

THE STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

October 29, 2015

9:36 a.m.

Reported By:

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Certified Reporter (AZ 50127)

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1 PUBLIC MEETING, BEFORE THE CITIZENS CLEAN  
2 ELECTIONS COMMISSION, convened at 9:36 a.m. on October 29,  
3 2015, at the State of Arizona, Clean Elections Commission,  
4 1616 W. Adams, Conference Room, Phoenix, Arizona, in the  
5 presence of the following Board members:  
6 Mr. Thomas J. Koester, Chairperson  
7 Mr. Mitchell C. Laird  
8 Mr. Steve Titla  
9 Mr. Damien R. Meyer  
10 Mr. Mark S. Kimble

9 OTHERS PRESENT:

10 Thomas M. Collins, Executive Director  
11 Paula Thomas, Executive Officer  
12 Sara Larsen, Financial Affairs Officer  
13 Gina Roberts, Voter Education Manager  
14 Alec Shaffer, Executive Support Specialist  
15 Mike Becker, Policy Director  
16 James P. Driscoll-MacEachron, AAG  
17 Joseph Kanefield, Ballard Spahr  
18 Mary O'Grady, Osborn Maledon  
19 Patricia Koester, Citizen  
20 Rivko Knox, League of Women Voters  
21 Stanley Williams, AZ Advocacy Network  
22 Louis Hoffman, Self  
23 Jim Barton, Torres Law Group  
24 Cory Watson, Intern  
25 Jane Amern, Intern  
Matt Roberts, Secretary of State's office  
Garrick Taylor, AZ Chamber of Commerce  
Brad Johnson, AZ Chamber of Commerce  
Lee Miller, Secretary of State's office  
Barrett Marson, Marson Media  
Evan Wyloge, AZ CIR  
Howie Fischer, Associated Press  
Jeremy Duda, Arizona Capitol Times  
Brent Steffens, R&R Partners  
\*Various other members of the public are present

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P R O C E E D I N G

1 CHAIRPERSON KOESTER: Good morning. The  
2 October 29th meeting of the Clean Elections Commission is  
3 called to order.  
4 Our first item is discussion and possible action  
5 on the Commission's minutes for September 24th, 2015. Any  
6 Commissioner have any comments or corrections?  
7 COMMISSIONER LAIRD: No.  
8 CHAIRPERSON KOESTER: No?  
9 COMMISSIONER TITLA: Chairman, I motion to  
10 approve.  
11 CHAIRPERSON KOESTER: Commissioner Titla  
12 approved.  
13 COMMISSIONER MEYER: Second.  
14 CHAIRPERSON KOESTER: And a second by  
15 Commissioner Meyers. All right, all in favor say "aye."  
16 (Chorus of ayes.)  
17 CHAIRPERSON KOESTER: Opposed? It carries.  
18 Item III, discussion of the Executive  
19 Director's report. Director Collins?  
20 MR. COLLINS: Yes. Chairman Koester,  
21 Commissioners, thank you. Just really briefly, you know,  
22 we are coming up on another election day. Several local  
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1 jurisdictions are having elections and we have information  
2 about those elections on our website.  
3 We're continuing to work on -- on our outreach  
4 efforts. Last month Gina and I were at Rio Salado College  
5 providing information at a -- at their panel discussion on  
6 cutting through the record -- rhetoric, which featured a  
7 number of speakers from around the -- around the State on  
8 -- on the issue of participation in public life in  
9 elections and otherwise.  
10 We've done -- we'll be continuing to be around  
11 the State over the course of the next few weeks. As you  
12 can see, it's quite a -- quite a busy agenda of -- of  
13 being out in public talking about issues related to both  
14 campaign finance and voter participation, which are our  
15 mandates.  
16 You have the participating candidate stand --  
17 standings, the complaint issues.  
18 Last thing I'll briefly highlight is we did  
19 submit our five-year rule review to the Governor's  
20 Regulatory Review Council. This is a -- a process  
21 basically in statute where we identify what our rules are,  
22 what changes we've made to them over the previous five  
23 years, and what their purpose is, and provide that to the  
24 Governor's Regulatory Review Council; and that we  
25 completed and is available with the report. And there

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1 will be addition -- and then there's budget information  
2 there, which Sara is available if -- if you have specific  
3 questions to discuss related to the quarterly financial  
4 information that's provided in the report. I won't  
5 pretend to try to speak educatedly on it.  
6 But with that, unless there are other questions,  
7 that's [sic] really completes my report Mr. Chairman,  
8 Commissioners.  
9 CHAIRPERSON KOESTER: Okay. Thank you, Tom.  
10 Commissioner Laird, do you have any  
11 questions on the budget right now?  
12 COMMISSIONER LAIRD: No. Not at this time.  
13 CHAIRPERSON KOESTER: Okay. All right. Next  
14 item is No. IV, it's discussion and possible action on  
15 adoption of rule amendments to A.A.C. R2-20-109, public  
16 comment, circulation of the rule, and related to the  
17 enforcement of the Clean Election Act and procedures.  
18 Now, this No. IV, as you see, has an (A), (B),  
19 (C), (D), (E), (F), (G) section and I think we're going to  
20 go slightly out of order in discussing this next matter.  
21 I think one reason that the R20- -- R20-109(F)(3) or (F),  
22 we have both, it's been out there for many, many days, 120  
23 plus, the version three as well as the Secretary of  
24 State's petition to amend.  
25 And as far as I know, I think Mr. Collins will

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1 back me up, that there -- version three and the Secretary  
 2 of State's, we can't do both. Doing one kind of moots the  
 3 other one I think is the right term. So, we could take  
 4 the Secretary of State's petition to amend first, get that  
 5 out of the way, and then we could proceed with the -- I'll  
 6 call it the version three for the better term.

7 So, I can ask Mr. Collins, but as far as I know,  
 8 there's been no comments or -- or anything on the  
 9 Secretary of State. Am I right about that or not?

10 MR. COLLINS: I -- I think, unless there is  
 11 something maybe buried into a comment in the -- in the --  
 12 in one of the other ones, perhaps the Chamber's letter. I  
 13 don't remember off the top of my head. I -- I don't think  
 14 that we received a specific comment that I'm aware of that  
 15 specifically said and staff is -- oh. I guess former  
 16 Commissioner Hoffman's letter said don't do it. But other  
 17 than that, I'm not aware of -- and I'm looking at Mike and  
 18 Alec who have also reviewed these things, and we don't  
 19 have any -- any other comment at all on that.

20 I agree with you, Mr. Chairman, that because the  
 21 Secretary's petition seeks to excise 16-913 from Rule  
 22 R2-20-109, were you-all to adopt that petition, it would  
 23 largely moot the remaining items under the rule agenda.  
 24 And so, it is logical to address that first.

25 The other -- only other question is whether or  
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1 And my understanding is that Mr. Spencer's  
 2 comments at the outset of this process which, you know,  
 3 were -- I guess I would call them belligerent with a kind  
 4 of a -- with a smile, remain the -- an accurate  
 5 representation of the Secretary of State's office position  
 6 in the event that the Commission moves forward with what  
 7 is delineated as Item IV(A) in this agenda item.

8 You know, whether or not that's a sufficient  
 9 reason to not do that, or whether or not some late gambit  
 10 to continue a dialogue that could have happened over the  
 11 course of the previous 168 days, is something that you-all  
 12 would be -- find, you know, acceptable is -- is a call for  
 13 you. But -- but that's my general sense of the lay of the  
 14 land.

15 So, with that, Mr. Chairman, I'd -- I simply -- I  
 16 guess if you want to have public comment ahead of the  
 17 items, especially given it is Secretary Reagan's petition  
 18 and Secretary Reagan's representatives are here, I -- I  
 19 don't know how you want to proceed.

20 CHAIRPERSON KOESTER: I -- I don't mind if -- you  
 21 want to make any statement, Lee, right at this time or...

22 MR. MILLER: Mr. Chairman, we have -- we have no  
 23 particular comment on -- on our petition. Just encourage  
 24 the -- the Commission to act as it sees fit.

25 CHAIRPERSON KOESTER: Sure. Does any  
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1 not you would prefer to have -- you know, Mr. Miller is  
 2 here from the Secretary's office. I would just say as a  
 3 preparatory matter to this entire discussion, that when  
 4 you look at the totality of the time that we have spent on  
 5 this subject matter, it has been about a hundred and -- I  
 6 think 168 days total. It has been 60 days since version  
 7 three circulated with the vote of the Commission. And --  
 8 and according to the minutes of that August meeting, it  
 9 was the only version of any rule related to independent  
 10 expenditure reporting that was, in fact, approved for  
 11 public comment.

12 I think the record -- with -- we have reviewed  
 13 the record on that, the record is, I believe, clear.  
 14 Crystal clear.

15 And there has been quite a bit of discussion in  
 16 the -- this period of time. I have spent several hours  
 17 with the State Election Director, I have spent time with  
 18 the Secretary of State, Chairman Koester and I have spent  
 19 considerable time with the Secretary of State. All that  
 20 by way of saying that our door has been open throughout  
 21 that entire period of time to resolve some of the issues.  
 22 I have myself put forward procedural rules designed to  
 23 mitigate the reasonable concerns of the Secretary, or at  
 24 least meet those -- meet those halfway; and those have not  
 25 been satisfactory to her or her staff.

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1 Commissioner have anything it might -- I -- I'll just put  
 2 this way, favorable towards the Secretary of State's  
 3 petition? In other words, do you want to make favorable  
 4 comments or --

5 COMMISSIONER LAIRD: Yeah. I -- I think I do.

6 CHAIRPERSON KOESTER: Commissioner Laird.

7 COMMISSIONER LAIRD: You know, I -- I don't agree  
 8 with the arguments that have been made by a number of  
 9 groups that we don't have jurisdiction over  
 10 non-participating -- non-participating candidates. If you  
 11 read the language of the Arizona Clean Elections Act, I  
 12 think it's very clear that we -- we do.

13 And I -- I agree that 16-942(B) can definitely be  
 14 read broadly enough to be applied to, quote, "any  
 15 reporting requirement imposed by this chapter," end quote.  
 16 And this chapter could would include Section 16-913, even  
 17 though 16-913 is not in the Arizona Clean Elections Act.

