

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES

IN RE: CAMPAIGN FINANCING OF YORK COUNTY CASINO
INITIATIVE

TRANSCRIPT OF PROCEEDINGS
TELEPHONIC MEETING OF THE COMMISSION ON
GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Held at Commission Office
45 Memorial Circle
Augusta, Maine 04330

OCTOBER 30, 2017

COMMISSION MEMBERS:

Margaret E. Matheson, Esquire, Chair (present in office)
Honorable Richard A. Nass (by phone)
William A. Lee, III, Esquire (by phone)
Meri N. Lowry, Esquire (by phone)
Bradford A. Pattershall, Esq. (by phone)

STAFF MEMBER:

Jonathan Wayne, Executive Director (present in office)

1 COUNSEL OF THE COMMISSION:

2 Phyllis Gardiner, Assistant Attorney General (present in
3 office)

4 OTHER PARTICIPANTS:

5 Thimi Mina, Esquire, Attorney for Bridge Capital, LLC (by
6 phone)

6 Alfred C. Frawley, IV, Esquire, Attorney for Bridge
7 Capital, LLC (by phone)

7 Bruce Merrill, Esquire, Attorney for Horseracing Jobs
8 Fairness Ballot Question Committee and Lisa Scott (by
9 phone)

8 Avery Day, Esquire, Attorney for Cheryl Timberlake (by
9 phone)

10 Drew Ketterer, Esquire, Attorney for Capital Seven (by
11 phone)

11 Andrew Ketterer, Esquire, Attorney for Capital Seven (by
12 phone)

12 Member of the Public:

13 Mal Leary, Reporter for Maine Public Radio (present in
14 office)

15

16

17

18

19

20

21

22

23

24

25

1 JONATHAN WAYNE: ... Jonathan Wayne. Meg Matheson is
2 here in the conference room along with counsel and Commission
3 employees and one member of the press. And by number of
4 procedural questions --

5 MARGARET MATHESON: Let's call the meeting to order.

6 MR. WAYNE: Okay, that's fine.

7 CHAIR MATHESON: All right.

8 MR. WAYNE: Yeah.

9 CHAIR MATHESON: This is CHAIR Matheson, and we're
10 just going to call the meeting to order, and Jonathan is going
11 to give us a little background right now.

12 MR. WAYNE: Well, I was just going to say briefly
13 that a number of procedural questions have been raised relating
14 to the scope of tomorrow's meeting and various objections. And
15 I haven't had a thorough opportunity to discuss with counsel
16 about which matters, if any, should be handled in public
17 session versus executive session, so you know, at some point we
18 should decide on the order of business.

19 CHAIR MATHESON: That's fine. As everybody knows, we
20 are limited to procedural logistical issues today, so we have a
21 -- I mean, just to get the ball rolling, we have at least the
22 issue of -- I was in a phone call with several counsel and
23 counsel here last week whether or not we want to try to
24 bifurcate this. There was a request by several parties or
25 counsel that we actually do deliberation and decision-making on

1 a different day. And I was uncomfortable to try to make that
2 decision because a bunch of us, parties to this and Commission
3 members, have articulated before that we wanted to try to do
4 this sort of as quickly as we can. So that was the initial
5 reason we went forward with this conference call.

6 Also, under discussion were several items that are --
7 either are confidential or are potentially confidential on how
8 we're going to deal with that tomorrow.

9 And then we have the latest email that came in
10 yesterday evening from Mr. Merrill. And I take it everybody
11 has had a chance to see that; is that correct?

12 RICHARD NASS: No. This is Richard. I have not seen
13 it. We've been -- we were out of power deeply.

14 CHAIR MATHESON: Okay. Well, should we take that
15 email up first, which is a request to continue the whole matter
16 to a different day, I believe?

17 PHYLLIS GARDINER: Right.

18 CHAIR MATHESON: And I guess at this point I might
19 ask Mr. Merrill to chime in and discuss his communication with
20 us today, if that's all right with everyone.

21 BRUCE MERRILL: The first thing that I'd like to add
22 is Thimi Mina had also joined in with my request and had sent
23 an email to Jonathan at 9:12 p.m. last night, and I don't know
24 how many of the Commissioners have seen that email as well.

25 CHAIR MATHESON: I have not. Meg has not.

1 MR. NASS: I have not.

2 BRADFORD PATTERSHALL: I have not.

3 MERI LOWRY: I have not.

4 MR. WAYNE: There was no -- I'd have to review the
5 email. I don't think I -- I think I was in bed by the time
6 that email was sent, and -- I think I was. Maybe I saw it this
7 morning, but regardless, I wasn't aware that he wanted me to
8 forward it to the Commissioners, so sorry, Commissioners.

9 MR. MERRILL: I believe that Thimi did want the
10 Commissioners to be aware of it, Jonathan.

11 MS. GARDINER: Can we -- this is Phyllis. Can we --
12 do any of you, other than Commissioner Nass, do any of the rest
13 of you have access to email while you're on this call such that
14 we could forward it to you from the Commission's office?

15 MS. LOWRY: Yes.

16 WILLIAM LEE: William Lee, I have access. If it's
17 not likely, maybe it could just be read to all of us.

18 MS. GARDINER: Well, that's probably the only way for
19 us to make sure that Commissioner Nass and Commissioner
20 Pattershall can see it.

21 MR. NASS: Yeah. Don't forget, Richard is going to
22 be, in less than an hour, is going to be on the road to
23 Augusta. I have a Board of Tax Appeals meeting at 12:30, so
24 I'm going to be heading in that direction, so I can read it
25 shorty, in a couple hours, so that's helpful.

1 MR. PATTERSHALL: I can read it right now if somebody
2 wants to forward it to me.

3 MS. GARDINER: Yeah. That's -- Jonathan just went to
4 his computer to see if he could do that. I don't have a
5 printout myself, so I can't --

6 MR. MERRILL: This is Bruce Merrill. I have it in
7 front of me right now if you want me to read it.

8 MR. PATTERSHALL: Sure.

9 MS. GARDINER: Okay.

10 MR. LEE: That would be fine.

11 MS. GARDINER: Do you want to go ahead, Bruce, and
12 give your --

13 CHAIR MATHESON: Sure.

14 MS. GARDINER: Bruce, do you want to speak for
15 yourself first because not everyone has seen what you wrote
16 either, and then if you want to add -- read us Thimi Mina's
17 email as well, that's fine.

18 MR. MERRILL: Should I begin?

19 DREW KETTERER: Bruce, this is Drew. Maybe you
20 should indicate what it is that you're reading and when it came
21 in.

22 MR. MERRILL: This is an email that Thimi sent out to
23 everyone last night following my email of 7:18. This one went
24 out at 9:12 p.m. last night. And, again, it was a request for
25 a postponement of tomorrow's hearing.

1 MS. GARDINER: Okay.

2 MR. MERRILL: Do you want me to read it?

3 CHAIR MATHESON: Sure.

4 MR. MERRILL: All right. "Hi, Jonathan, it's
5 Thimi. You were absolutely correct that you should not
6 take our concerns and objections personally. Both you and
7 Phyllis have been nothing but professional with all legal
8 counsel involved and acted in the best traditions of our
9 bar.

10 Leaving aside our honest differences of opinions
11 on the scope and interpretation of the Commission's
12 authorizing legislation or our objections to the contents
13 of your report, much of our concern about going forward
14 with this business on Tuesday is not of our making, your
15 making, or your Commission's. One would have to be blind
16 to deny that the Question 1 initiative has evolved into a
17 media circus.

18 What occurred over last week a sitting State
19 senator or legislator serving on a committee purporting to
20 be investigating Mr. Scott calling into an MPR program to
21 question Mr. Scott about, quote/unquote, convictions he
22 claimed to have knowledge of, but which never occurred,
23 was simply beyond the pale, and we have yet to obtain a
24 retraction to boot. In the public eye, any distinction
25 between the work of the legislature's committee and the

1 Ethics Commission has been lost. I just hate to think
2 that the machinery of good government can be used to
3 manipulate the outcome of any election.

