



**NOTICE OF PUBLIC MEETING
AND POSSIBLE EXECUTIVE SESSION OF THE
STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION**

Location: Citizens Clean Elections Commission

1616 West Adams, Suite 110

Phoenix, Arizona 85007

Date: Thursday, January 27, 2022

Time: 9:30 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on January 27, 2022. This meeting will be held at 9:30 a.m., at the Citizens Clean Elections Commission, 1616 West Adams, Suite 110, Phoenix, Arizona 85007. The meeting may be available for live streaming online at <https://www.youtube.com/c/AZCCEC/live>. You can also visit <https://www.azcleaselections.gov/clean-elections-commission-meetings>. Members of the Citizens Clean Elections Commission will attend either in person or by telephone, video, or internet conferencing. **This meeting will be held virtually.** Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at ccec@azcleaselections.gov.

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taken as a result of public comment will be limited to directing Council staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.

The Commission may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item listed on the agenda, pursuant to A.R.S. § 38-431.03 (A)(3). The Commission reserves the right at its discretion to address the agenda matters in an order different than outlined below.

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Commission Minutes for December 16, 2021.
- III. Discussion and Possible Action on Executive Director's Report, Enforcement and Regulatory Updates and Legislative Update.
- IV. Discussion and Possible Action on Proposed Meeting Dates for February – July 2022.
- V. Discussion and Possible Action on the 2022 Voter Education Plan.
- VI. Discussion and Possible Action on E-Qual electronic system for candidate petitions and qualifying contributions and process for collection and review of qualifying contributions.
- VII. Discussion and Possible Action on *Legacy Foundation Action Fund v. Clean Elections Commission*, 1 CA-CV 19-0773.

The Commission may choose to go into executive session for discussion or consultation with its attorneys to consider its position and instruct its attorneys regarding the public body's position regarding contracts, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. A.R.S. § 38-431.03(A)(4).

- VIII. Discussion and possible action on legislative bills on the topics of elections, voting, administration, campaign finance.
- IX. Recognition and Appreciation to Commissioner and Past Chair, Amy B. Chan, for her service to the Commission and the State of Arizona.
- X. Public Comment
This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism
- XI. Adjournment.
This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive

sessions) is available for public inspection at the Commission's office, 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Dated this 25th day of January, 2022
Citizens Clean Elections Commission
Thomas M. Collins, Executive Director

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission at (602) 364-3477. Requests should be made as early as possible to allow time to arrange accommodations.

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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING

Phoenix, Arizona
December 16, 2021
9:30 a.m.

COASH & COASH, INC.
Court Reporting, Video & Videoconferencing
1802 N. 7th Street, Phoenix, AZ 85006
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By: Kathryn A. Blackwelder, RPR
Certified Reporter
Certificate No. 50666

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1 VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS
2 CLEAN ELECTIONS COMMISSION convened at 9:30 a.m. on
3 December 16, 2021, at the State of Arizona, Clean
4 Elections Commission, 1616 West Adams, Conference Room,
5 Phoenix, Arizona, in the presence of the following
6 Board Members:
7 Ms. Amy B. Chan, Chairperson
8 Mr. Mark S. Kimble
9 Mr. Damien R. Meyer
10 OTHERS PRESENT:
11 Thomas M. Collins, Executive Director
12 Paula Thomas, Executive Officer
13 Mike Becker, Policy Director
14 Gina Roberts, Voter Education Director
15 Julian Arndt, Executive Support Specialist
16 Kara Karlson, Assistant Attorney General
17 Kyle Cummings, Assistant Attorney General
18 Monique Coady, Independent Advisor
19 Cathy Herring, Staff
20 Eric Sloan
21 Rivko Knox
22 Timothy A. La Sota, Esq.
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24
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1 P R O C E E D I N G
2
3 CHAIRWOMAN CHAN: It is 9:30 a.m. on
4 December 16th, 2021, and I'll call this meeting of the
5 Citizens Clean Elections Commission to order. I would
6 like to ask audience members to please keep their
7 microphones on mute.
8 And with that, we will take attendance. If
9 Commissioners could identify themselves for the record.
10 COMMISSIONER KIMBLE: Commissioner Mark
11 Kimble.
12 CHAIRWOMAN CHAN: Thank you.
13 COMMISSIONER MEYER: Good morning.
14 Commissioner Damien Meyer.
15 CHAIRWOMAN CHAN: And I'm Commissioner
16 Amy Chan.
17 I don't see any other Commissioners in
18 attendance, I don't believe. So we've got a quorum,
19 three of us.
20 And with that, we can move on to Agenda
21 Item II. Rolling right along. Item II, discussion and
22 possible action on Commission minutes for October 29th,
23 2021. Is there any discussion?
24 (No response.)
25 CHAIRWOMAN CHAN: If not, do I have a motion

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1 to approve the minutes?
2 COMMISSIONER KIMBLE: Madam Chair.
3 CHAIRWOMAN CHAN: Commissioner Kimble.
4 COMMISSIONER KIMBLE: I move we approve the
5 minutes for the Commission meeting of October 29th,
6 2021.
7 CHAIRWOMAN CHAN: Thank you.
8 Do I have a second, Commissioner?
9 COMMISSIONER MEYER: I wasn't there, so I
10 don't know --
11 CHAIRWOMAN CHAN: Oh.
12 COMMISSIONER MEYER: -- if I can technically
13 second this motion, so I would defer to the -- to the
14 Chairperson.
15 CHAIRWOMAN CHAN: Maybe I'll go ahead and
16 second it, if I'm the only one left.
17 And with that, we can go ahead and vote on
18 that. Commissioner Meyer, do you want to vote on it
19 or --
20 COMMISSIONER MEYER: I'll vote aye.
21 CHAIRWOMAN CHAN: Okay. Commissioner Kimble.
22 COMMISSIONER KIMBLE: Aye.
23 CHAIRWOMAN CHAN: And I'll vote aye as well.
24 And with that, we can move on to Agenda Item
25 III, discussion and possible action on Executive

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1 Director's report, enforcement and regulatory updates
2 and legislative update. Tom is going to go over this
3 for us today, as always. Thank you, Tom.
4 MR. COLLINS: I swore I wouldn't do that.
5 Thank you, Madam Chair, Commissioners. And
6 thanks, everyone, for being here. I know we have a lot
7 of work to do, but I think, you know, just the last six
8 weeks have been very productive for the Commission
9 staff.
10 First, though, I want to say congratulations
11 to Avery Xola, who earned his master's in public
12 administration from ASU this month. We are all excited
13 about that and that's pretty cool. I think he's out
14 today, but -- but nevertheless, we are very excited
15 about that.
16 You know, the legislative session starts in a
17 little less than a month now. So before we next meet,
18 the legislature will have started.
19 I want to hit a couple of the things that are
20 highlighted in the voter education section. You know,
21 we had -- just yesterday we had an online webinar that
22 we hosted with the Arizona Capital Times about the
23 midterms for 2022. It was really, really well done.
24 Gina and Ken Matta, who's the security chief for the
25 state elections, and Scott Jarrett, who's the election

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1 director for -- for Maricopa County, and Paul Senseman,
2 who many of you may know is a long-time lobbyist and
3 communications expert, one of the most well-respected
4 members of the government affairs community here. And
5 they really provided a lot of wonderful information and
6 it's -- and it's always great to see. And I really
7 can't commend Gina enough for her work on that.
8 Gina was also a judge of the We The People
9 regional competition with the Center for Civic
10 Education this weekend, which was very exciting. We're
11 very proud of that.
12 And obviously, you can see the variety of
13 outreach activities that Avery and Gina and
14 Chairwoman Chan have been involved in the last month.
15 We -- we will have more on voter education
16 for 2022 in January.
17 CHAIRWOMAN CHAN: Tom.
18 MR. COLLINS: Sorry. Yes.
19 CHAIRWOMAN CHAN: No, don't be sorry. I'm
20 interrupting you. But I was -- I was really interested
21 to see that Gina met with someone from The Carter
22 Center, because I believe -- and it was to discuss
23 election observers at the polls. I was curious to hear
24 a little more about that meeting. I'm interested
25 because I think The Carter Center has been around for,

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1 I don't know, several -- a long time, and my
2 understanding is that they have never thought it was
3 necessary to take a role in domestic election affairs
4 before. They've always done international work. And
5 with the situation in our country being what it is,
6 they've started doing some work here within the U.S.,
7 and I -- I just wondered, would it be all right to ask
8 Gina to tell us a little bit about that --
9 MR. COLLINS: Sure.
10 CHAIRWOMAN CHAN: -- meeting?
11 MR. COLLINS: Surely.
12 CHAIRWOMAN CHAN: Okay. Gina.
13 MS. ROBERTS: Madam Chair, Commissioners,
14 good morning. So the meeting -- The Carter Center
15 reached out to Clean Elections, and they were looking
16 to speak to stakeholders in the state just about the
17 idea of having nonpartisan election observers stationed
18 at the polls. And very initial discussions. They were
19 -- The Carter Center expressed that, you know, they --
20 they don't have any -- anything written down. They
21 were really just kind of putting the topic out there
22 and just starting very initial discussions on it. So
23 their -- they didn't really have any type of, you know,
24 framework or game plan, if you will, about what it
25 would look like. They just wanted to start those

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1 conversations with key stakeholders in key states that
2 they were looking at, Arizona being one of them.
3 So I -- I met with a representative, and it
4 was -- it was a fantastic discussion. And -- and
5 really what they were looking at is, would it be
6 beneficial to have somebody who is, you know,
7 nonpartisan in nature be there in the polls. Would
8 that benefit the voters. And so we had a good
9 discussion about what that would look like.
10 There -- in my opinion, I initially -- I see
11 a lot of challenges with that, with doing that. And so
12 we had a good discussion about a lot of things that
13 they would have to work through if they wanted to
14 pursue that, and mostly being kind of what is the end
15 game. What is the purpose of that nonpartisan person
16 being there. When you talk about political observers,
17 they have a specific function, where they're taking
18 notes and they're reporting back to their party. And,
19 you know, eventually, you know, if they go to court, if
20 they end up contesting the election, you know, those
21 observers could be called in as witnesses.
22 So there's specific roles that the political
23 party observers serve for kind of that end game, if you
24 will, you know, what does it -- end up occurring. So
25 what would be the function, then, of that nonpartisan

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1 observer? So who are they really representing there?
2 And then also, we talked about voter
3 perception too, such as -- the term "nonpartisan," as
4 we know here at Clean Elections, you know, we have to
5 often -- I think sometimes you have to earn that title.
6 And not saying that The Carter Center certainly hasn't
7 earned that. But when you're a voter too talking about
8 perceptions when you go into a polling place, you know,
9 how do you identify that person? You know, do you know
10 who that person is? Do you know that they're, you
11 know, with a nonpartisan entity? Or is it, you know,
12 something more comfortable for a voter to see a person
13 of each major political party there to provide that
14 balance.
15 So lots of just, you know, initial
16 discussions, things to think about, you know, not
17 necessarily a good thing or a bad thing. But it was,
18 again, just, you know, what are some of the things that
19 popped into our head when we first started talking
20 about this, what would it look like, and really what's
21 that ultimate goal of having that observer there. So
22 that was really what the main points of the discussion
23 ended up being.
24 CHAIRWOMAN CHAN: Thank you so much for that
25 overview. I was really curious to -- to hear a little

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1 bit about that. Thank you.
2 All right. Does anyone have any questions
3 for Gina?
4 (No response.)
5 CHAIRWOMAN CHAN: And if not, I'll throw it
6 back to Tom. Thanks, Tom.
7 MR. COLLINS: No. Thank you, Madam Chair,
8 Members. Just really quickly, we will meet again on
9 January 27th.
10 And I wanted to mention, Paula and Mike have
11 been coordinating our work with the Auditor General's
12 Office. As you all know, under 16-949, we are -- the
13 fund and its expenditures and revenues are audited
14 every four years by the Auditor General. We've had
15 productive meetings with them. They've been wonderful
16 and professional to work with. I really can't say
17 enough good things about them. And of course, Mike and
18 Paula have been -- been easy for them to work with,
19 which I think is important as well. So we look forward
20 to the results of that. You may look out in your own
21 e-mails for a message from them in the next few weeks
22 relating to whatever the audit resolution is.
23 I wanted to mention a couple of legal issues
24 I think are worth noting. We have two cases pending
25 respecting the Commission. One is the Legacy

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1 Foundation Action Fund matter at the Court of Appeals
2 and the other is The Power of Fives versus Clean
3 Elections, which is also part of the -- related, in a
4 way, to the enforcement item.
5 An important election case that was decided
6 in -- last week, the Ninth Circuit Court of Appeals
7 overruled the District Court and found that Arizona's
8 standard where, if you have failed to sign your ballot
9 affidavit envelope and fail to rectify that before
10 7:00 p.m. on election day, that is constitutional.
11 That means that the law that's on the books is still on
12 the books, and it makes it incredibly important --
13 well, it was always incredibly important. But it makes
14 it -- reemphasizes how important it is to sign your
15 ballot return envelope affidavit.
16 I want to -- I want to mention, I'm not a
17 real expert in election contests, but there is a case
18 out there called Torgeson v. Town of Gilbert, and it
19 has to do -- the operative facts -- the reason that
20 it's on the list here is because the operative facts
21 involve the Town taking down political signs. And part
22 of the Town's defense, which is relevant to the
23 campaign finance system, is that, in effect, the Town
24 was entitled to take these signs down because they were
25 put up by an individual and not by a political

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1 committee.
2 Since we've all been here for a while, we
3 might recall there's a case called Galassini v.
4 Fountain Hills that came up through the federal courts
5 in 2013 that struck down the then existing political
6 committee definition in part because of the burdens the
7 way it was drafted and how it was sought to be imposed
8 by the Town of Fountain Hills.
9 Again, I don't pretend to know the first
10 thing about election contests, but I do think we need
11 to be aware of the arguments that the Town is putting
12 forward and how they affect the overall operation of
13 the campaign finance system, because these concepts are
14 not entirely separate.
15 I wanted to really quickly hit -- and I
16 apologize, it's going longer than I expected. As you
17 can see, Gina, Alec, Avery, and the Chairwoman have
18 been either certified or recertified as election
19 officers through the Secretary of State.
20 Another thing we're just keeping an eye on is
21 the -- the Secretary and the Attorney General's Office.
22 I can't really characterize it beyond the fact that
23 they are -- there's some kind of argument relating to
24 the approval of the Election Procedures Manual. Again,
25 why is that something that we're asking you to keep an

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1 eye on? It's because the Secretary's Office
2 historically has, you know, had the -- the Election
3 Procedures Manual has always been a place where the
4 Clean Elections role and the Secretary's role come into
5 play with one another. And, of course, obviously, from
6 a voter education perspective, you know, where the
7 manual is, what the law is, those kind of things,
8 are -- are important. So, you know, we'll be tracking
9 that, but, you know we don't have any insight or inside
10 information other than the information that has been
11 made publicly available by the Secretary, which we have
12 if you want.
13 Finally, I want to say this. And this is
14 important for the -- for the -- for administrative law
15 purposes. Our regulatory agenda for this year we're
16 going to finish this year, this meeting, I hope. We --
17 we do not have additional rulemaking that we intend in
18 2022. If we -- something comes up and we have to,
19 obviously we'll update that and make you aware of that.
20 But we just want -- I just want to make sure that, you
21 know, we make our annual statement of what our
22 regulatory agenda is, and that is it.
23 So unless anyone has any further questions,
24 Madam Chair, Members, thank you very much for your time
25 this morning.

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1 CHAIRWOMAN CHAN: Thank you, Tom. I think
2 I'm the reason that it went longer than you expected.
3 Does anyone -- do any Commissioners have any
4 comments or questions for Tom?
5 (No response.)
6 CHAIRWOMAN CHAN: I'm so thrilled and
7 impressed with Avery, by the way.
8 Oh, I see Commissioner Meyer's hand is up.
9 Go ahead, please.
10 COMMISSIONER MEYER: I just want to make a
11 quick comment. Thank you, Chairman. You know, voter
12 education is more important right now than it has been
13 in my entire time on the Commission, I believe. I'm
14 just really thankful and proud to see what Tom and Gina
15 and Avery and the whole staff were out there doing on
16 the voter education to combat all the misinformation
17 out there. So thank you. Keep up the great work. I
18 know we're going to see your plan in January; I'm
19 looking forward to that. But I just wanted to thank
20 you and encourage you to keep it up, because we need --
21 we and the state, the citizens of Arizona, need you
22 guys now more than ever on this front. So thank you.
23 CHAIRWOMAN CHAN: Well said. Agree
24 100 percent. Thank you, Commissioner Meyer.
25 All right. If there's nothing further on

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1 this item, we'll move to Item IV, which is the budget,
2 discussion and possible action on the 2022 budget and
3 related statutory calculations.
4 So every year we approve a calendar year
5 budget, along with certain calculations required by
6 law, and there's a memo in the materials at Item IV
7 which outlines those calculations and our plan for
8 2022. And I believe this is Mike's item to present and
9 answer questions. Thank you, Mike.
10 MR. BECKER: Good morning, Madam Chair,
11 Commissioners. Before you is the proposed Commission
12 budget for calendar year 2022. Just a few highlights I
13 want to touch on.
14 First, the expenditure cap has increased. It
15 went up about a million dollars from last year, so
16 that's a good sign, which allows us to increase our --
17 both our administration and our voter education caps
18 going into 2022. Though, one downside. If you look at
19 the projected revenue going into 2022 and moving
20 forward for the next four years, we are projecting a
21 decrease in our revenue. We did see that this year,
22 and we are likely to continue to see that. Now, that
23 being said, the Clean Elections fund is flush with
24 cash, so we're not anticipating any concerns or issues
25 when it comes to funding our candidates moving forward

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1 for the 2022 election cycle.
2 Another area I want to highlight quickly for
3 you is in the -- both on the admin expenditure
4 projections, as well as the voter education expenditure
5 projections, the rent charges for the agency, those
6 have increased. That is due to the fact that we're
7 moving to a new building sometime in July, August time
8 frame, and the rent will increase in that. And so I've
9 also budgeted funds in there to offset any costs that
10 may be incurred for the moving, taking down our desks,
11 moving them over, assembling them, all that type of
12 thing. So that has increased from previous years.
13 Another aspect that I want to make sure
14 you're aware of that has increased dramatically is
15 under the voter ed side. If you look at the other
16 professional outside services, that has been -- that is
17 about a little over \$3 million, and that is a
18 substantial increase from previous years. That is due
19 to a couple things: One, a lot of what we're doing in
20 the IT side is moving from our actual servers, hard
21 servers, to going to the cloud, so that's going to cost
22 some funds; as well as being prepared for anything that
23 may come along through 2022.
24 I know in previous election cycles we've been
25 asked to be involved in different federal races in

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1 terms of debates; we want to make sure we're prepared
2 for that. And as long -- along that line, maybe the
3 congressional races as well. But we just want to be
4 prepared so that we can jump in at any time and make
5 sure that Clean Elections is involved in all these
6 aspects, just like we've been doing in the last couple
7 election cycles, and we want to increase that on the
8 voter ed side. So if you see that, that's -- that's
9 why that number has increased.
10 One last area I want to point out is, again,
11 expenditure cap and our balance. If we were to spend
12 all the way to the cap, we would be -- we would not
13 have any funds available. That's why we always
14 continue to say -- let you know that we recommend not
15 having any -- we don't have any funds available to give
16 to the general fund moving forward in 2022. We want to
17 make sure we're -- we have the funds available, which
18 we do, and continue to do, to fund all of our
19 candidates. And with it being a bigger election cycle
20 because of the Governor's race, Secretary of State, all
21 the -- all the statewide are going to be running,
22 we're going to make sure we still have the funds
23 available to fully fund every candidate that wants to
24 run as a Clean Elections candidate.
25 And with that, I'm happy to answer any

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1 questions.
2 CHAIRWOMAN CHAN: Thank you so much, Mike.
3 This is something that's extraordinary complex to my
4 mind but may not be to others.
5 Commissioner Kimble, did you have a comment
6 or question?
7 COMMISSIONER KIMBLE: I did.
8 Mike, you talked about revenue projections.
9 And I'm looking at Page 10 of the attachment,
10 anticipated fund balance projections over the next four
11 years, and projected revenues are flat to dipping a
12 little. Is this because of a decrease or a projected
13 decrease in court assessments or uncertainty about
14 court assessments or what is the reason for this?
15 MR. BECKER: Madam Chair, Commissioner
16 Kimble, that's exactly it. It is the court
17 assessments. The court assessments have decreased over
18 the last several years, and this is our way of just
19 being cautious, not knowing where the court assessments
20 will be moving forward, and that's why the numbers are
21 what they are.
22 COMMISSIONER KIMBLE: And have they -- why
23 have they decreased over the past couple years? There
24 was a legislative action, I guess it was a year ago,
25 that allowed judges to waive certain -- certain fees,

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1 but I don't know that that's really taken -- do we know
2 if that's really had much of an effect, or is it some
3 other factor?
4 MR. BECKER: Madam Chair, Commissioner
5 Kimble, at this point we don't know. It hasn't been --
6 hasn't been in place long enough to know whether that's
7 really affecting it.
8 The biggest issues, when it comes to our
9 court assessments, is the lack of drivers on the roads.
10 That's what -- during the -- as the pandemic hit last
11 year and we've seen the lack of drivers on the roads,
12 that's where the numbers come in. Most of our funding
13 for the Commission comes through that 10 percent
14 surcharge on traffic tickets. With the numbers of
15 drivers dropping, those -- those aren't occurring as
16 often. So on the one hand, that's good, people aren't
17 getting in trouble with the law; but for us, it hurts
18 our funding.
19 The other area is, again, which -- the
20 traffic -- the red light running, those cameras, they
21 are sporadic throughout the state, as the legislature
22 has gotten rid of most of them. So those funds, what
23 used to be a considerable amount, have dwindled to
24 basically nothing at this point. So it really boils
25 down to, we need more cars on the roads.

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1 COMMISSIONER KIMBLE: Interesting
2 observation. Thank you.
3 CHAIRWOMAN CHAN: Thank you.
4 Anything -- any other questions or comments?
5 (No response.)
6 CHAIRWOMAN CHAN: Okay. Yeah, that is
7 interesting about the cars on the roads. I have to
8 say, I'm back driving, now that my kids are back in
9 school, and I haven't really noticed fewer cars. I
10 don't disagree with what you're saying, but I've
11 definitely noticed more aggressive drivers and faster
12 drivers. It's like it's all been pent up over the past
13 year. Crazy.
14 Okay. So let's -- if there's nothing
15 further, question or discussion-wise, could we get a
16 motion to approve the memorandum in Item IV,
17 Commissioner Kimble or Meyer?
18 COMMISSIONER KIMBLE: Madam Chair.
19 CHAIRWOMAN CHAN: Yes.
20 COMMISSIONER KIMBLE: I move that we approve
21 the memorandum regarding budget projections in Item IV
22 of today's meeting.
23 CHAIRWOMAN CHAN: Thank you.
24 Is there a second?
25 COMMISSIONER MEYER: Commissioner Meyer.

