

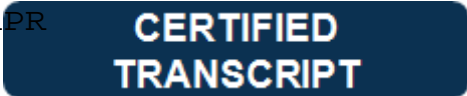
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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
July 27, 2023
9:30 a.m.

By: Kathryn A. Blackwelder, RPR
Certified Reporter
Certificate No. 50666



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1 PUBLIC MEETING BEFORE THE CITIZENS CLEAN
2 ELECTIONS COMMISSION convened at 9:30 a.m. on July 27,
3 2023, at the State of Arizona, Clean Elections
4 Commission, 1110 West Washington, Conference Room,
5 Phoenix, Arizona, in the presence of the following
6 Board Members:
7
8 Mr. Mark Kimble, Chairman
9 Mr. Galen Paton
10 Mr. Damien Meyer (Videoconference)
11 Mr. Steve Titla (Videoconference)
12
13 OTHERS PRESENT:
14
15 Thomas M. Collins, Executive Director
16 Paula Thomas, Executive Officer
17 Mike Becker, Policy Director
18 Alec Shaffer, Web Content Manager
19 Avery Xola, Voter Education Manager
20 Kara Karlson, Assistant Attorney General
21 (Videoconference)
22 Mary O'Grady, Osborn Maledon
23 (Videoconference)
24 Cathy Herring, Staff
25 Rivko Knox, Member of the Public
(Videoconference)
Nathan Madden, Member of the Public
(Videoconference)
Eli Dalton Webb, Member of the Public
(Videoconference)

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1 P R O C E E D I N G
2 CHAIRMAN KIMBLE: Good morning. Agenda
3 Item I is the call to order. It's 9:30 a.m. on
4 July 27th, 2023. I call this meeting of the Citizens
5 Clean Elections Commission to order.
6 With that, we will take attendance.
7 Commissioners, please identify yourselves for the
8 record.
9 COMMISSIONER PATON: Galen Paton.
10 COMMISSIONER MEYER: Damien Meyer.
11 COMMISSIONER TITLA: Yeah, Steve Titla here.
12 CHAIRMAN KIMBLE: Okay. We have a quorum.
13 Thank you very much, Commissioners.
14 Item II, discussion and possible action on
15 minutes for the June 22nd, 2023 meeting. Is there any
16 discussion on the minutes?
17 (No response.)
18 CHAIRMAN KIMBLE: If not, do I have a motion
19 to approve them?
20 COMMISSIONER PATON: I'll make a motion to
21 approve the minutes.
22 CHAIRMAN KIMBLE: Okay. Motion to approve
23 the minutes. Is there a second?
24 COMMISSIONER TITLA: I second.
25 CHAIRMAN KIMBLE: Thank you. Motion made by

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1 Commissioner Paton, seconded by Commissioner Titla.
2 I'll call the roll.
3 Commissioner Paton.
4 COMMISSIONER PATON: Aye.
5 CHAIRMAN KIMBLE: Commissioner Titla.
6 COMMISSIONER TITLA: Aye.
7 CHAIRMAN KIMBLE: Commissioner Meyer.
8 COMMISSIONER MEYER: I'll abstain. Since I
9 wasn't at the meeting, I can't verify whether they're
10 accurate.
11 CHAIRMAN KIMBLE: Okay. Thank you.
12 Chair votes aye.
13 The minutes are approved 3-nothing with one
14 abstention.
15 Item III, discussion and possible action on
16 the Executive Director's Report. Tom.
17 MR. COLLINS: Yes. Thank you, Chairman and
18 Commissioners. I wanted to hit a few highlights from
19 this report. First, shockingly, it's -- next week is
20 August 1st, which begins the qualifying period for
21 participating candidates in the Clean Funding program.
22 That means that those candidates can start to collect
23 their \$5 qualifying contributions from registered
24 voters in their district or, in the case of Corporation
25 Commissioner candidates, registered voters in the

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1 state.
2 This is always an exciting time of year,
3 so -- you know, we have had -- although, obviously, the
4 usage of the program -- that part of this program has
5 diminished over the years, we've always had strong and
6 consistent usage among the Corporation Commission
7 candidates, and I think this year will probably not be
8 an exception. And I also think that, you know, the
9 Corporation Commission is every -- every year, as the
10 State develops, the Corporation Commission becomes a
11 more important part of what, in fact, the government of
12 Arizona does.
13 There is an election date on August 1 as
14 well, with Prescott, Tucson conducting Mayoral and
15 Council ballot-by-mail elections.
16 And then the other thing to note -- and there
17 is a report attached to this. Mike's report on the
18 legislative activity is attached to this. Just a quick
19 note there: The Legislature will continue the session
20 on Monday, and, you know, nobody really knows what will
21 happen. They may come in and maybe sine die, they may
22 come in and then leave again.
23 From news coverage and certainly in my
24 outreach, you know, we know that, you know, that the
25 biggest single issue is this Maricopa County

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1 transportation tax. For reasons that are kind of
2 historical, in order for Maricopa County to impose a
3 countywide sales tax, the Legislature has to actually
4 approve that first. That -- the tax was last extended,
5 I want to say, 10 years ago. It would expire in 2025,
6 so that's been something people want to do. So that's
7 been the main -- the main remaining issue. Although,
8 there's a lot of chatter about the budget going
9 forward, and that's something that we keep an eye on
10 for a variety of reasons, not the least of which is,
11 what does the budget picture look like in 2020 --
12 fiscal 2025 and 2026, et cetera.

13 I wanted to talk a little bit about the voter
14 education outreach in particular. Couple of things
15 that I wanted to really highlight. Yesterday Avery was
16 a panelist on a McCain Institute panel entitled
17 Arizona's Youth Electorate: Exploring the Political
18 Behavior of Young Swing Voters. Some of us on staff --
19 I know Chairman Kimble got a chance to watch -- to
20 watch that panel.

21 I thought it was a great opportunity for
22 Avery. I thought that he did a very, very good job of
23 articulating specific -- both -- both aspects of the
24 history of youth voting and specific actions that
25 organizations, whether it's Clean Elections or other

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1 folks who are involved in talking to younger voters,
2 can take, you know.

