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4 THE STATE OF ARIZONA

5 CITIZENS CLEAN ELECTIONS COMMISSION

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10 REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING

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14 Phoenix, Arizona

15 June 17, 2021

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| <p>1 VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS 2 CLEAN ELECTIONS COMMISSION convened at 9:33 a.m. on 3 June 17, 2021, at the State of Arizona, Clean Elections 4 Commission, 1616 West Adams, Conference Room, Phoenix, 5 Arizona, in the presence of the following Board members: 6 Ms. Amy B. Chan, Chairwoman 7 Mr. Mark S. Kimble 8 Mr. Galen Paton 6 OTHERS PRESENT: 7 Thomas Collins, Executive Director 8 Paula Thomas, Executive Officer 9 Gina Roberts, Voter Education Director 10 Mike Becker, Policy Director 11 Kara Karlson, Assistant Attorney General 12 Monique Coady, Assistant Attorney General 13 Kyle Cummings, Assistant Attorney General 14 Joseph N. Roth, Attorney, Osborn Maledon 15 Avery Xola, Voter Education Specialist 16 Julian Arndt, Executive Support Specialist 17 Cathy Herring, Meeting Planner 18 Rivko Knox, Public 19 Deborah Tucker, Court Reporter 20 21 22 23 24 25 </p> | <p>1 2021. 2 Is there any discussion of those minutes? 3 And, if not, I would accept a motion to approve the 4 minutes. 5 COMMISSIONER KIMBLE: Madam Chair? 6 CHAIRWOMAN CHAN: Yes. Commissioner Kimble. 7 COMMISSIONER KIMBLE: I move we approve the 8 minutes for the Commission meeting of May 28th, 2021. 9 CHAIRWOMAN CHAN: Thank you. 10 I need a second. And, Commissioner Paton, 11 you're up. 12 COMMISSIONER PATON: This is Commissioner 13 Paton. I will second it. 14 CHAIRWOMAN CHAN: Thank you. 15 All right. The motion has been made and 16 seconded, so I will call the role to approve the minutes 17 from the May meeting. 18 Commissioner Kimble, how do you vote? 19 COMMISSIONER KIMBLE: Aye. 20 CHAIRWOMAN CHAN: Commissioner Paton, how do 21 you vote? 22 COMMISSIONER PATON: Aye. 23 CHAIRWOMAN CHAN: And I vote aye, as well. 24 And by a vote of three to zero, we have 25 approved the minutes of the May meeting.</p> | | |
| 09:33:21-09:34:30 | Page 3 | 09:35:29-09:37:06 | Page 5 |
| <p>1 P R O C E E D I N G 2 CHAIRWOMAN CHAN: All right. This is today's 3 meeting of the Citizens Clean Elections Commission. It 4 is Thursday, June 17th, at 9:32 a.m. 5 The first item on the agenda is the call to 6 order, so I'll go ahead and call the meeting to order. 7 I'd like to ask the members of the audience to 8 keep their microphones on mute, please, just so that 9 whoever's speaking can be heard adequately, especially 10 for the court reporter who's taking a record of the 11 meeting. 12 And if we could have the Commissioners 13 identify themselves for the record. 14 Go ahead and start, Commissioner Kimble. 15 COMMISSIONER KIMBLE: Commissioner Mark 16 Kimble. 17 CHAIRWOMAN CHAN: And Commissioner Paton? 18 COMMISSIONER PATON: Commissioner Galen Paton. 19 CHAIRWOMAN CHAN: And I'm Commissioner Amy 20 Chan. 21 And I don't believe there are any other 22 commissioners with us this morning. It's just going to 23 be the three of us, which is our quorum for today. 24 So, moving on to Item Number II, Discussion 25 and Possible Action on Commission Minutes for May 28th,</p> | <p>1 Moving on to Agenda Item III, Discussion and 2 Possible Action on Executive Director's Report, 3 Enforcement and Regulatory Updates and Legislative 4 Update. 5 Tom, we'll let you take it from here. 6 MR. COLLINS: Thank you. 7 Madam Chair, Commissioners, you know, it's not 8 been too long since our last meeting, but thank you all 9 for being here. I think we expect this -- the meeting 10 to go shortly -- quickly, rather, as soon as I find my 11 notes again. 12 You'll see from the -- you'll see from the 13 Executive Director's Report that there is a August 14 election coming up in -- in -- in several cities. And, 15 you know, Alec, as usual, has been in contact with the 16 counties and cities to make sure we have the most 17 up-to-date information available on our website for 18 voters. 19 Obviously, a lot of activities just in the 20 last three weeks on the voter education. I wanted to 21 highlight that Gina had an opportunity to present at the 22 Flinn Foundation's Center for Civic Leadership Summer 23 Public Policy Institute in order to talk about the 24 electoral system and youth community involvement, which 25 I think is an excellent opportunity.</p> | | |

