

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

August 25, 2022

9:30 a.m.

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1 PUBLIC MEETING, BEFORE THE CITIZENS CLEAN ELECTIONS
 2 COMMISSION, convened at 9:30 a.m. on August 25, 2022, at
 3 1400 West Washington Street, Conference Rooms 1-1102A and B,
 4 in the presence of the following Board members:
 5 Mr. Damien Meyer, Chairman (virtual)
 6 Mr. Mark S. Kimble
 7 Mr. Steve Titla (virtual)
 8 Ms. Amy Chan

9 OTHERS PRESENT:

10 Thomas M. Collins, Executive Director
 11 Paula Thomas, Executive Officer
 12 Mike Becker, Policy Director
 13 Gina Roberts, Voter Education Director
 14 Avery Xola, Voter Education Specialist (virtual)
 15 Alec Shaffer, Web Content Manager (virtual)
 16 Kara Karlson, Assistant Attorney General (virtual)
 17 Natalya Ter-Grigoryan, Richards and Moskowitz
 18 (virtual)
 19 Bill Richards, Richards and Moskowitz (virtual)
 20 Charles Spies, Dickinson-Wright (virtual)
 21 Jessica Brouckaert Bartlett, Dickinson-Wright
 22 (virtual)
 23 Cathy Herring, KCA
 24 Rivko Knox, Member of the Public

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1 CHAIRMAN MEYER: Excellent. Okay. Commissioner
 2 Titla is here.
 3 Is Commissioner Paton on the phone?
 4 MS. THOMAS: No.
 5 CHAIRMAN MEYER: Okay. So just to clean up that
 6 record, we have four of us are present: Commissioners Chan,
 7 Kimble, Titla, and then me, Damien Meyer.
 8 Second item on the agenda is discussion and
 9 possible action on minutes for the July 28, 2022, meeting.
 10 Does anyone have any comments or correction to the
 11 minutes?
 12 COMMISSIONER CHAN: Mr. Chairman?
 13 CHAIRMAN MEYER: Yes, Commissioner Chan.
 14 COMMISSIONER CHAN: I move that we approve the
 15 minutes as written.
 16 CHAIRMAN MEYER: We have a motion to approve. Is
 17 there a second?
 18 COMMISSIONER KIMBLE: This is a Commissioner
 19 Kimble, I second.
 20 CHAIRMAN MEYER: We have a motion to approve the
 21 minutes. I'm going to -- we'll vote on that. I'm going to
 22 call the roll.
 23 I'll start with Commissioner Titla, how do you
 24 vote?
 25 COMMISSIONER TITLA: Aye.

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P R O C E E D I N G

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 3 CHAIRMAN MEYER: Good morning. I'm Damien Meyer,
 4 Chair of the Citizens Clean Elections Commission for this
 5 year.
 6 Agenda Item Number I is call to order. It is
 7 9:30 a.m. on August 25th, 2022, and I call this meeting of
 8 the Citizens Clean Elections Commission to order.
 9 I'd like the -- I'd like to ask the audience
 10 members to please keep their microphones on mute.
 11 And with that, we will take attendance.
 12 Commissioners, please identify yourselves for the record.
 13 COMMISSIONER KIMBLE: Commissioner Mark Kimble; I'm
 14 present.
 15 COMMISSIONER CHAN: Commissioner Amy Chan; here.
 16 CHAIRMAN MEYER: And then Commissioner --
 17 Commissioners Paton and Titla are not -- not attending
 18 today, correct, Tom?
 19 MR. COLLINS: That --
 20 COMMISSIONER TITLA: I'm on the line.
 21 MR. COLLINS: Oh.
 22 COMMISSIONER CHAN: Oh.
 23 CHAIRMAN MEYER: Sorry.
 24 COMMISSIONER TITLA: This is Steve Titla. I'm on
 25 the line.

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1 CHAIRMAN MEYER: Commissioner Chan.
 2 COMMISSIONER CHAN: Aye.
 3 CHAIRMAN MEYER: Commissioner Kimble.
 4 COMMISSIONER KIMBLE: Aye.
 5 CHAIRMAN MEYER: And Commissioner Meyer, and I vote
 6 aye as well.
 7 So the minutes have been approved unanimously.
 8 Next we'll move right along to Item Number III on
 9 the agenda, discussion and possible action on Executive
 10 Director's report, enforcement and regulatory updates, and
 11 legislative updates.
 12 Tom, please -- the floor is yours, please let us
 13 know what's happening.
 14 MR. COLLINS: Okay. Thank you.
 15 Mr. Chairman, Commissioners, thanks for being here,
 16 all of you. We have obviously Commissioner Chan and
 17 Commissioner Kimble here in our -- in this hearing room,
 18 which is great. First time we've all been here for this
 19 since I think 2020, February, something like that. So
 20 that's pretty cool.
 21 The -- so just to go through the Executive
 22 Director's report then. We have -- the primary election was
 23 canvassed on the 22nd; the turnout was 34.92 percent, which
 24 is pretty high for a primary I think. Right?
 25 Yeah.

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1 Is that record high? That is a record high for a
2 midterm primary, so that was exciting.
3 And we'll be coming in in the next, you know, few
4 weeks on the voter registration deadline on early voting for
5 the general election.
6 Our legislative debates kick off this week and our
7 statewide debates will begin in September. We have a
8 schedule posted online.
9 You know, a couple of things we're working on
10 there. Friday we have a deadline for some candidates to
11 RSVP to us for the debate. So we will be hoping to hear
12 from them. That will give us some sense of where we are on
13 the statewide debates.
14 One issue we do want to -- we do want to kind of
15 note briefly is, you know, we're working on -- been looking
16 at the issue of scheduling, and in working through the
17 schedule we did end up, our gubernatorial debate is
18 currently scheduled to be on Yom Kippur. Now, we have had a
19 discussion internally with our -- the folks we've been
20 working with at PBS, the broadcast association, newspapers
21 association. We -- the debate itself is going to begin
22 right around sundown and then there's a lot more
23 rebroadcasting and streaming opportunities and online
24 opportunities than there have been in the past. So as -- as
25 of this point we have not -- we're not going to -- we're
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1 visit, they're the -- in what we used to think of as the
2 DEQ, I think they now call the Natural Resources Building.
3 It's 1110 West Washington.
4 And I've been in there pretty much, I don't know,
5 three -- three days a week for the last few weeks and it's
6 been -- it's been great. It's a -- it's a nice facility; it
7 really is.
8 You can see the candidates -- Clean candidates who
9 have moved on to the general election there and as well as
10 the participating candidate numbers, and we've begun the
11 auditing.
12 Couple of quick other notes, so -- and -- and I
13 don't mean to go on so long, but we are still waiting as of
14 this -- so as noted there, this Legacy Foundation Action
15 Fund case which is an enforcement matter that has been
16 around since 2014, is now at the State Supreme Court. They
17 had a conference on the 23rd, the results of that conference
18 have not entirely been published as of an hour ago, and I
19 haven't gotten a chance to go back.
20 So we don't know if -- that -- that is Legacy
21 Foundation's petition for review and we filed a response
22 back in May; and so, you know, this week happens to be the
23 State Supreme Court's very long agenda, they come back from
24 the summer break, they do rules, they do a ton of motions;
25 the petitions calendar is very long, so taking a couple days
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1 not -- at this point we're not moving -- we have not moved
2 the date.
3 However, you know, obviously there's some
4 considerations there and I want to make sure that you all
5 are aware of where we are on that today.
6 And we can return to that as well if anybody wants
7 to talk about it, you know, as part of this report.
8 You know, we have -- as you can see, Avery and Gina
9 have been continuing to do a lot of outreach activities, you
10 know, and I think that -- you know, I just want to say that,
11 you know, with -- with the debates, the voter education
12 guide, I should have noted was -- we are finalizing, you
13 know, Avery and Gina and Alec, and -- and Mike and Paula
14 have all been really -- been very busy and -- and -- but
15 continuing to be accessible to people around the state when
16 they have questions and when they are -- need information on
17 voting and the like.
18 So, you know, but it -- this is -- you know,
19 basically June and August are kind of crunch time for -- for
20 our work, which is a little bit different than maybe the
21 rest of the election community, but certainly it's a busy
22 time of year.
23 We are -- Mike Hollar (phonetic) is continuing to
24 work on our -- getting us installed in our new offices which
25 are down the street from here. If anybody ever wants to
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1 to get that out is not that -- it's not extremely
2 extraordinary. But if we find out in the course of this
3 meeting, I -- we'll -- we'll let you know.
4 We did have a story in the Republic recently I
5 think many of you ended up quoted on -- I think all of you
6 ended up quoted on regarding the appointment process for the
7 Commission.
8 We are -- the ballot initiatives we know now -- now
9 know that it appears that the Voters Rights of No Initiative
10 will be on the ballot; the Predatory Debt Collection
11 Protection Act I believe will be on the ballot; I think
12 there's still not clear -- there's still court action
13 remaining on the Arizonans For Free and Fair Elections.
14 Then I think that's kind of it.
15 And the regulatory agenda -305 and -306 are on this
16 agenda for public -- for potentially initiate public
17 comment.
18 So I think that kind of covers it.
19 Gina, Mike, Paula, is there anything else we want
20 to make sure we...
21 MS. THOMAS: I think we're good.
22 MR. COLLINS: Kara, anything else we need to...
23 MS. KARLSON: Not for me, Tom.
24 MR. COLLINS: Okay.
25 Well, Commissioner Chairman, I would -- if you all
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1 have any questions, that sort of completes our report.
2 CHAIRMAN MEYER: Thank you.
3 Tom, I had a question on the primary turnout. I
4 know that was a record high, it's still sort of
5 disappointing to see only, you know, essentially a third of
6 registered voters vote in that primary.
7 Do we know, do Clean candidates tend to do well in
8 their elections? Have we ever looked at that, like, what
9 their percent -- record percentage is?
10 MR. COLLINS: Sure. Mr. Chairman, Commissioners,
11 you know, in this particular election we had Clean
12 candidates for, you know, one of the -- I mean, one of the
13 first times I think in recent past beat either incumbents or
14 sort of what you might call -- or officeholders moving from
15 the House to the Senate and the Senate to the House in a
16 primary. That is something that I think relates to in part
17 the tactical decisions that those candidates are making.
18 Really -- really that's the main driver of this, right?
19 So the candidates who are running successful
20 campaigns in the public financing program in a primary,
21 they're tending to use tactics that are focused I think -- I
22 say this anecdotally -- that are more focused on grassroots
23 canvassing perhaps than, you know, sort of the mailer-driven
24 campaigns that might be more -- more popular with some
25 incumbents or -- essentially incumbent legislators.