4 Nothing that Ms. Scott or Ms. Timberlake might
5 say to you on Tuesday will add anything to the body of
6 information about money contributed to and expended by the
7 BQCs supporting Question 1. If there were any real
8 substantive omissions from public view with this point,
9 then okay, maybe the hearing goes forward of statutory
10 necessity, but that just isn't the case. All there's left
11 to be determined is whether there were violations for past
12 conduct in which what, if any, sanctions should be
13 applied.

14 We know that the parties differ on these issues,
15 and we know that there's a good possibility that this will
16 openly end up in the courts.

17 Also, please try to be understanding about the
18 difficulty of assembling responses to what were basically
19 open-ended subpoenas and our obligations to not submit
20 client's testimony under oath until we have at least
21 examined the body of documents, many of which were located
22 12 time zones away. That amounts to nothing more than a
23 lawyer's customary due diligence.

24 We agreed to a production schedule with the
25 Commission and we met it. If Ms. Scott or any of the

1 entities were intent on delaying action, believe me, they
2 could have moved to quash on grounds of overbreadth and
3 privilege or resisted service in lieu of voluntary
4 acceptance of service and appearance. Please explain that
5 to the Commissioners.

6 This is an unusual situation. The staff and its
7 legal counsel are in a difficult posture. On the one
8 hand, they have an obligation to give the Commission sound
9 legal advice which is consistent with the scope and limits
10 of its statutory authority. On the other hand, they are
11 in every sense an adversary to parties appearing before
12 the same Commission.

13 You will ultimately get to make your case if
14 there was a violation and that a penalty should be
15 imposed, and the Commission will ultimately make that call
16 in the first instance.

17 From there, the ball is in our court to pursue
18 our remedies, if any, in the courts. But all that does
19 not have to happen on the eve of an election that will be
20 irreparably tainted by addressing issues that add nothing
21 more to the body of information that the public is obliged
22 to have under the Clean Election Act.

23 Please feel free to share my two cents with the
24 Commission. This is a tough case that calls into play our
25 professional duty to see the bigger picture. Thimi R.

1 Mina, Counsel to Bridge Capital."

2 And Thimi has just joined the conference.

3 THIMI MINA: Hello, everybody.

4 CHAIR MATHESON: Good morning.

5 MR. MINA: I apologize. I had a tree fall on my
6 house.

7 MR. WAYNE: Oh, sorry.

8 MR. MINA: So, yeah, I wrote that last night to
9 Jonathan and hoping you folks could at least hear my
10 thoughts on it. Bruce has read it, so I won't repeat it.
11 This is, yeah, this is a tricky one, and I feel pretty
12 strongly given the events of last week that we ought to
13 think about the impact on the election itself through
14 needless haste to get to the endpoint on your legitimate
15 concerns.

16 So anyway, I'll leave it at that. You heard
17 what I had to say. If Jonathan has the email, maybe he
18 could forward it to you so you could see it. It's a
19 little hard to follow when somebody's reading it over the
20 phone. Thank you.

21 MR. KETTERER: This is Drew Ketterer. To the
22 extent that the email that was just read is taken by the
23 Chair to be in the form of a motion to postpone all of the
24 proceedings, Capital Seven joins in that motion.

25 MR. NASS: Madam Chair, are we open for

1 discussion now or --

2 CHAIR MATHESON: Yes.

3 MR. GARDINER: We haven't heard from Bruce
4 Merrill.

5 CHAIR MATHESON: Oh, we haven't heard from --
6 yeah, we haven't heard from Mr. Merrill yet.

7 MR. MERRILL: I believe that the Commission has
8 my email --

9 MR. WAYNE: Okay.

10 MR. MERRILL: -- but foremost -- among the
11 points that I made in there is that we had sitting member
12 of OPEGA call into a radio show where Shawn Scott and
13 Representative Luchini were being interviewed and accused
14 Mr. Scott of having convictions in the United States and
15 elsewhere, a patently false statement, and I will read
16 exactly what Legislator Rykerson said, and I quote, I am
17 on the Government Oversight Committee. Another thing we
18 found out was the number of convictions Mr. Scott has had
19 in other states and other countries. In Laos, you were
20 convicted, the country of Laos. In Massachusetts, you
21 were fined \$125,000. I have a very straightforward
22 question. I was wondering if you can list your
23 convictions in other states and other countries you had
24 against you in the last 10 years, end quote.

25 It is a patently false statement. Mr. Scott has

1 no criminal convictions of any type whatsoever in either
2 the United States or any other country.

3 I believe that Mr. Ketterer sent a letter to MPR
4 asking him to take this down off the website. I don't
5 believe that that's happened.

6 Mr. -- Legislator Rykerson has been asked to
7 retract his statement. He has refused to do it.

8 And then just to put icing on the cake, Roy
9 Lenardson, who's the political operative, the treasurer of
10 the PAC that is opposing Question 1, drove Legislator
11 Luchini to the call-in on MPR last week. And we just
12 think that at this point there is the appearance that the
13 state government is opposing Question 1 which defeats the
14 whole purpose of a citizen initiative. And for that
15 reason, there would be, at the very least, the appearance
16 of impropriety for this hearing to have to go forward
17 tomorrow on the eve of the election.

18 And that is, in essence, a summary of the email
19 that I sent to Jonathan last evening.

20 CHAIR MATHESON: Okay.

21 MR. NASS: This is Richard. I guess I'd like to
22 know for we're going to discuss this now or wait for an
23 executive session to discuss this particular request.

24 CHAIR MATHESON: Okay.

25 MS. GARDINER: Well, I think -- this is Phyllis.

1 You can --

2 MR. LEE: Somebody needs to speak up.

3 MS. GARDINER: Sorry. This is Phyllis Gardiner.

4 I think it's a motion being made for the public --

5 MR. LEE: Really speak up, Phyllis.

6 MS. GARDINER: You still can't hear me?

7 MR. LEE: Now I hear you.

8 MS. GARDINER: Okay. In response to
9 Commissioner Nass' question, you know, we're in public
10 session now. You would have to, you know, if you feel
11 there are particular grounds such as consulting with
12 counsel, you can make a motion to go into executive
13 session for that. If you have questions for the counsel
14 representing the respondents here, though, I think you
15 would want to ask those now.

16 MR. LEE: I have two questions. I'll defer to
17 anybody that has other questions.

18 MR. NASS: I have an opinion. I'm ready to
19 share that. I just want to make sure we don't need to be
20 in executive session.

21 CHAIR MATHESON: Well, I think as long as, you
22 know, if we start to get into, I don't know, sort of
23 strategy or that kind of --

24 MS. GARDINER: Well, if you, you know, if you
25 wish to -- yes, if you were going to be discussing

1 information, you're not -- this part of your -- this
2 motion that's been made by Mr. Merrill and Mr. Mina on
3 behalf of their client and joined by Capital Seven as well
4 does not require you to get into discussion of material
5 that's been claimed confidential. That would be one
6 reason to go into executive session.

7 As you know, another ground for going into
8 executive session is to consult with your counsel
9 concerning your legal rights and duties or pending or
10 contemplating litigation. So if at some point that's what
11 you want to discuss --

12 CHAIR MATHESON: Then we we'll do that.

13 MS. GARDINER: -- a legitimate subject of a
14 motion going into executive session, but I heard
15 Commissioner Lee said that he had a question, which I
16 assumed he meant a question for one of the attorneys
17 representing one of the respondents here.

18 MR. LEE: Yes.

19 CHAIR MATHESON: Yes.

20 MS. GARDINER: You don't want to be -- you're
21 not going to be wanting to ask those other than in public
22 session, so --

23 CHAIR MATHESON: Right.

24 MS. LOWRY: So this is Meri speaking. I'm
25 comfortable hearing Commissioner Lee's two questions, and

1 I also would like us to keep an eye on the clock so that
2 Commissioner Nass --

3 CHAIR MATHESON: Yes. That's a --

4 MS. LOWRY: -- has every opportunity to
5 participate in discussion --

6 CHAIR MATHESON: Great.

7 MR. LOWRY: -- before he's called away. Do you
8 leave at 9:30 or --

9 MR. NASS: 9:15, if my phone lasts that long,
10 Meri. This is a TracPhone, so I'm limited by power which
11 I don't have.

