isn't -- that the fact of the Council 5 determining that a rule is materially flawed is implicit 6 in the Council having taken action. I think that is not 7 sufficient under the statute. 8 It does not -- the fact of the action being taken 9 does not demonstrate that the Council determined anything 10 other than that the rule should be repealed. 11 MEMBER SUNDT: So I understand it, in your 12 (indiscernible), that -- that when we say "determines" 13 means there are findings of fact, which would -- I mean, 14 my experience, we typically -- when findings of fact or 15 conclusions of law are required, that requirement is 16 either stated or someone has moved for it. 17 I just see a determination which I read as 18 effectively ruling. 19 To go back to the Chairman -- Chairman's point, 20 it strikes me as much like a minute entry where there are 21 no specific findings of fact or conclusions of law, 22 there's simply a determination. 23 I think the invitation has been extended to -- to 24 work with us on -- on the rule, and I think that we 25 welcome that opportunity. And I -- I'm hearing even -- I Miller Certified Reporting, LLC</p>	<p style="text-align: right;">23</p> <p>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? Miller Certified Reporting, LLC</p>
<p style="text-align: right;">24</p> <p>1 MEMBER SUNDT: Yes. 2 MR. ROTH: Absolutely not. 3 MEMBER SUNDT: Okay. 4 MR. ROTH: That -- that part was clear. 5 MEMBER SUNDT: So, that's not an overstatement on 6 my part. That the positions -- that the position taken by 7 the Commission is: We don't have the authority to require 8 a repeal or an amendment of the rule? 9 MR. ROTH: That is more accurate than the 10 previous statement. What I would -- with respect to 11 overstatement, I was -- there's a lot of process that this 12 Council undertakes; and, frankly, I've not analyzed where 13 it starts and stops. But I wouldn't say my position right 14 now -- the Commission's position is not that there is no 15 role of collaboration or that the five-year report is a 16 bad idea, I'm not taking a position either way on that. 17 What I am saying is the position that has been 18 taken is that because of the Voter Protection Act, this 19 Council lacks the authority to require an amendment or 20 repeal of the Commission's rules. 21 The other overstatement I -- I would say, um, is 22 my -- I am not implying that findings of fact are 23 required. That would be one way to satisfy it. What I am 24 saying is that when you only have an order action taken 25 that says we require repeal, that is not sufficient to Miller Certified Reporting, LLC</p>	<p style="text-align: right;">25</p> <p>1 demonstrate implicitly that determinations have been made 2 as to what about the rule is materially flawed and what 3 reasons the rule is considered materially flawed. 4 That's -- that's I would say a narrower point than -- than 5 what you were making, Member Sundt, but your point is well 6 taken. 7 MEMBER SUNDT: Would -- would you agree that it's 8 reasonable to say if we began a collaborative process, we 9 could go through that and discuss what we think might be 10 necessary for a moment? 11 MR. ROTH: I would say the Commission is 12 certainly willing to engage in a collaborative process. 13 We've already begun work on a revised report that we were 14 preparing for May 31st but, obviously, with more time and 15 the benefit of everybody's comments today, we're looking 16 forward to working with Mr. Klemmich to submit a revised 17 report. 18 MEMBER SUNDT: Thank you, sir. 19 MR. ROTH: Thank you. 20 MR. KLEMINICH: Madame Chair, I'm sorry, I just 21 have a couple questions. 22 Number one, I'm curious as to, um, you say you're 23 working on a revised report. What exactly have you -- 24 have you done so far? 25 MR. ROTH: Well, we are expanding on some of the Miller Certified Reporting, LLC</p>

<p style="text-align: right;">26</p> <p>1 analysis that was given; although, I would say that the 2 five-year report that was submitted is quite robust. 3 MR. KLEMINICH: I -- I would agree, I don't think 4 there's any more analysis needed. 5 MR. ROTH: And I think we -- we understood some 6 of the comments to have concern with respect to the 7 economic analysis and we were -- we were beefing that up, 8 so to speak, and -- and giving some additional information 9 about the economic impact of the rules as they may be. 10 Although, they're unlike licensure rules or the ones that 11 have a more obvious direct effect on businesses, but that 12 is also an anticipated part of the revised report. 13 MR. KLEMINICH: Well, I appreciate that. What I 14 would say is that I think the changes that the Council 15 would request of the report are -- are much simpler 16 perhaps than what the Commission is thinking. So, I would 17 really ask that before you take any more of your time 18 on -- on this revised report you've been working on, that 19 you do consult with me. Because I think, you know, as -- 20 as Chairwoman Ong noted, um, the amount of revisions 21 necessary are really only related to aspects of, you know, 22 Rule 109 and potential related economic impacts. 