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1 that that may promote more people to run. So I think that
2 could be useful information.
3 Then the other question I had on the primary
4 turnout was, we do a ton of education, voter education work,
5 and one of the things that we did this year that I observed
6 and tried to Retweet and promote was, you know, letting
7 those Independent voters know that they can vote in a
8 primary if they request the ballot.
9 Do we know of the, you know, approximately 1.5
10 million voters, do we know how many of them were
11 Independents and what our percentage of Independent
12 registered voters were?
13 And this might be more available on the Recorder's
14 Office, I was just curious to see if that's something we've
15 looked at to see how effective our education piece on that
16 is.
17 MR. COLLINS: Sure. Mr. Chairman, I think I would
18 kind of refer to Gina, if...
19 MS. THOMAS: One moment.
20 MS. ROBERTS: Where?
21 MS. THOMAS: To the right of Commissioner Chan.
22 MS. ROBERTS: Oh, okay.
23 CHAIRMAN MEYER: If we don't have this, I mean it's
24 fine to sort of put this on next month's meeting agenda. I
25 just think it's interesting for us to know internally some

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1 So we don't -- I don't think we have a precise
2 number. I could do -- we could do a -- I think we could do
3 a run through on -- on that; but I will say that it is -- it
4 is -- the -- the conventional wisdom about the public
5 financing program is that it does not provide sufficient
6 funding to allow a person who is an outsider essentially to
7 take on an incumbent who has that fundraising advantage and
8 that -- and in so doing, you know, diminishes the --
9 obviously the anticorruption impact of the -- of the
10 program.
11 This session -- this election, this primary season,
12 especially on the Democratic side, that proved to be not a
13 rule and I -- and so I think that that may allow for some
14 review there.
15 So we have a little bit of data I guess -- so to
16 directly answer your question, we have a little bit of data
17 from this election. That data looks different than what
18 we've seen in the past, but we could do I think a -- you
19 know, a more -- a broader look at that over time.
20 CHAIRMAN MEYER: 'Cause I think that can be useful
21 data as a way to -- I mean, as an education piece for
22 candidates; and maybe, you know, people who may want to run
23 for office that think I can't, you know, raise the money to
24 do it and I can't win if I run Clean. If they see, you
25 know, that Clean candidates are doing well and fair well,

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1 of this stuff.
2 MS. ROBERTS: Sure. Mr. Chairman, Commissioners, I
3 don't know the numbers for the full state, but I can tell
4 you for Maricopa County Independent voter turnout was about
5 14 percent, which is about average. So that --
6 CHAIRMAN MEYER: It is average. Okay.
7 MS. ROBERTS: Yes. It is on -- on par.
8 And, again, Independent voters, you know, they are
9 right up there as part of one of our main voting blocs in
10 terms of numbers of registered voters. But, again, I don't
11 have that total statewide, we do have to take a look at each
12 county and look at the number of partisan ballots that were
13 requested by Independents; but for Maricopa County, it was
14 about 14 percent.
15 CHAIRMAN MEYER: Thank you.
16 Any of the other Commissioners have questions?
17 COMMISSIONER KIMBLE: Mr. Chairman?
18 CHAIRMAN MEYER: Commissioner Kimble.
19 COMMISSIONER KIMBLE: To that last point, I -- I
20 was going to bring that up, too.
21 I worked as a poll worker in the election, and from
22 my experience there and from numerous letters to the editor
23 I've read in -- in various publications, there's still so
24 much confusion about Independents.
25 At the poll I was working I had, I don't know, more

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1 than a dozen Independents who came in, said you have to
 2 choose a Democrat, Republican, Libertarian ballot -- no, not
 3 a Libertarian, Democrat or Republican; they said "I don't
 4 want to do that, I want an Independent ballot." And it's --
 5 I don't know, I found it surprising that this is still so
 6 widely misunderstood.

7 And I think there's a still perception that if I am
 8 an Independent I cannot vote or if I do I go in and ask for
 9 a Republican or Democratic ballot, then my registration is
 10 changed. And it's just a continuing source of confusion. I
 11 don't have any suggestion, but it's -- as an Independent, I
 12 find it frustrating.

13 Second point, on a different matter. The
 14 gubernatorial debate, I'm somewhat concerned that we're at
 15 this point scheduling it on Yom Kippur. It seems like if --
 16 if there's any possible way of changing it, seems like we
 17 should. Because it seems likely to -- to lead to some
 18 negative publicity or some controversy that I think the
 19 debate would -- would detract from the substance of the --
 20 of the debate.

21 And I don't know anything about the complexities of
 22 changing it to another date or the possibilities or the
 23 logistics but, if at all possible, I think it would be a
 24 good idea.

25 CHAIRMAN MEYER: Commissioner Chan, you had...
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1 that. Because the context, of course, was the point of the
 2 article which is that we're all serving expired terms, and I
 3 think all of us would not be here if -- if we didn't believe
 4 in the service that we are, you know, participating in and
 5 believe in the mission of this Commission.

6 And I -- I just wanted to make sure that you all
 7 know, because I care what you think, I don't want anybody
 8 here to think that I simply view this as a burden.

9 I think we all recognize that, you know, having a
 10 meeting once a month isn't a huge burden, but -- it is. I
 11 mean, it's -- it's a time commitment. And, frankly, in that
 12 context, I -- I appreciate seeing you all here today, but I
 13 think in the future I would -- with all due respect to
 14 Commissioner Kimble, I really appreciate being able to
 15 participate virtually. I think it helps, particularly
 16 considering the fact that we all have expired terms and --
 17 and have lives to conduct outside of this office.

18 So I just wanted to make it clear that the Clean
 19 Elections Commission's work and mission is still of utmost
 20 importance to me on a personal and a professional level, and
 21 I just didn't want any confusion about what my quote might
 22 have meant for anyone here. And if anybody has questions
 23 about that, please feel free to ask me.

24 So, thank you.

25 CHAIRMAN MEYER: Thank you, Commissioner Chan.
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1 COMMISSIONER CHAN: Oh. Yes.

2 CHAIRMAN MEYER: I think you were --

3 COMMISSIONER CHAN: Thank you, Mr. Chairman. I was
 4 waiting to see if you were going to say something --

5 CHAIRMAN MEYER: Okay.

6 COMMISSIONER CHAN: -- and I didn't realize I was
 7 up.

8 CHAIRMAN MEYER: I -- I appreciate
 9 Commissioner Kimble's comments. I think it makes sense, of
 10 course.

11 COMMISSIONER CHAN: Thank you, Mr. Chairman.

12 I -- I agree. I think probably if possible it
 13 would be wise to try to reschedule that if at all possible.

14 And as Commissioner Kimble alluded to, I'm not certain what
 15 the complexities might be, but maybe Tom can work on that
 16 with -- I know he's got a lot with all of the debates.

17 MR. COLLINS: No, I...

18 COMMISSIONER CHAN: Okay. I -- I wanted to just
 19 make a couple of comments -- well, maybe just one.

20 The Republic article featuring quotes from all of
 21 us. I just wanted to clarify because my quote was -- it
 22 was -- I -- what I stated in the article which was reflected
 23 was -- that this was a burden. And I -- I just wanted to
 24 make clear to the Commissioners and the staff and the public
 25 that there was context to that and there's some nuance to
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1 Appreciate that.

2 Commissioner Titla, do you have any comments or
 3 questions on the Executive Director's report or any other
 4 comments we've had or made?

5 COMMISSIONER TITLA: No. Thank you, everyone.

6 Yeah, thank you; no.

7 CHAIRMAN MEYER: And then before we move on, I just
 8 want to -- Commissioner Chan, I -- I understand why you
 9 wanted to make those comments. I know -- I certainly don't
 10 doubt your commitment to this Commission. So -- so I
 11 appreciate you saying that --

12 COMMISSIONER CHAN: Thank you, Mr. Chairman.

13 CHAIRMAN MEYER: -- and thank you.

14 Okay. Tom, do you have any follow-up information
 15 after any of the questions or comments from the
 16 Commissioners or are you ready to move on to the next agenda
 17 item?

18 MR. COLLINS: Mr. Chairman, thanks. I mean I
 19 suppose I should just say, we -- you know, we don't have the
 20 debate set up as an action item, but I -- we can take -- you
 21 know, we take the comments of the Commissioners, you know,
 22 with seriousness and we'll -- you know, we'll be looking at
 23 that. We will -- as I mentioned, we'll have the RSVP for
 24 some of these on Friday, so that will give a little better
 25 sense of where we are and we'll try -- we'll try to mitigate
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1 that the best we can.

2 CHAIRMAN MEYER: Great.

3 Okay. So we'll move on to Agenda Item Number IV,

4 which is discussion and possible action on MUR 2022-01,

5 Freedom's Future Fund.

6 COMMISSIONER CHAN: Mr. Chair?

7 CHAIRMAN MEYER: Yes, Commissioner Chan.

8 COMMISSIONER CHAN: If I could just ask a quick

9 question about this item.

10 My understanding is that this involves the

11 Governor's race, and in my other job for items that involve

12 the Governor's race because of the fact that the person that

13 I ultimately work for is running for Governor, our office

14 over there has not been -- has been referring these matters

15 out. And so I just wanted to bring that up because I

16 think -- even though I know I could be impartial, I just

17 would like to, out of abundance of caution, avoid any

18 appearance of impropriety or potential conflict of interest.

19 And so I wanted to throw that out there, I was

20 thinking I should recuse myself from considering this

21 matter.

22 CHAIRMAN MEYER: Sure. Thank you, Commissioner

23 Chan. And I -- and I think that was already my

24 understanding going in, 'cause we have talked about those

25 issues and I certainly understand why you're taking that

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1 And, you know, by -- by way of introduction I want

2 to -- you know, this concerns some advertisements that were

3 run in the -- throughout the spring -- well, the winter,

4 spring, and summer.

5 I want to first make a quick record of, as you can

6 see in the recommendation there are two parts, there is a

7 part one which deals with the expressed advocacy question

8 and a part two that deals with reporting. Part two deals

9 with two different kinds of reports, it deals with reports

10 under 16-941(B) and 16-958, and reports under 16-926.

11 For purposes of, you know, today based on, you

12 know, representations that Ms. Bartlett has made to me about

13 other expenditures -- or I shouldn't say "expenditures,"

14 other spending that Freedom's Future Fund has made, I'm not

15 going to ask at this time -- or to move forward on reason to

16 believe on the -926 primary purpose part of this

17 recommendation.

18 So I just wanted to say that up front because it's

19 something that I think is important and I wanted to make

20 sure you all know that, you know, if -- if that, you know,

21 changes or what have you, we'll come back to it. But at

22 this point, you know, we have some representations from --

23 from Freedom's Future Fund regarding their purpose and their

24 spending that make me -- that I want to make clear I am not

25 asking for -- for there to be any determination on reason to

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1 position.

2 So thank you for those comments, but -- so moving

3 forward with that, Tom, we have a reason to believe

4 recommendation from you in your capacity as our Executive

5 Director on this matter; Commissioner Chan is not going to

6 be participating, but we do have three other Commission

7 members here so we still have a quorum; and I'd like, Tom,

8 for you to introduce the item, give us an overview, and

9 then, you know, of course if we have questions, we'll let

10 you know.

11 And then I also see Mr. Spirs -- or, I'm sorry, is

12 it Spies -- Spees (phonetic)?