18 But as Tom has correctly noted, both the  
 19 Secretary of State and the Attorney General's office have  
 20 appeared before us strongly opposing that we are taking  
 21 jurisdiction of 16-913 reporting requirements; and, in  
 22 fact, have advised us that it will likely lead to  
 23 litigation. And they said that even if we do read the  
 24 statute broadly enough legally to assert jurisdiction over  
 25 16-913, that as a policy matter it's a bad idea and we  
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1 should exercise restraint as a matter of good public  
 2 policy.  
 3 I've tried to take a look at the statutory scheme  
 4 and -- and try and understand what I think the best  
 5 outcome on the Secretary's position might be. In doing  
 6 that, I've noted there -- there are two statutes there in  
 7 the Clean Elections Act that do require -- require  
 8 specific recording -- reporting. That is 16-941(D) and  
 9 16-958, those are the statutes in the Clean Elections Act  
 10 that require certain reports be filed.  
 11 Section 16-913 is not a part of the Arizona Clean  
 12 Elections Act and it's not a report that is required by  
 13 the Arizona Clean Elections Act, it's a report to be filed  
 14 with the Secretary of State.  
 15 And, you know, I would also note that there's  
 16 nothing in the Act that really gives us authority to  
 17 determine who -- who is and who is not a political  
 18 committee. And it's also interesting to note that 16-913  
 19 specifically provides what statutes govern if you fail to  
 20 file under -913. It specifically provides that if you  
 21 fail to file under -913, you are subject to the penalties  
 22 of 16-918. 16-918 is a very thoroughly-written statute  
 23 with a very formal procedure and with specific penalties  
 24 for failing to file under 16-913.  
 25 16-918 includes a requirement that written notice  
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1 that we could exercise jurisdiction over 16-913 if we  
 2 choose to do that. But I think as a matter of policy,  
 3 having two different government entities with the same  
 4 jurisdiction is just not a best practice. It creates  
 5 duplicative and potentially inconsistent interpretation,  
 6 potentially inconsistent investigations, potentially  
 7 inconsistent enforcement regarding, you know, not only  
 8 what are political committees, who must file, but even  
 9 whether or not a filing is adequate.  
 10 So, the potential duplication and inconsistency,  
 11 I think, is -- is inefficient government, I think is  
 12 confusing government, I think is a duplication of costs  
 13 and efforts; and, therefore, for those reasons, I think  
 14 it's unfair to the public and I think it's unfair to the  
 15 organizations that care enough about our State's political  
 16 process to participate in it.  
 17 So, for that reason I'm a -- I'm a "yes" on the  
 18 Secretary's petition.  
 19 CHAIRPERSON KOESTER: Okay. Thank you,  
 20 Commissioner Laird.  
 21 Mr. Collins, you want to elaborate a little bit  
 22 on what he said or just --  
 23 MR. COLLINS: Well -- no, no. I -- and I've said  
 24 to -- to -- in all candor, to Mr. Laird, that I believe  
 25 that the decision to adopt or not adopt the Secretary's  
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1 be sent by certified mail within 15 days of the filing  
 2 officer -- not the Arizona Clean Elections Commission, by  
 3 the way, a filing officer -- determines there's been a  
 4 violation of the requirements under 16-913.  
 5 Second, it provides a \$10-a-day penalty for late  
 6 filing.  
 7 Third, it provides an additional \$25-a-day late  
 8 filing penalty 15 days after the committee's been given a  
 9 written notice that it's failed to file as required by  
 10 16-913.  
 11 It -- it even goes on to provide that it -- a  
 12 candidate may not be eligible to run for office for five  
 13 years. It provides that for a standing political  
 14 committee, a violation, they have increased reporting  
 15 requirements going forward.  
 16 And, lastly, it provides that any political  
 17 committee may be completely suspended -- suspended from  
 18 operating in the State. Penalties much more powerful than  
 19 anything set forth in the Arizona Clean Elections Act.  
 20 So, you know, my conclusion after trying to take  
 21 a look at the statutory scheme and the arguments that have  
 22 been made, while I -- I don't -- I -- I -- I believe we  
 23 have the authority under the Arizona Clean Elections Act  
 24 to govern non-participating candidates and exercise  
 25 jurisdiction, you could read the statute broadly enough  
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1 petition is a policy decision for the Commission to make.  
 2 It is a binary decision. It is not about the nuances of  
 3 -- of -- of what is in -- you know, what -- what is in  
 4 version three, it's about a -- a binary yes/no decision.  
 5 And I think Mr. Laird has identified precisely what the  
 6 analysis would be to lead you to that.  
 7 I have, as you all know, outlined an  
 8 alternative -- an alternative analysis to that. But it's  
 9 not -- and - and -- and -- but it's not my point or  
 10 purpose, and I've -- and I've -- I just want to be clear  
 11 what I've said to Mr. Laird, I would say to all of you,  
 12 that I believe that it is the essence of a policy decision  
 13 for the Commission to make whether or not to continue in  
 14 this way or not. And then the legal underpinnings of that  
 15 being something that obviously reasonable people can  
 16 disagree about on that point.  
 17 COMMISSIONER TITLA: Mr. Chair?  
 18 CHAIRPERSON KOESTER: Of course in the future,  
 19 the legislature may decide to do something entirely  
 20 different or a ballot initiative could come up to perhaps  
 21 do what California has done. I -- it's hard to say.  
 22 But to -- to resolve this (C), I think the way we  
 23 have to do it is to -- a motion to deny or to delete or  
 24 how -- what would be the best legal term to --  
 25 MR. COLLINS: Well -- well, I think -- first, Mr.  
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1 Chairman, I don't know if there's any other public comment  
 2 you might want to receive on that question. And once  
 3 that's passed, my recommendation would be that it really  
 4 is up to any of you to either move to adopt Secretary  
 5 Reagan's petition, or, I -- I guess -- I mean, I guess you  
 6 could move to -- to -- to deny it if someone wanted to  
 7 make that motion alternatively. It -- the -- either --  
 8 either motion will yield a vote that will do --  
 9 CHAIRPERSON KOESTER: I see.  
 10 MR. COLLINS: -- either enact it or not enact it,  
 11 I guess is what I'm trying to say.  
 12 CHAIRPERSON KOESTER: Okay. So, you moved to  
 13 approve and everybody said "nay," then it accomplishes the  
 14 same thing. But you could move to deny and everybody vote  
 15 "aye" --  
 16 MR. COLLINS: Everybody said "aye" or not -- or  
 17 whatever you're going to do.  
 18 CHAIRPERSON KOESTER: Okay. I --  
 19 MR. COLLINS: Or maybe nobody says -- I don't  
 20 know what -- I -- I don't know what the outcome will be,  
 21 but I -- but I simply --  
 22 CHAIRPERSON KOESTER: No, no. Neither do I.  
 23 MR. COLLINS: -- yeah. I think the motion can be  
 24 made by whomever is comfortable, you know, making the  
 25 motion for what the thing is. For my perspective for the  
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1 out as part of the ongoing process.  
 2 COMMISSIONER TITLA: Chairman?  
 3 CHAIRPERSON KOESTER: Thank you, but --  
 4 COMMISSIONER TITLA: Chairman?  
 5 CHAIRPERSON KOESTER: Yes. Go ahead.  
 6 COMMISSIONER TITLA: Point -- point of order.  
 7 CHAIRPERSON KOESTER: Yes.  
 8 COMMISSIONER TITLA: I think that the gentleman,  
 9 my esteemed colleague, has made a motion, so I don't think  
 10 we can have any comments on the Roberts Rules of Order  
 11 until we either have a second or if there's no second, the  
 12 motion dies, then I think we can go into some comment.  
 13 CHAIRPERSON KOESTER: Okay. Well, I -- I get --  
 14 I see your point. So, Commissioner Laird has made a  
 15 motion. Can I have a second, then, on the proposal?  
 16 We need a second in order to take a vote, I  
 17 believe.  
 18 COMMISSIONER KIMBLE: I'll second it for purpose  
 19 of taking a vote.  
 20 CHAIRPERSON KOESTER: Okay. And then we had the  
 21 comment from the Chamber of Commerce. I -- we -- we  
 22 realize what -- what -- oh. Commissioner --  
 23 Commissioner -- Mr. Hoffman, if you want to make a  
 24 comment, too.  
 25 We have a -- we have a motion and a second so we  
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1 record purposes, I think a motion to approve the petition  
 2 would be clearer on the record in terms of -- because it's  
 3 more natural to vote "aye" for the thing you want to  
 4 happen and vote "nay" on the thing you do not want to  
 5 happen in -- in my view just for following along.  
 6 COMMISSIONER LAIRD: Which if -- if you would  
 7 like, I'll make a motion that we approve the Secretary's  
 8 petition.  
 9 CHAIRPERSON KOESTER: Okay. Well, I think we  
 10 have a comment --  
 11 COMMISSIONER LAIRD: Okay.  
 12 CHAIRPERSON KOESTER: -- first. Well, I think we  
 13 need a second, too, but...  
 14 MR. JOHNSON: Real quick, my name is Brad  
 15 Johnson, I'm the outside general counsel for the Chamber.  
 16 I think there's a third alternative that should be  
 17 considered in light of the rest of the agenda is that  
 18 you-all table this discussion, table a vote on that  
 19 petition to evaluate what's going to happen next in regard  
 20 to the rule that has been outstanding; and then to the  
 21 extent that that is also tabled for another 60 days, that  
 22 both of these petitions then can be used as part of the  
 23 process going forward. So, it's not just an up  
 24 --up-or-down type vote. I do recommend that you might  
 25 want to table this discussion because it could be worked  
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1 can make a discussion before we vote.  
 2 MR. HOFFMAN: Yes. Thank you, Mr. Chair,  
 3 Commissioners. Mr. Laird, I appreciate your comments.  
 4 I would like to urge the Commission to vote "no"  
 5 on the Secretary of State's petition to amend. There are  
 6 several, I think, good reasons why the Commission should  
 7 not provide a general get-out-of-jail-free card with  
 8 regard to the -- the penalties that are specified in the  
 9 Clean Elections Act, and as Mr. Laird said, apply to any  
 10 violation of this chapter. And I think that this is a  
 11 matter that can be addressed on a case-by-case basis.  
 12 Let me give you an example. In the past time I  
 13 was on the Commission, there was a complaint made against  
 14 the sitting -- well, the -- during the election of the  
 15 Attorney General, the last Attorney General, not the  
 16 current one. And that investigation and procedure with  
 17 respect to -- that was brought under the -918 statute that  
 18 Mr. Laird alluded to, continued past the following  
 19 election, and I'm not even sure if it's still continuing  
 20 to go on, I -- I've lost track of it. That's not good.  
 21 There have been other situations where a -- a  
 22 political official, the Attorney General or the Secretary  
 23 of State, either feels that they must bend over backwards  
 24 to charge someone of their own party because a feeling  
 25 that they're going to be accused if they don't; or,  
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1 alternatively, bend over to accuse somebody preferentially  
 2 of the other party. This Commission is a non-partisan  
 3 body, can decide things without the political  
 4 considerations that a -- the officials have to do.  
 5 And this is -- voting "no" on the petition to  
 6 amend simply leaves the -- the Commission in a position  
 7 where it can apply -- choose to apply penalties. The  
 8 penalty in the Clean Elections statute is stronger and so  
 9 at least some respects than the penalty, particularly the  
 10 \$10-a-day part is -- is stronger.  
 11 And as Mr. Laird also pointed out, the  
 12 Commission -- the Clean Elections Act does have some rules  
 13 that are -- that require other types of reporting. And if  
 14 you're going to be investigating whether there's a  
 15 violation of those kind of rules, it makes sense at the  
 16 same time to investigate whether any other rule is being  
 17 violated; and -- and that may depend -- that may alter the  
 18 penalty or may alter your decision as to how -- when you  
 19 would impose a penalty.  
 20 So, there are many, many instances in government  
 21 where two commissions or two bodies or two officials have  
 22 concurrent jurisdiction. There's a legal term for it,  
 23 "concurrent jurisdiction," because it happens a fair bit.  
 24 And in many instances, concurrent jurisdiction exists and  
 25 this is one of them and there's a reason for it.

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1 So, as far as postponing the -- the vote for  
 2 further time, I think Mr. Collins' point about this having  
 3 been a half a year already is -- is enough, and that, you  
 4 know, it's -- it's time to get to it. And I -- I urge the  
 5 Commission to defeat the petition and work hard on coming  
 6 together with suitable rules to make sure that we address  
 7 some of the legitimate policy issues and -- and procedural  
 8 concerns that the Secretary of State and -- and Mr.  
 9 Koest- -- Mr. Laird raised, as -- as well as others have.  
 10 And we provided some suggestions in our comments as to how  
 11 to do that and I urge adoption of those -- those kinds of  
 12 rules. Thank you very much.  
 13 CHAIRPERSON KOESTER: Thank you. Thank you, Mr.  
 14 Hoffman.  
 15 Anybody else who would like to make a comment  
 16 before we vote?  
 17 Okay. So, we had a -- a motion and a second. An  
 18 "aye" -- an "A" -- "aye" vote will be in favor of the  
 19 Secretary of State's petition to amend. A "nay" vote will  
 20 be to not.  
 21 So, all in favor to say "aye," please say so.  
 22 COMMISSIONER LAIRD: Aye.  
 23 CHAIRPERSON KOESTER: Okay. All opposed say  
 24 "nay."  
 25 (Chorus of nays.)

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1 I am not saying that in every case this  
 2 Commission is going to want to investigate agencies for  
 3 violation of -913, particularly in instances where that's  
 4 the only statute being violated or in instances where the  
 5 Secretary of State has -- is -- already has an ongoing  
 6 investigation that appears adequate. But a vote for the  
 7 petition would remove this Commission's ability to do that  
 8 and would basically negate the penalty that the voters  
 9 passed, because the Secretary of State and the Attorney  
 10 General cannot impose those penal -- that penalty, the one  
 11 in the Clean Elections statute, only this Commission can.  
 12 So, for those reasons I think it's -- it's strong  
 13 public policy.  
 14 I wanted to also thank Mr. Reckart, former  
 15 Commissioner and Commission Chair, he and I together  
 16 submitted the comments earlier this week jointly because  
 17 we wanted to present this position as an -- in a  
 18 non-partisan way. And my discussions with him were --  
 19 were positive and -- and fruitful in terms of trying to  
 20 lay this out in a hopefully orderly way for the  
 21 Commission. And I hope that that was helpful and I wanted  
 22 to thank and acknowledge Mr. Reckart.  
 23 My comments today are -- are, I believe,  
 24 consistent with that position; but, obviously, I'm  
 25 speaking here for myself, not for anyone else.

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1 CHAIRPERSON KOESTER: Okay. We have 4 to 1 to  
 2 not accept the Secretary of State's petition to amend.  
 3 So, we'll now proceed to (B), which is known as  
 4 the independent expenditure reporting requirements. We'll  
 5 call it version three, Langhofer, but it's version three  
 6 which has been out there quite some time.  
 7 Mr. Collins, if you want to say anything or we  
 8 want to go to public comment? How do you think we should  
 9 do this version?  
 10 MR. COLLINS: Well, again, Mr. Chairman, I think  
 11 it -- it's within your discretion. I certainly think  
 12 there may be people who would like to comment publically  
 13 on this. I know we've gotten comments on this specific  
 14 rule, you know, comments to the contrary from -- or,  
 15 comments critical of the rule, I should say, from -- from  
 16 the Chamber of Commerce and its affiliated members, as  
 17 well as the Torres Law Group, and those comments are --  
 18 tend to take opposite views of the -- of the -- of the  
 19 rule.  
 20 We have -- additionally, I -- so those -- you  
 21 know, and then I think that Mr. -- Mr. Reckart's and Mr.  
 22 Hoffman's comments touched on the construction issues that  
 23 are there; and you've had the opportunity to review all  
 24 the other public comments.  
 25 So, I don't know if any of those people or anyone

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1 would want to publicly have comment, but I certainly would  
2 defer to you on the order and in terms of if you want to  
3 do that -- I mean, you -- my understanding, and Mary  
4 correct me if I'm wrong, I think they take public comment  
5 before there was a motion if they wanted to.

6 MS. O'GRADY: That's correct.

7 MR. COLLINS: And -- and so if that's -- if  
8 that's your druthers, you would.

9 I -- I think I've probably said -- maybe I've  
10 said enough about -- about how this works and what -- what  
11 we think is achieved by this, but the -- the -- as my --  
12 just to reiterate, the memo that you have from  
13 October 16th by me delineates that the objectives of this  
14 exercise are to address the stated concerns of the  
15 regulated community about the absence of reliable metrics  
16 for decision-making around filing of campaign finance  
17 reports in this State; and, two, additionally provide  
18 transparency to the public so that it knows what the  
19 factors that a body like this will look at in determining  
20 as we meet in open session, whether or not if there was,  
21 in fact, a complaint filed -- which is, of course, itself  
22 a speculation, we would have that framework.

23 I would also reiterate that the existence of  
24 16-913 in the Rule predates this exercise. And so -- and  
25 so in -- in -- in the absence of drilling down in this

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1 would work in the event that the Commission chooses to  
2 make this decision.

3 CHAIRPERSON KOESTER: Thank you, Mr. Collins.

4 We already had a -- a -- a comment to  
5 delay, obviously, a gentleman from the Chamber of  
6 Commerce. We appreciate your comments.

7 Again, Mr. Collins, and I think the rest are  
8 Commissioners have been on this and discussed this and  
9 discussed it with their attorneys back and forth, and  
10 plenty of comments from the public. I personally think  
11 it's time to take a motion and a second and -- and we can  
12 discuss it after the motions; or, we can take a vote. I  
13 -- I -- but I think this has gone on long enough and I --  
14 I don't see any -- anyone clamoring to make a comment  
15 right now anyway but -- okay. Lee, go ahead.

16 MR. MILLER: Mr. Chairman, members, my name is  
17 Lee Miller, I'm the Deputy Secretary of State. Pleased to  
18 be before you this morning.

19 I think the very first time I was in front of the  
20 Commission was 15 years ago in working with the very first  
21 Chairman of the Commission, Gene Lemon, to really take the  
22 -- Gene spent an extraordinary amount of time taking the  
23 statute which the voters had passed and trying to make it  
24 operational. And what was very critical from the very  
25 beginning of operationalizing the Act, was to make the

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1 way, your decision having been to reject the Secretary's  
2 position, we are left with a choice now between -913 being  
3 there, being able to tell the regulated community and  
4 others what we will do in that event that those issues  
5 arise, or doing it on an ad hoc basis.

6 It's my view that all other things being equal,  
7 an administrative agency ought not do policymaking by  
8 enforcement, but rather ought have a rubric that it can  
9 provide to folks for their use in establishing and  
10 operating their entities and that the public will know how  
11 those entities are also operating.

12 So, I think that's the objective; that's the  
13 purpose of the -- of the rule; that's been the purpose of  
14 this exercise. And I think that the rule draft that we  
15 currently have, version three, with the changes I suggest  
16 which are minor and for the most part really cosmetic,  
17 achieves meeting that objective. Which is a discrete  
18 objective, it's not a -- it's a different objective than,  
19 you know, some of the broad -- the broader policy question  
20 you just addressed.

21 And so I would -- I guess I would leave it there  
22 at the risk of going on too long. And I'm open myself for  
23 any questions that you-all have at this point. And Mary  
24 as well, 'cause she's worked very hard with me to make  
25 sure that we would provide you our best sense of how this

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1 entire program of the -- that the Commission was going to  
2 administer something simple, something straightforward,  
3 something that any Arizonan could participate in so that  
4 you wouldn't need to be a political insider, you wouldn't  
5 need to have high-dollar consultants and lawyers to -- to  
6 get into the Arizona political process.

7 The whole purpose as Commissioner Lemon  
8 originally saw it of the Act was to provide a -- a simple,  
9 straightforward mechanism for Arizonans who wanted to be  
10 involved in the -- in the political process, to do so.

11 Funding campaigns was a -- was probably the first  
12 priority in the beginning; but, really, the interaction  
13 between participating candidates, non-participating  
14 candidates, and these independent expenditure committees  
15 was probably the second or third topic the Commission  
16 began to deal with back in -- in 1991.

17 I'd also like to note that Secretary of State has  
18 no quarrel with what the Commission chooses to do to  
19 enforce its own rules and regulations. The one and only  
20 concern we have with the rule that is -- proposal that is  
21 before you now is: Who is subject to it?

22 If you are subject to it, whatever you-all choose  
23 to do to implement that, that is entirely up to you.  
24 However you choose to craft an enforcement procedure and  
25 investigatory methodology, by all means, please go

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1 forward.

2 Our singular concern is: Who is subject to this

3 rule?

4 The Secretary of State's office, we have to worry

5 about that. Who is subject to our statutes? Do we have

6 the legal authority to regulate somebody who is choosing

7 to participate in the electoral process?

8 The Attorney General separately has to worry

9 about that. Do -- do -- they review our decisions. We

10 have no enforcement authority, our authority is to simply

11 opine whether we think it's, frankly, worth the Attorney

12 General's time to take a harder, more-focused look at

13 somebody's particular action. So, the Attorney General's

14 office, likewise, has to worry about whether as a

15 threshold question: Should I care about the actions

16 that -- that somebody has engaged in in the political

17 process?

18 You-all worry about that as well.

19 In some measure the reason we are all here today

20 -- and I will take some credit and some blame for it -- is

21 because the -- the nature of the legislature is to look at

22 our campaign finance laws annually and annually we revise

23 those. And in particular, this threshold question of who

24 shall be subject to those laws, is something that was

25 looked at over and over and over again and it -- and it

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1 doing so.