12 CHAIR MATHESON: 10:15.

13 MR. NASS: 10:15, yes.

14 CHAIR MATHESON: Thank you. Commissioner Lee,
15 you have the floor.

16 MR. LEE: Yes. First question which would be to
17 either Thimi or Bruce is what did Shawn Scott say in
18 response to the question posed by Representative Rykerson
19 about these alleged criminal convictions?

20 MR. MERRILL: He indicated that they were false.

21 And by the way, Senator Katz has come out and
22 stated that they have no information to suggest that Mr.
23 Scott has any convictions, and yet Rykerson still will not
24 retract his statement.

25 MR. LEE: Of course, the Ethics Commission is an

1 independent state agency --

2 MR. MERRILL: But, but --

3 MR. LEE: -- not under the direct control of the
4 Legislature. Indirect perhaps.

5 My second question is when you talked about if
6 we went forward with our hearing tomorrow that, you know,
7 there would appear to be some impropriety. I guess I
8 would turn that around and ask wouldn't there seem to be
9 an impropriety if we were to postpone a scheduled hearing
10 at the request of parties appearing before the Commission
11 to some date after the election? Wouldn't that appear to
12 be (indiscernible-background noise) that was being
13 influenced by parties coming before us?

14 MR. MINA: This is Thimi, Commissioner Lee. I
15 don't think so. I think the greater risk is the fact that
16 right now in the public eye, the machinery of state
17 government seems to be monolith. It's one entity. And
18 there's been repeated -- unfortunately, this OPEGA
19 government oversight investigation blurred distinction
20 between who's working and what. And I'm just trying to
21 make a point of focusing on the Maine Clean Election Act,
22 which requires accurate reporting of the contributions and
23 expenditures in elections.

24 Unfortunately, with the events of the --
25 particularly the events of the last week, this has evolved

1 into a media circus, and I made the greater risk right now
2 to have a testimonial hearing tomorrow, okay, that will be
3 heavily covered by the media for the purpose of
4 ascertaining facts which will add nothing to the body of
5 information that is already out there for the public to
6 see concerning the amount of contributions and the
7 expenditures relating to the Question 1 initiative.
8 Therefore, the question before you is do you want to get
9 embroiled in that kind of a controversy or do you simply
10 want to say what I've suggested, which is the information
11 known now to the Commission concerning the expenditures
12 and the contributions to the campaign are available for
13 public consumption.

14 We're going to continue this matter to a point
15 in the very near future in order to ascertain whether
16 there was previously, previously, a violation of the Maine
17 Clean Election Act and to what extent, if any, a sanction
18 should be applied.

19 And, Bruce, I think you may have indicated this,
20 that you'd be willing to accept on behalf of Ms. Scott a
21 subpoena for her appearance; is that correct?

22 MR. MERRILL: I said that in my email to
23 Jonathan last night, that's correct.

24 MR. MINA: Well, I think on balance, the risk of
25 improperly influencing an election outweighs the risk that

1 there will be some image of collusion between the
2 Commission and any entity.

3 CHAIR MATHESON: This is Commissioner --

4 MR. NASS: I just want to go on the record at
5 this point that I absolutely disagree with this. This is
6 Richard.

7 CHAIR MATHESON: Thank you, Richard.

8 MS. LOWRY: Do you want to say more?

9 MR. NASS: Yeah. I mean, there's -- in the
10 record that I just spent four days looking at, there's at
11 least one indication that this group of people is not
12 above doing exactly what's happening now, and that's
13 coming in at the last minute, 9:00 last night or 7:00 last
14 night to answer these motions. They've had plenty of time
15 to make them.

16 CHAIR MATHESON: Right. Commissioner --

17 MR. NASS: This is absolutely --

18 CHAIR MATHESON: Commissioner, this is Meg. I'm
19 sorry. I think we maybe want to talk about that with
20 Phyllis as counsel before we --

21 MS. GARDINER: You don't want to be talking
22 about anything, any facts in the record at this -- on
23 these procedural issues.

24 MR. NASS: Okay. All right.

25 CHAIR MATHESON: Yeah, gotcha.

1 MR. NASS: Before my phone gives out here, I
2 wanted to weigh in.

3 CHAIR MATHESON: And thank you for that. I just
4 think, you know, there are different perspectives on any
5 issue in life, and one of the perspectives that I think
6 this commission adheres to, and not just because it's a
7 legal requirement, but because it's also kind of the way
8 we do things in Maine, and that is to uphold this sense of
9 transparency in proceedings.

10 And while this case is different than other
11 cases we've had because they're all different, there's
12 also this overriding theme of ensuring that voters know
13 what's going on and, you know, who -- if like-minded
14 people want to, you know, decide an issue also looking at
15 who, you know, who's supporting it, who's not supporting
16 it, what, you know, what is going on, because this is a
17 lot of money, and we are duty-bound to determine whether
18 or not that transparency is there, was there, was there a
19 violation that occurred. And it's fairly cut and dry. I
20 know it doesn't feel like it, but that's sort of where I
21 am.

22 And so I understand your point of view talking
23 about maybe media circus, but you need to understand our
24 point of view as what we're duty-bound to do.

25 MR. MINA: And I don't disagree with you,

1 Commissioner, at all about your duties. My point is that
2 your duty is to comply with your authorizing statute,
3 which lists only a limited area of substance --

4 CHAIR MATHESON: That's right.

5 MR. MINA: -- and that is whether the money has
6 all been reported and whether it's been reported
7 accurately.

8 CHAIR MATHESON: Right. And if it is not, you
9 find a violation.

10 MR. MINA: All the information you have now is
11 all that the public is entitled to see. There are limits
12 to the statute. And what I'm -- I guess at this point the
13 risk is you're going beyond your statutory authority to
14 get into questions about how the Scotts dealt with the
15 media or how the Scotts, you know, came to decide they
16 wanted to do this, that's an irrelevancy. We're talking
17 about violations which if they occurred, occurred in the
18 past. So the basic question, why do we need to have a
19 hearing, a fact-finding tomorrow?

20 CHAIR MATHESON: Well --

21 MR. MINA: You know what? That's -- if I'm, you
22 know, if you guys have already made up your minds on that,
23 you know, there's no sense in me beating a dead horse, but
24 this is not going to play out well. This is going to
25 become a content-based outcome, and that is something that

1 the Maine Ethics Commission should go nowhere near.

2 MS. GARDINER: But --

3 MR. NASS: I object. I think we had an
4 obligation to the voters. We had information to get this
5 out before election day. To now sit on it until after the
6 election is --

7 I understand, you know, the proponents' view on
8 this. They don't want this out there before the voters.
9 I think we're obliged to.

10 MR. MINA: What is "this"? That is "this?"

11 MR. NASS: The contents of the report, the
12 contents of the report.

13 MR. MINA: The report is confidential. The
14 report, by statute, is confidential. It's an intra-agency
15 document. You can't possibly be thinking you're going to
16 take testimony tomorrow and issue a decision without some
17 reflection.

18 MR. NASS: Absolutely. I mean, this is -- we've
19 been doing this for months. We've been dealing with this
20 for months. It's not like it happened yesterday.

21 MR. MINA: (Indiscernible-both speaking) July
22 1st.

23 CHAIR MATHESON: All right.

24 MR. MINA: And I accepted service of a subpoena
25 with agreement with your staff, moved heaven and earth to

1 deliver Bridge Capital's records from seven times zones
2 away by September 15th. I have been working nonstop on
3 this case. It's not like we've delayed it. If we wanted
4 to delay it, we could have interposed a petition with the
5 Maine Superior Court to quash the subpoena, and in my
6 professional judgment it would have been severely cut
7 back. We gave the Commission more documents than we could
8 have possibly been expected to produce in accordance with
9 its mandate.

10 MR. NASS: Yeah, but you had -- you're really
11 trying to play to the voters, not to the court. The
12 voters
13 -- if you had gone to court and tried to squash this
14 thing --

15 CHAIR MATHESON: Okay.

16 MR. NASS: -- or quash this thing, whatever the
17 legal term is, that would have been a big signal to the
18 voters, and we wanted -- at least I want to conclude this
19 thing tomorrow.

