

ELECTIONS COMMISSION

REVISED

Meeting Minutes
January 17, 2012

ROLL CALL

PRESENT: Chair Smith, Commission Members Edgeworth, Louie and Pierre Dixon

ABSENT: Vice-Chair Cosgrove

STAFF: Senior Deputy City Attorney Lisa Herrick, City Clerk Dennis Hawkins, Evaluator Michael Moye, and Sr. Deputy City Clerk Nora Pimentel

ORDER OF BUSINESS

I. Call to Order

The members of the San Jose Elections Commission convened at 5:04p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

II. Hearings on Complaint

- A. Hearing on the complaint filed on December 19, 2011 by Johnny Khamis alleging that Leslie Reynolds and the Silicon Valley Association of Republican Women violated San José Municipal Code Campaign Ordinance: Soliciting/Receiving Contributions outside of Campaign Contribution Period.

Documents Filed: (1) Memorandum with attachments from Hanson Bridgett LLP to San Jose Elections Commission dated January 11, 2012 regarding a Citizen Complaint alleging potential violations of the Campaign Ordinance: Soliciting/Receiving Contributions Outside of Campaign Contribution Period. (2) Memorandum from Hanson Bridgett LLP to San Jose Elections Commission dated January 13, 2012 regarding a Notice of Errata to Report on Citizen Complaint alleging potential violations of the Campaign Ordinance: Soliciting/Receiving Contributions Outside of Campaign Contribution Period. (3) Transcript of Hearing dated January 17, 2012, Reported by Noelia Espinola, CSR, License Number 8060. Advantage Reporting Services, No. 41408 Pages 1 through 116.

Chair Smith, summarized hearing procedures and opened the public hearing. Evaluator Mike Moye summarized the Independent Evaluator's Report and Recommendations. Testimony was presented by Leslie Reynolds, Dr. Vincent Matthews, Jan Nedde, Johnny Khamis and Raymond Rodriguez. (See transcript for complete testimony)

The Commission deliberated.

Action: Upon motion by Commissioner Edgeworth, seconded by Commissioner Pierre Dixon, the Commission unanimously finds that based upon a preponderance of the evidence from the entire record of the proceedings that a violation has occurred in that SVARW solicited contributions for Reynolds prior to December 9, 2011 in violation of the Municipal Code. Vote 4-0-1 (Vice-Chair Cosgrove Absent)

Action: Upon motion by Commissioner Edgeworth, seconded by Commissioner Louie, the Commission unanimously finds that within the context of this complaint there is sufficient evidence to establish that no violation occurred and that Ms. Reynolds did not solicit contributions prior to December 9, 2011. Vote 4-0-1 (Vice-Chair Cosgrove Absent)

Action: Upon motion by Commissioner Louie, seconded by Commissioner Pierre Dixon, the Commission unanimously finds that within the context of this complaint there is sufficient evidence to establish that no violation occurred and that Ms. Reynolds did not receive contributions prior to December 9, 2011. Vote 4-0-1 (Vice-Chair Cosgrove Absent)

Action: Upon motion by Commissioner Pierre Dixon, seconded by Commissioner Louie, the Commission unanimously finds that within the context of this complaint there is sufficient evidence to establish that no violation occurred and that Ms. Reynolds receipt of contributions solicited by SVARW in violation of the Municipal Code was inadvertent and without knowledge of an impropriety. Vote 4-0-1 (Vice-Chair Cosgrove Absent)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Action: Upon motion by Commissioner Pierre Dixon, seconded by Commissioner Louie, the Commission decided to issue a public statement about the violation. Vote 4-0-1 (Vice-Chair Cosgrove Absent)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Action: Upon motion by Commissioner Pierre Dixon, seconded by Commissioner Edgeworth, the Commission directed the City Attorney to draft a resolution of the Commissions findings and penalties made and the Commission authorizes the Chair to approve and sign the resolution. Vote 4-0-1 (Vice-Chair Cosgrove Absent)

III. Public Comment

Jan Nedde and Johnny Khamis provided additional comments relative to the Complaint (see transcript for complete testimony).

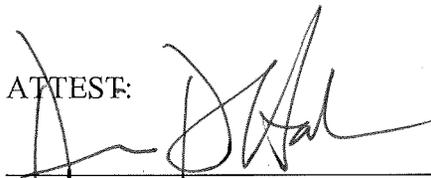
IV. Adjournment

The meeting was adjourned at approximately 7:11 p.m.



MICHAEL SMITH, CHAIR

ATTEST:



DENNIS D. HAWKINS, CMC
CITY CLERK and SECRETARY TO THE COMMISSION

Attachment: Transcript of Hearing dated January 17, 2012, Reported by Noelia Espinola, CSR, License Number 8060. Advantage Reporting Services

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Taken On January 17, 2012

SAN JOSE ELECTIONS COMMISSION
SPECIAL MEETING

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CONDENSED TRANSCRIPT

Advantage Reporting

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Services, LLC

1083 Lincoln Ave.
San Jose, CA 95125
Phone 408-920-0222
Fax 408-920-0188

SAN JOSE ELECTIONS
COMMISSION
SPECIAL MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Date: Tuesday, January 17, 2012
Time: 5:02 p.m.
Location: San Jose City Hall
200 E. Santa Clara Street
City Hall Wing - Room W262
San Jose, CA 95113
Reported By: Noelia Espinola, CSR
License Number #8060

#41408

Advantage *ARS* Reporting
Services, LLC

1083 Lincoln Avenue, San Jose, California 95125, Telephone (408) 920-0222, Fax (408) 920-0188

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<p>SAN JOSE ELECTIONS COMMISSION SPECIAL MEETING</p> <p>REPORTER'S TRANSCRIPT OF PROCEEDINGS</p> <p>Date: Tuesday, January 17, 2012</p> <p>Time: 5:02 p.m.</p> <p>Location: San Jose City Hall 200 E. Santa Clara Street City Hall Wing - Room W262 San Jose, CA 95113</p> <p>Reported By: Noelia Espinola, CSR License Number #8060</p> <p>#41408</p>	<p style="text-align: right;">Page 3</p> <p>1 2 INDEX OF WITNESSES 3 Page 4 LESLIE REYNOLDS 29 5 VINCENT MATTHEWS 40 6 JAN NEDDE 42 7 JOHNNY KHAMIS 48 8 RAYMOND RODRIGUEZ 58 9 JAN NEDDE (recalled) 64 10 11 --o0o-- 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: center;">Page 2</p> <p>1 2 APPEARANCES 3 San Jose Elections MICHAEL SMITH, Chair 4 Commission: LEON LOUIE 5 ROLANDA PIERRE DIXON 6 LINDA EDGEWORTH 7 8 Staff: LISA HERRICK, 9 Senior Deputy City Attorney 10 DENNIS HAWKINS, 11 City Clerk 12 13 The Reporter: ADVANTAGE REPORTING SERVICES 14 BY: NOELIA ESPINOLA, 15 CSR #8060 16 1083 Lincoln Avenue 17 San Jose, CA 95125 18 (408) 920-0222 19 20 --o0o-- 21 22 23 24 25</p>	<p style="text-align: center;">Page 4</p> <p>1 PROCEEDINGS 2 CHAIRMAN SMITH: I'd like to call this 3 special meeting of the City of San Jose Elections 4 Commission to order. 5 It is Tuesday, January 17, 2012. This 6 meeting is being held in Room W-262 of the San Jose 7 City Hall, and the meeting is being electronically 8 recorded. We also have a court reporter with us 9 tonight to compile a transcript of the hearing. 10 At this time I'd like the City Clerk to call 11 the roll of the Commission, please. 12 MR. HAWKINS: Chair Smith. 13 CHAIRMAN SMITH: Here. 14 MR. HAWKINS: Vice Chair Cosgrove. Absent. 15 Commissioner Louie. 16 COMMISSIONER LOUIE: Here. 17 MR. HAWKINS: Commissioner Pierre Dixon. 18 COMMISSIONER PIERRE DIXON: Present. 19 MR. HAWKINS: Commissioner Edgeworth. 20 COMMISSIONER EDGEWORTH: Here. 21 MR. HAWKINS: Mr. Chairman, you have a 22 quorum. 23 CHAIRMAN SMITH: Thank you. 24 I'd also like all City Staff and 25 representatives of Hanson Bridgett, the Commission's</p>

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1 Independent Evaluator/Investigator, to identify
 2 themselves for the record.
 3 MR. HAWKINS: Dennis Hawkins, City Clerk.
 4 MS. HERRICK: Lisa Herrick, City Attorney's
 5 office.
 6 MR. MOYE: And Mike Moyer, Hanson Bridgett.
 7 CHAIRMAN SMITH: Thank you.
 8 Okay. And at this point I'd entertain a
 9 motion to adopt tonight's agenda, as published.
 10 COMMISSIONER PIERRE DIXON: So moved.
 11 COMMISSIONER EDGEWORTH: How about a --
 12 CHAIRMAN SMITH: All in favor?
 13 (All Commissioners responded Aye.)
 14 CHAIRMAN SMITH: Any opposed?
 15 (No response.)
 16 CHAIRMAN SMITH: Okay. So the agenda is
 17 adopted.
 18 The purpose of this meeting is for the
 19 Commission to conduct a hearing on a complaint filed by
 20 Johnny -- Khamis or Khamis (pronunciation)?
 21 MR. KHAMIS: Johnny.
 22 CHAIRMAN SMITH: Khamis?
 23 MR. KHAMIS: Uh-huh.
 24 CHAIRMAN SMITH: All right. -- alleging that
 25 Leslie Reynolds, a candidate for City Council

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1 District 10, and the Silicon Valley Association of
 2 Republican Women, otherwise known as SVARW, violated
 3 San Jose Municipal Code Section 12.06.290.
 4 Specifically, the allegation is that Ms. Reynolds and
 5 SVARW did commence and conduct fundraising activities
 6 in support of Ms. Reynolds' campaign outside of the
 7 City's 180-day campaign fundraising period which began
 8 on December 9, 2011, for the June 5th, 2012, municipal
 9 election. The hearing is open to the public.
 10 Witnesses may be excluded at the discretion of the
 11 Commission.
 12 At this time I would like to have the --
 13 Mr. Khamis, the complainant; Ms. Reynolds and
 14 representatives from SVARW, who are the respondents,
 15 identify themselves for the record, please.
 16 MR. KHAMIS: Johnny Khamis.
 17 CHAIRMAN SMITH: The complainant. And
 18 repre- --
 19 MS. REYNOLDS: Leslie Reynolds.
 20 CHAIRMAN SMITH: All right. And the
 21 representative --
 22 MS. NEDDE: Jan Nedde, president of the
 23 SVARW.
 24 CHAIRMAN SMITH: Thank you. Any other from
 25 SVARW? Okay.

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1 MS. REYNOLDS: Excuse me. I did bring two
 2 other people. Is this the appropriate time to
 3 identify?
 4 CHAIRMAN SMITH: Sure.
 5 MS. REYNOLDS: My superintendent, Vincent
 6 Matthews -- Dr. Vincent Matthews; and my treasurer,
 7 Julia Rosenburg.
 8 MR. KHAMIS: Thank you. I also brought a --
 9 the witness, Ray Rodriguez.
 10 CHAIRMAN SMITH: Okay. Thank you.
 11 I would like to briefly go over the process
 12 for tonight's hearing. First, on November 30th, 2010,
 13 the City Council adopted Resolution 75640, which
 14 establishes the Commission's regulations and procedures
 15 pertaining to investigations and hearings. All parties
 16 to the proceedings have been provided copies of this
 17 resolution. The regulation and procedures have been
 18 adopted in order to ensure the fair, just and timely
 19 resolution of complaints before the Commission.
 20 All complaints are to be filed with the City
 21 Clerk, who acts as secretary to the Commission. Upon
 22 receipt of a complaint, the City Clerk notifies and
 23 provides a copy of the complaint to the Independent
 24 Evaluator/Investigator. In this matter, this was done
 25 on December 19th, 2011, the date that Mr. Khamis filed

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1 his complaint. The City Clerk also notifies the
 2 Commission members that a complaint has been filed but
 3 does not provide a copy of the complaint to the
 4 Commission.
 5 Upon receipt of the complaint, the
 6 Evaluator/Investigator notifies the respondent of the
 7 allegations and provides the respondent with a complete
 8 copy of the complaint, unless the
 9 Investigator/Evaluator determines that a delay is
 10 necessary so as to not compromise the investigation.
 11 In this case, the Evaluator did notify the respondents
 12 on December 22nd, 2011.
 13 The Evaluator/Investigator reviews every
 14 complaint to determine whether sufficient cause exists
 15 to conduct a preliminary investigation. Sufficient --
 16 sufficient cause shall exist when a complaint
 17 identifies specific facts which, if proven, would be a
 18 violation of the Municipal Code. If sufficient cause
 19 is found by the Evaluator/Investigator, it will conduct
 20 an investigation. The investigation must include an
 21 interview with the respondent and may also include an
 22 interview with the complainant and any witnesses, as
 23 well as a review of documents or other evidence. When
 24 concluded, the Evaluator/Investigator shall prepare a
 25 written report and recommendation. The report shall

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<p style="text-align: center;">Page 9</p> <p>1 include a summary of law and evidence gathered during 2 the investigation, including any exculpatory and 3 mitigating information. The Evaluator/Investigator may 4 consider all relevant facts and evidence, including 5 hearsay evidence. The report shall state whether the 6 Evaluator/Investigator concludes that Respondent did or 7 did not violate City law. Recommendations may include 8 actions to be taken by the Commission or further 9 investigation be conducted by the 10 Evaluator/Investigator. 11 The report and recommendations were submitted 12 by Hanson Bridgett on January 11, 2012, and copies were 13 provided to the complainant, respondents, 14 Commissioners, and posted to the web site with the 15 agenda for tonight's special Commission meeting. Under 16 the regulations and procedures, the respondent may 17 submit a written response to the report and 18 recommendations. The response may contain legal 19 arguments, a summary of evidence and any mitigating or 20 exculpatory information. The respondent must deliver 21 the response and eight copies to the City Clerk 22 24 hours in advance of the Commission hearing, if 23 possible. The respondent may appear before the 24 Commission personally or be represented by counsel or 25 any other person.</p>	<p style="text-align: center;">Page 11</p> <p>1 The use of subpoena powers may be used as a last resort 2 after good faith efforts to acquire the relevant 3 information have failed and upon a finding that the 4 information or testimony is essential for a 5 determination on the matter. 6 The complainant is to be treated like any 7 other witness in providing evidence. Any interested 8 person can submit a brief or written argument 24 hours 9 before the Commission convenes to hear the complaint, 10 if possible. The brief or written argument must be 11 simultaneously provided to the respondents. 12 Okay. At this time we do not have a brief or 13 written argument from the complainant. Do you have 14 anything written to submit at this time? 15 MR. KHAMIS: No, but I have a verbal. 16 CHAIRMAN SMITH: Okay. That's fine. 17 And then under the procedures, as chair, I am 18 free to consult with the Evaluator and the City 19 Attorney on procedural matters and, in addition, I may 20 also discuss procedural matters ex parte with the 21 respondent. And I did not have any such discussion 22 with respondents. 23 The Commission procedures allow for the 24 Independent Evaluator/Investigator to present the 25 report. At this time I will recognize Mike Moye from</p>
<p style="text-align: center;">Page 10</p> <p>1 At this time we do not have a written 2 response from the respondents. Do you have anything 3 written to provide at this time? Anything in writing? 4 MS. REYNOLDS: I have something in writing, 5 but I was going to read it. 6 CHAIRMAN SMITH: That's fine. You can do 7 that. 8 MS. REYNOLDS: I can submit it to you then. 9 CHAIRMAN SMITH: We -- you can do it as a -- 10 as a verbal statement. 11 MS. REYNOLDS: Okay. I also have a verbal 12 statement. 13 CHAIRMAN SMITH: Okay. That's fine. Yes? 14 MR. RODRIGUEZ: My name is Mr. Rodriguez. 15 I'd like to have a verbal statement as well. 16 CHAIRMAN SMITH: Okay. We'll do that. 17 MR. RODRIGUEZ: As a witness. 18 CHAIRMAN SMITH: Okay. The formal rules of 19 evidence do not apply to the hearing, but all testimony 20 shall be under oath or affirmation. Commission members 21 may ask questions of witnesses or the 22 Evaluator/Investigator when recognized by the chair. 23 The chair of the Commission may compel the testimony of 24 witnesses and may compel the production of relevant 25 documents to the Evaluator/Investigator by subpoena.</p>	<p style="text-align: center;">Page 12</p> <p>1 the Hanson Bridgett law firm, to present the report. 2 MR. MOYE: Okay. Thank you, Mr. Chair. 3 As indicated, the complaint alleged a 4 violation of a Municipal Code Section 12.06.290, which 5 establishes a campaign contribution period for local 6 elections. And in this instance the campaign 7 contribution period established by the regulation or 8 the statute began December 9th, 2011. And under the 9 provisions of Section 2.90 [sic], individuals -- 10 persons and committees are not permitted to solicit or 11 to accept campaign contributions prior to the start of 12 the campaign contribution period. 13 In this instance, on -- on or about 14 October 10th of 2011, the Silicon Valley Association of 15 Republican Women sent out a notice to their membership 16 inviting them to attend a Christmas Patriot Party on 17 December 10th, 2011. And in this notice or invitation 18 to their membership, they indicated that the admission 19 to the event would be "a \$25 or more donation per 20 person, to the candidate of your choice." They 21 indicated that the people attending could "pick one of 22 the declared candidates for the Republican nomination 23 for President or Leslie Reynolds, our endorsed 24 candidate for San Jose City Council." This invitation 25 to the membership of the SVARW provided for an e-mail</p>

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1 RSVP to Jan Soule, who is the director of on-line
 2 communications for the organization. But the
 3 invitation itself did not provide any mechanism for
 4 actually submitting any other information or actual
 5 contributions at that time.