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| 09:37:08-09:38:41 | Page 6 | 09:40:29-09:42:12 | Page 8 |
| <p>1 And I really think it's great that Gina, as 2 everyone knows, I think, that Gina was a -- participated 3 in the Flinn-Brown Civics Leadership Collaborative a 4 couple of years ago, and that's been great to see that 5 connection develop.</p> <p>6 Avery has continued his engagement with a 7 variety of different groups around the state, and 8 including the Secretary of State's Office, which, again, 9 you know, we're obviously always grateful to have the 10 opportunity to meet with folks who are, you know, 11 committed to working to continue to promote 12 participation under the Act. So, that's -- that is 13 where that is.</p> <p>14 You know, I wanted to say real quick, you 15 know, Julian has been working on the -- on the 16 legislative updates that come in the Executive 17 Director's Report throughout the session, and so I 18 really -- I just want to say I appreciate that. I'm not 19 sure -- I'm hopeful that this may be the last 20 legislative report for the year.</p> <p>21 So, I just want to take the opportunity to 22 thank Julian for continuing to keep that document 23 up-to-date and so we can get our hands on the 24 information as things develop. And they have developed 25 quickly over time during the session.</p> | | <p>1 file records of their donors with the California 2 Attorney General's Office.</p> <p>3 There again, the State of Arizona has 4 supported Americans for Prosperity, and is opposed to 5 that law. We know in Arizona that under the way that 6 the legislature has -- various legi- -- legislation that 7 has been passed here has essentially made those kinds of 8 requests very difficult, if not impossible, for anybody 9 who has a federal tax status. But there is, again, 10 concern, that should the court go very far one way or 11 the other, you know, there's some potential for 12 permutations that trickle down.</p> <p>13 One thing I'm not anticipating, and so I don't 14 think anyone should be terribly alarmed, is our trigger 15 reports being problematic, in part because the trigger 16 reports, while they apply broadly to every entity that 17 makes an independent expenditure, they don't require 18 information on donors.</p> <p>19 So, at the end of the day, the bargain, if you 20 will, that's struck by those reports, is, we get more 21 timely information for voters about -- about the fact 22 there's money being spent in an election they care about 23 and who the end spender is, but we don't get the donor 24 information.</p> <p>25 So, but -- but still, you know, if you're</p> | |
| 09:38:44-09:40:22 | Page 7 | 09:42:14-09:43:23 | Page 9 |
| <p>1 A couple legal matters I really wanted to just 2 highlight, in part because they will be coming out 3 between now and the next time we meet.</p> <p>4 The Supreme Court took the case, and the 5 argument was held in March, about Section 2 of the 6 Voting Rights Act as it applies to a -- two Arizona 7 laws; one which prohibits the collection of ballots by 8 certain third parties and one which has to do with 9 out-of-precinct voting for -- for Arizonans.</p> <p>10 You know, I'm not in a position to 11 prognosticate about how that case will come out. It has 12 -- The way the briefing was done, you know, the State, 13 different parties have, you know, have taken different 14 positions on the breadth of relief they're seeking. And 15 then, of course, the defense is a -- of the Voting 16 Rights Act itself is a different matter.</p> <p>17 So -- but definitely something to be aware of, 18 especially in view of the ongoing discussions of federal 19 election legislation that pertains to some of these 20 issues, or at least could.</p> <p>21 Finally, on that point, I wanted to also 22 highlight, on the point of the Supreme Court, I wanted 23 to highlight there is a pending free speech disclosure 24 case there. It has to do with the -- a California law 25 that allowed -- allows the -- requires the charities to</p> | | <p>1 interested in, as I think many commissioners are, and 2 the Act certainly speaks to disclosure issues, that's a 3 case that I think folks are going to want to be aware 4 of.</p> <p>5 And then, finally, just real quickly, we did 6 submit the rule that we approved at the last meeting to 7 the Governor's Regulatory Review Council and we hope to 8 have an opportunity to meet with them in the near 9 future.</p> <p>10 So, Madam Chair, Commissioners, that completes 11 my report. I hope everybody heard me okay. I'm trying 12 to project a little better. But in any event, if anyone 13 has any questions, I'm obviously available.</p> <p>14 CHAIRWOMAN CHAN: Thank you, Tom.</p> <p>15 Are there any questions from Commissioners?</p> <p>16 (No response.)</p> <p>17 CHAIRWOMAN CHAN: Nope? Okay.</p> <p>18 That was -- this is going to be a fast 19 meeting, although now I probably jynxed it.</p> <p>20 All right. We will move on, then, to Agenda 21 Item IV, which is Discussion and Possible Action on 22 MUR 20-03, Arizona Education Association.</p> <p>23 And I refreshed my memory by just reviewing 24 our meeting where we discussed this and voted on it last 25 time. But -- and that was in January, so, that's why I</p> | |

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| 09:43:28-09:44:45 | Page 10 | 09:46:12-09:47:22 | Page 12 |
| <p>1 had to go back and kind of refresh my memory. 2 But I think Tom can probably speak about this 3 for us. This was about several advertisement that the 4 respondent placed during the 2020 election time frame, 5 and Tom has a proposed conciliation.</p> <p>6 And then I thought perhaps Mr. Herrera from 7 Ballard Spahr was going to be here, but it doesn't look 8 like he is.</p> <p>9 MR. COLLINS: Yes.</p> <p>10 CHAIRWOMAN CHAN: So -- oh, and, actually, 11 Tom, maybe you did let me know in advance that perhaps 12 there wasn't going to be. So, I'll let Tom speak, and 13 then we'll take questions.</p> <p>14 MR. COLLINS: Madam Chair, Commissioners, and 15 then just -- just in case -- in case a legal question 16 comes up, Monique Coady is here and can answer those 17 questions on independent legal advice.</p> <p>18 So, the conciliation proposal that's in front 19 of you is my recommendation. Yeah, I have been in 20 communication with -- with Roy and the other attorneys 21 for the AEA.</p> <p>22 What I am requesting as a direction or a vote 23 from the Commissioners is authorization to enter into 24 this agreement with the Arizona Education Association 25 with a deadline of Monday morning at 9:00 o'clock for</p> | | <p>1 have notice. They did express to me they have a 2 scheduling conflict this morning. They -- I have given 3 them direction as to -- we've been transparent with them 4 about what I was going to request. And I have received 5 nothing to contradict any of that.</p> <p>6 CHAIRWOMAN CHAN: Okay.</p> <p>7 MS. COADY: Madam Chairwoman, members of the 8 Commission, I can also respond on a legal response.</p> <p>9 There is nothing in the statute or your rules 10 that require them to be present, or even require the 11 executive director to give them an opportunity to be 12 present. So it's at your discretion how you want to 13 move forward legally.</p> <p>14 CHAIRWOMAN CHAN: Okay. Thank you so much, 15 Ms. Coady. I really appreciate that. I think that 16 addresses my question.</p> <p>17 Okay. Commissioner Kimble or Commissioner 18 Paton, do you have any questions for Tom?</p> <p>19 COMMISSIONER KIMBLE: Commis- -- or, Madam 20 Commissioner, this is Commissioner Kimble.</p> <p>21 CHAIRWOMAN CHAN: Go ahead, Commissioner 22 Kimble.</p> <p>23 COMMISSIONER KIMBLE: Tom, could you talk a 24 little bit about what the potential penalty could have 25 been under the statutes? In the agreement it says up to</p> | |
| 09:44:49-09:46:07 | Page 11 | 09:47:29-09:49:04 | Page 13 |
| <p>1 the AEA to sign on.</p> <p>2 I -- I -- I'm -- I -- you know, we've been in 3 conversations with them. I don't think I -- I do think 4 that, you know, we can bear -- we had a little bit of 5 scheduling here this morning that was -- but -- but I 6 think we're in a position where I feel comfortable 7 making that recommendation.</p> <p>8 I do think that a deadline is appropriate. I 9 think that -- I think -- but I think that should resolve 10 the matter.</p> <p>11 So, I'm -- I'm simply requesting authorization 12 to enter into this agreement with the AEA and a deadline 13 of 9:00 o'clock Monday morning for the AEA to join.</p> <p>14 CHAIRWOMAN CHAN: Thank you, Tom.</p> <p>15 Do we have any questions? Well, I do have one 16 question.</p> <p>17 So -- and I don't know if this is best 18 directed at Tom, or maybe for Monique, if Monique is 19 here to advise us on this, but it was just a scheduling 20 conflict? Did Mr. Herrera wish to be heard about this 21 before we go forward?</p> <p>22 MR. COLLINS: Well, I can give you the factual 23 answer to that --</p> <p>24 CHAIRWOMAN CHAN: Of course.</p> <p>25 MR. COLLINS: -- which is that the -- they</p> | | <p>1 \$320 per day, up to twice the value of the unreported 2 amount.</p> <p>3 So, what -- what could the potential fine have 4 been, and how was the final amount of \$6,000 agreed 5 upon?</p> <p>6 MR. COLLINS: Madam Chair, Commissioner 7 Kimble, just so I don't forget, to answer your second 8 question first, the amount isn't agreed upon. The 9 amount will not be agreed upon until after this meeting 10 with them if I get the authorization to present this to 11 AEA, just to clarify that.</p> <p>12 With respect to your first question, the -- 13 the total at this point, I would -- I would -- I would 14 venture to guess, is -- well, when we calculate the 15 amount, we look at the amounts we've -- we've charged in 16 the past for similar spending in a similar time frame.</p> <p>17 So, we looked at two conciliations we entered 18 into in the 2018 election. One is a group called One 19 Arizona that had a very similar fact pattern in our 20 view, and then another -- there's another one whose name 21 is going to fall out my head right now, that I -- where 22 we sought \$5200 in the 2018 election.</p> <p>23 Those have been our reference points. So, the 24 goal has been to try to find a fine amount that ref-- -- 25 that respects the -- the process without -- without</p> | |