13 MR. SPIES: Spees (phonetic), but close enough.

14 CHAIRMAN MEYER: Thank you. I apologize,

15 Mr. Spies. And Ms. -- Ms. -- is Ms. Bartlett on the line?

16 MR. SPIES: She is in the office with me, but I'll

17 be speaking.

18 CHAIRMAN MEYER: Okay, and they are the attorneys

19 for the Freedom's Future Fund; some of Mr. Spies'

20 correspondence is in our packet.

21 So that was sort of kind of the order we take these

22 items in.

23 So we're going to start with Tom. So, Tom, the

24 floor is yours. Please go ahead.

25 MR. COLLINS: Thank you, Mr. Chair.

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1 believe about the primary purpose of Freedom's Future Fund

2 today.

3 CHAIRMAN MEYER: And, Tom, just so make sure we're

4 on the same page. When you say "primary purpose," you're

5 talking about the organization, Freedom's Future Fund, in

6 and of itself, and we are not talking about the primary

7 purpose of the ad.

8 MR. COLLINS: Correct.

9 CHAIRMAN MEYER: We're talking about the

10 organization, correct?

11 MR. COLLINS: Mr. Chairman, that is correct.

12 CHAIRMAN MEYER: Okay. Thank you.

13 MR. COLLINS: So this would be -- so on this would

14 be part two of part two of the memo essentially, 16-926 and

15 the primary purpose analysis, we're not asking to make a

16 determination on reason to believe today.

17 CHAIRMAN MEYER: 'Kay.

18 MR. COLLINS: And Mr. Spies may have further record

19 he wants to make on that, I'm not purporting to foreclose

20 that. It's just -- it's just my agreement with -- with

21 them, I think.

22 So, if you all have had the opportunity to review

23 the memo, you know, our -- the issue here is, you know,

24 principally focused on advertisements that identify Kari

25 Lake -- although not per se as a candidate for Governor,

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1 although we think that it's established, you know, by the
 2 case law and -- and as it works out, that Kari Lake was a
 3 clearly identified candidate for Governor in the
 4 advertisements; that the advertisements are express advocacy
 5 because when objectively evaluated as a whole, the
 6 advertisements we -- the advertisement we reviewed, which is
 7 in the materials at the YouTube link, and the evidence of
 8 other advertisements that we were able to glean from the FCC
 9 filings, together creates -- allows us to determine that
 10 there is reason to believe a violation may have occurred
 11 here.

12 The violation is that if you have an express
 13 advocacy piece of literature/advertising, and you -- under
 14 16-941(B) and 16-958, once that spending reaches a threshold
 15 with regard to a particular candidate, a filing is due, and
 16 those filings have not been made.

17 You know, we've looked, reviewed the case law here.
 18 Primarily the Committee for Fairness and Justice, which is a
 19 2014 Arizona Court of Appeals case concerning similar facts;
 20 and then a case called *Furgatch v. Federal Election*
 21 *Commission*, which is a 1987 -- or '86 -- Ninth Circuit Court
 22 of Appeals case that concerned the constitutional
 23 application of a -- of the federal election campaign --
 24 campaign act.

25 And the language, the test that *Furgatch*
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1 before you today.

2 Before I go into why we disagree with that, I want
 3 to let you know how much -- how professional your staff has
 4 been to deal with. So they've done a good job and have been
 5 professional and responsive throughout this; and if you make
 6 a decision that I will disagree with and find reason to
 7 believe, we nonetheless will continue to work with them in a
 8 conciliation process. So please don't take the strenuous
 9 nature of the argument I'm about to make as anything
 10 disrespectful to the Commission or your staff because they
 11 have been, you know, very good to deal with.

12 That said, we strongly disagree with the
 13 recommendation regarding express advocacy.

14 A little bit of background here is that Freedom's
 15 Future Fund is a non-stock, non-for-profit corporation,
 16 domestic in Delaware. Our focus is on -- the group's focus
 17 is on public policy advocacy on a variety of conservative
 18 policies focused on the West. It has primarily focused on
 19 border security and on Second Amendment rights. And I would
 20 note that this calendar year alone, they've spent over
 21 \$600,000 on policy -- pure policy advocacy that did not
 22 mention candidates at all. So could not -- you know, it
 23 isn't even open for contention for express advocacy; it's
 24 just pure policy work and no candidates mentioned.

25 So we believe it clearly has a primary purpose of
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1 articulates, at least in our -- our view, is -- is the test
 2 that's in Arizona statute and the test that's applied in
 3 Committee for Fairness and Justice. And essentially that
 4 means you have a -- does that advertisement have meaning
 5 such that no reasonable person could differ that its -- that
 6 its purpose was to advocate for or against -- for the defeat
 7 of or in favor of the election of a candidate, a clearly
 8 identified candidate.

9 That's sort of the summary of -- of our position.
 10 Obviously, you know, because Mr. Spies is here,
 11 we -- you know, I -- and then we -- you know, I -- I think
 12 that would -- that's all I have at this point unless the
 13 Commission has questions of me.

14 CHAIRMAN MEYER: Any Commissioners have any
 15 questions at this point?
 16 'Kay. Let's go ahead and I'll turn this over to
 17 Mr. Spies.

18 MR. SPIES: Thank you, Mr. Chairman, and thank you
 19 to the Commission for the opportunity to speak today.

20 As noted, I'm Charlie Spies. My colleague Jessica
 21 Bartlett is here in the office with me; and I also
 22 appreciate the assistance of my colleagues from our Phoenix
 23 office on the Arizona statutory interpretation points.

24 We represent Freedom's Future Fund and vigorously
 25 disagree with the reason to believe recommendation that's
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1 social welfare, and that the advertisements run in Arizona
 2 and being contested here are consistent with that purpose of
 3 educating people in the West especially, about the
 4 importance of border security policies.

5 I would note that the ads in question here
 6 highlighted Kari Lake's position on a variety of issues
 7 including amnesty, border security, and gun control. Each
 8 one of the advertisements run by the organization had a call
 9 to action in it, which directed the viewer to contact Kari
 10 Lake directly regarding her position on these issues; and
 11 the purpose was to persuade her to take a stronger position,
 12 especially on border security issues where she in the past
 13 was very supportive of -- of then-President Obama and Vice
 14 President Biden's policies on amnesty and what
 15 President Trump described as open borders. And we have been
 16 trying to push Candidate Lake and broad -- and Public Figure
 17 Lake to adopt stronger positions towards the border.

18 Some of these ads may have won her support among
 19 the supporters. You know when we educate the public on her
 20 positions on border security, that may help her in terms of
 21 some moderate voters who like the Biden-Obama policies, and
 22 when they learn that she was supportive of them, that might
 23 actually help her; and it might hurt her with some of the
 24 more harder line Trump supporters when they realized that
 25 she was not aligned with their policies.
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1 Either way, our goal -- what the group's goal was
 2 to push her to adopt harder line policies on the border.
 3 This is important when we get to the legal analysis
 4 in front of you. And if you -- there's a couple things we
 5 have to look at, the first is the Arizona statute, the
 6 second is Arizona case law, and the third is constitutional
 7 precedent, which is in the Ninth -- is most relevant here
 8 with the Ninth Circuit and the *Furgatch* decision.
 9 Before I briefly walk through this, I want to
 10 remind you ahead of time what my conclusion is going to be,
 11 and that's going to be the language in *Furgatch*, the Ninth
 12 Circuit opinion from 1987 that has guided the statutory
 13 construct in Arizona and controls what you can and can't do;
 14 and *Furgatch* concludes that if there -- if any reasonable
 15 alternative can be sugges- -- if any reasonable alternative
 16 can be suggested, then the communications cannot be treated
 17 as express advocacy.
 18 I remind you that doesn't mean it has to be the
 19 best interpretation, it's just any reasonable
 20 interpretation.
 21 So starting with Arizona's Clean Election Act,
 22 which I know you clearly are very familiar with, and it
 23 has -- both outlines the magic words, so to speak, that come
 24 from *Buckley v. Valeo* and their footnote 52 which outlines
 25 what -- what is considered to be express advocacy, and those

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1 distinguished in terms of the content of the ads.
 2 In CJF what you had was a call to action that said:
 3 "Tell Superintendent Horne to protect children, not people
 4 who harm them." And the ad claimed that when Horne was in
 5 the state legislature, he voted against tougher penalties
 6 for statutory rape; and when he was on the Board of
 7 Education, he voted to allow back into the classroom a
 8 teacher who was caught by students looking at child
 9 pornography on a school computer.
 10 That case was a clear mudslinging attack on a
 11 candidate, which illuminated the uncontroversial issue,
 12 which I hope and believe that the general public all agrees,
 13 protecting children from sexual predators is important.
 14 There weren't two sides to the issue and it wasn't really a
 15 policy issue, it was just a character attack on the
 16 candidate.
 17 Unlike that ad in CJF, our client's ad educates the
 18 public on the hot-button issues of gun control and border
 19 security and whose public policy solutions are better, and
 20 urges people to urge Kari Lake to support a more strict
 21 position on border security.
 22 Some people may agree, some people may disagree,
 23 but that was the focus and it's very different than the CJF
 24 example.
 25 Then CJF in the Arizona cases are -- are both

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1 phrases about voting for, electing, re-electing, supporting,
 2 there's no argument that we have never included any of those
 3 in any of our communications. So that's not in question
 4 here.
 5 The question is the second part of the Arizona
 6 test, which says that in context the advertisement can have
 7 no reasonable meaning other than to advocate the election or
 8 defeat of the candidate. And that's where we vigorously
 9 disagree on the idea that there can be no reasonable
 10 interpretation of policy adverti- -- advocacy from our
 11 advertisements.
 12 And I walked through before the facts in terms of
 13 the content of the ads and the purpose of them, and I just,
 14 I don't -- I think that is a very reasonable and happens to
 15 be accurate explanation of what the purpose of it is.
 16 The staff -- your staff in their reason to believe
 17 recommendation rely heavily on the language of Committee for
 18 Justice and Fairness, CJ- -- the C (technical disruption)
 19 decision, and they use that to try to push you towards a
 20 more holistic view that wants you to sort of push in favor
 21 of regulation. And I would urge you to dis- -- first of
 22 all, I don't agree with their conclusion there because I
 23 believe it still constrained by the "any reasonable
 24 alternative" language found in *Furgatch*; but aside from
 25 that, CJF is not a good example here because it can be

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1 educated by and constrained by the Ninth second -- Ninth
 2 Circuit's *Furgatch* opinion. And as a reminder, under the
 3 *Furgatch* -- the *Furgatch* standard "speech, quote, when read
 4 as a whole and with limited references to external events
 5 must be susceptible of no other reasonable interpretation
 6 but an as exhortation to vote for or against a specific
 7 candidate."
 8 That's what *Furgatch* says and that's at page 864.
 9 And the Court writes the component to that standard
 10 into three different parts. It talks about, first of all,
 11 even if it is not presented in the clearest, most explicit
 12 language, speech is expressed for present purposes if its
 13 message is unmistakable and unambiguous, suggestive of only
 14 one plausible reading.
 15 Second they say: "Speech must only be termed
 16 advocacy if it presents a clear plea for action, and thus
 17 speech that is merely informative is not covered."
 18 And the third factor is "it must be clear what
 19 action is advocated. Speech cannot be express advocacy of
 20 the election or defeat of a clearly identified candidate
 21 when reasonable minds could differ as to whether it
 22 encourages a vote for or against a candidate or encourages
 23 the voter to take some other kind of action."
 24 And that -- I'm reading that language from 864 of
 25 the opinion.