2 This -- we appreciate the time Chairman Koester,

3 Mr. Collins have given the Secretary and my colleagues in

4 the office over the past several weeks to -- to try and

5 find some common ground here. Aside from this question,

6 we've had -- I'm pleased to report we've had several very

7 productive conversations about how we can work together on

8 voter education activities, trying to develop new

9 technologies, new communications' tools, new ways to make

10 sure the -- the people of Arizona know what's going on in

11 -- in State Government, in -- in the electoral process, in

12 the ways that they want to receive information here in

13 2015; and we look forward to -- to continuing that

14 relationship and continuing to work together to -- to

15 really enhance and improve the knowledge and the education

16 the people of Arizona have about what their government is

17 up to.

18 I think that the most prudent thing to do on the

19 topic of who shall be subject to your regulations, who

20 shall be subject to my statutes, who is subject to your

21 penalties, who is subject to the penalties that the

22 Attorney General may impose on folks who are seeking to

23 participate in this most fundamental aspect of citizenship

24 is for all of us, all three organizations, to work

25 together over the next several weeks, craft a singular

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1 resulted in a -- in one sentence that ran I think it was

2 178 words, because folks like me, every time we had a -- a

3 -- a bright, new idea, we just run a bill that said:

4 Strike the period, put a comma, and let's just add the

5 next bright idea onto the end of the definition of the

6 term "political committee."

7 And I won't plow through the facts of the court

8 case that called into question that definition, but I will

9 note that the most fundamental holding of that court case

10 was voting. Participation in the political process is the

11 most fundamental aspect of citizenship in the United

12 States, and anybody and everybody that participates in it

13 needs to know in a simple and straightforward way how to

14 do it, how to do it correctly.

15 I think one of the problems with the rule that's

16 in front of you now is, frankly, evidenced by the number

17 of lawyers that are in this room today. There's too many

18 lawyers here. The -- what -- what this rule has become is

19 a battle amongst lawyers trying to ar- -- trying to

20 capture a universe of behavior that -- that they either

21 want to make sure is legal or want to make sure is

22 illegal; and that's -- that's not what the Act was

23 designed to do. It was designed to create a system to

24 allow anybody in Arizona that wanted to be involved in the

25 political process to have a simple, straightforward way of

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1 piece of legislation which we can take to the folks across

2 the street; and jointly and in common, address the

3 question of: What is it that makes you a political

4 committee? So, that the definition you're working under

5 in terms of who is subject to your rules, is the exact

6 same definition that I'm working under when our office

7 gets complaints, and is the exact same definition that the

8 Attorney General's office is working under when they are

9 doing their enforcement actions.

10 If I were up in Page trying to get active in a

11 State legislative race, with all due respect, the first

12 place I'd go to try and find out the rules of the game are

13 the Arizona Revised Statutes. I'd go down to the library

14 and I'd -- I'd ask to see the laws, the statutes that

15 apply to the -- the business of politics. I think it is

16 quite achievable goal for our three organizations, the

17 Attorney General's office, the Secretary of State's

18 office, the Commission, to work together in preparation

19 for this upcoming legislative session in January, to craft

20 a universal definition of "who is a political committee,"

21 so that everybody is operating under the same rules of the

22 road.

23 Again, when it comes to enforcement, we have no

24 quarrel with how you choose to craft your investigative

25 methodology, how you choose to enforce the statutes and

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1 the rules which you-all have adopted. I, likewise, have  
 2 statutes which I enforce, as does the Attorney General.  
 3 But what ought to be the same across the entire  
 4 spectrum is who is subject to those rules.  
 5 So, Mr. Chairman, members, what I strongly  
 6 encourage you to do today is to simply table the rule  
 7 proposal that is in front of you now. Tabling simply  
 8 allows you to pick it up at a future meeting if you  
 9 believe that conversations have become fruitless at the  
 10 legislature. But to please table the rule that is in  
 11 front of you now and instead direct staff to work together  
 12 with the Secretary of State's office, work together with  
 13 the Attorney General's office, on the topic of clarifying  
 14 to the extent it is necessary: Who is a political  
 15 committee? What is a political committee?  
 16 Because if we solve that question, then the  
 17 quarrels evaporate.  
 18 It's clear what your enforcement authority is.  
 19 It's clear what our enforcement authority is. It's clear  
 20 what the Attorney General's authority is.  
 21 What is not clear is: Who is subject to that  
 22 enforcement authority? And it's the Secretary's position  
 23 that the very best way, really the way that keeps the  
 24 spirit of the original Clean Elections Act moving forward  
 25 so that, frankly, anybody in the absence of having lawyers  
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1 First of all, why -- why this new idea at the  
 2 last minute first of all?  
 3 MR. MILLER: Mr. Chairman, Commissioner Kimble, I  
 4 don't believe it's a brand-new idea. Frankly, I think  
 5 from the very first, whether it was Mr. Spencer or  
 6 Secretary Reagan, if they were unclear as to the -- the  
 7 specificity of their concerns, I apologize, we'll try and  
 8 do better.  
 9 Again, I believe from the beginning, the  
 10 Secretary's position has been: We have no quarrel, no  
 11 concern with how you-all motivate folks who are supposed  
 12 to file reports with you, to file those reports and -- and  
 13 the consequences of -- of not filing.  
 14 Our singular concern, again, is: Who's supposed  
 15 to file reports?  
 16 I think the Secretary -- I -- I think if we  
 17 review the minutes from a couple of months ago, I think at  
 18 that time she encouraged mutual cooperation amongst the  
 19 three organizations to craft a definition of who shall be  
 20 subject to your regulations, my statutes, that was  
 21 mutually agreed upon and most importantly thoroughly  
 22 debated in the legislature, because those -- those are the  
 23 people that the voters of Arizona have chosen to -- to  
 24 really make the laws that shall apply to all of us. And  
 25 -- and we believe we're consistent with our point of view  
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1 and consultants and political insiders on their team,  
 2 knows how to -- how to get involved, is to work together,  
 3 put together a piece of legislation, legislature goes back  
 4 into regular session in approximately 60 days.  
 5 Again, "tabling" simply means we're -- we're able  
 6 to pick the matter up at a later date.  
 7 And with that, Mr. Chairman, members, I'm  
 8 available for any questions.  
 9 CHAIRPERSON KOESTER: Thank you, Mr. Hunter  
 10 [sic]. We appreciate you coming and appreciate your  
 11 comments.  
 12 COMMISSIONER KIMBLE: Mr. Chairman, I -- I guess  
 13 I would have a couple of questions.  
 14 First of all, this seems like a -- like a rather  
 15 dramatic departure from previous messages from the  
 16 Secretary of State that: Whatever you do, if you -- if  
 17 you adopt this rule, we're going to sue you. And now at  
 18 the -- when we're considering adopting it, you're asking  
 19 to table it and come up with some compromise that I'm not  
 20 sure I know what you're even thinking; and then even if  
 21 there is something that comes up, there's no guarantee the  
 22 legislature will take it up and pass it, and if they do,  
 23 they -- they're -- they're free to do that even if we  
 24 adopt this rule. So, I'm a little bit -- I guess those  
 25 are the -- the questions I have.  
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1 here all along.  
 2 COMMISSIONER KIMBLE: Okay. But just to  
 3 summarize, you're suggesting that -- that Mr. Collins, Ms.  
 4 Reagan, the Sec- -- and the Attorney General get together,  
 5 come up with an undefined agreement to go to the  
 6 legislature with no promise of or even no gauran- -- no --  
 7 no likelihood of success, and -- and then we go back to  
 8 where we are now?  
 9 MR. MILLER: Mr. Chairman, Commissioner Kimble, I  
 10 -- frankly, I think it's against the law for me to  
 11 guarantee what the legislature might do and -- and what  
 12 the Governor might do on any -- on any particular piece of  
 13 legislation. But, again, it -- it's our view that the  
 14 most essential question of who is subject to the laws of  
 15 Arizona, whatever they may be, is most appropriately, most  
 16 correctly dealt with by the legislature.  
 17 COMMISSIONER KIMBLE: Okay. Thank you.  
 18 CHAIRPERSON KOESTER: Maybe Mr. Collins would  
 19 like to make a -- a statement. But I have to say that Mr.  
 20 Spencer and Mr. Collins have spent hours and hours in his  
 21 office back and forth trying to find common ground, but  
 22 there's some sticking points that never were resolved. So  
 23 it's not that a lack of effort, I don't believe. So I  
 24 think he might say a little more here --  
 25 MR. MILLER: Oh. Mr. Chairman, I absolutely  
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1 agree with you.

2 MR. COLLINS: Yeah, I mean, Mr. -- Mr. -- Mr.

3 Chairman, Commissioners, I don't want to, you know, get

4 into a -- I think there's just a couple of factual points

5 that I think are worth making around -- around what Mr.

6 Miller has said that I really think are important to bear

7 in mind on a perspective on what -- what's going on here.

8 I think Commissioner Kimble is correct. No

9 matter what the Commission does -- and Chairman Koester is

10 correct, no matter what the Commission does, the

11 legislature exists, and the legislature may take actions,

12 whatever those actions are going to be. In the meantime,

13 what does the Commission see its obligation as to provide

14 clarity within its sphere during the time until that

15 happens?

16 And I think that with this election cycle

17 basically underway, the incentives are there to set down

18 what we think the policy ought to be. And we've had that

19 conversation. In other words, the Sec- -- the Commission

20 is not in a position where it's saying: Oh, we have some

21 ideas about it might be a little of this, may be a little

22 that. We have a thing that's written down which is the

23 objective of this whole enterprise that says: If these

24 things happen, then these penalties will follow; and if

25 these other -- these other things happen, these penalties

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1 orders that makes clear that folks who are below a

2 threshold level of activity have noth- -- nothing to be

3 involved with.

4 So, there's a switching of the apple for the

5 orange in who is concerned with this rule. This rule does

6 not concern true grassroots advocacy because the -- that

7 at a -- at -- at low levels, because the legislature has

8 itself already established that there is a floor that this

9 does not go below at which me and my friend who put

10 together some signs and stand on the corner and say this

11 legislation stinks or this guy ought to be thrown out,

12 that person, no one has any business talking to and no one

13 should, and that is the law of this State. And this

14 doesn't affect that.

15 And so I think it's important that we not have

16 our policymaking driven by a concern that's already taken

17 care of, which is to say: The grassroots' person, the

18 person who doesn't need a lawyer, doesn't need a lawyer.

19 And, in fact, the Secretary has wisely proposed

20 that perhaps even the minimal exemption form some folks

21 have to file in order to just do the minimal amount ought

22 to be done away with as well, and that would relieve even

23 what light burden arises for that person at that very

24 libble -- little threshold level. And that's -- that

25 resolves that.

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1 will not follow.

2 So, we're quite far along in terms of that.

3 We're not at -- at the drawing board, we have drawn the

4 picture.

5 With respect to whether or not people don't know

6 what it is, I think that really -- who should file, I

7 think that really gets to the essence of what Judge

8 Tielborg was talking about. Now, I -- you know, there's

9 three people in this room who actually litigated the case

10 in front of Judge Tielborg. They're: Jim Barton and Jim

11 Driscoll and me. Okay? Nobody else.

12 And I won't speak for Jim and Jim, but, you know,

13 Judge Tielborg had a particular view of how the law works,

14 but one thing that he did say that I would agree with Lee

15 about is that you ought to be able to identify who has to

16 do what, and that is precisely what this rule does. And

17 so this rule meets in no uncertain terms, Judge Tielborg's

18 request to the State. It does. There's no -- there

19 should really be no reasonable debate about that.

20 And, finally, with respect to this notion that

21 one oughtn't have to have a lawyer to engage in grassroots

22 political advocacy. There is no one in the State of

23 Arizona who works in campaign finance who believes

24 otherwise. And the State legislature has a policy in

25 place, adopted subsequent to some of Judge Tielborg's

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1 All of those things are quite different from

2 hybrid political organizations that we all know are

3 engaged in spending quite a bit of money on politics, but

4 who themselves have said they don't know precisely how

5 regulators will approach the problem. That's what Mr.

6 Liburdi wrote on behalf of the Free Enterprise Club in his

7 response to the Secretary of State which is cited in my

8 memo. That's what -- that's really the driving force

9 behind this.

10 So, we're doing that. We're achieving our

11 mission. We're meeting our objective. And by doing that,

12 it sets forth a thing folks can rely on and a thing the

13 legislature can look to as -- as -- as a starting place.

14 I am skeptical, to say the least, that further

15 discussion at this point in the absence of a concrete

16 proposal.

17 We have asked now since May, essentially, for the

18 Secretary of State's office to provide a definition of

19 "primary purpose." Just that. They haven't done it.

20 They haven't given it to us. When Mr. Spencer proposed to

21 reorganize Title 16 in a way that dealt with campaign

22 finance, he said that "primary purpose is low-hanging

23 fruit," and I think I wrote you-all a memo to this effect,

24 but he doesn't say what it is.

25 The answer to the question has been asked for and

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1 asked for. The next 30 days or 60 days won't prompt an  
 2 answer. I think the more likely outcome to prompt an  
 3 answer to the question we have asked and -- and have taken  
 4 up, I think, correctly the obligation to answer, is by  
 5 providing our answer -- or, your answer if you think it's  
 6 right.

7 That's what I think is -- is a decisive action  
 8 that be can -- can be taken and then as everyone has  
 9 observed, many, many actors may follow from that. That  
 10 does not create uncertainty. It does not create  
 11 uncertainty to have a written-down rule. It, in fact,  
 12 creates certainty. That's the nature of this process.

13 From the Clean Elections' perspective, it will be  
 14 certain. If others are uncertain, they have a choice then  
 15 of looking at the certainty of the Clean Elections' rules  
 16 or of developing and revealing to the public what other  
 17 item there is.

18 But the request, with all due respect to Mr.  
 19 Miller, is for -- to actually continue the uncertainty  
 20 into the election cycle, which I don't think is in the  
 21 best interest of implementing the Act. If we've made the  
 22 decision to move forward in this way in the first place.

23 CHAIRPERSON KOESTER: Thank you. Anything else  
 24 or --

25 MR. MILLER: No. Not -- not unless there are  
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1 including a 60-day public comment period. It's only after  
 2 this type of clear administrative process the Commission  
 3 move forward with the final vote.

4 Now, if we had our druthers, given the expansion  
 5 the Commission's jurisdiction has to impact the citizens'  
 6 participation in the electal- -- electoral process, we  
 7 believe the best course of action would be to pursue  
 8 changes via the legislature, but we realize that may not  
 9 be an option after all. But we would simply echo what  
 10 we've said in our letter submitted for the record.

11 Thank you.

12 CHAIRPERSON KOESTER: Thank you. Any other  
 13 comments?

14 Yes, sir. If you would state your name when you  
 15 come up.

16 MR. BARTON: Good morning. Jim Barton on behalf  
 17 of Torres Law Group. I guess I want to speak on behalf of  
 18 somebody who advises clients on how to comply with  
 19 campaign finance law. And we do need clarity and -- and,  
 20 frankly, I thought version two was better, the Executive  
 21 Director mentioned that my firm objected to prefer -- to  
 22 version three because we like version two better, but I  
 23 think version three is certainly better than nothing. I  
 24 really urge the Commission to adopt that.

25 I think the -- the -- you know, the question  
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1 additional questions.

2 CHAIRPERSON KOESTER: Okay. All right. Well...

3 COMMISSIONER TITLA: Mr. Chairman?

4 CHAIRPERSON KOESTER: Someone else? Sure. Go  
 5 ahead.

6 MR. TAYLOR: Commissioners, for the record,  
 7 Garrick Taylor with the Arizona Chamber of Commerce and  
 8 Industry. I'll keep our comments brief here.

9 You've already heard from Mr. Miller, we would  
 10 echo his desire to see this -- this item tabled. You've  
 11 heard from our counsel, Mr. Johnson. Our concerns with  
 12 the proposed rule changes and the Commission's process in  
 13 amending the rules have already been well documented. Our  
 14 comments, I believe you have this letter submitted by the  
 15 Chamber and several other business associations across the  
 16 State. Obviously, there's still disagreement in the  
 17 community over this issue.