6 The invitation to the membership was repeated
 7 in subsequent invitations that went out on -- or
 8 subsequent invitation which went out on October 24th,
 9 which was essentially the same format, provided the
 10 same information and offered the same manner of
 11 response as the October 10 notice to the membership. A
 12 further invitation was also sent out to the membership,
 13 again by e-mail. This notice went out to the
 14 membership on November 17th of 2011. There was also a
 15 newsletter published by the organization on or about
 16 that same date, both of which contained information
 17 about the Patriot Party.

18 And in these communications to the
 19 membership, there was a link by which members could
 20 complete or would find a registration form. The
 21 registration form set forth information regarding the
 22 party and a procedure for submitting contributions, as
 23 had been indicated in the two earlier invitations. And
 24 that registration form is attached to the complaint as
 25 Attachment Number 1.

1 The language of Attachment Number 1, the
 2 registration form, indicates that contributions could
 3 be made to one of several candidates, including
 4 Ms. Reynolds, who was running for City Council. The
 5 registration form states that "to comply with campaign
 6 finance law, we ask for your cooperation in following
 7 these five steps. Your name badge will be waiting for
 8 you when you arrive at the party." And then, as laid
 9 out in the registration form, the candidates [sic] are
 10 instructed to date their checks December 10th, 2011.
 11 Quote: This is the date that the donation will
 12 actually be made, end quote. It identifies the
 13 candidates to whom the contribution checks may be made
 14 out to.

15 There is then, under Sections -- or Steps 3
 16 and 4, information which is required with respect to
 17 providing campaign contributions in terms of a
 18 certification that the person is eligible to make a
 19 campaign contribution and then the required donor
 20 information -- name, occupation, address -- street
 21 address, including city and state.

22 Step 5 asked that the completed form be sent,
 23 along with the check, to Jan Soule at an address in San
 24 Jose and then provides for questions to be answered if,
 25 in fact, there are questions.

1 And so this registration form was available
 2 on or about November 16th, communicated to the members
 3 along with the e-mail of November 17th. And then there
 4 was a subsequent e-mail notification, also attaching
 5 the registration form, on December 3rd of 2010.

6 The event itself was held on December 10th,
 7 which was a Saturday, the day after the campaign
 8 contribution period had started. Prior to the event,
 9 the SVARW had received ten registration forms and
 10 contribution checks. They noted the date that they had
 11 received those checks, all of which were received
 12 between November 22nd and December 9th. At the event
 13 there were a number -- there were 13 individuals who
 14 submitted campaign contribution checks to the Reynolds
 15 campaign.

16 At the event -- end of the event, Ms. Soule
 17 provided all of the checks that had been received by
 18 the organization and registration forms to the
 19 treasurer for the Leslie Reynolds campaign -- the
 20 campaign contribution checks themselves, the
 21 registration forms containing the donor information.
 22 And all of this was provided in an envelope which
 23 indicated what the total amount of the contributions
 24 were.

25 There was some subsequent interaction between

1 the Reynolds campaign and SVARW to clarify the exact
 2 amount of the contributions. At the time the
 3 information or the campaign contribution checks and the
 4 donor forms were turned over to the Reynolds campaign,
 5 there was no indication on -- or by way of the
 6 information that was transferred which indicated when
 7 the campaign contribution checks and registration forms
 8 had actually been received, as all the checks were
 9 dated December 10th, 2011. There were no dates on the
 10 donor forms themselves, and the records of SVARW that
 11 indicated when they had received the earlier checks had
 12 not been provided to the -- to the Association.

13 In reviewing, you know, the facts, there were
 14 a couple of things that were significant, you know, to
 15 us. First, the event was planned and executed by the
 16 SVARW without input or consultation with the Reynolds
 17 campaign. Ms. Reynolds was informed of the event
 18 shortly before she became a paying member of the
 19 organization by way of an invitation to the event. At
 20 the time that she was invited to the event,
 21 Ms. Reynolds had clarified with the SVARW that, you
 22 know, under local law she was not permitted to start,
 23 you know, accepting campaign contributions before the
 24 start of the campaign contribution period, which was
 25 the day before the event. She clarified that point

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<p style="text-align: center;">Page 17</p> <p>1 with them but indicated she would attend the event. 2 So, other than attending the event and 3 accepting, afterwards, the contribution checks that had 4 been submitted as part of the event, we found no 5 evidence of any other sort of activity between 6 Ms. Reynolds, members of her campaign or the SVARW 7 which, in our view, would constitute either 8 coordination or any sort of consultation which would 9 suggest that the event itself had been conducted at the 10 behest of Ms. Reynolds or Ms. Reynolds' campaign. 11 The statute, 12.06.290, provides specifically 12 that solicitations and contributions are not to be made 13 prior to the start of the campaign contribution period. 14 "Solicitation" itself is not defined specifically under 15 the Municipal Code or under the Political Reform Act. 16 And by its very nature, it's a fairly broad term. 17 What we did find significant is that 18 Section D of 12.06.290 does specifically address the 19 issue of a contribution received outside the campaign 20 contribution period. So we saw that there was 21 potentially some distinction to be drawn between a 22 solicitation which occurred prior to the start of the 23 campaign contribution and perhaps the actual acceptance 24 of a contribution before that campaign contribution 25 period actually started. Because in this instance it</p>	<p style="text-align: center;">Page 19</p> <p>1 violation of Section 12.06.290 by the SVARW in that 2 they had solicited contributions outside of the 3 campaign contribution period. We determined that there 4 was no solicitation by the Reynolds campaign outside of 5 the campaign contribution period. And we had also 6 concluded and determined that there was no acceptance 7 by the Reynolds campaign outside of the campaign 8 contribution period as well, too. And those are the 9 findings set forth in our report. 10 One point that I will note with respect to 11 our report, that in Section 6.B.1 on Page 13 of the 12 report we had included, as part of a recitation of the 13 applicable law, a section from the resolution, 75640. 14 And I apologize that I failed to use the most current 15 language from the resolution. And so there is a 16 Subsection C which was inadvertently omitted from that 17 section. And that section states that in addition, if 18 the Commission finds a violation, that the Commission 19 may (a) find mitigating circumstances and take no 20 further action; (b) issue a public statement or 21 reprimand -- and this is the section that was left 22 out -- (c) require corrective action by a particular 23 deadline. And then (d) is as set forth, impose a 24 penalty in accordance with Chapter 12.04 of the San 25 Jose Municipal Code.</p>
<p style="text-align: center;">Page 18</p> <p>1 was clear, based upon the wording, certainly by the 2 November 16th, November 17th invitation to the party, 3 if not the earlier two invitations to the party, that a 4 solicitation of campaign contributions was being made 5 by the SVARW. 6 The question, then, you know, related to 7 the -- you know, the acceptance or the receipt of 8 campaign contributions prior to December 9th. And the 9 evidence, in our mind, demonstrated that the Reynolds 10 campaign had not received or accepted any campaign 11 contributions prior to that date. 12 There was evidence that the SVARW had 13 received campaign contributions checks made out to the 14 Reynolds campaign prior to December 9th, 2010. In our 15 view, this does not present a violation of the 16 Municipal Code by the Reynolds campaign insofar as the 17 checks received by the Association of Republican Women 18 were not received as an agent of the Reynolds campaign 19 because there was no agreement by the Reynolds campaign 20 for this activity to occur. In the first instance, it 21 was being conducted by the Silicon Valley Association 22 of Republican Women. And the actual transmissions of 23 checks did not occur -- occurred outside of the 24 campaign contribution period. 25 So we concluded that there had been a</p>	<p style="text-align: center;">Page 20</p> <p>1 Also, under Paragraph 2 of that same 2 regulation, there is a phrase at the end of the 3 paragraph that was added by the new regulation. And 4 that reads: "At the hearing on the complaint and 5 reviewed all the evidence in the record." So that's 6 just one more way or one clarification of the 7 Commissioners' certification that they have, indeed, 8 fulfilled their obligation to review all the evidence 9 before making a determination. 10 So, with that clarification, we would submit 11 our report to the Commission for their consideration 12 and action, as they deem appropriate. 13 CHAIRMAN SMITH: Okay. First, I guess I 14 would like to note that the clarification that was 15 provided was in a notice of errata that was received on 16 January 13th. So that's been documented in that 17 errata. 18 Any questions of Mr. Moyer from Commissioners? 19 COMMISSIONER EDGEWORTH: I would like to ask 20 a couple of questions, if I might. 21 Mr. Moyer, I have a couple of questions 22 related to 12.06.290. Especially Section A that says 23 "No person shall solicit or accept any campaign 24 contribution or deposits." So, whether it's an agent 25 or a committee or the candidate, how is that juxtaposed</p>

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1 to the fact that it says "no person shall"?
 2 In addition, I would like to also ask input
 3 on the significance of the postdating of the checks.
 4 And that -- for the postdating of the checks, how does
 5 that stand as receipt, given the definition within the
 6 Code as to the significance of a postmarked -- excuse
 7 me -- a postdating of a check, that the postdating of a
 8 check cannot be later than the mailing or delivery of a
 9 contribution?
 10 MR. MOYE: Two things. Well, first, the "no
 11 person" of that language would suggest that 12.06.290
 12 is to be read in its broadest sense. It doesn't limit
 13 it to a particular form or -- you know, a form of
 14 organization. So, for example, you know, if it said
 15 "no committee." You know, because the Code refers
 16 repeatedly to candidates and campaign committees and
 17 independent committees. And so the fact that, you
 18 know, we did not use any of those more limited forms of
 19 defining who the section was, you know, directed
 20 towards, that suggested that it was in a broad sense.
 21 Which also, you know, quite frankly, sort of,
 22 you know, creates a question as to what the actual
 23 intent is. You know, if -- you know, for example, I --
 24 you know, an individual tells their spouse, you know, I
 25 think we ought -- I think you ought to give money to

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1 this candidate, you know, when the campaign
 2 contribution period opens. Is that a solicitation?
 3 Well, arguably it would be because that's a person, if
 4 it occurs outside the campaign contribution period.
 5 But, in any event, you know, we read that as being
 6 broadly defined, whether it's an organization, an
 7 individual candidate or what have you.
 8 With regard to the postdating of the checks,
 9 I believe that we had, you know, indicated in the
 10 report that that was one of the concerns that was
 11 raised by the complainant, that -- to the extent that
 12 the registration form, you know, directed individuals
 13 to date their check December 10, 2011, and the fact
 14 that the form also, you know, demanded, if -- or
 15 permitted, if not demanded, you know, that folks could
 16 submit this registration form and contribution check
 17 prior to December 10th, that -- you know, clearly that
 18 sort of anticipated the notion of the postdating of the
 19 check.
 20 The Political Reform Act does address the
 21 issue of postdated checks in the section which
 22 describes, you know, enforceable promises to pay.
 23 Because oftentimes an issue comes up with is it a
 24 contribution if someone does not actually turn over
 25 something at that particular time. And under the

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1 Political Reform Act, a contribution made in the form
 2 of a postdated check -- that's considered an
 3 enforceable promise to pay at the time, you know, it is
 4 submitted to whomever it is submitted. And the same if
 5 that check was dated that date and passed over on that
 6 same date as well, too.
 7 So, in our view, the postdating of the check
 8 itself is neither -- is not a violation. And the
 9 circumstance where we would view that to be a violation
 10 or potential violation, if there was an intent -- some,
 11 you know, attempt to conceal the date at which the
 12 checks had been transferred to whomever it was being
 13 transferred. Because then there would be, in our view,
 14 an attempt to conceal the date at which the transfer
 15 was made, which was the date, you know, for purposes of
 16 the Code and the Political Reform Act, that the
 17 contribution would be deemed either accepted or
 18 received.
 19 So, in this instance, there were, like I
 20 said, ten checks that had been postdated, because they
 21 were all dated December 10th but submitted before
 22 December 10th. But there was no effort to conceal the
 23 date at which point those checks were received by the
 24 SVARW. So we did not determine that postdating and the
 25 other facts would constitute a violation.

Page 24

1 And then with respect to the Reynolds
 2 campaign, those checks were provided to them along with
 3 all the other checks received on December 10th. There
 4 was no evidence to indicate that they were aware that
 5 any checks had been received prior to December 10th,
 6 the date of event, when the other checks were being
 7 collected. And so there was nothing that they had done
 8 nor were involved in which might constitute concealment
 9 of the check itself.
 10 COMMISSIONER EDGEWORTH: I'm looking at,
 11 specifically, Subpart A of FPPC Regulation 1842 --
 12 421.1. It says, "Alternatively, the date of the check
 13 or other negotiable instrument by which the
 14 contribution is made may be used in lieu of the date on
 15 which the contribution is mailed, delivered, or
 16 otherwise transmitted, provided that it is no later
 17 than the date the contribution is mailed, delivered, or
 18 otherwise transmitted."
 19 MR. MOYE: Yes. And in this instance, you
 20 know, for each of the checks that were received by the
 21 SVARW -- and this is on Exhibit F. So, for each of
 22 those checks, to the far right there is a date in the
 23 C. And so even though those checks may have been dated
 24 December 10th, you know, for purposes of analysis, that
 25 check was received on December 7th. And so that was

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<p style="text-align: center;">Page 25</p> <p>1 the date that it -- or that was the date it was 2 received by the SVARW. So, for purposes of the 3 statute, even though the check is dated December 10th, 4 December 7th is the date of the contribution. 5 COMMISSIONER EDGEWORTH: Thank you. 6 MR. MOYE: The relevant date for purposes of 7 determining when the contribution was actually made. 8 COMMISSIONER EDGEWORTH: Thank you, Mr. Moyer. 9 CHAIRMAN SMITH: I have one sort of follow-up 10 question regarding the verbiage about no person shall 11 solicit or receive or -- contributions or exactly what 12 it says. The question of receiving. The SVARW did 13 actually receive, sort of, the contributions ahead of 14 the period, because they solicited them and then they 15 received the checks. But I'm not sure that -- there's 16 no mention of that. Although I'm not sure that they 17 really received them. They were just sort of holding 18 them. 19 MR. MOYE: Well, yes. And, you know, if it 20 had been a situation, you know, where, for example, you 21 know, the SVARW had kept the checks, you know, then the 22 question would have been what disposition of those 23 campaign contributions, insofar as they had received 24 them prior to the start of the campaign contribution 25 period. Excuse me.</p>	<p style="text-align: center;">Page 27</p> <p>1 MR. MOYE: Well, I think that you just alter 2 the hypothetical slightly. For example, suppose, you 3 know, someone had sent that check to the Reynolds 4 campaign prior to December 10th. If -- the Reynolds 5 campaign would have an obligation to return that check 6 within five days of receiving it if it was received 7 before December 9th. And if they did not, then there 8 would be a potential violation because, clearly, that 9 was a contribution that was received before -- even 10 though it had not necessarily been solicited by the 11 campaign. So there would have been no solicitation. 12 There would have been an acceptance of it. And then 13 there would have been a potential violation if it was 14 not returned. 15 You know, take the hypothetical one step 16 further. If, for example, a campaign had, you know, in 17 fact, engaged in some activity that might be considered 18 solicitation -- and I'll go back to the example -- you 19 know, really, that you have something ambiguous. I 20 think you ought to contribute to my campaign when the 21 time comes. But nothing happens. Well, arguably, you 22 might have a violation of the Code in that there was a 23 solicitation, depending upon what, you know, the facts 24 were. But if there was no contribution actually made, 25 then you would not have the acceptance or the receipt</p>
<p style="text-align: center;">Page 26</p> <p>1 And Exhibit D, you know, clearly provides 2 that, you know, those checks should be returned in that 3 particular instance. But because the Association did 4 not keep the checks -- they gave the checks to the 5 Reynolds campaign, and the Reynolds campaign accepted 6 those checks without any knowledge that those checks 7 had been received prior to the start of the campaign 8 contribution period -- you know, we did not determine 9 that there was any further action required by the 10 Reynolds campaign with respect to those checks. 11 CHAIRMAN SMITH: So the -- hypothetical. 12 Maybe -- it's probably a silly one. If there had been 13 no solicitation but for some strange reason people had 14 brought checks -- had sent checks in anyway, there 15 would be no violation? If people had sent checks to 16 SVARW to be turned over to the Reynolds campaign and 17 they were -- and they were sent in before the period 18 started but they were turned over as they were but 19 there had been no -- I don't know that this would 20 happen, but I'm just trying to just make the 21 distinction here between soliciting and receiving. I 22 guess what you're saying, there would be no violation 23 in that case. If somebody brought in the check, 24 really, as long as the candidate didn't get it until 25 December 10th --</p>	<p style="text-align: center;">Page 28</p> <p>1 of one. And the question wouldn't be whatever 2 corrective action is necessary to address the fact that 3 the solicitation had been made separate and apart from 4 the fact that no follow-up activity had occurred. 5 CHAIRMAN SMITH: Just a quick -- a quick 6 follow-up to that. There's a responsibility on the 7 part of the campaign, if they receive something outside 8 the period, to return it within five days. But there's 9 no such responsibility for someone such as SVARW. 10 MR. MOYE: If they -- if they still had it, I 11 think that there would be an obligation or 12 responsibility for them to return it. I think that if 13 there was, you know, evidence that the Reynolds 14 campaign had received those contributions, you know, 15 knowing -- knowing that they had been received prior to 16 the date of the event, that might create a different 17 set of circumstances. But the evidence in this case, 18 you know, indicated that the information they got -- 19 you know, to their knowledge, all the checks they were 20 receiving were checks that were received that 21 particular -- 22 CHAIRMAN SMITH: And I believe in the report 23 you pointed out that once the complaint came forward 24 and the candidate and committee became aware of this, 25 that those ten checks were returned at that time.</p>