20 CHAIR MATHESON: All right. So let's -- you
21 know what?

22 MR. MERRILL: I just want to clear up one
23 misunderstanding that you're operating under. We didn't
24 wait until late last night to send the email.

25 There have been a flurry of emails all weekend

1 that's been going back and forth among all counsel and the
2 Commission staff, and these were just the latest ones
3 clarifying what we were requesting, so we didn't wait
4 until the 11th hour. We've actually been communicating
5 with Commission staff all weekend on these procedural
6 issues.

7 MR. LEE: Point of order to the Chair.

8 CHAIR MATHESON: Yes.

9 MR. LEE: Thank you. Okay. I don't think we
10 need to be -- it's so difficult to be arguing back and
11 forth. None of us can see each other --

12 CHAIR MATHESON: I know. It's terrible.

13 MR. LEE: -- you'd like to speak up and you end
14 up interrupting someone.

15 I understand the concern being raised by Mr.
16 Mina and Mr. Merrill regarding concerns that the hearing
17 tomorrow could be beyond the scope of our authority. I
18 have no doubt that all five commissioners will conduct
19 themselves within the scope of their authority tomorrow.
20 And if we start to stray from the limits of our authority,
21 go beyond it, I have no doubt that our legal counsel, Ms.
22 Gardiner, will point that out to us and we will promptly
23 bring ourselves back in within the somewhat narrow scope
24 of authority we have been given.

25 I am -- I'm just going to say right now, I am

1 not inclined to continue this hearing. There may be a
2 separate issue of how far do we get tomorrow and how late
3 we can stay and whether we will actually complete the
4 entire process, but I think we have an obligation to
5 fulfill our duty by meeting tomorrow. And if -- and the
6 arguments can be made on both sides, and the press will
7 report what's being said, what's being argued. And it
8 will involve the issues that are before us. We are not
9 going to get into Shawn Scott and whatever else might
10 concern Shawn Scott. We have particular issues before us,
11 and I have absolute confidence that we will stay within
12 those bounds.

13 CHAIR MATHESON: Well --

14 MS. LOWRY: You know, in this --

15 CHAIR MATHESON: That's Commissioner Lowry?

16 MS. LOWRY: Yes. In this moment of quiet, can
17 we just restate the three items on our agenda for this
18 call?

19 CHAIR MATHESON: I, unfortunately, didn't write
20 everything down. It's whether -- Phyllis, can you help --

21 MS. GARDINER: Sure. I'll take a stab at it.
22 This is Phyllis. I believe that -- so this first agenda
23 item is whether to, you know, consideration of the
24 parties' request to postpone the entire proceeding
25 scheduled for tomorrow until after the election.

1 The second item I think would be if you do not
2 grant that, then the second item would be a request --
3 there are two different requests to bifurcate, one request
4 from Mr. Merrill, which would be have only testimony and
5 argument go forward tomorrow, and any deliberations or
6 findings or conclusions by the Commission would take place
7 at a later date after the election.

8 MS. LOWRY: Yes.

9 MS. GARDINER: Avery Day has requested that the
10 proceedings tomorrow be limited just to testimony and
11 defer argument as well as any deliberations or actions by
12 the Commission until a later day.

13 So that's what I had written down as item two
14 for you today.

15 MS. LOWRY: Yes.

16 MS. GARDINER: And then you have items 3 and 4
17 are, at least as I was thinking about it, you've got
18 requests that certain exhibits remain --

19 CHAIR MATHESON: Confidential.

20 MS. GARDINER: -- is treated as confidential
21 investigative working papers and remain confidential --

22 MS. LOWRY: Yes.

23 MS. GARDINER: -- during the course of any
24 proceedings tomorrow or at a later date.

25 And then lastly, the request by the respondents

1 by the argument that the staff report should remain
2 confidential as an investigative working paper as well.

3 MS. LOWRY: Yes, thank you.

4 MS. GARDINER: And do others agree that those
5 are the four items that we have, procedural matters for
6 today?

7 MR. KETTERER: I think Phyllis is accurate on
8 that.

9 MR. MERRILL: That's correct, Phyllis.

10 CHAIR MATHESON: Yeah.

11 MS. GARDINER: Okay.

12 MS. LOWRY: Thank you. And so we've started
13 with the issue of are we choosing today to postpone
14 tomorrow entirely? We've heard Commissioners Nass and Lee
15 say they're not in favor of that. We've also heard that
16 we're confident that we, with Phyllis' guidance, we're
17 going to be able to stay cleanly within the scope of our
18 authority and I'm going to add my voice to say that I do
19 think we are going to stay within the scope of our
20 authority and we should go forward tomorrow.

21 So before addressing any bifurcation and
22 deciding --

23 CHAIR MATHESON: Yeah.

24 MS. LOWRY: -- how much to cover tomorrow, what
25 our goal is, I'd say let's be -- let's go forward

1 tomorrow.

2 CHAIR MATHESON: Okay. And I also think -- say
3 it again.

4 MS. GARDINER: I just -- I'm just asking if
5 Commissioner Pattershall had any questions --

6 CHAIR MATHESON: Oh, okay.

7 MR. PATTERSHALL: Yeah. I actually listened to
8 an audio repeat of the debate between Representative
9 Luchini and Shawn Scott, and I thought Shawn Scott's point
10 was actually very well taken where he said, "Look, the
11 citizen referendum is open to anyone who wants to take
12 advantage of the process provided you do it legally. And
13 by all accounts, I think he has legally put this question
14 on the ballot.

15 The other side of that coin is the other laws
16 that apply to citizen initiatives are compliance with the
17 financing -- the finance reporting law, and I think we
18 have a duty to look at that aspect of the law to make sure
19 he complies with that. And I'm not in favor of postponing
20 this.

21 And I also wanted to know, is there any counsel
22 on this phone call that actually represents Mr. Scott?

23 MR. MINA: I represent Bridge Capital. Bruce
24 represents Lisa Scott. Drew represents Capital Seven.

25 CHAIR MATHESON: Capital Seven.

1 MR. PATTERSHALL: But it is correct that nobody
2 does represent Mr. Scott?

3 MR. MINA: Well, no.

4 MR. PATTERSHALL: Okay, thank you.

5 MR. MERRILL: That's correct.

6 CHAIR MATHESON: So.

7 MR. NASS: I also have a question. Didn't he
8 send some subpoenas to Mr. Scott in the hopes that he
9 appears in the state a couple weeks ago or a week ago?
10 What happened to the subpoenas (indiscernible) or
11 information about him?

12 MS. GARDINER: There were no subpoenas issued to
13 Shawn Scott, Commissioner Nass. The subpoenas were to the
14 entities, were to Lisa Scott and her -- Lisa Scott, Cheryl
15 Timberlake, Bridge Capital, and Capital Seven, all of whom
16 responded.

17 MR. NASS: Thank you.

18 CHAIR MATHESON: So --

19 MS. LOWRY: I don't think Regent Able responded.
20 Did we send a subpoena to them?

21 CHAIR MATHESON: We couldn't.

22 MS. GARDINER: We couldn't serve it. Right.
23 You're right. You're correct, Commissioner Lowry.

24 CHAIR MATHESON: So are we correct in calling a
25 vote on the issue of to continue tomorrow or would folks

1 like an opportunity to consult with counsel before we take
2 that vote?

3 MS. LOWRY: I'm comfortable with a vote.

4 MR. NASS: Me, too. This is Richard.

5 MS. LOWRY: Yeah. Leaving the door open to
6 Phyllis to say, "Gee, we should talk in executive
7 session."

8 MS. GARDINER: It's really your call.

9 CHAIR MATHESON: I'm going to chime in and day I
10 think if this vote -- if we call this vote and it's done,
11 then we're done. And if it's not, then the next issue is
12 bifurcate, so --

13 MS. LOWRY: Yes.

14 CHAIR MATHESON: -- so if we get to the
15 bifurcate issue, if we get there --

16 MS. LOWRY: Yes.

17 CHAIR MATHESON: -- I do think I would like to
18 have a chance to consult with counsel, so that's my sense
19 of that. So let me --

20 MS. LOWRY: Do you want to consult with counsel
21 before discussing bifurcation or before this vote?

22 CHAIR MATHESON: I think it depends on what
23 happens with this vote. If we get to bifurcation, I will
24 want to discuss with counsel.

