

**Meeting of the Maine Commission on
Governmental Ethics and Election Practices**

**In Re: Campaign Financing of York County
Casino Initiative**

November 3, 2017

[START RECORDING]

CHAIR MARGARET MATHESON: I'd like to call the meeting of the Commission on Governmental Ethics and Election Practices to order, and today, we, I believe, only have one agenda item, and in order to prepare for that, I'm actually going to move that pursuant to Title 1 of the Maine Revised Statutes, §405(4). I move we go into executive session pursuant to Title 1, §405(6)(E) and Chapter 1, §5(2) of the Commission Rules to consult with the Commission's counsel concerning the legal rights and duties of the Commission.

MR. WILLIAM LEE: So moved.

CHAIR MATHESON: Thank you, second? Any discussion?

MR. RICHARD NASS: No, second.

CHAIR MATHESON: All those in favor? All those opposed. Thank you.

MR. LEE: Are we going elsewhere and leave them here, or vice versa?

MS. MERI LOWRY: What would be most convenient?

[Background conversation]

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1 [Crosstalk]

2 CHAIR MATHESON: Good afternoon, everyone.
3 Thank you very much. We are here today with the
4 hearing that was held on Tuesday, was concluded,
5 and today, we are going to be deliberating, and
6 I guess, with that, we're off.

7 MR. THIMI MINA: May I indulge the Chair for
8 a moment?

9 CHAIR MATHESON: You would like to be
10 recognized? For what purpose?

11 MR. MINA: I'd like to be recognized and
12 made a point of order before you begin your
13 deliberations and just state an objection for
14 the record on behalf of all parties, all the
15 respondents.

16 CHAIR MATHESON: Well, I indicated Tuesday
17 that this is the deliberation piece.

18 MR. MINA: Correct.

19 CHAIR MATHESON: So, I'm going to allow it.
20 But I'm going to caution folks that this is not
21 going to be routine for the rest of today's—

22 Mr. MINA: Oh, I wish it wasn't, Chairman
23 Matheson.

24 CHAIR MATHESON: All right, please make your
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1 objection and your grounds.

2
3 MR. MINA: Yes. I was just provided with a
4 document styled as a roadmap for Commission
5 deliberations on November 3, 2017 which I
6 understand has been provided to the Commission
7 by counsel for the State of Maine. We object to
8 the roadmap as an agenda for your deliberations
9 because it does not encompass any of the
10 arguments of the respondents, and it compels
11 conclusions that violations have been committed
12 and that fines must be imposed. The very last
13 entry on page six of the document provides the
14 final agenda item that you direct staff to
15 prepare a written determination with findings
16 and facts and determinations of violations and
17 penalties for review and adoption by the
18 Commission. That, on its face, suggests that a
19 decision on violation has been made.
20 Furthermore, the roadmap, the agenda is, in
21 effect, a verdict form. It's telling you what
22 questions to consider in your deliberations, and
23 it was done without any input from counsel and
24 doesn't include any of our arguments, including
25 among other things it fails to require a

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2 determination on 21-A MRS §1062-A(4) regarding
3 the maximum penalty which may be imposed in this
4 matter to the extent that it does not involve
5 late reporting of a financial activity in which
6 case the maximum penalty is limited to \$10,000.
7 You have to make a determination in this case
8 whether unreported financial activity is the
9 equivalent of unreported sources of funding, and
10 that's a very critical point that we try to
11 emphasize in our work before you. So, we
12 object. All counsel have asked me to notice the
13 objections of all the respondents. We believe
14 that this roadmap, this verdict form, was
15 tantamount to a finding that the entire
16 proceeding is arbitrary and capricious, and we
17 want the record to reflect our objection to this
18 and further affirm our previous objection to
19 failure to bifurcate this proceeding until after
20 the election. Thank you, Madam Chairman.

21 CHAIR MATHESON: All right, you are
22 welcome.

23 [Background conversation]

24 MS. LOWRY: Oh, no. Phyllis had her hand up
25 and then I do have a response.

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1 [Crosstalk]

2 CHAIR MATHESON: Ms. Gardiner, as to what?

3 MS. GARDINER: Yes. The roadmap attempts to
4 track the Notice of Hearing. It does not
5 presume any decisions one way or the other.
6 It's attempting to just go through. Obviously,
7 you have to make findings as to whether there
8 were violations. If so, you then have to make
9 findings as to what the preliminary penalties
10 are. I agree with Mr. Mina, and it was an
11 omission that should be corrected. The maximum
12 penalty determination, I think, is something
13 that you have to do and certainly heard
14 argument, and I know you were all considering
15 all the arguments that legal counsel made, and
16 we can amend the outline to incorporate specific
17 findings as to what—and a section on preliminary
18 penalties. There ought to be a next section
19 which is determining what the maximum penalty is
20 whether that's § 1062-A(4), or how you would
21 apply two types of maximum penalties in §1062-
22 A(4). So, that was an omission on my part which
23 I apologize for, as I certainly wasn't
24 overlooking your argument on that point. But
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1 nothing else in this document is presuming one
2 direction or the other the Commission would go,
3 but simply trying to be a comprehensive list of
4 the issues that have been presented that have to
5 be determined one way or the other.
6

7 MS. LOWRY: Mm-hmm, and I think the other-

8 CHAIR MATHESON: [Interposing] Yes,
9 Commissioner.

10 MS. LOWRY: -ready change we can make is to
11 the final page, the final what appears to be a
12 directive to staff to prepare a written
13 determination with findings of facts. I think
14 that we can say "and, if applicable,
15 determinations of violations of penalties for
16 review."