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1 I'll second that motion.
2 CHAIRWOMAN CHAN: Thank you.
3 All right. Item IV has been moved and
4 seconded. We'll go ahead and call the roll.
5 Commissioner Meyer, how do you vote?
6 COMMISSIONER MEYER: Aye.
7 CHAIRWOMAN CHAN: Commissioner Kimble, how do
8 you vote?
9 COMMISSIONER KIMBLE: Aye.
10 CHAIRWOMAN CHAN: And I vote aye as well.
11 By our vote of three ayes and zero nays, we
12 have approved the item, and we will -- congratulations,
13 everybody. Good work. Good work. Thank you, Mike.
14 MR. BECKER: Thank you.
15 CHAIRWOMAN CHAN: Moving on to Item V,
16 discussion and possible action on amendment to
17 R2-20-101, rule amendment related to personal and
18 family contributions to candidates participating in the
19 Clean Election funding program.
20 We approved this rule for public comment in
21 July. And you may recall, the staff worked with
22 Governor's Regulatory Review Council to develop a clear
23 rule proposal to resolve an issue related to the
24 cross-references in the Act's definitions.
25 Tom, would you like to provide a brief

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1 summary of this draft and your recommendation?
2 MR. COLLINS: Sure. Madam Chair,
3 Commissioners, yes. As Chairwoman Chan said, you know,
4 we have had this rule. We've worked -- this is the
5 second version we've worked through after we got
6 some -- some good feedback from the Governor's
7 Regulatory Review Council about trying to smooth and
8 make sure the language was clear.
9 The upshot of this is that there's a --
10 there's a definition of family member for purposes of
11 the traditional candidate contributions and, you know,
12 essentially family members' donations are considered
13 essentially personal monies, for all practical
14 purposes, they are deemed to not have the corrupting
15 influence that -- that monies from nonfamily members
16 would have. In 2016 the legislature expanded the
17 definition of who was a family member for purposes of
18 that definition.
19 Because of the cross-references in the Clean
20 Elections Act, the reverse happens, in effect. And we
21 had a rule that -- that was set up under the old
22 system. So, in other words, when the -- when the
23 legislature broadened the definition for the purposes
24 of who can give to traditional candidates, it narrowed
25 and put in, under the category of family members, the

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1 definition for purposes of Clean Elections.
2 What does that mean? To be more precise, the
3 Clean Elections Act limits participating candidates on
4 the amount of personal and family contributions they
5 can receive. So now -- so whereas in 2016, for
6 example, a clean candidate might have been able to take
7 the \$180 in seed money from an aunt without having that
8 go towards their seed money -- their personal money
9 cap, under this rule it will. And that is, we believe,
10 or at least I believe, a result of the litigation in --
11 in a case called -- I think it's called Arizona
12 Advocacy Network versus State.
13 So that's what -- that's what we've done.
14 We -- those definitions will line up with the statute.
15 There is -- and I'd be remiss to not say that there is
16 a crimping on donations that would have been available
17 to participating candidates and there is a crimping on
18 the right of those people, those persons who are under
19 that definition, to give to the candidate of their
20 choice if they are participating. Those are results of
21 the statutory change and those will be results of the
22 rule change; however, this is not a policy -- in my
23 view, this is not a policy discussion. It's a -- it's
24 a legal exercise. So we recommend that the Commission
25 approve the rule, and we will then forward it to the

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1 Governor's Regulatory Review Council.
2 CHAIRWOMAN CHAN: Thank you, Tom.
3 Any questions from the Commission?
4 (No response.)
5 CHAIRWOMAN CHAN: Okay. If there are no
6 questions, is there a motion to approve the rule --
7 proposed rule -- or, amendment to the rule, I should
8 say?
9 COMMISSIONER KIMBLE: Madam Chair.
10 CHAIRWOMAN CHAN: Commissioner Kimble.
11 COMMISSIONER KIMBLE: I move that we approve
12 the amendment to R2-20-101, the rule amendment related
13 to personal and family contributions to candidates
14 participating in the Clean Elections funding program.
15 CHAIRWOMAN CHAN: Thank you.
16 May I --
17 COMMISSIONER MEYER: Second.
18 CHAIRWOMAN CHAN: -- have a second?
19 Oh, thank you, Commissioner Meyer. I heard
20 you second that.
21 And we do have a motion and a second, so I
22 will call the roll. Commissioner Meyer, how do you
23 vote?
24 COMMISSIONER MEYER: Aye.
25 CHAIRWOMAN CHAN: Commissioner Kimble, how do

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1 you vote?
2 COMMISSIONER KIMBLE: Aye.
3 CHAIRWOMAN CHAN: And I vote aye as well.
4 By your votes of three ayes and zero nays, we
5 have approved the amendment to the rule.
6 All right. Moving on to Item VI, discussion
7 and possible action on MUR 21-01, The Power of Fives,
8 LLC. The Commission may choose to go into executive
9 session for discussion or consultation with its
10 attorneys.
11 This is an enforcement-related item that we
12 continued -- that I continued from last month. There
13 was a lot of discussion around that. And since -- I'll
14 have Tom introduce the item, give an overview of his
15 recommendation, and then have time for Commission
16 questions and discussion. And then following that, we
17 can hear from Mr. La Sota, the attorney for Power of
18 Fives.
19 Tom.
20 MR. COLLINS: Madam Chair, Commissioners,
21 thank you. I want to say, you know, ordinarily we
22 don't -- we haven't done timing on these things, and I
23 don't -- I'm not saying that we should, but I do want
24 to make -- make clear that we are going to -- we would
25 like time for rebuttal after Mr. La Sota presents.

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1 So where we left things last month, really
2 the upshot of the -- what amounts to a motion to
3 dismiss from The Power of Fives is that there is a --
4 some kind -- there's a bright line to be found in the
5 Clean Elections Act between a business and everything
6 else and -- you know, and I think that -- I think that
7 that's a good place to start, because I think the big
8 picture here is that --
9 And I should note, you know, our -- my
10 colleague in this case, Kara Karlson and Kyle Cummings,
11 are here and will -- and may have -- and will have -- I
12 will -- at some point they will have their own thoughts
13 to add, I think.
14 But I think that -- I think that -- I think
15 that's -- I think that's a good place to start and I
16 think that -- and I think that that's -- and I think
17 the Act makes it clear that that's -- that what the --
18 what we're recommending, as far as determining there is
19 reason to believe here, is -- is appropriate.
20 Voters -- in the findings and declarations of
21 the Clean Elections Act, you know, voters talk about --
22 about the influence of money on elections, they talk
23 about the need to have, you know, more information
24 about how candidates are funding their campaigns. And
25 it seems to me that when you read those findings and

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1 declarations, it's pretty much impossible for me to
2 conclude that voters intended to create an onramp for a
3 network of undisclosed campaign finance activity.
4 Because as the complaint in the case -- you
5 know, this is not -- The Power of Fives' activity here
6 in the main arises from activity with Mr. Sloan, but
7 there were several other candidates who had this same
8 relationship with The Power of Fives. The Act, by its
9 terms, applies to persons. It doesn't apply expressly
10 to candidates. 16-957, the penalty enforcement
11 provisions, expressly apply to anyone who violates the
12 Act.
13 It's been the Commission's position, in fact,
14 in court, throughout every case, that it has
15 jurisdiction to enforce the Act across a variety of
16 different kinds of entities that come in conflict with
17 the -- with the Clean Elections Act. And every court
18 that has ever looked at the jurisdictional question of
19 the Commission has essentially concluded that the
20 Commission has the jurisdiction that it asserts under
21 the plain terms of the Act.
22 You know, I think that one of the things that
23 -- so we talk about it like what could -- what would be
24 the reasons why there could not be reason to believe
25 here. And again, I think the main one seem -- has

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1 always seemed to be, well, we're -- we're a business.
2 Now, in this particular case, the complaint makes clear
3 that whatever The Power of Fives was doing, it resulted
4 in a campaign finance activity that ought to have been
5 reported and wasn't reported, campaign finance activity
6 that implicates and directly involves contributions or
7 items that, you know, are either contributions or
8 expenditures on behalf of candidates by The Power of
9 Fives. And so just to underscore the audacity of the
10 -- of the -- of The Power of Fives' response in this
11 matter, it's illegal for limited liability companies
12 and corporations to contribute to candidates.
13 So does the campaign finance code apply to
14 businesses? Absolutely. It absolutely says that
15 businesses have to be more careful in how they interact
16 with candidates under the code than anyone else. The
17 only exception under the campaign finance code for all
18 of these things is for entities that have designation
19 under Section 501(a) of the Internal Revenue Code,
20 nothing else. And that's not a fact here. The
21 contours of that are -- don't even matter for this
22 purposes. But in this case, there's no exception.
23 So I think that we've made out the prima
24 facie case here for the violations that are laid out in
25 the complaint. And for that reason, you know, we

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1 recommend that -- that the Commission determine that
2 there's reason to believe here. And, you know, so
3 that's really our position.
4 Kara, I don't know if you want to jump in
5 here briefly.
6 CHAIRWOMAN CHAN: Sure.
7 MS. KARLSON: Thank you, Madam Chair,
8 Commissioners. And Tom, thank you for giving that
9 initial kind of table setting perspective. Because I
10 drafted the -- the slides about the reporting period, I
11 wanted to kind of explain why I provided that. And
12 then especially since Mr. Sloan is here also
13 separately, I did want to highlight for the Commission
14 that while the facts that I included in here are
15 related to the Sloan campaign, that is only because
16 those are the facts that we have directly from The
17 Power of Fives.
18 So we are using what should be undisputed
19 facts provided by The Power of Fives that give an
20 example of what The Power of Fives' scheme, their
21 contractual scheme would allow them to do with any
22 candidate. So, you know, to the extent that this
23 appears to be, you know -- I just don't want it to be
24 interpreted as an attack on Mr. Sloan, because this is
25 just -- these are the -- this is the information that

1 we have that was provided from The Power of Fives.
2 So The Power of Fives acknowledged that work
3 began in August of 2019. The Power of Fives stated
4 that they spent money on Mr. Sloan's campaign beginning
5 in September of 2019. They purchased signatures. They
6 booked events. So they spent some kind of money on at
7 least Mr. Sloan's campaign beginning on September 2019.
8 They booked -- or, they -- they signed the
9 contract on January 2020, and the first -- at the
10 latest, the first campaign finance report would have
11 been due April 15th. There was no campaign finance
12 report. And, in fact, that is not an accident. That
13 would be, you know, on -- under The Power of Fives'
14 thought process, that is exactly how it should work.
15 Because even though The Power of Fives was out there
16 making expenditures on behalf of getting Sloan elected,
17 Sloan hadn't made those expenditures.
18 And then moving to the second reporting
19 period, you have Dr. Branch hiring Mr. La Sota and
20 paying for the -- to both defend Mr. Sloan's petitions
21 and to knock off the -- Mr. Sloan's competition.
22 Again, nowhere is that disclosed that that happened.
23 By June 18th, you have the Branch e-mail to
24 the State Committee for the \$5 contributions for, you
25 know, The Power of Fives candidates. And I think --

1 and then you have this like very rushed period in July
2 where, you know, the actual qualification happens,
3 money is changing hands, and the final invoices for all
4 three phases are sent and there's a cancellation.
5 But basically like what that shows you is
6 that from September of 2019 through July 25th, 2020,
7 under Dr. Branch's reading of the Clean Elections Act,
8 no reporting is required for a full year. They can do
9 a full year of work and no reporting is required if you
10 take their -- their perspective.
11 And then I think, obviously, the big issue,
12 or at least one -- an example, a single example from
13 what we have right now, before we've been authorized to
14 do any further investigation, is that -- that June 18th
15 e-mail where Dr. Branch sends out an e-mail requesting
16 -- requesting \$5 contributions for Mr. Sloan's
17 campaign, and nowhere in that e-mail is there any
18 explanation that if he's successful in qualifying Eric
19 Sloan, that is a direct benefit to Dr. Branch.
20 Dr. Branch is sending out this e-mail on behalf of a
21 campaign, but he doesn't admit it in the e-mail. And
22 there's no report indicating that, should Mr. Sloan
23 qualify, he will actually stand to benefit at least
24 \$116,000. Now, I have a hard time looking at the Act
25 itself and figuring out a way where that does not

1 violate the Act.
2 And I do repeat Tom's point that under 16-916
3 LLCs shall not make contributions to candidate
4 committees. We know that Dr. Branch, by his own
5 admission, paid for, you know, 23,000 in legal fees.
6 So there are just -- these are just -- this
7 is just the tip of the iceberg in what is going on.
8 But really the key point of this slide is to just -- to
9 just show you some highlights of like these are
10 big-ticket things that happened that would go
11 unreported because of -- if we accept The Power of
12 Fives' reading on this.
13 CHAIRWOMAN CHAN: So may I ask a question of
14 Kara before we throw it back to Tom? I mean -- and
15 these slides were very helpful, Kara, so thank you. I
16 wasn't sure who created it.
17 You know, it reminds me of the conversation
18 we had last month when it was Commissioner Paton,
19 Commissioner Kimble, and I. And I think my -- my
20 discomfort with this is, why is it not on the candidate
21 to be the reporter? Why are we putting the onus on the
22 consultant? Are we going to have a situation now, if
23 we go forward with this -- this just seems so different
24 from things we've done in the past, and I don't know if
25 I'm missing something. If I'm wrong about that, please

1 call me on it.
2 I just, you know, I think of Constantin
3 Querard, who I know -- I just happen to know is a
4 consultant who, I don't know if he still does, but has
5 represented a lot of Clean Elections candidates in the
6 past. Is he going to have to register as a political
7 committee as a consultant?
8 Okay. So I see Kara shaking her head. I
9 know I -- Tom has his hand up too. Kara, let me let
10 you answer first. And then, Tom, you can have your say
11 as well. Because those were my concerns last time is,
12 are we going down a path that is, to my mind, a
13 little -- not a path I'm comfortable with? Go ahead.
14 MS. KARLSON: No. I hear your concern. This
15 is different. This is not saying that the -- that the
16 -- that the LLC -- that a campaign consultant would be
17 on the hook for making the -- you know, making the
18 record, filing the report. What this is saying is, you
19 cannot set up a business system that by its very nature
20 avoids needing those reports, right.
21 So his -- the argument that Sloan is making
22 is -- or, not that Sloan. Excuse me. The argument
23 that Branch is making, to the best of my
24 understanding -- and obviously, Mr. La Sota will get an
25 opportunity to rebut this -- is that, you know, we are

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1 fine because we just made this business and you -- no
2 one owed money until this later point in time, even
3 though all of these transactions were taking place
4 beforehand. And that is a clear violation of the law,
5 especially when you get into the fact that, again, by
6 its very term, 16-916, LLCs cannot make contributions
7 to a candidate committee. And this was either a
8 contribution to a candidate committee because, you
9 know, if Mr. Sloan didn't qualify, then he would not
10 owe them anything, in which case the LLC has given all
11 of this money to influence an election, or he intended
12 to make that money all along and this was set up
13 expressly to avoid any kind of -- the regular
14 disclosure obligations.
15 CHAIRWOMAN CHAN: I mean, I agree with you on
16 a promise to spend -- you know, a contract like that
17 needs to be reported at the time it's entered into,
18 right. I mean, and I think I brought up the Napolitano
19 campaign from years ago running into this exact
20 problem. But again, like at that time it wasn't her
21 consultant. It was her campaign that was in trouble
22 for that. And I think Mr. Sloan had his own issue with
23 us regarding this matter. And perhaps I'm just too
24 dense for this, but what is it that makes this Branch's
25 issue rather than Sloan's issue? And again, not to

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1 beat up on Mr. Sloan here.
2 Tom, did you want to jump on that one or --
3 MR. COLLINS: Yes. Yes, I absolutely do.
4 CHAIRWOMAN CHAN: And I apologize. I --
5 MR. COLLINS: It is both -- it is both of
6 their issue.
7 CHAIRWOMAN CHAN: Okay.
8 MR. COLLINS: We have an enforcement going
9 against Mr. Sloan. It's on the agenda later.
10 Mr. Sloan has requested it to be there.
11 CHAIRWOMAN CHAN: Yes.
12 MR. COLLINS: This enforcement -- when we
13 brought this case to the Commission a year ago, the
14 Commission told us, go out and figure out what's
15 happening here. We have -- we had a he-said-he-said
16 situation that happened in this very Zoom room. And
17 what we did was went out and dug into the facts. We
18 have the facts. We have all the facts we thought we
19 could appropriately have before we had to -- simply had
20 to file a complaint, and then we did that.
21 They're -- the reason why the consultant is
22 on the hook here too is because, under the statute and
23 the rules, the consultant is an actor of -- in his own
24 way. Not every consultant is doing this this way. I
25 have no evidence or experience of anyone ever having a

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1 business set up where you could agree to provide
2 services, begin to provide services, and that services,
3 by virtue of the contract, evade the very rules that
4 are in place.
5 So if you -- if the Commission does not have
6 the authority to put accountability on everyone who may
7 have -- again, this is a reason to believe stage. This
8 is not the end of this case, with all due respect,
9 Chairperson Chan. If the Commission says that now,
10 there will be an exception that will allow consultants
11 to drain the Clean Elections fund with no
12 accountability to the public whatsoever, and I simply
13 can't read the Clean Elections Act to say that.
14 CHAIRWOMAN CHAN: Okay. Thank you, Tom.
15 Thank you.
16 Anyone -- and I interrupted, I think, because
17 you had given it --
18 MR. COLLINS: No.
19 CHAIRWOMAN CHAN: -- over to Kara. And then
20 you maybe --
21 MR. COLLINS: I think we're -- I think we're
22 okay for now. I mean, we obviously want the time to
23 rebut.
24 CHAIRWOMAN CHAN: Yes.
25 MR. COLLINS: It's important.

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1 CHAIRWOMAN CHAN: Sure.
2 MR. COLLINS: So thank you.
3 CHAIRWOMAN CHAN: Okay. Any Commissioners
4 have any questions so far, other than myself?
5 (No response.)
6 CHAIRWOMAN CHAN: And if not, we'll move on,
7 I think, to Mr. La Sota, if he's ready and willing to
8 speak up.
9 MR. LA SOTA: I am. Are you ready for me to
10 begin, Madam Chair?
11 CHAIRWOMAN CHAN: Yes, please go ahead.
12 MR. LA SOTA: So good morning. I'm Timothy
13 La Sota on behalf of The Power of Fives. And I'd like
14 to start by talking out -- talking -- there are two
15 separate issues here. I think either one would command
16 a decision to dismiss this matter, but there are two
17 issues. There's the issue of Mr. Collins trying to
18 regulate a vendor, which the Chair has talked about at
19 some length at both -- and I think raised all the right
20 questions that I'll get into further in a moment. But
21 there's that issue, and there's also the issue that,
22 you know, look, at the inception of this contract,
23 it's -- there's no promise, agreement, no obligation to
24 pay anything, so -- but I'll get into that second.
25 First, I want to focus on the notion, you

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1 know, that now vendors have to register as a political
2 committee. And Mr. Collins is wrong that nobody has
3 these types of arrangements, and I'll give you a good
4 example.
5 I mean, so, you know, we talked about last
6 time. Last time Mr. Collins said The Power of Fives is
7 set up to -- to influence elections. I said, no, it's
8 not. It's set up to make money, same as my law firm.
9 But, you know, what if I'm in a situation -- and in
10 these election cases that happen very quickly,
11 sometimes payment is not made until later. Sometimes
12 payment is not made at all. Believe it or not,
13 candidates have been known to stiff an attorney. So in
14 that case, I'm now -- I've now made an in-kind
15 contribution to the -- to the candidate. And now,
16 according to Mr. Collins and Ms. Karlson, apparently,
17 I'm now guilty of -- I'm not just in violation of the
18 Clean Elections Commission Act, but I've now committed
19 a criminal offense because my firm is a -- it's an S
20 corporation.
21 So, I mean, that's the path you're going
22 down. Absolutely, you know, I'd like to answer that
23 question for the Chairwoman. If you side with
24 Mr. Collins and Ms. Karlson, absolutely I will tell
25 clients that they need to register as a political

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1 committee, because what if they get caught in a
2 situation, you know, where somebody doesn't pay a bill.
3 And in that case, they are in no different position
4 than The Power of Fives.
5 Sometimes people take things on a
6 contingency. I don't see any reason why that wouldn't
7 be legal, generally speaking. In this realm, well, now
8 it's illegal. And now, according -- and never mind the
9 Clean Elections Act, but just look at corporate -- you
10 know, let's just look at the corporate contributions
11 prohibition. Now, according to Mr. Collins and
12 Ms. Karlson, that that's a -- that would be a criminal
13 offense because you've -- you've given something of
14 value as soon as you've entered into that agreement.
15 So this is a -- this is a very troubling path
16 for the Commission to lead down. And this business
17 about this is just at the reason to believe stage,
18 look, we're here with a legal issue now. There's no
19 reason for this Commission to proceed with this matter,
20 because there's really no need for further
21 investigation. It -- you know, it's the legal issue
22 presented to you. I think that the Chair has focused
23 very appropriately on the terrible precedent that would
24 be set by -- if we're going to credit Mr. Collins and
25 his -- Ms. Karlson here.

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1 So -- but let's get into some specifics here
2 as to why Mr. Collins and Ms. Karlson are wrong. So
3 let's just talk -- they keep talking about -- they keep
4 talking about attorneys' fees, and you'll notice they
5 never read anything from the statute.
6 Okay. So let's look at the statute. So
7 we're talking about exemption from the definition of
8 expenditures. The following are not expenditures: The
9 value of any of the following to a committee: Payment
10 of a committee's legal or accounting expenses. Anyone
11 can look that up under 16-921. 16-911 is exemption
12 from definition of contribution, says the exact same
13 thing.
14 And this is exactly what Mr. Collins lost --
15 this issue he lost in his Arizona Advocacy Network case
16 where he said the legislature cannot change that
17 statute because it is locked in by the -- by the Voter
18 Protection Act. So, you know, obviously Mr. Collins,
19 you know, doesn't like things that take -- that take
20 certain elements out of his regulatory purview. I
21 guess maybe technically he was a defendant there, but
22 it was one of those where he was more -- he was on the
23 side of the plaintiff. And they were advocating that
24 the legislature cannot make that exception, that
25 exception for legal fees. Well, they lost, and it's

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1 right there in statute, so I have no idea why they keep
2 talking about that.
3 Also, I have no idea why they keep talking
4 about 16-946. That's the qualifying contributions
5 statute where you continue to hear Mr. Collins, and now
6 Ms. Karlson joining him, saying that Mr. Branch
7 violated that statute. Well, let's read that actual
8 statute. It says, during the qualifying period, a
9 participating candidate may collect qualifying
10 contributions, which shall be paid to the fund. To
11 qualify as a contribution, a contribution must be, and
12 it lists the different things that a contribution must
13 be.
14 It does not say anything about -- it doesn't
15 say anything about that there's a violation of that
16 statute. What it says is if that statute is not
17 followed, a contribution is not a qualifying
18 contribution. I mean, it stuns me that we would have
19 repeatedly these either misunderstandings or
20 misstatements about clear statutory law that anyone can
21 go look up, 16-946. You notice you didn't -- you
22 really didn't hear any quotations of the actual
23 statutes, because they keep trying to get away from the
24 actual laws.
25 So -- and there is a -- there's actually a

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1 criminal penalty that would apply to somebody that --
2 but it only -- as to 16-946, but it only applies to
3 somebody who actually pays for a contribution. It
4 doesn't apply to any of this other business, a
5 solicitation that they allege was improperly sent.
6 So obviously, the drafters thought of that
7 and did not include -- you know, did not include any --
8 any sanction for not following that statute except in
9 that one limited case, except the only sanction is the
10 contribution does not count as a qualifying
11 contribution, but you can't -- it's not a violation of
12 the statute unless you're paying somebody for the \$5
13 contribution.
14 So, now, in terms of -- you know, we talked
15 about at some length, I put this in my memo that, you
16 know, look, the bottom line here is -- is that when
17 they -- at the inception of this contract, there is no
18 promise, agreement, contract, or otherwise an
19 obligation to pay for goods and services. It's
20 entirely contingent. As of that moment, none of those
21 things exist. And that's why, you know, you heard
22 Ms. Karlson make a huge concession when she spoke. She
23 said the word "if." That was the word she used, "if,"
24 and that's the critical word here. It's an "if."
25 And Mr. Collins says he can't read the

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1 statute that way. Well, I mean, he doesn't want to
2 read it that way. But that's what the statute says.
3 And when we don't like --
4 And okay. Let's just -- maybe we could --
5 someone could argue that this is a gap, right, that
6 somehow this situation was not intended to be not
7 addressed and sort of the -- the situation that
8 Ms. Karlson talked at length about prevails where, you
9 know, somebody is allowed to do this, and if the person
10 doesn't qualify the thing just kind of disappears,
11 it -- poof. Well, let's say that was an oversight. I
12 don't know that it was. But even if it was, the proper
13 response to that is to address the oversight through
14 legislation. It is not to read out or contort the
15 words of the actual statute.
16 So, you know, the bottom line is, there's
17 nothing -- you know, at the inception of this thing
18 there's no promise, there's no agreement, there's no
19 contract, there's no nothing to -- for an obligation as
20 of that moment. The obligation arises later, if at
21 all. It's contingent. It may not arise. If X doesn't
22 happen, there is absolutely no obligation. So how can
23 you say -- how can you possibly say there's an
24 obligation at that moment? You can't. It's -- you
25 know, there is no -- an obligation that may or may not

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1 exist in the future is not an obligation, period, end
2 of story.
3 So, you know, the bottom line here is -- you
4 know, there are two separate reasons. Both of them are
5 good enough. There's no reason for this matter to
6 proceed any further, because the Commission is at the
7 threshold of what's really a legal determination, and
8 that -- and that does not involve -- you know, that
9 doesn't mean we need to give Mr. Collins more time to
10 investigate. He's had plenty of time. Most of the
11 things that have come out have come out in that other
12 civil matter.
13 But, you know, the bottom line here is -- is,
14 look, if we're going to go down this path, I mean, I
15 don't know what it's going to do to this entire
16 industry. But people like me, you know, it's like I
17 said about my law firm, my law firm was formed to make
18 money. That's why it was formed. I mean, yeah, sure,
19 I help candidates. But campaigns are formed to win
20 elections, and vendors operate to make money. Now,
21 they make money by helping candidates win elections,
22 but it does not mean, as Mr. Karlson -- as Ms. Karlson
23 and Mr. Collins would have it, that every one of those
24 needs to register as a political committee or that the
25 -- this Commission should embrace that -- what I view

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1 as a very chilling, very, very problematic step.
2 And you notice, you know, their attempts to
3 say, well, what's the difference? You know, the Chair
4 asked, well, you know, does this mean that everyone
5 needs to register, and they said no. But they -- but
6 they never said why not. Well, of course they need to
7 register.
8 What if I -- I help out a candidate and the
9 candidate stiff's me? Now I should have registered,
10 because I should have said at that moment I've made an
11 in-kind contribution to the candidate, even though that
12 was -- I never thought I'd be in that position. It's
13 really -- it's -- it may not be the exact same
14 situation as The Power of Fives, but that conclusion is
15 inescapable if you -- if you go down the path of trying
16 to -- trying to regulate vendors.
17 Now, the last thing I'll say is if the Clean
18 Elections Act was -- was meant to -- so clearly to
19 apply to vendors and entities that simply assist for a
20 living, that's what they do, that's their trade, the
21 Constantin Querards of the world, if it was meant to
22 apply to that, where are the penalty provisions?
23 Now, Mr. Collins said, oh, yeah, you know,
24 we've got that authority and it says we can do this, it
25 says we can do that, it says any person. Well, okay,