25 MS. LOWRY: Thank you.

1 CHAIR MATHESON: So do I have a motion that we -
2 - I don't know what the motion even is. There's no
3 motion.

4 MR. NASS: The motion is we should have the
5 hearing as scheduled tomorrow at the time appointed.

6 CHAIR MATHESON: Well, isn't that --

7 MR. LEE: Point of order if I may?

8 CHAIR MATHESON: Uh-huh, yes, Bill.

9 MR. LEE: Procedurally, I think we have -- one
10 of the parties has made a --

11 MS. GARDINER: Right.

12 CHAIR MATHESON: Has made a -- has moved --

13 MR. LEE: -- verbal motion, or I guess you could
14 say a written motion because we have it by email, they
15 have made a motion to us --

16 CHAIR MATHESON: Okay.

17 MR. LEE: -- but we actually have to vote on
18 their motion. This isn't a matter of our making a motion
19 to something that we wish to do like in making a decision.

20 MS. GARDINER: Correct. I think you're correct.

21 MR. LEE: So that's -- there's no motion or
22 second required. They have a motion to us, a motion to
23 continue --

24 CHAIR MATHESON: Right.

25 MR. LEE: -- and it is up to us to vote that

1 motion up or down.

2 CHAIR MATHESON: All right. So --

3 MR. LEE: A simple "All in favor" or "All
4 opposed."

5 CHAIR MATHESON: So all in favor of the motion
6 to continue the case? All those in favor of the motion to
7 continue the case?

8 MR. NASS: Meaning, this is Richard, meaning
9 that we are going to have our meeting as scheduled
10 tomorrow; is that correct?

11 CHAIR MATHESON: No. A yes vote means we would
12 grant the continuance and not meet on this issue.

13 MR. NASS: Okay.

14 CHAIR MATHESON: So all those in favor?

15 (No audible response)

16 CHAIR MATHESON: Hearing none, all those
17 opposed? Meg, opposed.

18 MS. LOWRY: Meri opposed.

19 MR. LEE: Bill opposed.

20 MR. NASS: Richard opposed.

21 MR. PATTERHSALL: Brad opposed.

22 CHAIR MATHESON: All right, thank you. Okay.

23 That being said, pursuant to Title 1 of the Maine Revised
24 Statutes Section 405, Subsection 4, I move that we go into
25 executive session pursuant to Title 1, Section 405,

1 Subsection 6, paragraph E, and Chapter 1, Section 5,
2 Subsection 2, of the Commission rules to consult with
3 Commission's counsel concerning the legal rights and
4 duties of the Commission, and pursuant to Title 1, Section
5 405, Subsection 6, paragraph F, to discuss information
6 contained in records made, maintained, or received by the
7 Commission which are confidential pursuant to Title 21,
8 Section 1003, Subsection 3-A.

9 MR. NASS: Is Phyllis comfortable with us going
10 into executive session on a phone call?

11 MR. LEE: I'll second the motion for discussion
12 purposes.

13 MR. NASS: Okay.

14 MS. GARDINER: It's certainly possible to do
15 that on a phone call, yes.

16 MR. LEE: How?

17 CHAIR MATHESON: Well, will the attorneys have
18 to go off and come back in?

19 MS. GARDINER: Well, I think there's two --
20 there were -- you combined two things in your motion --

21 CHAIR MATHESON: Oh.

22 MS. GARDINER: -- to confer with counsel --

23 CHAIR MATHESON: Oh, oh.

24 MS. GARDINER: If we're going to address
25 confidential exhibits and the motions that relate to that,

1 we need the counsel or the respondents need to be on the
2 phone. If you're going to request that you confer just
3 with me as your counsel on procedural issues, your legal
4 rights and duties on some of these procedural issues, then
5 we would need to get off the call and get back on I guess
6 is the only way we can do it.

7 CHAIR MATHESON: Yeah.

8 MS. GARDINER: Looking at staff here in case
9 they have some --

10 CHAIR MATHESON: Magic wand.

11 MS. GARDINER: -- insight into how to do that.

12 So it may be a little bit on what your -- and I don't know
13 what --

14 CHAIR MATHESON: Well, we could --

15 MS. MINA: Hey, Phyllis.

16 MS. GARDINER: Yes.

17 MR. MINA: -- Phyllis?

18 MS. GARDINER: Yes.

19 MR. MINA: This is Thimi.

20 MS. GARDINER: Yes.

21 MR. MINA: Why don't we just get off. You can
22 speak with the Commissioners and there will be -- unless
23 you can figure out a muting system here and then we can
24 just get back on when you're done.

25 MS. GARDINER: Well --

1 MR. MINA: Whatever is easier for you.

2 MS. GARDINER: Oh, I see what you mean, just
3 resume the call.

4 CHAIR MATHESON: You know --

5 MR. MINA: Yeah, I mean, you got all the
6 Commissioners on the conference call, right?

7 CHAIR MATHESON: Yeah, but --

8 MS. GARDINER: Yes.

9 MR. MINA: If we get off it, can you call back
10 or can we call back in or something?

11 MS. GARDINER: We could -- probably the best
12 thing we can do is send you an email and say "You call
13 back in," right?

14 MR. MINA: Yeah.

15 MS. GARDINER: It's a conference call.

16 MR. MERRILL: Do we make sure the media gets off
17 as well, Phyllis?

18 MS. GARDINER: Yes, absolutely.

19 CHAIR MATHESON: The other thing we could do
20 first is, yeah, we could just hear -- we could just talk
21 about -- everybody has seen -- oh, we could talk about the
22 confidentiality of certain items that are -- that were
23 objected to with counsel first, and then we can get off
24 this call, get on another call with just the Commissioners
25 and do --

1 MS. GARDINER: Right. Yes, we could do that.
2 Did you all understand that suggestion, that we -- rather
3 than have the Commission try to decide each of the items
4 on the agenda here --

5 MR. MINA: Right, right.

6 MS. GARDINER: -- go into closed session, but
7 hear you all out on the confidentiality issues and then we
8 go into executive session to address any legal issues and
9 get back -- then we would get back on for any action the
10 Commission is going to take because they would take a
11 vote.

12 CHAIR MATHESON: And I think we have, I mean, is
13 there a way to just end the call and then have
14 Commissioners call back in?

15 MS. GARDINER: They can --

16 MS. MINA: Phyllis, we'll do whatever is easiest
17 for you folks. We appreciate you doing this this morning.
18 I know everybody's on the phone. Whatever you want to do
19 is fine with me and Bruce and Drew.

20 MS. GARDINER: Right.

21 MR. MINA: You know, maybe some of this
22 confidentiality stuff can get pretty technical. If you
23 want, we can address that in the morning at the order of
24 first business, tough to do it on the phone. You can't
25 see our faces. We can't see your faces if somebody says

1 -- if you folks have -- one thing you should decide, I
2 think, is where are you going to do the whole shooting
3 match in one day, which -- and you know, obviously, you
4 know how we feel about that, but as far as the technical
5 issues on what's confidential and why, maybe that's best
6 addressed in the morning. Your call.

7 MS. LOWRY: Well -

8 CHAIR MATHESON: Commissioner Lowry.

9 MS. LOWRY: This is Meri speaking. I'm sorry,
10 did I just jump in too soon?

11 CHAIR MATHESON: No, it's all right.

12 MR. MINA: No, no, you're good.

13 MS. LOWRY: So if staff could let us know, is it
14 easy to establish a conference call line with a different
15 code number and have that code number be sent to each of
16 the Commissioners for when we do go into executive
17 session? If that takes just a minute to put in place,
18 that's the way I would like to go for executive session.