23 But I don't want the -- again, in the nature of 24 being fair, I don't want the Commission to go above and 25 beyond on -- on areas where the analysis was already --</p> <p style="text-align: right;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">27</p> <p>1 was already strong, so. 2 I was just curious as to what steps you had taken 3 and I would encourage you to, you know, get in touch with 4 me fairly soon before you take any more steps. 5 Um, I -- I guess my second point would be that I 6 think you did make an excellent point, Mr. Roth, when you 7 said that there -- there's probably an impasse as to the 8 interpretation of the statute. I know we're kind of going 9 through the -- the very lawyerly way of going through the 10 details of the -- of the statutory language. But I think, 11 again, the broader point, um, is that, you know, the 12 Council has, um, wanted to be a collaborative -- again, 13 I -- I am -- I've always intended to be a resource for the 14 Commission. I -- ever since, you know, one of your staff 15 members sat in one of my seminars last summer, I've been 16 trying to, you know, spearhead this report along. 17 So, again, I really hope that we can re-establish 18 that open dialogue that we had prior to this vote in order 19 for this process to go along more smoothly for both -- 20 both sides. 21 MR. ROTH: Madame Chair, Members. Thank you, Mr. 22 Klemminich, and we look forward to working with you as 23 well. 24 CHAIRWOMAN ONG: I think the last comment that I 25 wanted to make was that, um -- that, you know, I</p> <p style="text-align: right;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">28</p> <p>1 understand that there is an impasse as to how the 2 Commission intrep- -- interprets our authorizing statutes 3 and how the -- the Council interprets its authorizing 4 statutes. Um, but you may recall that the, you know, 5 Commission has previously argued that deference should be 6 given to the agency when interpreting its authorizing 7 statutes and, so, that seems to be what the Council is 8 doing here. Um, and so -- so, it just -- you know, in 9 keeping with that, you know, the Council agrees with the 10 staff attorney's interpretation of -1056(E), and, um, I 11 understand that you disagree, and so we can only agree to 12 disagree today. 13 Um, if there are no other questions or comments 14 from the Council, I know that we have a request for public 15 comment from -- from a representative from the Arizona 16 Advocacy Network. 17 MR. ROTH: Sorry, Madame Chair -- 18 CHAIRWOMAN ONG: Mm-hm. 19 MR. ROTH: -- can I just -- I want to clarify 20 something, a comment that I made very early as to what I 21 would suggest that the Council do. I just want to clarify 22 that and bring it back to the front because this was more 23 in the spirit of collaboration that we would -- we would 24 suggest the Council await the revised report that we are 25 working on and delay decision with respect to -1056(E)</p> <p style="text-align: right;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">29</p> <p>1 until that time, and I think that is the process that the 2 statute contemplates happening when a report is refer- -- 3 returned to be revised before a final determination is 4 made with respect to any of the rules that are part of 5 that report. 6 So, that would be our suggestion. Setting aside 7 the jurisdictional arguments and our disagreement with 8 respect to the meaning of -1056(E), just as to how the 9 Council should proceed, that's our recommendation and our 10 -- our proposal. 11 CHAIRWOMAN ONG: Council Member Sundt? 12 MEMBER SUNDT: May I? 13 CHAIRWOMAN ONG: Mm-hm. 14 MEMBER SUNDT: Did -- did I hear you to say 15 you're -- your recommendation is that we not take any 16 action under -1056(E), which I think is what we're 17 discussing that we have taken action under -1056(E), and I 18 understand the Commission's position to be that the action 19 taken is not adequate? 20 MR. ROTH: I -- I think you're implying a little 21 more than I intended to imply with the statement. 22 MEMBER SUNDT: I seem to be the master of 23 overstatement. 24 CHAIRWOMAN ONG: But -- but I did hear some -- 25 hear something similar in that, um, you know, we've</p> <p style="text-align: right;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">30</p> <p>1 already discussed that, we've already taken action under 2 -1056(E), but you're asking us to now wait on taking 3 action on -1056(E)?</p> <p>4 MR. ROTH: So, let me clarify then. I'm sorry to 5 interrupt. Let me clarify then so that our -- our lines 6 of disagreement and agreement can be clear.</p> <p>7 I -- what I would propose is that -- my 8 understanding is that a recommendation by the staff 9 attorney has been made that the Council take action today 10 for a procedural clarity -- whatever the description is -- 11 to affirm or to make effective an August 2nd date. We, 12 obviously, disagree as to the validity of the August 2nd 13 date; we can set that aside -- excuse me -- set that 14 aside.