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1 then how come he still has not identified what the
2 penalty would be, what penalty this Commission would be
3 able to impose?
4 So I look through. I think the penalty
5 provisions are 16-941-940 -- to 943, and I don't find
6 anything that would be even remotely applicable. 19
7 dash, I'll pull up 941 real quick. You know, that
8 talks about -- well, 941, limits on spending and
9 contributions for political campaigns, and that says
10 that (A) is a participating candidate, (B) is a
11 nonparticipating candidate, (C) is a candidate, whether
12 participating or nonparticipating. And so, you know,
13 that's it.
14 And then there's also -- you know, there's
15 16-942. There is a -- there's -- you know, the
16 reporting obligations that may arise under Article 1
17 are certainly not the purview of this Commission.
18 Under 942 they talk about the civil penalty for the
19 participating candidate, it's 10 times, it's
20 forfeitures of office.
21 Criminal violations and penalties under
22 16-943. Candidate who violates 941, Class 1
23 misdemeanor. That's not us.
24 Any person who knowingly pays anything of
25 value or compensation for a qualifying contribution, a

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1 Class 1 misdemeanor, that was -- that's the one thing
2 that would make an actual violation of 16-946 subject
3 to a sanction other than that the qualifying
4 contribution doesn't count. Not applicable.
5 False or incomplete report, Class 1
6 misdemeanor.
7 So, I mean, what -- what would you do to The
8 Power of Fives? You know, I put that in my memo. We
9 still don't really have an answer on that. And if --
10 if it's so apparent that the drafters, the voters
11 intended to capture us, then why is that -- why aren't
12 there actual penalty provisions that seem to apply to a
13 vendor?
14 So with that, I'd be happy to answer any
15 questions.
16 CHAIRWOMAN CHAN: All right. And just real
17 quick, Tim, I want to come to the defense of -- because
18 I feel a little bit like you were casting some
19 aspersions on Kara and Tom, and I disagree with that
20 entirely. I mean, they are two of the best lawyers I
21 know in the election realm. They know their stuff. I
22 think they don't speak down to the Commission or the
23 public, so, you know, not reading out the law is not --
24 they're not hiding anything.
25 You know, I know that there are sincere

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1 disagreements here, and I know you and I have had them
2 before too in enforcement -- in the enforcement realm,
3 I think back when I was at the Secretary of State. So,
4 you know, we can all have disagreements, and reasonable
5 disagreements even, and I just -- I don't want to have
6 that be on the record without speaking up about that,
7 because they're two probably of the -- the attorneys
8 that I probably respect most in Arizona on our election
9 laws. So I do want to say that.
10 MR. LA SOTA: Can I address that, Madam
11 Chair?
12 CHAIRWOMAN CHAN: Sure.
13 MR. LA SOTA: I like Mr. Collins and I like
14 Ms. Karlson. I mean, you know, Mr. Collins actually
15 sent me a client. And it doesn't -- and I think they
16 are trying to get you -- you know, I mean, it's --
17 they're not doing -- they're advocating.
18 CHAIRWOMAN CHAN: Well, just like you are.
19 MR. LA SOTA: Right.
20 CHAIRWOMAN CHAN: Any good attorney is going
21 to advocate on behalf of their client and how they see
22 the law.
23 MR. LA SOTA: I don't blame them for that.
24 But, you know, look, if you've got a statute where
25 you -- you know, you'd rather characterize a statute in

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1 a certain way, I mean, I do the same thing, that's not
2 -- that's not a character aspersion, but I'm trying to
3 get you back to the actual wording of the statute. And
4 naturally, they're maybe trying to get you a little bit
5 away, but I didn't say that that's anything I wouldn't
6 do under similar circumstances.
7 CHAIRWOMAN CHAN: Well, thank you for that
8 clarification. I just -- I wanted it to go on the
9 record that, knowing them both the way that I do and
10 how much they -- and I know yourself too. You know the
11 election laws in the state as well. But they are two
12 of the most knowledgeable election attorneys I know and
13 have such personal and professional integrity, so I
14 just wanted to recognize that for everybody and have it
15 on the record.
16 I don't know what the best order to go into
17 is. I know Tom wanted to speak. Did Mr. Sloan want to
18 speak as well?
19 Okay. Tom, do you think we should allow
20 Mr. Sloan to speak? I don't know if it matters to you
21 one way or the other, but...
22 MR. COLLINS: It certainly doesn't matter to
23 me. If it's a procedural question, I would defer to
24 Ms. Coady.
25 CHAIRWOMAN CHAN: Okay. Well, I'll perhaps

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1 let Mr. Sloan speak, and that way you can kind of wrap
2 up, maybe make your summation, so to speak, after that.
3 So I'll recognize Mr. Sloan.
4 MR. SLOAN: Thank you, Madam Chair, Members
5 of the Commission. Well, this has been going on for
6 quite some time. Here we are a year later -- year and
7 a half later, actually, since this issue originally
8 arose. I will be speaking later on to the other item
9 regarding myself as a candidate, but I think it's
10 really important to point out some things.
11 Mr. La Sota made the point that there's no
12 promise to pay until you're qualified, and that was
13 how -- that was how the contract was explained to me by
14 Dr. Branch. There were only 17 days between the moment
15 that I fired Dr. Branch -- or, the moment I qualified
16 and the moment that I fired Dr. Branch. So there were
17 17 days there. So he's asking for \$116,000, the entire
18 amount of the Clean Elections funding, for that 17-day
19 period. That's the first issue I want to point out to
20 the Commission.
21 The second point that I want to point out to
22 the Commission is that Bob Branch weaponized this
23 Commission against a former client of his because I
24 raised issues about the legality of the contract. And
25 once I raised those issues about the legality of the

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1 contract and brought those issues to the Commission,
2 which Mr. Collins and Ms. Karlson can confirm to you,
3 and was told that the contract did not apply to Clean
4 Elections -- did not meet the standards of Clean
5 Elections law, at that point we tried to figure out
6 what we needed to do. And I worked hand in hand with
7 the Commission on what needed to be done, which
8 included withholding \$94,000 of disputed revenues,
9 which were returned to the Commission promptly within
10 hours of a repayment order being paid.
11 I also want to point out that it is my
12 understanding and has always been my understanding that
13 you cannot use Clean Elections funds to pay legal
14 expenses. So the argument that this would cover all
15 vendors, including law firms, is a big stretch when
16 you're looking at the actual wording of the law.
17 Part of this issue arose because Dr. Branch
18 asserted, and has continued to assert, that he spent a
19 lot of money on my behalf, without my knowledge, before
20 I qualified for Clean Elections. That was never
21 disclosed to me as a candidate. My understanding was
22 always that once you qualify, the obligation begins, as
23 was stated by Mr. La Sota. So that's the entirety --
24 The other part I would point out is that the
25 Commission has found, on numerous occasions, that The

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1 Power of Fives and Dr. Branch's accounting makes it
2 impossible for a candidate to do the appropriate
3 filings not only with the Clean Elections Commission,
4 but with the Secretary of State's Office. That is done
5 purposefully on the -- on the -- by The Power of Fives,
6 because what they are doing is trying to take all of
7 that money and then not provide any service, which is
8 the reason why we are in this situation now, because I
9 became aware of what that -- what they were doing and
10 decided that I was not going to be a part of that.
11 Again, I just want to point out that I am in
12 the middle of a civil matter with The Power of Fives.
13 They have sued my wife and I personally for these
14 monies. We have accrued a tremendous amount of legal
15 expense to defend ourselves. We have lost the
16 arbitration. The arbitrator -- The Power of Fives is
17 now trying to confirm the arbitration award, which is
18 \$116,000, plus another 60 or \$70,000 in legal fees,
19 against me and my wife personally. The judge in that
20 case is waiting to see what the outcome is with regards
21 to how the Clean Elections law actually applies to this
22 contract, because Dr. Branch has sued you all with
23 regards to that.
24 But more importantly, I think it would be
25 really important that we continue to move forward with

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1 an investigation because there are more things to be
2 uncovered. There were other candidates who were
3 involved who qualified for Clean Elections. There are
4 current candidates that are being solicited by
5 Dr. Branch. He is continuing to use this model and,
6 quite frankly, is continuing to defraud people by
7 telling them that he is in compliance with Clean
8 Elections and that he is an expert in Clean Elections.
9 The Power of Fives denotes his expert status
10 of Clean Elections. His contract reads that he is an
11 expert in Clean Elections, and yet he is putting
12 candidates like myself and others in a position that we
13 could be fined up to 10 times the amount of the
14 contract, which we entered into in good faith, but he
15 did not, because he has put us in a position where he
16 can extort us by filing a complaint with Clean
17 Elections if we don't pay him. And that is wrong, and
18 the Commission should absolutely investigate that.
19 Thank you, Madam Chair.
20 CHAIRWOMAN CHAN: Thank you, Mr. Sloan.
21 All right. Tom.
22 MR. COLLINS: Yes. Madam Chair,
23 Commissioners, look, just to try to briefly rebut some
24 of the points that The Power of Fives raised, The Power
25 of Fives admitted right here just now that they spent

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1 money on the candidacy of Mr. Sloan and didn't report
2 it anywhere. Under the Act, spending on behalf of a
3 candidate, under 16-942(B), must be reported. It was
4 not. The issue --
5 CHAIRWOMAN CHAN: Tom. Tom.
6 MR. COLLINS: Yes. I'm sorry.
7 CHAIRWOMAN CHAN: That is the difference that
8 you're -- is that -- and I'm sorry to keep beating on
9 this. Probably maybe you wish it was the difference.
10 That is the difference between --
11 MR. COLLINS: That is -- that is a
12 difference.
13 CHAIRWOMAN CHAN: Okay.
14 MR. COLLINS: That is a difference for sure.
15 If you're looking for statutory language, it's all --
16 this is all in the complaint, mind you, but --
17 CHAIRWOMAN CHAN: Right.
18 MR. COLLINS: -- and in the response, but --
19 I mean, so -- just to make a point for the record, in
20 fact, every citation necessary for this is in the
21 materials, and we assume the Commission has read those
22 materials. So we didn't feel the need to do a
23 PowerPoint with a bunch of citations.
24 But, yes, the Act, penalty provisions
25 expressly apply to spending on behalf of a candidate

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1 unless you report it. It wasn't here. Mr. La Sota
2 doesn't dispute the fact that The Power of Fives went
3 out and spent money on a candidate. There is a dispute
4 about whether or not that spending was authorized or
5 known or not. That's what we're trying to get to.
6 That's part of the reason why we think there is good
7 jurisdiction here.
8 With respect to this idea that if someone
9 stiffed you on a loan you somehow accidentally made a
10 campaign contribution, the statute deals with that.
11 16-921 expressly talks about the fact that if you have
12 an extension of credit, it has to be commercially
13 reasonable, and you have to do something to go and get
14 it back. If you waive that loan in an unreasonable
15 way, yes, you have, in fact, made a contribution.
16 That's black letter law.
17 So the law is -- you know, the law is -- the
18 law is clear. There are -- and the admissions are
19 clear. The Power of Fives went out and spent money.
20 Mr. La Sota confirmed that again here today. That
21 money was not reported in a timely manner. The details
22 of that -- of those -- of those reports would not have
23 been, at least for purposes of this motion, enough to
24 satisfy the requirements of the -- of the Act in terms
25 of reporting as it is. Those are, in fact, actions

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1 that The Power of Fives took. Mr. Sloan took actions;
2 those are subject to another complaint. Those are
3 actions The Power of Fives took. The Power of Fives
4 admitted them here today.
5 In fact, Mr. La Sota's defense to this very
6 complaint is that they went out and spent money on the
7 campaign and didn't report it. That's the defense.
8 That can't be a good defense. It wouldn't matter if
9 they were a PAC or a 501(c)(4) or whatever. If you are
10 spending on behalf of a candidate, you have reporting
11 obligations under the Act that are freestanding and
12 independent of everything else in the campaign finance
13 code.
14 So at a minimum, the prima facie case for
15 reason to believe is made. And if we don't think that
16 a prima facie case for reason to believe has been made
17 here, then we are, in fact, reading out the on behalf
18 of language in 16-942(B), we are reading out the
19 commercially reasonable requirements under the regular
20 campaign finance code, we are reading out the fact that
21 the Commission has a specific rule that binds agents in
22 this -- in this particular context to avoid this very
23 kind of activity.
24 Mr. Branch and The Power of Fives know the
25 Clean Elections Act. They say they know the Clean

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1 Elections Act. Now, I have no doubt that Mr. La Sota
2 knows the Clean Elections Act. Mr. La Sota is -- it's
3 true, Mr. La Sota is an excellent attorney, and I
4 believe very strongly that he makes some good arguments
5 in some cases. Here, that's not this case. There's no
6 -- there's no slippery slope here. There's no nothing.
7 This is a discrete set of facts where an LLC's lawyer
8 comes before the Commission and says, yeah, we went out
9 and spent on behalf of the candidate, and no, we didn't
10 report it. And that's really all there is to this
11 stage.
12 CHAIRWOMAN CHAN: All right. Thank you, Tom.
13 I'm not sure if any members of the public
14 wish to weigh in. If so, let me know by raising your
15 hand or unmuting and speaking up.
16 And do the Commissioners have any comments or
17 questions?
18 Oh, I'm sorry, Kara.
19 Commissioner Meyer, you have a comment or
20 question? Perhaps I'll let you go and then Kara can --
21 COMMISSIONER MEYER: I do. Thank you, Madam
22 Chair. I do have a question. And I was not at the
23 October meeting, so I apologize if I'm asking a
24 question that's been answered. I didn't see a copy of
25 the contract in the materials for this meeting. Is

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1 that -- is that in there anywhere?
2 CHAIRWOMAN CHAN: I think we might have --
3 MR. COLLINS: Yeah.
4 MS. KARLSON: It was -- it was on a link, so
5 there was a link with a Google Drive --
6 CHAIRWOMAN CHAN: It was a Google Drive.
7 MS. KARLSON: -- that had --
8 COMMISSIONER MEYER: Okay. My apologies. I
9 guess so my question is, when -- you know, what we're
10 essentially talking about is a contingent liability.
11 What -- what is the event that happens to make that
12 contingent liability then become, you know, a fixed
13 liability that when the -- when the -- The Party of
14 Five actually is owed money, what event happens to make
15 that the case? And I apologize -- go ahead.
16 MR. COLLINS: Mr. La Sota? I assume that's
17 for Mr. La Sota.
18 COMMISSIONER MEYER: That's for anyone who
19 knows the answer.
20 MR. LA SOTA: No, I can address that, and
21 it's the -- it's the qualifying. And as a matter of
22 fact, in the arbitration by Judge Albrecht, the former
23 Superior Court judge, she found, and I'm going to
24 quote, this contract was for The Power of Fives to
25 provide campaign consulting services, provide campaign

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1 consulting services is not illegal, even if the
2 candidate wants to be or is a Clean Elections
3 candidate. The agreement did not bind the campaign to
4 a specific obligation. There was no debt created for
5 the campaign by entering into the agreement. There was
6 no obligation to pay until/if Sloan qualified for
7 public financing. There's nothing in the Clean
8 Election laws and regulations that prevent a candidate
9 from entering into a contract for services before he
10 receives Clean Elections funding with the payment to be
11 paid upon receipt of the Clean Elections funding.
12 That's exactly this issue, and it is upon
13 qualification and -- yeah.
14 COMMISSIONER MEYER: And my next question
15 relates to the penalty issue that Mr. La Sota raised.
16 And, Tom, is the penalty here 942(B)? Is that where
17 the penalty is for The Party of Fives?
18 MR. COLLINS: Well, Madam Chair, Commissioner
19 Meyer, I think that Mr. La Sota confirmed that, in
20 fact, that -- based on what Judge Albrecht said, if the
21 candidate didn't owe anything until qualification, then
22 all of the expenses that were incurred by The Party of
23 Fives were incurred on behalf of Mr. Sloan and
24 unreported. And those are, in fact, required to be
25 reported under 16-942(B).

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1 COMMISSIONER MEYER: No, I understand that's
2 the offense, but what's the penalty?
3 MR. COLLINS: Well, we would -- the penalty
4 would be that they would have to file those reports and
5 they would owe a late fee of up to the -- up to twice
6 the -- up to twice the amount of the unreported
7 expenditure.
8 COMMISSIONER MEYER: Okay. So that's the --
9 that's the (B), then, right, that's the --
10 MR. COLLINS: Yeah.
11 CHAIRWOMAN CHAN: Oh, Mr. La Sota apparently
12 disagrees with that. He's shaking his head.
13 MR. LA SOTA: And I really appreciate the
14 opportunity. So let's -- let's read (B). In addition
15 to any other penalties imposed by law, the civil
16 penalty for a violation by or on behalf of any
17 candidate or any reporting requirement imposed by this
18 chapter shall be \$100 per day for candidates for the
19 legislature and \$300 per day for candidates for
20 statewide office. I mean, there you go. Again,
21 another example of the Act penalizing candidates.
22 MR. COLLINS: I'm sorry.
23 CHAIRWOMAN CHAN: I think --
24 MR. COLLINS: I'm sorry.
25 CHAIRWOMAN CHAN: And, I mean, I'll let Tom

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1 speak, but to me that means that's the race involved,
2 not the candidate specifically, but maybe I'm wrong
3 about that.
4 MR. COLLINS: Madam Chair, this is very
5 important. We have a --
6 CHAIRWOMAN CHAN: Yes.
7 MR. COLLINS: -- case pending at the Court of
8 Appeals right now where our position is the precise
9 opposite of that. We are -- I mean, I just have to
10 advise you and advocate at this point -- not advise --
11 advocate here that this Commission's position has been,
12 and we are in court right now with the position, that
13 942(B)'s language says precisely, Madam Chair, what you
14 just said. This is not fooling around stuff.
15 MS. KARLSON: Well, and --
16 CHAIRWOMAN CHAN: Okay. Go ahead, Kara.
17 MS. KARLSON: -- Madam Chair and
18 Commissioners, if I can also add that, in terms of
19 statutory, you know, reference, 16-901(7) defines
20 candidate to include not only the person running, but
21 also anyone who is receiving contributions or making
22 expenditures on behalf of that individual in connection
23 with the candidate's nomination, election, or retention
24 of office.
25 And I just wanted to say, Chairwoman Chan,

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1 thank you for making that -- that statement. We were
2 not running from the statutes. We did not need to cite
3 this. We have, you know, nine pages of documents that
4 include lots of citations. To the extent you need any
5 additional elucidation, we would be happy to do that.
6 But it was certainly not meant to be running and/or
7 hiding from the statutes. It was just to not beat you
8 over the head with what you've already received.
9 CHAIRWOMAN CHAN: Thank you.
10 And I see Eric Sloan has his hand raised.
11 Yes, Mr. Sloan.
12 MR. SLOAN: Thank you, Madam Chair.
13 Mr. Meyer -- or, Commissioner Meyer, the way
14 it was described to me by The Power of Fives and the
15 way Mr. La Sota has described it today is that the
16 obligation begins once you receive funding, okay. The
17 way that it was described to me by the Commission staff
18 was that once you enter into an agreement, the promise
19 of the agreement is the actual -- I'm sorry, I'm not a
20 lawyer, so I'm trying to put these words together here
21 -- is the actual qualifying moment that happens going
22 forward. So the -- so there's -- there was a big
23 difference there, okay, which is the reason why --
24 CHAIRWOMAN CHAN: The obligation.
25 MR. SLOAN: I'm sorry. Again?

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1 CHAIRWOMAN CHAN: I'm sorry, and
2 especially --
3 MR. SLOAN: No, please.
4 CHAIRWOMAN CHAN: -- to our court reporter.
5 But the obligation that you enter into --
6 MR. SLOAN: Yes. Yes. Yes.
7 CHAIRWOMAN CHAN: -- before any money changes
8 hands --
9 MR. SLOAN: Yes.
10 CHAIRWOMAN CHAN: -- is something that needs
11 to be reported. I agree --
12 MR. SLOAN: Sure.
13 CHAIRWOMAN CHAN: -- with that. I believe
14 that is the law.
15 MR. SLOAN: Yeah, and I -- and I believe that
16 there's statute there. I can't cite to statute
17 because, again, I apologize, I don't have it in front
18 of me and I'm not a lawyer, but that was the issue at
19 hand.
20 With regards to the arbitrator, the
21 arbitrator said there are four corners to this
22 contract. And because there are four corners to this
23 contract, Mr. Sloan has to pay Power of Fives. She
24 said -- she did say that there could be -- and I don't
25 have it in front of me, again, but there could be an

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1 issue with regards to Clean Elections law, but as far
2 as a contract goes, this is a contract, right. She
3 didn't take into account Clean Elections law.
4 Now, I think, to a large degree, being a part
5 of that proceeding, she didn't understand it. And
6 Dr. Branch made it very clear that that arbitration was
7 specifically about a contract between himself and me as
8 an individual, which I did not sign that contract as an
9 individual, I signed it as a candidate, which is the
10 reason why we're here today.
11 And I just think it's really, really a bad
12 situation that an arbitrator, who didn't understand
13 Clean Elections, has passed a ruling that is now going
14 to put the entire system in jeopardy. The system will
15 no longer exist in its current form if this is allowed
16 to happen. And the only way you're going to get to the
17 bottom of this is if you dig into it and investigate
18 it. So I would again encourage the Commission to
19 investigate this matter. Thank you.
20 CHAIRWOMAN CHAN: Thank you, Mr. Sloan. And
21 I will say, from my perspective, although the
22 arbitration decision can be illuminating, I do view it
23 as separate from the election law issues. I mean,
24 it's -- it may be relevant or helpful in some way, but
25 to me it's not dispositive as to the election or

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1 campaign finance issues for the reasons you stated.
2 Well, I think if there's no other --
3 MR. LA SOTA: Madam Chair.
4 CHAIRWOMAN CHAN: Oh, I'm sorry. Did I miss
5 anybody or --
6 MR. LA SOTA: 15 more seconds.
7 CHAIRWOMAN CHAN: Okay.
8 MR. LA SOTA: Going back to 16-942(B), where
9 we were talking about reporting the language, the last
10 sentence of that subsection says, the candidate and the
11 candidate's campaign account shall be jointly and
12 severally responsible for any penalty imposed pursuant
13 to this subsection. So I think clearly that's a
14 penalty provision for -- for candidates.
15 CHAIRWOMAN CHAN: Okay. And I think -- now,
16 I see --
17 MR. SLOAN: But what -- but what happens --
18 Madam Chair, I'm sorry. I didn't mean to interrupt.
19 But what happens when you have a situation where a
20 consultant spends money or says they spent money on
21 behalf of a candidate, without the candidate ever being
22 informed or told that that was happening, and then
23 dropped a bill on the desk that says, pay me \$116,000
24 for 17 days of work and, oh, by the way, it wasn't 17
25 days of work, we started work back in August. I mean,

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1 he could make up any mythical date that he wanted and
2 use it.
3 What Bob Branch has done and The Power of
4 Fives has done is they're trying to have it both ways
5 in this case. Now they're saying, well, there's
6 nothing wrong with our contract, but also, Eric Sloan
7 owes me all this money. And if he can't pay for it out
8 of Clean Elections, he just has to pay for it out of
9 his own pocket. It's preposterous.
10 CHAIRWOMAN CHAN: Okay. Thank you,
11 Mr. Sloan.
12 MR. SLOAN: Thank you.
13 CHAIRWOMAN CHAN: I'm going to -- I'm going
14 to put a pin in the conversation now because I think --
15 I mean, I think I've heard enough to move forward. I
16 feel more comfortable now. I know I've made staff
17 aware, just from my statements here, the concern I have
18 about -- you know, but I think I understand it a little
19 better now. I have a little more comfort with it. I
20 definitely agree on the law regarding the obligation.
21 That's where you start the obligation to report, not
22 the actual getting the money and changing hands. Does
23 that make sense?
24 So for myself, I think I'm comfortable moving
25 forward. I want to make sure the other Commissioners

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1 are as well. Unless you guys have any questions, I
2 will entertain a motion to approve the recommendation
3 memo set forth in the materials or a motion to
4 determine there's no reason to believe. So does one of
5 you want to make a motion?
6 COMMISSIONER KIMBLE: Madam Chair.
7 CHAIRWOMAN CHAN: Yes, Commissioner Kimble.
8 COMMISSIONER KIMBLE: I move that we
9 authorize Tom to move ahead as -- I want to make sure I
10 have the wording correctly --
11 CHAIRWOMAN CHAN: To approve the
12 recommendation memo?
13 COMMISSIONER KIMBLE: -- to approve the
14 recommendation and move ahead with a -- determine that
15 we believe -- we believe that there's reason to believe
16 violations of the Clean Act and -- Clean Act and rules
17 may have occurred.
18 CHAIRWOMAN CHAN: Thank you.
19 Is there a second?
20 COMMISSIONER MEYER: Just -- just so we're on
21 the same page, can I get that motion one more time?
22 Can I hear that again?
23 CHAIRWOMAN CHAN: Sure.
24 Do you want to restate it, Commissioner
25 Kimble? I think you can say, motion to approve the