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| 09:49:12-09:50:50 | Page 14 | 09:53:03-09:54:46 | Page 16 |
| <p>1 making for an onerous fine in -- in our best guess as 2 staff.</p> <p>3 The reason we approach this this way -- and we 4 do tend to come out with lower numbers than is 5 potential. I mean, obviously the -- the -- the total 6 amount that could be charged here is something on the 7 nature of, you know, I don't know, \$230,000, or 8 something like that.</p> <p>9 That is, obviously, you know, twice the amount 10 of spending in question. You know, and it's a pretty -- 11 it's a pretty stiff penalty.</p> <p>12 Our goal, when we approach these things, is 13 always to get the information. So, it's -- it's -- so, 14 when we have a respondent who's, you know, who -- you 15 know, who's not terribly obstreperous about things, or 16 what have you, we -- we are able to make those kinds of 17 recommendations.</p> <p>18 You know, at the end of the day, that's all it 19 is. You know, I -- I could get you a more precise 20 figure on what the absolute amount is, we think, here. 21 I don't know that I have a -- I don't think we have -- I 22 don't think I have that calculation in front of me, but 23 it's certainly not difficult to make.</p> <p>24 At \$320 a day, for example, it would be -- it 25 would be -- you know, after six months it would be about</p> | | <p>1 -- that's the analysis.</p> <p>2 Now, that having been said, we have had, over 3 the course of several years, you know, maybe one group 4 that's in a 501(c)(3) category that has taken actions 5 that we have determined are -- are advocating for an 6 election.</p> <p>7 The big deterrent for a 501(c)(3) is that they 8 are not, at least under the IRS guideline, supposed to 9 be engaged in campaigning on behalf of candidates one 10 way or the other. There is a view that, among attorneys 11 -- I don't share -- that there has to be a way for 12 501(c)(3)s to do what they think is not candidate 13 advocacy during the heart of a political campaign. I 14 just don't think that's true. But raising that to a 15 court in this state at this day, this time, is a very 16 risky proposition.</p> <p>17 COMMISSIONER KIMBLE: Not to belabor the 18 point, but I guess my concern is -- this -- this was 19 called to our attention by someone who filed a 20 complaint.</p> <p>21 MR. COLLINS: Sure.</p> <p>22 COMMISSIONER KIMBLE: And I want to make sure 23 that the fine is not so onerous that we're going to get 24 into a protracted legal battle that's going to cause all 25 kinds of other problems.</p> | |
| 09:51:01-09:52:55 | Page 15 | 09:54:47-09:56:11 | Page 17 |
| <p>1 a \$60,000 fine. And this is about 10 percent of that.</p> <p>2 COMMISSIONER KIMBLE: Okay. So, do you feel 3 that this is an amount that is likely to -- to deter 4 future -- future violations of our rules? I understand 5 that it's in line with what we've done in the past, but, 6 as you pointed out, it's far less than they could have 7 been fined.</p> <p>8 MR. COLLINS: Sure.</p> <p>9 COMMISSIONER KIMBLE: But is it an amount that 10 you feel is going to make someone else sit up, take 11 notice, and say, "Maybe we shouldn't do this"?</p> <p>12 MR. COLLINS: That's a good question. You 13 know, the -- the -- Madam Chair, Commissioner Kimble, to 14 be, you know, as direct about it as I guess I think I 15 can be, every issue respecting -- expressing advocacy in 16 this state is fraught. There is a very deep divide 17 between what the binding case law of the state is about 18 determining this analytical question and what most 19 lawyers who defend groups that don't disclose their 20 donors think it should be.</p> <p>21 As a result, you know, when we go about trying 22 to get into compliance with these laws, we are -- get 23 people into compliance with these laws, we're always 24 conscious of the fact that it is better to get the 25 information than risk a larger legal thing. That's just</p> | | <p>1 On the other hand, I want to make sure it's 2 not so insignificant that organizations are going to 3 look at it in the future and say, "Well, we got caught. 4 That's just" -- "That's just the cost of doing 5 business."</p> <p>6 So, I want to make sure that there is some 7 level of deterrent in this. And that's why I'm asking 8 about the amount.</p> <p>9 MR. COLLINS: No, I -- I -- Madam Chair, 10 Mr. Kimble, I -- I see your point. I mean, I think that 11 the -- I mean, what I guess I'm -- I guess to be -- to 12 focus in on that, the big deterrent here for a 501(c)(3) 13 is never going to be the -- is never going to be the 14 Commission.</p> <p>15 The big deterrent for a 501(c)(3) is that if 16 an agent -- and this is part of the reason why there's 17 language in the agreement around the issue of whether or 18 not they're admitting, for purposes of tax law, whether 19 or not this was expressed advocacy.</p> <p>20 The reason that that piece is there, in my 21 view, is because the consequences for an organization 22 like the AEA are consequences at the federal tax level. 23 That's a much bigger risk than this.</p> <p>24 And so, given that we've only had, you know, 25 it looks like, you know, maybe one of these per election</p> | |