18 We are still unclear whether we're talking about  
 19 version three or version three with additional comments  
 20 provided from Director Collins. Frankly, we don't believe  
 21 there are -- there is a need here to rush into amending  
 22 these rules. And rather than do this in an ad hoc and  
 23 unpredictable fashion, we would encourage the Commission  
 24 to take the time to publish an official proposed rule that  
 25 can be considered through open and public discussion,  
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1 comes down to the clients come to you and say: All these  
 2 other guys are cheating, how -- why shouldn't we cheat?  
 3 And you need to be able to say there's somebody that is  
 4 going to enforce the law. And the lack of clarity and the  
 5 lack of enforcement is disastrous to having an orderly,  
 6 legal way to proceed. And so I strongly encourage you to  
 7 adopt this rule.

8 The Commission has -- as far as regulated  
 9 independent expenditures from all -- from all sources,  
 10 that's been a part of the Commission's, you know, standard  
 11 from the beginning. You know, even after we took away --  
 12 even after the Supreme Court took away matching funds, the  
 13 -- that -- that reporting remained. So, I guess, you  
 14 know, this -- this poor guy from Page who's trying to  
 15 figure out how to -- how to run for office, as others have  
 16 said, he's not going to be affected by this rule, right?

17 This rule is about -- this rule is about a  
 18 corporation or group of people that are sitting around  
 19 saying: Hey, what's this thing where we put together a  
 20 fake 501(C)(4) and we just say it's a 501(C)(4) and then  
 21 we just secretly spend money in elections, why shouldn't  
 22 we do that?

23 You know, if the IRS did things differently, then  
 24 the IRS could enforce and say: Hey, that's the wrong  
 25 regulation. By the way, that's another concurrent  
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1 jurisdiction, is the IRS can get involved in this: You  
 2 guys should be registered as a 527, not a 501(C)(4).  
 3 Yeah, but that's not happening too much, either.  
 4 And they say: Well, if nobody's going to  
 5 regulate it, then, Jim, why do you keep telling me to  
 6 follow the law? Why do I -- why do you keep making me the  
 7 chump who's following the law when there's nobody  
 8 watching -- nobody's watching the store?  
 9 So I really think that -- like I said, I like  
 10 version two better, but I think version three is good. I  
 11 really strongly encourage you to adopt it. And I do think  
 12 this rule will give some of that certainty and give some  
 13 of that -- it will give something for me to tell my  
 14 clients why they should follow the law because somebody's  
 15 going to be watching the henhouse. Thanks.  
 16 CHAIRPERSON KOESTER: Thank you.  
 17 Mr. Hoffman?  
 18 MR. HOFFMAN: Yeah. Thank you. I'll try to be  
 19 brief because I spoke earlier. I agree with about  
 20 80 percent of what Mr. Miller says. I think it would be  
 21 very valuable if the organizations could get together and  
 22 present something to the legislature. In the meantime, I  
 23 think you ought to pass this rule before the election  
 24 cycle so that our -- our rules, the Commission rules, the  
 25 statutes require that there be rules passed in the year  
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1 [sic] and published by the Citizens Clean Elections  
 2 Commission which are the two bodies that deal with  
 3 election law.  
 4 And if I look at the -- if I go to the  
 5 Attorney -- the Secretary of State's site -- did I say  
 6 Attorney General? I always do that. I'm sorry. The  
 7 S.O.S. and the -- and the Commission.  
 8 If I go to the S.O.S. site, I'm not going to get  
 9 any help. Despite the "S.O.S." The -- I'm not going to  
 10 see something in there that gives any -- any indication of  
 11 what it means to follow the primary purpose. If I go to  
 12 the Commission site right now, I'm not going to get any  
 13 help. But if this rule passes, I will. I will be able to  
 14 do that without going to a lawyer, which is precisely what  
 15 the S.O.S. says they want.  
 16 So, I don't understand the anger and the -- and  
 17 the attacks on the Commission for passing a rule to tell  
 18 people what they think this means. If the legislature  
 19 gets together and gets its act together and passes some  
 20 clarification to this rule itself or some further  
 21 clarification or modifications, like perhaps a rule that  
 22 says: If you mess -- if you're going to spend money on  
 23 Arizona elections, you're a political committee unless  
 24 it's less than \$500, that would be real easy and one that  
 25 I'd recommend. But until they do, I think this Commission  
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1 before the election, not during election years except in  
 2 extreme circumstances and there's a strong incentive to do  
 3 that.  
 4 With regard to what rule -- although I, as the  
 5 author of the version-two thing, I appreciate the  
 6 compliment. I, too, am here to support that you pass all  
 7 but the first and last paragraph. I'd like to recommend  
 8 that you reject the first paragraph and the last paragraph  
 9 of version three, but pass the remainder with revisions to  
 10 clarify, for example -- with tweaks to clarify what it  
 11 applies to; and, specifically, the changes proposed by Mr.  
 12 Collins, and in our comment we had a slight wording  
 13 revision to make it even clearer as to what it applies to.  
 14 I think that if I'm somebody in Page or any other  
 15 city in Arizona, and the first thing I do is look at the  
 16 statute, I'm going to see "primary purpose test," and I'm  
 17 going to not be a hundred percent sure what that means.  
 18 How do I determine what's the primary purpose, whether I  
 19 was -- whether I'm organized or whether I'm operating for  
 20 the primary purpose of -- and there -- there's -- so what  
 21 am I going to do at that point?  
 22 I have two choices: I can either call a lawyer  
 23 and say: What do we mean by primary purpose and does my  
 24 situation apply; or, I can go and look at the regulations  
 25 or instructions that are published by the Attorney General  
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1 ought to provide some guidance. And what you can do --  
 2 So, anyways, specifically I would like to  
 3 recommend that you adopt the proposal in what Mr. Reckart  
 4 and I suggested, which is to adopt all but the first and  
 5 last proposals -- all but the first and last paragraphs of  
 6 the version three proposal with the modifications by Mr.  
 7 Collins and with the one further edit to Mr. Collins'  
 8 modifications that we suggested.  
 9 I'm also happy if there's any questions to -- to  
 10 comment.  
 11 COMMISSIONER KIMBLE: Mr. Chairman?  
 12 CHAIRPERSON KOESTER: Commissioner Kimble.  
 13 COMMISSIONER KIMBLE: Mr. Hoffman, when you say  
 14 "the first paragraph," are you talking about the burden of  
 15 proof --  
 16 MR. HOFFMAN: Yes.  
 17 COMMISSIONER KIMBLE: -- paragraph?  
 18 Okay. I think that's already been stricken  
 19 in the version I have.  
 20 MR. HOFFMAN: Well, that was in -- in Mr.  
 21 Collins' comment --  
 22 COMMISSIONER KIMBLE: Okay.  
 23 MR. HOFFMAN: -- he suggested striking it and I  
 24 -- and I concur.  
 25 COMMISSIONER KIMBLE: Okay. As to the last  
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1 paragraph, I agree with you. The last paragraph reading:  
 2 "The Commission shall not release information  
 3 gathered in the course of the investigation of an  
 4 entity's political committee's status without  
 5 three business days' prior notice to the entity  
 6 to permit the entity to seek an order preventing  
 7 such release."  
 8 I think it's pretty clear that all of the  
 9 Commission's records are open. And I would question  
 10 whether this three-day delay con- -- conforms with the  
 11 Arizona public records law. And I -- I agree with you the  
 12 last paragraph should be stricken.  
 13 MR. HOFFMAN: Yeah. The -- the underlying last  
 14 paragraph in the version you proposed was -- was even  
 15 different than what you read. What you read was Mr.  
 16 Collins' proposed rewrite. I think that ought not to be  
 17 in the rule and simply ought be addressed as a public  
 18 records act, and -- and that was what Mr. Reckart and I  
 19 suggested. It -- that's something that could be addressed  
 20 as a separate matter.  
 21 There may be circumstances, let me add, in which  
 22 the -- certain material is not considered public and  
 23 certain private, you know, organizations do have the right  
 24 to request that certain information that's provided to any  
 25 public body be deemed private and not subject to the  
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1 CHAIRPERSON KOESTER: Thank you.  
 2 MR. HOFFMAN: Are there any other com- --  
 3 questions?  
 4 Thank you.  
 5 CHAIRPERSON KOESTER: Thank you. Well, any --  
 6 any further comments from any other one -- anyone else in  
 7 the audience?  
 8 One more gentleman.  
 9 MR. WILLIAMS: Good morning, Commissioners. My  
 10 name's Stanley Williams, I'm with the Arizona Advocacy  
 11 Network. And I would also like to urge adoption of rule  
 12 three today.  
 13 We've been hearing lots of different arguments  
 14 today. I -- I think it's pretty funny to hear that there  
 15 should be more public comment. I've been coming to  
 16 meetings since May; you all have been getting a lot of  
 17 public comment. And I think it does stand in contrast to  
 18 the way that some other offices are going about their  
 19 rules and statute changes as well.  
 20 But I think it would be worth noting, the  
 21 comments that have come in thus far, we've requested  
 22 through a public -- public request several times to see,  
 23 you know, what's being said about these things, and the  
 24 vast majority of comments in favor have been from  
 25 individuals, people who want to know who are trying to  
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1 public records law, and those -- there is procedures for  
 2 how to deal with those requests, and that's what the  
 3 Commission ought to follow and not have some sort of  
 4 separate rule for this unique -- or unique rule applicable  
 5 to this situation.  
 6 So, that's why I suggested that you adopt the --  
 7 remain -- the balance of the published proposal excluding  
 8 the first and the last paragraph. And then the revisions  
 9 which are wording changes that Mr. Collins proposed are  
 10 simply clarifications of what was intended, and we had a  
 11 slight additional few words to modify what it applied to  
 12 as well.  
 13 I -- I'd like to see the Commission, you know,  
 14 join together to -- to, you know, tell people that this  
 15 rule is intended to provide some guidance and if the --  
 16 you know, now that the -- now that the Secretary's  
 17 petition is -- been denied so that there is a statement  
 18 that will remain in our rules for -- which has been there  
 19 for three or four years, that this Commission could impose  
 20 a penalty for violation of -913, this rule ought to help  
 21 give people some guidance as to what it means to violate  
 22 -913 according to the way the legislature has modified the  
 23 -- the statute as it stands today. And I think that's  
 24 helpful and I don't understand why that's such a threat to  
 25 people.  
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1 influence their elections. The very few comments against  
 2 have come from businesses, people who represent big  
 3 business, big money.  
 4 And I think it is worth noting, the arguments at  
 5 least from my perspective that we're hearing against what  
 6 you-all are trying to do, have really boiled down to  
 7 either this nonsensical turf war that I would think voters  
 8 don't really care about, and then also not a -- I think  
 9 the words used have been "chilling of speech," but really  
 10 a lack of influence over elections that actually doesn't  
 11 exist.  
 12 This rule wouldn't do anything to stop groups  
 13 from having influence in the election. It would help  
 14 provide clarity on who is trying to have influence over  
 15 our elections.  
 16 And, so, I think you-all have been under attack  
 17 many legislative sessions in a row now, through the courts  
 18 you-all have survived all of those attacks but one. We  
 19 probably wouldn't be here in -- talking about this  
 20 specifically had that court case gone a different way.  
 21 But, really, it doesn't -- it doesn't seem to make sense  
 22 to me to delay any further unless a concrete proposal were  
 23 to come forward and an offer to stand down. You know, if  
 24 the allies in the legislature of the Chamber and the  
 25 Secretary's office would stop trying to repeal the  
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1 Commission, then it might be worth looking at some of  
2 these delays and let the legislative process unfold.  
3 They've had many opportunities to do that the  
4 last few years, especially since Citizens United, but that  
5 hasn't happened. And so, again, I would just encourage  
6 you all to adopt rule three today. Thank you.  
7 CHAIRPERSON KOESTER: Thank you.  
8 Yes, ma'am?  
9 MS. KNOX: My name is Rivko Knox, and I'm  
10 speaking actually -- although I've submitted a comment as  
11 an individual, I'm speaking on behalf of the League of  
12 Women Voters of Arizona; we submitted a comment as well.  
13 The League was one of the entities who worked very hard  
14 with other organizations way back prior to the passage of  
15 the Clean Elections initiative and we support what the  
16 Commission is doing with all of the permutations that have  
17 gone back and forth.  
18 I don't want to go into detail, I'm not an  
19 attorney, but I think that the whole idea of making the  
20 Clean Elections -- making the process of the Clean  
21 Elections Commission supports, which is enabling more and  
22 more people to be involved in the election process in a  
23 way that is clear and easy for people to understand is  
24 something that the League definitely supports. And I  
25 think that with various modifications discussed already  
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1 COMMISSIONER TITLA: Second.  
2 CHAIRPERSON KOESTER: Okay. It's been moved and  
3 seconded for the version three with the exceptions --  
4 minor exceptions noted on --  
5 MR. COLLINS: And -- and just so every- --  
6 everyone understands, that last exception is with respect  
7 to the item in -- what is on -- in the renumbering what is  
8 currently Section 3 of Exhibit 2, having to do with the  
9 release of public information.  
10 CHAIRPERSON KOESTER: Okay.  
11 MR. COLLINS: This -- the result of that aspect  
12 of the motion would be that, as we have in the past,  
13 issues related to enforcement or anything else, would be  
14 handled according to the public records law and whatever  
15 rights that both private people and people who seek  
16 records have under that law.  
17 CHAIRPERSON KOESTER: I think Mr. Hoffman just  
18 has a question.  
19 MR. HOFFMAN: Pardon me. Yes. I -- I don't know  
20 if you intended -- we had suggested that a few additional  
21 words to Mr. Collins' edits that would make it clear that  
22 the proposal -- that the rule only applies to the  
23 operation of entity- -- entities and not to their  
24 formation, and that was in our comments. And it would  
25 require a few additional words and I'd urge the Commission  
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1 this morning, that it is time for the Commission to take  
2 action clarifying and making for transparency and an  
3 independent entity, which the Commission is, to enforce  
4 rules is exactly what the Clean Elect -- was intended by  
5 the people when they voted for the Clean Elections  
6 initiative way back -- what is it? -- 15, 16 years ago.  
7 Thank you very much.  
8 CHAIRPERSON KOESTER: Thank you.  
9 I'm not seeing anybody else with a  
10 comment --  
11 COMMISSIONER KIMBLE: Mr. Chairman?  
12 COMMISSIONER TITLA: Chair?  
13 CHAIRPERSON KOESTER: Go ahead.  
14 COMMISSIONER TITLA: Go ahead.  
15 COMMISSIONER KIMBLE: I want to make a motion  
16 that I think incorporates all of the various edits that  
17 we've been talking about.  
18 I move the Commission adopt as a final rule  
19 Exhibit 1 to the Collins' October 16th, 2015 memo, except  
20 that Section 12 of Exhibit 1 should be replaced with the  
21 text of Exhibit 2; with the edits in Exhibit 2  
22 incorporated in Section 3 of Exhibit 2 dealing with the  
23 release of information is not adopted; Exhibit 2 should be  
24 renumbered to conform with the style of Exhibit 1. And I  
25 make that in the form of a motion.  
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1 to include that -- that edit.  
2 CHAIRPERSON KOESTER: Operation instead of --  
3 MR. HOFFMAN: The conduct I believe is the --  
4 Tom, could you help with the...  
5 MR. COLLINS: So -- so with respect to Mr.  
6 Hoffman's -- and Mary, please, you know, if there's a  
7 thing here at this point, if you have anything you need us  
8 to do from a procedural perspective, please interrupt me.  
9 But Mr. Co- -- Mr. Hoffman's point as I  
10 understand it is that the "political committee" definition  
11 that gives rise to a lot of this discussion, it talks  
12 about things, three different ways in which one takes the  
13 form of a political committee: One is to be conducted as  
14 a political committee; another is to be organized as a  
15 political committee; and, yet, a third is to be combined  
16 in some way to be a political committee.  
17 I am trying to find the exhibit. If someone had  
18 the number, it would be helpful for them to tell it to me  
19 so I could have it in front of me while I'm speaking. I'm  
20 riffing here.  
21 But the upshot of what Louis just said is that  
22 you might delineate that a entity that's organized  
23 essentially on purpose as a political committee is a  
24 political committee. Doesn't matter really how they spend  
25 their money. If you get up and say: I am a political  
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1 committee, you're a political committee.  
 2 So, this is comment 18, which is at pretty -- I  
 3 don't know what tab it's at, but...  
 4 MS. THOMAS: Tab 4, public comments.  
 5 MR. COLLINS: So, anyways, that's the upshot of  
 6 it. People who are organized as political committees  
 7 would be delineate- -- would be -- it would be clarified  
 8 that people who are organized as political committees are  
 9 political committees. People who combine themselves, I  
 10 don't -- I can't find at this point what the combination  
 11 point is. And then conduct which is the upshot of most of  
 12 what we're talking about would be dealt with separately.  
 13 I -- I -- to be honest with you, in the event  
 14 that someone is, in fact, organized as a political  
 15 committee and makes no argument that they're organized as  
 16 a political committee, they are probably going to file as  
 17 a political committee and it will be difficult for them to  
 18 defend themselves under this conduct prong even if we de-  
 19 -- under this evaluation as not a political committee  
 20 because of the way that they're going to act.  
 21 So, I -- I -- I will be honest with you, I just  
 22 -- it's up to you. It's really -- I -- it -- it may be  
 23 helpful but, you know, I think we have a rule. I think  
 24 the rule has been evaluated. I think we've received  
 25 comments. I think -- so, I wouldn't -- unless you guys --  
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1 that somebody can be formed or conducted for the primary  
 2 purpose. Or combined, which is another way of forming.  
 3 So, I -- I -- I'd recommend that you make that  
 4 further change to clarify to -- to what the rule applies.  
 5 MR. JOHNSON: Chairman?  
 6 CHAIRPERSON KOESTER: Do you see where this is?  
 7 MS. THOMAS: Mic.  
 8 MR. JOHNSON: Mr. Chairman, again Brad Johnson on  
 9 behalf of the Chamber, outside general counsel.  
 10 I think it is quite telling of the amount of  
 11 lawyers, and I agree with Mr. Miller in that sense,  
 12 including your own counsel, who cannot figure out exactly  
 13 what rule is actually being presented here today or has  
 14 been commented on. What I just heard from Commissioner  
 15 [sic] Hoffman say is basically a reversion back to version  
 16 one, which is if you spend \$500, you should be considered  
 17 a political committee.  
 18 I don't know if that's exactly what he was  
 19 saying, but that's what I heard, so I apologize.  
 20 MR. HOFFMAN: It's not.  
 21 MR. JOHNSON: Okay. But that being said, what we  
 22 need here is, is a clear rulemaking process, whether it's  
 23 30 days to meet Commissioner [sic] Hoffman's rule, but we  
 24 have never heard other than what Commissioner Kimble just  
 25 said, of going line by line of as to what paragraph should  
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1 unless anything I've said sounds particularly interesting  
 2 to you, I wouldn't -- I -- I would just at this point save  
 3 that. If it comes up again in a way that needs to be  
 4 clarified, we can do it then. That would be my --  
 5 MR. HOFFMAN: The specific suggestion is on page  
 6 4 of the comments of Mr. Reckart and myself dated  
 7 October 26th, which I believe was --  
 8 MS. THOMAS: 18.  
 9 MR. HOFFMAN: -- comment --  
 10 CHAIRPERSON KOESTER: 18.  
 11 MR. HOFFMAN: -- 18. And we suggested that --  
 12 Mr. Collins had suggested inserting under Section --  
 13 Section 20(F) as -- under 20(F), and then: "Unless a  
 14 preponderance of evidence establishes that"; and we  
 15 suggested inserting: "As being conducted for the primary  
 16 purpose of indi- -- of influencing an election."  
 17 So, to make clear that this is only applied --  
 18 that the test being made is only applied to the conduct of  
 19 the entity rather than to the formation of the entity.  
 20 So, in that way a organization that is formed for  
 21 the purpose of influencing an election can still be  
 22 considered to be a political committee if they spend \$500  
 23 or more, regardless of their -- their -- the amount of  
 24 money they spend or the percentages that they spend. And  
 25 that's what the statute seemed to say that it would --  
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1 be included and not included, we have not heard from the  
 2 entire Commission as to what the rule is that the public  
 3 is actually commenting on.  
 4 We have had people from the public proposing  
 5 different procedures, then we have Executive Director  
 6 Collins the week before making changes to those comments  
 7 by the public. We've never heard from the Commission  
 8 itself. The Commission itself needs to say: If we are  
 9 going to vote on a rule, this is what it's going to look  
 10 like. Exactly what Commissioner Kimble just put together.  
 11 Here are the four corners of it and we're going to vote on  
 12 this rule next time. We have never had that in three  
 13 versions.  
 14 Now, all of the constant shuffling back and forth  
 15 of the lawyers trying to figure out exactly what exactly  
 16 different words are going to be meaning, is exactly why we  
 17 need to understand from the Commission: What is the rule  
 18 you-all are putting out? Not what a Langhofer it is, not  
 19 what Executive Director Collins is putting out. What does  
 20 the Commission want? And then allow public comment in  
 21 regard to that. We have not had that.  
 22 So, I would recommend is, is that the Commission  
 23 take this opportunity, vote "no" on adopting the petition  
 24 as it is right now; discuss amongst yourself as to what  
 25 you think the rule should look like from a Commission  
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1 standpoint; and then from that, this is the rule we're  
2 going to vote on as a Commission because we can understand  
3 the Commission's thinking on the various rules and proceed  
4 accordingly.