3 And, I mean -- and just to give you a sense
4 of how, I mean, prestigious this panel was, obviously
5 it's the McCain Institute, they had Harvard's director
6 of polling on there, they had a woman who's a fellow at
7 the McCain Institute who is now -- who was formerly the
8 director of public policy for Snapchat, which is a big
9 company.

10 So I think that's certainly appropriate
11 company for Avery to be in, and I felt like it was --
12 and he, you know, I thought, was in many ways the most
13 direct -- well, not in many ways -- in actuality the
14 most direct speaker there to how -- how youth voting
15 actually -- how people, you know, who -- voters,
16 younger voters, actually act and what they're
17 responsive to and, again, like I said, specific actions
18 that organizations can take. So I was really
19 impressed. And it was good for Avery, it was good for
20 our organization, and it was a -- it was a -- and I
21 think there will be a YouTube about it at some point.
22 So if you want to watch it, I recommend it.

23 I also wanted to highlight that Gina has been
24 teaching the Arizona Secretary of State's election
25 officer certification training on voter outreach and

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1 education. Now, again, I just want to highlight this
2 because, again, it's an important aspect of what we do
3 and it's an important linchpin in training election
4 officers. In other words, basically every County
5 employee who touches a ballot has to be trained through
6 this process, so I think that having the recognition of
7 Gina's expertise, you know, and the Commission's role
8 in that process is important because, you know, that
9 certification process touches, you know, so many people
10 and helps validate the professionalism of our election
11 officials in the state.

12 I also wanted to highlight, Alec is working
13 and has -- has created a guide for local jurisdictions
14 on how they can include local candidates in the
15 profiles on the Clean Elections website. And I think
16 that's important because, as we iterate our website to
17 continue to be the best one-stop shop for voters in any
18 part of the state, local candidates are a key part of
19 that.

20 We know, from talking to local election
21 officials over the years, local candidates is a thing
22 they get questioned on; but because of their role,
23 they're not in a position to provide that information.
24 This is a way that we can help to serve both voters and
25 local election officials. So when -- you know, when we

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1 talk about who our main constituencies are, obviously
2 candidates are one of them because of the Clean Funding
3 program or the debates and the candidate statement
4 pamphlet, but election officials in counties and
5 cities, and then obviously voters are the number one
6 constituent. So I think that that's an important thing
7 I wanted to highlight.

8 You can see just obviously a continued effort
9 on the part of everyone to -- to get out and be meeting
10 with folks, and really I think some of these
11 meetings -- some of these efforts are really starting
12 to gel in a way that I am very -- I'm very happy about.

13 One other note I want to mention. Gina and I
14 yesterday went to a presentation on -- in honor of the
15 33rd anniversary of the Americans with Disabilities Act
16 with the -- which was presented by the Ed Pastor Center
17 for Politics and Policy at ASU, the Arizona Center for
18 Disability Law, and Ability360. And that, you know,
19 itself was a -- was a -- was an important place for us
20 to be. You know, something like 20 percent of all
21 people across demographics have a disability, and not
22 all those disabilities are visible, and accommodation
23 of those -- those people who have disabilities --

24 You know, I'm a lawyer, you know, a lot of
25 people on the Commission are lawyers, and a lot of

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1 people who advise election officials are lawyers. And
2 so if you look at things through the ADA lens, you're
3 looking at a -- at a -- at a sort of a minimal
4 requirement, which is really not the same as what is
5 actually necessary to actually try to meet a voter
6 where they are and accommodate them. And we heard some
7 stories about folks who have gone to what are nominally
8 ADA compliant voter centers that don't, in fact,
9 provide the access that is usable, right. So you have
10 an accessible machine, but it's placed in a -- it's
11 placed somewhere where there's not actually privacy
12 taken into account.

13 I think that that's important because, you
14 know, we have, through our -- through the ASL,
15 candidate statement pamphlet, through Sun Sounds, and
16 in other ways, tried to broaden our approach to
17 accessibility. And I think that's really something
18 that is important, again, because it can -- I mean,
19 just from looking in the room of folks -- folks who
20 were there, you know, we had just a broad diversity of
21 people from different parties and different walks of
22 life who, you know, who sort of were able to talk about
23 how the voting process -- there's what is legally
24 required, but then there is what is practically
25 necessary. And that divide is something, I think, we

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1 can help inform our constituencies about.

2 We continue to work with the Secretary's
3 Office on the Election Procedures Manual and sit in on
4 those meetings.

5 We did -- the Arizona State Center for
6 Inclusive and Sustainable Democracy launched a report
7 last week that we helped support on independent
8 election administration and on -- it was really a
9 survey. It's a survey of more than a thousand voters,
10 and it really looked at what do voters like about the
11 election system, what don't they like. And a couple of
12 things that were key takeaways were: Voters do not
13 like the partisanship within the election system
14 itself. So that means -- and the two key things, I
15 think, about that that are important to bear in mind
16 are: Voters are discouraged -- at least say they're
17 discouraged by a primary system that's maybe more
18 partisan focused and then with respect to election
19 officials themselves.

20 You know, the United States is somewhat
21 unique in Western democracies insofar as our election
22 administration process is run by people who are elected
23 in partisan elections, right, so -- and this is
24 something that some election officials who are elected
25 have talked about as well, the need to have some kind

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1 of a nonpartisan aspect to that to try to maybe get
2 the -- try to build more confidence there.

3 So we have some information there about the
4 report. We will -- I hope to, in the -- probably in
5 the fall we'll have Tom Riley, who's a principle
6 author, here to talk us through that. But I think
7 there's a lot of insight there for a lot of the roles
8 that we play, whether it's our policy making role or
9 otherwise.

10 I think that -- the only other thing I wanted
11 to note on the lawsuit front, I do want to just make
12 sure -- two things. One, we had a result in the state
13 case against Prop 211 that was good. The case was
14 dismissed with leave to amend and file a new lawsuit.
15 That new complaint was filed on Friday. If you'd like,
16 obviously, we can send you a copy of it.

17 And then the other -- the other thing we did
18 do is we resolved the case called Legacy Foundation
19 Action Fund last -- last -- earlier this month. That's
20 been on this list for a long time, but that's now been
21 resolved and there's not -- no further action for the
22 Commission on that.

23 So I think that kind of concludes the report.

24 CHAIRMAN KIMBLE: Thank you, Tom.

25 Let me also just echo what you said about the

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1 McCain Institute forum and Avery's participation in it.