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1 So we do -- our ads do not with those factors of
2 unambiguously suggestive of only one plausible reading --
3 read -- meaning and having a clear plea to action to vote,
4 we do not meet those standards and, therefore, our ad does
5 not meet the constitutional standard in the Ninth Circuit.

6 I'm (verbatim) start out by saying I've been
7 respectful of the staff's recommendation here, and to be
8 blunt, you may think that their interpretation is the best
9 interpretation. So you may read through the reason to
10 believe finding and be compelled that the best
11 interpretation of Freedom's Future Fund's ads is they're
12 intended or that they do advocate against Kari Lake; you
13 could think that's the best interpretation. But, remember,
14 that's not the legal standard here.

15 The legal standard is, is there a plausible
16 argument? Is there any reasonable argument that the ads are
17 about border security and about policy issues; and if there
18 are -- if there are those plausible arguments, then under
19 the standards that you're constrained by, this cannot be
20 considered to be express advocacy.

21 I appreciate your giving me the time to address
22 you.

23 CHAIRMAN MEYER: Thank you, Mr. Spies.

24 And I just want to say your comments at the
25 beginning are in these times a breath of fresh air and very
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1 Ninth Circuit, all of which extends beyond Arizona. So I
2 would respectfully say no.

3 CHAIRMAN MEYER: Well, would you agree with me that
4 someone who lives in Arizona and watches -- for example,
5 watches this YouTube ad -- that I would like to play if we
6 could at the Commission meeting. I -- I can play it on my
7 screen if -- I don't know if we can play it there.

8 But would you agree with me that someone who lives
9 in Arizona may view this ad and have a different
10 interpretation of it than you who lives in Washington, D.C.?

11 It may impact them much differently as a resident
12 of Arizona than it does someone who lives in D.C.?

13 MR. SPIES: Mr. Chairman, I -- absolutely; but I
14 would also respectfully say that that proves my point, which
15 is that different viewers -- when you're talking about
16 policy advocacy ads, they may be good to some people, bad to
17 other people and they may see them through different lenses,
18 and that can't be the constitutional standard for express
19 advocacy.

20 CHAIRMAN MEYER: Okay. And I guess, you know, I --
21 I read in one of your letters -- and maybe this is on the --
22 a different issue of public figure/public official. And are
23 we going to get into that later or we going to get into
24 that -- is that on the table presently?

25 MR. SPIES: On the table presently.
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1 much appreciated, your compliments to our staff, your, you
2 know, ability to see that reasonable minds can disagree on
3 something, I appreciate that.

4 I do have a couple of questions for you and then
5 I'll turn it over to my fellow Commissioners as well.

6 And can I ask, Mr. Spies, are you lead counsel on
7 this matter for the -- for the Freedom's Future Fund?
8 You're the principal?

9 MR. SPIES: Yes, sir.

10 CHAIRMAN MEYER: Okay. And then is there any
11 counsel in Arizona that's helping you with this at the
12 Dickinson-Wright office?

13 MR. SPIES: Yes.

14 CHAIRMAN MEYER: Okay. So where -- where do you
15 live, sir?

16 MR. SPIES: Washington, D.C.

17 CHAIRMAN MEYER: And -- and do you think the fact
18 you live in Washington, D.C., does that impact your ability
19 to determine whether or not an ad like this in Arizona may
20 or may not be, you know, express advocacy?

21 MR. SPIES: I would respectfully say no because
22 this is dealing with cons- -- U.S. constitutional
23 principles; and, you know, in my time working at the Federal
24 Election Commission, we were dealing with these nationally
25 and you've got *Buckley v. Valeo* federal standards and the
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1 CHAIRMAN MEYER: Okay. So I think in one of the
2 letters it states that you're viewing Ms. Lake as a TV
3 journalist and -- and not as a -- as a candidate. I guess
4 to me that strains credibility. She hasn't been on the news
5 for several years, two or three years to my knowledge, and
6 she has been running for Governor here in the state of
7 Arizona -- and every native Arizonan knows that -- for at
8 least two years.

9 So I guess what is -- I guess, what is the basis to
10 argue that this ad is to try to influence a TV journalist
11 and not a candidate?

12 MR. SPIES: Mr. Chairman, I think your comment is
13 fair. That's probably right that people now view her as a
14 candidate, but in terms of the legal analyst -- and this is
15 why I didn't focus on that argument -- it's not really
16 relevant. The point is that she's an influential public
17 figure who at least in the past has been wrong on border
18 security issues, and my client would like to push her to
19 take a stronger position.

20 CHAIRMAN MEYER: Well, when you say she's been
21 wrong on border security issues, I think you mean she's
22 taken a position that your organization, Freedom's Future
23 Fund, disagrees with.