19 CHAIR MATHESON: Yeah. I think that's a good
20 idea.

21 MR. NASS: This is Richard. I can't get email.
22 I have no power here, so I'm on a battery-operated cell
23 phone.

24 CHAIR MATHESON: We can call him.

25 MS. LOWRY: Got it.

1 MS. GARDINER: We can call --

2 CHAIR MATHESON: Do we have his cell phone
3 number? Oh, don't tell us.

4 MR. NASS: I'd be happy to share that with you.

5 MR. WAYNE: Yeah, I believe we have it.

6 CHAIR MATHESON: Okay.

7 MS. LOWRY: And, Brad, are you able to get an
8 email with a code?

9 MR. PATTERSHALL: Yes, I am.

10 MS. LOWRY: Okay. I also would like to first
11 discuss the bifurcation and save confidentiality
12 discussion, which I think might go quite quickly,
13 actually, just by a suggestion that it's going to be
14 technical in nature.

15 CHAIR MATHESON: So do that tomorrow?

16 MS. LOWRY: No. I did not mean to imply that we
17 do it tomorrow. I'm just talking about the order in which
18 we take things today. I think tomorrow is -- however it
19 is formed, tomorrow is going to be too busy for that, and
20 if we can spend the time and reach decision on
21 confidentiality today, we should do that.

22 CHAIR MATHESON: All right. So here's my
23 suggestion. Let's vote on the pending motion and we will
24 take up the confidentiality issues right now.

25 MS. GARDINER: With counsel on the phone.

1 CHAIR MATHESON: With counsel on the phone. And
2 then we'll shut down that phone call and have another
3 phone call to consult with Ms. Gardiner. How does that
4 sound?

5 MS. LOWRY: I'd rather do bifurcation first with
6 Richard with us --

7 CHAIR MATHESON: Oh, okay.

8 MS. LOWRY: -- as Phyllis has advised and --

9 CHAIR MATHESON: Okay. So we'll have to set up
10 two calls.

11 MS. LOWRY: -- and get his input.

12 MS. GARDINER: Right. I think the simplest
13 would be if we do it that way, so that would mean revising
14 the motion probably so that it was just to go into
15 executive session to consult with counsel --

16 CHAIR MATHESON: Okay.

17 MS. GARDINER: -- on the Commissioners' rights
18 and duties with respect to this request to bifurcate. And
19 if counsel for the parties could get off the phone at that
20 point, and as soon as we conclude that discussion and the
21 Commission goes out of executive session, we would ask you
22 to call back in for a closed session to talk about the
23 confidentiality issues to the extent --

24 MS. LOWRY: How many counsel do we have outside
25 of Commission's counsel on the phone right now?

1 MS. GARDINER: One, two, four --

2 MR. MERRILL: Bruce Merrill on behalf of Lisa
3 Scott. Thimi Mina on behalf of Bridge Capital. Al
4 Frawley on behalf of Bridge Capital. Drew Ketterer on
5 behalf of Capital Seven, and Avery Day on behalf of Cheryl
6 Timberlake.

7 MS. GARDINER: Yeah.

8 MS. LOWRY: And are Fred and Thimi in a
9 conference room together or are they on separate phone
10 lines within their law firm?

11 MR. FRAWLEY: No, we're on separate phone lines.
12 I can't leave my house. The road is closed, so --

13 MS. LOWRY: Okay. So my preference if we go
14 forward in the way that has been suggested is that one
15 person announces he's getting off. I want to count the
16 beeps as people leave the call, and we're looking for five
17 beeps.

18 MR. MINA: Okay. We're going to --

19 (MULTIPLE SPEAKERS)

20 CHAIR MATHESON: I thought we were going to set
21 up a new --

22 MS. LOWRY: I'm sorry, I didn't hear you, Thimi.

23 MR. MINA: I'm going to hang up now, so you're
24 going to hear a beep. And, of course, the media is going
25 to be getting off as well, so you need a sixth beep, I

1 take it.

2 MS. LOWRY: No. I think that's simple. They're
3 in the room and they'll be asked to leave the room in
4 Augusta.

5 MR. MINA: Oh. No issue there then. Okay.

6 MS. GARDINER: Correct.

7 MR. MERRILL: And I'm with Thimi in his
8 conference room, so there will be one beep for the two of
9 us.

10 MR. MINA: And I've got to give myself about an
11 hour, so if I don't get back right away, Al Frawley from
12 my office will be on the line with Bruce.

13 MS. LOWRY: Thank you.

14 MR. MINA: Okay, goodbye, everybody.

15 MS. GARDINER: Goodbye.

16 MR. KETTERER: This is Drew Ketterer and I'm
17 going to get off the line next, and I'll wait to get the
18 email telling me what the new call-in number is. My law
19 partner, Andrew, will get off after that and he's in
20 Florida and I'm in Maine. And I'm leaving the call.

21 MR. A. KETTERER: This is Andrew, I'm now
22 hanging up as well.

23 MS. LOWRY: Thank you.

24 MR. FRAWLEY: This is Al Frawley. I'll hang up
25 now as well. Thanks.

1 MS. LOWRY: Thank you.

2 CHAIR MATHESON: I didn't hear Thimi. I didn't
3 hear Thimi's --

4 MR. DAY: This is Avery Day, I'll sign off.

5 MS. LOWRY: Thank you. So speaking for myself,
6 I didn't hear a beep when --

7 CHAIR MATHESON: Thimi.

8 MS. LOWRY: -- Thimi and --

9 CHAIR MATHESON: I didn't either.

10 MS. LOWRY: And Bruce left the call.

11 CHAIR MATHESON: I didn't either, you know. I
12 hate telephone conferencing things. I really do.

13 MS. LOWRY: Yeah. Yeah.

14 CHAIR MATHESON: So what do we do? Yeah.

15 MR. LEARY: You haven't voted to go into
16 executive session yet.

17 CHAIR MATHESON: Oh.

18 MS. LOWRY: Yeah.

19 MS. GARDINER: Right.

20 CHAIR MATHESON: Okay. So let's take the vote,
21 Commissioners.

22 MS. GARDINER: You need to clarify the motion, I
23 think.

24 CHAIR MATHESON: Okay. The motion is --

25 MS. GARDINER: Just on (indiscernible).

1 CHAIR MATHESON: Right. Sorry. Pursuant to
2 Title 1, Section 405(4), I move we go into executive
3 session pursuant to Title 1, Section 405(6)(3) and Chapter
4 1, Section 5, Subsection 2, of the Commission rules to
5 consult with Commission's counsel concerning legal rights
6 and duties of the Commission.

7 MR. LEE: Second.

8 CHAIR MATHESON: All those in favor of the
9 pending motion? Meg says --

10 MR. NASS: This is Richard, aye, aye.

11 CHAIR MATHESON: Meg says yes. Meri.

12 MR. PATTERSHALL: Aye.

13 MS. LOWRY: Meri, aye.

14 CHAIR MATHESON: Brad.

15 MR. LEE: Bill, aye.

16 CHAIR MATHESON: Bill, good. Okay, that's
17 everybody. Thank you.

18 (AUDIO 1 ENDS)

19 (AUDIO 2 BEGINS)

20 MS. GARDINER: All other Commissioners are on
21 the phone or here.

22 CHAIR MATHESON: All right, so thank you,
23 everybody, for being patient. It's been, you know,
24 interesting with people out of power and finding phones or
25 sitting in the dark, so thank you all first off.

1 Let's talk, if everybody is on board, let's talk
2 about the bifurcation issue. And I wanted to give folks
3 an opportunity to talk a little bit about that, if you
4 would, if you care to, either Bruce or Thimi or Avery.

5 MR. MINA: It's Thimi, Chair Matheson. I think
6 we've laid out the points in our written submissions --

7 CHAIR MATHESON: Okay.

8 MR. MINA: -- so I don't want to beat a dead
9 horse. I'll just say this, bifurcation now would mean
10 simply taking testimony tomorrow and if you want to hear
11 argument on that testimony, and adjourn the issue of
12 whether a violation has occurred and sanctioned for to a
13 later meeting. The latter, the existence of a violation
14 and what, if any, sanctions should be imposed is dealing
15 with a violation, primarily a late reporting violating
16 that occurred and was known to the Commission in April.
17 So the question before you is what and if -- is it in the
18 public interest or is it compelling in the public interest
19 to issue a finding on those two points on the eve of the
20 election for conduct that occurred in some instances as
21 long as two years ago and has been known to the public
22 since at least our filings, the filings in April. There's
23 no more information that the petitioners can present on
24 the amount of contributions or expenditures, no more,
25 which we contend is the limit of their obligations under

1 the Clean Elections Act.