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1 recommendation memo set forth in the materials.
2 MS. COADY: I would recommend that the motion
3 does include the reason to believe language and also --
4 CHAIRWOMAN CHAN: Oh, well done, Commissioner
5 Kimble.
6 MS. COADY: I'm so pleased. I'm so
7 impressed. And also, recommend that the motion would
8 include both the complaint and the reason to believe
9 memorandum, because the complaint does specify the
10 statutes in more detail, as Ms. Karlson had mentioned.
11 So perhaps a motion along the lines of, you
12 know, move to proceed with an investigation.
13 Commission finds reason to believe violations of the
14 statutes or rules may have occurred based on the
15 complaint and the reason to believe memorandums
16 provided, something along those lines.
17 CHAIRWOMAN CHAN: Commissioner Kimble.
18 COMMISSIONER KIMBLE: Madam Chair, can I just
19 cut and paste what Ms. Coady said --
20 CHAIRWOMAN CHAN: Certainly.
21 COMMISSIONER KIMBLE: -- as my motion?
22 CHAIRWOMAN CHAN: Yes.
23 Okay. So we have a motion. And do we have a
24 second?
25 COMMISSIONER MEYER: I second. Commissioner

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1 Meyer. I second it.
2 CHAIRWOMAN CHAN: Thank you.
3 And we'll go ahead and have our vote.
4 Commissioner Meyer, how do you vote?
5 COMMISSIONER MEYER: Aye.
6 CHAIRWOMAN CHAN: Commissioner Kimble.
7 COMMISSIONER KIMBLE: Aye.
8 CHAIRWOMAN CHAN: And I vote aye as well.
9 I appreciate the staff and Mr. La Sota and
10 Mr. Sloan explaining all of this to me. I feel like
11 I've been a little bit of a logjam with, you know, my
12 difficulty, but I do believe that there is reason to
13 believe here, and that's why I did vote aye. And so
14 with our votes of three ayes and zero nays, we have
15 approved that as moved and will move on to the next
16 item, Item VII.
17 I did want to ask our court reporter, do you
18 need a break? We have a few items left, and I wondered
19 if you could use a brief break.
20 THE COURT REPORTER: I'm okay to keep going
21 if everyone else is. Thank you for checking.
22 CHAIRWOMAN CHAN: Okay. Sure. All right.
23 Everyone else good to keep going? We'll just try to
24 move it along.
25 All right. Item VII, discussion and possible

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1 action on MUR 20-04, Eric Sloan. This item concerns a
2 complaint brought by Dr. Bob Branch of The Power of
3 Fives against Eric Sloan, who is a Corporation
4 Commission candidate.
5 The Commission determined reason to believe
6 last December and entered a repayment order in April
7 that Mr. Sloan fulfilled. He has requested to address
8 the Commission regarding this matter, and we may close
9 the matter or take no action. Staff has not proceeded
10 to the next stage in MUR 20-04, but is available to
11 answer questions.
12 So with that, I'll allow Mr. Sloan to speak
13 to this. And then if the Commissioners have any
14 questions or comments, perhaps Tom can step in.
15 MR. SLOAN: Sorry. I hit my camera button
16 there instead of the mute button.
17 CHAIRWOMAN CHAN: Oh, that's all right.
18 MR. SLOAN: Well, let me see. Where to
19 begin. A brief historical background. I was a Power
20 of Fives candidate. I was -- my signatures were
21 actually challenged by Bob Branch's attorneys, his
22 legal counsel for his Power of Fives corporation. That
23 began to sour our relationship.
24 Subsequently, I did hire Tim La Sota, who was
25 on this call representing Bob Branch. Tim La Sota

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1 represented me in court. He was my attorney. He,
2 candidly, never disclosed that Bob Branch was his
3 client. I was always under the assumption that I was
4 his client. I found this out, that Bob Branch was his
5 client, in the newspaper, of all places, in November
6 during the last election cycle.
7 The issues that arose between me and
8 Dr. Branch arose specifically around his billing
9 practices and the fact that he was trying to bill me
10 for things that he never did and he was trying to bill
11 me for things that he couldn't possibly do, as example,
12 printing services. He also had made several comments,
13 and I believe the Commission has these documents, where
14 he said that that money was not the campaign's money.
15 It was his money to spend as he saw fit.
16 At that point, I contacted Lee Miller, who I
17 had met during the campaign, who is an elections
18 attorney. I believe Lee spoke directly with Tom and
19 Kara regarding the situation. We fully disclosed every
20 single thing that was going on. I have done nothing to
21 prevent the Commission from having full access and full
22 disclosure with regards to my campaign. I have
23 admitted that I entered into a contract, which I
24 believed was legal at the time that I entered into it,
25 but subsequently was notified by elections -- Clean

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1 Elections staff that it was not compliant with Clean
2 Elections law.
3 At that point, I put a full stop on all
4 monies and payments to Bob Branch and withheld that
5 money. It was about \$94,000. The Commission did agree
6 that there were \$23,000 in justifiable expenses after I
7 fired The Power of Fives and Dr. Branch. As I stated
8 before, there were 17 days between my qualifying and
9 Dr. Branch being fired, Power of Fives being fired.
10 There was actually 30 days between the time that I got
11 the check and my canceling the contract with
12 Dr. Branch, but I understand that the qualifying is the
13 issue, not the actual receipt of the check. I have
14 fully admitted to my fault in this.
15 As I said before, I am being sued civilly.
16 My wife and I personally are being sued by The Power of
17 Fives. I did not enter into that contract as an
18 individual. I entered into it as a candidate. There
19 are several lawyers on the call, so I'm sure everyone
20 can make the distinction there.
21 This investigation is being used as a weapon
22 against me in the civil matter. It's being used to --
23 to tell people who are decision makers, who don't
24 understand the Clean Elections process, who don't
25 understand the administrative law side of the state

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1 agencies, that I am under investigation for acting
2 improperly, when I think I have clearly stated here and
3 continue to state in my civil matter that I was
4 defrauded and that I was the victim of that fraud. And
5 once I discovered it, I completely put the brakes on
6 it. And then I was retaliated against using the
7 official process of Clean Elections to basically try to
8 ruin me is what Bob Branch and The Power of Fives is
9 trying to do.
10 The only way for me to move forward is to ask
11 the Commission to please end the investigation with
12 regards to me as an individual. And I don't know if
13 that's the right wording. Tom, you'll have to help me.
14 Kara, I would need your -- I don't know what the
15 wording is, so I apologize, but --
16 Tom, is that the right wording?
17 MR. COLLINS: Yeah. I mean, I'm sorry, Madam
18 Chair. I --
19 MR. SLOAN: I'm not asking for legal counsel.
20 I'm asking for --
21 MR. COLLINS: No. No. No. No. I follow.
22 Madam Chair, Commissioners, I think that -- I
23 mean, so just to recapitulate, I think what we're
24 hearing, I think what Mr. Sloan is saying is, look, you
25 got this matter under review. Will you close it?

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1 MR. SLOAN: Yes, that's exactly what I'm
2 saying. I would -- I would -- I have no problems with
3 continuing to work with the Commission with regards to
4 what happened in the past, but also, and I've told Tom
5 and Kara this, Bob Branch is continuing this fraud on
6 other candidates. He has already signed up other
7 candidates. He has already signed contracts to put a
8 concert in place, to put other events in place. He is
9 moving forward, full steam ahead, with total disregard
10 for this Commission, because his intent is to drain the
11 Clean Elections fund of money.
12 As I told you, he is -- he is promising
13 services that he is not going to provide and can't
14 provide. And I don't want to see other people end up
15 in the situation that I'm in and the stress that my
16 family is under because of this civil suit, because the
17 arbitrator didn't understand Clean Elections law, which
18 is exactly what he was hoping for. And so I am
19 throwing myself on the mercy of this Commission and
20 asking you to please end this.
21 CHAIRWOMAN CHAN: Thank you, Mr. Sloan. It
22 really is -- I just hate hearing about the troubles
23 that people have to go through with regard to
24 disagreements like this that blow up and become
25 litigation, so I am sorry about that for you and your

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1 family.
2 MR. SLOAN: Thank you.
3 CHAIRWOMAN CHAN: Let me ask, do any of the
4 Commissioners have comments or questions?
5 And Tom, perhaps you could -- would it be
6 appropriate or acceptable to ask you weigh in on your
7 opinion on this?
8 MR. COLLINS: Well, I mean, if you're -- if
9 you're asking me that question, I think it is. But
10 really, Ms. Coady would have to answer that question if
11 you're asking.
12 CHAIRWOMAN CHAN: Okay. Well, maybe
13 Ms. Coady can do it.
14 MS. COADY: Madam Chairwoman --
15 CHAIRWOMAN CHAN: I don't know if we've ever
16 been in this situation before, and it seems very
17 unique. And I can kind of understand, based on what
18 Mr. Sloan is presenting, the broader lay of the land
19 that -- you know, in law school we studied cases, and
20 usually it seemed like it was family law that this type
21 of stuff would happen in, but -- so perhaps, yes,
22 Ms. Coady, could you weigh in on this and --
23 MS. COADY: Yes, Madam Chairwoman,
24 Commissioners. There really are no rules guiding what
25 you can ask of whomever is on the call, so certainly

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1 you could ask Mr. Collins to weigh in. But I would
2 advise you that in your rules, when a matter is closed,
3 it's typically because the Commission has found, after
4 investigation or after hearing, that a violation did
5 not occur.
6 Here there's -- it's at the discretion of the
7 Commission, after some discussion, whether you want to
8 continue with the investigation or close the matter.
9 But any motion, I would ask if you do move to close it,
10 would have more of a factual basis so you don't set the
11 precedent of closing matters without coming to the
12 conclusion a violation didn't occur.
13 Here there are extenuating circumstances.
14 And so after you ask your questions of Mr. Collins and
15 perhaps more of Mr. Sloan, then you can come to your
16 own conclusions and make a motion to either continue
17 the investigation or to close it for whatever reason.
18 CHAIRWOMAN CHAN: Thank you.
19 And actually, that does -- I guess I do have
20 a question, and perhaps the other Commissioners will
21 have the same one or others. But, for example, I
22 really thought we had kind of put Mr. Sloan's case to
23 bed. He had paid all the money back. And so I hate to
24 confess I was surprised we were still having his case
25 hang around, because that makes me sound like I don't

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1 know what's going on. But I will admit, I apparently
2 did not know what was going on.
3 MR. SLOAN: No. And Madam Chair, if I can,
4 please.
5 CHAIRWOMAN CHAN: Sure, Mr. Sloan. Go ahead.
6 MR. SLOAN: I don't think that the issue is
7 with regards to it just hanging around. I think the
8 issue is regards to extenuating circumstances that are
9 happening in civil court currently, right.
10 CHAIRWOMAN CHAN: Yes.
11 MR. SLOAN: The other part of that is, and to
12 Ms. Coady's point, I think the factual basis is that
13 there was an investigation. I have admitted that I
14 entered into a contract improperly. I repaid \$94,000
15 to the Commission, which has got to be one of the
16 highest repayments the Commission has ever received. I
17 was a steward of the money. And I have, in every step
18 of this situation, tried to do the right thing. And so
19 if there is a factual basis for saying that the
20 investigation is over, that there has been a remedy,
21 that -- those are the facts.
22 CHAIRWOMAN CHAN: Thank you, Mr. Sloan. And
23 I -- I don't know if you're, you know, going to run
24 again, but if you do, I hope you'll consider running
25 clean, because we really believe in this process. I

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1 just hate that you had such a horrible experience,
2 apparently. Maybe --
3 MR. SLOAN: Well, staff has been wonderful.
4 Let me just be very clear. Staff has been terrific.
5 They have always told me that they are not my legal
6 counsel, which I greatly appreciate, because I don't
7 know -- I mean, they're always -- I mean, it's been
8 really -- working with the Clean Elections staff has
9 not been an issue.
10 CHAIRWOMAN CHAN: That's wonderful to hear.
11 I mean, I didn't expect --
12 MR. SLOAN: There has been outside issues,
13 yeah.
14 CHAIRWOMAN CHAN: Tom, do you have a position
15 you could talk to us about on this?
16 MR. COLLINS: So, Madam Chair, Commissioners,
17 yes. I mean -- and I take Ms. Coady's advice to heart.
18 I think that's -- I think that's a fair point and I --
19 and I -- and I agree with -- and so I'm not sure,
20 within that, you know, how you would craft that, but
21 here's what we -- here's what we know. You know,
22 everything -- I mean, without getting into the stuff we
23 don't know, which is really the civil action side, you
24 know, it is true and it's in our -- and it's in all the
25 memos associated with this that it was Mr. Sloan's

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1 campaign that initially contacted us about this
2 dispute, and they did follow the Act with respect to
3 how this dispute was to be treated.
4 It's also true -- and, Madam Chair, you're
5 not wrong. I mean, we had a substantiative hearing in
6 April, we had -- about the repayment order. We went
7 through that. Mr. Sloan made -- I mean, it wasn't
8 sworn, but, you know, what amounts to an allocution
9 around those issues.
10 So I don't know how you phrase the -- how you
11 put that phrasing together, I'll be candid. What I
12 think is this. The reason we have this case open as a
13 separate matter still is because of the fact that we
14 are in a situation where we wanted to make sure that we
15 retained jurisdiction over the transactions. We
16 believe we have the jurisdiction over the transactions
17 in two ways. We are not currently seeking additional
18 penalties against Mr. Sloan. Like if you were to say
19 today, what do you want to do about this, you know, we
20 would not be in a position to say that we would be
21 seeking a penalty on top of the repayment. You know,
22 so -- I mean, we obviously are going to have to retain,
23 and I think we have the authorization to -- you know,
24 if we have to subpoena Mr. Sloan or his spouse, you
25 know, as part of the thing, we're going to have to do

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1 that. So we may not --
2 MR. SLOAN: We would fully comply.
3 MR. COLLINS: Yeah. Yeah. So we may not
4 be -- we may not be done with the -- with the -- with
5 the factual issues here.
6 So, you know, the harder part here is -- and
7 I suppose maybe I should have been more effective as
8 staff here. The harder part here I think really is the
9 issue that Ms. Coady identified. So, for example, if
10 we could put together a motion that simply said, like,
11 look, we are going to conclude this matter and, based
12 on the representations of Mr. Sloan, we are not -- we
13 don't see the need to impose further penalties, and
14 therefore, we are closing it, you know, or something
15 along those lines that makes that record, you know, I
16 think -- I feel comfortable with that.
17 And then Kara -- Ms. Karlson has something to
18 add, Madam Chair, if you would recognize her. Thanks.
19 CHAIRWOMAN CHAN: Certainly.
20 Ms. Karlson.
21 MS. KARLSON: Madam Chair, Commissioners, the
22 only thing that I would add -- I think that Tom is on
23 the right track. And again, you know, I'm in this spot
24 right now where I'm not advising you necessarily. You
25 know, I'm not advising you. But what I would advocate

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1 for is to include, as part of that factual basis, that
2 there was a repayment that made the -- you know, a
3 repayment of the remaining Commission funds. Because I
4 do think that that is important, as part of the factual
5 basis for concluding the investigation, that, you know,
6 there was an investigation, there was, as you put it,
7 Madam Chair, I think, essentially an allocution, and
8 there was a repayment of those funds. And on that
9 basis, with all of those factors, I think that that
10 provides a good precedent for future investigations
11 when we're moving forward. It's not just a, oh, well,
12 you dismissed, you know, this other case for no reason.
13 We can say, no, there -- there were very good reasons.
14 CHAIRWOMAN CHAN: Yeah. I mean, I --
15 personally I -- on one hand, I hate to treat somebody
16 differently from how we would treat a regular case, but
17 I think this is just the first time somebody has
18 actually come to us to ask us to close the case, and
19 it's after all of this -- he's cooperated with our
20 investigation, repaid all the Commission funds, been
21 present at every meeting we've talked about this at to
22 add his information. And I think if anybody came to us
23 in this way, we would be willing to consider it.
24 I hope I'm not -- you know, I may or may not
25 be speaking for all of us. But doesn't mean we would

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1 always approve it; I don't know whether we will today.
2 I'm interested to hear from the other Commissioners
3 whether they have questions or comments. But, you
4 know, those are kind of some of the concerns I have, I
5 suppose, that we've just never done this before. But
6 again, nobody has suggested it before. So there's a
7 first time for everything, I suppose.
8 Commissioner Meyer, did you have a comment or
9 a question?
10 COMMISSIONER MEYER: I did. Thank you, Madam
11 Chair. I think I know the answer to this question, but
12 I just want to make sure it's on the record. And this
13 is a question for -- for Tom and staff. It sounds like
14 from the point that Mr. Sloan brought this issue to
15 your attention or came to you regarding this that he's
16 been entirely cooperative and done everything you've
17 asked him to do. Is there anything that the Commission
18 and staff have asked of Mr. Sloan that he has not done
19 or not cooperated with since he came to you -- came to
20 the Commission with this issue?
21 MR. COLLINS: Madam Chair, Commissioner
22 Meyer, no, I can't -- I couldn't identify a thing.
23 COMMISSIONER MEYER: Okay.
24 CHAIRWOMAN CHAN: Tom, did you need to add --
25 MR. COLLINS: No. I mean, like I said -- I

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1 mean, the fact -- the facts -- I mean, putting aside
2 the, you know, facts around that we don't know, the
3 interactions with the Commission were -- they came --
4 the campaign got in touch with us in, I don't know,
5 August or something of 2020 and proceeded accordingly,
6 and the complaint came after that. We don't know -- we
7 don't -- we, as Clean Elections staff, don't know all
8 the things that happened in the intervening, you know,
9 that caused Mr. Branch to then bring this complaint.
10 We don't. But we do know that, like I said, Mr. Sloan
11 has provided us those documents that we requested and
12 he has -- you know, so I just don't -- I just -- I'm
13 trying to think through all the transactions we've had,
14 and it's hard to find one. I have not -- I can't
15 find -- I can't find one that -- where we asked for
16 something and didn't get it immediately. I mean, we
17 got the repayment order done in -- very quickly. That
18 was -- I mean, that was --
19 MR. SLOAN: Few hours.
20 MR. COLLINS: Yeah, that was -- that was -- I
21 mean, that was, in itself --
22 CHAIRWOMAN CHAN: That is fast.
23 MR. COLLINS: Yeah, so --
24 MR. SLOAN: I mean, literally we had the
25 check written -- the second we signed the repayment

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1 order, I had the check written and drove it down to
2 Clean Elections immediately.
3 MR. COLLINS: I mean, that's -- so that's --
4 yes. So I'm just -- Madam Chair, Commissioner Meyer,
5 just to try to fill out the record a little bit there,
6 you know, they brought the issue to us. When the
7 complaint arose, they didn't withdraw from interacting
8 with us.
9 I would also note Mr. Sloan, because of the
10 financial aspects of this, is acting pro per. And I
11 think that -- and so -- and as Mr. Sloan said, and I
12 appreciate him saying, we have -- we have been in a
13 position where we cannot ask -- we cannot -- we have to
14 respect our roles as State employees and attorneys, so
15 it's been -- in other words, he's been navigating this
16 in a way -- in an environment where neither Kara nor I,
17 as a professional nor legal matter, are in a position
18 to assist him or to even really do anything other than
19 tell him he shouldn't be talking to us, so -- so --
20 quite frankly.
21 And so I just -- I don't know really what
22 else to add, but I -- but other than under the
23 conditions -- you know, we've done repayments before.
24 We've had candidates get involved in stuff, and some of
25 them -- and some of them go south.

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1 COMMISSIONER MEYER: So Madam Chair.
2 CHAIRWOMAN CHAN: Yes, Commissioner Meyer.
3 COMMISSIONER MEYER: I mean, we're stewards
4 of this money, this Clean Elections funding money. Is
5 it your findings, Tom, or your opinions that all the
6 money -- the Clean Election funding was either
7 appropriately spent by Mr. Sloan's campaign or returned
8 to the Commission?
9 MR. COLLINS: Madam Chair, Commissioner
10 Meyer, yes. Under the terms of the repayment order,
11 which is -- which was -- which is a comprehensive
12 detailing of the -- of the accounting leading up to
13 that that is included in the order, and the order --
14 yes, that is, in fact, correct. In fact, the \$94,000
15 amounts to virtually the entirety of the primary
16 funding that Mr. Sloan received.
17 COMMISSIONER MEYER: Okay.
18 CHAIRWOMAN CHAN: So, Ms. Coady, do you
19 believe that we've kind of laid out enough of the facts
20 here for our consideration that we could make a motion?
21 MS. COADY: Madam Chairwoman, Commissioners,
22 I do. I think that the rationale that has been
23 discussed would be the cooperation of Mr. Sloan and the
24 completion of the repayment order or fulfillment of the
25 repayment order or some such wording.

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1 CHAIRWOMAN CHAN: Okay. Is there a
2 Commissioner who would like to make a motion on this?
3 Do you need help with language?
4 COMMISSIONER MEYER: I guess I just want to
5 understand what closure of the file -- closure of this
6 case means that -- that the Commission no longer has
7 jurisdiction to investigate this anymore. But I guess,
8 you know, with my litigator hat on, I mean, we have --
9 the case against The Party of Fives is ongoing. Is
10 that the -- that's the case where you would use -- you
11 would use that -- the fact that that case is open as
12 your -- as your vehicle to get any discovery that you
13 need on that issue, right? I mean, we're done with
14 Mr. Sloan, right?
15 MR. COLLINS: Madam Chair, Commissioner
16 Meyer, that's -- yes, we had -- we had maintained this
17 case for -- you know, really with the idea that if --
18 if there were -- if there was -- that having the
19 penalties available in the event that there was not
20 cooperation or things turned out to not be truthful, et
21 cetera, those were the kinds of things we're always
22 concerned about. So, I mean, you know, we have --
23 And I would say, and I want to make clear,
24 because I think Rep -- not the Representative. I think
25 the Chairwoman made a very good choice -- not yet,

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1 Representative -- that, you know, that this isn't --
2 that this isn't a, oh, this is what -- you know, that
3 this is not something anyone -- would happen to just
4 anyone. I mean, we really do have a substantial record
5 here. And, you know, I mean, and we have -- frankly,
6 we have -- many of the facts are not in dispute. You
7 know, some of the facts are, and we need to get to the
8 bottom of that. That's a whole other thing. But I
9 just feel like we are -- we are not in a position where
10 we would be seeking that additional penalty at this
11 point, and so...
12 CHAIRWOMAN CHAN: Okay. Thank you.
13 Yeah. I will say, Mr. Sloan, you have
14 definitely stood out as an active participant, very
15 cooperative participant in this whole process, which,
16 from my perspective as a Commissioner, I really
17 appreciate. Especially since I used to do campaign
18 finance enforcement at the Secretary of State's Office,
19 it's nice when you can kind of work cooperatively with
20 the people you're doing enforcement against --
21 MR. SLOAN: Yeah.
22 CHAIRWOMAN CHAN: -- since it can be an
23 adversarial process. So thank you for that.
24 MR. SLOAN: Thank you.
25 CHAIRWOMAN CHAN: So having taken all of this

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1 into consideration, is it possible that one of you
2 might have a motion, my fellow Commissioners? Do we
3 need help with language on that?
4 COMMISSIONER MEYER: I -- I think I have one
5 here, Madam Chair, if I can make that.
6 CHAIRWOMAN CHAN: Sure. Sure, Commissioner
7 Meyer.
8 COMMISSIONER MEYER: I would move that, based
9 upon the unique facts of Mr. Sloan's case, including
10 the fact that Mr. Sloan has made repayment to the
11 Commission consistent with the order he agreed to, has
12 fully cooperative with the Commission in investigating
13 this matter since it was brought to the Commission, and
14 based upon the fact that the Commission has done an
15 investigation and is seeking no further penalties from
16 Mr. Sloan, that we close this case.
17 CHAIRWOMAN CHAN: Thank you.
18 Do I have a second?
19 COMMISSIONER KIMBLE: Commissioner Kimble. I
20 second.
21 CHAIRWOMAN CHAN: Thank you. All right.
22 With that, we will take a vote. Commissioner
23 Meyer, how do you vote?
24 COMMISSIONER MEYER: Aye.
25 CHAIRWOMAN CHAN: Commissioner Kimble.