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1 Right? Wasn't that somewhere in the report?
 2 MR. MOYE: No, no.
 3 CHAIRMAN SMITH: I thought I saw that.
 4 You have a question, Commissioner?
 5 COMMISSIONER EDGEWORTH: I was -- no, I was
 6 going to comment that there are provisions that require
 7 the check to be returned to the contributor. I was
 8 just -- but you added it anyways.
 9 CHAIRMAN SMITH: Okay. All right. No other
 10 questions? Okay. Thank you.
 11 Okay. At this point I would call upon
 12 Ms. Reynolds to present any written or oral response
 13 that you might have. And we would appreciate it if you
 14 could limit your comments to ten minutes. If you want
 15 to come forward, and I'll swear you in.
 16 MS. REYNOLDS: Thank you.
 17 CHAIRMAN SMITH: Are these okay here?
 18 MS. PIMENTEL: I'm going to see.
 19
 20 LESLIE REYNOLDS,
 21 being first duly sworn by the Chairman to tell the
 22 truth, the whole truth and nothing but the truth,
 23 testified as follows:
 24
 25 CHAIRMAN SMITH: Thank you. You may be

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1 seated. Okay.
 2 MS. REYNOLDS: It is considerably much less
 3 than ten minutes. I did prepare something ahead of
 4 time, and I appreciate your listening to this.
 5 So, members of the Election Committee, you
 6 have all -- you all have the report prepared by your
 7 attorneys, so I won't take your valuable time and
 8 restate the details. But I do want to take this
 9 opportunity to make just a few points.
 10 Because I am currently a publicly elected
 11 trustee, I am held to the highest standards of
 12 accountability, the standards which I have successfully
 13 demonstrated for the past eight years. And as a Board
 14 of Education trustee for the San Jose Unified School
 15 District, my integrity is paramount to my ability to
 16 perform my duties. I have 3,000 employees, 33,000
 17 students, and, according to our latest demographics
 18 study, am accountable to 250,000 San Jose residents,
 19 who are all depending on that integrity. To have it
 20 questioned in this most public of ways goes far beyond
 21 the City Council race.
 22 I believe that I am here not because of anything
 23 that I have done but because the complainant failed to
 24 received the endorsement from SVARW, and for the
 25 political gain he thought he could gain from this

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1 expensive exercise. The report you have reflects the
 2 efforts my campaign staff and I have put forth to
 3 ensure that we were following the San Jose city
 4 campaign laws. Furthermore, I believe that SVARW acted
 5 unintentionally, with no malice or illegal purpose, and
 6 truly believed that they were complying with the law.
 7 I find it disturbing that someone can manipulate and
 8 subvert this process into a political tool without
 9 consequence.
 10 I would ask that you take the recommendation
 11 of your legal counsel and to see this for what it
 12 really is: A move in a political game. But this is
 13 not a game to me or the people that I represent.
 14 In closing, I want to thank you and tell you
 15 how much I appreciate the time you've spent away from
 16 your families and the service you are providing for the
 17 city of San Jose.
 18 I would also -- if you would allow me, I
 19 would like to have my superintendent, Dr. Matthews, who
 20 insisted on coming here and speaking on my behalf.
 21 CHAIRMAN SMITH: Okay. Should we do that now
 22 or with others? We're basically now --
 23 MS. HERRICK: It's part of the respondent's
 24 piece.
 25 CHAIRMAN SMITH: Okay. Fine.

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1 MS. HERRICK: I think now is fine. You might
 2 want to see whether or not the Commissioners have any
 3 questions.
 4 CHAIRMAN SMITH: Oh, yeah. Let's do that.
 5 Right. Ask questions.
 6 Any questions, Commissioners?
 7 COMMISSIONER EDGEWORTH: Thank you so much.
 8 Obviously, we want to take this as serious as we can on
 9 both parties' part. My questions relate to an
 10 understanding of your knowledge about the way this
 11 party was going to be handled and the solicitation of
 12 contributions.
 13 And I understand that you did not actually
 14 become a member of the Association until after you were
 15 endorsed --
 16 THE WITNESS: Correct.
 17 COMMISSIONER EDGEWORTH: -- by the group.
 18 I understand there is an application process
 19 for being endorsed by the Association. Can you --
 20 THE WITNESS: There's a bidding process.
 21 COMMISSIONER EDGEWORTH: Can you explain a
 22 little bit about that process.
 23 THE WITNESS: The process was, if I recall --
 24 it been awhile now, and I've gone through a lot of
 25 processes, to be quite honest, as a candidate. So, to

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<p style="text-align: center;">Page 33</p> <p>1 the best of my recollection, it was really more about 2 interviewing directly with the SVARW. And I -- I 3 believe that I did fill out some paperwork, talking 4 about the priorities that were important to me as a 5 Council member candidate, along those kinds of lines. 6 The kinds of experience that I have. And it was a 7 bidding process that took place between me and two 8 other candidates. 9 COMMISSIONER EDGEWORTH: And how were you 10 notified that you were the one selected to have the 11 endorsement? 12 THE WITNESS: The SVARW contacted me -- via 13 e-mail, actually -- and let me know, with the 14 congratulations that they had selected me as their 15 candidate that they choose to endorse. 16 COMMISSIONER EDGEWORTH: Was there any kind 17 of a procedure or process by which you accepted the 18 endorsement, a formality about, yes, I accept your 19 endorsement? 20 THE WITNESS: Just a hearty thank-you note 21 for selecting me as their candidate. 22 COMMISSIONER EDGEWORTH: What was your 23 impression of what an endorsement would mean? What did 24 you expect from that endorsement? What did you -- what 25 did it mean to you to be endorsed by this Association?</p>	<p style="text-align: center;">Page 35</p> <p>1 publications. But there was no converse kind of 2 conversation of, Oh, and, by the way, you know, please 3 make sure to put my name on all your correspondence. 4 No, there is nothing. 5 COMMISSIONER EDGEWORTH: How did you know 6 that you were allowed to use their endorsement in your 7 campaign activity? 8 THE WITNESS: They told me. 9 COMMISSIONER EDGEWORTH: They told you? 10 THE WITNESS: And it's -- yeah. We are -- 11 trying to remember the exact wording. I don't have it. 12 I apologize. I didn't realize that that would be 13 something you would want me to bring. But, you know, a 14 probably pretty typical letter. You know, we've 15 reviewed. We -- you know, pleased to announce you as 16 our candidate. And, you know, kind of be in touch 17 and -- you know, the typical -- I'm sorry. I 18 apologize. I don't remember the exact words. 19 COMMISSIONER EDGEWORTH: That's all right. 20 What was the first -- when were you first 21 aware of this Patriot Party? 22 THE WITNESS: I was aware of it -- I'd say -- 23 pretty close to November time frame, I want to say. 24 And I had a conversation -- you know, we discussed this 25 with the attorney here, that -- you know, we did have a</p>
<p style="text-align: center;">Page 34</p> <p>1 THE WITNESS: With any endorsement, it merely 2 means that the Association believes that I'm the 3 candidate that best reflects their views and opinions, 4 that they believe that I would just be a good choice. 5 And, beyond that, there's no obligation between me and 6 the Association or any other endorser. I'm very 7 careful, actually, who I ask to endorse me because I do 8 not want to have any kind of obligation in any way, 9 outside of being able to, you know, certainly listen to 10 them as endorsers. And certainly, as time moves 11 forward, it would be great if their members would like 12 to support me in my -- in my campaign. 13 COMMISSIONER EDGEWORTH: And so there's not 14 an expectation of any kind of a relationship in terms 15 of publishing their name, announcing that they've 16 endorsed you? 17 THE WITNESS: No. 18 COMMISSIONER EDGEWORTH: There's no 19 expectation. Even though it was in all of the 20 newsletters from then forward, that you were 21 prominently featured in newsletters and -- 22 THE WITNESS: That's -- I have absolutely no 23 say over that. I was just thrilled that they gave me 24 their endorsement. Beyond that, I was able to -- I had 25 their permission to use their name in any of my</p>	<p style="text-align: center;">Page 36</p> <p>1 conversation that simply went, We're having a party on 2 December 10th. It's an annual party that we have. We 3 always have it on the second weekend, and it happens to 4 fall this year after the -- you know, the December 9th 5 start date. Can you come to the party? We would like 6 to, you know, be able to feature you and other 7 candidates that are running. Can you make it? 8 And my response was, Of course I can. Thank 9 you. 10 COMMISSIONER EDGEWORTH: Did you ever 11 receive, either by e-mail or through the newsletter -- 12 I think you became -- when did you become a member? 13 11-19. About the same time -- 14 THE WITNESS: I think so. 15 COMMISSIONER EDGEWORTH: -- as the November 16 newsletter was coming out? 17 THE WITNESS: Probably. 18 COMMISSIONER EDGEWORTH: At which time there 19 was the form in the newsletter announcing to submit 20 contributions and fill out the campaign form prior, and 21 don't wait for the busyness of the party. Were you 22 aware of that -- when did you see that? About the same 23 time? 24 THE WITNESS: I probably did. But, as I 25 explained to the attorney, as a school board member I</p>

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1 get hundreds of e-mails every single day. And,
2 honestly, I -- I did not read the entire form. I
3 just -- oh, here's the party. Here's the date.
4 Double-check my calendar. Yes, I can go.
5 I did see the portion, though, that, you
6 know, you cannot contribute before the date. That was
7 mission-critical for me, because that's the rules.
8 Those are the laws. And, you know, you've got to
9 follow those rules. And so it was my understanding
10 that I would not be receiving one dime until
11 December 10th. And that's really what I was focusing
12 on was making sure to follow that really important
13 rule.

14 COMMISSIONER EDGEWORTH: Are you -- are you
15 suggesting that you contacted someone to question the
16 form or make it clear what your intentions were when
17 you saw the form?

18 THE WITNESS: No. Maybe you can ask me --

19 COMMISSIONER EDGEWORTH: Okay. You indicated
20 you were concerned that you didn't receive any
21 contributions before the 10th. Did you contact anyone
22 to say, Are these -- you know, did you let anyone know
23 that you did not --

24 THE WITNESS: Oh, I'm sorry. Yes. So
25 SVARW -- yes. When I -- when they did ask me, Are you

1 available to come to this party, I -- you know, I
2 responded that of course I was. Just I cannot accept
3 any campaign contributions prior to December 9th,
4 actually. And I didn't.

5 COMMISSIONER EDGEWORTH: And did you ever
6 question them on the presentation of the form --

7 THE WITNESS: No.

8 COMMISSIONER EDGEWORTH: -- that solicited
9 contributions?

10 THE WITNESS: No, I did not.

11 COMMISSIONER EDGEWORTH: Okay. Thank you
12 very much.

13 CHAIRMAN SMITH: Any other?

14 Okay. I just have one question. Once you
15 became aware that ten of the contributions had actually
16 been submitted before December 9th, were those --

17 THE WITNESS: When did I become -- I
18 became --

19 CHAIRMAN SMITH: Well, when did you become
20 aware?

21 THE WITNESS: I became aware of that in this
22 investigation. I never had any knowledge, until this
23 investigation took place, that there were even checks.
24 In fact, tonight was the first night I -- time I
25 learned that there were -- that there were ten of them.

1 I had no idea. All I know is that at the end of the
2 evening on December 10th, we were given an envelope.
3 And I handed it to my treasurer. And inside that
4 envelope were checks, and they were all dated
5 December 10th. So I had absolutely no way of knowing
6 which checks had been received prior to December 9th.
7 And given that they were all dated on December 10th, I
8 wouldn't have been able to do anything with them until
9 that date anyway.

10 CHAIRMAN SMITH: Since then, you have been
11 informed that certain of them were actually submitted
12 prior to the --

13 THE WITNESS: Just tonight, yes. Well,
14 that's -- okay. Let me back up.

15 I was informed -- about a week and a half
16 ago, I had a phone conversation discussing this meeting
17 with your attorney. And he did say that there were
18 some checks. But the number ten didn't come up until
19 this evening.

20 CHAIRMAN SMITH: So none of those --

21 THE WITNESS: So I don't know -- and I don't
22 even know which of the people were part of the group of
23 ten.

24 CHAIRMAN SMITH: Okay. So none of the early
25 contributions have been returned?

1 THE WITNESS: No.

2 CHAIRMAN SMITH: Okay. I would swear I saw
3 it in the report, but I guess I didn't.

4 COMMISSIONER PIERRE DIXON: No. It was not
5 there.

6 CHAIRMAN SMITH: I dreamt it.

7 Okay. So at this -- okay. That answers the
8 question. Okay. Thank you.

9 THE WITNESS: Thank you. Can I --

10 CHAIRMAN SMITH: Yes. Dr. Matthews.

11 THE WITNESS: Thank you very much.

12
13 VINCENT MATTHEWS,
14 being first duly sworn by the Chairman to tell the
15 truth, the whole truth and nothing but the truth,
16 testified as follows:

17
18 THE WITNESS: I will also be brief. This
19 is -- my name is Vincent Matthews. I'm the
20 superintendent of the San Jose Unified School District.
21 This is my 26th year in education. I've had the
22 opportunity to work with a number of school boards --
23 the San Francisco Unified School Board members, San
24 Leandro, Tamalpais Union High School, Oakland
25 Unified -- and in working with all of those board

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1 members, honesty and integrity are critically important
2 characteristics for school board members.

3 Without question, Leslie Reynolds is someone
4 who I hold in the highest esteem and is one of the
5 most -- when I talk about I look for integrity and
6 honesty in a board member, without question, she is at
7 the top. And hearing the allegations, I, without
8 question, know that this is a person who is constantly
9 in our district, making sure that not only is she held
10 in the highest esteem but making sure that all of her
11 employees are. I'm just here as a character witness,
12 to say that this is a person who, without question, is
13 at the top in terms of integrity and honesty.

14 CHAIRMAN SMITH: Thank you. Any questions of
15 Dr. Matthews?

16 Okay. Then thank you.

17 MS. REYNOLDS: Thank you.

18 CHAIRMAN SMITH: Okay. At this time I would
19 call on Jan Nedde, who -- from the Silicon Valley
20 Association of Republican Women to present her oral
21 response.

22 And, again, we would appreciate it if you
23 would keep it to ten minutes.

24 MS. NEDDE: It will be shorter than that.
25

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1 attendees pay a minimal cost to attend, office holders
2 are always invited as our guests. As a trustee for San
3 Jose Unified School District, Leslie Reynolds attended
4 both of our 2010 and 2011 parties.

5 With the excitement focused on the Republican
6 Presidential debate, the SVARW board decided to let
7 attendees make a contribution to the Presidential
8 candidate of their choice rather than to SVARW for the
9 2011 party. Realizing that candidates running for San
10 Jose City Council could begin raising money
11 December 9th, we added Leslie Reynolds to the list of
12 candidates. We did not ask Leslie Reynolds if she
13 wanted to be included.

14 SVARW efforts to ensure that we were
15 complying with election law, while, at the same time,
16 providing a pleasant experience for guests attending
17 our party, compounded the problem. We initially
18 promoted the event in October, asking for people to
19 send an e-mail RSVP. As November approached, we
20 realized that we would have guests lined up outside the
21 house, in the cold, as they would need to write their
22 checks to a specific candidate's campaign committee and
23 provide the required donor information. The form
24 identified as Attachment 1 was our solution to reducing
25 gridlock at the door. By encouraging people to write

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1 JAN NEDDE,
2 being first duly sworn by the Chairman to tell the
3 truth, the whole truth and nothing but the truth,
4 testified as follows:
5

6 THE WITNESS: My name is Jan Nedde. I'm the
7 current president of SVARW, and I thank you all for
8 being here tonight to consider this.