24 MR. SPIES: Absolutely.

25 CHAIRMAN MEYER: Okay.
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1 MR. SPIES: Sorry for not being more precise.
 2 CHAIRMAN MEYER: No, that's okay.
 3 Does Freedom's Future Fund have an office in
 4 Arizona?
 5 Do they have any employees in Arizona?
 6 MR. SPIES: No.
 7 CHAIRMAN MEYER: Okay.
 8 Okay. I don't have any other questions right now
 9 but, do we know, do we have the ability to play that
 10 YouTube lab -- or YouTube ad during this meeting?
 11 MS. THOMAS: Yes.
 12 MS. HERRING: Yes. We can pull that up.
 13 MR. COLLINS: Do you --
 14 CHAIRMAN MEYER: I would like to play that so we
 15 can all just see what we're talking about.
 16 MR. COLLINS: Mr. Chairman, if I -- if I may just
 17 real quick -- wait.
 18 MS. HERRING: Would you like to play it now?
 19 MR. COLLINS: Okay.
 20 (Whereupon the ad was played.)
 21
 22 CHAIRMAN MEYER: Okay. Thank you for showing that.
 23 My fellow Commissioners, you have any questions for
 24 Mr. Spies?
 25 COMMISSIONER KIMBLE: Mr. Chairman?
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1 Commission has in front of you today and determining whether
 2 the advertisement is express advocacy, that does not depend
 3 on the status of the person that is mentioned in the
 4 advertisement, it depends on the communication in the
 5 advertisement. And, again, the question you have in front
 6 of you is respectfully to determine: Is there any
 7 reasonable alternative reason that Freedom's Future Fund
 8 might have been running advertisements than to promote or
 9 oppose a candidate?
 10 And even if you watch the ad and you want to -- you
 11 have a different takeaway from it, I would urge you to look
 12 at the -- in your packet is the exact script and language of
 13 the advertisement that just ran and the closing line of the
 14 advertisement, which is "Contact Kari Lake and tell her its
 15 time to secure our border"; and that is with contact
 16 information on the screen.
 17 So if that is a plausible or reasonable
 18 interpretation, than this cannot be considered to be express
 19 advocacy under the constitutional construction --
 20 restrictions thrown out in *Furgatch*.
 21 COMMISSIONER KIMBLE: I -- I understand that and I
 22 don't know that I -- I'm straining to see if there's another
 23 plausible explanation other than the fact she's running for
 24 Governor or another reasonable explanation other than the
 25 fact she's running for Governor, and -- and at this point
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1 CHAIRMAN MEYER: Mr. Kimble.
 2 COMMISSIONER KIMBLE: Mr. Spies, Chairman Meyers
 3 (verbatim) hit on a point that -- that I was -- that I was
 4 going to make. It seems like your main point that you're
 5 making is that she's not a candidate -- or she is a
 6 candidate, but that's not what you're -- you're involved
 7 with, you're -- you're delivering this information because
 8 she's a widely known public figure who has the ability to
 9 influence policy outcomes and who just happens to be a
 10 candidate.
 11 And I'm wondering if you can tell me, first of all,
 12 am I accurate in my understanding of your position; and,
 13 second of all, how many other campaigns -- television
 14 campaigns have you undertaken nationwide against former
 15 television journalists who have not been on the air as
 16 television journalists for several years, just to say these
 17 people are giving you bad information as television
 18 journalists several years ago?
 19 MR. SPIES: So thank you for the question because I
 20 think it's important to clarify that one component of the
 21 arguments we made in our rather lengthy responses was that
 22 we are trying to influence her positions on issues and even
 23 before she ran for office she was an influential public
 24 figure, and so that's where that fits into the argument.
 25 However, in terms of the legal decision the
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1 I'm not sure I see one.
 2 It -- it seems -- despite the fact that you don't
 3 say "vote against Kari Lake," it seems clear from the
 4 context of the entire ad, not just the tag line about
 5 contact her at this website, that -- that the intent is --
 6 is directed at as you once -- as you called her during your
 7 presentation "Candidate Lake," not "Former Television
 8 Journalist Lake."
 9 MR. SPIES: May I respectfully just note that the
 10 question before the Commission is not what the intent of the
 11 advertisement was, because that would force you to then look
 12 into the minds of different people engaging in free speech
 13 in the state. So intent is not the issue. The issue is:
 14 Can the content of the advertisement be reasonably
 15 interpreted to have any plausible reas- -- meaning other
 16 than to vote for or vote against her?
 17 And, you know, that if plausibly this could be
 18 considered to try to persuade her to take a harder line on
 19 border issues -- which, in fact, is what it's doing -- then
 20 even if you think there's a better explanation, it's still
 21 not express advocacy.
 22 COMMISSIONER KIMBLE: Okay. Thank you, Mr. Spies.
 23 CHAIRMAN MEYER: Commissioner Chan and then also I
 24 don't want to forget about Commissioner Titla who is on --
 25 on the line.
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1 But, Commissioner Chan, do you have any questions
 2 for Mr. Spies?
 3 COMMISSIONER CHAN: Mr. Chairman, I'm not
 4 participating.
 5 CHAIRMAN MEYER: Oh. I'm sorry. Forgive me.
 6 COMMISSIONER CHAN: That's all right.
 7 CHAIRMAN MEYER: Commissioner Titla --
 8 COMMISSIONER CHAN: Thank you for your
 9 consideration.
 10 CHAIRMAN MEYER: Yes.
 11 Commissioner Titla, do you have any questions for
 12 Mr. Spies?
 13 COMMISSIONER TITLA: Yeah. I -- I just got on -- I
 14 was on the phone and I just got on the Zoom now, and is it
 15 possible to replay this -- this ad so I can see it?
 16 CHAIRMAN MEYER: I think we can manage that.
 17 COMMISSIONER TITLA: Okay. Thank you.
 18 CHAIRMAN MEYER: Can we please replay the ad?
 19 MS. THOMAS: Yes. One moment.
 20 (Whereupon the ad was played.)
 21
 22 CHAIRMAN MEYER: Commissioner Titla?
 23 COMMISSIONER TITLA: Yeah, thank you. Yeah, I saw
 24 the ad.
 25 So Freedom's Future is saying that this is not
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1 doesn't that fact almost work against you here? Because,
 2 you know, it sounds to me -- is \$6 million the majority of
 3 the spending on border issues?
 4 You know, you just say you spent \$6 million on
 5 ads --
 6 MR. SPIES: I -- I --
 7 CHAIRMAN MEYER: -- that don't mention candidates,
 8 which obviously would not be expressed advocacy against a
 9 candidate or pro or -- pro or against a candidate because
 10 there's no candidates mentioned, but the ad we're looking at
 11 is obviously distinguished because it's -- it does mention a
 12 candidate. And not only does it mention that candidate,
 13 it -- it provides facts that are -- have nothing to do with
 14 border security.
 15 For example, how does pointing out that Ms. Lake
 16 donated money to Obama and did not donate to former
 17 President Trump, how does that fact attempt to influence
 18 someone on border measures?
 19 To me I look at that and that's just a play --
 20 that's just an advertisement to try to portray her in a
 21 negative light and -- for the Republican party and to impact
 22 her candidacy, and I don't see another way -- another
 23 reasonable way to view that. But that's how I see it right
 24 now.
 25 MR. SPIES: A couple points, Mr. Chairman. First
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1 expressed advocacy for Kari Lake?
 2 CHAIRMAN MEYER: That's correct -- or, actually, I
 3 think it would be expressed advocacy against Kari Lake I
 4 think is -- is...
 5 But go ahead.
 6 COMMISSIONER TITLA: What they're saying?
 7 CHAIRMAN MEYER: I'll let Mr. Spies state their
 8 position.
 9 My understanding is that Mr. Spies is arguing,
 10 quite well in my opinion, that this ad does not constitute
 11 express advocacy regarding Ms. Lake.
 12 But Mr. Spies, I'll let you answer
 13 Commissioner Titla's question.
 14 MR. SPIES: Yes. Commissioner, thank you for
 15 taking the time to view it mult- -- you know, and look at
 16 it, but to be clear, yes, Freedom's Future Fund believed
 17 that this is an advertisement our position is to push Kari
 18 Lake to take a stronger position on border security issues.
 19 And I should also note, I don't think I've
 20 mentioned, that Freedom's Future Fund has spent six figures
 21 on advertisements on border security that do not mention any
 22 candidates at all. So -- that was in July of this year. So
 23 this is consistent with the policy advocacy purpose of the
 24 organization to encourage strong border security policies.
 25 CHAIRMAN MEYER: But Mr. Spies, doesn't that --
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1 of all, if I said 6 million then I apologize, I meant to say
 2 six figures, so.
 3 CHAIRMAN MEYER: Oh. You did say six figures. I
 4 think I -- that's my fault.
 5 MR. SPIES: Sadly we don't, the group doesn't have
 6 6 million to spend, but...
 7 CHAIRMAN MEYER: Nor do I, Mr. Spies, so. So go
 8 ahead.
 9 MR. SPIES: But to -- to ask your -- to answer your
 10 question about why that's relevant or does that cut against
 11 us, I think it goes to the policy advocacy purpose of the
 12 organization.
 13 And, remember, the standard you as Commissioners
 14 are voting on today is, is it rea- -- is there a reasonable
 15 interpretation of the advertisement that it is meant to
 16 advocate for stronger border security policies and to push
 17 Kari Lake to take stronger border security policies.
 18 So, again, that doesn't have to be the best
 19 interpretation, you may not even agree with that
 20 interpretation, your only question is: Is that a reasonable
 21 interpretation? And if it is, then under *Furgatch* this
 22 cannot be considered to be express advocacy.
 23 CHAIRMAN MEYER: Okay. Do any other Commissioners
 24 have any further questions for Mr. Spies?
 25 Okay. Hearing none, Tom, do you have any
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1 additional comments or -- for the -- for the Commissioners?
 2 MR. COLLINS: Mr. Chairman, just briefly -- and I
 3 will be brief. I first I want to just rehighlight that
 4 we're not asking for -- and I think, you know, because of,
 5 you know, Mr. Spies just mentioned that other spending, you
 6 know, I think that's part of the reason, you know, we are
 7 asking for anything on the primary purpose at all. That's
 8 an important fact that Mr. Spies pointed out for the primary
 9 purpose issue and I just want to highlight that so that --
 10 CHAIRMAN MEYER: And, again, that's the primary
 11 purpose of the organization.
 12 MR. COLLINS: Correct, yeah. I just want to make
 13 sure that the record is crystal clear about that.
 14 With respect to the advertisements at issue, you
 15 know, Committee for Justice and Fairness is good law in
 16 Arizona. In fact, as an administrative agency, I think it's
 17 the controlling case for us. The advertisement in that case
 18 said -- ran, you know, when the candidate was still
 19 superintendent of public instruction and it -- you know, it
 20 claimed that when the -- the personnel running for Attorney
 21 General -- or was running for Attorney General, as a state
 22 legislator he voted against tougher penalties for statutory
 23 rape; and then he when he was on the Board of Ed, he voted
 24 to allow a classroom teacher who had been caught looking at
 25 child pornography back in; and then the advertisement urged
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1 not be effective in the general. I think that the timing
 2 matters in that respect here and, again, confirms that, you
 3 know, taken together with the statute, the case law, the
 4 advertising language, this analysis that, you know, that --
 5 you know, reasonable had to include the circumstances, it is
 6 limited, and it's looking at outside events.
 7 I would note and, you know, Mr. Spies brought up,
 8 that this -- rather than directing you to contact Kari Lake
 9 directly as the -- as the CJF did with then-Superintendent
 10 Horne, this one actually urges you to go to
 11 KariLakefacts.com, which is not affiliated with Kari Lake
 12 but is, in fact, another website, a website that belongs to
 13 Freedom's Future Fund, where you receive information that
 14 reiterates essentially the message of the advertisement.
 15 So the call to action rather than in the case of
 16 CJF where it was "call Mr. Horne" who was then in office
 17 where there was a plausible argument, at least plausible --
 18 there was a plausible argument which is not up to the court,
 19 but a plausible argument that that urged him to take action
 20 he presently might take, this calls action in contract,
 21 specifically calls on you to go to a website belonging to
 22 Freedom's Futures -- Freedom's Future Fund for the purpose
 23 of receiving more information about Kari Lake.
 24 So I think taken together, the test is one of
 25 reasonableness. I -- I don't think that -- I think
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1 people to tell the superintendent to protect children, not
 2 people who harmed them, displayed photographs of the
 3 candidate, and then provided his office number, telephone
 4 number as superintendent of public instruction.
 5 I think that that advertisement here is -- is --
 6 is -- the advertisement that we've looked at here today
 7 is -- is all but identical. I think -- and I do think that,
 8 you know, and that there is therefore under the case law
 9 and -- and our analysis, there's no reasonable alternative
 10 meaning.
 11 It's not -- you know, occasionally we've heard go
 12 back and forth between "plausible" and "reasonable." The
 13 test is really "reasonable." And so you take the language,
 14 the images together, I think that specific language that I
 15 think that are -- that I think that is indicative and, in
 16 fact, confirms that this is not subject to any reasonable
 17 alternative is the languages -- is the language "How can we
 18 trust Kari Lake?"
 19 The context here is instructive and limited. But
 20 trust Kari Lake to do what? And the answer has to be to be
 21 a nominee for Governor. It tips -- the entire language
 22 does, but I think that's an example of something that just
 23 confirms that that's the correct analysis.
 24 Additionally the timing. This had to be done in
 25 the primary because this kind of advertisement would simply
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1 therefore that when, you know, credulity is a strained to
 2 the point of unreasonableness, that we know that this is
 3 express advocacy. I think case law, CJF and *Furgatch*, both
 4 confirm that.
 5 For those reasons we would ask with respect to the
 6 16-941(B) and 16-958, that the Commission find that there's
 7 reason to believe a violation may have occurred for failure
 8 to file those independent expenditure reports.
 9 That's all I have unless Commissioners have
 10 questions.
 11 CHAIRMAN MEYER: Thank you, Tom.
 12 I guess I just have a comment to let kind of folks
 13 know where I'm at, and that is, you know, I look at this ad,
 14 and Mr. Spies has done an excellent job of setting forth the
 15 case law and argument, but I -- I look at this ad and I see
 16 this as an ad that is -- is express advocacy; and then this
 17 last comment, you know, in the last three seconds of the ad
 18 is sort of an effort -- you know, "contact Kari Lake." I
 19 think that's an effort to try to end run around this express
 20 advocacy, you know, requirement that we have, threshold that
 21 we have; and that -- it just -- that's -- that's an effort
 22 to end run that statute and it just -- it doesn't work.
 23 This is -- my initial impressions and we'll look at more of
 24 this 'cause this is just a reason to believe, that this is
 25 an express advocacy ad.
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1 So that's -- that's where I sit and I'll be voting
 2 to -- voting to find there's a reason to believe when this
 3 comes to a vote.
 4 So if any other Commissioner wants to comment on
 5 this, I welcome them.
 6 And Commissioner Titla, you are -- your camera is
 7 now working. Looks like your -- yeah, all right. All
 8 right.
 9 COMMISSIONER TITLA: Yeah, this is -- this is
 10 Commissioner Titla. Thank you.
 11 You know, what I'm going to say is not for either
 12 party, it doesn't support either party in the election.
 13 It -- I don't support Kari Lake.
 14 But with regard to what the attorney said and
 15 watching the -- watching the ad here, I think it's
 16 reasonable to interrupt that it is not express advocacy
 17 right now. That's my initial impression right now. And,
 18 but once we go to a vote and I hear your opinions, then --
 19 then of course I could be persuaded otherwise.
 20 But my initial impression is that, you know, is --
 21 is what I said. That there's reasonable -- reasonable
 22 explanation that it is not.
 23 So that's my inclination right now. Thank you.
 24 COMMISSIONER KIMBLE: I think Chairman Meyer is on
 25 mute.

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1 a reason to believe a violation may have occurred?
 2 COMMISSIONER KIMBLE: Mr. Chairman, I'll try. I
 3 don't know if I have the wording right.
 4 But I would move that the Commission determine
 5 there is a reason to believe a violation of 16-941(B) and
 6 16-948 has occurred, and that we authorize our Executive
 7 Director to conduct an investigation.
 8 CHAIRMAN MEYER: 'Kay.
 9 And Tom, before we take a vote, did -- did -- I
 10 just want to make sure Commissioner Kimble correctly
 11 identified the authorities that you're -- you're asking us
 12 to -- to move under here.
 13 MR. COLLINS: Yeah, it's 16-941 and 16-958.
 14 COMMISSIONER KIMBLE: I'm sorry, I misspoke. I
 15 said 16-948.
 16 MR. COLLINS: Yeah.
 17 COMMISSIONER KIMBLE: So it's 16-941 and 16-958 I
 18 believe. I would move the Commission determines that a
 19 reason to believe that a violation of those two statutes
 20 over which the Commission has jurisdiction may have
 21 occurred, and that we direct the Executive Director to
 22 conduct an investigation.
 23 CHAIRMAN MEYER: 'Kay. All right. We have a
 24 motion pending from Commissioner Kimble.
 25 Is there a second to that motion?