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1 COMMISSIONER KIMBLE: Aye.
2 CHAIRWOMAN CHAN: I vote aye as well.
3 And with that, we will close MUR 20-04
4 regarding Eric Sloan. Congratulations, Mr. Sloan.
5 MR. SLOAN: Thank you very much. I
6 appreciate it.
7 CHAIRWOMAN CHAN: And thank you for -- for
8 that cooperation. I'm sure that's, you know --
9 MR. SLOAN: Absolutely. And again, you know,
10 without repeating myself, I'm happy to continue to
11 cooperate with any of the investigations that have to
12 do with The Power of Fives and the Sloan campaign from
13 2020, but I did want to make the Commission aware that
14 The Power of Fives is continuing to do business as it
15 did in 2020. And so thank you so much. I really
16 appreciate it. Thank you.
17 CHAIRWOMAN CHAN: Thank you.
18 All right. With that, we can move on to
19 Item VIII, discussion and possible action of -- on
20 election of Chairperson for 2022.
21 COMMISSIONER MEYER: Madam Chair, can I make
22 a brief comment on Item No. VII before we move on?
23 CHAIRWOMAN CHAN: Oh, certainly. I'm sorry.
24 Commissioner Meyer, please.
25 COMMISSIONER MEYER: That is, you know, I

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1 certainly understand -- I'm very sympathetic and
2 empathetic for what Mr. Sloan has gone through. You
3 know, I just feel like he was an unknowing victim here
4 of this scheme that we were talking about with The
5 Party of Fives. And if there is -- I don't know our
6 training materials inside and out for the Clean
7 Election candidate training, but maybe this is
8 something we want to make sure that we're informing
9 candidates about to very closely look at these
10 consulting agreements and understand the risks. And I
11 don't know if there's a way to run these agreements
12 through Commission staff before they're signed, as
13 opposed to after the fact. And if this is already
14 being done, forgive me. But I just want to put that on
15 the record that if there's a way we can help future
16 candidates avoid the scenario that Mr. Sloan has had to
17 go through, let's do that.
18 CHAIRWOMAN CHAN: Thank you.
19 Oh, Tom.
20 MR. COLLINS: I just want to -- Madam Chair,
21 I just want to say that we can take that as direction
22 and make sure we review our materials. I mean, I can
23 state with confidence that our materials cover this
24 kind of -- when obligations arise under the Act, they
25 do. But I do think that, you know, we can always shore

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1 that up. And, you know -- and if necessary, and this
2 is what I'm trying to -- we can always look at -- if we
3 wanted to get that kind of information, you know, we
4 can -- we can talk about how to -- how to do that.
5 Certainly one thing we can tell people and we
6 have -- well, I'll leave it there. We will take that
7 and try.
8 CHAIRWOMAN CHAN: Okay. Thank you.
9 Commissioner Meyer, that's an excellent
10 suggestion.
11 COMMISSIONER MEYER: Thank you.
12 CHAIRWOMAN CHAN: And thank you, Tom.
13 All right. And with that, we can move on to
14 the -- get a -- get a volunteer perhaps. Well, we can
15 talk about Item VIII. Every year we do elect a
16 Chairperson to chair meetings in the next calendar
17 year, and we are at a crossroads that we have never
18 been at before because we do not have a junior member
19 to nominate or saddle with the job. We don't even
20 have, you know, all five of us here.
21 And so I will say that I am happy to continue
22 doing this job if you should want me to continue doing
23 it. I know that just being a Commissioner is a big
24 job. You know, it's disruptive once a month. It's
25 a -- it's an important job, in my opinion. But if one

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1 of the other Commissioners is desiring of or willing to
2 be the Chairperson next year, I am more than happy to
3 nominate that person and we can vote on it today. So
4 with that --
5 COMMISSIONER KIMBLE: Madam --
6 CHAIRWOMAN CHAN: Yes.
7 COMMISSIONER KIMBLE: Madam Chair.
8 CHAIRWOMAN CHAN: Commissioner Kimble.
9 COMMISSIONER KIMBLE: As you point out, we --
10 we are, in about two and a half weeks, going to be in
11 unprecedented territory where all five of us are
12 serving past the end of our term. And the people
13 charged with appointing members have not followed
14 through with their legal responsibility to do that for
15 five years now, which is unfortunate. But we have a, I
16 think, I don't know if it's a policy, but it's
17 certainly a strong tradition of selecting a new Chair
18 every year, and I think it is incumbent upon us to
19 carry forward in as normal a manner as possible given
20 the challenges that we're unexpectedly facing.
21 And with no -- with no disrespect to you,
22 Madam Chair, because I think you've done an excellent
23 job this year, I would like to nominate Commissioner
24 Meyer to be Chair for 2022 --
25 CHAIRWOMAN CHAN: All right.

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1 COMMISSIONER KIMBLE: -- and I hope he'll
2 accept.
3 CHAIRWOMAN CHAN: Commissioner Meyer, your
4 thoughts.
5 COMMISSIONER MEYER: I don't know whether I
6 should consider this appointment to be a lifetime
7 appointment or a lifetime sentence at this point, and I
8 say that jokingly.
9 Tom, did you have something to say?
10 MR. COLLINS: No, I don't have a better --
11 CHAIRWOMAN CHAN: I think this whole
12 situation is a little humorous, isn't it? We're doing
13 a voluntold Chairmanship now going forward.
14 COMMISSIONER MEYER: Well, I joke because I
15 don't know what else to do. I -- I know -- I'm very
16 honored to accept -- or, to be nominated, and I just
17 want to, you know, flesh this out a little bit more. I
18 mean, 2022 is going to be a very big year for the
19 Commission, for the state with the midterms. And I am
20 happy and more than willing to serve as Chairperson of
21 this Commission. I am also a full-time practicing
22 attorney and full-time dad. And I know Commissioner --
23 I mean, we're all working, we're all busy. I know --
24 I'm not sure if either of you feel like you have more
25 time to devote to the Chairperson position. I would

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1 like to hear from you on that. Again, I'm happy to do
2 it and I'm not rejecting the nomination, but I
3 certainly maybe want to talk with you all a little bit
4 about it more.
5 And as far as the tradition of changing the
6 Chairmanship every year, tradition has been thrown out
7 the window here, as all five of us are now past the
8 five-year plan. I personally would have no issue with
9 Madam Chair -- Commissioner Chan serving as Chairperson
10 again. I think you've done a great job. So I'll just
11 throw that -- those considerings out. I want to throw
12 that out to you two to kind of hear from you about
13 that.
14 CHAIRWOMAN CHAN: Well, and maybe --
15 Commissioner Kimble, I don't know -- I know that you
16 served perhaps more recently as Chairman than
17 Commissioner Meyer, but it was still a Chairman -- two
18 Chairmen removed if you were going -- would you be
19 willing to consider being the new Chairman next year
20 perhaps? I was trying to think in my mind, frankly, of
21 who's not working full-time, and I think it is
22 Commissioner Kimble and myself of the five of us, if
23 I'm not mistaken. Because I know that that can be a
24 factor now that we don't really have anybody new. What
25 do you think, Commissioner Kimble? Would you

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1 perhaps --
2 COMMISSIONER KIMBLE: Oh, well, I wasn't --
3 this is probably selfish, but I wasn't really thinking
4 so much of who has the time to do it. I was thinking,
5 as Commissioner Meyer pointed out, that 2022 is going
6 to be a busy and challenging year. And for that
7 reason, I think Commissioner Meyer is best suited to
8 lead the Commission during this.
9 Again, I think, Madam Chair, you've done --
10 you've done an exceptional job this year, which has
11 been a -- a weird year. But I just don't think that we
12 ought to say, well, tradition has been all upended, so
13 let's just -- let's just stop picking new Chairs. I --
14 I feel Chairman Meyer would be the best Chair for this
15 coming year, which is not really answering your
16 question, but that's my feelings.
17 CHAIRWOMAN CHAN: Okay. Well, no. I mean,
18 you know, that's perfectly acceptable.
19 Well, Commissioner Meyer, I think
20 Commissioner Kimble has made his feelings known. And,
21 you know, I don't know if we should take a vote today
22 or wait and see if any of the others want to offer
23 themselves up as Chairpeople.
24 COMMISSIONER MEYER: Commissioner Chan,
25 what's your opinion?

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1 CHAIRWOMAN CHAN: I mean, I -- I would like
2 it to be someone who's willing to accept it. And if
3 you are, I'm happy to support your nomination. I just
4 -- I understand -- I feel like there's -- again,
5 because of the fact that everybody is here now -- going
6 to be here past their expiration date next year, I was
7 thinking about rolling back through seniority, you
8 know, even. But I also feel like once people's seats
9 have expired, they move on in a little bit of a regard,
10 you know, not that they don't participate. But to go
11 back through seniority, so -- but I have no problem
12 switching Chairs. I just hate to see --
13 COMMISSIONER KIMBLE: Madam Chair.
14 CHAIRWOMAN CHAN: Yes.
15 COMMISSIONER KIMBLE: I think seniority is a
16 good point. And I would have nominated Commissioner
17 Titla, but he has challenges of his own at getting to
18 meetings, and so the next most senior member is
19 Commissioner Meyer.
20 COMMISSIONER MEYER: Okay. Well, based upon
21 the comments from my fellow Commissioners, I will
22 accept the nomination.
23 CHAIRWOMAN CHAN: All right. Excellent.
24 COMMISSIONER MEYER: Do we vote?
25 CHAIRWOMAN CHAN: Yeah, I think we -- we do

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1 vote.
2 MR. COLLINS: We have -- you have voted
3 historically.
4 COMMISSIONER KIMBLE: And I made a motion,
5 which I don't know if it's been seconded.
6 CHAIRWOMAN CHAN: Oh, then I will second the
7 motion and then we'll call the roll.
8 Commissioner Meyer, how do you vote?
9 COMMISSIONER MEYER: Aye.
10 CHAIRWOMAN CHAN: Commissioner Kimble, how do
11 you vote?
12 COMMISSIONER KIMBLE: Aye.
13 CHAIRWOMAN CHAN: And I vote aye as well.
14 And by a vote of three to zero, Commissioner
15 Meyer, you are Chairman for the second time, which I
16 don't know if that's been done in the history of the
17 Commission, but congratulations.
18 MR. COLLINS: It happened one time.
19 CHAIRWOMAN CHAN: Oh, it did? Okay.
20 COMMISSIONER MEYER: Oh, don't burst my
21 bubble.
22 MR. COLLINS: I'm sorry. I mean -- well, I'm
23 sorry. I'm sorry. I take it back. It never happened.
24 CHAIRWOMAN CHAN: In our recent memory, for
25 all of us new to the Commission --

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1 MR. COLLINS: Oh, yes. Yes. Yes. You would
2 have had --
3 CHAIRWOMAN CHAN: -- it's a historical event,
4 so congratulations.
5 MR. COLLINS: Mike, Paula, and I are the only
6 three people that actually know that. So if the rest
7 of you forget it, it never happened.
8 CHAIRWOMAN CHAN: Okay.
9 COMMISSIONER MEYER: This is being live
10 streamed by millions.
11 CHAIRWOMAN CHAN: It should be.
12 All right. Item IX, we can move on to public
13 comment. So this is the time for consideration of
14 comments and suggestions from the public. Action taken
15 as a result of public comment will be limited to
16 directing staff to study the matter or rescheduling the
17 matter for further consideration and decision at a
18 later date or responding to criticism.
19 So does any member of the public wish to make
20 comments at this time? You can -- oh, I see Rivko is
21 here with her hand raised. I'll just note that you can
22 also send comments to the Commission by mail or e-mail
23 at ccec@azcleelections.gov. So, Ms. Knox.
24 MS. KNOX: My name is Rivko Knox, for the
25 record. I'm just speaking as a citizen of the state of

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1 Arizona and a voter.
2 Madam Chair and Members of the Commission,
3 all three of you, I want to, first of all, to one more
4 time tell you how very much I enjoy and learn from
5 participating in these meetings about the law and the
6 intricacies of the law. I'm not an attorney and never
7 have been.
8 I also wanted to thank all three of you for
9 continuing to serve. I know last time I made a
10 comment -- a month ago I made a comment about my
11 ongoing, and it's true, my ongoing concern about the
12 lack of nomination of new Commissioners. And I don't
13 know at this point what anybody -- I know I -- I'm not
14 sure there's anything I can do.
15 But my -- the main point I wanted to make is
16 what a tremendous program the Commission sponsored
17 yesterday with the Arizona Capital Times Morning Scoop,
18 at which Gina Roberts -- who I found out her real name
19 is Regina Roberts, but that's how it goes, after eight
20 years or something I finally found that out -- did an
21 amazing job. The entire program was beautifully,
22 beautifully, very well organized. Very knowledgeable
23 people spoke. All the speakers were experts in what
24 they talked about and spoke to facts.
25 Unfortunately, there was one person in the

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1 chat who was off in a different dimension, I suppose
2 one might say. But the nice thing was that most of the
3 comments were either asking questions or complimenting
4 the speakers. And I'm just so happy at the wonderful
5 institution that this is, and that it continues.
6 And I'm not sure if this is appropriate for
7 me to say or not, but as you know, I am no longer the
8 League-assigned observer or representative here, and I
9 know a new person has been assigned. And all I can say
10 is, I hope that that person is staying in touch with
11 you, Mr. Collins, as Executive Director, and the
12 Commissioners and adequately reporting. I do send a
13 report of the meetings that I attend, or observe
14 afterwards if I'm unable to actually be there on the
15 day, to a few people in the League who are interested,
16 but I just hope the connection stays, especially with
17 the importance of this upcoming election year, 2022.
18 Thank you very much, and I look forward to
19 seeing all -- or, listening to all of you next month.
20 Happy holidays.
21 CHAIRWOMAN CHAN: Thank you, Rivko. Same to
22 you. Happy holidays, happy new year.
23 And is there anyone else who wishes to speak?
24 I don't even know if there's any other members of the
25 public here. I don't think so.

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1 So in that case, we will move on to Item -- I
2 don't know which item -- oh, it's Item X, excuse me,
3 adjournment, motion to adjourn. So I would entertain a
4 motion to adjourn.
5 COMMISSIONER KIMBLE: Madam Chair.
6 CHAIRWOMAN CHAN: Commissioner Kimble.
7 COMMISSIONER KIMBLE: I move that we adjourn.
8 CHAIRWOMAN CHAN: Okay. Is there a second?
9 COMMISSIONER MEYER: Second.
10 CHAIRWOMAN CHAN: All right. Let's call the
11 roll. Commissioner Meyer.
12 COMMISSIONER MEYER: Aye.
13 CHAIRWOMAN CHAN: Commissioner Kimble.
14 COMMISSIONER KIMBLE: Aye.
15 CHAIRWOMAN CHAN: And I vote aye as well.
16 And with that, we are adjourned. Everybody
17 go be safe, have a wonderful holiday and happy new
18 year, and we'll see you back here in January. Bye.
19 COMMISSIONER MEYER: Bye, guys.
20 (The proceedings concluded at 11:43 a.m.)
21
22
23
24
25

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

3
4 BE IT KNOWN that the foregoing deposition was
5 taken by me pursuant to stipulation of counsel; that I
6 was then and there a Certified Reporter of the State of
7 Arizona, and by virtue thereof authorized to administer
8 an oath; that the witness before testifying was duly
9 sworn by me to testify to the whole truth; that the
10 transcript was submitted for review and signature; that
11 the questions propounded by counsel and the answers of
12 the witness thereto were taken down by me in shorthand
13 and thereafter transcribed into typewriting under my
14 direction; that the foregoing pages are a full, true,
15 and accurate transcript of all proceedings and
16 testimony had and adduced upon the taking of said
17 deposition, all to the best of my skill and ability.

18
19 I FURTHER CERTIFY that I am in no way related
20 to nor employed by any of the parties hereto nor am I
21 in any way interested in the outcome hereof.

22
23 DATED at Tempe, Arizona, this 20th day of
24 December, 2021.

25


Kathryn A. Blackwelder, RPR
Certified Reporter #50666

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**CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
January 27, 2022**

Voter Education:

- Avery provided phone coverage and election day support for the November 2, 2021 Election
- Avery represented Clean Elections in the Monthly Arizona African American Legislative Committee meetings
- Avery participated in the Educational Momentum Action Team (EMAT) meetings to share resources for civic engagement
- Gina and Avery spoke with the Center for the Future of Arizona to discuss a potential collaboration
- Avery is a participating member of the Secretary of State Youth Committee and meets monthly
- Avery attended the monthly Arizona Commission of African American Affairs meetings
- Avery continued assisting the Arizona Independent Redistricting Commission's community outreach efforts
- Avery attended the Mesa Community College Civic Action Council meeting to plan for future events for the 2022 school year.
- Avery was recertified as an Election Officer on December 2, 2021
- Avery met virtually with Madame Chair Neuberg of the Arizona Independent Redistricting Commission to discuss outreach to the African American community in Arizona
- Avery and Gina continue to collaborate with the Arizona Department of Education's CE² committee
- Avery began monthly meetings with Betty Galanter, the Maricopa County Elections Department Voter Outreach manager to discuss strategies.
- Gina and Avery met with a member of the City of Tucson's Commission on disability issues, Adiba Nelson to share resources and information on voting for disabled voters
- Avery and Julian virtually attended the Secretary of State's 2022 Candidate Filing webinar to be on hand for questions
- Avery attended the 36th Annual Arizona Martin Luther King, Jr. Celebration virtually and represented Clean Elections

Miscellaneous:

Arizona Auditor General Audit

- The Auditor General approved our audit under A.R.S. § 16-949.

Outstanding legal matters

- Legacy Foundation Action Fund
 - This agenda.
- The Power of Fives, LLC v. Clean Elections, CV2021-015826, Superior Court for Maricopa County
 - Pending, no action to report.
- Election cases involving Arizona
 - Senate ballot review questions remain active.
- **Appointments**
 - No additional information at this time

Enforcement

MUR 21-01, TPOF, pending.

Regulatory

The Governor's Regulatory Review Council will meet Tuesday February 1, 2022 and will consider approval of the Commission's amendment to R2-20-101 relating to family members. The council held a study session Wednesday and we are hopeful the rule will earn approval next week at the regular meeting.

| Bill (House, Senate) | Sponsor | Assigned to | What it does | Direct effect on CCEC | Status | Notes |
|---|--------------------|-------------|--|---|--------|-------|
| H2023: Electronic Ballot Images; Public Record | Rep. Finchem (R) | | After the polls are closed, the officer in charge of elections is required to make available to the public the images of the ballots that are used to tabulate the election in a manner that allows the images to be searchable by precinct but that precludes any alteration of the images. States that the digital images of the ballots are public records. | Possible education to not put any identifying material on ballots. | | |
| H2041: ballot fraud countermeasures; paper ink | Rep. Blasiucci (R) | | Any vendor that provides fraud countermeasures for the use of paper ballots must be ISO 27001 certified, ISO 17025 certified, or ISO 9001:2015 certified. Ballot fraud countermeasures are required to include all of a list of 19 specified features, including: tamper-evident security inks, invisible ultraviolet microtext, a serialized black QR code, and a paper receipt for the voter. The Legislature is required to require that the State Treasurer provide counties with the ballot paper prescribed by this legislation. Applies to the regular general election in 2022 and all elections held in 2024 and later. Appropriates an amount of money from the State Treasurer's general fund in FY2022-23 to the State Treasurer for the purchase of antifraud ballot paper meeting these requirements. | None. Unique barcode tracking to vote brings up questions regarding State Constitution, Article 7, Section 11. | | |
| H2039: early voting; boxes; observers; electioneering | Rep. Blackman (R) | | County recorders or other officers in charge of elections are required to provide an unmonitored drop box for receiving voted early ballots. For any drop boxes that are used to receive voted early ballots, the county board of supervisors is required to furnish the boxes and the drop box. Voters who have delivered their ballots are required to promptly move outside the 75-foot limit. Increases the criminal classification of electioneering within the 75-foot limit, hindering the voting of others, and voting in a county in which the voter no longer resides, to a class 6 (lowest) felony. <i>Repeals a class 2 (mid-level)</i> | None. | | |
| H2071: early ballots; postmark date; receipt | Rep. Cook (R) | | An early ballot and affidavit that is postmarked by U.S. mail on or before the sixth day before election day is valid and eligible to be counted if received no later than five days after election day. Effective January 1, 2023. | Voter Education. | | |
| H2077: candidates; school; local electronic signatures | Rep. Pawlik (D) | | This list contains the names of the candidates for school board election through secure internet petition system provided by the Secretary of State is expanded to include candidates for school board election and any office for which a county board of education is the election authority. | None. | | |
| H2079: initiative; referendum; signatures; electronic submittal | Rep. Pawlik (D) | | The Secretary of State is directed to provide a system for qualified electors to sign initiative and referendum petitions by way of a secure internet portal. The system is required to verify the qualified electors' identities and to provide a qualified elector with the ability to sign the initiative or referendum petition to do so. The person or organization that files the application for initiative or referendum petition may choose to collect up to 100 signatures for the petition by use of the online signature collection system. | None. | | |
| H2080: hand count; electronic tabulation verification | Rep. Finchem (R) | | For the regular primary and general elections, all ballots are required to be counted by hand, and machines or devices for electronic tabulation of ballots can be used only for quality control checks of the ballots. When the court orders a recount of votes that were tabulated by hand, the recount must be a hand count and the court is allowed to order a recount of the votes that were tabulated by use of the hand recount. Effective January 1, 2023. | Depending on administration, may require voter education efforts pertaining to the length of time it will take to tabulate vote totals. | | |
| H2092: ballot measure amendments | Rep. Saiman (D) | | Various changes to statutes relating to initiative and referendum measures. Repeals statute requiring constitutional and statutory requirements for initiative and referendum measures to be strictly construed and requiring persons using the initiative process to strictly comply with those constitutional and statutory requirements. At any time before a petition or organization submits an initiative or referendum petition, a political committee that intends to file that petition is allowed to submit the proposed description of the principal provisions of the initiative or referendum measure to the Attorney General for determination of whether the description is lawful and sufficient. The Attorney General is required to approve or reject the description within ten days after the date the description is received. The Attorney General must state the reasons for the rejection. If approved, any challenge to the description must be filed in the superior court within ten days after the Attorney General's approval. Repeals statute that requires a political committee that intends to support or oppose an initiative or referendum measure to submit a copy of the text of the proposed law, referral or constitutional amendment to the unicameral Legislative Council for the proposed measure. Contains a legislative intent clause. | None. | | |

| Bill (House, Senate) | Sponsor | Assigned to | What it does | Direct effect on CCEC | Status | Notes |
|--|------------------------|-------------|---|--|--------|-------|
| H2094: early ballot collection, limitations; repeal | Rep. Saiman (D) | | It is no longer a class 6 (lowest) felony to knowingly collect voted or unvoted early ballots from another person. | None. | | |
| H2109: election celebration day | Rep. Basalucci (R) | | The day of the general election, every other year, is designated as Election Day, which is not a legal holiday. | None. | | |
| H2170: election mailings; third-party disclosures | Rep. Kavanagh (R) | | Any nongovernmental person or entity that mails, sends by electronic or digital means, or provides an electronic or digital link to an official ballot mailing to a voter must include the county recorder's county officer in charge of elections or the Secretary of State, including a voter registration application or an early ballot request, is required to include the words "not from a government agency" in the printed or digital print on the outside of the envelope or prominently placed in the electronic or digital message. | None. | | |
| H2194: national popular vote; interstate agreement | Rep. Powers Hanney (D) | | Establishes an agreement among the states to elect the U.S. President by national popular vote. Individual must request to register to vote. Prohibition on automatic registration. | Requires other states to agree to forgo the electoral process. None impact at the moment. Codifying Opt-In system. | | |
| H2236: voter registration; request required | Rep. Hoffman (R) | | No election day registration in order to vote in that election. Request to register could be guilty of a class 6 misdemeanor. | None. Redundant as language already prohibits voter registration 25 days prior to election. | | |
| H2237: same day voter registration; prohibition | Rep. Hoffman (R) | | County Recorder or other election official may not use unmonitored ballot drop boxes. | None. | | |
| H2238: ballot drop boxes; prohibition | Rep. Hoffman (R) | | The county board of supervisors and officer in charge of elections are prohibited from using an electronic vote adjudication. A duplicate copy of a damaged or defunct ballot must be made by hand. | None. | | |
| H2239: electronic ballot adjudication; prohibition | Rep. Hoffman (R) | | County boards of supervisors and any officer in charge of elections are prohibited from authorizing, establishing or using a voting center at which a voter who is a registered voter and has received a ballot must be made by hand to receive the appropriate ballot for that specific voter. | Education on proper location to vote. | | |
| H2240: elections; voting center prohibited | Rep. Hoffman (R) | | For any voter or voter's agent who delivers one or more voted early ballots in affidavit envelopes at any polling place or voting center, the election identification for his/her own early ballot, and to attest in writing that he/she is the voter's family member, household member or caregiver for such voter, is a class 6 (lowest) felony. After receiving a voter registration form, the county recorder is required to verify that the name, address, date of birth and driver license number of the registrant are valid and accurate. The county recorder is required to verify that the statewide database, the Secretary of State is required to verify that the name, address, date of birth and driver license number of the registrant are valid and accurate. If the registrant fails to comply with these requirements is guilty of a class 6 (lowest) felony. | Voter Education about ballot drop off procedures. | | |
| H2241: early ballot drop off; identification | Rep. Hoffman (R) | | The voter registration form is required to contain a statement that if the registrant permanently moves to another state after registering to vote in this state, the registrant's voter registration will be cancelled. | None. | | |
| H2243: voter registration; state residency; cancellation | Rep. Hoffman (R) | | The Auditor General is required to conduct systems and procedures audits of offices conducting the general election. Appropriates \$800,000 from the general fund in FY2022-23 to conduct these audits. | None. | | |
| H2244: auditor general; election systems; audits | Rep. Hoffman (R) | | On-site early voting locations, centers, and emergency voting centers may be used for in-person early voting only during the period beginning on the Saturday before election day for a primary or general election and continuing through the Monday before election day for a general election. No early voting centers may be used for in-person early voting for any other election or time period. | Limits early voting to the 3 days prior to an Election. | | |
| H2245: in-person early voting; time period | Rep. Finchem (R) | | A person's right to vote is automatically restored on the person's discharge of probation or absolute discharge from imprisonment. | Update Voter Education. | | |
| H2259: voting rights; felonies; automatic restoration | Rep. Espinoza (D) | | An individual who is an election officer or supervisor of election operations, a clerk, assistant chairperson, treasurer or other member of a political action committee. Does not apply to an individual's membership in a candidate committee or political party committee. | None. | | |
| H2270: officials; political action committee prohibition | Rep. Bolick (R) | | State agencies and local authorities are prohibited from using a photo enforcement system to identify violators of traffic control device and speed regulations. Statutes authorizing and regulating photo enforcement are repealed. | Slight impact to funding, most photo enforcement systems have already discontinued in use quite heavily. | | |
| H2282: prohibition; photo radar | Rep. Fillmore (R) | | | | | |