2 You know, whether and to what extent they
3 cooperated with the media, there's so much extraneous
4 information in the report is utterly beyond the scope of
5 the authorizing statute, utterly beyond it. And I would
6 just say that I think at this point asking for bifurcation
7 on merely whether a sanction should be imposed and whether
8 a violation occurred is not asking for much. It's the
9 least we can do to try to keep some balance in this
10 situation that has been driven by the opponents of the
11 initiative.

12 Now as I told you at the outset, I don't care
13 about, you know, the contents of this one way or the other
14 and neither should you. This should not be about the
15 content or the messenger itself.

16 CHAIR MATHESON: Absolutely.

17 MR. MINA: You've got to (indiscernible) on
18 message with that regardless of how you vote, and I think
19 I see that, you know, the die is cast with respect to some
20 of you. No matter how we vote, in order to maintain the,
21 you know, the public perception that the machinery of the
22 government can be influenced by lobbyists and legislators
23 with an agenda, you've got to make it clear that, you
24 know, I don't know how you do it now that the hearing is
25 going forward tomorrow, but at the minimum, bifurcation

1 would seem to be a prudent step. Bruce.

2 MR. MERRILL: I would join in that. As Thimi
3 said, the one and only thing that's left to decide is
4 whether and to what extent a reporting violation occurred
5 and whether a sanction is appropriate under these
6 circumstances. There's no reason why that has to be
7 determined before the election. It has no impact on the
8 public's right to know or what the public already knows
9 about this initiative. Is Drew on?

10 MR. KETTERER: Yes, I am. I think the written
11 submissions fairly state the position on behalf of Capital
12 Seven. I joined in those written submissions and I waive
13 further argument.

14 MR. DAY: This is Avery Day. I guess I, you
15 know, would come at it a little bit differently. I think
16 the Commission received a lot of paper. I'm, obviously,
17 guilty in contributing to that, a number of exhibits, but
18 you know, the staff report was lengthy. It was all
19 documented with exhibits, you know. We responded. The
20 parties responded at the end of last week. There was a
21 lot of information there.

22 I expect that the testimony will take some time.
23 You know, we're hearing from one witness for the very
24 first time, and so there's a lot of information there, you
25 know. I think my submission was pretty heavy on facts. I

1 think we'll receive a lot of fact information tomorrow.
2 And Bruce's submission, you know, certainly was heavy on
3 the law and was quite complex in some of those arguments.

4 And I'm not trying to insult the diligence or
5 anything of the Commission members. I just think there's
6 a lot there, and it takes a lot of time to process that
7 and act on that accordingly. I just -- I think it would
8 be fair to give a little bit more time to digest all of
9 this.

10 MS. GARDINER: May I ask a question?

11 CHAIR MATHESON: Yes, Phyllis.

12 MS. GARDINER: This is Phyllis. I just had a
13 question for you, Avery, because you were -- a distinction
14 between your request and Bruce Merrill's that the others
15 have joined in is that you were suggesting that tomorrow
16 be limited to taking evidence in the form of exhibits and
17 testimony and not even necessarily getting to the point of
18 argument. And I think maybe the others are suggesting the
19 argument would be appropriate, but just not Commission
20 deliberations. So do you have any -- does any of you have
21 any comment about the two different places where you would
22 propose the Commission draw the line in this before --

23 MR. DAY: I'm fully aware where I was coming
24 from, so I appreciate the question, but there is a bit of
25 a difference there in the request.

1 You know, I think for me we have a witness that
2 we're going to hear from for the first time tomorrow in
3 terms of Lisa and, obviously, what she may say may roll
4 into what the final argument is, and perhaps I'm revealing
5 that I'm not as fast on my feet as the other folks on this
6 phone call, but you know, I was primarily looking for a
7 little bit of time to sort of process what the evidence is
8 that is given tomorrow --

9 CHAIR MATHESON: Okay.

10 MR. DAY: -- and how to incorporate that.

11 MR. MINA: Yeah. I don't disagree with Avery,
12 Phyllis, in terms of the amount of information. I'd like
13 to believe that this is not going to be pre-judged and
14 that the decision hasn't been made. And I think it will
15 go a long way, at least -- and not only in the eyes of the
16 various interested parties, but in the public's perception
17 that the Commission received evidence, heard argument, and
18 circled back before they made a decision. I can't think
19 of any judge that would rule from the bench on an issue of
20 this sort, so I do think the volume of information
21 supports the argument for bifurcation in its own right.

22 CHAIR MATHESON: Uh-huh, okay. Thank you.

23 MR. MERRILL: This is Bruce Merrill. My reason
24 for wanting to sum up or argue the first day is the trial
25 lawyer in me. I like to be able to talk to the

1 Commissioners while the testimony is fresh in their mind
2 rather than coming back at a later date to make the
3 argument.

4 MS. GARDINER: Okay.

5 MR. MERRILL: But I certainly appreciate Avery's
6 concern.

7 MR. MINA: And what happens if you folks -- what
8 happens, Phyllis, if the Commissioners come back here and
9 say, "Gee, we'd like to have some more information on
10 this. We'd like to have some post-hearing briefing"?

11 MS. GARDINER: Yeah.

12 MR. MINA: You know, I guess you could kind of
13 play it by ear, take the testimony, see how far we go,
14 hear from us if you can bear it anymore, and then make a
15 decision as to, you know, whether you want to hear more
16 argument or have briefing.

17 MS. GARDINER: Yeah.

18 MR. MINA: I think the big issue is whether
19 you're going to turn around tomorrow and try to wrap this
20 up in one day if it's all done before the election for no
21 reason. That's my point.

22 MS. GARDINER: Yeah.

23 MR. MERRILL: And as Avery pointed out, you've
24 got a 62-page report. You've got submissions by Avery,
25 myself, and others. And then you've got additional

1 filings in addition to that and 60-some-odd exhibits to
2 consider. Then you've got the exhibits that both Avery
3 and I submitted in addition to that, and it's a lot to
4 process. And I agree with Thimi, I can't imagine any
5 judge would rule from the bench. They would say "Thank
6 you, Counsel, I'll take it under advisement."

7 MR. KETTERER: This is Drew Ketterer on behalf
8 of Capital Seven. Yeah, it does seem to me there is quite
9 a volume of information to be not only received, but
10 understood and digested. And I think it's important from
11 the perspective of the Commission itself to make sure that
12 the members of the public don't feel like there's a rush
13 to judgment because we're under some artificial deadline.

14 You know, I think we're having a hearing on
15 October 31st because when you count backwards from when
16 the subpoenas were issued and when service was made, that
17 happens to be where we end up. It might have been better
18 for everybody if we ended up at the end of November
19 instead of the end of October, but that's the way it is.
20 But having said that, there is a lot of information to
21 digest.

22 I share the view that if we're going to receive
23 evidence tomorrow, I think that the arguments of counsel
24 should be the same day because, otherwise, it's not fresh
25 in the minds of the Commissioners later on when you're

1 listening to the argument. I think the evidence and the
2 arguments could be the same day, but you know, I say this
3 respectfully as a former Commission member, I mean, you
4 may just run out of daylight. It's a simple matter of
5 taking the evidence and hearing counsel and then going
6 into a deliberations stage. It might appear to members of
7 the public that if it gets to be 6 or 7 or 8:00 at night
8 that it's sort of no matter what, we are going to decide
9 this today. And there may be a public perception created
10 that we impact the election. I know that's the last thing
11 that the five Commissioners would want nor that the staff
12 would want, so those are my thoughts on behalf of Capital
13 Seven.