9 First of all, I want to say that SVARW agrees
10 with the findings of Mr. Moye. We are at this hearing
11 tonight solely because SVARW endorsed Leslie Reynolds
12 for San Jose City Council District 10 rather than SVARW
13 member Johnny Khamis. We are extremely saddened that
14 simply including Leslie Reynolds in our list of
15 candidates has turned into a campaign tactic by Johnny
16 Khamis to discredit his opponent.

17 Until the complaint was received by SVARW,
18 the organization was unaware that promoting our 2011
19 Christmas Patriot Party was a violation -- potential
20 violation of San Jose election law. Because San
21 Jose -- SVARW strives to make every effort to follow
22 the law, we found this complaint quite disturbing.

23 For the past three years, SVARW has hosted a
24 Christmas Patriot Party, which is held in a private
25 residence on the second Saturday in December. While

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1 their postdated check for the candidate and provide the
2 information ahead of time, we hoped to make things flow
3 easier for the December 10th party. While this was
4 certainly acceptable for the Presidential candidates,
5 we unknowingly erred in adding Leslie Reynolds'
6 campaign to the form.

7 Johnny and Juliana Khamis have been members
8 of the SVARW since 2007. As members of SVARW, Johnny
9 and his wife received all of the attachment to the
10 complaint -- all of the attachments to the complaint,
11 which included e-mail updates Attachments 2 through 6.
12 Attachment 1 was a link from the e-mail updates 4
13 through 6 and the newsletter attachment 7 through 9.

14 The complaint states that Leslie Reynolds
15 received these attachments. This is not correct.
16 Leslie Reynolds joined SVARW in November 2011 for the
17 2012 membership year. She was not entitled to receive
18 our newsletter until January 2012. Leslie was not sent
19 Attachments 7, 8 and 9. Leslie Reynolds joined the
20 SVARW e-mail list on November 19th of 2011. She was
21 e-mailed Attachments 5 and 6. SVARW uses a web-based
22 e-mail newsletter service called Constant Contact to
23 send out e-mails. This service provided real-time
24 tracking of which recipients opened a particular
25 e-mail. Leslie Reynolds did not open Attachments 5 and

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1 6.
2 The October 10th e-mail, Attachment 2, also
3 includes an invitation to an SVARW campaign workshop on
4 November 3rd. Johnny Khamis, Ray Rodriguez and Johnny
5 Khamis' treasurer attended the campaign workshop. Also
6 attending the workshop were SVARW president for 2011,
7 Cathy Davis; president for 2012, Jan Nedde; and three
8 other board members -- Gail DeSmet, Barbara [sic]
9 Janssen Martinez and Jan Soule. Johnny Khamis had
10 ample opportunity to approach any of the board members
11 present and put a stop to the inclusion of Leslie
12 Reynolds in the list of candidates within the
13 solicitation. He chose to keep quiet and allow SVARW,
14 an association that he was a member of, to become a
15 target of his complaint.
16 SVARW appreciates the time Mr. Moye took to
17 understand the details of what happened -- transpired
18 and the Commission's time in listening to our response.
19 You can be assured that SVARW now understands that
20 there can be no solicitation of funds prior to the
21 first date that funds can actually be received by the
22 candidate. Thank you for your attention.
23 CHAIRMAN SMITH: Thank you. Questions?
24 COMMISSIONER PIERRE DIXON: It's my
25 understanding you gave this event about three times

1 before?
2 THE WITNESS: No.
3 COMMISSIONER PIERRE DIXON: This was the
4 first time?
5 THE WITNESS: Yes.
6 COMMISSIONER PIERRE DIXON: Were you aware of
7 the local campaign laws in reference to solicitations
8 prior to the --
9 THE WITNESS: Well, not -- not prior. We
10 thought that we could -- we could mention it in a
11 newsletter or e-mail and that it wouldn't -- we didn't
12 know.
13 COMMISSIONER PIERRE DIXON: Okay. Did you
14 have local candidates, prior to this particular year,
15 as part of your party, or was it always national
16 candidates?
17 THE WITNESS: No, it was -- it was local.
18 They were always invited. But I don't know that we
19 specifically put -- put a name -- a local candidate's
20 name. I'm not sure about that.
21 COMMISSIONER PIERRE DIXON: Okay. Thank you.
22 That's all I have.
23 CHAIRMAN SMITH: If I could clarify the
24 question or response. You invited local candidates to
25 the previous parties, but did you solicit funds for

1 their campaigns at those previous parties or were they
2 just invited?
3 THE WITNESS: No. What we would do is we
4 would solicit funds for SVARW so that we could, in
5 turn, support -- endorse the candidates.
6 CHAIRMAN SMITH: So this was the first time
7 that you solicited funds for a specific -- to go
8 directly to candidates?
9 THE WITNESS: Yes, because of the excitement
10 around the Presidential Republican debates.
11 CHAIRMAN SMITH: Okay. Commissioner?
12 COMMISSIONER EDGEWORTH: I was going to ask
13 for the same clarification.
14 CHAIRMAN SMITH: Anything else?
15 Okay. Thank you.
16 Okay. At this time, Mr. Khamis, would you
17 like to present a written or oral response? And,
18 again, we would appreciate it if you would limit your
19 comments to ten minutes.
20 MR. KHAMIS: Can I have my witness go first?
21 CHAIRMAN SMITH: I'd prefer it, I think, that
22 you go first.
23 MR. KHAMIS: Fine.
24
25

1 JOHNNY KHAMIS,
2 being first duly sworn by the Chairman to tell the
3 truth, the whole truth and nothing but the truth,
4 testified as follows:
5
6 CHAIRMAN SMITH: Be seated.
7 MR. KHAMIS: Commissioners, I thank you for
8 your time, first and foremost.
9 It saddens me that I have to be in this
10 situation to begin with. I -- I am not the kind of guy
11 who likes to go out and knock a, you know, fellow
12 candidate. In fact, I have a lot of respect for my
13 opponent, Leslie.
14 I was frankly -- I filed this complaint
15 because of the citizens of the city of San Jose. I
16 think they need to have honesty in their -- and
17 integrity in their government. We've suffered from
18 dishonesty in government before, and I -- and this is
19 one of the reasons why I decided to run to begin with.
20 When I -- when I signed my paperwork, my
21 intent to run, I was told not to solicit any funds and
22 not to solicit -- not to have any of my friends solicit
23 funds for me, period. I stuck to that rule. And I
24 assumed that all the candidates had the same rule and
25 the same, you know, lecture about not fundraising prior

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1 to the -- and telling others not to fundraise as well.
 2 I've been accused of wasting government money
 3 and government time and having a -- you know,
 4 basically, a sour attitude because the -- the
 5 organization that we belonged to for so many years
 6 didn't endorse me. But that's not the fact. The fact
 7 is, it's not my responsibility to let others know how
 8 to run their campaign.
 9 And if -- and I thought, with all the -- with
 10 all the experience that Leslie has as a government
 11 official, she should have known better. She should
 12 have informed them. I find it extremely troubling to
 13 note some of the stuff, like she didn't know that the
 14 ten checks were in the report, even, that you guys sent
 15 us. It's right here on this page, the ten checks in
 16 question that you guys said that she should return in
 17 five days. I mean, it's right here. It's obvious my
 18 opponent either doesn't care about the rules or is
 19 trying to subvert the system.
 20 I -- I'm actually, you know, shocked, because
 21 she is claiming she didn't receive any e-mails or other
 22 faxes when I received glowing, you know, support for
 23 her -- in January there was a newsletter announcing her
 24 as a new -- as the newest member. It was either
 25 January or February. I told our investigator that,

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1 that she became a member back then even if she didn't
 2 become -- even if they say that she didn't receive any
 3 information until the -- until the date that she was
 4 endorsed. She was endorsed in May of sometime or -- a
 5 little bit after May. She -- she should have received
 6 every single e-mail and newsletter.
 7 And, frankly, I find it disingenuous that
 8 when somebody is -- you know, I've belonged to SVARW
 9 for a long time. This is a fine women's organization
 10 that I've been proud to support in the past with all
 11 their fundraisers. One of the big things that they do
 12 for candidates is fundraise. And one of the things
 13 that I've liked about them is that they're very
 14 proactive. They inform the community. And I've been
 15 proud to associate with them for all of these years.
 16 And I'm still proud to be part of the organization.
 17 They've got this -- they did this mistake, but I don't
 18 fault them at that. I think it's the candidate's
 19 responsibility to get their ducks in a row and follow
 20 the laws.
 21 Now, if you think that the laws are too
 22 strenuous, then take out the laws. I mean, if -- if
 23 somebody could say -- if somebody can go wink, wink,
 24 nod, nod, and have -- have somebody else fundraise for
 25 them quietly in the background and say, Oh, yeah, we

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1 got to make sure that the checks are signed on
 2 December 10th, then -- I'm not going to take it, of
 3 course, but just make sure that they're signed, you
 4 know, on December 10th -- then, you know, just abolish
 5 the law. Let us collect money whenever we want.
 6 Right. So I'm -- I'm not saying that -- I'm not saying
 7 that the law is correct, but I'm following the law.
 8 And I think, in fairness to all the
 9 candidates that are running -- we have -- no, more than
 10 just me. There are like six other candidates running
 11 for the same position now. And in fairness to the --
 12 in fairness to the citizens of this community, we want
 13 our leaders to follow the laws of this city. And I
 14 don't want -- I don't want my representative to either
 15 be ignorant of the law and have broken the law
 16 unintentionally or to be subverting the law
 17 intentionally.
 18 And, in either case, it's my belief -- and
 19 the only reason I did this complaint -- it is my belief
 20 that one of those two things happened. And, either
 21 way, this is why I submitted this complaint. Not to --
 22 not to waste all of your time and the City's money but
 23 to make sure that the City has proper representation.
 24 Thank you.
 25 CHAIRMAN SMITH: Any questions?

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1 COMMISSIONER EDGEWORTH: Mr. Khamis, did you
 2 compete to be endorsed? Did you also go through the
 3 interview process?
 4 THE WITNESS: Yes, I did.
 5 COMMISSIONER EDGEWORTH: And approximately
 6 what time period was that?
 7 THE WITNESS: I'm going to say it was -- it's
 8 been a long time. It was, I think, around the late May
 9 time frame.
 10 COMMISSIONER EDGEWORTH: And when -- did you
 11 receive any kind of notice as to which of the
 12 candidates was selected for the endorsement?
 13 THE WITNESS: Yes, I did get an e-mail. I
 14 did get an e-mail and then a -- then a letter, saying
 15 that, Hey, sorry. We went -- endorsed someone else.
 16 In fact, even after they endorsed somebody
 17 else, I still went to their party. My children
 18 received the Patriot -- my two children entered an art
 19 contest that the women put together. Both of my
 20 children won the top two prizes, first and second
 21 place. This is after the endorsement. Not before.
 22 So, again, you know, I have no ill feelings
 23 toward the Silicon Valley Republican Association of
 24 Women. I think that they're doing their best to get
 25 the people elected that they think are best for

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<p style="text-align: center;">Page 53</p> <p>1 their -- for the community.</p> <p>2 COMMISSIONER EDGEWORTH: When you sought the</p> <p>3 endorsement, what did you -- what was your expectation</p> <p>4 of what an endorsement would mean in --</p> <p>5 THE WITNESS: Well, my expectation is exactly</p> <p>6 what I said. These women are a powerhouse. They write</p> <p>7 articles, they fundraise, they socialize with others</p> <p>8 and they get the word out. And that's -- that's what I</p> <p>9 was hoping to get out of the association with the</p> <p>10 Republican women. I attended many fundraisers that</p> <p>11 they -- that they held for senator, state senators,</p> <p>12 city -- other City Council candidates. I've been to</p> <p>13 many of their fundraisers, and I've been proud to</p> <p>14 donate in many of those.</p> <p>15 COMMISSIONER EDGEWORTH: How were you made</p> <p>16 aware that they were accepting competitors for the</p> <p>17 endorsement? What was the mechanism by which you were</p> <p>18 notified, if you want to be endorsed, you can compete</p> <p>19 for the endorsement?</p> <p>20 THE WITNESS: Well, I just got a phone call,</p> <p>21 to be quite frank. Jan Soule called me. And they --</p> <p>22 that's what they told me. We're looking at candidates.</p> <p>23 We want to make an early decision. And that's it.</p> <p>24 COMMISSIONER EDGEWORTH: Okay. But you</p> <p>25 were -- you got the e-mails and the -- is it correct</p>	<p style="text-align: center;">Page 55</p> <p>1 choice." It talks about Leslie Reynolds as being a</p> <p>2 candidate for District 10 and is in need of donations.</p> <p>3 As a -- as a part -- as part of that</p> <p>4 training, did the newsletters or this party ever get</p> <p>5 discussed?</p> <p>6 THE WITNESS: On the training, I do not</p> <p>7 believe so.</p> <p>8 COMMISSIONER EDGEWORTH: Okay.</p> <p>9 THE WITNESS: But I know that in a couple of</p> <p>10 other newsletters it was mentioned -- in fact, they</p> <p>11 advertised meet-and-greet at Leslie's house in the</p> <p>12 November newsletter, where people were invited to</p> <p>13 Leslie's house for a meet-and-greet and discussion.</p> <p>14 And -- you know, that I knew about. But there was no</p> <p>15 fundraising being done at this candidate school. None</p> <p>16 in either -- in either school -- either school.</p> <p>17 COMMISSIONER EDGEWORTH: Did you attend a</p> <p>18 training meeting at Ms. Reynolds' house?</p> <p>19 THE WITNESS: I did not. It was not a</p> <p>20 training meeting. It was --</p> <p>21 COMMISSIONER EDGEWORTH: Campaign planning</p> <p>22 meeting?</p> <p>23 THE WITNESS: Campaign planning meeting or</p> <p>24 something. It was a -- a discussion of her campaign, I</p> <p>25 think.</p>
<p style="text-align: center;">Page 54</p> <p>1 that you've been getting the e-mails and newsletters</p> <p>2 consistently?</p> <p>3 THE WITNESS: Absolutely. I get the e-mails.</p> <p>4 In fact -- yeah, I do get all the e-mails all the time.</p> <p>5 And all the newsletters come to my home on a regular</p> <p>6 basis.</p> <p>7 COMMISSIONER EDGEWORTH: Do you recall when</p> <p>8 this training session that was talked about by the --</p> <p>9 by the chairwoman --</p> <p>10 THE WITNESS: Yes.</p> <p>11 COMMISSIONER EDGEWORTH: -- or the president</p> <p>12 of the Association. Do you recall approximately when</p> <p>13 that training session was?</p> <p>14 THE WITNESS: There were actually two</p> <p>15 training sessions. One -- and I -- I've taken both of</p> <p>16 them. They were both at the Almaden Valley library.</p> <p>17 One of them was -- she knew better. One of them was in</p> <p>18 like November, and the other one was in August</p> <p>19 sometime, I think.</p> <p>20 COMMISSIONER EDGEWORTH: I'm looking at a --</p> <p>21 the board meeting minutes, an excerpt from the board</p> <p>22 meeting minutes of August 31st, in which they made the</p> <p>23 decision about the Patriot Party and "it was suggested</p> <p>24 that we charge \$25 for the event, and attendees will</p> <p>25 write their checks directly to candidates of their</p>	<p style="text-align: center;">Page 56</p> <p>1 COMMISSIONER EDGEWORTH: Okay.</p> <p>2 THE WITNESS: I did not attend it, no.</p> <p>3 COMMISSIONER EDGEWORTH: Okay. Thank you.</p> <p>4 COMMISSIONER PIERRE DIXON: And how long have</p> <p>5 you been a member of SVARW?</p> <p>6 THE WITNESS: I don't know. It's been quite</p> <p>7 some time.</p> <p>8 COMMISSIONER PIERRE DIXON: And you did</p> <p>9 receive all the e-mails and notices that went out to</p> <p>10 all members?</p> <p>11 THE WITNESS: Actually, not me personally.</p> <p>12 My wife does get them.</p> <p>13 COMMISSIONER PIERRE DIXON: When did you</p> <p>14 first become aware of the Patriot Party making this</p> <p>15 request for contributions before the contribution</p> <p>16 period?</p> <p>17 THE WITNESS: October.</p> <p>18 COMMISSIONER PIERRE DIXON: And what did you</p> <p>19 do with that information at that time?</p> <p>20 THE WITNESS: I -- I just kind of said --</p> <p>21 well, you know, it bothered me a little bit. But I</p> <p>22 knew it was for October 10th. So I said, Well, I guess</p> <p>23 she's following the laws, because it's supposed to be</p> <p>24 October 10th.</p> <p>25 A couple -- you know, I kept getting them.</p>