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1 CHAIRMAN MEYER: I'm sorry, I was on mute.
 2 Commissioner Kimble, do you have any comments or...
 3 COMMISSIONER KIMBLE: Mr. Chairman, your comments
 4 reflect my views exactly. I do not think there's a -- a
 5 reasonable alternative explanation for -- for this
 6 advertising. I think it -- it -- you would really have to
 7 strain to find something to support that this is anything
 8 but an ad to urge voters to vote against Kari Lake.
 9 CHAIRMAN MEYER: Okay. So Tom, you need a motion
 10 for us, correct, to -- to find a reason to believe?
 11 MR. COLLINS: Mr. Chairman, the procedures which
 12 are outlined in the memo, you know, are that, you know, if
 13 the Commission were to find -- if there were three votes of
 14 the Commission to find reason to believe, then there would
 15 be a reason to believe determination. If there -- if there
 16 were not, then we would not have that determination, so.
 17 But we would, yes, need a motion to proceed.
 18 CHAIRMAN MEYER: Okay. So we have a quorum of
 19 three members. Do we need a majority of the quorum or do we
 20 need a majority of the Commission?
 21 MR. COLLINS: The rule is three votes for reason to
 22 believe.
 23 CHAIRMAN MEYER: 'Kay.
 24 Okay. Well, does anyone have -- does anyone want
 25 to make a motion on this issue of whether there is or is not

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1 COMMISSIONER TITLA: Chairman, this is Steve Titla,
 2 Commissioner Titla, and I second that motion because I think
 3 that this should be looked into further.
 4 My inclination is -- is not to agree with the
 5 underlying principle, but I think that we should look into
 6 this further and this investigation will do that I think.
 7 So I second the motion.
 8 CHAIRMAN MEYER: Okay. So we have a -- we have a
 9 motion, it's been seconded. So now we will vote.
 10 I will call the roll.
 11 Commissioner Kimble, how do you vote?
 12 COMMISSIONER KIMBLE: I vote aye.
 13 CHAIRMAN MEYER: Commissioner Titla.
 14 COMMISSIONER TITLA: Aye.
 15 CHAIRMAN MEYER: 'Kay, Commissioner Chan is
 16 abstaining.
 17 Commissioner Meyer, and I vote aye as well.
 18 Commissioner Paton is not present.
 19 So the motion carries 3 to 0.
 20 And I just want to for the record state that, you
 21 know, my comments today are based upon where we are at in
 22 the -- in the investigation. There's just a reason to
 23 believe finding right now, there's no final decisions; and
 24 pending further investigation, I -- you know, I will
 25 continue to review this and -- and be open minded on what

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1 our investigation finds.

2 So given that, I want to thank Mr. Spies for

3 appearing. But Mr. -- or Tom, is there anything further we

4 need to do on Agenda Item IV?

5 MR. COLLINS: Mr. Chairman, not from our

6 perspective. I don't know if Mr. Spies needs -- has any

7 other record he wants to make. Obviously we -- I don't have

8 any.

9 CHAIRMAN MEYER: I'll certainly give Mr. Spies that

10 opportunity, if there's anything further you want to put on

11 the record, Mr. Spies.

12 MR. SPIES: No, sir. Thank you for your

13 consideration.

14 CHAIRMAN MEYER: Okay. Thank you, Mr. Spies.

15 Okay. So we will move on to Agenda Item Number V,

16 which is the discussion and possible action on proposed

17 amendments to the Arizona Administrative Code Title 2,

18 Chapter 20, Article 3, standard of conduct for Commissioners

19 and employees; Sections R2-20-305, reporting suspected

20 violations and R2-20-306, disciplinary and other remedial

21 actions.

22 Last month we had lengthy discussions on how to

23 improve our ethics rules to ensure transparency in the event

24 of any conflicts would arise at the Commission. We directed

25 the Executive Director to develop a rule amendment to

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1 limitations as to what a Commission can do to a Commissioner

2 that are statutory, but we tried to, you know, come up with

3 something that would have -- would create a public process,

4 be transparent, and allow the Commission to weigh in.

5 The -- the issue that we identified through this

6 process was that really our rules did not really deal -- it

7 had a process laid out for how to deal with an employee

8 issue, but really didn't have a kind of a regulatory place

9 for -- for the Commission to talk amongst itself about

10 Commissioners, so we wanted to create that.

11 And so we're asking for approval of this to

12 circulate it for public comment and then we will return it

13 with whatever comments we get and within the next couple --

14 several months, probably next two or three months.

15 I don't know if -- and -- and obviously,

16 Mr. Chairman, with your permission I just want to make sure,

17 I don't know if Natalya has anything she wants to make sure

18 we tell ya.

19 MS. TER-GRIGORYAN: Natalya Ter-Grigoryan and I

20 have Bill Richard here with me as well, and we believe that

21 Mr. Collins summarized the proposed amendments pretty

22 thoroughly. So essentially changes the current rules from

23 being exclusively to employees to being more generalized and

24 provides a process for addressing complaints.

25 CHAIRMAN MEYER: Thank you.

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1 capture that discussion, so today we are reviewing

2 amendments to the rules to ensure more transparency. Staff

3 is asking for a vote to forward these amendments for public

4 comments.

5 Tom, you have a summary of the proposed amendments?

6 MR. COLLINS: Yes.

7 CHAIRMAN MEYER: It's within our packet.

8 MR. COLLINS: Yes, Mr. Chairman. And Natalya

9 Ter-Grigoryan with Richards and Moskowitz is here, she has

10 been working with me on developing this -- along with Bill,

11 on developing this -- yeah, this amendment if you have any

12 questions for her.

13 We -- essentially what we did is we took the issues

14 we talked about last month and kind of put some -- put them

15 into a, you know, a rule format. What essentially these

16 amendments will do is say, you know, if there's particular

17 information about a Commission ethical issue of some kind or

18 conflict issue principally, you know, it would allow our --

19 the Chairman and the Executive Director to process that, and

20 then allow the Commission to come together to discuss it

21 and -- and have a, you know, a kind of -- a collective

22 decision that would be enforceable under our rules to the

23 extent that, you know, we have -- to the extent that you --

24 you can.

25 In other words, obviously there are certain

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1 I -- I had two comments on R2-20-305, and that

2 is -- I guess the first one is a question and the second one

3 is a comment.

4 The first question is that Subsection (B) of this

5 rule gives the Chair of the Commission authority to decline

6 to require a response and then -- and statewide, this is

7 meritless; there should not be an issue. And I just -- and

8 I just want to confirm, does the Chair -- that's more

9 author- -- you're kind of giving the Chair unilateral

10 authority to make a decision there.

11 Is that -- is there a source that -- I just want to

12 make sure that that's something that's allowed under the --

13 the statutory scheme/administrative code that we have. So

14 that was my first question.

15 MR. COLLINS: I mean, I'm happy to take a stab at

16 that or Natalya or Bill you want to go, you know, whichever.

17 However you want to -- I don't have a preference really.

18 MR. RICHARDS: Well, Tom, I'd be happy to address

19 it just briefly and then obviously you can add your comments

20 and elaborate on that.