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| 09:56:15-09:57:28 | Page 18 | 09:59:11-10:00:23 | Page 20 |
| <p>1 cycle that we've had a complaint on, we have done an 2 enforcement on those. And, interestingly enough, we've 3 never had the same group twice. In fact, we've never 4 even had the same attorneys for those groups twice. 5 So, my -- my -- so, I think we are hitting the 6 right note because it's not prevalent and we haven't had 7 repeat players.</p> <p>8 COMMISSIONER KIMBLE: Okay. Thank you. That 9 -- that's a very good answer, I think.</p> <p>10 Thank you, Madam Chair.</p> <p>11 CHAIRWOMAN CHAN: Thank you, Commissioner 12 Kimble and Tom.</p> <p>13 Commissioner Paton, do you have any questions 14 for Tom?</p> <p>15 COMMISSIONER PATON: Well, I have -- yeah. 16 I --</p> <p>17 CHAIRWOMAN CHAN: Go ahead.</p> <p>18 COMMISSIONER PATON: I think that, you know, 19 I'm -- I'm satisfied with the payment.</p> <p>20 I was wondering if we could include in that 21 that they would state to their membership what happened. 22 You know what I'm saying, that they would -- could we 23 ask them to publicize the fact that this has been done, 24 and maybe it would get out -- you know, put the seed in 25 other people's mind that are part of the organization</p> | | <p>1 making sure that we reflect our own priorities in that. 2 So, that's an important thing. You know, that's my -- I 3 mean, I think -- I -- I can only share with you my 4 experience in negotiating these kinds of agreements. 5 COMMISSIONER PATON: Sure. I mean, \$6,000 is 6 -- I mean, I used to be in the AEA for many years. I 7 mean, it's probably dues for, like, six people in their 8 organization. So, I mean, it's not that much money to 9 them.</p> <p>10 But I guess the idea that they -- if they 11 would let the membership know, you know, what was going 12 -- you know, what happened, then that would be maybe a 13 better detriment to maybe this not happening again. 14 But, I mean, I'm satisfied with the \$6,000. 15 If we need to be punitive, I don't think this is 16 probably well thought out by, you know, the organization 17 or people within it, or whatever, to go ahead and do 18 that. So . . .</p> <p>19 CHAIRWOMAN CHAN: Okay. Thank you, 20 Commissioner Paton.</p> <p>21 COMMISSIONER PATON: That's all.</p> <p>22 MR. COLLINS: I'm definitely going to keep 23 that in mind as we go forward, for sure. Sorry for 24 interrupting.</p> <p>25 CHAIRWOMAN CHAN: No, that's okay.</p> | |
| 09:57:30-09:59:08 | Page 19 | 10:00:25-10:01:38 | Page 21 |
| <p>1 that they're not supposed to be doing that? 2 MR. COLLINS: Madam Chair, Commissioner Paton, 3 you know, it's an interesting question. I mean, I'll 4 just be honest with you. My own view would be that that 5 would be -- that would be very hard to convince any 6 501(c)(3) or (c)(4) organization to do. 7 In my experience in working with settling some 8 of these matters, when we tried to impose anything that 9 goes beyond the communication and into the organization 10 -- I'll give you an example. 11 We have tried in the past -- and this is 12 probably before any of the current Commissioners were on 13 the Commission. But we've tried to impose, on 14 settlements of lawsuits and the like, binding on the 15 members of a 501(c)(3) or (c)(4) organization. That -- 16 that has always been a non-starter because of the -- 17 because it puts us into their associational freedoms. 18 I'm -- I'm -- I'm not -- Now, that said, this is a 19 public record. It's a public conciliation. It's 20 required to be a public conciliation in the statute. It 21 will get publicity. 22 But getting it communicated to the membership 23 of AEA through AEA, I -- I -- my -- my own experience 24 tells me that that would be a non-starter. 25 However, obviously, I'm more concerned about</p> | | <p>1 I think -- I think I understand why 2 Commissioner Paton, you know, was going that direction. 3 I'm not comfortable trying to tell an association, you 4 know, or dictate what they communicate to their members, 5 even if it's a part of our -- even if it's, you know, 6 something that we're part of. I just -- for some reason 7 that made me feel a little uncomfortable. 8 And I think, Tom, you touched on it with the 9 -- their freedom of association. I just don't feel 10 comfortable meddling in that. 11 But, I know, you know, it's -- and meddling 12 may not be the right word, but interfering or trying to 13 dictate that. 14 But I do understand, I think, Commissioner 15 Paton, what you're trying to do. And perhaps it's the 16 same thing Commissioner Kimble is trying to get at, 17 which is, you know, deterring this type of behavior in 18 the future. 19 But I think Tom kind of hit the nail on the 20 head with regard to at least what we're seeing is this 21 doesn't seem to be happening -- when it happens, we're 22 seeing it once an election cycle. And we're getting 23 these complaints and we're addressing them. 24 And it may feel like, you know, it's too many 25 times, but we are -- we're achieving something. We're</p> | |