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<p style="text-align: center;">Page 57</p> <p>1 And then I just said, Wait a minute. There's got to be 2 something wrong with this, you know. The form itself 3 is telling you to postdate the check. 4 So I asked -- I asked about postdating a 5 check from a friend of mine. And he said, Oh, there's 6 nothing -- you know, nothing -- not a big deal about 7 postdating a check. 8 And then I got another one. And I was like, 9 Why should she be able to do this when I can't? You 10 know, I was told that I shouldn't be even asking for 11 funds. 12 And so he says, Well, what is she doing? And 13 I -- I gave him the newsletter and -- well, that's 14 illegal. 15 COMMISSIONER PIERRE DIXON: Did you consider 16 contacting the organization? 17 THE WITNESS: Well, you know, in my -- you 18 know, in my defense here, I mean, they made their bed. 19 I mean, they had endorsed that candidate. They didn't 20 endorse me. If they had endorsed me, I would have told 21 them, This is not right. Don't do it, you know. 22 So, you know, when -- when I filed my FPPC 23 form, I found out that I cannot do that. So I -- you 24 know. 25 COMMISSIONER PIERRE DIXON: Okay. Thank you.</p>	<p style="text-align: center;">Page 59</p> <p>1 each time he responded immediately. So we have a great 2 City Clerk. But did want us to know the rules. And 3 one of the rules he said: You cannot raise a penny 4 before the date. Okay. 5 And also, on the FPPC number, when you raise 6 money, you must give that number, saying that you're in 7 compliance with the State, I believe. And the City, 8 Okay. So I've attended both training 9 sessions with the Silicon Valley Republican women's 10 group. And, as Johnny says, they're -- they're a very 11 enthusiastic, committed-to-the-community people. 12 Right. 13 The second -- the second -- the first -- the 14 first training was a gentleman that ran for Congress 15 who gave his views of how to run for Congress. And I 16 had mentioned someone there. That's great, but there's 17 only a couple of Congress seats in the whole county. 18 We should have something more relevant, how to run for 19 school board or City Council or anything else. A water 20 board, whatever. 21 And -- and, to my -- to my pleasure, they 22 gave -- a second one was on running for City Council. 23 And Mr. Victor Ajlouny, who is -- who is a political 24 consultant, came and spoke. The first thing that he 25 said to the group: If you're going to run, you must</p>
<p style="text-align: center;">Page 58</p> <p>1 THE WITNESS: Sure. 2 CHAIRMAN SMITH: Any other questions? 3 Okay. Thank you. And then your witness. 4 THE WITNESS: Thank you. 5 MR. RODRIGUEZ: Good evening. I'm Raymond. 6 Thank you very much, Commissioners. 7 8 RAYMOND RODRIGUEZ, 9 being first duly sworn by the Chairman to tell the 10 truth, the whole truth and nothing but the truth, 11 testified as follows: 12 13 CHAIRMAN SMITH: Be seated. 14 THE WITNESS: I'll be pretty brief. 15 I believe the reason why Johnny filed these 16 charges was about honesty and integrity but something 17 more. Compliance with the law. We had met with the 18 City Clerk when he had just -- he had just became City 19 Clerk last year. And the -- the districts hadn't been 20 formulated yet. But he assured us that we would 21 probably be -- the chances were that -- 50/50 that we 22 would get into the design of the district. 23 And at that time we asked him the rules to -- 24 to run. And he -- to his credit, he spent a lot of 25 time with us. And several times we contacted him, and</p>	<p style="text-align: center;">Page 60</p> <p>1 know every law that is -- in compliance for that seat. 2 Right. He made that very, very clear. And everybody 3 wanted to know about fundraising and strategies and 4 image and message and several things. But he kept 5 going back: You must know the laws. If you don't do 6 that, you're going to find yourself in trouble. Right? 7 I am not a member of Silicon Valley 8 Republican Women, but I did receive every e-mail to 9 Mrs. Reynolds -- and I do not know Mrs. Reynolds -- 10 party. And I -- and I found it really -- I thought 11 that she probably had cleared it up, saying, Hey, we 12 cannot raise money. You cannot raise money. 13 The City Clerk was very clear to me that we 14 can't have a second party to raise money for us either. 15 So that even if I say, "Will you support me?" and you 16 went off and you raised money for me -- right? It 17 can't be a blind type of thing. If I have any hint 18 that you're doing this, I am to say, Stop. You cannot 19 raise money. I don't have an FPPC number -- right? -- 20 and it is against -- it is against the rules. 21 Now, there's four other districts that are up 22 for grabs or up for election for the primary. Right? 23 And there are six other people -- excuse me -- five 24 other people running for this seat. And no one has 25 broken -- or has raised money before the time of the</p>

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1 date except Mrs. Reynolds. Okay.
 2 So -- and it's difficult for me to believe
 3 that Mrs. Reynolds has not received an e-mail when I'm
 4 not a member and I received an e-mail and she was
 5 endorsed by the Silicon Valley Republican Women. It's
 6 just -- it's just impossible for me to believe that. I
 7 mean, why would I be getting communications and --
 8 saying, Support her?
 9 And that's all I have to say.
 10 CHAIRMAN SMITH: Thank you. Any questions?
 11 COMMISSIONER PIERRE DIXON: No.
 12 CHAIRMAN SMITH: I have a question.
 13 THE WITNESS: Yes, sir.
 14 CHAIRMAN SMITH: Are you affiliated with
 15 Mr. Khamis' campaign in some --
 16 THE WITNESS: You know what? I've advised
 17 him. That's all I've done.
 18 CHAIRMAN SMITH: So you're an unofficial
 19 adviser.
 20 THE WITNESS: I'm one of those unofficial
 21 advisors, yes. Excuse me. And I did take some
 22 photographs for him.
 23 CHAIRMAN SMITH: Okay.
 24 COMMISSIONER EDGEWORTH: Mr. Rodriguez, the
 25 difficulty that we are faced with is distinguishing

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1 Mrs. Reynolds' direct involvement as opposed to the
 2 actions taken by the Association.
 3 THE WITNESS: Uh-huh.
 4 COMMISSIONER EDGEWORTH: Can you contribute
 5 any evidence or information that leads you to believe
 6 that they are commingled, other than fact that she
 7 received the funds on the 10th?
 8 THE WITNESS: I only can say this. And I do
 9 have respect for the Association. I said that they --
 10 that they seemed to be fine community leaders. The
 11 only thing I can think of is that -- is that if I am
 12 receiving e-mails and not a member, how could the
 13 person they endorse and the person that -- that their
 14 photos -- her biography was in the e-mail. How can she
 15 not know that they were going to not raise money? This
 16 was like a surprise party, and here's the money? I
 17 don't think so.
 18 So -- if I was Mrs. Reynolds or consulting
 19 Mrs. Reynolds, I would have said, This is a nice thing,
 20 but this is illegal. You cannot do this.
 21 So I -- I don't have any evidence that she
 22 did or did not receive e-mail. But if I received an
 23 e-mail and I'm nobody, how can she not receive an
 24 e-mail when she's the invited guest?
 25 COMMISSIONER EDGEWORTH: Among the e-mails,

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1 did you also receive the Association's newsletters or
 2 just the e-mail solicitation?
 3 THE WITNESS: Just the e-mail solicitation.
 4 COMMISSIONER EDGEWORTH: Do you recall any
 5 differences between the earlier ones that you received
 6 and the way those messages about the party, for
 7 example, were -- are listed among all of the events
 8 that were coming up?
 9 THE WITNESS: No. And, to tell you the
 10 truth, no, I don't. And they may have been there, but
 11 that didn't strike me. I just went through it. I
 12 don't know about yourself. I get a number of e-mails.
 13 But I always try to go through them and find the topic
 14 that -- that I'm looking for and dismiss everything
 15 else.
 16 COMMISSIONER EDGEWORTH: Okay. Thank you,
 17 Mr. Rodriguez.
 18 CHAIRMAN SMITH: Okay. Thank you.
 19 COMMISSIONER PIERRE DIXON: Thank you.
 20 COMMISSIONER EDGEWORTH: Thank you very much.
 21 CHAIRMAN SMITH: Is there anyone else here
 22 this evening who would like to speak to the Commission
 23 or provide any additional evidence or testimony on this
 24 matter?
 25 All right. Can I ask someone to come back --

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1 COMMISSIONER EDGEWORTH: That's what I was
 2 going to ask.
 3 CHAIRMAN SMITH: -- and ask a question.
 4 Ms. Nedde, could you come back. You were
 5 already sworn in, so I won't go through it again.
 6
 7 JAN NEDDE,
 8 being previously sworn by the Chairman to tell the
 9 truth, the whole truth and nothing but the truth,
 10 testified as follows:
 11
 12 CHAIRMAN SMITH: Could you perhaps offer some
 13 thoughts or an explanation as to why Mr. Rodriguez says
 14 he was receiving all of these e-mails and he's not a
 15 member? That whole thing -- is there some other
 16 mechanism for signing up for your e-mails than being a
 17 member?
 18 THE WITNESS: There is a mechanism that we
 19 have. It's a conservative -- it's a conservative
 20 newsletter that kind of updates people on any
 21 conservative events that are happening in the area.
 22 And anyone can sign up for that. And I don't know if
 23 that is how he got the information. That's the only
 24 way that I can feel that -- feel like he may have.
 25 Because in order to get our newsletter, you

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1 have to be a member of SVARW. And, like I pointed out,
 2 Leslie was not. So she didn't get our newsletter
 3 until -- she wasn't eligible until this very month.
 4 So, unless he was signed up to get our conservative
 5 calendar is what it's called, I don't know how else he
 6 would have gotten the information. And I don't know
 7 that it was even on there. I can't -- I'm not sure,
 8 because I'm not the one that compiles all of that.
 9 CHAIRMAN SMITH: This other conservative --
 10 what was it?
 11 THE WITNESS: Calendar.
 12 CHAIRMAN SMITH: Okay. So that's your
 13 publication, from your organization?
 14 THE WITNESS: Yes. We get information from a
 15 number of conservative organizations and compile it and
 16 put it out in -- to conservative groups.
 17 CHAIRMAN SMITH: So it would be events that
 18 you're sponsoring as well as others.
 19 THE WITNESS: There are others. Any
 20 conservative group will be on it, and we'll publish
 21 their information.
 22 CHAIRMAN SMITH: Okay.
 23 THE WITNESS: And it will go to anyone who
 24 signs up for that.
 25 CHAIRMAN SMITH: Thank you.

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1 Did you have --
 2 COMMISSIONER EDGEWORTH: Yes. I was going to
 3 also ask if we could have you come back. I appreciate
 4 the opportunity to ask a couple more questions.
 5 The newsletter you're talking about, this
 6 conservative -- what did you call it? The --
 7 THE WITNESS: Calendar.
 8 COMMISSIONER EDGEWORTH: Calendar. Is that
 9 separate from the Association of Republican Women?
 10 This newsletter Volume V --
 11 THE WITNESS: Yes.
 12 COMMISSIONER EDGEWORTH: Okay. So, this
 13 other newsletter, that only goes to members?
 14 THE WITNESS: Yes.
 15 COMMISSIONER EDGEWORTH: Okay. I, perhaps,
 16 misunderstood. But when you were up here answering
 17 questions before, you indicated that Ms. Reynolds was
 18 not eligible to receive this letter for quite some
 19 time. And separate from the e-mail news information
 20 that was regularly sent out, which she did not open,
 21 apparently. But would she have received these
 22 newsletters?
 23 THE WITNESS: No, because she was not a
 24 member.
 25 I want -- I want to clarify something.

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1 Because we bestow our endorsement upon someone, as we
 2 did last year upon Leslie, that does not mean that she
 3 becomes a member of SVARW. That does not mean that she
 4 gets our newsletter.
 5 COMMISSIONER EDGEWORTH: Okay.
 6 THE WITNESS: Until she signs up as a member
 7 and pays her dues, which she did in December.
 8 COMMISSIONER EDGEWORTH: I don't know when
 9 you became the president.
 10 THE WITNESS: Just now.
 11 COMMISSIONER EDGEWORTH: Just now. Okay.
 12 THE WITNESS: Just this month.
 13 CHAIRMAN SMITH: Just in time.
 14 COMMISSIONER EDGEWORTH: So -- so -- yeah, as
 15 the recording secretary, then. Okay. As the recording
 16 secretary, can you tell us a little bit about these --
 17 this board minute excerpt as late -- as early as
 18 August 31st, when it talks about the change of the
 19 party from a different -- an admittance fee to an
 20 actual contribution and where it says "Leslie Reynolds,
 21 the candidate for District 10, is in need of
 22 donations." Can you comment on that resolution?
 23 Because already it begins to start talking about
 24 donations. It isn't soliciting, but at least it's a
 25 decision to use this party as a fundraiser for

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1 individual candidates.
 2 THE WITNESS: Does it actually name that
 3 party at that time?
 4 COMMISSIONER EDGEWORTH: Yes, it does. It
 5 says, "The Patriot Party of December 10th will be
 6 hosted by" -- it doesn't give the name. "It was
 7 suggested that we charge \$25 for the event, and
 8 attendees will write their checks directly to the
 9 candidate of their choice. The SVARW will provide the
 10 food and wine. Leslie Reynolds, the candidate for
 11 District 10, is in need of contributions." It does.
 12 comment that she can only begin collecting
 13 contributions on December 9th.
 14 But the plan for the party to be a fundraiser
 15 and mentioning her and her need of funds was already in
 16 a -- in a -- the minutes of a board meeting as of the
 17 31st of August. Would she should not have been aware
 18 of that decision?
 19 THE WITNESS: No, because she's not a member
 20 of our board, and we wouldn't have told her anything.
 21 We were kind of trying to formulate how we were going
 22 to handle this Patriot Party. Because they're very
 23 important to us, and they are fundraisers. And we were
 24 talking about it in August. But it wasn't until later
 25 on that we decided that we were going to attach it to

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1 the Republican -- the Republican candidates and
 2 their -- what do you call them? Well, anyway, they've
 3 been debating.
 4 And then we decided to add Leslie on,
 5 although later on. Much later on. But she was on our
 6 radar, yes, that she needed contributions ultimately,
 7 that we wanted to keep her in mind.
 8 COMMISSIONER EDGEWORTH: The reason why I
 9 raise this is because it's August 31st, but the
 10 newsletter is talking about this being a fundraiser for
 11 candidates, without her name being mentioned. But
 12 local candidates are mentioned in general as well as
 13 the Presidential nominees competing for the nomination,
 14 that it would be a fundraiser. Like a month later --
 15 like the first one was like in October -- the first
 16 part of October was the first -- in our packet of
 17 exhibits -- was not too long after this decision was
 18 made. And it wasn't until a month later that her name
 19 was actually put on the list of donating contributions
 20 and the form was attached to the newsletter, where it's
 21 actually inserted in the newsletter.
 22 So the decision to make it a fundraising for
 23 a specific candidate was made at the very end of
 24 August, the last day of August. And by October it was
 25 already being advertised as such in e-mail, on-line

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1 distribution of campaign -- of news information as well
 2 as the published newsletter that she would not have
 3 been. So it wasn't too long a distance from this
 4 decision to when it actually started being publicized.
 5 Is that correct?
 6 THE WITNESS: Uh-huh.
 7 COMMISSIONER EDGEWORTH: Okay. Thank you.
 8 CHAIRMAN SMITH: Okay. Thank you.
 9 All right. Okay. Now, I would ask Mr. Moye
 10 if you would repeat for us the information regarding
 11 your recommendations.
 12 MR. MOYE: Yes. And the --
 13 CHAIRMAN SMITH: And we'll go into discussion
 14 and action.
 15 MR. MOYE: Yes, so our specific conclusions
 16 concern the violation by the SVARW regarding soliciting
 17 campaign contributions prior to the start of the
 18 campaign contribution period. And then the second
 19 finding, that the Reynolds campaign did not accept
 20 campaign contributions prior to the start of the
 21 campaign contribution period; that there was -- the
 22 evidence did not sustain an allegation that either the
 23 Association or Reynolds had acted deliberately or with
 24 intent to violate the Municipal Code.
 25 And, based upon that, we are recommending

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1 that the Commission adopt the findings -- our findings,
 2 as set forth in the report, and the recommendations of
 3 the report as well, too. And, you know, the
 4 recommendations being -- you know, specifically, you
 5 know, adopting the report itself and whatever, you
 6 know, action the Commission may deem appropriate with
 7 respect to the solicitation and violation by the
 8 Association.
 9 CHAIRMAN SMITH: Okay. Thank you.
 10 Okay. At this time, we'll make our
 11 decisions. And we have, as called out in the -- I
 12 guess it's the resolution. We have four options. And
 13 also a sheet of paper that lists those. And those four
 14 options are:
 15 First of all, number one, the Commission may
 16 find that further investigation is necessary. If so,
 17 it shall direct the Evaluator/Investigator to conduct
 18 further investigations and report back to the
 19 Commission.
 20 Number two, the Commission may find that
 21 there is sufficient evidence to establish that no
 22 violation occurred. If so, it shall make that finding
 23 and announce that fact.
 24 Number three, the Commission may find that
 25 there is insufficient evidence to establish that a

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1 violation has occurred. If so, then it shall make that
 2 finding and announce that fact.
 3 And, number four, the Commission may find
 4 that, on the preponderance of the evidence from the
 5 entire record of the proceeding, a violation has
 6 occurred.
 7 I think it might be a good idea -- and I
 8 don't know if this is for the Evaluator or for the City
 9 Attorney -- to briefly talk about the difference
 10 between Number 2 and Number 3. If you read them quick,
 11 it's like, What's the difference? But they're very --
 12 I think there's a significant but subtle difference
 13 that I think we -- and since two of the four of us have
 14 not been through this process before, I think it would
 15 be helpful to perhaps just briefly, if we could -- who
 16 should I ask?
 17 MS. HERRICK: Flip a coin.
 18 CHAIRMAN SMITH: It's a legal distinction
 19 between the two. So I think we need a understanding
 20 for it.
 21 MS. HERRICK: I'm happy to take a stab at it
 22 and weigh in, Mr. Moye.
 23 For Number 2, it's basically that the
 24 Commission should be satisfied that there is enough
 25 evidence to determine that there is no violation. For

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1 Number -- the difference, then, in Number 3 is that
2 there is not evidence to determine that a violation has
3 occurred. So if there is not enough evidence under
4 Number 3 to determine that a violation has occurred --
5 for example, you could make that finding or there may
6 be something that you have a question about that might
7 take you back up to Number 1, for example, for further
8 investigation. But Number 2 is a very decisive
9 determination that there is enough evidence to
10 determine that no violation has occurred.
11 CHAIRMAN SMITH: Number 3 is a little more --
12 MR. MOYE: Or Number 3 might, you know,
13 reflect a situation where there is evidence which is
14 just not going to be available to the Commission to
15 clarify what might be a concern. And so in that
16 circumstance, rather than finding -- the
17 preponderance-of-the-evidence standard would not be
18 met. And so there's a -- there's a different route to
19 concluding that no -- that you're not going to take
20 action as opposed to affirmatively concluding that
21 there is no -- or the evidence does not sustain the
22 violation.
23 CHAIRMAN SMITH: Okay. Any questions about
24 that?
25 COMMISSIONER PIERRE DIXON: No.