17 MS. GARDINER: Yes, exactly.

18 [Crosstalk]

19 MR. LEE: Sure, I have no problem adding
20 that. It makes express what I believe is
21 implied, certainly the way I took it.

22 CHAIR MATHESON: And so objections are
23 noted.

24 MR. MINA: And the roadmap will be made
25 part of the record, Madam Chairman?

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2 CHAIR MATHESON: Here's the interesting
3 piece, is that this was done to give us an
4 opportunity to try and be somewhat organized and
5 to flesh out, because if you're relying on the
6 Chair to flesh everything out under this Notice
7 of Hearing, we'd be way longer, so, yes, we're
8 going to allow this.

9 MR. MINA: And it'd be part of the record?
10 I just want it marked an exhibit for the record.

11 MS. GARDINER: It doesn't need to be marked
12 as an exhibit. It is part of the record. It is
13 not evidence. It is part of the record.

14 MR. MINA: Okay, fine. That's fine. Sure.

15 [Crosstalk]

16 MS. GARDINER: Anything that goes before the
17 Commissioners is part of the agency record in
18 this matter.

19 MR. MINA: Very good, thank you, Madam
20 Chairman.

21 MR. LEE: This just ensures a much smoother
22 process and deliberation than I think were it to
23 be done in a piecemeal fashion, and everybody
24 can see where we are and where we're going on a
25 step by step by basis, and if we, along the way,

1
2 decide we wish to vary that, we will.

3 MS. LOWRY: Oh, yes, great,

4 CHAIR MATHESON: All right, so-

5 MR. NASS: [Interposing] Do you want to
6 remind everyone or we are going to be looking at
7 waving hands?

8 CHAIR MATHESON: It's an interesting process
9 here that everything that we deliberate on is
10 done here in front of everybody, and there's a
11 permanent record made of that, and so we've
12 heard from everybody. I was very careful to
13 tell everybody that on Tuesday and thank
14 everybody for putting in that long day, and we
15 have a lot of information to try to narrow down
16 into a semblance of order and be able to
17 articulate findings based on those. So, we are
18 going to be deliberating today, and I'm not
19 going to be-I don't think any of the
20 Commissioners will be responding to sort of head
21 nods or head shakings or things like that, and
22 we may from time to time need to ask a question
23 of either staff or counsel. And we will, and
24 thank you. As we've articulated, we're going to
25 be looking at several questions that were

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1 initially set out in the Notice of Hearing, and
2 we articulated them at the beginning of the last
3 meeting, and that's this roadmap that we'll be
4 following today, based on those issues that were
5 set out in the Notice of Hearing. The first
6 question is whether Lisa Scott, Miami
7 Development Concepts LLC and/or International
8 Development Concepts LLC violated Title 21-A,
9 §1056-B by not registering and filing reports as
10 Ballot Question Committees prior to April of
11 2017. The first question is set out here, and,
12 again, Commissioners if you see other questions
13 or differences in a question that you would like
14 to see, please speak up. Did Lisa Scott receive
15 contributions aggregating in excessive of \$5,000
16 for the purpose of initiating or influencing the
17 York County Casino Direct Initiative?
18

19 [Background conversation]

20 MR. LEE: The attachment C in-

21 CHAIR MATHESON: [Interposing] For the staff
22 report?

23 MR. LEE: -to the staff report has a chart
24 showing contributions from Bridge Capital to
25 Lisa Scott, the dates and the amounts spanning

1 from December 10th of 2015 through May 9th of
2 2016. They were reported late, and that totals
3 \$2,580,000. During the entire deliberations, I
4 never heard anybody disputing the dates of the
5 filing, the amounts of the filings or anything
6 else. Those appear to be facts that are not
7 disputed. The characterization of them and what
8 they mean, seems to be more of a subject of
9 debate and argument that we've been having.

11 CHAIR MATHESON: And I think I would like to
12 note that what is set out in this Attachment C
13 it says Bridge Capital, but we are also to
14 understand that it was by way of Capital Seven
15 also. I mean the discussion was a loan to
16 Bridge Capital--

17 [Crosstalk]

18 CHAIR MATHESON: I mean a loan from Bridge
19 Capital to Capital Seven.

20 MR. LEE: And Capital Seven--

21 CHAIR MATHESON: [Interposing] And that this
22 was the full payment.

23 MR. LEE: --and the payments did not flow
24 through Capital Seven but in fact were made
25 directly to Lisa Scott.

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CHAIR MATHESON: Yep.

MS. LOWRY: And when you refer to the dates and the amounts, Commissioner Lee, I think you were referring to the specified contributions and not to the filings.

MR. LEE: Correct.

CHAIR MATHESON: So,, I think that we agree that the facts and the testimony, based on bank records and what folks have testified to, that the contributions were in excess of \$5,000 for the purpose of initiating or influencing it.

MR. LEE: And they're not loans to Lisa Scott because by the testimony and the exhibits that were offered, these were actually loans to Capital Seven, and by direction that loan amount then went directly from Bridge Capital to Lisa Scott. And because it's not a loan to Lisa Scott, it doesn't fit within the loan exception in terms of reporting.

MS. LOWRY: And this is despite receiving testimony that they were styled as loans with no documentation, right, just a loan within the family's understanding of what a loan might be.