2 It was a very interesting forum, and I thought Avery
3 presented some very, very relevant statistics on -- on
4 young voting and also some excellent suggestions on how
5 to get more young people involved in the process, and
6 he told -- talked quite a bit about the role of Clean
7 Elections in educating voters. So I -- I was very
8 impressed, Avery. I appreciate you doing that.

9 Is there any other discussion or questions
10 from Members of the Commission?

11 (No response.)

12 CHAIRMAN KIMBLE: Hearing none, we'll move
13 on.

14 Item IV, discussion and possible action
15 regarding opening a public comment period on proposed
16 rules related to the Voters' Right to Know Act,
17 Proposition 211. As you can see, our Agenda sets forth
18 a number of rules that staff has drafted to begin the
19 rulemaking process under the Voters' Right to Know Act.
20 I'm not going to recite them all here.

21 The public comment period is designed to
22 solicit feedback from the public, the regulated
23 community, and other stakeholders. The public comment
24 period here will last no less than 60 days, and rules
25 will be placed on the Agenda for final approval after

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1 that time. We take public comment up through and
2 during the Commission's meeting to approve a rule.
3 Actions we may take after a public comment period
4 include deferring action, making changes to the
5 proposed rules, and seeking further comment.
6 Tom, do you want to give us a brief overview
7 of the proposed rules?
8 MR. COLLINS: Yes. Thank you, Mr. Chairman,
9 Commissioners.
10 So -- so at our last meeting we began a
11 public comment period on rules that were designed to
12 address specific policy-related questions that the
13 Prop 211 dedicates to us, for example, disclaimers on
14 public communications, the process for notice before
15 someone's money can be used for campaign media
16 spending, you know, we did some definitional stuff,
17 some basic work on timelines, those kinds of things.
18 Those are currently out for public comment; although,
19 other than an initial comment we received with some
20 clarifying questions, which we're working on responding
21 to, we haven't received a lot yet. I assume we'll
22 probably receive most of that towards the end of the
23 60-day period.
24 Today we are doing what I see as the -- as
25 the, in all likelihood, the -- the second and last big

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1 chunk of rules. And what I mean by that is not to say
2 that we won't have other rules that we'll propose, but
3 we really tried to break down this process into a
4 section on 211 as it -- you know, 211-specific things,
5 right. In other words, the thing -- substantive law of
6 211 requires us to take certain steps to fill in
7 particular blanks identified by the statute. This --
8 and we tried, as much as we could, to also lay out
9 basic procedural rules like the time computations and
10 such in that -- in that set.
11 This set of rules has to do with -- with the
12 procedures around complaints, investigations, and
13 enforcement. And so for the -- the sources of these
14 rules are -- are principally, obviously, case law in
15 the state, we looked to the Clean Elections Act rules
16 themselves, we looked to the Secretary of State's
17 Election Procedures Manual, we looked to the Federal
18 Election Commission, and we looked to the -- not a --
19 not a broad survey, but we looked to a number of rules
20 developed and implemented by other state boards and
21 commissions as it relates to their enforcement
22 authority.
23 So the broad strokes are, you know, the law
24 -- the law allows and the -- and the rules create a
25 process for if a person has a complaint underneath, you

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1 know, Title 16, Chapter 6.1, which is Prop 211, how to
2 provide that to us. We retained, from the Clean
3 Elections rules, the need to have that sworn and
4 notarized. We think that that, at a minimum, helps
5 ensure some validity to the rules, helps ensure that we
6 don't get frivolous complaints -- or, the complaint
7 process -- we don't get frivolous complaints, and we
8 think that that works well. We also require that, as
9 we do under the Clean Elections Act, for responses.
10 There is a -- you know, we have a process for
11 responding. The -- some of the highlights of what
12 happens then are: This set of rules more directly
13 empowers the staff of the Clean Elections Commission to
14 take investigatory steps in order to flesh out a
15 complaint or ultimately dismiss a complaint working
16 with a respondent.
17 It then sets forth a process by which the
18 staff and attorneys for the Commission will be -- will
19 work with the respondents and their counsel to, you
20 know, essentially -- as we work up to a hearing, it has
21 a specific prehearing conference. That's something
22 that I don't think many state agencies actually have.
23 But as we move towards more of a formal hearing process
24 here, rather than this more informal hearing process
25 we've had under the Clean Elections Act, you know, we

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1 thought it was important to build in that conference
2 process.
3 That conference will then result in a report
4 that will go to the Chair, congratulations, or the
5 Chair's designee to, you know, essentially do a
6 prehearing order that tries to capture, you know,
7 how -- how things will proceed. The goal here is to,
8 you know, end up with, rather than a reason to believe
9 hearing and a probable cause hearing, is to have a
10 single hearing where the issues -- the factual issues
11 are determined by the Commission and the assessment --
12 and the assessment of penalties, if any, is determined
13 by the Commission.
14 And then from there, obviously, a respondent
15 who doesn't like the outcome can seek review or, in the
16 event that they don't -- or, whether they do or don't,
17 the Commission staff can seek to enforce whatever final
18 order is issued by the Commission.
19 You know, we think that, you know, this is
20 clear. We think it provides a -- sufficient
21 protections to respondents in terms of their interests.
22 And we think that, you know, we think that this will
23 be, you know, a relatively efficient system for
24 resolving complaints.
25 One of the things we don't know, obviously,

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1 is what the volume will be, you know, as we move
2 forward, those kinds of things. We also don't know --
3 you know, as Commissioner Paton has mentioned in the
4 past, we also still aren't clear -- as clear about what
5 the person power, person hours are going to be involved
6 in this.

7 One of the things that the rules make
8 explicit, which has always been implicit in the
9 practice of both the Commission and the Attorney
10 General's Office, is that the Commission will have to
11 have an attorney, who is your independent advisor, to
12 help assist not only with the hearing process, but with
13 these -- with the prehearing orders, you know, to make
14 sure that, you know, as your -- when you get this
15 packet of information of recommendations that are
16 hopefully jointly agreed to by both parties, you know,
17 to help sort through that. I mean, we put all that in
18 with some specificity, again -- not to be repetitive
19 here, but that's always been implicit, and some of it
20 is explicit in the agency manual that's promulgated by
21 the Arizona Attorney General's Office, but, you know,
22 in view of the litigiousness of folks in all parts of
23 the legal process, we thought it might be better to
24 just put it in there as clearly as possible, so -- but
25 at the end of the day, we hope that these rules come

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1 across as relatively intuitive to practitioners in this
2 area.