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1 CHAIRMAN SMITH: Everybody clear on what
2 those distinctions are?
3 COMMISSIONER PIERRE DIXON: Yes.
4 CHAIRMAN SMITH: You either say -- well, I'm
5 not going to even going to try to paraphrase. I'll
6 just confuse things.
7 MS. HERRICK: Mr. Chair, I just want to
8 remind everyone: We have a hardworking court reporter
9 here who's trying to take everything down. And so -- I
10 know we start slipping and talking over each other, but
11 let's try really hard not to do that, please.
12 CHAIRMAN SMITH: So this meeting will not be
13 like our other meetings, where we talk over each other.
14 Humor is not necessary.
15 Okay. So what we -- I believe what we need
16 to do is to go through the recommendations one at a
17 time and make a determination, you know, for these four
18 options, for each of the four. And what I would
19 like -- I think what I would like to do is to follow --
20 what the Robert's Rules of Order say we're supposed to
21 do which is to have a motion first and then discuss
22 rather than -- what we often do is to discuss and then
23 come up with a motion.
24 So for Number -- just give me a second here.
25 Let me find my note. For Number 1, unless somebody has

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1 got something different, I would entertain a motion
2 that we find, on the preponderance of the evidence from
3 the entire record of the proceedings, that a violation
4 has occurred in that SVARW solicited contributions for
5 Candidate Reynolds prior to December 9th, 2011, in
6 violation of the Municipal Code.
7 COMMISSIONER EDGEWORTH: I so move.
8 COMMISSIONER PIERRE DIXON: I will second
9 that.
10 CHAIRMAN SMITH: Any discussion on that
11 motion?
12 COMMISSIONER PIERRE DIXON: I think it's
13 clear from the record and what we have here in the
14 testimony that we've gotten today that, in fact, that
15 solicitation did occur, and it did occur before
16 December 9th by SVARW.
17 COMMISSIONER EDGEWORTH: As a comment: My
18 concern is that not only did the violation occur, but I
19 think it can be argued that the care taken to postdate
20 the checks or have them postdate the checks indicates
21 full knowledge of the Municipal Code but is seen as a
22 means of getting around it. And I just want that on
23 the record.
24 CHAIRMAN SMITH: Okay. I -- I guess I
25 don't -- I don't -- I don't see that, personally. I --

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1 it was getting around the Code, I think, but I didn't
2 view it as a willful, deceptive act but rather an
3 attempt to comply, perhaps clumsily. But I think we --
4 the comments so far -- I think we agree there is a
5 violation here.
6 COMMISSIONER EDGEWORTH: Yes.
7 CHAIRMAN SMITH: The rationale behind it or
8 the facts behind it here notwithstanding.
9 Any other --
10 COMMISSIONER PIERRE DIXON: Well,
11 furthermore, just to comment a little on that, I think
12 it is the responsibility of any organization that does
13 fundraising as a main part of their business to know
14 what the rules and regulations are. And there are no
15 excuses for not knowing the law.
16 In this particular instance, the law is very
17 clear. The solicitation did take place; that makes it
18 a violation. That's where I stand.
19 COMMISSIONER LOUIE: I still think that it
20 was not willful. And I don't think that -- postdating
21 a check was -- made it even a worse situation. I agree
22 with the findings here that, yes, there was a
23 violation.
24 CHAIRMAN SMITH: So, if there's no further
25 discussion, I'll offer a vote. All those in favor of

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1 the motion please say "Aye."
 2 (All Commissioners responded Aye.)
 3 CHAIRMAN SMITH: Any opposed?
 4 (No response.)
 5 CHAIRMAN SMITH: Okay. So the motion passes
 6 unanimously.
 7 The second recommendation is that Candidate
 8 Reynolds did not solicit contributions prior to
 9 December 9th, 2011. And this is why I make the
 10 distinction between Number 2 and Number 3.
 11 Yes.
 12 COMMISSIONER EDGEWORTH: I would like to
 13 recommend a change, a little bit, to the wording -- a
 14 modification to the wording that "relative to this
 15 complaint, Reynolds did not solicit contributions prior
 16 to December 9th." We have no information about
 17 anything else that may be filed as a complaint some
 18 other time.
 19 CHAIRMAN SMITH: Okay. I think we need to
 20 clarify between our options, though. We find that
 21 there is insufficient evidence to establish that a
 22 violation has occurred, which was -- which was
 23 Number 3; or we want to make a definitive statement,
 24 Number 2, that there is sufficient evidence to
 25 establish that no violation occurred. I think we need

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1 to make the distinction.
 2 COMMISSIONER LOUIE: Well, based on what
 3 we've heard, that's what we've heard. There is no
 4 evidence, based on what we heard. I mean, the --
 5 apparently the party does say, hearsay, that they got
 6 e-mails or done this. But when one of the
 7 Commissioners asked, Do you have proof, there's no
 8 proof.
 9 So, in my opinion, it's not insufficient.
 10 What we hear -- what we heard is what we heard.
 11 Therefore, there is enough evidence to show that she
 12 did not --
 13 CHAIRMAN SMITH: Is that -- is that the -- is
 14 that the intent of your motion?
 15 COMMISSIONER EDGEWORTH: My intent is
 16 twofold. Number one, I would agree with our colleague
 17 that the evidence does not support that she solicited
 18 or received contributions before the beginning of the
 19 campaign period. My distinction is a little bit more
 20 fine than that, is that it's -- we can't make a
 21 definitive statement that she did not do so in other
 22 contexts and other ways before the -- we have no --
 23 that is not the point here. The point here is that in
 24 the context of this complaint, she did not.
 25 CHAIRMAN SMITH: Okay. So, in the context of

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1 this complaint, you would state the motion that there
 2 is sufficient evidence to establish that no violation
 3 occurred. Or Option Number 2. Is that the motion?
 4 COMMISSIONER EDGEWORTH: Yes.
 5 CHAIRMAN SMITH: Is there a second?
 6 COMMISSIONER LOUIE: (Raises hand.)
 7 CHAIRMAN SMITH: There's a motion and second.
 8 I would just make a statement that -- I don't
 9 think a violation occurred, but I would offer Number 3.
 10 I think there's insufficient evidence, because -- I
 11 just think there's insufficient evidence. But I'm not
 12 going to argue the point. I don't think it's that
 13 important in this case. I think the important thing is
 14 that we find that there is no violation.
 15 COMMISSIONER EDGEWORTH: If we're in
 16 discussion period, I would like to change to Option 3
 17 as well. I think that is the real issue, that there is
 18 no sufficient evidence here that suggests that she has
 19 violated the early contribution and solicitation.
 20 CHAIRMAN SMITH: So you want to change -- how
 21 do we do this?
 22 MS. HERRICK: Well, the maker of the motion
 23 can change her motion.
 24 CHAIRMAN SMITH: And then the second --
 25 MS. HERRICK: As long as the second agrees.

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1 CHAIRMAN SMITH: Or somebody else is willing
 2 to second the change.
 3 MS. HERRICK: Well, right now you've got --
 4 MR. HAWKINS: You've have a motion and then a
 5 second.
 6 CHAIRMAN SMITH: Okay. So she wants to
 7 change the motion. Do you -- okay.
 8 COMMISSIONER LOUIE: (Shakes head from side
 9 to side.)
 10 MS. HERRICK: Vote on that motion and then if
 11 it fails --
 12 CHAIRMAN SMITH: Vote on the original motion?
 13 MS. HERRICK: Correct.
 14 CHAIRMAN SMITH: Okay. Any discussion before
 15 we do that.
 16 Okay. No discussion. Okay.
 17 Okay. The motion was -- just to clarify, the
 18 original motion, which is we find that there is
 19 sufficient evidence to establish that no violation
 20 occurred. In the context of --
 21 COMMISSIONER EDGEWORTH: In relation to
 22 Ms. Reynolds, in the context of this complaint.
 23 CHAIRMAN SMITH: Okay. All in favor?
 24 COMMISSIONER PIERRE DIXON: Aye.
 25 CHAIRMAN SMITH: Two. Opposed?

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<p>1 COMMISSIONER EDGEWORTH: No.</p> <p>2 COMMISSIONER LOUIE: (Shakes head from side</p> <p>3 to side.)</p> <p>4 CHAIRMAN SMITH: It's two to two.</p> <p>5 MS. HERRICK: So the motion fails with a tie.</p> <p>6 CHAIRMAN SMITH: So it fails because it needs</p> <p>7 three.</p> <p>8 Okay. You wish to make a new motion?</p> <p>9 COMMISSIONER EDGEWORTH: I make a motion that</p> <p>10 the Commission find that, based on -- within the</p> <p>11 constraints of this complaint, there is insufficient</p> <p>12 evidence to establish that a violation occurred and</p> <p>13 that Ms. Reynolds did not solicit contributions prior</p> <p>14 to December 9th, 2011.</p> <p>15 CHAIRMAN SMITH: Is there a second?</p> <p>16 I'll second it.</p> <p>17 Okay. Discussion? I think we're headed for</p> <p>18 Number 2.</p> <p>19 COMMISSIONER PIERRE DIXON: I think the -- I</p> <p>20 think the fine distinction, to me, as an attorney, is</p> <p>21 the question of whether or not I heard any evidence.</p> <p>22 And, in my mind, I heard sufficient evidence when I</p> <p>23 heard from the president of the organization that she</p> <p>24 was not on the e-mail list and did not receive those</p> <p>25 e-mails to become aware that solicitation was taking</p>	<p>1 CHAIRMAN SMITH: It's just a matter of how we</p> <p>2 word it.</p> <p>3 COMMISSIONER PIERRE DIXON: That's right.</p> <p>4 COMMISSIONER LOUIE: Right. And, again --</p> <p>5 continue what I said. Again, "insufficient" means</p> <p>6 we're not sure because we didn't hear something. We</p> <p>7 heard what we heard, and it all leads to --</p> <p>8 CHAIRMAN SMITH: Yeah. Okay.</p> <p>9 COMMISSIONER LOUIE: But you're right, it's</p> <p>10 splitting hairs.</p> <p>11 CHAIRMAN SMITH: Okay. So right now -- so do</p> <p>12 you have a comment?</p> <p>13 COMMISSIONER EDGEWORTH: I think the main</p> <p>14 issue is that there is no finding of violation. I</p> <p>15 think that's the main issue.</p> <p>16 CHAIRMAN SMITH: I'm willing to switch to the</p> <p>17 other side, because I don't think it's worth sitting</p> <p>18 here all night, splitting hairs.</p> <p>19 COMMISSIONER EDGEWORTH: I agree with you. I</p> <p>20 agree with you. That will make it cleaner.</p> <p>21 CHAIRMAN SMITH: So, if that's the case, we</p> <p>22 need to vote down this motion. Make a motion --</p> <p>23 MR. HAWKINS: Point of order. I believe that</p> <p>24 Commissioner Edgeworth could withdraw her motion with</p> <p>25 the consent of the seconder, and then you could make --</p>
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<p>1 place. And, to me, that made sufficient evidence in</p> <p>2 the context of this complaint. For me to say that</p> <p>3 there is not -- there is insufficient evidence would</p> <p>4 mean I didn't hear anything on the subject. But I did</p> <p>5 hear something on it, and I'm taking it at its face</p> <p>6 value. And that's why I vote for Number 2.</p> <p>7 COMMISSIONER LOUIE: I have to agree that --</p> <p>8 the fact that "insufficient" means we're not sure.</p> <p>9 Well, we've heard enough evidence to show that it</p> <p>10 didn't occur. She did not solicit. And, again, we</p> <p>11 heard someone say "We think" and "We got e-mail," but</p> <p>12 that's not evidence. So there was no evidence that</p> <p>13 stated otherwise. The evidence stated she did not</p> <p>14 solicitate prior to that date.</p> <p>15 So that's why I'm proceeding the way I'm</p> <p>16 proceeding. I -- the evidence is clear: She did not</p> <p>17 do it, based on what we heard. We didn't hear one</p> <p>18 person say -- or document saying yes and another</p> <p>19 document saying no. That would be insufficient; we're</p> <p>20 not sure. I didn't see that "not sure."</p> <p>21 So that's my opinion.</p> <p>22 CHAIRMAN SMITH: I think we're -- okay.</p> <p>23 We're splitting hairs. I think we all agree there is</p> <p>24 no violation.</p> <p>25 COMMISSIONER PIERRE DIXON: Right.</p>	<p>1 CHAIRMAN SMITH: Thank.</p> <p>2 COMMISSIONER EDGEWORTH: Thank you. I</p> <p>3 withdraw my second motion then.</p> <p>4 CHAIRMAN SMITH: I withdraw the second.</p> <p>5 Okay. Now, do you want to make the --</p> <p>6 COMMISSIONER EDGEWORTH: Okay. I'll try.</p> <p>7 I'll try.</p> <p>8 CHAIRMAN SMITH: Make it quick.</p> <p>9 COMMISSIONER EDGEWORTH: Okay. Within the</p> <p>10 context of this complaint, I make a motion that the</p> <p>11 Commission find that there is not sufficient</p> <p>12 evidence -- there is sufficient evidence to establish</p> <p>13 that no violation has occurred and that Ms. Reynolds</p> <p>14 did not solicit contributions prior to December 9th,</p> <p>15 2011.</p> <p>16 COMMISSIONER LOUIE: And I'll second it, like</p> <p>17 before.</p> <p>18 CHAIRMAN SMITH: Okay. Any more discussion?</p> <p>19 All in favor?</p> <p>20 (All Commissioners responded Aye.)</p> <p>21 CHAIRMAN SMITH: Any opposed?</p> <p>22 (No response.)</p> <p>23 CHAIRMAN SMITH: Okay. It's unanimous.</p> <p>24 At some future time, we may want to talk</p> <p>25 about Option 2 versus Option 3. Out of -- out of</p>

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1 the -- separate from any particular investigation.
 2 Because it's a little -- that's why I asked for some
 3 discussion -- clarification to begin with. It's a
 4 little murky. Okay.
 5 The third recommendation is that Candidate
 6 Reynolds did not receive contributions prior to
 7 December 9th, 2011. We have a motion -- I would
 8 entertain a motion that we -- basically, Option 2, that
 9 we find that there is sufficient evidence to establish
 10 that no violation occurred. If somebody would like to
 11 make that motion.
 12 COMMISSIONER LOUIE: I'll make the motion.
 13 COMMISSIONER PIERRE DIXON: I will second it.
 14 CHAIRMAN SMITH: Okay. Any discussion?
 15 COMMISSIONER EDGEWORTH: I would like to
 16 suggest that it repeats the language in the context of
 17 this complaint.
 18 CHAIRMAN SMITH: Is that acceptable? Okay.
 19 It's acceptable to the maker of the motion and the
 20 seconder.
 21 And I would agree on this one. I think it's
 22 very clear that she didn't receive anything. I mean,
 23 there's been nothing to indicate that she received
 24 anything relative to this point, prior to December 9th.
 25 So any other?