</p> <p>15 I would say delay that further action in making 16 or confirming the August 2nd date until you have a chance 17 to review the revised report that the Commission intends 18 to submit; and -- and at that time, the -- a decision 19 regarding what is or is not materially flawed regarding 20 the revised report can be made.</p> <p>21 MEMBER SUNDT: Madame Chairman? Just on that 22 line of clarity, my understanding was that one of the 23 Commission's objections was there was no, um, official 24 vote on setting the date and that was the nature of the 25 complaint. Some of us may view it as self-executing, that</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">31</p> <p>1 as -- if no date was officially set, they would be -- what 2 does -1056 provide?</p> <p>3 "No -- no earlier than six months after the date 4 the meeting in which the Council considers the 5 agency's report on its rule."</p> <p>6 So, I mean, did I -- I can tell you my view 7 of it as I read it as self-executing. But you're asking, 8 if I understand correctly: Although the Commission has 9 asked that we have a vote to set a date, you're now asking 10 that we not have a vote to set the date and that we 11 consider the revised report?</p> <p>12 Understanding that you'll probably begin by 13 telling me I've overstated.</p> <p>14 MR. ROTH: I -- Member Sundt, I would say that I 15 think the statute contemplates a process where the report 16 is reviewed, and if there's a determination made that some 17 part of it is inadequate, which we understand that 18 determination is made, and the statute says inform -- 19 shall inform the agency what is inadequate, and at that 20 point there is an option to submit a revised report, that 21 you may require a revised report.</p> <p>22 I don't understand the purpose to that unless 23 that preceded a determination about repealing of rules 24 that are subject of that -- the subject of that five-year 25 report.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">32</p> <p>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?</p> <p>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?</p> <p>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.</p> <p>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.</p> <p>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</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">33</p> <p>1 to have it on the books when a five-year review report is 2 being revised? Um, I don't see how that would be prudent.</p> <p>3 MR. ROTH: I guess that reduces back to the fact 4 that we do not think a determination had ever been made 5 that the rule was materially flawed. But we've discussed 6 that here, so we can leave it at that.</p> <p>7 MEMBER SUNDT: I have no other questions right 8 now.</p> <p>9 CHAIRWOMAN ONG: Any other questions or comments 10 from the Council?</p> <p>11 Okay. Thank you, Mr. Roth.</p> <p>12 MR. ROTH: Thank you, Madame Chair.</p> <p>13 CHAIRWOMAN ONG: And we have a -- and we have a 14 representative here from the Arizona Advocacy Network. 15 And just wanted to keep in mind that today's agenda and 16 matters are limited to more of the sort of procedural 17 questions that have stemmed from the action that the 18 Council already took on February 2nd.</p> <p>19 MS. PSTROSS: Thank you, Chairwoman Ong. Council 20 Members, my name is Samantha Pstross, I'm the Executive 21 Director of the Arizona Advocacy Network. You might 22 remember me from the February 2nd meeting and meetings 23 there and after. And I will try to be brief, but I agree 24 with you, I think we do need to -- to clarify what is 25 going on. Um, I -- I know as a member of the public, I am</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: right;">34</p> <p>1 very confused as to what's happening and I'm really</p> <p>2 surprised to hear your viewpoint on collaboration.</p> <p>3 Um, so, I -- I think there's three main issues</p> <p>4 that -- that need to be clarified.</p> <p>5 So, the first is why the five-year review needed</p> <p>6 to be returned. Um, I think it's clear that it was never</p> <p>7 really explained what was wrong with the five-year review,</p> <p>8 and, um, the Commission has been trying to understand, um,</p> <p>9 from my understanding, what was wrong and how they can fix</p> <p>10 it because they have been trying to collaborate.</p> <p>11 Um, in fact, they don't really even need to take</p> <p>12 part in the five-year review because they are a</p> <p>13 voter-protected, independent agency. At least from our</p> <p>14 perspective, the Arizona Advocacy Network's perspective.</p> <p>15 However, they've always been in the spirit of goodwill and</p> <p>16 collaboration, they have taken part in this five-year</p> <p>17 review.</p> <p>18 Um, so, I think that's the first question: What</p> <p>19 was wrong with the five-year review; what needs to be</p> <p>20 changed?</p> <p>21 My second question is: Why -- why does -- why do</p> <p>22 the parts of 109, why are they materially flawed?