5 That is how the rulemaking process works in other  
6 administrations. And so that is the process that I would  
7 highly recommend that you take today. Because we as the  
8 public do not understand what the Commission is putting  
9 forward. And that is what you need comment on, what the  
10 Commissioners want, not individuals.

11 COMMISSIONER TITLA: Chairman --

12 MR. JOHNSON: Thank you.

13 COMMISSIONER TITLA: -- point of order. A motion  
14 was made, a second was made, I call for the question.

15 MR. JOHNSON: On what?

16 COMMISSIONER TITLA: A vote be made.

17 MR. COLLINS: Would -- would you like the vote, I  
18 mean, do I -- so. I'm sorry, Mr. Chairman, it's your --

19 CHAIRPERSON KOESTER: Yes. Well, I -- I think  
20 that the changes as suggested are extremely minor, it  
21 doesn't change the purpose of -- of the version three. I  
22 think as Mr. Collins has said we could -- we could omit  
23 what Mr. Hoffman says and -- and come back to it again.

24 MR. COLLINS: Mr. -- Mr. Chairman, I think Mr.  
25 Titla's -- if I'm understanding -- if I understand the

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1 prop- -- proper posture here, Mr. Titla having called for  
2 the question, the vote is now in front of you, I think --  
3 is -- is I think what's he's -- I think the discussion at  
4 this point terminates. And you -- and the vote is -- is  
5 in front of you. I believe.

6 COMMISSIONER MEYER: Commissioner --

7 MR. COLLINS: But, Mary, I'm -- I'm asking Mary  
8 if there's any other procedural -- other procedural  
9 meaning to what Mr. Titla said that I'm not aware of.

10 MS. O'GRADY: They can also -- yeah, if there are  
11 more questions, they can -- they can get answered if there  
12 are more questions.

13 MR. COLLINS: Okay. Okay. I just wanted -- I  
14 just wanted to make sure we were all -- understood the  
15 record.

16 CHAIRPERSON KOESTER: Okay. Commissioner Laird.

17 COMMISSIONER LAIRD: I mean, I'm confused at this  
18 point. You know, there's -- Commissioner I think's done a  
19 great job thinking through it, apparently better than I  
20 did because I didn't follow all the inclusions and  
21 exclusions and then we've have other recommendations that  
22 apparently were sympathetic, too, that we're also going to  
23 make, which I think goes to the point that counsel for the  
24 Chamber was making. I mean, I'm confused as to what the  
25 exact rule is. And I guess as a lawyer I think every word

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1 matters. I mean, one word can completely change the --  
2 the meaning of the sentence.

3 So, if -- if we're making a bunch of changes that  
4 we only got out a week ago, and then we're making more  
5 changes today, I would rather err on the side of openness  
6 and disclosure and put out exactly what we think, you  
7 know, ought to be a thumbs-up or thumbs-down vote, and  
8 maybe give 30 more days if we don't need 60 legally.

9 I would like to look at the -- the amended  
10 version. I'm -- I'm confused.

11 MR. COLLINS: Mr. Chairman, if -- may I  
12 respond --

13 CHAIRPERSON KOESTER: Sure.

14 MR. COLLINS: -- I mean, I think Mr. Laird's  
15 comments really do --

16 CHAIRPERSON KOESTER: Yeah.

17 MR. COLLINS: Two things really quickly. The --  
18 the motion, Mr. -- I -- I -- I do not believe and I did  
19 not recommend that you move forward with anything Mr.  
20 Hoffman just said. It is unnecessarily injecting a new  
21 discussion point that is not appropriate at this time.  
22 The motion was made for the content that is in front of  
23 you and it is exclusively made on the content that has  
24 been in front of you, including the memo that I wrote  
25 which mentioned that you -- you could go either way if you

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1 choose on the public records issue.

2 So, everything that was in Mr. Kimble's motion,  
3 to be fair to him, is precisely what has been available  
4 since October 16th. And, you know, the Commission did  
5 move in August to have that version circulated, and then  
6 the Commission did ask me in September to produce that  
7 memo on the timeline that -- that it was produced. So,  
8 all those things are true. All those things are  
9 documented in the record.

10 What has happened right now with Mr. Hoffman's  
11 interjection on an issue that he cares about is not  
12 relevant to -- let's not get confused here. What Mr.  
13 Hoffman says he would like is not what the Commission does  
14 and not what the Commission is voting on. Mr. Kimble has  
15 made a motion -- just -- I'm just trying to clarify the  
16 record so everybody understands.

17 Mr. Kimble has made a motion that is based  
18 explicitly in every way on the publically-available  
19 information, the precise language the Commission voted to  
20 circulate and then requested a final read through and memo  
21 about, and -- and -- and does nothing else but that. Any  
22 other thing that's happened here in the last five minutes  
23 is not anything the Commission has done. And so that's  
24 the question before you. Mr. Titla has called for the  
25 question. You obviously, yes, can clarify that.

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1 But to -- to answer your question as clearly as I  
 2 can, the motion simply adopts the memo, exhibits, that you  
 3 have had and that have been available, with the only thing  
 4 it excepted as I said at the outset, is the public records  
 5 piece which, again, my memo itself articulated to everyone  
 6 who -- to whom it was available to -- and it was available  
 7 to everyone -- was something that was a policy decision  
 8 for you.

9 So, I just want to make sure everyone understands  
 10 that what Mr. Hoffman just said and what's before the  
 11 Commission have no relationship to one another because Mr.  
 12 Hoffman cannot and is not in a position to make a motion.  
 13 Mr. Kimble has made the motion. That's the motion that's  
 14 in front of you.

15 COMMISSIONER LAIRD: So -- see -- let me see if I  
 16 can understand. So, the -- the what is before us is the  
 17 draft version that you submitted to us. But did -- did  
 18 the public see this with -- with these edits? I know the  
 19 public said -- saw draft one of version three --

20 MR. COLLINS: Right.

21 COMMISSIONER LAIRD: -- but then you sent out  
 22 what -- what I'll call draft two of version three --

23 MR. COLLINS: Correct.

24 COMMISSIONER LAIRD: -- and now we're proposing a  
 25 draft three of version three, which is deleting the last  
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1 issue, because anyone who was at the meeting would have  
 2 known it was coming.

3 COMMISSIONER LAIRD: Yeah.

4 MR. COLLINS: Anyone who was so interested in  
 5 this issue that they were following it --

6 COMMISSIONER LAIRD: Yeah.

7 MR. COLLINS: -- would have been well aware that  
 8 this was exactly how the process was going to unfold  
 9 because this is the process the Commission decided to  
 10 have.

11 COMMISSIONER LAIRD: Right.

12 MR. COLLINS: So, in that sense, I -- I -- I  
 13 don't -- I -- I don't want to get -- I -- I just don't  
 14 want to get too far afield from that. It's been available  
 15 on the Web since -- I -- I don't know the date, perhaps  
 16 someone will be able to find that answer for us.  
 17 Certainly the Chamber has had it, you know, Mr. Taylor and  
 18 Mr. Hamer are -- are able policy and lawyers in their  
 19 right. You know, I -- I just don't -- I have a difficult  
 20 time understanding that position in view of what's  
 21 actually happening as opposed to, you know, some of the  
 22 confusion that may have just occurred with other things  
 23 being injected that are not, in fact, subject to the  
 24 motion that's in front of you.

25 COMMISSIONER LAIRD: So, let me just say, again,  
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1 paragraph of the --

2 MR. COLLINS: Well, what my -- what -- if you --

3 COMMISSIONER LAIRD: -- of number two. Yeah.

4 MR. COLLINS: The public had available to it all  
 5 of those things, correct.

6 COMMISSIONER LAIRD: Including the edited -- the  
 7 edited version?

8 MR. COLLINS: Yes.

9 COMMISSIONER LAIRD: And more than 10 days ago?

10 MR. COLLINS: On October 16th it was circulated  
 11 to you. I don't know precisely what day we put it on the  
 12 Web. I -- we know -- I know we sent it to the Chamber  
 13 with -- what? -- I don't know maybe on last Monday.

14 These changes, Mr. Chairman, Mr. Laird, are --  
 15 are not significant. They're not. I mean, I -- I just --  
 16 they're not.

17 But Mary, obviously, could tell you a little more  
 18 about that procedurally. They've been available since the  
 19 16th. If you were at the meeting, you would have known  
 20 that I was tasked with producing this by the 16th.

21 COMMISSIONER LAIRD: I think I asked you that.

22 MR. COLLINS: Right. And so --

23 COMMISSIONER LAIRD: Yeah.

24 MR. COLLINS: -- the fact that we didn't put it  
 25 on the Web on the 16th, I guess seems to be the only  
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1 to be sure --

2 MR. COLLINS: Okay.

3 COMMISSIONER LAIRD: -- I got it --

4 MR. COLLINS: Absolutely.

5 COMMISSIONER LAIRD: -- because I want to make  
 6 sure I got it, because there's several vesion- -- versions  
 7 floating around.