CHAIR MATHESON: I think it falls squarely

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1 under the definition of loan under, I'm looking
2 at, Title 21-A, §1052(3).
3

4 MR. LEE: A loan to Capital Seven.

5 CHAIR MATHESON: I'm sorry, as contribution,
6 excuse me.

7 MS. LOWRY: Oh, yes, thank you.

8 CHAIR MATHESON: It falls under the
9 definition of contribution which can include a
10 gift, subscription, loan, advance or deposit of
11 any money of anything with value made to a
12 political action committee. Any funds received,
13 yup.

14 MS. LOWRY: Phyllis, did you?

15 MS. GARDINER: Yeah, no, Madam Chair, you
16 touched on most of the point. I was just going
17 to make sure you were clear. When you talk
18 about a loan, a loan by a financial institution
19 made pursuant to banking regulations—

20 CHAIR MATHESON: [Interposing] Yes.

21 MS. GARDINER: —is exempt from the
22 definition of contribution. A regular loan by a
23 non-financial institution is part of the
24 definition of contribution. That's what the
25 Chair just read.

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CHAIR MATHESON: Yes.

MS. GARDINER: So when you're talking about loans, you may just want to be specific about which kind of-

CHAIR MATHESON: [Interposing] I don't want to put words in your mouth, Commissioner Lowry, but I think you were indicating the clarification that we did not or the money that was provided through these transfers were not loans to Lisa Scott.

MS. GARDINER: Thank you.

CHAIR MATHESON: Okay.

MS. LOWRY: Right.

MR. LEE: We need a motion. I would move that we find for reasons just stated in the record that Lisa Scott received contributions aggregating in excess of \$5,000 for the purpose of initiating or influencing the York County Casino Direct Initiative.

CHAIR MATHESON: I would second that. Do we want to take each one of these as we go? One by one?

MS. LOWRY: A separate motion for each step? Sure, okay.

1
2 CHAIR MATHESON: All right, is there more
3 discussion amongst the Commissioners?

4 MR. BRADFORD PATTERSHALL: Well, just that
5 whether or not you received contributions is
6 relevant to the requirement to file as a BQC.
7 That's what this is all getting at.

8 CHAIR MATHESON: Yes.

9 MR. PATTERSHALL: We have yet to determine
10 that, but one would think that's the next step,
11 and I should just say I read attorney Merrill's
12 argument, and I appreciate it. And I originally
13 arrived at the same argument about §1056-B and
14 how it's worded, and I understand that where
15 you're saying where the comma is placed. This
16 statute says, "A person not defined as a
17 political action committee that receives
18 contributions or makes expenditures," and then
19 it says, comma, "other than by contribution to a
20 political action committee or a Ballot Question
21 Committee aggregating in excess of \$5,000 for
22 the purpose of initiating or influencing a
23 campaign"... shall register as a BQC essentially.
24 And I went back and I read that, and I said it
25 only makes sense, this statute, if you bifurcate

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1
2 the statute, and you say a person not defined as
3 a political action committee that either
4 receives contributions on the one hand or makes
5 expenditures other than by contribution to a
6 political action committee or Ballot Question
7 Committee. And I came to the conclusion and I
8 think the others might have that-

9 MS. LOWRY: [Interposing] Yes.

10 MR. PATTERSHALL: -you can't receive
11 contributions other than by contribution to a
12 political action committee or Ballot Question
13 Committee. So, that other than by-

14 [Crosstalk]

15 MR. PATTERSHALL: -only applies to
16 expenditures, not receipt of contributions, is
17 how I came to that point, and I wanted to say
18 that because I remember when you first made the
19 argument here, and I thought that was correct
20 until I kept looking at it and looking at it and
21 looking at it. So, I just want to say that.

22 CHAIR MATHESON: Yep, thank you. Uh, yes?

23 MR. LEE: I'll just comment. I read it the
24 way I believe is correct the first time, but I
25 can certainly understand when somebody reads

1
2 that that it requires further study and thought,
3 and the construction being proposed by Ms. Scott
4 would lead to an absurd-

5 MS. LOWRY: [Interposing] Yes.

6 MR. LEE: -result because you could receive
7 funding from a dozen different organizations
8 from around the globe and just have the money
9 all go into an LLC, ABC, that you created one
10 day. And then, when it comes time to file, you
11 say, yep, I got all this money from ABC, and
12 with the end result that the public doesn't have
13 any idea where any of the funding came from-

14 CHAIR MATHESON: [Interposing] Which
15 basically why the statute is here.

16 MR. LEE: Right, and has that \$5,000
17 trigger. So, just wanted to add that.

18 CHAIR MATHESON: Thank you, Commissioners.
19 All right, the motion. All those in favor-
20 unless there's other discussion-all those in
21 favor? Unanimous, thank you.

22 [Background conversation]

23 CHAIR MATHESON: And opposed, zero.

24 [Background conversation]

25 CHAIR MATHESON: Five to zero is the vote.

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2 So, the if so is now so. When should she have
3 registered and filed as a BQC, as a Ballot
4 Question Committee?

5 MR. LEE: Looking at the same exhibit as
6 referenced in the prior motion, it would appear
7 that when a contribution of \$50,000 was made on
8 December 10th of 2015, that exceeded \$5,000
9 threshold, and therefore, registration should've
10 occurred at that time.