| Bill (House, Senate) | Sponsor | Assigned to | What it does | Direct effect on CCEC | Status | Notes |
|---|-------------------|-------------|--|--|--------|-------|
| H2283: polling places, schools, district boards | Rep. Fillmore (R) | | The officer in charge of elections is required to prioritize public schools and fire stations as polling places. School principals and fire station board members are required to assist the county board of supervisors and the officer in charge of elections in selecting and coordinating schools and fire stations as polling places. School principals are no longer authorized to deny a request to provide space for use as a polling place in specified circumstances. | None. | | |
| H2287: precincts; combination; prohibition | Rep. Fillmore (R) | | County boards of supervisors are no longer allowed to authorize the use of emergency voting centers. County recorders and other officers in charge of elections are no longer authorized to provide emergency polling centers or to experience an emergency immediately preceding an election. | Voter Education updates. | | |
| H2288: emergency voting; registration update; prohibition | Rep. Fillmore (R) | | The county chairman of each political party is required, instead of allowed, to designate a party agent or representative who may act as a representative of the party in the polling place for each political party is required to be present at each voting place, and the party representative is required to remain in the polling place until completion of the tabulation of the ballots. The county recorder or other officer in charge of elections. | None. | | |
| H2289: challengers; polling places; tabulation observation | Rep. Fillmore (R) | | The first Tuesday after the first Monday in November in every even-numbered year must be designated Election Celebration Day, which is not a legal holiday. | None. | | |
| H2295: election day; celebration | Rep. Fillmore (R) | | Strikes list 2 from acceptable form of ID in order to vote. | Voter education required to inform people of the limited options they will have to procure ID at the polls. Should require a 3/4 vote. | | |
| H2357: election board clerks; party affiliation requirement | Rep. Fillmore (R) | | The inspector, marshal, and judges AND CLERKS shall not have changed their political party affiliation or their no party preference affiliation since the last preceding general election | None. | | |
| H2376: election procedures; review, commission | Rep. Bolick (R) | | Establishes a 13-member Election Integrity Commission to biennially conduct a review of election laws and procedures to ensure statewide election integrity, beginning in 2023. The Commission is required to submit recommendations to the Governor, the Secretary of State, and the Legislature by December 1 of each odd-numbered year. The Commission terminates on July 1, 2032. | None. | | |
| H2377: voting; seventy-five foot limit; photographs | Rep. Bolick (R) | | While within the 75-foot limit of the polls, a voter is prohibited from photographing or videoing himself, his/her own ballot, and any election worker. | None. Procedural change, privacy issues. | | |
| H2378: election lawsuits; settlements; approvals | Rep. Bolick (R) | | A county recorder or other officer in charge of elections is authorized to join in any election-related civil action that materially affects the election process. | Do not believe the Commission falls into this category. | | |
| H2379: election procedures manual; statutory conflict | Rep. Bolick (R) | | The election instructions and procedures manual is required to provide for transparency and election security to the maximum extent allowed by law. If any provision of the manual conflicts with the provisions of the statutes and the procedures manual is inoperative and the statute prevails. | None. State law > EPM. | | |
| H2380: early ballots; delivery; penalties | Rep. Bolick (R) | | The criminal classification for knowingly collecting voted or unvoted early ballots from another person is increased to a class 4 (lower mid-level) felony. A county recorder or other officer in charge of elections is authorized to submit a complaint to the Election Integrity Unit of the Office of the Attorney General regarding a possible violation of the prohibition on collecting early ballots. The Attorney General is required to investigate the complaint and make findings, including a determination on whether to file charges. The Attorney General is required to report on these findings to the Governor and the Legislature by February 1 each year. | None. | | |
| H2395: auditor general; voter registration database | Rep. Kaiser (R) | | The Auditor General is required to review the processes and statutory requirements for maintaining the statewide voter registration database, county early voting lists and county State and county recorders are required to provide specified information to the Auditor General. The Auditor General is required to report on these findings by August 30 of each even-numbered year. Appropriates \$500,000 from the general fund in FY 2022-23 to the Auditor General for this purpose. | None. | | |

| Bill (House, Senate) | Sponsor | Assigned to | What it does | Direct effect on CCEC | Status | Notes |
|---|------------------------|-------------|--|--|--------|-------|
| H2402: automatic voter registration; same day | Rep. Soore (D) | | <p>A person who is otherwise qualified to register to vote may register during the 28 days preceding the election in the precinct in which the person resides for at least 29 days immediately preceding the election. A person who is otherwise qualified to register to vote may register on Election Day at the polling place for the precinct in which that person maintains residence. A person who registers to vote under this provision does not qualify a person to vote in a partisan primary election. Every person who is applying for a driver license or renewal, including a nonoperating identification license or renewal, must provide the voter registration information and who is otherwise qualified to register to vote must be registered to vote automatically on completion of the license application unless the applicant provides evidence of a decision not to register. A person who is not registered to register to vote and who unknowingly registers under this provision is not guilty of false registration or false swearing. Effective January 1, 2023.</p> | Procedure change. Voter Education efforts. | | |
| H2430: secretary of state; nonpartisan office | Rep. Shah (D) | | <p>1. A section for the office of Secretary of State is moved to the nonpartisan section of the ballot, and signature requirements are modified to reflect the change. Effective January 1, 2023.</p> <p>Various changes to campaign contribution limits. Decreases campaign contribution limits to \$390 for a candidate for a statewide office, county or district office, to \$488 to a candidate committee for legislative office, and to \$1,010 to a candidate committee for statewide office, all of which are subject to the same contribution limits without mega PAC status. Campaign contribution limits apply as an aggregate total for the combined primary and general election, instead of per "election cycle" (defined). The aggregate total for a candidate committee is more than an aggregate total of \$5,610 in a calendar year to state and local candidate committees and political action committees that contribute to the candidate committee. Contributions are prohibited from contributing monies in the name of the partnership. Candidate committees are prohibited from accepting contributions from all political action committees other than a political action committee that is a candidate committee, primary and general election of more than \$10,020 to a candidate committee for municipal, county or district office, \$16,150 to a candidate committee for statewide office, \$10,010 to a candidate committee for a statewide office. A candidate committee for a candidate that is a political party nominee is prohibited from accepting contributions as an aggregate total for the candidate committee for more than \$10,020 to a political party of more than \$10,020 to a candidate committee for an office other than a statewide office, and \$100,110 to a candidate committee for a statewide office.</p> | None. | | |
| H2443: campaign finance; contributions limits | Rep. Powers Hanley (D) | | <p>Applies clean elections laws to candidates for county attorney, county recorder, county school superintendent, county sheriff and county treasurer. Establishes primary election spending limits for candidates for county office based on county population. Due to voter protection, this bill requires a 3/4 vote of each house of the Legislature for enactment.</p> | None. | | |
| H2445: clean elections; county candidates | Rep. Powers Hanley (D) | | <p>A voter who has the envelope containing the completed early ballot and completed affidavit, location on election day and whose identification is verified and confirmed is allowed to remove the completed ballot from the envelope and deposit it in the ballot box. The voter must sign the affidavit in that polling place and to discard the envelope and completed affidavit.</p> <p>Each political party that is qualified for representation on an official party ballot at the primary election and accorded a column on the ballot is required to submit one representative, one presidential elector for each congressional district and two presidential electors as at-large presidential electors. A presidential elector who is designated by a congressional district is required to be a resident of that congressional district. Presidential electors who are designated for a congressional district are required to cast their electoral college votes for the candidates for the office of president and vice president for the highest number of votes in that congressional district as prescribed in the statewide canvass. The two at-large presidential electors are designated by the county to cast electoral college votes for the candidates for president and vice president who jointly received the highest number of votes from an aggregate vote of all the members of the State Legislature voting as a single body.</p> | Add county offices to public financing program. | | |
| H2469: early ballots; polling place; tabulation | Rep. Carroll (R) | | | Voter Education amendments. | | |
| H2476: presidential electors; congressional districts; at-large | Rep. Carroll (R) | | | Adds 2 votes to the electoral college based on voting via the State Legislator for the office of President and Vice-President. | | |

| Bill (House, Senate) | Sponsor | Assigned to | What it does | Direct effect on CCEC | Status | Notes |
|---|-------------------|-------------|---|---|--------|-------|
| H2491: elections; signature matching requirements | Rep. Hoffman (R) | | The county recorder or other officer in charge of elections is required to apply an unspecified factor (blank original) to the original when processing the original. The Secretary of State's election procedures manual. A person who violates this requirement is guilty of a class 5 (second-lowest) felony. | Add a process for blank affidavit envelopes. None. | | |
| H2492: voter registration; verification; citizenship | Rep. Hoffman (R) | | Except for a form produced by the U.S. Election Assistance Commission, a county recorder or other officer in charge of elections is required to be accompanied by satisfactory evidence of citizenship, and the county recorder or other officer in charge of elections is required to reject any application for registration in person if the applicant does not provide satisfactory evidence of citizenship. A county recorder or other officer in charge of elections who fails to reject an application for registration in these circumstances is guilty of a class 6 (lowest) felony. The county recorder or other officer in charge of elections is required to determine whether an applicant meets the citizenship status of an applicant for voter registration. A person who registers to vote is required to provide an identifying document that establishes proof of location of residence. A person who registers to vote in person but does not provide satisfactory evidence of citizenship is not eligible to vote in presidential elections. A person who has not provided satisfactory evidence of citizenship and who is eligible to vote only for ballot issues is not eligible to receive an early ballot. | Voter Education for changes to voter registration requirements and mail ball eligibility. | | |
| H2493: election integrity fund | Rep. Hoffman (R) | | Agron prices \$12 million from the general fund in FY2022-23 to the newly established Election Integrity Fund, to be used to pay county recorders for election security, cybersecurity and other expenses for postelection hand tabulations. | None. | | |
| H2494: voter registration events; posting | Rep. Hoffman (R) | | The Secretary of State and each county recorder is required to post on their public websites a list of each event that the Office of the Secretary of State or the county recorder attends and provides voter registration services. | None. | | |
| H2597: nominating petitions; multiple petition signatures | Rep. Center (R) | | Signatures of nominating petitions, allowed to be unlimited number of candidate petitions, instead of being limited to signing only one petition for the same office. | None. | | |
| H2571: early voting; limitations; hand count | Rep. Blackman (R) | | Qualified electors are only allowed to vote by early ballot if they are able to appear in person at the time of the election. The elector cannot attend the polls on election day because of the tenets of his/her religion, or the elector is an absent uniformed services voter or overseas voter or the spouse or household member of the absent uniformed services voter. County recorders are no longer authorized to establish on-site early voting locations. All ballots are required to be counted by hand, and electronic tabulating machines or equipment are prohibited. Effective January 1, 2023. | Voter Education changes. | | |
| H2577: voter identification; ballots; delivery; process | Rep. Blackman (R) | | A county recorder or other officer in charge of elections is required to provide a secure, sealed drop box for receiving voted early ballots. A qualified elector is required to request any early or absentee ballot and a county recorder or other officer in charge of elections is required to provide an early or absentee ballot without a specific request from the voter for a single specific election. A qualified elector is required to vote in a polling place or voting center, except when the elector is unable to appear in person to a polling place or voting center. Modifies the list of accepted forms of identification for voters. Changes require the voter identification changes require the affirmative vote of at least 3/4 of the members of each house of the Legislature for passage. | Voter Education changes. | | |
| H2591: state candidates; nomination; fee | Rep. Cook (R) | | For any person who holds a statewide or legislative office and who submits a nomination petition to the Secretary of State, the person may pay a \$250 fee to the office of the Secretary of State for deposit in the general fund and the person is not required to submit a nomination petition or signatures. | For incumbents, they would pay a \$250 fee instead of having to gather nomination signatures or submit a nomination petition. | | |
| H4435: county recorder; nonpartisan office | Rep. Shah (D) | | The election for the office of county recorder is nonpartisan. The election rules, ballot, and signature requirements are modified to reflect the change. | None. | | |

| Bill (House, Senate) | Sponsor | Assigned to | What it does | Direct effect on CCEC | Status | Notes |
|---|----------------------|-------------|--|---|--------|-------|
| S1008: elections; recount margin | Sen. Ugenti-Rita (R) | | Modifies the criteria that triggers an automatic election recount to require a recount when the margin between the two candidates receiving the most votes is less than 0.5 percent of the total number of votes cast for and against a measure or proposition, is less than or equal to 0.5 percent of the number of votes cast against a measure or proposition, or the difference in votes that triggered an automatic recount was the lesser of 0.1 percent of either a specified number of votes based on the office to be filled or 200 votes for the office. | None. | | |
| S1010: school districts; protesting; partisan elections | Sen. Ugenti-Rita (R) | | All elections for school district governing board members in Arizona are required to be conducted using a partisan primary election followed by a general election on or after January 1, 2023. A person is prohibited from the vicinity of any location where a school meeting is taking place, and from taking any other adverse action against a person or a group of people engaging in "peaceful protesting" at a school district if the person prohibits a school district from requiring people to apply for a permit or secure authorization for protesting. | Update to Voter Education. | | |
| S1012: registration database; federal voters; report | Sen. Townsend (R) | | Requires the Secretary of State to provide access to the voter registration database to a person or entity that is designated by the Legislature and to the Election Integrity Unit of the Attorney General's Office for the purpose of determining whether voter registration list maintenance complies with the law with respect to federal-only voters. The person or entity designated by the Legislature is required to be qualified in more than one state to analyze a state's voter registration list in compliance with federal law, and is required to report its findings to the Legislature, the Attorney General, and the Secretary of State. Each county recorder is required to submit an annual report to the Legislature regarding the voter registration information that must be included in the report is specified. The Attorney General and the County Attorney shall investigate and prosecute, as appropriate, any person who fails to register to vote and who knowingly registers to register to vote. | None. | | |
| S1013: secretary of state; federal form | Sen. Townsend (R) | | By December 31, 2022, the Secretary of State is required to submit to the U.S. Election Assistance Commission a request that the Commission issue federal-specific instructions to provide Arizona's state-specific instructions to provide proof of citizenship. | None. | | |
| S1017: state finance review; task force | Sen. Bowie (D) | | Establishes a 22-member Citizens Finance Review Task Force to analyze the source of general fund and nongeneral fund revenues and expenditures to the state, and make recommendations regarding the responsible retirement of existing state debt. The Task Force is required to submit a report to the Governor on or before September 30, 2023, and to present the report to a joint meeting of the legislative appropriations committees by January 31, 2024. Self-repeals October 1, 2024. | Possible task force the Commission may need to report to. | | |
| S1027: election bureau; complaint; investigation | Sen. Rogers (R) | | Establishes the Bureau of Elections in the Office of the Secretary of State to investigate and prevent fraud in any state, county, or local government election. Any qualified elector is permitted to submit a complaint to the Bureau. Establishes procedures for the Bureau to conduct investigations, including issuing subpoenas, and conducting hearings. The Bureau is required to publicly report its findings and conclusions and make any appropriate referrals to a prosecutorial agency. The Bureau is required to establish a general fund in FY2022-23 to establish the Bureau. | Unknown. | | |
| S1028: ballot paper; security measures | Sen. Rogers (R) | | Any vendor that provides fraud countermeasures that are contained in and on the paper used for ballots is required to be ISO 27001 certified. ISO 27001 certification is required for all vendors. Ballot fraud countermeasures are required to include at least three of a list of ten specified features, including watermarking, security inks and unique barcodes. | None. Unique barcode tracking to vote brings up questions regarding State Constitution, Article 7, Section 1. | | |
| S1043: election day; state holiday | Sen. Rogers (R) | | Adds the primary election day and the general election day to the list of state holidays. A person entitled to vote at a primary election or general election held in Arizona is authorized to be absent from employment and is prohibited from being employed by the employer during the election. A person who refuses an employee these wages is guilty of a class 2 (mid-level) misdemeanor. | Update to Voter Education. | | |

| Bill (House, Senate) | Sponsor | Assigned to | What it does | Direct effect on CCEC | Status | Notes |
|--|-------------------|---|--|---|--------|-------|
| S1054: election equipment, security; legislative review | Sen. Townsend (R) | | Beginning in 2022 and every two years thereafter, the committee appointed by the Senate to study and report on the use of various types of vote recording or tabulating machines or devices is required to provide for a detailed review of election equipment security for counties with a population of more than 500,000. The review must include a review of the software and other systems used in the most recent general election. An additional person who is an expert in election equipment security must be appointed to the committee. The committee's review must be presented to the standing committees of the Legislature with jurisdiction over election issues at a public meeting that is held by August 11 following the general election. | None. | | |
| S1055: election process, contractors and contracts | Sen. Townsend (R) | | A contractor that enters into a contract with a county to provide election equipment or services and that fails to perform its obligations under the terms of the contract is liable for liquidated damages in an amount equivalent to the amount paid under the contract, and a misdemeanor. | None. | | |
| S1056: misplaced ballots; invalidity; misdemeanor; damages | Sen. Townsend (R) | | Any ballots that are misplaced and not included in the initial tally at a polling place or counting center are invalid ballots and are prohibited from being counted. A person who is guilty of a class 2 (mid-level) misdemeanor. If a provisional or early ballot that identifies the voter on the face of the affidavit or envelope is misplaced and cannot be counted, the voter of the ballot is liable for liquidated damages and civil action for damages against the governmental body administering the election for the loss of the right to vote. | None. | | |
| S1058: drive-up voting; prohibition | Sen. Rogers (R) | | The county recorder or officer in charge of elections is prohibited from allowing a voter to receive a ballot by mail, drive-up, or by conveyance, and from using a ballot drop box except inside a polling place or voting center or the county recorder's or election department's office. County recorders or election officers are required to monitor ballot drop boxes. | Update to Voter Education. | | |
| S1094: petition signatures, description; invalidity | Sen. Measard (R) | Senate: Government, Rules | A circulator of an initiative or referendum petition is required to either read the initiative or referendum description aloud to each person signing before that person signs or to allow the person to read the description aloud to the person before the person signs. The circulator must inform the person that reading the description is required so that the person can understand the petition. The circulator is prohibited from not understanding the description before signing the petition. For any person who signs without either hearing or reading or seeing the circulator read or read aloud a line through the circulator signature and the signature is void and cannot be counted. | Will likely make the process for not only gathering signatures for voter initiatives and referendums more difficult, but also more difficult in regards to challenges of signature. | | |
| S1118: electronic ballot images; public record | Sen. Borrelli (R) | Senate: Government, Rules | After the polls are closed, the officer in charge of elections is required to make available to the public, in a manner that allows the images to be searchable by precinct but that precludes any alteration of the images, States that the digital images of the ballots are public records. | None. | | |
| S1120: ballot fraud countermeasures; paper; ink | Sen. Borrelli (R) | Senate: Government, Appropriations, Rules | Any vendor that provides fraud countermeasures for ballot paper for any general election in 2022 and thereafter is required to provide for the ballots is required to be ISO 27001 certified, ISO 17025 certified, or ISO 9001:2015 certified. Ballot fraud countermeasures are required to include all of the following: a) a security seal, b) security links, invisible ultraviolet microtext, a serialized black QR code, and a paper receipt for the voter. The Legislature is required to provide for the purchase of ballot paper for the purchase of anti-fraud ballot paper for the purchase of anti-fraud ballot paper meeting these requirements. | None. County questions whether or not any of this would be possible with current tabulators in place. | | |
| S1133: schools; cities, all mail prohibited | Sen. Rogers (R) | Senate: Education, Government, Rules | Municipalities and school districts are prohibited from conducting an election. Effective January 1, 2023. | Voter Education. | | |
| S1149: countywide elections; vote by mail | Sen. Bowie (D) | Senate: Government, Rules | On approval of the county board of supervisors and if 60 percent or more of the county's registered voters are on the permanent early voting list, a county is authorized to conduct a countywide election by mail. The election is authorized by that county, including elections for federal and state offices and measures, and elections for county, municipal, school district and special districts. Counties that conduct mail ballot elections are required to provide the following information about the election to the Legislature by January 1 of each year following a mail ballot election. | None. | | |

| Bill (House, Senate) | Sponsor | Assigned to | What it does | Direct effect on CCEC | Status | Notes |
|--|-------------------|---------------------------|--|---|--------|-------|
| S1169: email; prohibition; political campaigns | Rep. Gowan (R) | | Campaign committees are prohibited from sending a campaign email to an email address that ends in .edu or .gov. In an action for damages, a person who sends a campaign email is liable to the email recipient for \$100 per email. | Committees wouldn't be able to send emails to the commission? Candidates would be required to use personal email possibly. Define "campaign email". | | |
| S1228: driver licenses; authorized presence repeal | Sen. Quezada (D) | | The Department of Transportation is no longer prohibited from issuing or renewing a driver's license for a person who does not submit proof that the applicant's presence in the U.S. is authorized under federal law. | Concern whether DL would now be a sufficient form of identification to vote or registering for a full ballot. | | |
| S1259: recounts; requests; procedures; audits | Sen. Menard (R) | | Increased audit amount: 2% to 5%. Allowed for State Council. Council may request a recount of the election up to 5 days after completion of the canvass. | None. | | |
| S1260: registrations; early voting; move notice | Sen. Menard (R) | | Codifies best practices of removing voter if notified they have been registered in another County. Violations for knowingly forwarding a ballot to a voter who is registered in another state. | None. | | |
| SCR1005: federal ballot voters; identification | Sen. Townsend (R) | Senate: Government, Rules | The 2022 general election ballot is to carry the requirement that voters who are not registered to vote require federal-only voters to provide proof of citizenship by presenting one of a list of specified forms of identification in order to receive a ballot. | Update to Voter Registration education. | | |

***Proposed Commission Meeting Dates
February - July 2022***

| Month | Date | State Holiday – Office Closed |
|-----------------|------------------------|--|
| February | 24th | <i>President's Day, Feb 21st</i> |
| March | 24th | |
| April | 28th | |
| May | 19th | <i>Memorial Day, May 30th</i> |
| June | 30th | |
| July | 28th | <i>Independence Day, July 4th</i> |



During the months of February – July 2022, staff estimates commission meetings will be held once a month. All meeting dates are on Thursday and scheduled to begin at 9:30 a.m.

In the event additional meetings are required, Staff will work individually with each Commissioner to determine availability and ensure we have a quorum for the meeting.

ITEM IV



THOMAS COLLINS <thomas.collins@azcleelections.gov>

CD/LD Maps Are Certified

candidate <candidate@azsos.gov>
To: candidate <candidate@azsos.gov>

Fri, Jan 21, 2022 at 4:56 PM

Dear Candidates,

The Independent Redistricting Commission has voted to certify both the Congressional and Legislative maps today. You can view the official maps here:

<https://redistricting-irc-az.hub.arcgis.com/pages/official-maps>

The IRC has provided the following address look up tools for the new districts:

- Congressional Maps:
<https://arcg.is/14jGWP>
- Legislative Maps:
<https://arcg.is/1zHGzL>

As a reminder, once the counties receive the certified maps, they will begin implementing the maps which takes time. Congressional and Legislative candidates can continue using E-Qual to collect signatures in their 2020 district until the counties begin importing maps into the statewide voter registration system, which is expected to begin around March 5. To find further guidance if you are a Congressional or Legislative candidate, please see our redistricting guide: https://azsos.gov/sites/default/files/2022_Candidate_Redistricting_Guide.11.2022_Version.pdf

We would also like to draw your attention to our Candidate Filing webpage (<https://azsos.gov/elections/running-office/candidate-filing>).

On this page you can find information about the following:

- The different ways to file: By Appointment, By Drop Box, or By Certified Mail
- A [Candidate Filing Checklist](#) to help you organize the documents required for candidate filing
- The [Observation Policy](#) so you will be prepared about what can be observed during your filing appointment
- [Filing by Mail Forms](#) for both your nomination paperwork and for Clean Elections filings

- The link to make an appointment, which **currently is available for clean elections participating candidates who wish to file early. Appointments will be open 30 days prior to the calendar date you wish to file.**

If you have further questions about candidate filing, we encourage you to attend the upcoming Candidate Filing Webinar:

- When: February 4 at 9:00am
- Registration Link: https://us02web.zoom.us/webinar/register/WN_FuK0h332QR2zlwn6fQqe4w

This is the last webinar we have scheduled, but if you are unable to attend and would be interested in us scheduling another webinar, please email candidate@azsos.gov.