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1 COMMISSIONER PIERRE DIXON: No.
 2 CHAIRMAN SMITH: Okay. All in favor?
 3 (All Commissioners responded Aye.)
 4 CHAIRMAN SMITH: Any opposed?
 5 (No response.)
 6 CHAIRMAN SMITH: Okay. It's unanimous once
 7 again.
 8 And the fourth one is that Candidate Reynolds
 9 received a contribution solicited or received by SVARW
 10 in violation of the Municipal Code was inadvertent and
 11 without knowledge of impropriety. I'm not going to
 12 suggest a motion on this one. You guys decide if you
 13 want to do Number 2 or Number 3. Somebody make a
 14 motion.
 15 COMMISSIONER PIERRE DIXON: My motion would
 16 go, again, as to Number 2, that relative to this
 17 complaint, there was sufficient evidence to establish
 18 that no violation occurred. In reference to the fact
 19 that it was inadvertent and without knowledge or
 20 impropriety.
 21 CHAIRMAN SMITH: Okay.
 22 COMMISSIONER LOUIE: And I'll second that.
 23 CHAIRMAN SMITH: Okay. Any discussion?
 24 COMMISSIONER EDGEWORTH: I have a little bit
 25 of a question, the way it's worded here. We've got two

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1 parties involved. And it's not clear to me, the
 2 sentence, whether we're talking about both of them
 3 jointly or whether we should divide these into two.
 4 COMMISSIONER PIERRE DIXON: We've got --
 5 CHAIRMAN SMITH: This -- as I read this
 6 recommendation, we can ask the Evaluator -- I read this
 7 as a -- that this -- on the part of the candidate, this
 8 was inadvertent and without knowledge of impropriety.
 9 But maybe you could -- maybe I should ask the
 10 Evaluator.
 11 MR. MOYE: Yes. It is referring to
 12 Ms. Reynolds. And it specifically was sort of -- sort
 13 of tying up the loose end, if you will, and whether --
 14 CHAIRMAN SMITH: And heading toward the
 15 penalty.
 16 MR. MOYE: Yes. And, you know, given, you
 17 know, these other findings, you know, there would still
 18 potentially be the question of, well, was this done
 19 with knowledge or was it truly -- or does the evidence
 20 demonstrate that it was inadvertent and without
 21 knowledge of an impropriety having occurred? So it's
 22 focused on Ms. Reynolds.
 23 COMMISSIONER EDGEWORTH: I would suggest,
 24 then, given that response, that it's not received by
 25 the SVARW but received from them.

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1 COMMISSIONER PIERRE DIXON: I would accept
 2 that amendment.
 3 COMMISSIONER EDGEWORTH: So that she received
 4 the funds from them rather than -- they -- it sounds
 5 like they also received the contributions. So I think
 6 it's just changing the --
 7 CHAIRMAN SMITH: Well, they did --
 8 THE WITNESS: Reynolds received a
 9 contribution solicited or received from --
 10 CHAIRMAN SMITH: But then it says "in
 11 violation of the Municipal Code." And the violation of
 12 the Municipal Code was received by. They received
 13 them -- solicited -- I think solicited and received --
 14 I had it as Number 9.
 15 COMMISSIONER PIERRE DIXON: Well, I like the
 16 amendment, because I think it does clarify it.
 17 "Received from in violation," and then that becomes the
 18 second part.
 19 MR. MOYE: I would -- if it were to say
 20 "from," then I would recommend striking "in violation
 21 of the Municipal Code." Because the motion was -- to
 22 the extent that there may have been something that was
 23 a mistake by SVARW, the question is, was
 24 Ms. Reynolds -- did Ms. Reynolds act without knowledge
 25 of that. So, you know, it could say -- you know,

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<p style="text-align: center;">Page 89</p> <p>1 Ms. Reynolds received a contribution solicited or 2 received, you know, from SVARW -- 3 COMMISSIONER PIERRE DIXON: Was inadvertent. 4 MR. MOYE: -- was inadvertent. Or it 5 could -- and I guess, maybe, to make it a little bit 6 clearer -- "in violation of the Municipal Code" -- if 7 you left it -- "in violation of the Municipal Code, as 8 set forth above." I think that might make -- 9 COMMISSIONER PIERRE DIXON: It clear. 10 COMMISSIONER EDGEWORTH: But there is no 11 "above" in the motion, is there, Mr. Moyer? 12 MR. MOYE: Okay. Good point. 13 CHAIRMAN SMITH: I like it the way it's 14 written, personally. 15 MR. MOYE: Okay. Well, you know what I was 16 thinking. So now, I guess, at this point it would 17 be -- 18 CHAIRMAN SMITH: Okay. So what do we -- what 19 do we have? And I was just guilty of talking over. 20 COMMISSIONER PIERRE DIXON: The last 21 statement, that Mrs. Reynolds received a contribution 22 solicited or received from SVARW was inadvertent and 23 without knowledge of an impropriety. That would strike 24 the language "in violation of the Municipal Code." My 25 comment was to leave it in and to add the "from." I</p>	<p style="text-align: center;">Page 91</p> <p>1 suggestion of -- trying to clarify, would be "Reynolds 2 received a contribution solicited by SVARW in violation 3 of the Municipal Code." 4 CHAIRMAN SMITH: I like that. That would 5 basically take D and strike the words "or received." 6 MR. HAWKINS: Right. 7 CHAIRMAN SMITH: Leave the "by" but strike 8 "or received." 9 COMMISSIONER EDGEWORTH: Okay. 10 COMMISSIONER PIERRE DIXON: All right. 11 CHAIRMAN SMITH: I think that's a good 12 suggestion. So are you willing to accept, as the maker 13 of the motion? 14 COMMISSIONER PIERRE DIXON: I will. 15 COMMISSIONER LOUIE: Can I ask Mr. Moyer: Any 16 comment on that? 17 MR. MOYE: No, that's fine. 18 COMMISSIONER LOUIE: Okay. I seconded. I'm 19 fine with it. 20 CHAIRMAN SMITH: Okay. Any further 21 discussion? 22 Okay. All in favor? 23 (All Commissioners responded Aye.) 24 CHAIRMAN SMITH: Any opposed? 25 (No response.)</p>
<p style="text-align: center;">Page 90</p> <p>1 thought that was clear. 2 MR. MOYE: And the only concern I had about 3 that is that would suggest that her receipt of that 4 from SVARW was in violation of the Municipal Code. And 5 that was my only concern about that wording. 6 CHAIRMAN SMITH: Okay. So what do you want 7 it to be? 8 COMMISSIONER PIERRE DIXON: Well, I made a 9 motion based on the original language. 10 CHAIRMAN SMITH: Okay. 11 COMMISSIONER PIERRE DIXON: And then there 12 was a comment made. 13 CHAIRMAN SMITH: Oh, that's right. 14 COMMISSIONER PIERRE DIXON: Change it to 15 "from." 16 CHAIRMAN SMITH: Okay. That's right. That's 17 right. 18 COMMISSIONER PIERRE DIXON: I was willing to 19 accept that. And now I don't know if we want to do 20 that or not. 21 CHAIRMAN SMITH: Okay. 22 MR. HAWKINS: Just trying to help the 23 Commission to clarify. Something along the lines of 24 "Reynolds received contribution solicited by SVARW in 25 violation of Municipal Code was inadvertent." Just a</p>	<p style="text-align: center;">Page 92</p> <p>1 CHAIRMAN SMITH: Okay. Unanimous once again. 2 Now we move to the penalty phase. I need to 3 get back to where I was here. Oh, okay. And now that 4 we have -- we have completed our disposition on the -- 5 of the recommendations, we need to -- I need to get a 6 certification before we go to the penalty phase. So 7 what I would like is for each Commissioner to certify 8 that you have heard or read the testimony of the 9 hearing and reviewed all the evidence in the record by 10 affirming "So certified." 11 So I will start. So certified. 12 COMMISSIONER EDGEWORTH: So certified. 13 COMMISSIONER PIERRE DIXON: So certified. 14 COMMISSIONER LOUIE: So certified. 15 CHAIRMAN SMITH: Thank you. 16 Okay. Next, if the Commission's findings are 17 that a violation has occurred, the Commission must now 18 determine the penalties. If the Commission finds that 19 a violation has occurred, the Commission may -- and 20 this gets back to the errata and the letter that we 21 talked about. This is where that comes up. We can 22 (a) find mitigating circumstances and take no further 23 action; (b) issue a public statement or reprimand; 24 (c) require a corrective action by a particular 25 deadline; and/or (d) impose a penalty in accordance</p>

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<p>1 with Chapter 12.04 of the San Jose Municipal Code. 2 The affirmative votes of at least three 3 Commission members are required to impose orders and 4 penalties for a violation. In addition, in order to 5 vote to oppose any order or penalty for a violation, 6 every Commissioner must certify -- we'll go through 7 that again, that you've heard the testimony, et cetera. 8 In determining if -- and this is where that 9 fourth recommendation comes into play. In determining 10 if penalties should be imposed for violations of 11 Title 12 and the amount of such penalties, the 12 Commission shall consider all relevant circumstances 13 surrounding the case, including: The severity of the 14 violation; the presence or absence of any intention to 15 conceal, deceive or mislead; whether the violation was 16 a deliberate, negligent -- whether the violation was 17 deliberate, negligent or inadvertent; and whether the 18 violation was an isolated incident or pervasive enough 19 to indicate a pattern of disregard for this Chapter; 20 whether the respondent has a prior record of violations 21 of City law in relation to campaign finance, lobbying, 22 conflicts of interest or governmental ethics; the 23 degree to which the respondent cooperated with the 24 investigation; and whether or not corrective actions 25 were taken, if appropriate, in accordance with the</p>	<p>1 taken by the person who we found to have a violation 2 but rather by the person who we found didn't have a 3 violation. 4 COMMISSIONER PIERRE DIXON: And my question 5 would be, how do you accomplish that when you said that 6 the candidate did not have knowledge? If she did -- if 7 she didn't have knowledge at the time and didn't get 8 the funds until the date that it was okay to receive 9 them, she should retain those funds. I think you have 10 a problem saying that. 11 CHAIRMAN SMITH: Well, can we get some legal 12 advice from somewhere on that point? Is it appropriate 13 to ask for any of those funds to be returned? Or maybe 14 even all of them, because they were all solicited 15 before December 9th even if they were received at the 16 party rather than in advance. 17 MR. MOYE: Well, I -- you know, I think that, 18 you know, that was, you know, sort of the -- you know, 19 the step of the analysis sort of getting to the 20 conclusions. And -- because, you know, the Association 21 is responsible for what the Association does, and 22 Ms. Reynolds is responsible for what she does. 23 There are circumstances where one might 24 become responsible for the acts of the other. And so 25 that's why we walk through, you know, evidence which</p>
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<p>1 provisions of this Chapter. 2 And then, if we find a violation occurred, we 3 must adopt a motion imposing penalties. 4 And then under Municipal Code 5 Section 12.04.100, if we find a violation of this 6 title, the Commission may: Find mitigating 7 circumstances and take no further action; issue a 8 public statement or reprimand; or impose a civil 9 penalty in accordance with the title. 10 MR. HAWKINS: Mr. Chair -- 11 CHAIRMAN SMITH: Yes. 12 MR. HAWKINS: -- in this -- the other option 13 is also, as mentioned before, require corrective action 14 by a particular deadline. 15 CHAIRMAN SMITH: Oh, okay. Thank you. Which 16 leads to a question -- before we talk about motions, I 17 think -- clarification. The violation that we have 18 found is SVARW. And so that would be -- you're talking 19 about possible penalties. However, there is a 20 corrective action that I see that actually involves the 21 candidate. And that is the return of those funds that 22 were -- I think, that were solicited prior to -- at 23 least the ten checks that came in before December 9th. 24 That would seem, to me, anyway, to be an appropriate 25 corrective action. But that's an action not to be</p>	<p>1 would, you know, indicate, whether or not any of these 2 activities occurred at the behest of Ms. Reynolds, 3 thereby making her responsible for them; whether any of 4 the actions were taken, you know, as the agent of 5 Ms. Reynolds, thereby creating a -- certainly could be 6 a responsibility as well, too. And our conclusion was 7 that the evidence, you know, failed to sustain that any 8 of the actions were taken at her behest or that, you 9 know, the Association was acting as her agent. 10 You know, hypothetically, had the evidence 11 been to the contrary on either one of those points, 12 then it would be the situation, you know, where you 13 might -- you know, arguably, the -- you know, the 14 violation might be found against both parties, but 15 there are circumstances where it might be found against 16 one as opposed to not the other. And then, 17 potentially, corrective action, you know, could be 18 assessed against, you know, either of the two parties. 19 In this instance, in -- consistent with the 20 last finding as to whether or not there was, you know, 21 if you will, culpability -- again, if the receipt, you 22 know, had been, you know, knowing, which would perhaps 23 suggest some sort of coordination between the two 24 parties, then that last finding would not have occurred 25 and there would probably be a different situation in</p>

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<p style="text-align: center;">Page 97</p> <p>1 terms of assessing, you know, some other corrective 2 action which might take in Ms. Reynolds. 3 CHAIRMAN SMITH: Okay. So -- so you're 4 basically saying there's no need for corrective action 5 on her part? 6 MR. MOYE: Well, the corrective action would 7 have to be, you know, with respect to the violation by 8 the Association, consistent with your finding that the 9 Association is the only one that has committed a 10 violation. 11 MS. HERRICK: And, Mr. Chair, I agree with 12 that. I think that what the Evaluator is saying is 13 that if you have found that there isn't a violation 14 against Ms. Reynolds, you cannot impose a penalty 15 against her. 16 CHAIRMAN SMITH: Well, that's -- that's why I 17 was asking that question. I don't know if corrective 18 action constitutes a penalty. I guess it does. 19 COMMISSIONER PIERRE DIXON: Yeah. 20 CHAIRMAN SMITH: It's just -- I -- it's clear 21 to me that she's not responsible for this happening. I 22 don't want anybody to misunderstand that. However, the 23 money is sort of tainted. Whether she's responsible or 24 not, that money was sort of tainted because it was 25 solicited in advance. But I'll accept --</p>	<p style="text-align: center;">Page 99</p> <p>1 that aren't enforceable, personally. 2 Okay. I guess at this point I would 3 entertain a motion. And I'll suggest one, unless 4 somebody has got one. 5 COMMISSIONER PIERRE DIXON: Now in terms of 6 penalty? 7 CHAIRMAN SMITH: Yes. 8 COMMISSIONER PIERRE DIXON: I had my first 9 look, in thinking over this and reading and then 10 listening to all the testimony today, again, I think 11 the bulk of the responsibility lies with the 12 organization. And as an organization that's doing 13 fundraising, they are obligated to follow the law, 14 which they did not do it in this case. And I think 15 that it was inadvertent. I don't think you did it 16 purposely. I don't think you did it as a matter of 17 evasion around the law but a violation occurred. And 18 so my suggestion is that we issue a public statement of 19 reprimand as a result of that. 20 COMMISSIONER LOUIE: I would second that. I 21 feel that the -- penalty is not appropriate because it 22 was not, you know, deliberate. So it was inadvertent. 23 CHAIRMAN SMITH: You mean as far as a 24 financial fine -- 25 COMMISSIONER LOUIE: Financial penalty. Let</p>
<p style="text-align: center;">Page 98</p> <p>1 MR. MOYE: To some extent, that's the anomaly 2 of the Code itself. Because the Code does not require 3 any corrective action in the case of the improper 4 solicitation. 5 And, you know, arguably, that -- you know, I 6 can foresee a number of circumstances which sort of 7 lead to that result. You know, it being -- again, some 8 of those sort of ambiguous hypotheticals under which 9 the solicitation might occur. The fact that the -- you 10 know, there might not be any bell to unring simply by a 11 solicitation or, you know, perhaps just simply the 12 futility of trying to have some -- set forth some 13 corrective action. Whereas, in the case of an 14 acceptance, that is more concrete. And that's what the 15 Code really wanted to address in terms of, you know, 16 potential things happening in the form of corrective 17 action. 18 CHAIRMAN SMITH: Okay. 19 MS. HERRICK: I do think, Mr. Chair, that if 20 you wanted -- if the Commission wanted to issue a 21 public statement about this would be something that the 22 Commission deems is a good thing, I think you can say 23 that. I just don't know that it's enforceable. 24 CHAIRMAN SMITH: Okay. I don't -- I don't 25 know that I want to muddy the waters by saying things</p>	<p style="text-align: center;">Page 100</p> <p>1 me correct that. 2 CHAIRMAN SMITH: I would -- I would -- I 3 would certainly agree with that. 4 What if -- I don't -- I don't think we've 5 done -- do we have a second? 6 MS. HERRICK: Commissioner Louie. 7 CHAIRMAN SMITH: I'm sorry. I lost track. 8 Does that mean we would have to -- if we were 9 to do that, we would have to come up with a statement 10 tonight? 11 MS. HERRICK: I think you can do it a couple 12 of different ways. You can some offer some bullet 13 points that could be -- that the Commission could 14 delegate the authority to the chair to finalize that, 15 working with Staff. Or we can bring it back to your 16 next meeting. It's up to you. It seems like those are 17 two reasonable, obvious options. 18 CHAIRMAN SMITH: I guess -- well, I'll let -- 19 see if anybody else has a comment, and then I've got a 20 question. 21 MS. HERRICK: Okay. 22 COMMISSIONER EDGEWORTH: The only other 23 comment I would make is that I do think that there is 24 evidence that they cooperated with the investigation. 25 There was no attempt to hide when the date of actual</p>

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1 receipt was. It's in their record. If I can confirm
 2 that this came from them.
 3 MR. MOYE: Yes, it did.
 4 COMMISSIONER EDGEWORTH: Okay. This came
 5 from them. So I think a reprimand.
 6 Is there a difference between a public
 7 statement and a reprimand? What are the differences
 8 between the two?
 9 CHAIRMAN SMITH: That's kind of getting to
 10 what I wanted to ask. I think reprimand -- I agree
 11 with your statement. I think it was an honest mistake.
 12 It kind of -- as I read the report, it looks like they
 13 just kind of -- events kind of progressed, and they got
 14 into this situation without realizing what they'd got
 15 themselves into. That's my impression of it. And so
 16 reprimand, to me, seems kind of harsh.
 17 I was kind of favoring finding mitigating
 18 circumstances, which would say it was an inadvertent
 19 thing. They cooperated fully. They were very open
 20 about it. They admitted to -- you know, they basically
 21 said -- their representative here tonight said they
 22 agreed with the finding.
 23 So I don't personally think I find a need
 24 even for a statement, but -- I don't know. What did
 25 you guys have in mind as a statement?