3 Obviously, most of the attorneys who appear
4 in front of us are -- are litigators, you know, in
5 their own right. And so I think that perhaps
6 there's -- you know, this might actually be more
7 consistent or more comfortable for them than perhaps
8 some of our more informal processes. And I use
9 informal not to say casual, right. I use informal to
10 mean we haven't traditionally had live witnesses just
11 because people have never really talked about it; this
12 would allow for that, if necessary, those kinds of
13 things.

14 So that's -- that's sort of the process here.
15 As I say, we anticipate there will be --

16 Oh, the other thing I should mention --
17 sorry -- I need to mention is, we do have some rules on
18 transactions and structuring, and those are designed to
19 provide, again, a procedural backdrop for 16-975 in
20 particular which says, basically, you oughtn't
21 structure a transaction or attempt to structure or aid
22 in structuring a transaction to evade the requirements
23 of Chapter 6.1.

24 So one of the things -- the things that we
25 tried to do there were twofold. Number one, say, look,

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1 if you're a person who is in this process who has
2 information you're conveying, and the information
3 you're conveying you reasonably believe to be accurate
4 or true or believable, you know, to you, you should be
5 able to rely on that. You know, we don't -- you know,
6 but the tradeoff for that we put in here, and people
7 can comment on this either way, is, you know, if it's
8 not, we don't -- you're not -- that's not a carte
9 blanche, you know. It needs to be actually believable
10 or reasonably believed.

11 We also talked a little bit about the
12 evidentiary presumptions around structuring. So, in
13 other words -- and what it does is it said, the
14 Executive Director, when you're presenting a case, at
15 least for civil purposes, that talks about structuring,
16 you know, we're going to have essentially, you know, a
17 standard of having to show something of -- some willful
18 conduct with respect to the transaction or the
19 circumstance that you're operating from.

20 And then finally, we have a provision that
21 attempts to -- for folks who advise people in the
22 process of dealing with Chapter 6.1, you know, to try
23 to give them some -- some -- it's not -- some, you
24 know, latitude there. But we do want to make clear --
25 and then we do make clear in that rule that, you know,

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1 even if you're -- you know, someone advising a client
2 in enforcement or whatever is not going to be
3 inherently -- you know, wouldn't be subject to
4 structuring some kind of -- being implicated in some
5 kind of structuring scheme because of that.

6 Nevertheless, you cannot -- and we have some reason to
7 believe, based on public statements by folks, that, in
8 fact, people are confused about the difference between
9 advising people of the law and advising people to
10 structure their transactions illegally. And so we made
11 explicit, based on that, that, you know, whatever you
12 are doing for your client, you cannot advise a client
13 to take actions or take actions yourself that result in
14 structuring your transactions to avoid the requirements
15 of the Act.

16 Why that's a point of confusion is a little
17 bit beyond me. I don't know if election attorneys --
18 if they've talked to their colleagues in the financial
19 services bar or not. It doesn't seem to be that big of
20 a problem there. But apparently it was something -- it
21 was a source of confusion, we've learned, through
22 public statements by lawyers in the -- who work in
23 elections. So that's why that's there. So we hope
24 that that together provides some clear processes for
25 attorneys and regulated folks to, you know, work

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1 through problems there.
2 It's also important to note that in the prior
3 rulemaking process we started a review process on an
4 advisory opinion process, right. So you take these two
5 things together. You have a rule that tries to outline
6 what the procedures are going to be for -- for
7 transactions and structuring, but also that's where
8 this advisory opinion piece comes -- becomes important.
9 Because there's no reason to be, on a -- on sort of a
10 lark or on -- there's no reason, under this set of
11 rules, to be acting with uncertainty about whether or
12 not you have -- you are engaging in something that
13 would be considered structuring, because you have a
14 clear -- you know, assuming all these rules are
15 finalized, you have a clear opportunity to have the
16 Commission independently provide an opinion you can
17 rely on about whether or not what you propose to do is
18 appropriate and you have guidelines about what we
19 think, generally speaking, you know, will fall in or
20 outside those lines. So I think if you take those two
21 things together, it's very difficult to see how, for me
22 anyways, to see how someone would -- would have a
23 serious problem with respect to that.
24 COMMISSIONER PATON: I have a question.
25 MR. COLLINS: Sure. Please.

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1 CHAIRMAN KIMBLE: Commissioner Paton.
2 COMMISSIONER PATON: Couple things. So if we
3 are having -- does that involve extra personnel to do
4 that? Are we -- are we -- have a different budget? Is
5 that coming out of the budget that we have now? And as
6 far as somebody that advises us on this, is that a
7 separate lawyer than what we have now or is it from the
8 Attorney General's Office or how is that -- how does
9 all that work, I guess?
10 MR. COLLINS: Sure. That was a very good
11 question, Mr. Chairman, Commissioner Paton. So from
12 a -- from a budgeting perspective, you know, we are --
13 we are hopeful that our budget process in the next --
14 over the next few months will be a little bit more
15 involved than it has been on a variety of different
16 fronts. We will -- we will have to engage with the
17 Attorney General's Office on this.
18 The statute permits us to make hire -- to
19 make -- to hire counsel outside of -- well, it's
20 unclear to me if it allows us to hire entirely outside
21 of the procurement process outlined in 41-192 and
22 41-2518, but it nevertheless allows us to select
23 counsel. So how that will work is probably something
24 we will coordinate with the Attorney General's Office.
25 How much more additional funding that