We will schedule further webinars if there is interest from candidates.

Sincerely,



Joshua Doty
Elections Filing Manager
Arizona Secretary of State

Email: candidate@azsos.gov
Office: 602-364-3221

1700 W Washington St., 7th Fl. | Phoenix, AZ | 85007

This message and any messages in response to the sender of this message may be subject to a public records request.



THOMAS COLLINS <thomas.collins@azcleelections.gov>

Fwd: SOS Bulletin - January 14

1 message

THOMAS COLLINS <thomas.collins@azcleelections.gov>
To: THOMAS COLLINS <tom@azcleelections.gov>

Mon, Jan 24, 2022 at 4:24 PM

----- Forwarded message -----

From: Christine Dyster
Date: Tue, Jan 18, 2022 at 8:57 AM
Subject: SOS Bulletin - January 14
To:

2022.01.11 - Candidate Outreach - Redistricting.pdf

Hello Arizona Election Officials,

Here is your SOS Bulletin for the week of January 14, 2022. If there are any updates you want to see included next week, let me know!

AVID

- Release 7.1 is currently in development, and it is expected to be released sometime later this month. We will announce the expected date soon.
- As previously discussed, beginning on Jan. 24 AVID will implement a new IP address security restriction. Please note we will issue a series of reminders to include additional details as we get closer to the implementation date.
- The Redistricting Test Environment (RTE) is now online. Counties AVID users have been provided guidance on how to use the environment VIA a Video Demonstration. This video is posted in the RTE Dashboard Messages.
- The next Enhancement Committee meeting is scheduled for Jan. 19 at 2:30. If you have an agenda item, please reach out to Laurin Custis (laurin.custis@yavapaiaz.gov).
- If you encounter any issues in AVID:
 - Use the golden button to submit a ticket.
 - Provide critical data needed to analyze the problem. For example, include screen shots of the entire screen, and other pertinent information (voter ID numbers, search criteria used, copy of a report, upcoming deadlines, etc.)
 - If applicable, add a note to indicate if the current functionality is broken or if you are requesting an enhancement.

Candidate Filing Updates

- Our Office updated guidance for candidates affected by redistricting and the impacts on E-Qual. Congressional and Legislative candidates should plan on E-Qual being offline beginning around March 5. This does not impact local jurisdictions who use E-Qual. The updated guidance is attached.
- Our Office held its first webinar for candidates about the filing process this week. We have an additional one scheduled:

Attached is the updated Petition Verification Guide for Counties. This includes signature review guidance for:

- Candidate Petitions
- Qualifying Contribution Slips
- New Party Petitions
- Initiative, Referendum, and Recall Petitions

If you have any questions regarding this guidance, please reach out to Kori at klorick@azsos.gov.

SOS Elections Team for 2022

Here are some key people you need to know going into 2022 and what to contact them about!

| | | |
|------------------|---|--|
| Christine Dyster | L&A | Cdyster@azsos.gov |
| Jason Chavez | Outreach/Training | Jchavez@azsos.gov |
| Josh Doty | Filings (Initiative/Candidate/Recall/FDS) | Jdoty@azsos.gov |
| Yolanda Morales | Voter Reg. Policy/UOCAVA | Ymorales@azsos.gov |
| Russ Smith | AVID/redistricting | Rsmith@azsos.gov ; AVIDhelp@azsos.gov |
| Tessa Otero | Campaign Finance | Totero@azsos.gov |
| Tyler Wengrzyn | ERIC reports | Azericdata@azsos.gov |

Christine Dyster

Deputy Elections Director

Arizona Secretary of State



County Recorder Petition Signature Verification Guide (Dec. 2021)-1.pdf

253K

ARIZONA SECRETARY OF STATE’S OFFICE
COUNTY RECORDER PETITION SIGNATURE VERIFICATION GUIDE
 (REV. DEC. 2021)

| ALL CANDIDATE NOMINATION PETITIONS (<u>A.R.S. § 16-315</u> ; <u>A.R.S. § 16-321</u> ; <u>A.R.S. § 16-341(I)</u>) | |
|--|-----------------------|
| Petition Scenarios | Accept/ Reject |
| <p>1. Voter active/inactive, registered in proper party, and registered address is in district.</p> <p>Note: For candidate petitions, as long as the address in the registration record is in the district, the signature is <u>valid</u> (assuming all other requirements met), regardless of whether the address written on the petition is: (i) the same as the registered address or different; (ii) within or outside of the district; or (iii) a P.O. Box. <u>A.R.S. § 16-321(B)</u>.</p> | ACCEPT |
| <p>2. Voter active/inactive and registered address is out of district.</p> <p>Note: For candidate petitions, if the address in the registration record is outside of the district, the signature is <u>invalid</u>, no matter what the address written on the petition is. <u>A.R.S. § 16-321(B)</u>.</p> | REJECT |
| <p>3. Voter active/inactive and registered in different recognized party.</p> <p>Note: A voter not registered with a recognized party may sign a recognized party candidate’s petition, excluding a candidate for precinct committeeman. Additionally, any registered voter, regardless of party affiliation may sign an <u>A.R.S. § 16-341</u> (independent) candidate’s petition.</p> | REJECT |
| <p>4. Voter not registered or registered to vote after the date of signing the petition. <u>A.R.S. § 16-321(B)</u>.</p> | REJECT |
| <p>5. Voter is a minor who will be 18 years old by the next regular general election and, at the time of signing, was a registered voter (with their registration status in “suspense” due only to age) in the district of the office the candidate is seeking. <u>A.R.S. § 16-101</u>; <u>A.R.S. § 16-121(A)</u>; <u>A.R.S. § 16-321(B)</u>; <u>Simpson v. Tarver</u>, No. CV-20-0218-AP/EL (Ariz. Aug. 24, 2020).</p> | ACCEPT |
| <p>6. Voter provided no date on petition signature line.</p> <p>Note: However, omission of the year does not invalidate a date entry as long as it contains a valid month and day. <u>McKenna v. Soto</u>, 481 P.3d 695, 698-99 (2021).</p> | REJECT |

| | |
|--|----------------------|
| <p>7. Duplicate for same candidate: Voter signed the same candidate’s petition more than once and another signature is dated on or before the same date as the signature being reviewed.</p> <p>Note: Both signatures must be identified by page and line number.</p> | <p>REJECT</p> |
| <p>8. Duplicate for same office: Voter signed more than one candidate’s petition for the same office and another signature is dated on or before the same date as the signature being reviewed.</p> <p>Notes:</p> <ul style="list-style-type: none"> • Both signatures must be identified by page and line number. • Signer may sign petitions up to the number of open seats for that office (<i>i.e.</i>, state house, city council members). | <p>REJECT</p> |
| <p>9. Missing signature: voter provided other information but did not sign the petition.</p> | <p>REJECT</p> |
| <p>10. Missing printed name: voter did not provide printed name and other information provided is insufficient to identify the voter.</p> <p>Note: Do not reject if other information provided is sufficient to identify the voter. <u>A.R.S. § 16-321</u>; <i>Jenkins v. Hale</i>, 218 Ariz. 561, 565 (2008).</p> | <p>REJECT</p> |
| <p>11. Signature or other information printed by the signer is illegible and search of county’s database in an attempt to identify the voter was unsuccessful.</p> | <p>REJECT</p> |
| <p>12. Petition signature does not match voter’s signature in the voter registration record. <u>A.R.S. § 16-321(D)</u>.</p> | <p>REJECT</p> |
| <p>13. Residence address or description of residence location is missing on petition signature line.</p> <p>Notes:</p> <ul style="list-style-type: none"> • P.O. box is acceptable. <i>Jenkins v. Hale</i>, 218 Ariz. 561 (2008). • Missing city/town or zip code does not invalidate the signature if eligibility can be verified based on the incomplete address. <i>McKenna v. Soto</i>, 480 P.3d 695, 700 (2021). • Protected/secured registrants may write in “Protected Address,” “Protected Registrant,” “Secured Registrant,” or substantially similar designation in place of residence address. <u>A.R.S. § 16-321(E)</u>. | <p>REJECT</p> |
| <p>14. Voter signed the petition prior to the candidate filing a statement of interest for nomination if a statement of interest is required to be filed. <u>A.R.S. § 16-341(I)</u>.</p> | <p>REJECT</p> |
| <p>15. Voter is a “federal-only” voter and petition is for state/local candidate. <u>AG Opinion I13-011(R13-016) 2013</u>.</p> | <p>REJECT</p> |

| CLEAN ELECTIONS - \$5 QUALIFYING CONTRIBUTION SLIPS (A.R.S. § 16-946) | |
|--|----------------------|
| Petition Scenarios | Accept/Reject |
| <p>1. Voter active/inactive and registered address is in district.</p> <p>Note: For \$5 QC slips, as long as the address in the registration record is in the district (which may be the 2020 or 2022 district, as listed on the Statement of Interest or Nomination Paper), the signature is valid (assuming all other requirements met), regardless of whether the address written on the QC slip is: (i) the same as the registered address or different; (ii) within or outside of the district; or (iii) a P.O. Box. <u>A.R.S. § 16-946(B)(1)</u>.</p> | ACCEPT |
| <p>2. Voter active/inactive and registered address is out of district.</p> <p>Note: For \$5 QC slips, if the address in the registration record is outside of the district (which may be the 2020 or 2022 district, as listed on the Statement of Interest or Nomination Paper), the signature is invalid, no matter what the address written on the QC slip is. <u>A.R.S. § 16-946(B)(1)</u>.</p> | REJECT |
| <p>3. Voter is a “federal-only” voter. <u>AG Opinion I13-011(R13-016) 2013.</u></p> | REJECT |

| NEW PARTY RECOGNITION PETITIONS (<u>A.R.S. § 16-801(A)</u>; <u>A.R.S. § 16-803(E)</u>) | |
|---|----------------------|
| Petition Signature Scenarios | Accept/Reject |
| <p>1. Voter active/inactive and petition address within the applicable jurisdiction.</p> <p>Note: For new party petitions, as long as the address written on the petition is within the applicable jurisdiction, the signature is valid (assuming all other requirements met), regardless of whether the address in the registration record is: (i) the same as the registered address or different; or (ii) within or outside of the applicable jurisdiction. <u>A.R.S. § 16-803(E)(5)</u>.</p> | ACCEPT |
| <p>2. Voter active/inactive and petition address outside of the applicable jurisdiction.</p> <p>Note: For new party petitions, if the address written on the petition is outside of the applicable jurisdiction, the signature is invalid, no matter what the address in the voter registration record is. <u>A.R.S. § 16-803(E)(5)</u>.</p> | REJECT |
| <p>3. Voter active/inactive, registration address in applicable jurisdiction and petition address is a P.O. Box. <u>AG Opinion I09-011(R09-020) 2009.</u></p> | ACCEPT |
| <p>4. Voter not registered or registered to vote after the date of signing the petition. <u>A.R.S. § 16-803(E)(2), (5)</u>.</p> | REJECT |
| <p>5. Voter provided no date on petition signature line. <u>A.R.S. § 16-803(E)(2)</u>.</p> | REJECT |
| <p>6. Residence address or description of residence location on the petition is missing, illegible, or nonexistent. <u>A.R.S. § 16-803(E)(1), (4)</u>.</p> | REJECT |
| <p>7. Signature is illegible and the signer is otherwise unidentifiable. <u>A.R.S. § 16-803(E)(3)</u>.</p> | REJECT |
| <p>8. Petition signature does not match voter’s signature in the voter registration record. <u>A.R.S. § 16-803(E)(7)</u>.</p> | REJECT |
| <p>9. Duplicate signature: Voter signed the same petition more than once and another signature is dated on or before the same date as the signature being reviewed. <u>A.R.S. § 16-803(E)(8)</u>.</p> <p>Note: Each duplicate signature must be identified by page and line number.</p> | REJECT |
| <p>10. Voter was not 18 years old on the date of signing the petition. <u>A.R.S. § 16-803(E)(6)</u>.</p> | REJECT |
| <p>11. Voter is a “federal-only” voter. <u>AG Opinion I13-011(R13-016) 2013</u></p> | REJECT |

| INITIATIVE, REFERENDUM AND RECALL PETITIONS (A.R.S. § 19-112(A); A.R.S. § 19-121.02; A.R.S. § 19-205(A); A.R.S. § 19-208.02(A); AG Opinion I09-011(R09-020) 2009.) | |
|--|----------------------|
| Petition Signature Scenarios | Accept/Reject |
| <p>1. Voter active/inactive and petition address is within the applicable jurisdiction.</p> <p>Note: For initiative, referendum, and recall petitions, as long as the address written on the petition is within the applicable jurisdiction, the signature is valid (assuming all other requirements met), regardless of whether the address in the registration record is: (i) the same as the registered address or different; or (ii) within or outside of the applicable jurisdiction. <u>A.R.S. § 19-121.02(A)(5).</u></p> | ACCEPT |
| <p>2. Voter active/inactive and petition address is outside of the applicable jurisdiction.</p> <p>Note: For initiative, referendum, and recall petitions, if the address written on the petition is outside of the applicable jurisdiction, the signature is invalid, no matter what the address in the voter registration record is. <u>A.R.S. § 19-121.02(A)(5).</u></p> | REJECT |
| <p>3. Voter active/inactive and petition address is a P.O. Box. <u>AG Opinion I09-011(R09-020) 2009.</u></p> | REJECT |
| <p>4. Voter is not registered or registered to vote after the date of signing the petition to vote. <u>A.R.S. § 19-121.02(A)(5).</u></p> | REJECT |
| <p>5. Voter was not 18 years of age on the date of signing the petition. <u>A.R.S. § 19-121.02(A)(6).</u></p> | REJECT |
| <p>6. Voter provided no date on petition signature line. <u>A.R.S. § 19-121.02(A)(2).</u></p> | REJECT |
| <p>7. Signature is missing, or signature is illegible and the signer is otherwise unidentifiable. <u>A.R.S. § 19-121.02(A)(3).</u></p> | REJECT |
| <p>8. Signature does not match voter’s signature in the voter registration record. <u>A.R.S. § 19-121.02(A)(7), (9).</u></p> | REJECT |
| <p>9. Residence address or description of residence location is missing, illegible or nonexistent. <u>A.R.S. § 19-121.02(A)(1), (4).</u></p> <p>Note: Protected/secured registrants may write in “Protected Address,” “Protected Registrant,” “Secured Registrant,” or substantially similar designation in place of residence address.</p> | REJECT |

| | |
|--|----------------------|
| <p>10. Duplicate signature: Voter signed the same petition more than once and another signature is dated on or before the same date as the signature being reviewed. <u>A.R.S. § 19-121.02(A)(8)</u>.</p> <p>Note: Each duplicate signature must be identified by page and line number.</p> | <p>REJECT</p> |
| <p>11. Voter is a “federal-only” voter and petition is for an initiative or referendum, or recall of a state/local candidate. <u>AG Opinion I13-011(R13-016) 2013</u>.</p> | <p>REJECT</p> |
| <p>12. Circulator was a Justice of the Peace or County Recorder at the time of circulating the petition. <u>A.R.S. § 19-121.02(A)(10)</u>.</p> | <p>REJECT</p> |

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

LEGACY FOUNDATION ACTION FUND, *Plaintiff/Appellant*,

v.

CITIZENS CLEAN ELECTIONS COMMISSION, *Defendant/Appellee*.

No. 1 CA-CV 19-0773
FILED 1-20-2022
AMENDED PER ORDER FILED 1-21-2022

Appeal from the Superior Court in Maricopa County
Nos. CV2018-004532
CV2018-006031
(Consolidated)
The Honorable Christopher T. Whitten, Judge

AFFIRMED

COUNSEL

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OPINION

Presiding Judge Randall M. Howe delivered the opinion of the court, in which Chief Judge Kent E. Cattani joined. Judge Cynthia J. Bailey dissented.

H O W E, Judge:

¶1 Legacy Foundation Action Fund appeals the trial court’s dismissal of its special-action complaint and granting summary judgment to the Citizens Clean Election Commission in the Commission’s separate enforcement action. Legacy argues that its special-action complaint was an appropriate collateral attack on the Commission’s jurisdiction. The Commission argues that because Legacy had challenged its jurisdiction in the administrative proceeding and failed to seek timely review of that decision, Legacy is precluded from collaterally attacking its jurisdiction now.

¶2 We hold that an administrative agency’s jurisdiction cannot be collaterally attacked by a party that challenged the agency’s jurisdiction administratively but failed to timely appeal the agency’s decision. Accordingly, we affirm the trial court’s dismissal of Legacy’s special-action complaint and its granting the Commission summary judgment.

FACTS AND PROCEDURAL HISTORY

¶3 Legacy is a non-profit corporation that aired political advertisements in Arizona in 2014. The Commission then received a complaint alleging that Legacy had violated the Citizens Clean Elections Act, A.R.S. §§ 16-940 to -961. The Commission believed that Legacy had violated the Act’s independent reporting requirements, and – after holding a hearing – assessed Legacy \$95,460 in penalties. *See* §§ 16-941(D), -957(A)-(B). Legacy sought administrative review, arguing in part that the Commission lacked subject-matter jurisdiction to assess the penalty. The Commission, however, rejected that argument and, in March 2015, entered a final administrative order imposing a civil penalty of \$95,460 against Legacy.

¶4 Eighteen days after the Commission issued its final administrative order, Legacy sought judicial review, arguing that the Commission lacked personal and subject-matter jurisdiction. The trial court

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dismissed the appeal, concluding that it lacked jurisdiction because Legacy missed the 14-day deadline to appeal under A.R.S. § 16-957(B). Legacy appealed the trial court's dismissal of its appeal, but this court and our supreme court upheld the dismissal. *See Legacy Found. Action Fund v. Citizens Clean Elections Comm'n*, 243 Ariz. 404, 408 ¶¶ 19-20 (2018) (*Legacy I*). In doing so, our supreme court noted that it "express[ed] no view on whether Legacy [could] pursue alternative procedural means to challenge the Commission's penalty order as void." *Id.* at ¶ 19.

¶5 On remand, the Commission sought judgment in the trial court against Legacy for the full amount of the final administrative order. The same day, Legacy brought a special action in the trial court, alleging in part that the Commission lacked subject-matter jurisdiction over the matter, and the court consolidated the two cases. Both parties moved to dismiss, and the trial court granted the Commission's motion, dismissed Legacy's special-action complaint, and denied Legacy's motion to dismiss.

¶6 The parties then each moved for summary judgment on the Commission's enforcement of the final administrative order. In ruling on the motions, the trial court characterized Legacy's arguments as asking the court to set aside the Commission's factual findings. The court concluded that the findings could not be set aside and granted the Commission summary judgment. Legacy timely appealed.

DISCUSSION

¶7 Legacy argues that the trial court erred in dismissing its special-action complaint and granting the Commission summary judgment, thereby enforcing the Commission's final administrative order. Legacy contends that its special-action complaint was an appropriate collateral challenge to the Commission's subject-matter jurisdiction. We review the dismissal of a complaint *de novo*, assuming as true the complaint's well-pleaded facts, and we will affirm when, as a matter of law, the plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof. *Hopi Tribe v. Ariz. Snowbowl Resort Ltd. P'ship*, 245 Ariz. 397, 400 ¶ 8 (2018).

¶8 Legacy is precluded from collaterally attacking the Commission's exercise of subject-matter jurisdiction. "[A]dministrative decisions which go beyond an agency's statutory power are vulnerable for lack of jurisdiction and may be questioned in a collateral proceeding." *Ariz. Bd. of Regents for & on Behalf of Univ. of Ariz. v. State*, 160 Ariz. 150, 156 (App. 1989). However, "[f]ailure to appeal a final administrative decision makes

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that decision final and *res judicata*.” *Gilbert v. Bd. of Med. Exam’rs*, 155 Ariz. 169, 174 (App. 1987), *superseded on other grounds by statute as stated in Goodman v. Samaritan Health Sys.*, 195 Ariz. 502, 508 ¶ 25 n.7 (App. 1999).

¶9 Under the doctrine of *res judicata* (now referred to as “claim preclusion”), “a final judgment on the merits bars further claims by parties or their privies based on the same cause of action.” *In re Gen. Adjud. of All Rights to Use Water in Gila River Sys. & Source*, 212 Ariz. 64, 69 ¶ 14 (2006) (quoting *Montana v. United States*, 440 U.S. 147, 153 (1979)). Final administrative orders are final judgments for purposes of claim preclusion. See *Hawkins v. State*, 183 Ariz. 100, 104 (App. 1995) (“Where a party does not appeal a final administrative decision that decision becomes final and *res judicata*.”). The principles of claim preclusion “apply to jurisdictional determinations – both subject matter and personal.” *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982). “A party that has had an opportunity to litigate the question of subject-matter jurisdiction may not . . . reopen that question in a collateral attack upon an adverse judgment.” *Id.*; see also Restatement (Second) of Judgments § 12 (1982) (parties are precluded from litigating the court’s subject-matter jurisdiction in subsequent litigation except in limited circumstances).

¶10 Legacy and the Commission were parties to the administrative proceeding, and Legacy challenged the Commission’s subject-matter jurisdiction in that proceeding. Eighteen days after the Commission issued its final order, Legacy appealed to the trial court, arguing that the Commission had lacked personal and subject-matter jurisdiction over the matter. But the trial court dismissed the appeal as untimely because Legacy had appealed after the 14-day deadline under A.R.S. § 16-957(B). The Commission’s administrative order became final after our supreme court affirmed the trial court’s dismissal of Legacy’s untimely appeal.

¶11 Having litigated subject-matter jurisdiction in the administrative proceeding and having failed to timely appeal the final ruling on the merits by direct review, Legacy cannot raise the issue again in a new proceeding. See *Gilbert*, 155 Ariz. at 176 (“No timely appeal having been taken, the decision of the board is conclusively presumed to be just, reasonable[,] and lawful.”); see also Restatement (Second) of Judgments § 17 (1982) (a final judgment in a civil defendant’s favor on a claim “bars a subsequent action on that claim”). This is no less true when the collateral attack targets the Commission’s subject-matter jurisdiction because “[e]ven subject-matter jurisdiction . . . may not be attacked collaterally” once the decision becomes final on direct review. See *Travelers Indem. Co. v. Bailey*,

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557 U.S. 137, 152 (2009) (quoting *Kontrick v. Ryan*, 540 U.S. 443, 455 n.9 (2004)). “[T]he need for finality forbids a court called upon to enforce a final order to ‘tunnel back . . . for the purpose of reassessing prior jurisdiction de novo.’” *Id.* at 154 (quoting *In re Optical Techs., Inc.*, 425 F.3d 1294, 1308 (11th Cir. 2005)); see *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) (“[T]he practical concern with providing an end to litigation justifies a rule preventing collateral attack on subject-matter jurisdiction.”).

¶12 Legacy points to our supreme court’s *Legacy I* opinion in arguing that its special-action complaint was a proper collateral attack on the Commission’s subject-matter jurisdiction. Our supreme court, however, noted that it expressed no view whether Legacy could pursue alternative procedural means to challenge the Commission’s penalty order as void. This question was not before the court at that time. Our supreme court’s statement, therefore, does not support Legacy’s argument.

¶13 Legacy also cites this court’s prior decisions to argue that its special-action complaint is a proper collateral attack on the Commission’s subject-matter jurisdiction. But those decisions do not support allowing Legacy to collaterally attack the Commission’s subject-matter jurisdiction after it failed to properly seek appellate review of the Commission’s ruling rejecting Legacy’s argument. While this court previously stated in those decisions that a collateral attack on jurisdictional grounds is allowed, each involved a situation in which the party did not have an opportunity to raise that issue in the prior proceeding. See *Miller v. Ariz. Corp. Comm’n*, 227 Ariz. 21, 24 ¶ 9 (App. 2011); *Sprang v. Petersen Lumber, Inc.*, 165 Ariz. 257, 264 (App. 1990); *Ariz. Bd. of Regents*, 160 Ariz. at 154–55; see also *Tucson Warehouse & Transfer Co. v. Al’s Transfer, Inc.*, 77 Ariz. 323, 324–28 (1954) (although not directly stated, party did not have opportunity to raise issue in prior proceeding). None of those decisions held that a party that challenged an administrative agency’s jurisdiction in a prior proceeding may do so again in a collateral proceeding. They are therefore inapplicable.

¶14 Here, Legacy challenged the Commission’s subject-matter jurisdiction in the administrative proceeding and then forfeited its right to challenge that decision by failing to timely appeal. Our supreme court noted in *Legacy I* that A.R.S. § 12-902(B) does not “provide limitless entitlement to challenge an administrative agency’s jurisdiction through direct appeal.” Similarly, Legacy’s right to challenge the Commission’s jurisdiction through collateral attack is not unlimited. “It is just as important that there should be a place to end as that there should be a place to begin litigation.” *Travelers Indem. Co.*, 557 U.S. at 154 (quoting *Stoll v. Gottlieb*, 305 U.S. 165, 172 (1938)). Allowing Legacy to challenge the

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Commission's subject-matter jurisdiction after it already did so in the administrative proceeding would short-circuit the principles of claim preclusion. *See id.*; *see also Willy*, 503 U.S. at 137. Because Legacy challenged the Commission's jurisdiction in the administrative proceeding and failed to timely appeal, it cannot collaterally attack the Commission's subject-matter jurisdiction now.