8 So, the Commissioner's motion is version two that  
 9 you sub- -- you submitted to the Chamber and you submitted  
 10 to us on October 16th --

11 MR. COLLINS: Correct.

12 COMMISSIONER LAIRD: -- with the exception of the  
 13 last paragraph, and we -- this amendment deleted the first  
 14 last paragraph and now we're deleting the --

15 MR. COLLINS: Correct.

16 COMMISSIONER LAIRD: -- revised last paragraph --

17 MR. COLLINS: That is --

18 COMMISSIONER LAIRD: -- otherwise it's the same?

19 MR. COLLINS: Right.

20 COMMISSIONER LAIRD: Okay. Well, I -- you know,  
 21 I -- I would say this: You know, I think it was a really  
 22 good effort, Tom, by you, by Mary, to put together  
 23 something substantive that would be more understandable  
 24 than just you -- you're a political committee, you --  
 25 primary purpose with no definition whatsoever. So, I  
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1 applaud you for that. I -- and for that reason, I think  
 2 it's much better than our current rule. And so, I could  
 3 likely support it for that reason.  
 4 I -- I am a little concerned that at least the  
 5 Chamber thinks they haven't had a fair chance and -- and  
 6 the Secretary thinks that with a little more time maybe we  
 7 could -- now, I understand the skepticism that we've been  
 8 working on that and nothing happened, I -- I get that.  
 9 But -- but that's my only concern.  
 10 MR. COLLINS: Sure.  
 11 COMMISSIONER LAIRD: I think it's an improvement  
 12 over the existing rule. I -- I -- I applaud you and --  
 13 and Mary and Langhofer, who I don't know, I guess for --  
 14 for the work that's been done there. I think that's a  
 15 workman-like effort to try and create a workable set of  
 16 rules on "what is a political committee," and for that I  
 17 applaud you.  
 18 MR. COLLINS: Well, thank -- I thank you. Mr.  
 19 Chairman, Mr. Laird, I thank you very much for those  
 20 comments and I know Mary is appreciative of them.  
 21 I -- I do think that -- and I -- and as I said to  
 22 you, I do not believe that how the Commission decides to  
 23 address a particular stakeholder's views, whether or not I  
 24 -- I may not agree with the facts about how that unfolded,  
 25 but how they feel about it and that is -- and how you want  
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1 COMMISSIONER KIMBLE: Yes. My motion was that  
 2 the Commission adopt as a final rule Exhibit 1 to the  
 3 Collins' October 16th, 2015 memo, except Section 12 of  
 4 Exhibit 1 shall be replaced with the text of Exhibit 2  
 5 with the edits in Exhibit 2 incorporated; Section 3 of  
 6 Exhibit 2 dealing with the release of information is not  
 7 adopted; Exhibit 2 shall be renumbered to conform with the  
 8 style of Exhibit 1.  
 9 CHAIRPERSON KOESTER: Thank you.  
 10 COMMISSIONER MEYER: My -- my comment on that is  
 11 I -- I think we have a rule here that -- that I can  
 12 support, but in my opinion the proper way to do this is to  
 13 have that rule all in one sheet of paper, one exhibit, so  
 14 every one of us can be looking at ex- -- exactly what's  
 15 going to be passed. And if that's something that can be  
 16 recirculated by Mr. Collins and we can meet again in a --  
 17 in a few days to -- to vote on a motion.  
 18 I -- I think the text -- I think we can all see  
 19 what the text is, but I -- I -- in my opinion it's a  
 20 confusing process to follow along what that -- what that  
 21 motion is. All the text is there, I think it should be  
 22 put into one document so we can all see what it is.  
 23 COMMISSIONER KIMBLE: Mr. Chairman?  
 24 CHAIRPERSON KOESTER: Commissioner Kimble.  
 25 COMMISSIONER KIMBLE: Mr. Collins, correct me if  
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1 to address that is entirely, again, a Commission decision  
 2 and not something that I have any opinion or interest in  
 3 weighing in upon.  
 4 I -- I simply believe that the materials were  
 5 made available to the public in a -- in a -- in a timely  
 6 manner.  
 7 COMMISSIONER LAIRD: Okay.  
 8 MR. COLLINS: That to the best of my knowledge  
 9 every other entity that has opined here has had ample --  
 10 has felt comfortable and knowledgeable enough to be able  
 11 to -- to speak to it.  
 12 I'm -- I feel -- and -- and if other  
 13 Commissioners have similar -- don't know what we're doing,  
 14 obviously, now would be a good time to -- to talk about  
 15 that. But my sense is -- well, that's something for  
 16 you-all to decide, really. But the -- the general sense I  
 17 have is that with the exception of the Chamber of  
 18 Commerce, folks understood what we were doing, understood  
 19 why we were doing it, and were able to follow along with  
 20 the -- the process.  
 21 COMMISSIONER MEYER: Mr. Chairman?  
 22 CHAIRPERSON KOESTER: Yeah.  
 23 COMMISSIONER MEYER: Can -- can I hear the motion  
 24 again?  
 25 CHAIRPERSON KOESTER: Yes. Of course.  
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1 I'm wrong, but I think what we have is exactly -- is this,  
 2 with the exception of striking the last paragraph calling  
 3 for the three-day delay in release of public information.  
 4 It -- it's not --  
 5 COMMISSIONER MEYER: What -- what are you holding  
 6 up, sir?  
 7 COMMISSIONER KIMBLE: I am holding up -- it's --  
 8 it's Exhibit 2 in tab 4.  
 9 COMMISSIONER MEYER: But the -- Mr. -- Mr.  
 10 Chairman?  
 11 CHAIRPERSON KOESTER: Yes. Commissioner.  
 12 COMMISSIONER MEYER: The -- the motion addresses  
 13 Exhibit 1 and -- and striking out part of Exhibit 1 and  
 14 adding in Exhibit 2 and then deleting part of Exhibit 2.  
 15 It's just in my opinion, it's confusing, and we can  
 16 present a nice, clean draft of this. And if we need to  
 17 move -- you know, because I -- I have a concern that it's  
 18 transparent exactly what it is that we are voting on. And  
 19 if someone in the public is raising a concern that they  
 20 aren't sure what it is, why not alleviate that concern,  
 21 which we should be able to do easily.  
 22 COMMISSIONER TITLA: Chairman, point of order. I  
 23 think that a motion has been made, a second has been made,  
 24 but I now agree with my esteemed colleague that we need to  
 25 be transparent to the public and so I withdraw my second.  
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1 And I think that we should put this out for public  
 2 comment, put it one sheet of paper, distribute it, and  
 3 publish it to the public and whoever needs to see it, and  
 4 then let's vote on it with -- with clear -- with  
 5 clearness. Thank you.  
 6 CHAIRPERSON KOESTER: I think Ms. O'Grady has a  
 7 point of order.  
 8 COMMISSIONER TITLA: I withdraw my second,  
 9 Chairman. I think that should be addressed first.  
 10 MS. O'GRADY: Mr. Chair, I was just also going to  
 11 say, I mean --  
 12 COMMISSIONER TITLA: Point of order, Chairman.  
 13 CHAIRPERSON KOESTER: Yes.  
 14 COMMISSIONER TITLA: I withdrew my second. That  
 15 should be addressed first.  
 16 CHAIRPERSON KOESTER: Okay. You wish to withdraw  
 17 your second.  
 18 COMMISSIONER TITLA: Yes.  
 19 CHAIRPERSON KOESTER: Do we vote on that to --  
 20 COMMISSIONER TITLA: No, it's just a withdraw I  
 21 think.  
 22 CHAIRPERSON KOESTER: Okay. Point taken.  
 23 Ms. O'Grady?  
 24 MS. O'GRADY: Well, I guess then procedurally we  
 25 still have a motion on the table that now doesn't have a  
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1 MS. O'GRADY: He could withdraw the motion or Mr.  
 2 -- the Commissioner could withdraw his motion or it  
 3 wouldn't -- if it doesn't have a second, there would be no  
 4 further action on the motion. That particular motion  
 5 would fail for lack of second --  
 6 CHAIRPERSON KOESTER: Okay.  
 7 MS. O'GRADY: -- at this point.  
 8 CHAIRPERSON KOESTER: Okay. We have a -- we --  
 9 we don't have a second at this point. So, why -- why  
 10 don't we take a recess. And, like I said, an excellent  
 11 sugg- -- suggestion. Everybody wants to see it in a final  
 12 draft --  
 13 MR. HOFFMAN: Mr. Chairman, I just wanted to say  
 14 I apologize for, you know, mucking up the works before if  
 15 that's what it was viewed as.  
 16 CHAIRPERSON KOESTER: That's all right.  
 17 Okay. We're in -- we're in recess for  
 18 probably 10 minutes.  
 19 (Whereupon a recess is taken at 11:12 a.m. until  
 20 11:35 a.m.)  
 21  
 22 CHAIRPERSON KOESTER: Well, I think we're back in  
 23 session again after a recess. We made a -- we're working  
 24 on the collating and putting everything in one complete  
 25 page or two.  
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1 second. So, whether Commissioner Kimble wants to -- well,  
 2 I'll -- I'll make my procedural recom- -- suggestion was  
 3 perhaps we could, if you wanted to take a recess and we  
 4 could get it typed up or, we -- you know --  
 5 CHAIRPERSON KOESTER: That's an excellent idea.  
 6 MS. O'GRADY: -- right now and circulate it.  
 7 CHAIRPERSON KOESTER: I -- I think that's really  
 8 an excellent idea.  
 9 MS. O'GRADY: Do that right now.  
 10 CHAIRPERSON KOESTER: I'm in favor of taking a  
 11 recess.  
 12 MS. O'GRADY: But we do have a motion on the  
 13 table.  
 14 CHAIRPERSON KOESTER: Yes, I know. We still  
 15 have --  
 16 COMMISSIONER KIMBLE: With no second.  
 17 CHAIRPERSON KOESTER: With no second.  
 18 COMMISSIONER LAIRD: It dies for a lack of a  
 19 second.  
 20 CHAIRPERSON KOESTER: It dies of lack of second I  
 21 think is what Commissioner Laird is saying.  
 22 MR. COLLINS: Withdraw the motion -- can he  
 23 withdraw the motion?  
 24 MS. O'GRADY: What?  
 25 MR. COLLINS: Can he withdraw the motion?  
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1 Mary, you want to just make a comment on what  
 2 we're doing perhaps?  
 3 MS. O'GRADY: Sure. To simplify the -- the  
 4 motion that -- that Commissioner Kimble had made, instead  
 5 of having Exhibit -- Exhibit 1 which we're referencing the  
 6 handout, that's -- that was what was out for comment.  
 7 CHAIRPERSON KOESTER: Yes.  
 8 MS. O'GRADY: Exhibit 2 had the changes that we  
 9 were incorporating and they really are recommending for  
 10 incorporation and they are rather technical changes, I can  
 11 just briefly -- it was eliminating Section (A) because  
 12 it's not the Commission that has a burden of proof, but  
 13 making it clear under Section (B) that the preponderance  
 14 of stan- -- of evidence standard is what governs the  
 15 Commission's decision-making. So, we just made that  
 16 clarification.  
 17 We also made a clarification that when they talk  
 18 about earmarking grants, they're talking about grants for  
 19 reportable contributions and reportable expenditures as  
 20 that term is used.  
 21 And the original language had referred to a safe  
 22 harbor, and rather than -- and that didn't -- we thought  
 23 it more useful just to establish, again, the burden of  
 24 proof, which is preponderance of evidence. And, so that's  
 25 -- that's the nature of -- of the change in -- in --  
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1 that's another change in the measure.

2 And then the final change was in the Section (D),

3 I believe -- well, the public records issue, which the

4 original had proposed some language, we had proposed some

5 modified language which was in Exhibit 2, but the motion

6 would have eliminated that altogether. And so, the

7 collated version would eliminate that altogether.

8 So, the -- when we say "collated," what we're

9 doing is incorporating what was in Exhibit 2, with the

10 modifications described in the motion, and rolling them

11 into Exhibit 1 so it shows how it fits into the context of

12 the rule, and -- and then we'll have that single -- so,

13 the single motion can -- 'cause there were some other

14 changes to that rule that were part of that motion, so

15 they'd all be part of what was distributed as Exhibit 1.

16 And we wanted to have some extra proofreading

17 time to make sure the numbering is -- is -- is, you know,

18 all correct when we roll it into Exhibit 1. And so,

19 that's the status, we're just preparing that document.

20 CHAIRPERSON KOESTER: Okay.

21 MS. O'GRADY: And -- and -- yeah.

22 CHAIRPERSON KOESTER: Good. Thank you. So, all

23 that information will be on our website today you would

24 see, say within an hour?

25 MR. COLLINS: Well, I -- it will be on the  
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1 recommended on the 16th, which as she explained, are not

2 substantive.

3 CHAIRPERSON KOESTER: Okay. Fine. I think we

4 should move on. We have a few more items and I think we

5 can do that now and then tomorrow we've already said what

6 we're going to do.

7 Item (D) refers to R2-206 [sic]; (E) -208; (F)

8 -208, and (G) -208, different versions of -208.

9 Mr. Collins, why don't you give your opinion --

10 MR. COLLINS: Okay. Sure.

11 CHAIRPERSON KOESTER: -- and we'll discuss it a

12 little bit.

13 MR. COLLINS: And -- and this -- and we -- we

14 sent a brief memo sort of outlining the highlights of

15 these rules, really the sort of headlines of them. And

16 each one of these was an effort in -- well, yeah, part of

17 the process of talking with Mr. Spencer at -- at some

18 length, identifying perhaps what his views in terms of the

19 overlapping jurisdiction would be and how you might

20 mitigate that.

21 To be honest with you, there's a -- there's an

22 argument that I think is quite persuasive that says that

23 it's really -- it's really at the end of the day up to the

24 Commission to use its deference, to use its -- use its

25 judgment on when to defer to the Secretary's office and  
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1 website -- Mr. Chairman, Commissioners, it will be on the

2 website within the amount of time it takes to do it,

3 which -- which I hope is an hour-ish.

4 CHAIRPERSON KOESTER: Okay. An hour or two, all

5 right.

6 So, we -- we plan on taking the vote tomorrow at

7 2 o'clock. Not that every Commissioner is going to come

8 here in person, because two of us at least live in Tucson,

9 but it will be an open meeting as usual and you can hear

10 us on the phone make our -- or, on the speaker system,

11 make our vote and make our motion and we'll -- we'll see

12 what happens. But the version completed would be

13 available this afternoon what we're going to vote on

14 tomorrow in its entirety on --

15 MR. COLLINS: And -- and, Mr. Chairman, just to

16 -- just to be clear, what will be on the website is, in

17 fact, what is on the website now except collated --

18 CHAIRPERSON KOESTER: Right.

19 MR. COLLINS: -- in a manner that everyone -- no

20 one will be able to say that they can't follow page to

21 page. In effect, the -- the rule draft will be engrossed

22 in the legislative term, so that it is all in one

23 document; but it is all material that has been circulated

24 publically for the appropriate time under the statute and

25 may -- and includes the changes which Mary and I  
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1 when not to defer to the Secretary's office; and I

2 believe, frankly, that because of all of your experience

3 at this point in this role, that you have the best sense

4 as to when it's appropriate and when it's not, independent

5 of setting forth a specific rule that limits your

6 choices -- that imposes limitations on your own choices.

7 One of the rules which is R2-20-206, specifically

8 limits me and says -- or, to any executive director,

9 really -- and says, you know, I shall go and ask your

10 permission before I move past the complaint stage of a

11 complaint that is exclusively about 16-942(B)'s

12 application to -- to a -- to an entity excluding those

13 asp- -- those aspects of -- that -- that -- those

14 provisions that might apply to that entity that are

15 directly part of the Clean Elections Act, the 16-941 and

16 16-958, which Mr. -- Commissioner Laird identified in his

17 earlier comments.

18 We have a similar rule to that in the context of

19 traditional candidates. In other words, prior to my

20 initiating an inquiry with a traditional candidate, I am

21 required to have the affirmative vote of the Commission,

22 it's an additional procedural step that is what we created

23 back in 2014, maybe.

24 You know, the efficacy of that, you know, you can

25 kind of can look at it one way or the other. I in all  
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1 candor, I -- I've had traditional candidates who had  
 2 complaints in front of us who wanted to get rid of them,  
 3 be kind of irritated that I didn't feel like I should be  
 4 asking them follow-up questions without your perm- --  
 5 without the Commission's permission, which maybe  
 6 exacerbated things. I don't know the answer to that  
 7 exactly.

8 But the -206 version of those seems like it's the  
 9 closest to an existing practice.

10 The other versions of -208 essentially, to a  
 11 greater or lesser degree, defer to the Secretary of  
 12 State's office in a more direct manner.

13 So, one of the versions of -208, the -208 version  
 14 one, I think, says that in the event that the Secretary  
 15 declines to find reasonable cause, it would require some  
 16 supermajority of Commissioners to -- to do that, and that  
 17 -- we haven't determined what that supermajority would be,  
 18 but it would be greater than three; and it could be four,  
 19 it could be five -- and I guess that would be the only two  
 20 options.

21 The next one I think is a little bit modification  
 22 on that.

23 And then the third one is our effort to try to  
 24 articulate what we understood the Chamber of Commerce to  
 25 believe was the way we should approach this, which was to  
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1 glance.

2 So, all that having been said, my -- my view is  
 3 that the Secretary's office, obviously, does not believe  
 4 that any of these rules mitigate their issues; this is --  
 5 this is not sufficient. It's not. If it was, Mr. Spencer  
 6 would have told me because we talked about these things in  
 7 quite specific terms.