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1 requires is a -- is a little unclear to me. At this
2 point, I am hesitant to staff up, with full-time staff,
3 new -- until we have a sense of what the -- what the
4 real amount of complaints really is, because that's
5 a -- because there's a lot of -- I mean, just there's a
6 lot of ET -- what are they called -- ERE -- there's a
7 lot of ERE costs associated with that, especially if
8 you're hiring someone who -- who is -- essentially has
9 a JD. So that's probably something -- I mean, that's
10 something I -- you know, I think we'll -- we will over
11 time be able to talk --
12 COMMISSIONER PATON: You mean that's a
13 lawyer?
14 MR. COLLINS: Right. Yeah. Yeah. But
15 lawyers are expensive. And lawyers by the hour are
16 actually cheaper than lawyers -- I mean, for us lawyers
17 by the hour are less expensive than a permanent lawyer
18 on staff who --
19 And then -- and then there are questions --
20 and I don't know how -- I mean, I'm just throwing this
21 out here. And if I shouldn't, then I'm sure Kara and
22 Mary are going to be not thrilled that I say this. But
23 there are substantial questions about how arm's length
24 a relationship with a lawyer has to be. I mean, in
25 other words, can the Commission actually hire a lawyer,

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1 who is their independent advisor, without that lawyer
2 then becoming subject of being pilloried in a -- in a
3 later court opinion? I mean, we don't know the answers
4 to those questions.
5 So we'll work through all that. My -- my
6 hope is that -- and how this should ultimately end up
7 working is that there -- the most important points are
8 going to be that the attorney who advises the
9 Commission's loyalty flows to the Commission, to you
10 all, and not to the staff, and that the -- and that
11 there would be a conflict for that lawyer to -- to come
12 across the sort of wall we've tried to erect in
13 these -- in these rules.
14 What I -- what I think will take the most
15 work is ensuring -- and this is something that I will
16 work on and, to the extent that -- and I, you know,
17 obviously will engage with Kara about this, is making
18 sure that the Attorney General's Office understands
19 that that person will have to have substantive
20 understanding of this statute. And that will benefit
21 not just the Commission, but the respondents, right.
22 I mean, in other words, what the --
23 traditionally the Attorney General's Office has done
24 for independent advice is they have attorneys who work
25 in, say, the licensing bureau or some other place who

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1 can come in and basically -- and you've had this,
2 right? And some of those lawyers are very good and
3 very much understand the situation. And a lot of the
4 procedural aspects of -- of hearings are the same no
5 matter, right? If you're talking to the Fingerprint
6 Board or you're talking to the Clean Elections
7 Commission, a lot of the basic due process law stuff
8 that they're guiding you on is the same. However, this
9 rule requires them to be able to understand why -- you
10 know, why a scheduling order would require the things
11 that would be required and sort of requires a little
12 bit more subject matter expertise around these areas.
13 For example, if -- if you were to -- let's
14 just imagine that we get to the end of a case and you
15 want to issue a final order. A final order -- you
16 might not -- you know, the rules contemplate that the
17 respondent and the -- and the staff can both provide
18 you draft final orders. You might not like either of
19 those. The attorney who you would ask to write one
20 that you like will be an independent -- will be this
21 independent legal advisor. That means that person has
22 to understand the law at play in order to draft that
23 order properly, right?
24 So -- so that's -- that is -- so it's a
25 substantial question, and one that we'll kind of have

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1 to work through. But right now my -- and it may very
2 well be that what we do is we end up having to hire
3 somebody who's outside to do that. I mean, I don't
4 know. Depending upon if there are attorneys who have,
5 you know, who have not been on one side or the other or
6 who are not currently, you know, sort of engaged in,
7 you know, representing clients, particularly partisan
8 or ideological clients, before the Commission or before
9 other campaign -- in other campaign finance cases.
10 So it's a -- it's a really good question, and
11 the reason I gave you such a long answer is because
12 it's -- these are all questions we'll have to -- we'll
13 have to -- some questions we'll have to answer. And so
14 what I'm trying to just demonstrate is our awareness of
15 that and how we can hopefully work through that over
16 the course of the next, you know -- you know, six
17 months or so. I'm not expecting --
18 COMMISSIONER PATON: I'm just concerned that,
19 you know, we've got all these proposed rules and the
20 public comment that we've gotten --
21 MR. COLLINS: Yeah.
22 COMMISSIONER PATON: -- is pages.
23 MR. COLLINS: Yes.
24 COMMISSIONER PATON: That seems to me this
25 could become, you know, fairly cumbersome and may

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1 overwhelm us, I guess, because it's an unknown.
2 MR. COLLINS: Right.
3 COMMISSIONER PATON: And obviously the person
4 that advises us or advises the people interested --
5 MR. COLLINS: Yeah.
6 COMMISSIONER PATON: -- that are coming for
7 answers to questions that they have, it could be a
8 whole little staff, right?
9 MR. COLLINS: Yeah. Right. Yes, that's
10 correct. So, I mean, certainly other agencies that
11 have similar responsibilities to ours in other states,
12 and certainly at the federal level, have -- have bigger
13 enforcement staffs than Mike and me. I'm -- but as I
14 say, I mean, I'm -- I am still not convinced that -- I
15 just -- I just -- the problem is that -- I mean, the
16 real problem becomes, just as a budget matter and as a
17 practical matter, if there was --
18 Let me give you an example. And this is a
19 free -- this is a free -- a free idea for the Attorney
20 General's Office. If the Attorney General's Office was
21 to create a bureau of independent advisers whose job
22 was not to be the attorney contact point for the boards
23 and the commissions and other agencies that do
24 enforcement, but rather was designed to have broad
25 subject matter expertise in all of the different

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1 enforcement regimes in the state, and could provide
2 those attorneys to agencies on an ad hoc basis, that
3 would be a way that we could -- all the boards, who are
4 all in a similar situation, could address this kind of
5 issue.
6 And what that would mean would be you would
7 take -- let's say you hire five attorneys for that and
8 you broke up the major areas of -- of state regulation.
9 You had a health and safety person, you had a person
10 who, you know -- a health person, you had an election
11 person, you had a -- you had a person who deals with
12 the Board of Technical Registration and the Registrar
13 of Contractors. If you -- that person could be
14 cross-trained on some of those things.
15 It would be similar to how -- the way the
16 Legislative Council has a set of lawyers that work for
17 the Legislature, and each one of those legislative
18 lawyers has a --
19 COMMISSIONER PATON: Like a utility player?
20 MR. COLLINS: Yeah, exactly. Each one of
21 those attorneys has a set -- a part of the Arizona
22 Revised Statutes that is their area. And so if
23 something comes in, someone wants a bill written about
24 Title 16, they go to one attorney. If they want a bill
25 written about the tax code, they go to another

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1 attorney. That would be a way in which the Attorney
2 General's Office could better deal with both the
3 increasingly -- well, I shouldn't say increasing -- the
4 changes in administrative law that are coming out of
5 our court system, the changes in administrative law
6 that are likely to come out of the federal court system
7 that may apply to state institutions, and -- and also
8 maintain, you know, especially on those -- in those
9 areas where health and safety are critically important,
10 maintain a context where all of the respondents get all
11 the due process to which they're entitled to, but the
12 public and victims, in the cases of health and safety
13 issues, are also protected by the boards being able to
14 act independently.