11 MS. GARDINER: Just again, a technical point
12 with the statute. The wording of the statute
13 gives someone seven days, I believe, to file
14 after that trigger is-

15 [Crosstalk]

16 MR. LEE: I'll amend what I just said to:
17 and should have registered no later than
18 December 17th of 2015, if it in fact is within
19 seven days.

20 MS. GARDINER: Yes. Within seven days of
21 receiving those contributions or making those
22 expenditures.

23 CHAIR MATHESON: And what's the citation for
24 that, please?

25 MS. GARDINER: §1056-B(1-A).

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CHAIR MATHESON: Okay, thank you.

MR. LEE: What I said was just a statement.
My own opinion.

[Crosstalk]

MR. LEE: I didn't actually say that as a
motion.

[Crosstalk]

CHAIR MATHESON: I'm going to take a minute
to just peek at the statute, if you don't mind.
Within seven days of receiving those
contributions, okay, so it's either December
17th, or is this one of those where you can put
another day on here?

MS. GARDINER: You wouldn't count the day of
the contribution. You'd start one day after the
contributions.

MR. LEE: Which means the 17th.

CHAIR MATHESON: Yes.

MR. NASS: It's irrelevant since it's now
2017.

[Background conversation]

CHAIR MATHESON: So does anybody care to
make that in the form of a motion? If not, the
Chair will.

[Background conversation]

MR. LEE: I move that Lisa Scott should've registered and filed as a BQC on or before December 17th of 2015 for having received a contribution of \$50,000 on December 10th, 2015.

MR. NASS: Second.

CHAIR MATHESON: Any further discussion? All those in favor of the pending motion? All those opposed? Five to zero, affirm. Okay, what campaign reports was she obligated to file and when?

[Background conversation]

CHAIR MATHESON: Okay, good, yeah, thank you.

[Background conversation]

CHAIR MATHESON: Oh, yes, the new roadmap has calculation of preliminary maximum penalties on page three at the bottom. What is the applicable maximum penalty? Is that it?

[Background conversation]

MS. GARDINER: The changes that we made to correct the error that Mr. Mina had flagged is on the bottom of page three. Calculation of preliminary and maximum penalties, so there's a

1 new question one there: what is the applicable
2 maximum, what is the preliminary.

3 CHAIR MATHESON: Okay.

4 MS. GARDINER: And I think the other
5 correction is at the end, as Commissioner Lowry
6 has noted, the end of today whatever you've
7 decided the suggestion is that you'll be
8 directing staff to prepare a written
9 determination of findings of fact.
10

11 [Crosstalk]

12 MS. GARDINER: I'm sorry, it did not get
13 corrected.

14 [Crosstalk]

15 MS. GARDINER: I think we do. I don't want
16 to have an inaccurate statement on this.

17 CHAIR MATHESON: Okay.

18 [Background conversation]

19 CHAIR MATHESON: All right, thank you, all.
20 Are we back on track here?

21 [Background conversation]

22 CHAIR MATHESON: Here we go, so the change
23 here is page seven which is being distributed,
24 the last item, which is under paragraph D,
25 "Direct staff to prepare a written determination

1
2 for review and adoption by the Commission with
3 findings of fact, determinations of violations
4 if any, and determinations regarding penalties,
5 if applicable." And thank you everyone, so
6 let's go back. We are on what campaign reports
7 was she obligated to file and when, and the
8 "she" for those who of you who are joining back
9 in is Lisa Scott.

10 MR. LEE: Okay, I'll make a motion for the
11 Chair.

12 CHAIR MATHESON: Thank you, yes.

13 MR. LEE: I move that we find that Lisa
14 Scott was required to file an initial report on
15 December 17th, 2015 and a 2016 January Quarterly
16 report on January 15th, 2016, a 2016 April
17 Quarterly report on April 11th, 2016 and a 2016
18 11-Day Pre-Primary report on June 3rd of 2016.

19 CHAIR MATHESON: And that was in the form of
20 a motion.

21 MR. NASS: Second.

22 CHAIR MATHESON: Is there any discussion
23 amongst the Commissioners? No?

24 [Background conversation]

25 MR. LEE: Just a question to Ms. Gardiner.

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1 We'll be dealing with the issue of when it was
2 actually filed and making a finding on that
3 separately later, correct?
4

5 CHAIR MATHESON: Well, if we do it as part
6 of this motion—

7 MS. GARDINER: [Interposing] Right, and I
8 think that's—

9 MR. LEE: [Interposing] Would it be
10 preferable to do it now as opposed to later in
11 terms of which statement of calculation of what
12 the statutory penalty would be?

13 MS. GARDINER: I don't know that you need,
14 the report is filed and has a date-stamp on it,
15 so, I don't know that is much of a judgment
16 call, but you should make, looks it was filed—

17 MR. LEE: [Interposing] I can quickly do it
18 with a friendly amendment to the motion, if
19 whoever seconded it would allow me to do it.

20 MR. NASS: Yes.

21 MS. LOWRY: Yes, thank you.

22 MR. LEE: And further finding that the
23 initial report was filed on April 24th, 2017, the
24 2016 January Quarterly report was filed on April
25 24th, 2017, the 2016 April Quarterly was filed on

1
2 April 24th of 2017, and the 2016 11-Day Pre-
3 Primary report was filed on April 24th, of 2017.