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| 10:01:40-10:02:50 | Page 22 | 10:03:52-10:05:09 | Page 24 |
| <p>1 achieving the reporting that should have been done, 2 perhaps, with the trigger reports, or whatever. But, 3 you know, to me that's -- I guess my hope would be 4 compliance is better than -- somebody used the word 5 punitive. So I -- that would be my desire and 6 preference.</p> <p>7 Anybody want to respond to that or should we 8 move on? If we want to move on, I would entertain a 9 motion regarding the conciliation.</p> <p>10 COMMISSIONER KIMBLE: Madam Chair?</p> <p>11 CHAIRWOMAN CHAN: Yes, Commissioner Kimble.</p> <p>12 COMMISSIONER KIMBLE: I move that we approve 13 MUR 20-03, the conciliation agreement with the Arizona 14 Education Association.</p> <p>15 CHAIRWOMAN CHAN: Thank you.</p> <p>16 Do I have a second?</p> <p>17 COMMISSIONER PATON: This is Commissioner 18 Paton. I would second that motion.</p> <p>19 CHAIRWOMAN CHAN: Thank you so much. 20 I'll call the role.</p> <p>21 Commissioner Kimble, how do you vote?</p> <p>22 COMMISSIONER KIMBLE: Aye.</p> <p>23 CHAIRWOMAN CHAN: Thank you.</p> <p>24 Commissioner Paton, how do you vote?</p> <p>25 COMMISSIONER PATON: Aye.</p> | | <p>1 that I would like to have a reasonable, but quick, 2 turn-around. I think we have --</p> <p>3 CHAIRWOMAN CHAN: Sure.</p> <p>4 MR. COLLINS: I think my point would be that 5 if it has to -- my -- to be consistent with my 6 representations as to what I'm requesting to the 7 respondents, I would just say it has to be no earlier, 8 certainly, than 9:00 a.m. on Monday.</p> <p>9 CHAIRWOMAN CHAN: Okay. And they've been 10 aware of this, and I know this has been pending for some 11 time. So, they've seen this draft, I presume.</p> <p>12 MR. COLLINS: They wrote it.</p> <p>13 CHAIRWOMAN CHAN: They wrote it. Okay. Well, 14 there we go.</p> <p>15 So, Commissioner Kimble, Commissioner Paton, 16 perhaps just to clarify the record and to help things 17 along, does one of you want to make a motion? And 18 whether it's a 9:00 a.m. Monday deadline, or maybe a 19 close of business Monday, like 5:00 p.m. Monday, I don't 20 know.</p> <p>21 COMMISSIONER KIMBLE: Well, Madam Chair, this 22 is Commissioner Kimble, would it suffice to say that we 23 would like this agreement to be reached as quickly as 24 possible, or do we need an actual deadline in there?</p> <p>25 CHAIRWOMAN CHAN: Sounded like Tom wanted that</p> | |
| 10:02:50-10:03:48 | Page 23 | 10:05:11-10:06:41 | Page 25 |
| <p>1 CHAIRWOMAN CHAN: And I vote aye, as well. 2 By a vote of three to zero, we have approved 3 -- or, adopted the conciliation agreement as proposed by 4 Tom.</p> <p>5 MS. KARLSON: Madam Chair, there's one other 6 issue. Mr. Collins also requested --</p> <p>7 CHAIRWOMAN CHAN: A deadline. I forgot the 8 deadline.</p> <p>9 MS. KARLSON: -- a deadline. And I didn't 10 know if you were choosing to do it as a separate order, 11 or what.</p> <p>12 CHAIRWOMAN CHAN: You know what --</p> <p>13 MS. KARLSON: I just noticed it.</p> <p>14 CHAIRMAN: Sorry to speak over each other 15 here.</p> <p>16 Let me go back and revisit with the 17 Commissioners. We should probably do it separately 18 since I wasn't clear.</p> <p>19 Commissioner Kimble and Commissioner Paton, 20 would you like to propose the 9:00 a.m. --</p> <p>21 Was it 9:00 a.m. Monday deadline that you were 22 requesting, Tom?</p> <p>23 MR. COLLINS: That -- that's what I was 24 requesting. Obviously, you know, that's a matter of 25 discretion. I just -- I would like to -- my point is</p> | | <p>1 firm deadline.</p> <p>2 MS. KARLSON: Madam Chair, if I may --</p> <p>3 CHAIRWOMAN CHAN: Yes.</p> <p>4 MS. KARLSON: -- speak, Tom -- I mean, unless 5 Tom wants to speak, it's been our experience that having 6 deadlines has been important with this particular 7 investigation. And so having a firm deadline -- and we 8 -- you know, 9:00 a.m., 5:00 p.m., Monday, Tuesday, 9 whatever -- I know that Tom put in an e-mail to them 10 that -- that, you know, a deadline. But having that 11 come from the Commission, I believe, would be important 12 and influential, whether they accept or reject. But we 13 need to get an answer so that we can move forward.</p> <p>14 COMMISSIONER KIMBLE: Madam Chair, I guess I 15 would say that I would include in my -- or, I would make 16 a motion that we include that deadline of 5:00 p.m. 17 Monday, June 21st, to reach agreement on this.</p> <p>18 CHAIRWOMAN CHAN: All right. Thank you, 19 Commissioner Kimble.</p> <p>20 Could I get a second on that motion?</p> <p>21 COMMISSIONER PATON: This is Commissioner 22 Paton. I would second that motion.</p> <p>23 CHAIRWOMAN CHAN: Thank you so much. 24 All right. The motion has been made and 25 seconded, and so we'll go ahead and vote on that.</p> | |