15 That would be -- that's my dream solution to
16 this problem, but -- because I don't think -- I just
17 don't think that each individual board trying to create
18 a huge, you know, a huge staff for this is probably
19 very effective, and it's very -- much more expensive.

20 COMMISSIONER PATON: So my understanding is
21 this bill, I mean, this became law.

22 MR. COLLINS: Yeah.

23 COMMISSIONER PATON: And we're responsible
24 for it.

25 MR. COLLINS: Yeah.

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1 COMMISSIONER PATON: But we weren't funded
2 for it, is what I'm asking you?

3 MR. COLLINS: So that's a good question. So,
4 Mr. Chairman, so there's a 1 percentage -- there was
5 a -- there was a 1 percentage point increase in the
6 surcharge that funds the main Clean Elections Act. It
7 is -- the payments for this -- there are caps under the
8 Clean Elections Act for expenses under that article
9 that don't appear to apply to this chapter, but I would
10 say that -- let me put it this way. I think what -- it
11 was like --

12 What was the number? You gave me the
13 number of what -- where we were at, roughly.

14 MR. BECKER: About 72,000.

15 MR. COLLINS: Right. So so far the
16 1 percentage point increase has provided about 72,000
17 in new revenue. That's -- obviously, for startup
18 purposes, that's not even in the ballpark. What could
19 -- if that's -- that's over six months' time. Let's
20 say -- and those revenues have not been consistent over
21 time, but let's say that raises 100 to \$150,000 a year
22 in additional revenue for this particular project.
23 That's not going to cover the cost of it.

24 Now, the Act directs, essentially, the Clean
25 Elections fund to provide the funding for that, so we

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1 can -- we have funding available to backfill that, but
2 -- so I -- this is -- and that doesn't affect the
3 general fund, which is the most important legal aspect
4 of it. But, no, this doesn't pay for itself.

5 I mean, but more importantly, you know, I
6 mean, the other problem here is that there are legal
7 changes to the way administrative law is done that
8 are -- that are coming, whether they're coming in the
9 form of the Legacy Foundation case that we just
10 resolved or coming in the form of cases that are now
11 pending at the U.S. Supreme Court, that are going to
12 require all of us, not just us, but everybody who does
13 this kind of work, to evaluate what the costs are going
14 to be.

15 They're going to raise the costs of enforcing
16 laws, whether it's a law related to a doctor who gets
17 in trouble with BOMEX or a -- or an acupuncturist or an
18 independent expenditure -- person that makes
19 independent expenditures. They're going to raise the
20 costs of enforcing the law against those folks. There
21 is --

22 And so I guess what I'm trying to say is,
23 your questions are exactly right, it's just that there
24 are -- there are a bunch of different factors that are
25 going to play out that are going to determine how that

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1 gets paid for that we don't -- that all the chips
2 haven't fallen yet to know how that's going to work
3 out.

4 My hesitancy, as Executive Director, to bring
5 on new staff members is, I don't want to bring in
6 somebody who's going to end up not having a lot of work
7 to do. A lot of this will end up inevitably falling
8 after --

9 You know, we managed to run, for the most
10 part, the Clean Candidate program with the -- most of
11 the candidates, not all, but most of the candidates and
12 the Independent Expenditure Reporting program aspects
13 of the Clean Elections Act with basically Mike and I,
14 with assistance from Kara, and not -- but pretty,
15 pretty efficiently on a financial side. There are some
16 cases that blow up, but they don't blow up every time.

17 This -- this one is a little bit -- a little
18 bit different. And if the Clean Elections Act startup
19 in 1999 through 2006 is any indication, there was --
20 there were way more -- and I think, Mike, I think --
21 there were way more things that turned into --
22 immediately into sort of real litigation outside of
23 just the administrative process. And at that point,
24 that really is going to necessarily involve attorneys
25 and -- but not necessarily attorney -- but it doesn't

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1 make any sense to actually have -- it's not the kind of
2 attorney that you would necessarily employ in-house.
3 It's inevitably going to result in -- whether it's the
4 Attorney General's Office, depending upon the
5 circumstance, or outside counsel, you know, whether --
6 you know, whether that's Mary or what -- that's what
7 Mary's role has been in a number of cases.
8 You know, I don't have a quantitative answer;
9 I only have qualitative answers on this question.
10 COMMISSIONER PATON: So it's the great
11 unknown really?
12 MR. COLLINS: Yeah. Yes, it is. I mean,
13 if -- we have the money, you know, provided the budget
14 doesn't go -- the overall State budget doesn't go away
15 and we don't find ourselves cannibalized, but --
16 COMMISSIONER PATON: But I just -- I just
17 feel like what if it turns into a significant thing.
18 And I doubt that the Legislature is going to, you know,
19 try to help us out. And I guess -- I guess if more
20 people get fined or whatever, that would be -- but I
21 thought our revenues were kind of going down --
22 MR. COLLINS: Yes.
23 COMMISSIONER PATON: -- for a couple years.
24 MR. COLLINS: Oh, for sure.
25 COMMISSIONER PATON: So that's -- maybe I'm

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1 making a mountain out of a molehill, but I think try to
2 plan what could happen.
3 MR. COLLINS: Yeah. Mr. Chairman,
4 Commissioner Paton, no, you're not making a mountain
5 out of a molehill. You're identifying real concerns
6 that we really talk about internally a lot. It's just
7 that it's hard to get -- it's just hard to get ahead of
8 -- I mean, we know there are administrative law
9 decisions that are on the docket at the U.S. Supreme
10 Court right now that may have a trickledown impact on
11 the way everybody who enforces law through
12 administrative process does business, right. And why
13 does that -- and that will alter the terrain,
14 potentially significantly, and it may really affect the
15 costs quite a bit.
16 But, you know, until those happen, the most
17 important thing for us is to be able to tell you what
18 we're considering, what we think is our solutions to
19 those things if they -- if they were to occur, and
20 then -- and then -- and then the big unknown -- the
21 biggest single unknown is, what is the volume of
22 complaints going to be, you know, and what is the
23 volume of complaints that will actually have to be
24 resolved by a hearing.
25 You know, I mean, I would say -- this is not