4 MR. NASS: Seconded, as amended.

5 CHAIR MATHESON: Is there any discussion?
6 And I just thought of something. Sorry, it
7 slipped my mind. There is a-

8 [Background conversation]

9 CHAIR MATHESON: All right, anything on the
10 pending motion, anymore discussion? All those
11 in favor? Five. All those opposed. Zero.
12 Carries. We now go through this, the same sort
13 of questions, but in regard to Miami Development
14 Corporation LLC, and I'm just going to call it
15 MDC if that's all right with everybody. Did MDC
16 receive contributions aggregating in excess of
17 \$5,000 for the purpose of initiating or
18 influencing the York County Casino Direct
19 Initiative, and, again, I think we are referring
20 to Attachment C.

21 MR. LEE: I will move that MDC received
22 contributions aggregating in excess of \$5,000
23 for the purpose of initiating or influencing the
24 York County Casino Direct Initiative,
25 specifically by receiving \$300,000 on April 20th

1
2 of 2016, as is reflected in the Attachment C to
3 the Commission staff report.

4 CHAIR MATHESON: And for which there is an
5 exhibit. I'll just take that, oh, that's a
6 comment later, sorry. Do I have a second?

7 MR. NASS: Second.

8 MR. PATTERSHALL: I was going to discuss. I
9 think there's other receipts of contributions
10 besides that one on April 27th, 2016. I think
11 the evidence in the record is pretty clear that
12 there were payments made by Regent Able to MDC
13 on multiple occasions, and there was an
14 agreement between them, MDC and Regent Able,
15 that that money be provided. So, there's others
16 dates that-

17 MR. LEE: [Interposing] I'm just reporting
18 the one contribution that triggered the-

19 MR. PATTERSHALL: [Interposing] Okay.

20 MR. LEE: -purpose of registering and
21 reporting; but, yes, there certainly are others.

22 CHAIR MATHESON: In fact, through 12/20/2016
23 with a total of \$950,000.

24 MR. LEE: And maybe in line with what she
25 just said that based on the way the question is

1 worded, if I could amend the motion-

2 MR. NASS: [Interposing] Sure.

3 MR. LEE: -permission of the second-saying
4 move that we find that MDC did receive
5 contributions aggregating in excess of \$5,000
6 for the purpose of initiating or influencing the
7 York County Casino Direct Initiative by
8 receiving contributions totaling \$950,000 over a
9 period of time between April 20th of 2016 and
10 December 20th of 2016.

11 MR. NASS: Second, as amended.

12 CHAIR MATHESON: As amended, okay. Any
13 further discussion? Yes, Commissioner Lowry.

14 MS. LOWRY: So, is this the place where we
15 also consider whether it was in the form of a
16 loan? And does that need to be referenced in
17 our motion?
18

19 MR. PATTERSHALL: If there's any question,
20 it was not a loan.

21 MS. LOWRY: Yeah, there isn't any question
22 that it was not a loan, in my mind. No, it was
23 a capital injection.

24 CHAIR MATHESON: Right.

25 MR. PATTERSHALL: In the evidence, I think

1
2 Ms. Scott testified that presumably I mean we
3 don't know the principal of Regent Able has some
4 kind of agreement with Mr. Scott that if this
5 were to pass he might get-

6 CHAIR MATHESON: [Interposing] But we have
7 nothing before us on that.

8 MR. PATTERSHALL: Right, but that's evidence
9 it was not a loan.

10 CHAIR MATHESON: Right.

11 MR. LEE: A question of the Chair to
12 Counsel.

13 CHAIR MATHESON: Certainly.

14 MR. LEE: Would it be preferable to amend
15 that motion to include a finding, if that's what
16 we feel, that in fact establishing that this was
17 an investment and not a loan at this time or a
18 letter time?

19 MS. GARDINER: I think--and this roadmap was
20 not intended to constrain your discussions. You
21 should discuss everything that you find relevant
22 at any point. The purpose of this was just to
23 try to make sure that we touched on every issue
24 presented to you that has to be decided one way
25 or the other. You can change the order, and you

1 should feel free to discuss any testimony or
2 exhibits that you found relevant to any
3 responses to arguments that were raised to you
4 that you find relevant. So, yes, it's certainly
5 anything that has to do with whether MDC had an
6 obligation to file as a Ballot Question
7 Committee is kind of incorporated in that
8 question posed to you. So, whether you make it
9 in separate motions or you just have some
10 discussion, you are free to do that.

12 CHAIR MATHESON: I believe it fell within
13 the definition of contribution under-

14 MR. LEE: [Interposing] We can have a
15 discussion establishing that it was not a loan,
16 that it was an investment for equity interest in
17 Capital Seven.

18 MR. PATTERSHALL: That seems to be what the
19 evidence shows.

20 [Crosstalk]

21 MR. LEE: We've received, there's been an
22 exhibit showing that there is a contractual
23 relationship between Regent Able and MDC,
24 whereby money was going to be advanced for the
25 purpose of hopefully passing the initiative, and

1 testimony established that it was in return for
2 an equity interest in Capital Seven. Although
3 the testimony established by Lisa Scott was that
4 she did know the actual amount of that equity
5 interest. But if we agree with those facts,
6 then, clearly, it was not a loan. It was an
7 investment, and it was within the definition of
8 contribution.

9 [Crosstalk]

10 MR. PATTERSHALL: I think her testimony was
11 that she doesn't know, but she presumes that it
12 was for an equity interest. I don't want to
13 misstate what she says. She wasn't sure, but it
14 makes sense to me and she thought that--

15 MR. LEE: [Interposing] But none of the
16 evidence offered, either documentary or
17 testimonial, would establish that it was a loan
18 versus an investment.