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| 10:06:45-10:07:54 | Page 26 | 10:09:07-10:10:25 | Page 28 |
| <p>1 Commissioner Kimble, how do you vote? 2 COMMISSIONER KIMBLE: Aye. 3 CHAIRWOMAN CHAN: Commissioner Paton, how do 4 you vote? 5 COMMISSIONER PATON: Aye. 6 CHAIRWOMAN CHAN: And I vote aye, as well. 7 So, by a vote of three ayes and zero nayes, we 8 have approved the deadline as noted in the record, 5:00 9 p.m Monday. We're in agreement. Thank you so much. 10 MR. COLLINS: Thank you, Commissioners. 11 CHAIRWOMAN CHAN: Excellent. So now we can 12 move on to our next item, which is Item V. And this is 13 Discussion and Possible Action on Legal Issues with 14 Election Budget and Procedural Bills, including House 15 Bill 2110 and House Bill 2891. 16 And I'm just going to let Tom go ahead and 17 give us an overview of where we are on this. And we do 18 have counsel here. If we need to go into executive 19 session, we can entertain a motion for that. 20 MR. COLLINS: Yes. Thank you, Madam Chair, 21 and Commissioners. 22 So, you know, we've kept this item on the 23 agenda for a couple of different reasons. One, because 24 it's a little bit difficult to anticipate what the 25 legislature's going to do budget-wise. As everybody, I</p> | <p>1 the issues we've identified with respect to 2891. 2 So, I'm dealing with the budget bill first 3 because I think 2110 is principally where the legal 4 discussion is. And I know every -- we -- I know that 5 there was discussion last month about wanting to make 6 sure that all the Commissioners had an opportunity to 7 hear from Joe, and that kind of thing. 8 So, just to deal with the budget real quick -- 9 I should have premised this by saying that. The last 10 thing we heard about that section is that there was some 11 concerns about the legality as applies to the Clean 12 Elections Commission. 13 I think it's clear, and we've said this as 14 staff, that we think -- and, certainly, I think, that 15 the purpose of the language that we're concerned about 16 is to deal with issues the legislature and others seem 17 to have with the Secretary of State's Office, you know, 18 because of in the drafting the drafting's broader than 19 necessary to address that. That's how we got wrapped up 20 in it. 21 And we're hopeful, but, you know, we won't 22 know that -- that -- because, you know, we're not -- 23 we're more the target of convenience than a target of, 24 you know, purpose, you know, where that might come out. 25 But we'll see.</p> | | |
| 10:07:57-10:09:05 | Page 27 | 10:10:28-10:11:45 | Page 29 |
| <p>1 think, probably knows, we -- the legislature went into a 2 special session that I think wraps up today, but -- 3 regarding funding for wildfire-related issues. And then 4 our expectation, I guess, is that they will turn to the 5 budget sometime between now and June 30th. 6 The bills, the 2891 language, did come out of 7 a Budget -- the Budget Procedures Bill. But we have not 8 -- we know that the -- that the -- that there are some 9 -- that the state legislature staff has identified 10 similar issues to ours with respect to this language as 11 it applies to the Clean Elections Act. 12 CHAIRWOMAN CHAN: Tom? 13 MR. COLLINS: Yes. I'm sorry. 14 CHAIRWOMAN CHAN: I'm sorry. I just want to 15 stop you right there. 16 MR. COLLINS: Yes, please. 17 CHAIRWOMAN CHAN: You said that the language 18 in 2891 came out? 19 MR. COLLINS: No, no, no. It -- 20 CHAIRWOMAN CHAN: Oh, sorry. 21 MR. COLLINS: I'm sorry. I apologize. 22 CHAIRWOMAN CHAN: Maybe I misunderstood. 23 MR. COLLINS: So, the last thing we heard on 24 2891, Madam Chair and Commissioners, was that the 25 legislature's attorneys had identified similar issues to</p> | <p>1 CHAIRWOMAN CHAN: All right. Just to clarify, 2 2891 is the piece that substitutes the Attorney General 3 for all election law -- 4 MR. COLLINS: Right. 5 CHAIRWOMAN CHAN: -- judgment defense policy 6 kind of things? 7 MR. COLLINS: Madam Chair, Commissioners, 8 that's correct. And -- and the contrast between the 9 Commission's role and what the Secretary of State's role 10 may be is that the -- among others, is that the 11 Commission has express authority to intervene in cases 12 where the Clean Elections Act is challenged. 13 And so the language that reserves to the 14 Attorney General's Office, the direction on those cases, 15 if you apply it to the Clean Elections Act would, at the 16 minimum, violate the Voter Protection Act. 17 There's other language in the bill and the 18 bill itself that raise all -- a bunch of other 19 constitutional issues related to the procedure of 20 passing bills in the legislature. There's a provision 21 to exempt the Attorney General's Office for purposes of 22 elections from their obligations to clients. You know, 23 there's -- it's a wide -- it's a very short bit of 24 language, but it pacts in a lot of legal shifts. 25 And, like I say, I think the purpose of that</p> | | |