14 CHAIR MATHESON: Thank you. Well, this is
15 Commissioner Matheson, and --

16 MR. LEE: Speak up.

17 CHAIR MATHESON: Boy, nobody ever tells me that.
18 This is Commissioner Matheson, and I have to say that I
19 kind of like the idea that Mr. Merrill has proposed, I
20 believe, and Mr. Day, that maybe it's a -- let's see where
21 we get tomorrow. I mean, we have -- we just may be worn
22 out as well. And I do -- I mean, I understand and take to
23 heart that, you know, we haven't heard everything and we
24 haven't seen everything and we do need to do that. And
25 that's why we are -- that's why we're having today's

1 meeting so we can, hopefully, clear up some of the issues
2 before tomorrow comes.

3 So I guess I would be in favor of sort of maybe
4 addressing this later on tomorrow, you know. You know,
5 actually see where we are, what has --

6 MR. MINA: You're talking about whether we do
7 argument or whether we don't do argument because really
8 the issue, I think, is whether you're going to bifurcate,
9 at a minimum, a determination and the imposition of a
10 sanction tomorrow.

11 And then the further question, which I think you
12 are speaking to, Commissioner Matheson, is the question of
13 whether we take testimony and then hear argument.
14 Certainly, we're going to take testimony. You're going to
15 hear new testimony tomorrow. You're going to have
16 questions and the lawyers are going to have questions, so
17 the question is -- and we get to the end of it and we make
18 our arguments, hopefully succinctly, then the question is
19 whether you go any further than that in one day.

20 CHAIR MATHESON: Well -- and I think it depends
21 on what we hear and what the arguments are. And we may,
22 you know, like you may feel this is all fresh in our minds
23 now and we can make a decision or, whoa, wait a minute,
24 now we may have more questions and may continue the
25 matter. I mean, I think every option is a potential

1 option, so that's just sort of how I feel about that. I
2 think we don't know.

3 MR. MINA: So you would propose not making a
4 decision on bifurcation until tomorrow?

5 CHAIR MATHESON: Yes, I guess that's what -- I
6 would either propose that or make the decision and allow
7 you to raise it again tomorrow.

8 MR. MINA: Okay.

9 CHAIR MATHESON: I think it's -- I almost think
10 it's premature right now, but --

11 MR. MINA: Okay. All right. Well, you know,
12 you folks are, you know, I know you're volunteers and I
13 know you're here this morning kind of an ad hoc basis and,
14 you know, there's a point which further argument on it
15 doesn't do any good. And speaking for Bridge Capital, my
16 client, I'm ready to submit on the record, have you vote,
17 and let's move on. Let's get to it. I want to get ready
18 for tomorrow, and I know Bruce does, and he put a good
19 presentation on.

20 CHAIR MATHESON: Okay, very good. Other
21 Commissioners?

22 MS. LOWRY: Just one comment. This is Meri
23 Lowry speaking. So as we get ready to vote on the issue
24 of bifurcation, I would still like to allow time on this
25 phone call to discuss the specific request for

1 confidentiality associated with certain exhibits to the
2 report.

3 CHAIR MATHESON: Yes. And what we'll do there
4 is we need to go back into executive session because we're
5 not in executive session right now, and we will be to
6 discuss the confidentiality stuff. We've got everybody on
7 the line, though, so yay, don't hang up.

8 MS. GARDINER: Right, right, right. Yeah.

9 MR. LEE: This is Bill Lee. I agree with what
10 the Chair has suggested, which is quite simply we'll see
11 how far we get tomorrow. I would not want to vote to
12 absolutely deny the ability to have it bifurcated, and I
13 would not vote to absolutely say that it is going to be
14 bifurcated. I want to see how far we get and how we feel
15 based on the evidence that is presented tomorrow. And if
16 we need to take a formal vote on the position, we can do
17 that or, with the permission of the attorneys, we just are
18 leaving that issue open. And if that's what we're doing,
19 then everybody needs to come prepared tomorrow with the
20 idea that we might get to the end and be prepared for
21 that. On the other hand, we may get to a certain point
22 and say this is as far as we can go today or we need to
23 hear from somebody else or we need to have something
24 briefed or whatever --

25 CHAIR MATHESON: Right.

1 MR. LEE: -- (indiscernible) that we might get
2 to the end.

3 CHAIR MATHESON: Yeah.

4 MR. LEE: Is that the sense of the rest of the
5 Commissioners?

6 CHAIR MATHESON: It certainly is mine. Brad?

7 MR. PATTERSHALL: This is Brad. Yeah, I -- yes,
8 I agree. It's my -- my focus is really narrow. I think
9 that counsel has really outlined what we're looking at and
10 it's whether or not there are certain reporting
11 requirements complied with. And I'm not interested in
12 getting into arguments that the politicians can do.

13 (Indiscernible)

14 CHAIR MATHESON: No, that's correct. I concur.

15 MS. LOWRY: I'm also -- this is Meri Lowry
16 speaking. I'm in agreement that we should decide tomorrow
17 on the bifurcation issue.

18 MR. MINA: Phyllis, speaking for the petitioner,
19 I think -- at least two of them here, I won't speak for
20 you, Drew, I would -- we don't want to waive any
21 objections, obviously, because we think bifurcation of
22 this decision may become an issue, the timing of it --

23 MS. GARDINER: Yeah.

24 CHAIR MATHESON: Yeah.

25 MR. MINA: -- may become an issue if there's a

1 court challenge. But I wouldn't object to simply tabling
2 that determination to tomorrow --

3 CHAIR MATHESON: Perfect.

4 MR. MINA: -- so that we don't have to belabor
5 this today.

6 MS. GARDINER: Right.

7 MR. MINA: Everything the Commissioners are
8 saying about, you know, it sounds reasonable. The problem
9 isn't on the Commission's making. It's the political
10 environment that we're in.

11 MS. GARDINER: Right.

12 MR. MINA: And I think -- was that Commissioner
13 Pattershall who just spoke?

14 CHAIR MATHESON: Yes.

15 MR. MINA: I mean, that really goes to the nub
16 of the issue. I mean, are going to be here to do the
17 bidding of the opponents of an initiative, you know,
18 unwittingly by allowing the dialogue to go far beyond the
19 scope or the extent of your authorization? And I'm
20 satisfied that you're going to do your best tomorrow not
21 to let that happen. So I'll shut up. Phyllis, why don't
22 you do the procedural thing and we can move on.

23 MS. GARDINER: So I think that what's clear is
24 that the Commission is going to just --

25 CHAIR MATHESON: We'll deal with that.

1 MS. GARDINER: -- carry this over, and should we
2 actually make it a -- I don't think you need to make it a
3 motion to table because I think that you're going to be
4 going through the hearing -- there's not going to be a
5 renewed motion to bifurcate at the outset of tomorrow's
6 hearing, but there might be a renewed request to stop the
7 proceedings after evidence and argument. Is that a fair
8 understanding of what you all just said?

9 CHAIR MATHESON: I think so.

10 MS. GARDINER: Okay. So --

11 CHAIR MATHESON: Shall we go into
12 executive --

13 MS. GARDINER: So in order to discuss the
14 objections to confidentiality of the exhibits, we can't,
15 obviously, disclose things that are alleged to be
16 confidential, so --

17 CHAIR MATHESON: So I would move that we go into
18 executive session pursuant to Title 1, Section 405,
19 Subsection 6, Paragraph F, to discuss information
20 contained in records made, maintained, or received by the
21 Commission which are confidential pursuant to Title 21-A,
22 Section 1003, Subsection 3(a). Do I have a second from a
23 commissioner?

24 MR. LEE: Second.

25 CHAIR MATHESON: Any discussion on that motion?

1 I heard something else going on. Okay. All those in
2 favor? Meri?

3 MS. LOWRY: Aye.

4 CHAIR MATHESON: Brad?

5 MR. PATTERSHALL: Aye.

6 CHAIR MATHESON: Bill?

7 MR. LEE: Aye.

8 CHAIR MATHESON: Meg, I.

9 MS. GARDINER: Okay.

10 CHAIR MATHESON: All right.

11

12 (Whereupon the above-entitled proceedings were
13 concluded this date.)

14

15

16

17 ATTEST:

18 I hereby certify that the foregoing is a true
19 transcript of a digital recording of a hearing held in
20 this case.

21

Gloria A. Veilleux, Transcriber

22



23

24

Alley & Morrisette Reporting Service

25