21 I believe that the structure here is intended to

22 allow the Chairman to exercise what is essentially kind of a

23 not jurisdictional function to ensure that where you have a

24 clearly unmerited allegation. I mean, for example, someone

25 came in and said that: I saw, you know, Commissioner X in

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1 the grocery store and they looked at me funny and,
2 therefore, I believe that, you know, they are -- they have a
3 conflict of interest here. That you could simply say:
4 Well, we're not going to hear that; we're not going to put
5 that on the agenda.
6 It's almost really an agenda-setting exercise. It
7 isn't intended to allow you to kind of make these final up
8 or down nuance decisions where there's a, you know, at least
9 a facially arguably allegation of a conflict. It may be
10 that, you know, more precise language is needed to make that
11 absolutely clear, but that is the intention behind them I
12 believe.
13 COMMISSIONER CHAN: Mr. Chairman, I have a question
14 about that, too. Could I ask real quick?
15 CHAIRMAN MEYER: Sure. Go ahead.
16 COMMISSIONER CHAN: The Chair or Executive
17 Director. If it's the Chair, who has -- who is the subject
18 of the claim, do we need to have an alternative listed in
19 there, like the next most senior member of the Commission?
20 We don't have a vice chair.
21 I just -- I don't know I'm seeing an issue where
22 there is none, I just wondered if we needed an alternative
23 in case the Chairman is the person who's the subject of the
24 complaint.
25 MR. COLLINS: Mr. Chair, I guess --
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1 elections.
2 And -- and so -- but as the Chairman noted, that is
3 hard to account for because when we're -- because we now
4 live in the real world, right, where political decisions,
5 government decisions were -- where the policy is clear, are
6 now subject to a political influence that is just beyond I
7 think what any of us really believed was true sometime ago.
8 And so, you know, we want to be conscious of that,
9 but -- but also, you know, this body has had a -- you know,
10 all of you in your long service -- your endless service --
11 to the Commission, you know, have recognized the values that
12 we have and -- and have created a culture that we hope will
13 ensure that those folks who come after us all will -- will
14 follow these as they're -- in the spirit they're intended.
15 So, you know, those are hard, nuanced decisions.
16 Bill, I think, identified correctly, I think clearly we
17 tried to say -- we tried to take we want this to not -- not
18 be the marginal case but the extraordinary case where it is
19 something that's just off the wall.
20 And -- and, you know, I mean I think that we can
21 see if folks will make -- I mean, I'm comfor- -- I guess
22 what I'm trying to say, if you ask me, obviously we're
23 comfortable for these draft -- this draft for purposes of
24 public comment.
25 As we go along if we get comments that say, look,
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1 CHAIRMAN MEYER: Can I respond to that quickly?
2 I think, you know, we can write rules 'til we're
3 all old and gray if we try to anticipate every thing that's
4 going to come up.
5 I think in that instance, you know, it's going to
6 be on the Executive Director's shoulders, and I would not
7 try to write that into the rule. That's just how I would
8 see it. And I don't -- I welcome our counsel and Tom's
9 thoughts on that, but that's just my initial reaction I
10 wanted to share.
11 MR. COLLINS: I mean, Mr. Chairman, I mean, I think
12 that -- I mean I think that the idea is that, you know,
13 that, yeah, if -- that it would sort of devolve to the
14 Executive Director from the Chair. There's a little bit
15 of -- I think both -- both the questions Commissioner Chan
16 and Chairman, your earlier question, I mean they get at an
17 issue that is a real concern. And I think that the issue is
18 just that we live -- I mean, just to harken back to some of
19 your comments earlier today, Mr. Chairman.
20 I mean, not to put too fine a point on it, but the
21 reality is is that we are all living in a universe in which
22 any authorization is -- it can be assumed to be taken to its
23 maximum place beyond what the intent of anyone was when they
24 imposed it. That is the world that we live in today; we've
25 seen that again and again and again, especially in
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1 you need to tighten this up or it's going to potentially
2 ratchet up things with the -- you know, with the Chair or
3 the Executive Director, you know, that's a -- that's a --
4 that's certainly a consideration.
5 But I do think that both of your comments and
6 questions are -- are important things to be aware of in the
7 context we are all now working in.
8 COMMISSIONER CHAN: May I ask --
9 CHAIRMAN MEYER: And -- oh. Go ahead, Commissioner
10 Chan.
11 COMMISSIONER CHAN: The only other item that I
12 noticed was the response shall be due five days. And on one
13 hand five days is -- is not a tiny amount of time, but I
14 just wondered if -- if we should consider making it ten
15 days. I don't know where we came up with the five days, if
16 there was -- I just was curious about that.
17 Again, I'm not sure that it's an insufficient
18 amount of time, it just seems like depending on how
19 voluminous something might be. I tend to think of things
20 and think the worst-case scenario, so I just wanted to throw
21 that out there regarding the five days.
22 MR. COLLINS: Mr. Chairman, I do have an answer for
23 that, why the five days.
24 CHAIRMAN MEYER: Sure.
25 MR. COLLINS: It's not a good -- it's not a -- it's
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1 not a particularly thoughtful answer, it's just that's what
2 we require for response to complaints when they come in
3 against candidates and -- and IEs and stuff.
4 COMMISSIONER CHAN: Well then that seems fair.
5 Thank you.
6 CHAIRMAN MEYER: I was going to make the same
7 comment that I thought five days seemed tight and suggest we
8 make it ten days. Just, I mean, that's my suggestion.
9 This is a -- you know, many of us have full-time
10 other jobs we're working and it can be not a good situation
11 to have to do that in five days; could be challenging. If
12 there's -- if there's a reason, a compelling reason to have
13 it be five days, and I'm not sure I heard one there with the
14 candidates having to respond in five days 'cause it's just a
15 different issue, but I would suggest we make that ten days.
16 COMMISSIONER KIMBLE: Mr. Chairman?
17 CHAIRMAN MEYER: Yes, Commissioner Kimble.
18 COMMISSIONER KIMBLE: Speaking as someone who is
19 already old and gray, I'll not try to take offense at your
20 comment on that.
21 CHAIRMAN MEYER: Well, I won't even have that
22 opportunity to go gray, so just relish that.
23 COMMISSIONER KIMBLE: I -- I think your initial
24 point was should the Chair be involved in this process at
25 all. And it just -- I just don't understand why the Chair.
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1 putting this language that we have out for public comment
2 and then we could --
3 MR. COLLINS: Sure --
4 CHAIRMAN MEYER: And -- and I think -- I'm sorry to
5 interrupt. But I think this is almost, you know, when we
6 start looking at the next rule, you know, and the Chair and
7 Executive Director are kind of running with the
8 investigation as I read this, you know, that's -- that same
9 issue gets brought in to Rule -306 as well.
10 So I -- I'm saying we should have this discussion
11 as to both rules and not have it twice regarding this issue
12 of the Chair and the Executive Director, so.
13 But go ahead.
14 MR. RICHARDS: Mr. Chairman, if I could add one
15 point, and that that is also to Commissioner Chan's point
16 earlier, I think that the language here anticipates that the
17 Chair, if the Chair was the subject of the allegation, the
18 Chair would probably recuse themselves from making any
19 decision at that point in time just as a matter of form, but
20 also 'cause that's what the rest of the rule suggests that
21 they should do probably. And so this just makes its clear
22 that, you know, in that sort of circumstances, the Executive
23 Director can also make that sort of decision and gives that
24 flexibility.
25 COMMISSIONER CHAN: Thank you.
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1 It seems like it ought to be just the Executive Director,
2 and I don't understand "the Chair or Executive Director,"
3 how we would decide who's going to do it. Why not just make
4 it the Executive Director?
5 CHAIRMAN MEYER: 'Kay. I don't feel strongly one
6 way or the other, frankly.
7 Tom, was there a reason why the Chair was included?
8 The way -- this -- the way I see this playing out,
9 if it's just the Executive Director is you get one of these
10 complaints, you're going to probably call the Chair and say,
11 "Hey, this came in, let's talk about this," and then you'd
12 make a decision.
13 But I don't feel strongly about it, so I'm open to
14 be convinced why I should or should not.
15 MR. COLLINS: Mr. Chairman, Commissioner Kimble, I
16 mean -- I mean, I don't -- it doesn't -- I think the -- the
17 only thing -- I mean I think that Chairman Meyer's right, at
18 least how we -- and all of you have been Chair, when we do
19 things that how we would do it is call you and say, "Hey,
20 you know, what do you want to do about this?"
21 Beyond that, I don't -- I don't think there's a
22 lot. I don't have any -- I'm not married to this language
23 in any serious way.
24 Bill, Natalya, I don't think we have any strong...
25 COMMISSIONER KIMBLE: Well, I'm not opposed to
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1 CHAIRMAN MEYER: Okay. Does anyone have any
2 further comments on the rule -- rules suggestions here to
3 put out to comment?
4 I'll note on -306 paragraph (D) there's a typo.
5 The second sentence, the first word needs to be capitalized
6 after; but that's simple.
7 But any other comments on these rules?
8 And then if not, I -- I assume you need a vote from
9 us, Tom, to put these out for public comment?
10 MR. COLLINS: Mr. Chairman, yes. So what I would
11 recommend by way of the record here would be, you know,
12 motion to approve the draft rules or the -- I'm sorry, the
13 amendment for public comment; and then I think to make the
14 record clear, to the extent that you want to, you know, if
15 there's any specific changes that you want to make, you
16 know, it might be helpful to try to articulate them, you
17 know, in -- in that motion if that's something people want
18 to do.
19 The advantage of doing that now is that -- is
20 just -- you know, at some -- you got to get into the
21 language at some point, and -- and if we think that's going
22 to be a thing, you know, I think that -- I -- again, I don't
23 want to press -- whatever we do is fine, I just think that,
24 you know, it's easier to -- it's easier to -- from a pure
25 paperwork perspective in terms of the Arizona administrative
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1 record, it's just easier to if you want it to be a certain
 2 way, make it that way the first time, than it is to go back
 3 in and change it once we get the ball rolling. 'Cause then
 4 we got to get into analysis and if it's substantive and all
 5 this other stuff that -- that -- you know, that we don't
 6 have to do if anybody wants it to be, for example, where it
 7 says "Chairman or Executive Director," have it just say
 8 "Executive Director" for example.
 9 That would be the kind of change where if you're
 10 comfortable with with changing that now, go ahead and do
 11 that.
 12 CHAIRMAN MEYER: And I -- I forgot I had one
 13 another question on -306 --
 14 MR. COLLINS: Yeah.
 15 CHAIRMAN MEYER: -- (E)(1). What do we mean by
 16 "voluntary remedial action"? Does that mean recusal? Do we
 17 need to -- does that mean resigning from the Commission?
 18 What is that -- I mean, what does that mean?
 19 MR. RICHARDS: I think actually, Mr. Chair, I think
 20 that that could take all of those forms.
 21 CHAIRMAN MEYER: 'Kay.
 22 MR. RICHARDS: What we're talking about there is
 23 just an expression of opinion to inform the Commissioner
 24 about whom the complaint has been made what the majority of
 25 Commissioners think they should do, would be most
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1 know, later on or a party to a proceeding were to sue and
 2 ask that the Court enforce the conflict rules, it would be
 3 strong evidence certainly in favor of that -- that sort of
 4 legal complaint.
 5 The second option is a disqualification vote, which
 6 is going to be case by case. It's going to be proceeding by
 7 proceeding, and I guess suppose ultimately the result of the
 8 Commission on saying I want every single action before the
 9 Commission that you're disqualified to be a Commissioner,
 10 but it is not a wholesale vote to, you know, remove them
 11 from office.