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| 10:11:48-10:13:00 | Page 30 | 10:14:37-10:15:48 | Page 32 |
| <p>1 is not -- has little to do with us, although, obviously, 2 the ethical exemption that the legislature is seeking to 3 use the Attorney General's Office will affect every -- 4 everyone.</p> <p>5 But that's not nearly as much of a concern to 6 us, frankly, as the -- as -- as the fact that we have a 7 clear statute on point that says that it is the 8 Commission that has the authority to intervene.</p> <p>9 CHAIRWOMAN CHAN: And, Tom, there's also a 10 separate piece in that bill that gives GRRC more 11 authority, as well, correct? It makes super GRRC, as I 12 think we were just calling it to kind of consolidate --</p> <p>13 MR. COLLINS: Yeah.</p> <p>14 CHAIRWOMAN CHAN: -- and know what we were 15 talking about. Okay.</p> <p>16 MR. COLLINS: Yes. And there, the proposal is 17 -- so, earlier in the session the legislature passed a 18 bill that basically said, you know, try to clarify some 19 petitioning that one can do to GRRC. It wasn't a 20 significant change.</p> <p>21 The change that's proposed in the -- in the 22 budget drafts -- well, the budget bills that were 23 introduced would be that GRRC would not need a petition 24 in order to start looking into some state agency.</p> <p>25 Three member -- four members of the -- of</p> | | <p>1 ahead. I'm sorry.</p> <p>2 MR. COLLINS: Well, I was going to move on to 3 2110 if --</p> <p>4 CHAIRWOMAN CHAN: Please. Go ahead, yes. I 5 was just going to ask about that. Okay. Go ahead.</p> <p>6 MR. COLLINS: So, with respect to 2110, you 7 know, just to refresh everybody really quickly, that 8 bill preempts -- that may not be the right language, but 9 it -- it says that, notwithstanding the Clean Elections 10 Act, the source of the Clean Elections Act upon this 11 shall no longer be what's in the Clean Elections Act, 12 but that shall be generated by a new informant." I 13 don't know how to characterize that, but that's what it 14 does.</p> <p>15 Why we were concerned about that, because the 16 bill is part of -- is part of a broader bill to remove 17 or alter financial obligations that arise from civil 18 traffic complaints.</p> <p>19 You know, as applied to the Commission, it has 20 been my view that that violates the Voter Protection Act 21 because, you know, the long and short of it being that 22 in my view, a notwithstanding clause applied to a Voter 23 Protective Act has to be a violation of the Voter 24 Protection Act because it literally not withstands the 25 Voter Protection Act -- that Voter Protection Act.</p> | |
| 10:13:03-10:14:35 | Page 31 | 10:15:50-10:16:58 | Page 33 |
| <p>1 Governor's Regulatory Review Council would simply have 2 to notify their chair that they want to review a rule.</p> <p>3 And then upon that notice, the -- GRRC would 4 essentially demand that the agency produce some 5 justification for the rules.</p> <p>6 This is interesting for a couple of different 7 reasons. Number one, we think it's a Voter 8 Protection Act issue, because although we may be subject 9 to GRRC, and certainly have operated consistently with 10 that, we -- that -- that obligation is fixed by 11 the voters. So, in -- in -- so, while other agencies 12 certainly have to deal with this change, it has a Voter 13 Protection Act issue, from our perspective.</p> <p>14 I think that is unlikely to change. I think 15 that's unlikely to come out of the bill. But, again, 16 we'll -- we will have to deal with that if it stays in, 17 you know, when the bill passes.</p> <p>18 The state of play, I think I was talking to 19 Mike yesterday, is that -- and I think -- I think it -- 20 did I talk -- there may be a way to get out of this 21 budget situation with a shorter budget, a more tene-- 22 you know, a more limited budget to keep the State's 23 doors open past June 30th. So, it's really -- it's just 24 -- it's just -- it's very much in flux.</p> <p>25 CHAIRWOMAN CHAN: Thank you. Okay. So -- go</p> | | <p>1 We've seen, obviously, with the court, that the courts 2 will do anything to avoid, you know, a rational outcome 3 on a -- on a voter protection act case. But, you know, 4 please don't sanction me for saying that.</p> <p>5 Nevertheless, I think that, you know, I think 6 that everybody knows the contours of that. And the 7 Commissioners had all expressed interest in the past in 8 talking about it. And then we wanted -- I know that 9 everybody wanted to make sure that all five 10 Commissioners over the course of these last two meetings 11 we've had were on the same page and had the same 12 information. So, that's why Joe is here.</p> <p>13 And I guess I'll -- after that lengthy 14 introduction, I guess I'll leave it at that.</p> <p>15 CHAIRWOMAN CHAN: Okay. Thank you.</p> <p>16 Do any Commissioners want to -- and I don't 17 know if Joe is the appropriate person -- I guess Joe 18 would be the appropriate person to talk to about this, 19 then, specifically about 2110 at this point, correct, 20 because the budget is kind of an unknown quantity right 21 now.</p> <p>22 But as far as 2110, that having been signed, 23 do Commissioner Paton or Commissioner Kimble have 24 questions?</p> <p>25 And, Joe, do you think we need to go into</p> | |

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| 10:17:00-10:18:17 | Page 34 | 10:19:30-10:20:56 | Page 36 |
| <p>1 executive session? Do we need to wait and hear these 2 questions first? How should we proceed?</p> <p>3 MR. ROTH: Thank you, Madam Chair, and 4 Commissioners. It depends on the question, I would say, 5 whether we need to go into executive session.</p> <p>6 CHAIRWOMAN CHAN: Okay. Well, then maybe I'll 7 let the Commissioners start, and then we can go from 8 there.</p> <p>9 Commissioner Paton, did you have a question?</p> <p>10 COMMISSIONER PATON: So, what are -- what is 11 the likelihood of these being passed, Tom?</p> <p>12 MR. COLLINS: Yes. Madam Chair, Commissioner 13 Paton, so 2110 was passed and signed by the governor. 14 It will not be effective until 90 days after the 15 legislative session closes. That means we're looking 16 currently at somewhere between -- I think we're looking 17 at September. What June -- June, July, July to August. 18 Yeah, we're looking at probably September before the 19 bill would actually be effective.</p> <p>20 So -- so, what that means is that, from my 21 perspective, from a practical perspective, not a legal 22 perspective, we're not currently on the clock 23 imperatively to make any decisions about this. I simply 24 want them -- you know, so, I just -- I think it's -- I 25 think, though, that everybody wanted to make sure we had</p> | | <p>1 I mean, I just -- I mean -- I mean, the bottom 2 line is that what we are trying to -- what we -- what we 3 told the Commissioners in April we would do is be ready 4 to talk about some of the cost and balances legally, and 5 challenges, and things that I think are within the scope 6 of legal discussion, not -- you know, not for the 7 purpose of drilling down to a decision, but -- but for 8 the purpose of -- of having -- because we have more time 9 than we might otherwise have to make sure all of -- all 10 of the Commissioners have an opportunity to sort of be 11 issue sensitive around some of the decisions we'll have 12 to make down the road to proceed.</p> <p>13 COMMISSIONER KIMBLE: Madam Chair?</p> <p>14 CHAIRWOMAN CHAN: Yes, Commissioner Kimble.</p> <p>15 COMMISSIONER KIMBLE: I have a number of 16 questions, I think all of which would need to be 17 addressed in executive session. I don't know whether 18 this is the right time or not, since there's only three 19 of us here, but -- but since Joe is here now, I think -- 20 I think it would be a good time to at least start 21 addressing some of these questions.</p> <p>22 CHAIRWOMAN CHAN: Okay. Do you want to make a 23 motion?</p> <p>24 COMMISSIONER KIMBLE: So I would move we go 25 into executive session.</p> | |
| 10:18:18-10:19:27 | Page 35 | 10:20:56-10:21:36 | Page 37 |
| <p>1 a chance to touch base.</p> <p>2 CHAIRWOMAN CHAN: Thank you.</p> <p>3 COMMISSIONER PATON: But the likelihood of it 4 passing is --</p> <p>5 MR. COLLINS: It's a hundred percent.</p> <p>6 COMMISSIONER PATON: A hundred.</p> <p>7 MR. COLLINS: It's signed already. I'm sorry. 8 It been -- it's been passed.</p> <p>9 COMMISSIONER PATON: So, I guess if we wanted 10 to talk more about it, we'd go to -- into executive 11 session.</p> <p>12 MR. COLLINS: Here's how -- I'm sorry. 13 Madam Chair, I mean, my -- my view on 14 executive session would be this. If you have questions 15 about what steps we need to take in order to challenge 16 this law, if that's something the Commission ultimately 17 chose to do, those are appropriate questions to go into 18 executive session for. I think that, you know, various 19 other, you know, challenges that go with every kind of 20 discussion around litigation, I think those would also 21 be appropriate things for executive session.</p> <p>22 So, my -- my own view would be, if you would 23 like to ask Joe about some of those things that 24 Commissioners -- that someone -- that we go into 25 executive session.</p> | | <p>1 CHAIRWOMAN CHAN: Okay. Thank you. 2 Commissioner Paton, I think I need a second 3 for that.</p> <p>4 COMMISSIONER PATON: I would second that 5 motion.</p> <p>6 CHAIRWOMAN CHAN: All right. And then, Tom, 7 do we vote on that, I assume, since we took a motion and 8 a second?</p> <p>9 MR. COLLINS: Yes, please.</p> <p>10 CHAIRWOMAN CHAN: All right. Commissioner 11 Kimble, how do you vote?</p> <p>12 COMMISSIONER KIMBLE: Aye.</p> <p>13 CHAIRWOMAN CHAN: Okay. And Commissioner 14 Paton, how do you vote?</p> <p>15 COMMISSIONER PATON: Aye.</p> <p>16 CHAIRWOMAN CHAN: I vote aye, as well.</p> <p>17 So, three to zero, we will go into executive 18 session.</p> <p>19 MS. HERRING: Chairwoman Chan, can you 20 confirm who should join the executive session, please?</p> <p>21 CHAIRWOMAN CHAN: Sure. Well, okay. So, the 22 three Commissioners, Tom, Joe Roth.</p> <p>23 Tom, what other staff should be there?</p> <p>24 MR. COLLINS: I think Mike is usually --</p> <p>25 CHAIRWOMAN CHAN: Mike, okay.</p> | |