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1 a -- this is a rule of thumb, but I would say nine
2 times out of 10 we are in the -- in the context of
3 independent expenditure reports and in the context of
4 clean candidates, we are able to resolve complaints
5 without -- without any -- without any -- without any
6 kind of hearing by virtue of -- by just, you know,
7 staying on top of them, getting -- I mean, you know,
8 addressing them quickly and resolving them the most
9 efficient way possible. We have not, for example,
10 culturally had an approach that says that enforcement
11 for the purposes of extracting financial penalties is
12 our -- is our focus.
13 The other X factor, just -- not to -- just to
14 throw it out there, just so you have more awareness, is
15 this Act is much more explicit about the rights of
16 folks who are dissatisfied with our decisions to sue
17 the Commission. That's a whole other cost that the
18 Clean Elections Act does not -- does not make nearly as
19 explicit. In fact, we've had many fewer lawsuits along
20 those lines than this would. That happens at the FEC
21 all the time. The FE- -- that part of the law is very
22 similar to what the FEC faces.
23 I am -- I guess what I want to say is, I am
24 just, small c, conservative about wanting to invest the
25 money in employment costs up front before we have a

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1 better gauge of -- because we can ramp up stuff. It's
2 a lot easier to ramp up than it is to ramp down.
3 COMMISSIONER PATON: I guess maybe what I'm
4 thinking is that -- that maybe we can try to figure out
5 like a job description or whatever and have that kind
6 of stuff set up if we actually need it --
7 MR. COLLINS: Yeah.
8 COMMISSIONER PATON: -- and have it ready to
9 go so -- you know, before it envelopes us if something
10 happens.
11 MR. COLLINS: Yeah. I think that's -- I
12 think that's a good -- Mr. Chairman, I think that's a
13 good idea. We have had some conversations, I mean,
14 along those lines. We had a -- we had a very -- I had
15 a very good suggestion from somebody just the other day
16 in that meeting about whether or not we needed to set
17 up a more formal enforcement division, you know, on
18 paper. So, you know -- yeah, so I think that's
19 probably not a bad idea, and we can sort of have --
20 COMMISSIONER PATON: Because we already have
21 five, six, seven legal issues that we look at like
22 every time we come.
23 MR. COLLINS: Right. Right.
24 COMMISSIONER PATON: And this could -- like I
25 said, we are seeing these comments that are pages long,

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1 so people are already thinking about stuff. So if
2 that's the case, then I think we should be prepared for
3 it.
4 MR. COLLINS: Sure. I think that --
5 CHAIRMAN KIMBLE: Okay. Are there any other
6 questions or discussions from Members of the Commission
7 on opening a public comment period?
8 (No response.)
9 CHAIRMAN KIMBLE: I will note we received a
10 written comment yesterday from Lee Miller Law.
11 Is there anyone else here who wishes to make
12 a comment on the draft rules?
13 (No response.)
14 CHAIRMAN KIMBLE: Seeing no one, do I have a
15 motion to distribute the rules identified in Item V --
16 excuse me -- Item IV of the Agenda for public comment?
17 (No response.)
18 CHAIRMAN KIMBLE: No one wishing to make a
19 motion?
20 COMMISSIONER MEYER: I'm sorry. I can make
21 that motion. Mr. Chair, I move that we circulate the
22 rules in Item V of the Agenda for public comment as
23 proposed by staff.
24 CHAIRMAN KIMBLE: Commissioner Meyer, that's
25 actually Item IV.

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1 COMMISSIONER MEYER: My apologies. Item IV.
2 CHAIRMAN KIMBLE: Okay. Thank you.
3 There's been a motion to distribute the rules
4 identified in Item IV of the Agenda for public comment.
5 Is there a second?
6 COMMISSIONER PATON: Second.
7 CHAIRMAN KIMBLE: Seconded by Commissioner
8 Paton. I will call the roll.
9 Commissioner Paton.
10 COMMISSIONER PATON: Aye.
11 CHAIRMAN KIMBLE: Commissioner Titla.
12 (No response.)
13 COMMISSIONER MEYER: Commissioner Titla,
14 you're on mute.
15 CHAIRMAN KIMBLE: Commissioner Titla.
16 COMMISSIONER TITLA: Yeah, hello.
17 CHAIRMAN KIMBLE: Yes. How do you vote on
18 the motion?
19 COMMISSIONER TITLA: Oh, aye. I vote aye.
20 CHAIRMAN KIMBLE: Okay. Thank you,
21 Commissioner Titla.
22 Commissioner Meyer.
23 COMMISSIONER MEYER: Aye.
24 CHAIRMAN KIMBLE: Chair votes aye.
25 The motion is approved 4-to-nothing.

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1 Item V, discussion and possible action on the
2 following 2022 primary and general election candidate
3 audits. Mike Becker is going to make some general
4 comments on this item. Mike.
5 MR. BECKER: Mr. Chairman, Commissioners,
6 thank you. Before you are the final two audits for the
7 2022 election cycle. One is a primary; one is a
8 general. The audits turned out fine. There's nothing
9 exciting or major to discuss in them.
10 I would like to say thank you to Fester and
11 Chapman, the auditing firm that we've worked with for
12 seven years. They do an amazing job. They have a lot
13 of patience with our candidates and they do a
14 phenomenal job getting the information that we need, so
15 can't say enough about them.
16 But with that being said, those are the last
17 two audits, and I ask that you approve them and we can
18 close the book on 2022.
19 CHAIRMAN KIMBLE: Thank you, Mike.
20 Are there any questions or comments from the
21 Commission on Item V?
22 (No response.)
23 CHAIRMAN KIMBLE: I'll entertain a motion to
24 approve the audits identified in Item V of the Agenda.
25 COMMISSIONER PATON: I'll make a motion to