19 MR. PATTERSHALL: Again, and even if it was
20 a loan, we don't have any information that
21 Regent Able is a financial institution.

22 [Crosstalk]

23 MR. PATTERSHALL: I mean it's clearly a
24 contribution.

1
2 CHAIR MATHESON: Do we want to make that
3 part of the motion, or do we just want to have a
4 separate finding? I don't know...

5 MS. GARDINER: Two of the Commissioners have
6 articulated that as a finding. You all should
7 decide if you're adopting that.

8 CHAIR MATHESON: All right, let's make the
9 motion.

10 MR. LEE: We'll have a motion, and then,
11 we'll have a follow-up motion, I take it?

12 CHAIR MATHESON: Yes.

13 MR. LEE: Sure, we make a conclusion, and
14 then, we make a finding related to it.

15 CHAIR MATHESON: So, the motion that's
16 before us now is: did MDC receive contributions
17 aggregating in excess of \$50,000 amount. But
18 your motion was a lot more detailed. We
19 identified the dates.

20 MR. LEE: Receive contributions of \$950,000
21 set for a motion.

22 CHAIR MATHESON: Right, and you've indicated
23 those do, yep.

24 MR. LEE: Right.

25 CHAIR MATHESON: All right, so all those in

1 favor of the pending motion? Five. All those
2 opposed. Zero. Five to zero, carries. A
3 finding in the form of a motion, is that most
4 helpful for everybody?
5

6 MS. GARDINER: Well, I think to reflect if
7 that's a finding of the Commission overall that
8 would be the clearest way to do it.

9 MR. PATTERSHALL: Yeah, no. I would move
10 that the funds provided by Regent Able to MDC—
11 [Crosstalk]

12 MR. PATTERSHALL: That we make a finding
13 that the funds provided by Regent Able to MDC
14 constituted contributions as defined in Title
15 21-A, §1052(3)(C).

16 CHAIR MATHESON: Yeah.

17 MR. LEE: As evidenced by the testimony to
18 that effect and documentary evidence provided
19 showing that there was a contractual
20 relationship between MDC—

21 MS. LOWRY: [Interposing] Reflecting at
22 least. It wasn't signed.

23 [Crosstalk]

24 MR. LEE: The testimony was that it was
25 signed.

1 MS. LOWRY: Yes.

2 MR. LEE: But we do not have a signed copy.

3 MS. LOWRY: Yes.

4 MR. PATTERSHALL: Can I adopt what you just
5 said in a motion?

6 MS. LOWRY: Yes.

7 MR. PATTERSHALL: Okay.

8 MR. NASS: You need a second?

9 CHAIR MATHESON: Second?

10 MR. NASS: Second.

11 CHAIR MATHESON: All right, any more
12 discussion?

13 MR. PATTERSHALL: Well, it was clearly that
14 Mr. Kobayashi wanted—I mean he was trying to
15 influence them. His company was trying to
16 influence the ballot question. There's no
17 question.

18 MS. LOWRY: Oh, yes.

19 MR. PATTERSHALL: Okay.

20 MS. LOWRY: Thank you for adding that.

21 MR. PATTERSHALL: I'd like to add that to
22 the motion.

23 [Crosstalk]

24 MR. PATTERSHALL: I'm going to move that we

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make a finding of fact—

CHAIR MATHESON: [Interposing] All right.

MR. PATTERSHALL: —that the proceeds that were provided by Regent Able to MDC constituted contributions because they were provided with intent to influence the ballot question.

MR. NASS: Second, as modified.

CHAIR MATHESON: Any further discussion? All those in favor? Five. All those opposed? Zero. If so, and we have just found so, when should MDC have registered and filed as a Ballot Question Committee? So, what do we think triggered that?

MR. LEE: April 27th, 2016.

MR. PATTERSHALL: Seven days from the date of receipt of the first payment.

CHAIR MATHESON: Is that the form of a motion?

MR. PATTERSHALL: No, not yet.

[Crosstalk]

CHAIR MATHESON: Yes, that's exactly right. I mean it's the same statute.

MR. LEE: Right, the funds were received on April 20th.

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1 CHAIR MATHESON: From Regent Able. And is
2 this the motion? Am I making a motion?

3 [Background conversation]

4 CHAIR MATHESON: Okay, I move that the
5 contribution from Regent Able to MDC of \$300,000
6 that was made on April 20th of 2016 triggered the
7 report, and that the report triggered the filing
8 requirement. End of my motion.

9 MR. LEE: Triggered the requirement to file
10 on or before April 27th, 2016?

11 MS. LOWRY: Yes.

12 CHAIR MATHESON: Okay, because that's sort
13 of the next question, but that's fine.

14 [Background conversation]

15 CHAIR MATHESON: Phyllis has something.

16 MS. GARDINER: I'm just reminded that you
17 want to on this factual issue the MDC has
18 argued—Mr. Merrill argued that the... and I can't
19 recall—you'll have to recall the testimony
20 better than I, but that at the time the money
21 came in from Regent Able, the argument was that
22 it was intended for Massachusetts and not
23 necessarily Maine. By the time the funds got
24 submitted to MDC though, oh, I'm sorry, that

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2 they didn't become used in the Maine campaign
3 until MDC transferred funds to the Horseracing
4 Jobs Fairness Ballot Question Committee. And
5 you can reference the part of the record that
6 reflects, and that payment was made a few days
7 later.