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| 10:21:38-10:47:28 | Page 38 | 10:48:53-10:49:36 | Page 40 |
| <p>1 MR. COLLINS: I don't know. 2 MS. THOMAS: And the court reporter, as well. 3 She's going to do a separate -- 4 CHAIRWOMAN CHAN: Yes, thank you. 5 MS. THOMAS: -- confidential transcript. 6 CHAIRWOMAN CHAN: Thank you. 7 MS. HERRING: Okay. Wonderful. 8 So I will open a breakout room for that 9 executive session. It is not set to close at any time. 10 So, when you are done with executive session, you can 11 come back to this main room. 12 And for those staying in the main Zoom room, 13 just as a reminder, the live stream on YouTube will 14 continue. 15 So, I will open the private room for executive 16 session now. 17 CHAIRWOMAN CHAN: Thank you. 18 (The following section of the meeting is in 19 executive session and bound under separate cover.) 20 * * * * *</p> <p>21 (End of executive session. Public meeting 22 resumes at 10:47 a.m.) 23 CHAIRWOMAN CHAN: Okay. Cathy, we are back in 24 the main session. I don't know if Commissioner Paton 25 was able to bring himself back, though, via phone.</p> | | <p>1 today. I don't know if she wants to -- no. No? Didn't 2 want to speak? Okay. 3 All right. And I don't see anyone else here 4 from the public. 5 And so with that, I think we can move on to 6 adjournment, dare I say it, Item Number VII. 7 So, with that, I would entertain a motion to 8 adjourn. 9 COMMISSIONER KIMBLE: Madam Chair? 10 CHAIRWOMAN CHAN: Commissioner Kimble. 11 COMMISSIONER KIMBLE: I would make a motion we 12 adjourn. 13 CHAIRWOMAN CHAN: I heard that you move that 14 we adjourn. 15 Commissioner Paton? 16 COMMISSIONER PATON: I would second that 17 motion. 18 CHAIRWOMAN CHAN: All right. We have a motion 19 and a second. 20 Commissioner Kimble, how do you vote? 21 COMMISSIONER KIMBLE: Aye. 22 CHAIRWOMAN CHAN: Commissioner Paton, your 23 vote? 24 COMMISSIONER PATON: Aye. 25 CHAIRWOMAN CHAN: And I vote aye, as well.</p> | |
| 10:47:32-10:48:53 | Page 39 | 10:49:38-10:49:45 | Page 41 |
| <p>1 MS. HERRING: He is back. 2 CHAIRWOMAN CHAN: Great. Perfect. 3 All right. And I think with that we are -- 4 unless anybody had any questions or comments, I always 5 hate to close out something and move on to the next if 6 somebody has questions. But I don't think we have any 7 more business on the Commission from the Commissioners 8 on Item Number V today. 9 And I want to thank Joe Roth for being here 10 for us for that. 11 And with that, I will go ahead and move on to 12 Item Number VI, Public Comments. 13 I would make sure I don't leave anything out. 14 So, this would be the time for consideration 15 of comments and suggestions from the public. Action 16 taken as a result of public comment will be limited to 17 directing staff to study the matter or rescheduling the 18 matter for further consideration and a decision at a 19 later date or responding to criticism. 20 Does any member of the public wish to make 21 comments at this time? You can also send comments to 22 the Commission by mail or e-mail at 23 CCEC@AZCleanElections.gov. 24 And does anyone have any comments? I don't 25 see any hands raised, although I do see Rivko is here</p> | | <p>1 And with that, we are adjourned until our next 2 meeting. Everyone go and be well and we'll see you next 3 time. Thank you. 4 (Meeting adjourned at 10:49 a.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> | |

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.

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4 BE IT KNOWN that the foregoing proceedings
5 were taken before me, Deborah L. Tucker, Certified
6 Reporter No. 50464 and Notary Public in and for the
7 County of Maricopa, State of Arizona; that the
8 proceedings were taken down by me in shorthand and
9 thereafter reduced to typewriting under my direction;
10 that the foregoing pages are a true and correct
11 transcript of all proceedings had upon the taking of
12 said proceedings, all done to the best of my skill and
13 ability.

14 I FURTHER CERTIFY that I am in no way
15 related to any of the parties hereto nor am I in any way
16 interested in the outcome hereof.

17 DATED at Phoenix, Arizona, this 17th day of
18 June, 2021.

19

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21 Deborah L. Tucker, RPR
22 Certified Reporter #50464
and Notary Public
My Commission expires:
23 January 20, 2025

24

25



Deborah L. Tucker, RPR
Certified Reporter #50464
and Notary Public
My Commission expires:
January 20, 2025

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