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1 approve these audits from Item No. V.
2 CHAIRMAN KIMBLE: Thank you, Commissioner
3 Paton.
4 Is there a second?
5 COMMISSIONER MEYER: I'll second that.
6 COMMISSIONER TITLA: I second it.
7 CHAIRMAN KIMBLE: Seconded by Commissioner
8 Titla. I will call the roll.
9 Commissioner Paton.
10 COMMISSIONER PATON: Aye.
11 CHAIRMAN KIMBLE: Commissioner Titla.
12 COMMISSIONER TITLA: Aye.
13 CHAIRMAN KIMBLE: Commissioner Meyer.
14 COMMISSIONER MEYER: Aye.
15 CHAIRMAN KIMBLE: Chair votes aye.
16 The audits are approved 4-to-nothing.
17 MR. BECKER: Thank you.
18 CHAIRMAN KIMBLE: Thank you, Mike.
19 This is the time for consideration of
20 comments and suggestions from the public. Action taken
21 as a result of public comment will be limited to
22 directing staff to study the matter or rescheduling the
23 matter for further consideration and decision at a
24 later date or responding to criticism. Please limit
25 your comment to two more -- to no more than two

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1 minutes.
2 Does any member of the public wish to comment
3 at this time?
4 MR. WEBB: Yes.
5 CHAIRMAN KIMBLE: Okay. I couldn't tell who
6 that is who said "yes."
7 MS. HERRING: Eli.
8 CHAIRMAN KIMBLE: Eli?
9 MR. WEBB: Yes.
10 CHAIRMAN KIMBLE: Okay. Could you identify
11 yourself for the record before you make your comment,
12 please?
13 MR. WEBB: My name is Eli Dalton Webb. I am
14 a registered voter and resident of Cochise County,
15 Arizona.
16 CHAIRMAN KIMBLE: Okay. Mr. Webb, go ahead
17 with your comment.
18 MR. WEBB: All right. One is, I'm kind of
19 concerned and a little bit disappointed about -- how
20 much is the Clean Elections Commission spending on
21 attorneys? Because I really felt like -- listening to
22 that guy, he spoke for an hour, and it was a lot of,
23 you know, almost nothing. It was a -- it was a lot of
24 legalese that I don't think is leading anywhere. So,
25 you know, I'd kind of like to know how much this guy is

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1 getting paid and, you know -- you know, I really think
2 that it's, you know, the government milking the clock
3 on that one.
4 And the other thing that I'm concerned about,
5 which is an even more serious concern, is the throwing
6 everybody in the primaries -- or, sorry -- throwing
7 everybody in the primary debates. I'll give you a very
8 specific example. So the Republicans and Democrats are
9 going to try to go after the Corporation Commission,
10 you know, as usual, right, which that's -- that's to be
11 expected. I believe there's, what, like three seats
12 that are open. So if there's going to be like at least
13 four Democrats and at least four Republicans, they're
14 all going to get thrown in the same primary debate.
15 But if there's one Libertarian that runs for the
16 Corporation Commission, they're not going to be invited
17 to that primary debate where they're going to get --
18 but the Republicans are going to be debating against
19 the Democrats, but the Libertarians won't be invited
20 because they only have one candidate.
21 So, you know, it really alienates anybody --
22 or, any party that has equal to or less than the amount
23 of seats that are up for election. So that is --
24 that's pretty concerning. The primaries are supposed
25 to be for the primary election, it should be party

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1 against party. And then for the general, then throw
2 everybody in. And that concludes my comments.
3 CHAIRMAN KIMBLE: Okay. Mr. Webb, just to
4 clarify on your first matter. You talked about some
5 gentleman who spoke for about an hour. Are you talking
6 about Mr. Collins here?
7 MR. WEBB: Yes. I -- I don't know.
8 CHAIRMAN KIMBLE: Okay. And I'm pointing to
9 Mr. Collins, who's sitting to my left. Is that who you
10 were talking about?
11 MR. WEBB: Yes.
12 CHAIRMAN KIMBLE: Okay. Okay. I just wanted
13 to clarify your comment.
14 And I don't know how much I want to get into
15 this about the debates, but the debate is set up so
16 that people who have a contested primary debate each
17 other. And if there would be two Libertarians running,
18 they would debate each other. If there's only one, and
19 they don't have a contested primary, they probably
20 wouldn't be participating in the debate.
21 But we appreciate your comments, and thank
22 you for attending the meeting.
23 Is there any other member of the public who
24 wishes to make a comment?
25 (No response.)

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1 CHAIRMAN KIMBLE: Seeing none, we will move
2 on. The public may also send comments to the
3 Commission by mail or e-mail at
4 ccec@azcleanelections.gov.
5 I would now entertain a motion to adjourn,
6 Item VII in the Agenda.
7 COMMISSIONER PATON: I would make a motion to
8 adjourn.
9 CHAIRMAN KIMBLE: Commissioner Paton has made
10 a motion to adjourn. Is there a second?
11 COMMISSIONER TITLA: I second.
12 CHAIRMAN KIMBLE: Commission Titla seconds.
13 I will call the roll.
14 Commissioner Paton.
15 COMMISSIONER PATON: Aye.
16 CHAIRMAN KIMBLE: Commissioner Titla.
17 COMMISSIONER TITLA: Aye.
18 CHAIRMAN KIMBLE: Commissioner Meyer.
19 COMMISSIONER MEYER: Aye.
20 CHAIRMAN KIMBLE: And the Chair votes aye.
21 We are adjourned until August. Thank you.
22 (The meeting concluded at 10:31 a.m.)
23
24
25

1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)
3

4 BE IT KNOWN that the foregoing proceedings
5 were taken by me; that I was then and there a Certified
6 Reporter of the State of Arizona; that the proceedings
7 were taken down by me in shorthand and thereafter
8 transcribed into typewriting under my direction; that
9 the foregoing pages are a full, true, and accurate
10 transcript of all proceedings had and adduced upon the
11 taking of said proceedings, all to the best of my skill
12 and ability.
13

14 I FURTHER CERTIFY that I am in no way related
15 to nor employed by any of the parties hereto nor am I
16 in any way interested in the outcome hereof.
17

18 DATED at Tempe, Arizona, this 28th day of
19 July, 2023.
20

21 
22 _____
23 Kathryn A. Blackwelder, RPR
Certified Reporter #50666
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