 12 Which I -- which I think would be a problem for the
 13 Commission. I'm not sure that the Commission's authority
 14 would extend to that. I certainly do believe it would
 15 extend to disqualifying a Commissioner from individual
 16 votes.
 17 CHAIRMAN MEYER: Okay. Well, thank you for your
 18 explanations. That answers my questions.
 19 Does any other Commissioner have any other
 20 questions? If not, I am -- does anyone want to make a
 21 motion?
 22 COMMISSIONER CHAN: Mr. Chairman?
 23 CHAIRMAN MEYER: Yes, Commissioner Chan.
 24 COMMISSIONER CHAN: Just a final comment before we
 25 make a motion. I think if I understood our conversation,
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1 appropriate thing for them to do; and I think that most
 2 likely would take the form of, you know, "we believe you
 3 should recuse yourself from X, Y, or Z decisions."
 4 But I suppose in a case where if the conflict
 5 created a problem for issues across the board, then the rest
 6 of the Commission could legitimately reasonably say "we
 7 think you should resign from one position or the other to
 8 end the conflict."
 9 CHAIRMAN MEYER: And what would weight would that
 10 decision have by the majority of the Commission?
 11 'Cause, I mean, like Tom said, taking this
 12 authority to the ultimate extreme, you know, we got five
 13 Commissioners, we got three Commissioners that don't like
 14 someone, they could find something and then vote that guy
 15 out or -- or woman out, you know. So that's just sort of
 16 the stuff we need to be thinking about.
 17 MR. RICHARDS: Mr. Chairman, the way I would read
 18 this particular provision is, is that option number one is
 19 simply in the public expression of opinion by the majority
 20 of Commissioners that this particular charge or allegation
 21 of conflict, you know, appears to be legitimate and that we
 22 believe that Commissioner X should take the following
 23 actions.
 24 That actually does not require or mandate usually
 25 that that Commissioner take those actions. However, if, you
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1 that that the main thing that we might be changing before we
 2 put this out for public comment is just in -305(B) changing
 3 the five days to ten days. I don't know that I heard a
 4 consensus about removing the Chair from the process of
 5 declining in either one of the sections.
 6 I just want to clarify.
 7 CHAIRMAN MEYER: I heard -- I heard Commissioner
 8 Kimble say that he's putting it out for public comment in
 9 the --
 10 COMMISSIONER KIMBLE: As is, yes.
 11 CHAIRMAN MEYER: -- the way it is.
 12 Okay.
 13 COMMISSIONER KIMBLE: Yes.
 14 COMMISSIONER CHAN: Oh. Did you?
 15 CHAIRMAN MEYER: Commissioner Titla, did you have
 16 any comments on this before we hopefully get a motion to
 17 vote on this?
 18 COMMISSIONER TITLA: (No audible response.)
 19 CHAIRMAN MEYER: Okay. Anyone want to make a
 20 motion?
 21 COMMISSIONER CHAN: Mr. Chairman, I would move that
 22 we approve the amendments for public comment as written.
 23 Do I need to move them in separately?
 24 COMMISSIONER KIMBLE: The ten days.
 25 CHAIRMAN MEYER: Do you want to --
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1 COMMISSIONER CHAN: Oh. I'm sorry. I
 2 misunderstood. I thought we were -- forgive me. Let me
 3 remove -- like withdraw my motion and make a new one.
 4 Tom, do I need to do these separately?
 5 MR. COLLINS: I --
 6 COMMISSIONER CHAN: Kara?
 7 MR. COLLINS: Sure.
 8 COMMISSIONER CHAN: Okay. So Mr. Chairman -- thank
 9 you and I'm sorry to put you on the spot.
 10 MR. COLLINS: No, no. I should know the answer to
 11 that.
 12 COMMISSIONER CHAN: No, no. That's okay.
 13 MR. COLLINS: I think the answer is yes.
 14 COMMISSIONER CHAN: It's probably best to be clear.
 15 MR. COLLINS: The answer is "or."
 16 COMMISSIONER CHAN: Okay. So Mr. Chairman, I'd
 17 like to make a motion that we approve -- or approve the
 18 amendment to section R2-20-305 with the only change to
 19 Subsection (B) making that ten days rather than five days.
 20 CHAIRMAN MEYER: And that it be issued for public
 21 comment, correct?
 22 COMMISSIONER CHAN: And that it be issued for
 23 public comment. Thank you, Mr. Chairman.
 24 CHAIRMAN MEYER: Okay. You're very welcome.
 25 Is there a second to that motion?
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1 COMMISSIONER KIMBLE: Aye.
 2 CHAIRMAN MEYER: Commissioner Titla.
 3 COMMISSIONER TITLA: Aye.
 4 CHAIRMAN MEYER: And Commissioner Meyer, I vote aye
 5 as well.
 6 So that motion carries 4-0.
 7 And I'm assuming it won't be a problem to correct
 8 that typo. Is that -- we don't need to have a motion on
 9 that, correct?
 10 MR. COLLINS: Yes, that's good.
 11 CHAIRMAN MEYER: Okay. So that wraps up Agenda
 12 Item V.
 13 Thank you, Mr. Richards and Ms. -- I don't want to
 14 butcher your last name, but thank you -- what was your name
 15 for the record? I want to get it right.
 16 MS. TER-GRIGORYAN: Ter-Grigoryan.
 17 CHAIRMAN MEYER: I'm sorry. What was it?
 18 MS. TER-GRIGORYAN: Ter Gri-gor-ee-an (phonetic).
 19 CHAIRMAN MEYER: All right. Thank you very much.
 20 I appreciate it.
 21 All right. So now we'll move on to Agenda Item
 22 Number VI, which is discussion and possible action of
 23 proposed meetings dates for September through December of
 24 2022.
 25 I know Paula had circulated dates. Anyone have any
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1 COMMISSIONER KIMBLE: I will second that.
 2 CHAIRMAN MEYER: All right. We have a motion and a
 3 second.
 4 All right. We're going to call the roll on the
 5 motion.
 6 I'm going to start with Commissioner Chan.
 7 COMMISSIONER CHAN: I vote aye.
 8 CHAIRMAN MEYER: Commissioner Kimble.
 9 COMMISSIONER KIMBLE: Aye.
 10 CHAIRMAN MEYER: Commissioner Titla.
 11 COMMISSIONER TITLA: Aye.
 12 CHAIRMAN MEYER: And Commissioner Meyer, I vote aye
 13 as well.
 14 So that motion carries unanimously as to -305.
 15 Is there a motion for R2-20-306?
 16 COMMISSIONER CHAN: Mr. Chairman, this is
 17 Commissioner Chan, I move that we approve the amendment to
 18 R2-20-306 for public comment as written.
 19 COMMISSIONER KIMBLE: I will second that.
 20 CHAIRMAN MEYER: 'Kay. I have a motion and a
 21 second.
 22 Again, we will call the roll on the vote here.
 23 Commissioner Chan.
 24 COMMISSIONER CHAN: I vote aye.
 25 CHAIRMAN MEYER: Commissioner Kimble.
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1 questions or comments -- comments on those dates?
 2 And I know I had put one comment in -- okay. That
 3 was taken out -- okay.
 4 Does anyone have any comments or can we have a
 5 motion to approve these meeting dates?
 6 COMMISSIONER CHAN: Mr. Chairman, I move that we
 7 approve the meeting dates.
 8 CHAIRMAN MEYER: Is there a second?
 9 COMMISSIONER KIMBLE: I second.
 10 CHAIRMAN MEYER: All right. Motion to approve
 11 meeting dates. We're going to vote.
 12 Call the roll.
 13 Commissioner Chan.
 14 COMMISSIONER CHAN: I vote aye.
 15 CHAIRMAN MEYER: Commissioner Kimble.
 16 COMMISSIONER KIMBLE: Aye.
 17 CHAIRMAN MEYER: Commissioner Titla.
 18 COMMISSIONER TITLA: Aye.
 19 CHAIRMAN MEYER: And Commissioner Meyer, I vote aye
 20 as well.
 21 We are safe and secure for our future meeting
 22 dates.
 23 On to Item Number VII, which is public comment.
 24 This is the time for consideration of comments and
 25 suggestions from the public.
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1 Action taken as a result of public comment will be
 2 limited to directing staff to study the matter or
 3 rescheduling the matter for further consideration and
 4 decision at a later date or responding to criticism.
 5 Does any member of the public wish to make comments
 6 at this time?
 7 MR. COLLINS: We do have a --
 8 CHAIRMAN MEYER: Is any --
 9 MR. COLLINS: We do have one -- we have one member
 10 of public but I don't think she needs -- she wants to
 11 comment. I don't know.
 12 That's fine. So I think we're good.
 13 CHAIRMAN MEYER: No comment.
 14 And then anyone...
 15 MR. COLLINS: You're like -- you know, it's like a
 16 standing offer.
 17 COMMISSIONER CHAN: Mr. Chairman, just to make --
 18 MS. KNOX: My name -- my name is Rivko Knox. Where
 19 do I have to go?
 20 COMMISSIONER CHAN: Oh. I'm sorry.
 21 CHAIRMAN MEYER: I had a sneaking suspicion that
 22 that was Ms. Knox.
 23 MS. KNOX: Where do I go?
 24 MS. THOMAS: To the right of Commissioner Kimble.
 25 CHAIRMAN MEYER: Good morning, Ms. Knox.
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1 continue to participate in meetings, whether it's through
 2 Zoom or in person.
 3 So thank you very much.
 4 CHAIRMAN MEYER: Thank you, Ms. Knox.
 5 Is there any -- any -- there's no other comment in
 6 -- in the room there, correct?
 7 COMMISSIONER KIMBLE: Correct.
 8 CHAIRMAN MEYER: And then anyone online? I'm not
 9 sure if there's anyone there.
 10 You may also send comments to the Commission by
 11 mail or e-mail to CCEC@azcleelections.gov.
 12 That brings us to Agenda IX -- excuse me, Agenda
 13 Item Number VIII, which is adjournment.
 14 Do we have a motion to adjourn?
 15 COMMISSIONER CHAN: Mr. Chairman, before I make the
 16 motion to adjourn, I just want to acknowledge that I think
 17 Commissioner Titla, if this was an employee position or an
 18 elected official position, I think he almost would have
 19 vested in the state retirement system by now he's been
 20 serving so long. So I just thought -- I wanted to recognize
 21 him for that that is -- you know, of all of us, he's
 22 definitely had the most perseverance.
 23 So I just wanted to thank him for still being with
 24 us, 'cause as time marches on I'm sure -- I'm sure we all
 25 feel that a little bit.
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1 MS. KNOX: I am Rivko Knox. I'm a long-time
 2 resident of the state of Arizona, a long-time voter, and
 3 I've been following the actions of the Citizens Clean
 4 Elections Commission for, I don't know, about 10 or
 5 12 years.
 6 And I just appreciate very much the commitment of
 7 all the Commissioners and of the staff. I was very -- this
 8 is the first obviously public meeting I've attended in quite
 9 a while, so it's -- I had a hard time finding the building
 10 which is why I came in late. That's beside the point,
 11 that's not a policy issue.
 12 I just did want to say, like I say, I think the
 13 professionalism of staff are just overwhelming. I continue
 14 to be massively impressed. I continue to mention Clean
 15 Elections as a source of infor- -- invaluable source of
 16 objective information that you have wherever I possibly can.
 17 And finally I was very pleased actually to see the
 18 Mary Jo Pitzl article. I actually sent her an e-mail and
 19 thanked her for highlighting the issue of the ongoing terms
 20 of all of the Commissioners, and I thank you all for
 21 unbelievable commitment and service to an organization -- or
 22 a state agency, which technically you are, that is really
 23 a -- it's such a critical component of our democratic
 24 system.
 25 And I appreciate the opportunity to speak and to
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1 And with that, I -- I would move that we adjourn
 2 this meeting.
 3 COMMISSIONER KIMBLE: I would second that.
 4 CHAIRMAN MEYER: Okay. And I -- you know, I want
 5 to say Commissioner Chan I agree. Thank you, Commissioner
 6 Titla. It's always great to -- it's great to have you. And
 7 you have me by one year, yeah, on the Commission, so.
 8 Okay. So we have the motion to adjourn. I'll call
 9 the roll.
 10 Commissioner Chan.
 11 COMMISSIONER CHAN: I vote aye.
 12 CHAIRMAN MEYER: Commissioner Kimble.
 13 COMMISSIONER KIMBLE: Aye.
 14 CHAIRMAN MEYER: Commissioner Titla.
 15 COMMISSIONER TITLA: Aye. And thank you for your
 16 comments, appreciate it.
 17 CHAIRMAN MEYER: You're welcome.
 18 And Commissioner Meyer, I vote aye.
 19 We are adjourned. Our next meeting is
 20 September 29th.
 21 Thank you.
 22 (Whereupon the meeting concludes at 11:11 a.m.).
 23
 24
 25
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C E R T I F I C A T E

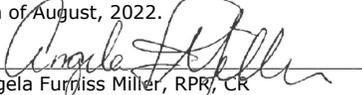
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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing proceedings were taken before me, Angela Furniss Miller, Certified Reporter No. 50127, all done to the best of my skill and ability; that the proceedings were taken down by me in shorthand and thereafter reduced to print under my direction.

I CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome thereof.

I FURTHER CERTIFY that I have complied with the requirements set forth in ACJA 7-206. Dated at Litchfield Park, Arizona, this 30th of August, 2022.



Angela Furniss Miller, RPR, CR
CERTIFIED REPORTER (AZ50127)

* * *

I CERTIFY that Miller Certified Reporting, LLC, has complied with the requirements set forth in ACJA 7-201 and 7-206. Dated at LITCHFIELD PARK, Arizona, this 30th of August, 2022.



Miller Certified Reporting, LLC
Arizona RRF No. R1058

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