</p> <p>23 I -- I find that deeply concerning. I mean, if</p> <p>24 the Commission has rules that are materially flawed, I as</p> <p>25 a member of the public would want to know why they're</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">35</p> <p>1 flawed and, you know, make sure that that is addressed.</p> <p>2 Um, and, you know, if we're going to talk about</p> <p>3 the spirit of collaboration, you said that -- from my</p> <p>4 understanding, that you don't really need to explain what</p> <p>5 that means because it's not -- it's not written in your</p> <p>6 rules as you interpret them. So, I think if you're trying</p> <p>7 to be collaborative, it would be really nice to understand</p> <p>8 why those specific rules are -- as you claim them to be --</p> <p>9 are materially flawed, um, so that the public can</p> <p>10 understand what exactly is -- is going on here. Why, you</p> <p>11 know -- why you're -- you're wanting to change these --</p> <p>12 these parts of the Commission's rules. They have a lot of</p> <p>13 rules, so why -- why this part?</p> <p>14 Um, and, finally, you know, simply the fact that</p> <p>15 the Citizens Clean Elections Commission is voter</p> <p>16 protected; they were put there by the people to be</p> <p>17 independent. If a partisan agency can go in and change</p> <p>18 their rules without really any explanation, um, that --</p> <p>19 that then doesn't allow the Commission to be independent</p> <p>20 and act independently. Um, and so, you know, I -- I think</p> <p>21 it's wonderful that the Commission is trying to</p> <p>22 collaborate, that they're willing to resubmit their</p> <p>23 five-year review even though from our perspective they</p> <p>24 don't even need to do that.</p> <p>25 Um, so, I -- I hope that you can help -- help me</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: right;">36</p> <p>1 clarify these questions: What -- what was wrong with the</p> <p>2 five-year review; why these specific rules; um, and --</p> <p>3 yeah. So, I don't know if I can -- if -- if you can</p> <p>4 answer those questions for me, I would really appreciate</p> <p>5 it. Thank you.</p> <p>6 CHAIRWOMAN ONG: Well, as to your first question</p> <p>7 about why it was returned and what, um, we are requesting</p> <p>8 be revised, I think that we've just discussed that at</p> <p>9 length this morning. And -- and it goes to -- to your</p> <p>10 point about collaboration is that we've emphasized from</p> <p>11 the start that, you know, our -- our staff attorneys</p> <p>12 were -- were happy to collaborate with the Commission.</p> <p>13 And, um, I understand that -- that -- that you've only,</p> <p>14 you know, seen the submissions and the discussions at the</p> <p>15 meetings, but, um, what you don't see behind the scenes is</p> <p>16 that there really hasn't been a lot of inter- --</p> <p>17 interaction since the February 2nd meeting between the</p> <p>18 Commission and our staff attorneys, other than these four</p> <p>19 letters that were really more legal arguments rather than</p> <p>20 collaborative discussions. Um, and so -- so that goes to</p> <p>21 your first question.</p> <p>22 Um, as to your second question about why it was</p> <p>23 materially flawed, um, as was pointed out earlier, you</p> <p>24 know, we discussed Rule 109 and the Clean Elections</p> <p>25 Commission's five-year review report at length over the</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: right;">37</p> <p>1 past, you know, five couple of meetings, and -- um, and --</p> <p>2 and discussed the various factors under -1056(E), um, with</p> <p>3 regards to why, you know, we -- we believe that the rule</p> <p>4 was materially flawed.</p> <p>5 There was a lot of discussion about -- about the</p> <p>6 economic impact, whether the rule imposed the least</p> <p>7 burden, um, on the public. And -- and -- and as was</p> <p>8 discussed earlier, we're not the court of law, we're --</p> <p>9 we're not a judge issuing a written decision that needs to</p> <p>10 set forth findings of fact and conclusions of law. I</p> <p>11 think that we were -- we discussed more so than with any</p> <p>12 other item our reasoning with regards to Rule 109, and --</p> <p>13 and we made a determination that the rule was materially</p> <p>14 flawed at the February 2nd meeting.</p> <p>15 Um, and -- and, finally, when it comes to the</p> <p>16 Voter Protection Act that, you know, I think -- we, you</p> <p>17 know, can agree to disagree there.</p> <p>18 But I do want to comment on -- on your statement</p> <p>19 that -- that we are a partisan agency when, in fact, we</p> <p>20 are not a partisan agency, we are a council made up of</p> <p>21 members of the public. All -- all the members except</p> <p>22 myself are, um, you know, while -- while they receive, you</p> <p>23 know, incentives for their travel time and whatnot and</p> <p>24 time out of their day, they are essentially volunteers,</p> <p>25 members of the public, who are, you know, recommended, um,</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