8 MR. WAYNE: Horseracing Jobs Fairness BQC
9 reported receiving money from MDC on April 26th,
10 which was six days after MDC received the money
11 from Regent Able.

12 [Background conversation]

13 CHAIR MATHESON: And the amount was what?

14 MR. WAYNE: I think it was \$150,000 on April
15 26th that HRJF received from MDC.

16 MR. LEE: It was \$150,000.

17 MR. WAYNE: Yeah, it will just take me a
18 second.

19 [Background conversation]

20 MS. GARDINER: So, you might want to make a
21 factual determination as to which date is
22 relevant to your findings? When did you think
23 the obligation was triggered I should say.

24 MR. WAYNE: Right, so on Exhibit 137-008,
25 that's the campaign finance report by

1
2 Horseracing Jobs Fairness-

3 [Crosstalk]

4 CHAIR MATHESON: So, if we were to accept
5 that argument, doesn't that mean that the
6 specific contribution that was reported late
7 would have been \$150,000 on 4/20/16? That's
8 when the payment was made to MDC, payment was
9 made of \$300,000. Their argument is it wasn't
10 all...

11 MS. GARDINER: Right, the MDC transferred
12 those funds to Horseracing Jobs Fairness,
13 presumably confirming its intention that it
14 would be used by Horseracing Jobs Fairness on
15 this ballot question campaign on the 26th of-

16 CHAIR MATHESON: [Interposing] Right, I
17 understand that, but the money came to MDC on
18 4/20.

19 MS. GARDINER: That's correct. The question
20 is you just need to make a finding as to when
21 was its purpose clear that it was for the Maine
22 campaign?

23 MS. LOWRY: And I think it's a difference of
24 six days.

25 MS. GARDINER: Mm-hmm, I think so.

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2 MS. LOWRY: So why don't we be conservative?

3 [Background conversation]

4 CHAIR MATHESON: Are you saying that the
5 initial report should've been filed sometime in
6 May?

7 MR. LEE: If you go seven days from the-

8 CHAIR MATHESON: [Interposing] Go from the
9 26th.

10 MR. LEE: -26th, you have May 3rd.

11 [Background conversation]

12 MR. LEE: And we've got the campaign finance
13 filing report 137-008. It shows that \$150,000
14 on April 26th, and that's part of a larger amount
15 that came in several days earlier, but at that
16 point-

17 [Crosstalk]

18 MR. LEE: -that's a contribution of more
19 than \$5,000 and triggers a filing requirement on
20 the part of MDC within seven days which would be
21 by May 3rd, 2016. Does that sound right? So, do
22 you want to rework that motion?

23 PAUL LAVIN: No one seconded it.

24 CHAIR MATHESON: So, let's just withdraw
25 that and come up with something else. You have

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a question?

MR. LEE: I would move that we find that MDC should've registered and filed as a BQC on or before May 3rd of 2016 by receipt of funds of \$150,000 on April 26th of 2017. Ms. Gardiner, does that address your concern?

MS. GARDINER: I just want make sure you address their argument.

MR. LEE: I just want to make sure we get it right. A larger amount came in, and some of it was going to be allocated apparently to Massachusetts, or at least potentially, but there's no question that \$150,000, based on the filing that took place, occurred on April 26th of 2016.

MR. PATTERSHALL: I'll second that.

CHAIR MATHESON: All right, any more discussion? I'm okay with that, so that is going to change that first chart, and we might want to—

MR. LEE: [Interposing] Yeah, it's going to change some numbers.

CHAIR MATHESON: Yeah, it's going to change the numbers.

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MR. LEE: If we get to that.

CHAIR MATHESON: Okay, if we get there.

Yeah, I think I can support the motion, so anyone else? All right, all those in favor? Five. Opposed? Zero.

MS. LOWRY: Does it make sense for us to think about and establish the change in numbers while this is relatively fresh in our minds?

MR. PATTERSHALL: To me, there's significant mitigating factors that are going to more than offset the decreases in the numbers. So, for me I don't think we need to do that.

MS. LOWRY: Okay.

MR. PATTERSHALL: That's me talking.

CHAIR MATHESON: I think we'll probably need to at some point. We may not.

MR. LEE: If we get to the point of calculating, we're going to have to make a calculation of the maximum statutory penalty, and that is going to have to reflect the finding we just made of a smaller amount-

MS. LOWRY: [Interposing] Yes.

MR. LEE: -and also the change in the date by several days.

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MS. LOWRY: Yes.

MR. LEE: and we got some wonderful number crunchers out there I hope.

MR. PATTERSHALL: Is that a necessity that we actually find what the maximum statutory penalty is?

[Crosstalk]

CHAIR MATHESON: Yeah, we just added that to the roadmap: what's the applicable maximum penalty.

MS. GARDINER: I think that's the proper thing to do because—

[Crosstalk]

MS. GARDINER: You need to be deciding what your—

[Crosstalk]

[Background conversation]

CHAIR MATHESON: I thought somebody could be working on it while we're—or maybe he's just leaving.

[Background conversation]

CHAIR MATHESON: So what campaign reports was MDC obligated to file and when? Yeah, we still need to do all of those. Yep?

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2 MR. LEE: I make a motion that we find that
3 MDC was obligated to file an initial report on
4 or before May 3rd of 2016, a 2016 October
5 Quarterly on or before October 5th of 2016, a
6 2016 42-Day Post-General on December 20th of
7 2016, and a 2017 January Quarterly on or by
8 January 17th of 2017. And that all of these
9 reports were in fact instead filed on April 24th
10 of 2017.