8 You know, it really then becomes whether or not  
 9 you believe it's appropriate to cabin your own and to --  
 10 to -- by extension, my day-to-day discretion; or, if you  
 11 feel like we are able with your decision-making and my,  
 12 you know, day-to-day work with Sara, to manage, you know,  
 13 filtering out the good complaints from the bad complaints,  
 14 and -- and -- and not get us involved in complaints that  
 15 we oughtn't be involved in and to defer when it's  
 16 appropriate to defer. But those would be essentially  
 17 judgments that you-all would exercise your discretion in a  
 18 -- in a -- in a -- on a case-by-case basis.

19 So, that's -- so, the big picture is case-by-case  
 20 or rule; and then the next level is what kind of rule.

21 And sort of my -- my -- my inclination is to kind  
 22 of just see how it works on case-by-case basis. I'm not  
 23 married to any of these procedural rules. But if you-all  
 24 think that case-by-case is not a great way to go, then I  
 25 would do the -206 rather than any of the -208s, because  
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1 delineate between -- in some way between Article 1  
 2 violations and Article 2 violations, and allow us to make  
 3 complaints on Article 1 violations to the Secretary's  
 4 office.

5 I'm not sure if we -- you know, that this -- now,  
 6 I will in candor, we took the idea that was in the  
 7 Chamber's letter and tried to make it into a rule that we  
 8 thought reflected what they wanted; whether or not we did  
 9 that correctly, I don't know. They haven't to the best of  
 10 my knowledge commented on that rule. So, we labeled that  
 11 the Chamber's rule, but just to be clear, it's the  
 12 Chamber's idea that we tried to write up in a way that  
 13 would reflect what we think they want. But it's --it's  
 14 not clear to me.

15 And it's also not clear to me when you think  
 16 about that concept, you know, what that would mean,  
 17 because the question still is: What's Article 1 and  
 18 what's Article 2, to Mr. -- to Mr. Laird's point.

19 So, in a certain sense, the -- the -- the concept  
 20 that they come up with, I guess assumes a certain  
 21 agreement with their view of Article 1 versus Article 2;  
 22 if you don't agree with it, then the rule means something  
 23 different than if you do and that makes it a little harder  
 24 to -- to talk about. It makes it much more complicated  
 25 than -- than -- than it would -- it looks like at first  
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1 -206 is consistent with the practice we've already  
 2 established for traditional candidates.

3 So, those are my views on those matters. If you  
 4 have any others -- I -- I -- if you have any questions on  
 5 those, I'm happy to -- happy to answer them as best I can.

6 CHAIRPERSON KOESTER: Thank you. Does any  
 7 Commissioner have a -- a comment or --

8 MR. COLLINS: Oh. I'm sorry. And I know that  
 9 Commissioner Hoffman has specific comments on -206, but I  
 10 don't know -- I don't know if they're obviated by what  
 11 I've said or not, so.

12 So, I'm just telling -- I'm just -- just putting  
 13 that there now.

14 COMMISSIONER LAIRD: So -- so, Tom, to be sure I  
 15 understand. So, -2 -- -206 as -- as -- (D) as you've  
 16 presented it here in our -- our book for today --

17 MR. COLLINS: Yeah.

18 COMMISSIONER LAIRD: -- is consistent with  
 19 current practice, that's how you're doing it now?

20 In other words, if you -- you come to the  
 21 Commission, if the -- but you don't proceed on an  
 22 investigation of a potential violation of this nature  
 23 without first coming to the Commission?

24 MR. COLLINS: In a traditional candidate context.

25 COMMISSIONER LAIRD: Right.  
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1 MR. COLLINS: Right. So, right now -- so, if  
2 it's a clean candidate, you know, we have a way of doing  
3 things. And this rule I think says if it's -- this would  
4 have to be an IE where no clean candidate was involved in  
5 the race. I think is -- I'd have to double-check that.  
6 But --  
7 COMMISSIONER LAIRD: Yeah.  
8 MR. COLLINS: -- I think that's right? Right?  
9 Yeah. So, this says as we have this sort  
10 of special additional vote for traditional candidates, if  
11 it's an IE in a traditional candidate context, the same  
12 additional vote would be required.  
13 COMMISSIONER LAIRD: And -- and do you think that  
14 practice has worked well historically?  
15 MR. COLLINS: Well, we've done it. We had one  
16 run with it. I think the -- the pros of it were that --  
17 to -- well, it's interesting how you look at the problem.  
18 The -- the pros of it were that it theoretically  
19 allows the Commission to do a check early, formally, to  
20 say: We don't want to do this; we do want to do this,  
21 right?  
22 So, that's a -- that's a -- that's a positive.  
23 It does for that reason, inherently create more protection  
24 for that subset of spenders or candidates.  
25 The criticism of it is -- or, at least the  
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1 But we don't have enough experience with it yet,  
2 'cause we really the main case in which that operated was  
3 in Horne and -- and -- and that may have been a -- a  
4 unique case for lots of reasons. So, you know -- so, but  
5 I -- but I -- at least I know how it works, you know what  
6 I mean? At least we know how it works. And -- and so it  
7 -- and it was manageable in that sense.  
8 The -- and so I'm -- I think I've rambled on.  
9 But I hope somewhere in there should have been a  
10 responsive answer.  
11 COMMISSIONER LAIRD: Do you think any of these  
12 other versions that are in here of -208 versus -206, which  
13 captures existing practice, are better than existing  
14 practice?  
15 MR. COLLINS: I -- I don't. And the -- and the  
16 -- and to be honest with you, and the reason I don't, if  
17 you're choosing among them -- even though I wrote three of  
18 them, except for the one that the Chamber, which I wrote  
19 but I was trying to use their inspiration -- is because  
20 the -- the other three really get into a different  
21 philosophical question. The other three get into a  
22 question which we're talking around, so when we're --  
23 we're talking about, which is, you know: Does the  
24 Commission see its view as -- what does the Commission see  
25 itself as?  
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1 criticism of the traditional candidate rules was you ought  
2 to treat everybody the same and so you shouldn't do  
3 special stuff for traditional. If you really are an  
4 agency that does traditional -- that regulates in all  
5 these areas, you ought treat them all the same.  
6 And on the other -- and the other thing I'll just  
7 say, and this is -- this is really a -- kind of a delicate  
8 point and something we would have to work on over time in  
9 educating the media, we had a vote, this preliminary vote  
10 in the Horne matter. And the press, you know -- you know,  
11 you know, whom I love dearly, especially Mark, you know,  
12 treated it as if it was a little bit of a trial of the  
13 century, even though it was the procedural equivalent of a  
14 preliminary hearing. It wasn't even a -- it wasn't a  
15 trial, it wasn't even a grand jury, it was like -- it was,  
16 you know, it was just a -- it was really at -- at best a  
17 preliminary hearing.  
18 So that can cut both ways. So, the protection,  
19 right, to the candidate, of, well, if I win this vote, I  
20 can knock this out early; but the attention then comes  
21 earlier. So, I think that's a double-edged sword. And  
22 not being a political consultant, I'm not sure which --  
23 I'm not sure -- I -- I guess what I'm trying to say in a  
24 very, very long-winded way is, it is not clear to me if  
25 the medicine is worse than the disease.  
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1 So, I guess "better" is really the wrong word. I  
2 -- I have tended to be of the school of thought that says  
3 the Commission -- until I hear otherwise from a majority  
4 of the Commission, you know, the Commission should do  
5 things that are -- that recognize its own authority and  
6 operate in the sphere of its own authority independent of  
7 another agency, using its own judgment on a case-by-case  
8 basis to know when to defer.  
9 -208 more affirmatively gives that deference in a  
10 formal way, which again, philosophically, again, like many  
11 of these things is a policy question for the Commission.  
12 I wouldn't want to weigh too heavily in on my own personal  
13 policy views. But that's the -- that's the difference.  
14 It's not really better or worse.  
15 The -208 rules are more about expressly deferring  
16 to another body; -206 is about reserving judgment to the  
17 Commission and then exercising that judgment as the  
18 Commission sees fit. Does -- does that make sense?  
19 COMMISSIONER LAIRD: Mm-hm.  
20 CHAIRPERSON KOESTER: Mr. Collins, would you say,  
21 then, that you're -- you're comfortable with the -- the  
22 rules as they are -- as we have right now going forward?  
23 And especially with the -109 going to be out there, that  
24 maybe there's no need to at this time to press forward  
25 with --  
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1 MR. COLLINS: Well -- well, I would say this  
 2 about that, Mr. Chairman and members, I -- I do not  
 3 believe that we -- well, we have one pending complaint  
 4 right now against a -- that we have not moved forward on  
 5 it yet, but we have a complaint. And, I guess, an  
 6 independent expenditure from 2014 still, a late-breaking  
 7 one. That is a -- but it's not a contributor-related one,  
 8 it's all about the report, the 16-941(D) report that's in  
 9 the Clean Elections. We haven't brought that to you, yet.  
 10 I don't want to say too much about it.  
 11 But, we have not gone around and tried to find  
 12 enforcements on IE issues. In fact, if you go back to  
 13 really the top part of the -109 rule that we have in place  
 14 now, it's built around this exemption form, which  
 15 theoretically allows somebody who says -- and not -- and  
 16 in practice has allowed someone who says: Hey, I'm going  
 17 to go file with the Secretary of State these other forms,  
 18 please leave me alone and we've left them alone.  
 19 So, you know, it's -- so, given that we have a  
 20 framework that says: A, here's an easy way to opt out of  
 21 having Clean Elections looking at your stuff, with, you  
 22 know, assuming you're -- you are who you say you are,  
 23 which most people seem to be able to abide by; and, B,  
 24 we're not, and unless I get some very clear direction from  
 25 a majority of the Commission to do so, going to change our  
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1 feedback. And these can al- -- always be revisited.  
 2 MR. COLLINS: Of course.  
 3 CHAIRPERSON KOESTER: There's no -- there's no --  
 4 in this case, case of -109(F), it was -- I think it's  
 5 imperative that we do take action soon.  
 6 On these, I -- I don't see the necessity of  
 7 having to do anything right now, and I -- I would prefer  
 8 to -- I don't know, again the word is -- table or just to  
 9 say I think we're -- we're fine as we -- as we are right  
 10 now. And -- and maybe if a case comes by next year that  
 11 would apply, we can all -- all revisit these again and  
 12 say, you know, this -- this might make more sense or --  
 13 Anyway, that's my comment.  
 14 COMMISSIONER LAIRD: Well, but -206 is just --  
 15 you're adding (D), which just codifies existing practice,  
 16 right?  
 17 MR. COLLINS: Well, I -- I --  
 18 COMMISSIONER LAIRD: So, we would still want to  
 19 pass --  
 20 MR. COLLINS: I think that -- Mr. Chairman, Mr.  
 21 Laird, what -- what it -- it codif- -- it -- it -- it  
 22 incorporates an additional group of people into an  
 23 existing practice.  
 24 So, there's an existing practice for traditional  
 25 candidates, and then -206 would incorporate that practice  
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1 practice in terms of, you know, like, about -- we don't  
 2 have an enforcement agenda is I guess what I'm trying to  
 3 say.  
 4 We don't -- if the things come in, they come in.  
 5 And if things happen that we can't ignore, they happen.  
 6 That's, you know, that -- that can happen. Someone  
 7 doesn't file reports flagrantly and we become aware of it,  
 8 that -- those are things that can happen. But it's  
 9 not like -- yeah, I don't know. There's no such thing  
 10 as -- we're not driving around in patrol cars, you know,  
 11 looking for campaign finance violations is what I'm trying  
 12 to say.  
 13 So, the rules as they stand now I think are  
 14 perfectly fine given the guidance that you've provided me;  
 15 but, if you want additional written guidance, this is the  
 16 way you could do it.  
 17 CHAIRPERSON KOESTER: Okay. I -- personally, I  
 18 think of things over the last four and a half years that  
 19 I've been involved have -- have worked fine with the rules  
 20 we have. And I -- I -- and I just don't see the -- the  
 21 urgency of -- of moving forward on -- on -- although -206,  
 22 I can understand, it's not a big deal. But I'll just give  
 23 my preference, I think we should -- we should stay as we  
 24 are now and see what -- what develops over the next six,  
 25 eight months as far as the legislature and -- and  
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1 to independent expenditure makers where there's -- where  
 2 there are just traditional candidates. So, it's -- so  
 3 it's -- it's broadening an existing prac- -- practice to  
 4 include a new group that's not currently involved in that  
 5 practice.  
 6 Now, to -- to be clear, given the amount of  
 7 scrutiny that we-all face under all -- all of these  
 8 circumstances, I -- I -- I just don't think that -- well,  
 9 expanding or not expanding, the -- the -- the bottom line  
 10 would be before -- the -- the -- the net result would be,  
 11 you would get a complaint from -- we would get a  
 12 complaint, Sara and I would write up a memo based on the  
 13 complaint exclusively and say: There is further inquiry  
 14 necessary here; and then after that, we would bring a  
 15 reason to believe memo to you. So, it's an additional  
 16 procedural step.  
 17 It's -- it's -- it's -- well, so, I guess I'm --  
 18 what -- I guess what I'm trying to say, Commissioner  
 19 Laird, it's not -- strictly speaking, it's not codifying  
 20 current practice, it is -- it is applying a analogous  
 21 current practice to an additional set of entities. Does  
 22 that -- does that make sense?  
 23 COMMISSIONER LAIRD: Which is participating  
 24 candidates?  
 25 MR. COLLINS: That's correct -- non-participating  
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1 candidates. Right. That's right.

2 And -- and -- and so, you know, I will tell you

3 that as -- whether we pass the rule or not, I'm not -- and

4 we -- because we have another dual jurisdiction potential

5 case coming up down the pipe, like I say, I'm going to

6 take my guidance from you-all. I mean, whether -- whether

7 you pass the rule or not, I'm not -- I'm not interested in

8 -- in taking actions that are not consistent with the

9 direction the Commission wants to move in.

10 So, from my perspective, again, it's a policy

11 decision. If you're comfortable with where we are and you

12 feel that I can be relied upon to do what you ask without

13 having it in a rule, then as an executive- -- as a

14 bureaucrat, it's in it's -- it's in the nature of being a

15 bureaucrat to say -- to say "okay."

16 But, you know, just to be candid.

17 COMMISSIONER LAIRD: All right. All right.

18 CHAIRPERSON KOESTER: Okay. Mr. Hoffman?

19 MR. HOFFMAN: I was hesitant to -- to comment

20 further, but I was asked -- alluded to before that we had

21 -- that I had submitted a comment with Mr. Reckart on this

22 rule and so I might provide a couple of choices or

23 suggestions.

24 We had attached as Exhibit B to our comment,

25 which is No. 18 in your tab, suggested a revision to

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1 mine originally and -- and Tim liked it -- was -206(A), it

2 makes some wording changes to try to make that part of the

3 rule a little more clear, and that's not something that's

4 been addressed at all.

5 And then it added a section -- sorry. There was

6 three, then. I've added a little section to the end

7 basically saying that this was not intended to create a

8 defense to any entity, which I think would be a prudent

9 thing to do.

10 My recommendation to you is to put this version

11 out for public comment and -- since it hasn't, you know,

12 been published for comment, and table the -- leave the

13 docket open, but table the discussion on the current -206

14 and close the docket on -208; and then by two months from

15 now when you pick it up again, you can decide which

16 version of -208 -- -206(D) would be appropriate, or

17 whether none would be -- would be better. As well as you

18 would you'd be able to consider revisions to (A) and --

19 and the final paragraph. And I think that that would, you

20 know, give maximum flexibility.

21 As far as the issue of whether you should do

22 anything, it's a little bit of a difficult issue because,

23 you know, I -- I have great faith in Tom and -- and Mr.

24 Collins is certainly capable of deciding and is going to

25 do things in a -- in a positive way, and -- and Sara is

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1 -206 -- actually, let me start at the end.

2 I agree that -- I -- I recommend to the

3 Commission that it not adopt any changes to -208. Just to

4 keep things simple.