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1 COMMISSIONER PIERRE DIXON: I really thought
 2 there needs to be a public statement because you're
 3 taking about an organization whose main cause is to do
 4 fundraising. And they need to be really clear on what
 5 the laws are. And when you violate those laws, we have
 6 to be clear that we make that statement. If this was a
 7 brand new group -- that's why I asked how long you had
 8 been in existence -- that just was created, you know,
 9 six months ago; I would be more toward Number 1, which
 10 would be mitigating circumstances. But I think, when
 11 you're dealing with professionals who have done this
 12 before, more than one time, that this public statement
 13 and reprimand needs to be in there. And we don't want
 14 to see this happen again. I'm sure it won't in terms
 15 of this group, but we want to make sure no one else
 16 makes the same mistake.
 17 MR. MOYE: And just by point of clarity: A
 18 reprimand is a rebuke. A statement can be anything up
 19 to. So a statement could be a statement of concern.
 20 It could be a statement of clarifying intentions, that
 21 sort of thing. So I think that's the distinction
 22 between a public statement. A public statement: The
 23 Commission has reviewed this case and is concerned by
 24 these facts and these circumstances. A reprimand:
 25 And, therefore, we --

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1 COMMISSIONER PIERRE DIXON: Okay.
 2 CHAIRMAN SMITH: Yeah, I would suggest we
 3 ought to clarify in the motion whether we want a
 4 statement or a reprimand. I personally will not
 5 support a reprimand. But I would support a statement
 6 of some sort. But I think we need to clarify the
 7 motion and then, depending on what that motion is, if
 8 we decide on a statement, we need to decide -- we need
 9 to come to some sort of agreement on what that
 10 statement might be.
 11 COMMISSIONER PIERRE DIXON: That's fine.
 12 CHAIRMAN SMITH: Do you guys -- the maker or
 13 the seconder of the motion, are you -- is it a
 14 statement or a reprimand?
 15 COMMISSIONER PIERRE DIXON: My concern is
 16 that we make a public statement about the violation,
 17 that there was a violation.
 18 CHAIRMAN SMITH: Okay.
 19 COMMISSIONER PIERRE DIXON: And the nature of
 20 it.
 21 CHAIRMAN SMITH: So that would be the motion?
 22 COMMISSIONER LOUIE: And I agree. No
 23 reprimand.
 24 MR. HAWKINS: Just to clarify: The motion is
 25 that it will be a public statement?

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1 CHAIRMAN SMITH: Yes.
 2 MR. HAWKINS: But we would strike the word
 3 "reprimand"?
 4 CHAIRMAN SMITH: Right.
 5 MR. HAWKINS: Strike "reprimand."
 6 CHAIRMAN SMITH: Right.
 7 MR. HAWKINS: Thank you.
 8 CHAIRMAN SMITH: Okay. Any -- any other
 9 discussion?
 10 Okay. All in favor?
 11 (All Commissioners responded Aye.)
 12 CHAIRMAN SMITH: Any opposed?
 13 (No response.)
 14 CHAIRMAN SMITH: Okay. It passes.
 15 Now we needed to make some decision on what
 16 the statement is going to be.
 17 Do you have a suggestion? I see you're
 18 writing there.
 19 COMMISSIONER PIERRE DIXON: Well, I liked her
 20 first suggestion to give some bullet points and then
 21 have you get together with Staff and then perhaps
 22 either e-mail or whatever, and let us know and bring it
 23 back to the next meeting for our final.
 24 CHAIRMAN SMITH: Oh, you mean do it at the
 25 next meeting?

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1 MS. HERRICK: Sure.
2 CHAIRMAN SMITH: Oh, okay.
3 COMMISSIONER PIERRE DIXON: I like that.
4 CHAIRMAN SMITH: Okay. All right. You want
5 to -- you got some bullet points now?
6 COMMISSIONER PIERRE DIXON: Well, I think the
7 main thing is that there has been a violation by this
8 organization; what the nature of the violation was,
9 which was soliciting before the period. So that's my
10 two. You may know how to work the rest of these.
11 CHAIRMAN SMITH: That sounds pretty much what
12 we do in the resolution. Is the resolution, which we
13 haven't gotten to yet. Is the resolution a public
14 statement?
15 MS. HERRICK: The resolution is a public
16 document. It's not something that we necessarily post
17 on the web site or issue as a press release. That
18 might be some additional steps that you could take: A
19 resolution is a public document of the Commission.
20 CHAIRMAN SMITH: But a public statement would
21 be something we would --
22 MS. HERRICK: Well, I made a couple of
23 suggestions of how you can make it more public. But
24 I'm sure there are plenty of other good ideas as well.
25 COMMISSIONER EDGEWORTH: Do we need to make

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1 motions about this?
2 MS. HERRICK: Well, you should, first of all,
3 certify the penalty. Right? Certify that you --
4 CHAIRMAN SMITH: And then we do the
5 resolution.
6 MS. HERRICK: And then give some direction to
7 Staff to develop a resolution, which we can bring back
8 to the next meeting and then maybe you want to decide
9 then if and how to publish it. I don't know. It
10 depends on if you feel that there is some urgency in
11 doing that -- in coming to some conclusion between now
12 and second week in February. I don't know that there
13 is necessarily urgency.
14 CHAIRMAN SMITH: I'm not sure -- when -- the
15 next meeting is what date?
16 COMMISSIONER EDGEWORTH: February 8th?
17 Eighth.
18 CHAIRMAN SMITH: We could go ahead and do the
19 resolution. I mean, why not do the resolution and
20 then -- which basically just is a formal statement of
21 the actions we took tonight, of our findings and of the
22 penalty. And we could do that, and then it could be
23 delegated to me to finalize it with Staff and the
24 issues so there wouldn't be any delay on the
25 resolution. And then we could take up the statement

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1 next time.
2 COMMISSIONER PIERRE DIXON: Or work on the
3 statement.
4 CHAIRMAN SMITH: Yeah, or we could do them
5 together.
6 The only question is, is there benefit to
7 anyone in getting the resolution out now rather than
8 waiting for three weeks or whatever it is?
9 COMMISSIONER PIERRE DIXON: I'd like the
10 resolution to be out as soon as possible.
11 CHAIRMAN SMITH: That's sort of my
12 inclination.
13 Okay. Let's do the certification. And then
14 we -- and then we'll -- do we need anything more as far
15 as what we might put in a statement, or we just --
16 MS. HERRICK: The statement sounds -- the
17 resolution will be more -- will be bigger than just the
18 statement. Right. Because there were the other
19 recommendations that you made decisions -- findings
20 about, rather. You could -- you could take a portion
21 of that -- of the resolution, which really is the
22 statement that you're talking about, and you could
23 decide what you want to do with that. And you could
24 decide what you want to do with that now. And then
25 assuming that you delegated authority to the chair to

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1 approve the resolution, then, once that -- that piece
2 could be taken out, and then you could tell us how you
3 want to make known or -- you know.
4 CHAIRMAN SMITH: And we could do that at the
5 next hearing.
6 MS. HERRICK: You can do that at the next
7 meeting, or you could tell us now how you want that
8 done.
9 CHAIRMAN SMITH: Yes. I'm sorry.
10 COMMISSIONER EDGEWORTH: I think an important
11 part of this public statement is a decision, or at
12 least recommendations, as to how it is distributed and
13 how it is made public. And one of the things I would
14 like to suggest is that they must publish it in their
15 newsletter and in their on-line -- on-line distribution
16 so that their group knows what has happened. And also
17 in a newspaper of general circulation?
18 COMMISSIONER PIERRE DIXON: Uh-huh. Sounds
19 good.
20 CHAIRMAN SMITH: Okay. Yeah, I'm still
21 struggling with what the thing is actually going to
22 say, the statement. But we can -- beyond just that
23 there was a violation.
24 COMMISSIONER PIERRE DIXON: The resolution
25 will cover everything.

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<p>1 CHAIRMAN SMITH: Resolution will cover 2 everything. 3 COMMISSIONER PIERRE DIXON: And then we just 4 pull the statement out. 5 COMMISSIONER EDGEWORTH: Including about 6 Ms. Reynolds. 7 COMMISSIONER PIERRE DIXON: Yes. 8 COMMISSIONER EDGEWORTH: And then we'll send 9 the -- 10 CHAIRMAN SMITH: I think it's -- I think 11 there's value in getting that out. 12 COMMISSIONER PIERRE DIXON: Right. Right 13 away. 14 CHAIRMAN SMITH: The statement would just 15 focus on the one case where we found the violation and 16 whatever it is that we want to say about that, which I 17 don't know. It's much more -- this is a violation of 18 the law, and people should be aware of -- 19 MS. PIERRE SMITH: Right. 20 CHAIRMAN SMITH: -- you know, of this as 21 regards solicitation in advance of -- and I think 22 that -- a brief discussion with Staff earlier today. I 23 think they prepare FAQs, frequently asked questions, 24 for candidates. I think this is a -- something based 25 on this case is a -- is an excellent addition to the</p>	<p>1 that? 2 Okay. All in favor? 3 (All Commissioners responded Aye.) 4 CHAIRMAN SMITH: Any opposed? 5 (No response.) 6 CHAIRMAN SMITH: Okay. It's unanimous. 7 Okay. Public comment. Is there anyone who 8 desires to address the Commission on this -- on the 9 topic of tonight's hearing? 10 MR. HAWKINS: Mr. Chair, in reference to the 11 Commission's desire to try and get resolution of this 12 out to the public, what we could do is prepare a 13 synopsis -- which is not the official minutes of the 14 meeting, but post a synopsis which summarizes the 15 actions that the Commission has taken tonight, with the 16 findings relative to Ms. Reynolds and the findings 17 relative to the Republican women's group, as an interim 18 step to get the word out, and we will post that on our 19 web site as part of the after action for the Commission 20 meeting. That would be a way of communicating to the 21 public what the resolution was tonight. 22 CHAIRMAN SMITH: Now, that's in regards to 23 like -- you're relating that to the statement or to the 24 resolution or both? 25 MR. HAWKINS: More of the statement --</p>
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<p>1 FAQs. You know, what one can get oneself into as 2 regards to solicitation and beginning a contribution 3 period, et cetera. 4 COMMISSIONER PIERRE DIXON: Right. 5 CHAIRMAN SMITH: Okay. At this point we need 6 to certify again that -- relative to the penalty phase, 7 that each Commissioner certify that you have heard or 8 read the testimony of the hearing and have reviewed all 9 of the evidence in the record by affirming "So 10 certified." 11 I will start. So certified. 12 COMMISSIONER EDGEWORTH: So certified. 13 COMMISSIONER PIERRE DIXON: So certified. 14 COMMISSIONER LOUIE: So certified. 15 CHAIRMAN SMITH: Okay. Thank you. And we're 16 almost there. 17 And now -- okay. At this time I would 18 entertain a motion that the Commission directs the City 19 Attorney to draft a resolution of the Commission's 20 findings and penalties and that the Commission 21 authorizes the chair to approve and sign the 22 resolution. I'm entertaining a motion. 23 COMMISSIONER PIERRE DIXON: I would so move. 24 COMMISSIONER EDGEWORTH: Second. 25 CHAIRMAN SMITH: Okay. Any discussion on</p>	<p>1 CHAIRMAN SMITH: The statement. I mean, the 2 resolution -- 3 MR. HAWKINS: -- at this point in time. 4 CHAIRMAN SMITH: -- will be a little -- 5 MR. HAWKINS: But if the Commission was 6 interested in trying to get something out currently in 7 that, this would establish -- you know, we got the 8 report posted. This would summarize the Commission's 9 actions tonight. And so if the media and other people 10 were interested in what the Commission found, that 11 would be on our web site. 12 CHAIRMAN SMITH: And that would be in advance 13 of the minutes -- 14 MR. HAWKINS: I think we can produce a 15 synopsis within a day or so and have that up on the web 16 fairly quickly. 17 MS. HERRICK: But it also sounds like the 18 Commission would like to review the statement and how 19 it's going to be distributed. So I think maybe we 20 should continue the hearing for that purpose for 21 February 8th. 22 CHAIRMAN SMITH: Yes, it's a continuation of 23 the hearing. So we would have to have the court 24 reporter back and have that -- 25 MS. HERRICK: No, I don't think we need the</p>

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1 court reporter back. You're not taking any testimony
 2 or evidence. We're discussing the penalty.
 3 CHAIRMAN SMITH: Okay. So we don't need --
 4 okay. I'll -- I'll take you guys' word for it.
 5 MS. HERRICK: Right.
 6 CHAIRMAN SMITH: You're the experts.
 7 MR. HAWKINS: It's kind of a combination of
 8 approaches.
 9 CHAIRMAN SMITH: Okay. So I see a couple of
 10 hands. Yes?
 11 MS. HERRICK: You asked for comments.
 12 COMMISSIONER PIERRE DIXON: You did ask for
 13 further comments, yes.
 14 CHAIRMAN SMITH: Yes.
 15 MS. NEDDE: I just wanted to thank all of the
 16 Commissioners with regard to how fairly and seriously
 17 you took this process. I'm really impressed, and I
 18 really appreciate it. I thank everybody that came
 19 here. All of the attorneys, court reporter. Everyone.
 20 Thank you all.
 21 CHAIRMAN SMITH: Thank you. Behind you.
 22 Yes?
 23 MR. KHAMIS: I also wanted to thank all of
 24 you for the attention to this item. Although I'm -- I
 25 don't -- I don't know how, you know, to prevent this

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1 kind of thing in the future, especially when people
 2 still get to keep monies that they've gotten in
 3 violation of the Code. That's -- I'd like for -- in
 4 the future, for some kind of training at the beginning
 5 of the -- as soon as you sign paperwork, that we have
 6 the candidates understand in writing that they are not
 7 to solicit; they are not to have other people solicit
 8 for them.
 9 And I also -- if you are going to ask the
 10 Republican women's association to write this letter, I
 11 would like not to be mentioned. You know, I am not --
 12 you know, I am not the cause of that problem. So I'm
 13 hoping -- I've been discouraged by some of the comments
 14 saying that this is frivolous. And I am hoping that
 15 they would not use that wording in their statement.
 16 COMMISSIONER PIERRE DIXON: I would hope not.
 17 CHAIRMAN SMITH: I think the statement that
 18 we're talking about is a statement --
 19 COMMISSIONER EDGEWORTH: It's our statement.
 20 CHAIRMAN SMITH: -- that we would prepare,
 21 and they would --
 22 MR. KHAMIS: That they would have to put in
 23 their --
 24 COMMISSIONER EDGEWORTH: Yes.
 25 CHAIRMAN SMITH: There was a suggestion --

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1 it's not approved, but there was a suggestion that we
 2 ask them to publish a statement of their own on the --
 3 MR. KHAMIS: Thank you for clarifying that.
 4 CHAIRMAN SMITH: But it would be our
 5 statement. I mean, they can -- they can make their own
 6 statement. I can't stop them as far as a statement.
 7 What we're discussing here would be one that we make.
 8 Okay. Anything else?
 9 If not, we are adjourned. Thank you.
 10 (Whereupon, the special meeting was concluded
 11 at 7:09 p.m.)
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1
 2 I, NOELIA ESPINOLA, do hereby certify:
 3 That prior to being examined, the witnesses
 4 named in the foregoing special meeting were duly sworn
 5 to testify as to the truth, the whole truth, and
 6 nothing but the truth;
 7 That said special meeting was taken down by
 8 me at the time and place therein named, and thereafter
 9 reduced to computerized transcription under my
 10 direction.
 11 I further certify that I am not interested in
 12 the outcome of this special meeting.
 13
 14
 15
 16 Dated: _____
 17 NOELIA ESPINOLA, CSR #8060
 18
 19
 20
 21
 22
 23
 24
 25