¶15 Legacy concedes that the Restatement (Second) of Judgments § 12 provides that a party may not challenge a tribunal's subject-matter jurisdiction in subsequent litigation but argues that the Restatement does not apply in Arizona when contrary state court decisions, statutes, or rules of procedure apply. The difficulty with this argument, however, is that no Arizona appellate court decision, statute, or rule has addressed whether a party that has already raised jurisdictional issues can do so again in a collateral proceeding. Legacy also argues that Arizona Rule of Procedure for Special Actions 3(b) specifically permits a party to raise questions concerning jurisdiction in a special action. But that rule, as with the other authorities Legacy cites, does not address whether a party may raise subject-matter jurisdiction in a special action when the party already litigated that issue to judgment in a previous proceeding. We therefore follow the Restatement and hold that Legacy may not collaterally attack the Commission's exercise of subject-matter jurisdiction in the prior administrative proceeding. *See Delci v. Gutierrez Trucking Co.*, 229 Ariz. 333, 337 ¶ 16 (App. 2016) ("[A]bsent Arizona law to the contrary, Arizona courts will usually apply the law of the Restatement.").

¶16 Legacy notes that the Restatement identifies two exceptions to claim preclusion. First, claim preclusion does not apply to collateral attacks on subject-matter jurisdiction if "[t]he subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority." Restatement (Second) of Judgments § 12(1). Legacy argues that the Commission's exercise of subject-matter jurisdiction was a manifest abuse of authority because the Commission's jurisdiction "extends to expenditures made 'by or on behalf of any candidate,'" and Legacy is not a candidate.

¶17 This exception does not apply because the Commission's exercise of subject-matter jurisdiction here was not a manifest abuse of authority. The exception is narrowly applied to "egregious cases where a court lacks the power to hear a particular class of case." *In Interest of A.E.H.*, 468 N.W.2d 190, 206 (Wis. 1991). Legacy does not argue that the Commission improperly exercised subject-matter jurisdiction over an entire category of cases. Rather, it argues that the Commission's exercise of

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jurisdiction over this particular case was improper. But the question is “not whether a court makes a proper or improper determination of subject-matter jurisdiction in a particular case[,]” but whether it lacks jurisdiction over an entire category of cases, *In re C.L.S.*, 225 A.3d 644, 650–51 (Vt. 2020), such as a bankruptcy court handling a criminal trial, *Travelers Indem. Co.*, 557 U.S. at 153 n.6. “Otherwise, every jurisdictional error could arguably be characterized as a manifest abuse of authority, and the exception would be rendered meaningless.” *In Interest of A.E.H.*, 468 N.W.2d at 206. Therefore, Legacy has not shown a manifest abuse of authority by the Commission’s exercise of subject-matter jurisdiction.

¶18 Second, Legacy argues, claim preclusion does not apply to collateral attacks on subject-matter jurisdiction when “[a]llowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government.” Restatement (Second) of Judgments § 12(2). Legacy argues that the Commission’s exercise of subject-matter jurisdiction infringes on the authority of the Arizona Secretary of State as well as the Arizona Attorney General, which it contends have exclusive enforcement authority over independent campaign contributions. The Commission’s enforcement of the Act does not have that effect, however, because A.R.S. § 16–956(A)(7) expressly authorizes the Commission to enforce the Act, and the Commission has the sole power to investigate and enforce violations of the Act. *See Ariz. Advocacy Network Found. v. State*, 250 Ariz. 109, 121 ¶¶ 56–57 (App. 2020). This exception is therefore inapplicable.

¶19 Legacy argues further that claim preclusion does not apply because the Commission infringed on its free speech rights. Legacy’s argument, however, does not relate to any of the exceptions provided by the Restatement (Second) of Judgments § 12 and is instead an argument on the merits. Legacy also fails to show how enforcing the principles of finality interferes with its free speech rights. It therefore has not shown that this case fits under one of the narrow exceptions to the application of claim preclusion. As a result, Legacy is precluded from collaterally attacking the Commission’s exercise of subject-matter jurisdiction in the administrative proceeding.

¶20 The dissent asserts that subject-matter jurisdiction—especially of administrative agencies—is of such importance that a party must be able to raise it anytime. *Infra* ¶¶ 29–31. But no matter how important an issue is—even one as important as subject-matter jurisdiction—a system of ordered litigation and final resolution of disputes cannot function effectively if an unsuccessful litigant can attack a final

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resolution in a subsequent collateral proceeding. *See Travelers Indem. Co.*, 557 U.S. at 152; *Kontrick*, 540 U.S. at 455 n.9; *Willy*, 503 U.S. at 137. Application of claim preclusion to subject-matter jurisdiction has been the law for more than a century, *see Des Moines Navigation & R. Co. v. Iowa Homestead Co.*, 123 U.S. 552, 557–59 (1887) (citing cases), and no Arizona decision contradicts this principle.

¶21 This is not a situation in which a litigant had no earlier opportunity to litigate the agency’s jurisdiction. Legacy challenged the Commission’s subject-matter jurisdiction in proceedings before the Commission itself, and when the Commission rejected Legacy’s argument, Legacy had the statutory right to seek review of that determination, A.R.S. § 16-957(B), but forfeited that right by not asserting it timely. Legacy’s forfeiture does not entitle it to a second opportunity. *See Legacy I*, 243 Ariz. at 406 ¶ 8 (“[W]e are ‘not free to ignore the clear statutory language of A.R.S. § 16-957(B) and create jurisdiction in the superior courts where the legislature has provided to the contrary.’”).

¶22 The dissent posits that we are establishing an exception to the well-settled rule that subject-matter jurisdiction can be neither waived nor stipulated to. Instead, we are simply applying the well-settled rule—as announced by the United States Supreme Court—that principles of claim preclusion apply to jurisdictional determinations—both subject matter and personal. *See Ins. Corp. of Ireland, Ltd.* 456 U.S. at 702 n.9 (citing *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940); *Stoll v. Gottlieb*, 305 U.S. 165 (1938)). After losing its jurisdictional challenge before the Commission, Legacy had the statutory right under A.R.S. § 16-957(B) to seek review of the Commission’s subject-matter jurisdiction within 14 days of the Commission’s ruling but failed to do so. The appeal was a necessary part of vindicating Legacy’s legal position. *Cf. Rancho Pescado, Inc. v. Nw. Mut. Life Ins. Co.*, 140 Ariz. 174, 181–82 (App. 1984) (party failed to take advantage of a statutory right to appeal denial of a motion to arbitrate and filed breach of contract action instead; party cannot challenge denial of motion to arbitrate on appeal on the breach of contract action).

¶23 Although the dissent emphasizes that the only determination of jurisdiction has been by the administrative agency itself, the hearing before the administrative agency was merely the beginning of a judicial process that allowed an appeal of the administrative agency’s jurisdiction to the superior court, this court, and the Arizona Supreme Court. *See* A.R.S. §§ 12-901 to -914, 16-957(B). And Legacy’s failure to timely appeal from the administrative agency’s decision is no different than a failure to timely appeal from a superior court decision, or a failure to seek review from one

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of this court's decisions. Under either scenario, the failure to properly seek review results in a final judgment that cannot be collaterally attacked in a subsequent proceeding.

¶24 Our decision does not give special consideration or deference to an administrative agency. Nor does it suggest that a litigant would be better off by not diligently contesting an agency's jurisdiction in an administrative proceeding. Instead, we hold simply that procedural bars created by a failure to appeal from the superior court or from the court of appeals likewise apply to a failure to appeal from an administrative agency decision.

¶25 The dissent also takes issue with our citation to principles of claim preclusion set forth in the Restatement (Second) of Judgments § 12. *Infra* ¶ 32–36. But Arizona typically applies the Restatements of Law when no statute, rule, or appellate decision contradicts them and “when [they] set[] forth sound legal policy.” *In re Sky Harbor Hotel Prop.*, 246 Ariz. 531, 533 ¶ 6 (2019) (quoting *CSA 13-101 Loop, LLC v. Loop 101, LLC*, 236 Ariz. 410, 414 ¶ 18 (2014)). Not only does § 12 set forth the sound legal policy of establishing an endpoint to litigation that is consistent with United States Supreme Court authority, but no controlling Arizona legal authority contradicts it. Furthermore, our primary analysis of and reliance on the Restatement is in connection with our conclusion that the *exceptions* to claim preclusion proffered under the Restatement do not apply to the facts here. Under these circumstances, the analytic framework the Restatement sets forth is persuasive and compelling.

¶26 The dissent cites *State v. Espinoza*, 229 Ariz. 421 (App. 2012), as authority for declining to follow § 12. *Infra* ¶ 35. But that decision addressed whether an adult could be *criminally* prosecuted for failing to register as a sex offender, holding that the court that had originally imposed the registration requirement lacked jurisdiction to do so. *Espinoza*, 229 Ariz. at 429 ¶ 34. The decision involved issues of criminal liability and the loss of personal liberty that are not present in this case, and for that reason it does not guide our decision. Moreover, the decision specifically recognized that its holding was an exception to Arizona's adoption of “a modern approach[] in conformity with the Restatement” in addressing the effect of a final judgment.¹ *Id.*

¹ The Arizona Supreme Court recognized that the consequences of an incorrect jurisdictional decision in a criminal prosecution is so great that it

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¶27 The trial court therefore did not err in dismissing Legacy's special-action complaint or in granting the Commission summary judgment. Because Legacy's collateral attack is precluded, we do not consider its argument that this court can independently review the Commission's subject-matter jurisdiction.

CONCLUSION

¶28 For the foregoing reasons, we affirm the trial court's dismissal of Legacy's special-action complaint and its granting the Commission summary judgment in the enforcement action.

adopted rules of criminal procedure that exempt jurisdictional issues from the application of normal rules of preclusion in post-conviction proceedings. *See* Ariz. R. Crim. P. 32.1(b); 32.2(b). The supreme court has not created a similar exception in civil proceedings. This highlights that *Espinoza's* holding is limited to criminal proceedings and has no greater application.

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Bailey, J., dissenting

B A I L E Y, Judge, dissenting:

¶29 I respectfully dissent. In my view, by failing to timely appeal the agency’s final ruling, Legacy forfeited the right to challenge nearly all the agency’s actions. But for the reasons set forth below, it did not, and could not, forfeit the right to challenge the agency’s subject-matter jurisdiction.

¶30 The majority recognizes that “administrative decisions which go beyond an agency’s statutory power are vulnerable for lack of jurisdiction and may be questioned in a collateral proceeding.” *Supra* ¶ 8 (quoting *Ariz. Bd. of Regents ex rel. Univ. of Ariz. v. State*, 160 Ariz. 150, 156 (App. 1989) (citations omitted)). This principle extends broadly, even to courts of general jurisdiction, and pervades our procedural rules. Our courts have long recognized that judgments of a court or agency lacking subject-matter jurisdiction are void and subject to collateral attack. *See, e.g., Chaparro v. Shinn*, 248 Ariz. 138, 142-43, ¶ 22 (2020) (citing *Walker v. Davies*, 113 Ariz. 233, 235 (1976)); *Sch. Dist. #1 of Navajo Cnty. v. Snowflake Union High Sch. Dist.*, 100 Ariz. 389, 391-92 (1966) (citing *Dockery v. Cent. Ariz. Light & Power Co.*, 45 Ariz. 434, 449-50 (1935) (citations omitted)). Our procedural rules likewise go to great lengths to provide parties relief from such judgments. For example, Arizona Rule of Civil Procedure 60(c) allows a party only six months to raise most challenges to a judgment, but the rule imposes no deadline on a challenge to a void judgment. *See Legacy Found. Action Fund v. Citizens Clean Elections Comm’n (Legacy I)*, 243 Ariz. 404, 407-08, ¶¶ 15-17 (2018) (contrasting time limit imposed by statute to appeal from an agency determination under A.R.S. § 12-902 and the ability to seek relief from void judgments beyond the normal time limits under Rule 60(c) or otherwise collaterally challenge a void judgment). And, contrary to the majority’s framing, Rule 3(b) of the Arizona Rules of Procedure for Special Actions imposes no limit on a collateral challenge to a judgment on jurisdictional grounds.

¶31 Subject-matter jurisdiction can neither be waived nor conferred by stipulation. A court simply cannot hear a case over which it has no jurisdiction. *See State v. Maldonado*, 223 Ariz. 309, 311, ¶ 14 (2010). Even A.R.S. § 12-902(B), a statute *Legacy I* made clear does not directly apply to this case, does not in my view grant extended appeal rights to some litigants. Instead, it merely recognizes Arizona precedent on challenges to subject-matter jurisdiction.

¶32 Here, the majority chooses to establish an exception to this well-settled rule where an agency has made a contested determination as

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Bailey, J., dissenting

to its own jurisdiction. The majority largely bases its decision on the Restatement (Second) of Judgments § 12 (1982) and federal procedural law, which has long been inconsistent with Arizona's approach. I am not persuaded that the majority's "turn to the Restatement" is appropriate, and I find the federal cases inapposite.

¶33 The comment to Restatement § 12 notes that the issue we confront presents a "sharp conflict of basic policies," i.e., a clash between principles of finality and validity. Restatement (Second) of Judgments § 12 cmt. a. As Comment a explains,

If the question is decided erroneously, and a judgment is allowed to stand in the face of the fact that the court lacked subject matter jurisdiction, then the principle of validity is compromised. On the other hand, if the judgment remains indefinitely subject to attack for a defect of jurisdiction, then the principle of finality is compromised.

¶34 Under the "traditional doctrine," the conflict is resolved in favor of validity. *See id.* By contrast, the "modern procedural regime" grants preclusive effect to judgments issued without subject-matter jurisdiction. *See id.* at cmt. c, e.

¶35 The majority favors the "modern procedural regime," appealing to general principles of finality that until now have peacefully coexisted with an exception for subject matter jurisdiction. In so doing, the majority gives no heed to the fact that the subject-matter jurisdiction of an administrative agency to act in a quasi-judicial role is established by statute, not by the agency itself. Thus, the result disregards the danger of administrative overreach when an agency is allowed to determine for itself the extent of its jurisdictional power. Though I think the majority's new rule is especially problematic in the administrative context, the majority's decision to look to the Restatement to resolve this issue is itself problematic. We turn to the Restatement only when Arizona law is silent. Here, in another case, this court has noted that Arizona still follows the traditional doctrine on "true" questions of subject-matter jurisdiction:

In the context of challenges to criminal judgments that have become final, our state has adopted a modern approach, in conformity with the Restatement, which resists the temptation to characterize even serious procedural irregularities as violations of jurisdictional court authority. *See, e.g., Maldonado*, 223 Ariz. [at 312], ¶ 18 But

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true jurisdictional limitations on a court's authority remain and it is our conclusion that one of those boundaries has been breached here.

State v. Espinoza, 229 Ariz. 421, 429, ¶ 34 (App. 2012). The majority summarily distinguishes *Espinoza* as relating to "criminal liability." I see *Espinoza* as affirming that, for "true jurisdictional limitations," validity still trumps finality, even for courts of general jurisdiction.

¶36 Moreover, the modern approach advanced by the majority (and the Restatement) contorts basic principles of Arizona law, and logic itself, toward the end of judicial economy and finality, neither of which is meaningfully threatened by the more consistent traditional approach.

¶37 Claim and issue preclusion, on their own terms, apply only to a judgment or ruling issued by a body with subject-matter jurisdiction. Among the elements of issue preclusion is that the earlier decision be "a valid and final decision on the merits." *Garcia v. Gen. Motors Corp.*, 195 Ariz. 510, 514, ¶ 9 (App. 1999). Likewise, for claim preclusion to be effective, there must be "a final, valid judgment," *Banner Univ. Med. Ctr. Tucson Campus, LLC v. Gordon*, 249 Ariz. 132, 136, ¶ 9 (App. 2020) (quoting *Circle K Corp. v. Indus. Comm'n*, 179 Ariz. 422, 425 (App. 1993)), "rendered by a court of competent jurisdiction," *Hall v. Lalli*, 194 Ariz. 54, 57, ¶ 7 (1999) (citations omitted).

¶38 The requirements of a "valid" decision and a "court of competent jurisdiction" mean that a court must have subject-matter jurisdiction over a dispute before its ruling may acquire preclusive effect. Here, any application of preclusion to the agency findings must include a determination that the agency had subject-matter jurisdiction. If the agency did not have subject-matter jurisdiction, there is no preclusion. If the agency had subject-matter jurisdiction, Appellant's petition for relief fails. Either way, Appellant's challenge to jurisdiction must be considered.

¶39 Further, the majority's rule seems to punish parties for raising defenses. On one hand, if an agency exercises excessive power against a party whose counsel is lackadaisical and fails to raise a genuine jurisdictional issue, the party later may collaterally challenge the agency's abuse of authority, presumably long after the expiration of any time to appeal (a right that survives this majority opinion). On the other hand, if an administrative agency exercises powers beyond its authority, *over the party's objection*, then its abuse of authority cannot be challenged collaterally. Waiver is rewarded, while a diligent defense is punished.

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¶40 Finally, the majority raises the specter that our system would not function effectively if this court were to recognize Appellant's challenge. But if courts have not, until now, applied the majority's limits to subject-matter jurisdiction challenges, then there is no reason to expect anything different than we've seen in the past, i.e., that other restraints sufficiently limit frivolous collateral challenges to subject-matter jurisdiction.

¶41 In the end, we err by applying the so-called modern rule from the Restatement and the federal procedural law on which the majority relies. Instead, under Arizona statutes and rules, the potential injustice when an agency acts beyond its statutory authority outweighs any interest in finality and judicial economy.



AMY M. WOOD • Clerk of the Court
FILED: JT

https://tucson.com/news/local/govt-and-politics/arizona-appeals-court-rebuffs-groups-bid-to-skip-campaign-law-fine/article_bc12b5d6-7ae1-11ec-a898-27295c77ad28.html

ALERT TOP STORY

Arizona appeals court rebuffs group's bid to skip campaign law fine

Howard Fischer Capitol Media Services

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Getty Images

Howard Fischer Capitol Media Services

PHOENIX — The state Court of Appeals has rebuffed a bid by a group that spent \$260,000 attacking a 2014 foe of Doug Ducey's in his first gubernatorial campaign to escape a fine for violating state campaign finance laws.

In a split decision, the judges said the record shows that the Legacy Foundation Action Fund waited too long before appealing a more than \$95,000 fine imposed by the Citizens Clean Elections Commission over its commercials targeting former Mesa

Mayor Scott Smith. In fact, Judge Randall Howe pointed out that even the state Supreme Court upheld that finding.

Undeterred, attorneys for the conservative political fund then opened a new legal front with this lawsuit, arguing that the commission did not have any legal authority to impose the fine in the first place.

But the majority of the appellate judges said Legacy showed no “manifest abuse of authority” that would now allow it to pursue a new lawsuit after having missed the deadline to appeal the original fine. And that, they said, means it forfeited any right to make new arguments.

There was no immediate response from attorneys for the foundation.

The case stems from a commercial that ran in early 2014 when Smith was pursuing the Republican gubernatorial nomination.

Produced by the Legacy Foundation, it noted that Smith, who was mayor of Mesa, also was president of the U.S. Conference of Mayors. More to the point, it focused on some of the stands the conference had taken.

“They fully endorsed Obamacare from the start,” the commercial said. And it said the conference supported the Obama administration’s efforts to regulate carbon emissions and “backed the president’s proposal to limit our Second Amendment rights.”

It even featured photos of Smith placed next to pictures of a smiling Obama.

Only thing is, Arizona law requires anyone who seeks to influence an election to publicly disclose the spending. The Legacy Foundation, however, did not, leading to a complaint against it by the Clean Elections Commission.

Jason Torchinsky, one of the attorneys for the fund, argued there was nothing improper about the commercial.

He said it was not designed to influence the election but simply to “educate” Arizonans about Smith. And Torchinsky noted that the ad made no reference to Smith’s race against Ducey nor even to Smith’s status as a candidate.

The commission concluded otherwise, saying it was an attempt to affect the Republican gubernatorial primary, noting the commercial ran just as Smith was stepping down as Mesa mayor to launch his statewide campaign. And the panel imposed that \$95,460 fine.

Legacy’s first lawsuit was thrown out by a trial judge for failing to appeal within 14 days as required by law.

That decision was upheld by the Arizona Supreme Court in 2018. But the justices said they were not ruling on whether Legacy could attack the fine with an alternate legal theory.

The result was this case, with attorneys for Legacy raising new arguments about why it was never required to disclose the spending and, by extension, why it doesn’t have to pay the fine.

Some of this is was a rehash of the original arguments.

Attorney Brian Bergin argued that the commission, in concluding the purpose of the commercial was to affect the 2014 GOP primary, ignored the plain language of what viewers saw.

“The Arizona advertisement discusses issues: government spending, Second Amendment rights, and the regulation of carbon emissions,” Bergin wrote, while telling viewers the policies “are wrong for Mesa” and urging them to call Smith “and tell him to support policies that are good for Mesa.”

But Tom Collins, the commissions executive director, said that ignores other facts.

He pointed out that the positions taken by mayors' organization — the ones that Legacy Foundation said it was educating Mesa voters about — all were taken before Smith became president of the group.

And then there was the fact that by the time the commercials aired Smith was no longer its president. But he was running for governor.

“Taken together, allegations (about Smith) that were not correct, the timing of the ad and other factors, there's really no way to see the ad as anything other than what it is: an attack ad designed to urge folks to vote against Mayor Smith for the Republican gubernatorial nomination in 2014 because he was ‘Obama's favorite mayor,’” Collins said.

Bergin also told the Court of Appeals there was a key flaw in the commission's case against his client. He contends that the commission is required to identify the candidate that the commercial was made “by or on behalf of.”

“Legacy is certainly not a candidate and was not working “on behalf of” any candidate,” Bergin said.

The appellate court rejected that claim, saying Legacy showed no “manifest abuse of authority” that would allow it a second try to overturn the fine.

Howe similarly dismissed Bergin's contention that only the secretary of state has the power to enforce campaign finance laws and not the commission which was created by voters in 1998. And the court rebuffed arguments that it should allow Legacy to effectively re-litigate the issue by claiming that the rules on campaign finance reporting infringed on the organization's free speech rights.

“This is not a situation in which a litigant had no earlier opportunity to litigate the agency's jurisdiction,” Howe wrote.

Collins said Friday that Legacy still hasn't paid the fine. He said interest is continuing to accumulate but could not provide a specific figure.

Citizens Clean Elections Commission Report

To: Commissioners

From: Clean Elections Staff

Date: Jan 25, 2022

Subject: 2022 State Legislative Agenda

Introduction

The purpose of this report is to outline the Commission's legislative agenda for the 2022 Arizona State Legislature Regular Session.

This document is intended to provide guidance to Commission staff respecting the Commission's goals for the session.

The session began earlier this month. Staff will continue to brief the Commission, as it has in the past, on developments in the Legislature during the session.

The Commission is expressly authorized to make recommendations on changes in law. A.R.S. § 16-956.

Principles and Priorities

Staff recommends that the Commission endorse the following principles and priorities for the session.

Oppose efforts to defund, eliminate or limit the Citizens Clean Elections Act.

Over several sessions, members of the legislature have proposed measures that seek to defund, eliminate or limit the authority of the Act or the Commission itself. The Commission has historically opposed these efforts on the grounds that they are typically poorly constructed, misleading or otherwise ill-considered. Staff recommends the Commission oppose legislation that seeks to defund, eliminate, or limit the CCEA and/or Commission.

Address proposed legislation on elections, voting, and campaign finance.

The Legislature continues to expand, contract, and tweak election- related laws. Staff will continue to monitor and consider positions on each proposal as it is introduced.

The Commission has supported efforts to enhance voter education and participation through legislation that advances the election confidence and public participation values that undergird the Act. The Commission should continue to support such legislation.

The last few sessions have seen an uptick in proposals that could limit participation or give rise to new information challenges for voters. These proposals appear to have the effect of diminishing confidence in the election system, particularly among Republican voters. According to the website FiveThirtyEight:

Polling from Monmouth University before and after Arizona's [review of Maricopa County ballots] found that the [audit did more to reinforce concerns around election fraud than to alleviate them. And as laws have been passed under the banner of improving voter trust, Republican voter trust in elections remains low. Just 35 percent of Republicans said they had at least some trust in the U.S. electoral system in a poll conducted by Morning Consult on Dec. 30, 2021. That's down from 43 percent in January of last year, and 69 percent prior to election day 2020, according to prior polling from Morning Consult.[1]

While blanket opposition to such proposals does not serve the Commission's interest in promoting participation and restoring confidence in elections, it is important that the Commission be in a position to observe critical issues that may be overlooked or unconsidered, including the need for additional voter education.

[1] <https://fivethirtyeight.com/features/the-big-lie-voting-laws/>