5 With regard to -206, I -- I am inclined to

6 recommend that the Commission consider some revisions.

7 The -- there is a published version of the rule that you

8 published two months ago which just adds the new paragraph

9 (D), that would bind Mr. Collins in all circumstances with

10 regard to IE groups; and as he said, that would extend the

11 practice with non-participating candidate to IE groups.

12 The proposal that we had suggested does two

13 things: One, is it -- it has a substitute (D) that would

14 bind him only in more limited ways. Number one, it

15 would -- if there was a inconsistency with the Secretary

16 of State's findings, it would bind him to bring it to your

17 attention; and, number two, it would bind him to consult

18 with the Secretary of State in -- you know, in cases where

19 an ongoing investigation was around.

20 So, that's sort of a halfway measure, if you

21 will, designed to try to mitigate the potential for

22 conflict with the Secretary of State's office. It doesn't

23 go as far as the current version.

24 The second thing that the proposal in -- in --

25 that Tim and I came up with does, is -- actually, it was

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1 beyond reproach as well.

2 But I think that from the point of view of the

3 public, there is some benefit in not having Tom get, you

4 know, subtle clues from private conversations with

5 individual Commissioners. He certainly couldn't poll --

6 the -- the open meetings law would not allow him to poll

7 the body as an entirety to see whether he should open a

8 particular investigation or not, and he would be allowed

9 to make an individual call or maybe two to find out what

10 people thought about whether to -- people on this --

11 Commissioners thought about whether to institute a

12 particular investigation, but he can't actually get

13 direction from the Commission as a whole without violating

14 the public meetings law, which I know he would never do.

15 So there's a risk of him being sort of out on a

16 limb if he thinks based on a conversation or maybe two

17 that it's worth proceeding, and then the Commission ends

18 up, you know, not being happy about that situation. So,

19 there is a little bit of -- and from the point of the view

20 of the public, we get to hear whether the Commission is

21 going to do in -- you know, authorize an investigation to

22 proceed against a particular candidate as well. And these

23 kind of rules -- this whole section of rules, allows

24 for -- for that to be open that such an investigation is

25 going on.

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1 So, there is some benefit to it, but certainly I  
2 agree that it's not something that needs to be decided  
3 right now and that's why I recommend publishing for  
4 comment the -- the alternative version that has some  
5 additional clean-up matters and see if -- if those are --  
6 you know, bring -- see what comments come and then you can  
7 address the policy question of whether to continue in --  
8 in December.

9 Are there questions or -- or concerns or anything  
10 the Commissioners would like me to address?  
11 CHAIRPERSON KOESTER: Any questions?  
12 COMMISSIONER MEYER: No.  
13 CHAIRPERSON KOESTER: Thank you.  
14 MR. HOFFMAN: Thank you. Thank you, Mr. Chair.  
15 CHAIRPERSON KOESTER: Thank you for your input.

16 I have no problem with -- I think we could  
17 as a body perhaps today as far as -208, just kind of close  
18 that out or however you want to put it. I -- I do see  
19 some merit in -206, and I -- I do kind of agree with Mr.  
20 Hoffman, we -- we definitely could put something out for  
21 comment. And it's reasonable -- I haven't read this real  
22 carefully, but it's reasonable to perhaps come up with  
23 something that we could agree to put out for public  
24 comment. I don't think we can do that right this moment  
25 but, again, perhaps by tomorrow we -- if something was

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1 With respect to Mr. Hoffman's comments, if you  
2 wanted those to be -- what I think I understand to be  
3 hearing, formatted in a manner that's consistent with our  
4 style if they aren't already, which I can't remember off  
5 the top of my head, then, you know, that might be  
6 something we could -- we could relatively easily collate  
7 and -- and -- and put out there in a manner that you-all  
8 might subsequently vote to circulate for public comment or  
9 not circulate for public comment at your -- at your  
10 discretion in a -- in a -- in a noticed agenda.

11 And that's really something that you could  
12 certainly direct me to do if it's something you're  
13 interested in. Or, if you're not interested in it at all,  
14 we cannot do it or we can bring it up next month or at any  
15 time.

16 So, those are really -- those -- I think the --  
17 but so your main point is if you don't want to do anything  
18 on the -- these rules that are on the agenda, you just  
19 don't do anything.

20 MR. HOFFMAN: Mr. Chair?  
21 CHAIRPERSON KOESTER: Yes.  
22 MR. HOFFMAN: I'm not sure if you're aware that  
23 Exhibit B has a fully-formatted proposal. This is Exhibit  
24 B to my comment, has a fully-formatted proposal which I  
25 believe is in Commission form except I used italics and --

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1 written where everybody sees it and like you, other  
2 Commissioners have said on one page and we say, yeah, we  
3 have a chance to study it, then I think we could take  
4 action and put it out for public comment.

5 The trouble is, I think at this point I don't  
6 think we can do anything right now. However, if any  
7 Commissioner has a suggestion on how we might do it, I'm  
8 -- that's fine. As far as I think the -- the concept  
9 sounds reasonable. And the -206 is the only thing that I  
10 kind of originally thought that there could be some  
11 adjustment.

12 So, I don't know if we need a motion or if we  
13 just wait 'til next month or how -- what would you  
14 suggest, Mr. Collins?  
15 MR. COLLINS: Well, Mr. Chairman --  
16 Commissioner -- Commissioners -- excuse me -- to the  
17 extent that no one has an interest in making a motion on  
18 -206 or any of the versions of -208, they simply --  
19 nothing happens to them. They just -- they just...  
20 CHAIRPERSON KOESTER: Right.  
21 MR. COLLINS: I suspect they may be eligible to  
22 be brought back on a further agenda 'cause there has been  
23 60-days comment, but I don't -- we've never really done  
24 that. But, just for lack of a better word -- way of  
25 putting it, you need not vote them down.

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1 and underlining instead of just underlining. So, if the  
2 Commission were inclined to do it.

3 I wanted to add one last point, if you wait one  
4 month and put it out for 60-month public comment -- 60-day  
5 public comment, you're into next year, which the  
6 Commission rules create an -- an -- an issue with, but.  
7 So, I mean, I -- I think if you do it today or tomorrow,  
8 it doesn't make any difference; but if you wait a month,  
9 there is a significance to that.

10 So, I -- I don't know if -- you know, if people  
11 liked the suggestion or not and wanted to hear what others  
12 had to say, then, you know, I'd urge putting it out for  
13 public comment. And then since the one is out for public  
14 comment already for 60 days, it doesn't matter if it's 120  
15 and you consider it in two months from now.

16 CHAIRPERSON KOESTER: Mary, would you like to --  
17 MS. O'GRADY: I was just going to say, and for  
18 kind of docketing purposes, 60 days from tomorrow which is  
19 October 30th, I have as being December 20- -- Monday,  
20 December 29th, just for calendaring purposes. I don't  
21 know --  
22 MR. COLLINS: When is the -- when is our December  
23 meeting?  
24 MS. O'GRADY: -- how that fits with the December  
25 schedule.

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1 MS. THOMAS: I don't remember. It's the second  
2 week of December.  
3 MR. HOFFMAN: No, that's -- that's good point.  
4 MR. COLLINS: So -- so --  
5 MR. HOFFMAN: So, yeah, we may be into next year  
6 anyway, but it could still be passed but it's, you know,  
7 easier to do if it's --  
8 MR. COLLINS: But it wouldn't be until Jan- --  
9 basically, effectively, unless if we had a special meeting  
10 for this thing, it wouldn't be 'til January. That's --  
11 just so everybody understands.  
12 CHAIRPERSON KOESTER: But the meeting we're  
13 having tomorrow, you don't think could incorporate --  
14 MR. COLLINS: Well, it would -- nothing would --  
15 nothing would --  
16 CHAIRPERSON KOESTER: Oh.  
17 MR. COLLINS: -- change the fact that 60 days  
18 from now --  
19 CHAIRPERSON KOESTER: Gotcha.  
20 MR. COLLINS: -- is passed the last meeting of  
21 the year, unless we had another meeting --  
22 CHAIRPERSON KOESTER: On the 31st.  
23 MR. COLLINS: -- on the 31st. In which case, the  
24 only -- the real consequence would be that we would have  
25 to have a unanimous vote in January on whatever proposal  
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1 at -- my -- oh. Oh. R2-20-109(D), transportation ex- --  
2 expenses. That was one of the more simple items --  
3 MR. COLLINS: Yes.  
4 CHAIRPERSON KOESTER: -- easy to maybe we can get  
5 a motion on that. It just simplifies the reporting  
6 transportation expenses. Simplifies transportation  
7 expense reporting is what it does, which I think makes  
8 sense from last year when we had Mr. Bennett had a lot of  
9 problems.  
10 MR. COLLINS: Yeah. And -- and --  
11 CHAIRPERSON KOESTER: Not that he should have,  
12 but he did.  
13 MR. COLLINS: And, Commissioners, just to -- on  
14 that point, Mr. Chairman, Commissioners, you know, Sara is  
15 here, I just want to make a quick point while we're -- no  
16 one will object to this now on the procedural grounds  
17 because nobody is paying attention to it. But there isn't  
18 a procedural grounds -- there isn't a procedural basis on  
19 which to object.  
20 This -- this text -- this text has been  
21 circulated now literally itself without any changes for  
22 the whole 168 days because it's in -109. So, every time  
23 -109 goes out, this text goes out with it.  
24 So, what we -- we think we can do, because that's  
25 so, is adopt the provisions of -109 that are -- this would  
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1 it is to make it effective immediately.  
2 CHAIRPERSON KOESTER: Sure. Well, I think that's  
3 quite possible if -- if we-all -- this is a fairly simple  
4 as compared to -109 to if we all got on the same page and  
5 saw everything precisely that we could probably get when  
6 it's worked out a unanimous decision.  
7 MR. HOFFMAN: I would like to think so.  
8 CHAIRPERSON KOESTER: I would think so, it's not  
9 that complicated. So, okay. We could even put it out,  
10 have it ready for next meeting, which is the November 21st  
11 or -- I forget the date, but it's like a week before  
12 Thanksgiving, that's all I remember so, and then we could  
13 put it out for public comment, and if it -- it and then if  
14 it's in January or February, if we -- if we -- it gets  
15 unanimous approval, it -- it would be in plenty of time  
16 for anything that would come down the road as far as  
17 complaints and whatnot.  
18 So, I feel comfortable doing that. Although I  
19 might not be around in February, so somebody else...  
20 In any case, all right. That's -- that sounds  
21 reasonable. We'll just table everything with -- with --  
22 that's -206, -208 related, and perhaps by next meeting in  
23 November, we can have something to vote on to put out for  
24 public comment as far as -206 is concerned.  
25 I almost forgot, but we did -- we should look  
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1 be -- and I'm --  
2 CHAIRPERSON KOESTER: No idea.  
3 MR. COLLINS: -- I'm really having a hard time  
4 finding my way around my notebook today. This is tab (D).  
5 CHAIRPERSON KOESTER: Yeah.  
6 MR. COLLINS: So, we would really literally be  
7 saying the motion would -- the -- the appropriate motion  
8 would be to adopt from Item IV the language in -- that is  
9 R2-20-109(D). That is -- that would be the motion and  
10 that is at Item IV(A) and (B) in your -- in your  
11 materials. And it is -- it is about as clear as day  
12 there.  
13 So that would be the mo- -- so that would be the  
14 motion I'd recommend would be to adopt R2 -- the changes  
15 to R2-20-109(D) that are identified in Item IV.  
16 CHAIRPERSON KOESTER: Gotcha. Would a  
17 Commissioner please make that motion, if you would?  
18 COMMISSIONER LAIRD: Oh. I see. Exhibit 1.  
19 MR. COLLINS: And Sara is here if it doesn't--  
20 COMMISSIONER MEYER: So moved.  
21 CHAIRPERSON KOESTER: So moved?  
22 COMMISSIONER MEYER: Yeah.  
23 CHAIRPERSON KOESTER: All right. We have a -- a  
24 -- a motion. Could I have a second?  
25 COMMISSIONER KIMBLE: Second.  
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1 CHAIRPERSON KOESTER: Okay. So we're going to  
 2 adopt the changes regarding R2-20-109(D). All in favor  
 3 say "aye."  
 4 (Chorus of ayes.)  
 5  
 6 CHAIRPERSON KOESTER: Opposed?  
 7 It's a unanimous. That takes care of the  
 8 transportation expenses.  
 9 MR. COLLINS: And Sara is very grateful.  
 10 CHAIRPERSON KOESTER: All right. It's getting --  
 11 the meeting is getting a little long.  
 12 We have discussion and possible action on Clean  
 13 Elections Commission/Secretary of State Interagency  
 14 Service Agreement following the money upgrades to the com-  
 15 -- campaign finance reporting system.  
 16 I notice that Mr. Hunter is no longer -- or, Mr.  
 17 Miller, rather, is no longer with us, but --  
 18 MR. COLLINS: Well, and -- and, Mr. Chairman, as  
 19 -- as you and I discussed, this was originally an item  
 20 that was designed to allow us to kind of fill the  
 21 Commission in on a conversation we'd had with Secretary  
 22 Reagan. I think that from conversations that I've  
 23 understood that she's had with Mr. Kanefield subsequently  
 24 iterating, seemed to suggest that our relationship, so to  
 25 speak, is an all-or-nothing proposition. Either we --  
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1 just in the appellate process.  
 2 CHAIRPERSON KOESTER: Okay. Thank you, Ms.  
 3 O'Grady.  
 4 Okay. We're getting down to No. VII, which is  
 5 public comment. We've had considerable public comment  
 6 already, but if anyone else has something to add right  
 7 now, now is the time.  
 8 Item No. VIII, is adjournment. A motion to  
 9 adjourn would be in order.  
 10 COMMISSIONER LAIRD: I so move.  
 11 COMMISSIONER TITLA: Second.  
 12 CHAIRPERSON KOESTER: We have a motion and a  
 13 second. All in favor.  
 14 (Chorus of ayes.)  
 15  
 16 CHAIRPERSON KOESTER: Opposed?  
 17 Okay. We're Adjourned. Thank you very  
 18 much.  
 19 (Whereupon the proceeding concludes at 12:19  
 20 p.m.)  
 21  
 22  
 23  
 24  
 25  
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1 either we do the rule -- or, we don't do the rule and we  
 2 work together on other things; or, we do do the rule and  
 3 we revert to Mr. Spencer's original comments which are --  
 4 I don't know which foreign war he was alluding to, but one  
 5 of them.  
 6 Best as I can say, the best estimate I have at  
 7 this point, whether or not that works out in the long run  
 8 once the legislative session and things kind of hit the  
 9 road, I don't know. But that was the purpose of that  
 10 agenda item, it's kind of been obviated by other events.  
 11 We did have a nice conversation with her, it just  
 12 didn't have anything to do with the rule.  
 13 CHAIRPERSON KOESTER: That's true.  
 14 MR. COLLINS: Yeah. Sorry, Mr. Chairman.  
 15 CHAIRPERSON KOESTER: All right. So, we'll  
 16 consider No. -- Item No. V done for now.  
 17 Items VI is discussion and possible action  
 18 regarding procedural status, Commission interest, and  
 19 related legal actions and, again, the Legacy Foundation  
 20 Action Fund versus Clean Elections Commission, which we  
 21 could go into executive session depending on maybe any  
 22 comments that Mary wants to make at this time.  
 23 MS. O'GRADY: Mr. Chair, Commissioners, the only  
 24 update is that the only action pending is the appeal and  
 25 our opening -- our brief is due December 2nd and so we're  
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C E R T I F I C A T E

1  
 2  
 3 I, Angela Furniss Miller, Certified Reporter, do  
 4 hereby certify that the foregoing pages numbered 1 through  
 5 104, inclusive, constitute a full and accurate printed  
 6 record of my stenographic notes taken at said time and  
 7 place, all done to the best of my skill and ability.  
 8 DATED, at LITCHFIELD PARK, Arizona, this 3rd day  
 9 of November, 2015.  
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 Angela Furniss Miller, RPR, CR  
 Certified Reporter (AZ50127)  
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