<p style="text-align: center;">38</p> <p>1 by the House, by the Senate and, um, and represent, you 2 know, business interests, small -- small business 3 interests and -- and whatnot. So, um, so I just wanted to 4 make that clear for the record. 5 Um, I don't know if there are any other comments 6 from the Council. 7 MEMBER SUNDT: Madame Chair, if I might. I -- I 8 can tell you that I thought I was fairly clear with Mr. 9 Collins and I thought that they were acting beyond the 10 authority granted by statute and that I was not persuaded 11 that the Commission's efforts to -- or, writing into its 12 rules the ability to enforce items under Article 1, which 13 is outside of the Clean Elections Act, is appropriate. 14 So, to me, one of the -- the -- the things that 15 stands out is I don't believe that the action that's being 16 taken in that rule is authorized by the statute. 17 MS. PSTROSS: Okay. Um, Chairwoman Ong, Council 18 Member Sundt. I -- I understand your concerns, but 19 because the Commission is voter protected, I -- I don't 20 see how the Governor's rulemaking, how -- how you can go 21 in and then change something that has -- you know, has 22 been interpreted, um, by many, and by the Clean Elections 23 Commission, that they do have this authority. Um, you 24 know, if you can go in and change their rules without 25 having to go through voter protection, it's -- it's not --</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: center;">39</p> <p>1 then why -- I mean, why have it be voter protected at all, 2 right? You know. So, um -- I suppose you don't know. 3 Um, but I -- 4 MEMBER SUNDT: I'll respond. 5 MS. PSTROSS: Okay. 6 MEMBER SUNDT: May I, Madame Chair? 7 CHAIRWOMAN ONG: Please. 8 MEMBER SUNDT: Um, in keeping in mind the last 9 time you and I spoke you gave me that caveat, you said I'm 10 not a lawyer. 11 MS. PSTROSS: Mm-hm. 12 MEMBER SUNDT: So, um, with that caveat in mind, 13 I don't believe the Voter Protection Act which relates to 14 this voter referendum protects rulemaking performed by an 15 agency under the statutes that we're talking about. I 16 don't believe that the Voter Protection Acts grants the 17 authority to an agency to rewrite legislation or expand 18 its authority beyond what was granted in -- in the 19 referendum. So, that's where I'm hung up. 20 I understand that the Voter Protection Act 21 requires that if there's going to be a legislative change, 22 that you have to have a two-thirds vote. But we're not 23 talking about the statute, we're talking about rules 24 issued under the statute, and that's where I'm finding the 25 disconnect.</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>
<p style="text-align: center;">40</p> <p>1 I think we've invited -- and I would invite 2 again, perhaps Mr. Roth knows, if he can cite some 3 authority to me, a case to review that says a Voter 4 Protection Act shelters the rulemaking process, then I'll 5 certainly read -- read through that. I -- but I don't 6 think it goes that far. 7 MS. PSTROSS: Okay. Um, Council Member Sundt, I 8 -- I understand what you're saying. I -- I guess that 9 what it comes down to and what we've all discussed at 10 length is, you know, we don't believe the Commission has 11 overstated anything, that they -- that their rulemaking is 12 completely in line with what the voters gave them, the 13 power that they gave them with the Clean Elections Act, 14 um, and with -- with parts of statute. 15 Um, and also, you know, just to talk about 16 partisanship and what's partisan/non-partisan. You know, 17 I think it's wonderful that the Clean Elections Commission 18 has five commissioners and no more than two can be from 19 the same political party so that it's definitely, you 20 know, as non-partisan as possible. 21 I -- I'm not sure, do you guys have the same 22 rules with, um -- with GRRC members? 23 CHAIRWOMAN ONG: Our requirements are set forth 24 in -- in statute, so you can review those there. But, um, 25 but there are certain members who are required to be</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>	<p style="text-align: center;">41</p> <p>1 recommended by the House, the Senate, and to represent 2 small business interests and so forth, so. 3 MS. PSTROSS: Okay. All right. Well, thank you. 4 Are there any other questions? 5 All right. Thank you. 6 CHAIRWOMAN ONG: If there are no other questions 7 or comments, the meeting is adjourned. 8 UNIDENTIFIED MALE SPEAKER: Do you need to 9 (inaudible) the day? 10 (Whereupon the audio recording concludes.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Miller Certified Reporting, LLC</p>

C E R T I F I C A T E

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

Digitally signed by Angela Miller
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Date: 2016.05.09 10:17:52 -0700

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

Miller Certified Reporting, LLC

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