11 MS. LOWRY: Second.

12 CHAIR MATHESON: Any more discussion? All
13 those in favor? Five. Opposed? Zero.

14 [Background conversation]

15 CHAIR MATHESON: Okay. And now we move into
16 a similar series of questions, but it is
17 concerning International Development
18 Corporation, LLC. Did IDC receive contributions
19 aggregating in excess of \$5,000 for the purpose
20 of initiating or influencing the York County
21 Casino Direct Initiative?

22 MR. PATTERSHALL: I'd make a motion, a
23 finding of fact that IDC or International
24 Development Corporation is an LLC formed by Lisa
25 Scott to use, her testimony was, when she goes

1
2 to Hawaii, I believe, because there is
3 apparently no Bank of America in the 50th state
4 of America, so this was the LLC that she used
5 when she was on the island. That's just to
6 clarify who IDC is.

7 MR. LEE: Put in the exact form of a motion?

8 MR. PATTERSHALL: That was it.

9 [Background conversation]

10 MR. PATTERSHALL: IDC is an LLC created by
11 Ms. Scott solely for the purpose of using it
12 when she's geographically located in Hawaii.

13 CHAIR MATHESON: I would add to that finding
14 then though but it also is a limited liability
15 company that has its own legal entity.

16 MR. PATTERSHALL: I think that's by
17 definition.

18 CHAIR MATHESON: Okay.

19 [Background conversation]

20 MR. PATTERSHALL: I just want to make a
21 finding, so we can explain what IDC is for
22 anybody that's-

23 MR. LEE: [Interposing] Okay, separate from-

24 MR. PATTERSHALL: [Interposing] Separate
25 from anything just yet, just to establish what

1
2 it is, and I find that to be interesting that
3 she had an individual LLC solely for when she's
4 in Hawaii. Nothing wrong with that. I just
5 found it interesting, and I wanted to make sure
6 people understood who that is.

7 [Background conversation]

8 CHAIR MATHESON: Yeah, okay. Do I have a
9 second?

10 MR. LEE: Sure. Yes.

11 CHAIR MATHESON: Do we have any more
12 discussion? Just a finding, so all those in
13 favor? Five, zero.

14 MR. PATTERSHALL: I'd make a second motion
15 that IDC did in fact receive contributions in
16 excess of \$5,000 for the purpose of influencing
17 the ballot question.

18 MR. NASS: Second.

19 CHAIR MATHESON: Any discussion? All those
20 in favor? Five, zero, and that's actually
21 that's C right there is what we just did, right,
22 yes. Okay.

23 MS. LOWRY: So, this time we didn't have the
24 specific dates and amounts included.

25 [Crosstalk]

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MS. LOWRY: Thank you.

MR. LEE: I move that we find that IDC received a contribution of \$100,000 on December 21st, 2015 from Bridge Capital which triggered a registration and filing requirement as a BQC on or before December 28th of 2015.

MR. NASS: Second.

MS. LOWRY: You don't want to put the second one in as well?

MR. LEE: And received a further contribution from Bridge Capital of \$100,000 dollars on December 24th of 2015.

MS. LOWRY: Triggering a filing requirement.

MR. LEE: Although this question deals with the initial registration.

[Crosstalk]

MR. LEE: That's why I only said the first one because that triggered it, but I think it's more - - to put-

MS. LOWRY: [Interposing] Put it in.

MR. LEE: -both of them in at the same time, so that we have made a finding that these two contributions were made by Bridge Capital to IDC.

1 [Background conversation]

2
3 MS. LOWRY: And do we want to say that the
4 money was designated for the purpose of
5 initiating or influencing the York County Casino
6 Direct Initiative—

7 [Background conversation]

8 MR. PATTERSHALL: Well, we did not specify
9 that the money from Bridge Capital was used for
10 that purpose, but really, it's no different than
11 the money loaned to Lisa Scott, it's just that
12 she used that when she was in Hawaii because she
13 couldn't use the Bank of America.

14 MS. LOWRY: Right.

15 CHAIR MATHESON: And I think we've covered
16 both of these bullet points because we said,
17 yes, it did and should've registered which is on
18 the 28th, and the report was the initial report.

19 [Background conversation]

20 CHAIR MATHESON: Yeah, I don't know, did we
21 get a second on it?

22 MR. LEE: Yes.

23 CHAIR MATHESON: We did? Okay, good because
24 we wouldn't be discussing it otherwise.

25 [Background conversation]

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2 MR. LEE: Yeah, let's make sure we've had
3 this discussion.

4 [Background conversation]

5 MS. GARDINER: All I've written down is that
6 you moved that IDC received a contribution of
7 \$100,000 on December 21, 2015 from Bridge
8 Capital and another contribution of \$100,000 on
9 December 24, 2015 from Bridge Capital. That's
10 as far as I heard.

11 MR. LEE: I'd like to amend the motion, if
12 it wasn't stated before, state for the purpose
13 of initiating or influencing the York County
14 Casino Direct Initiative. No reason to play
15 back the tape recorder.

16 MS. LOWRY: Right.

17 MR. LEE: Just say it again and be sure of
18 it.

19 CHAIR MATHESON: Okay, are we clear, so
20 then, we'll vote on the next two bullets just to
21 be—

22 MR. LEE: [Interposing] After we vote on
23 this.

24 CHAIR MATHESON: Yes. So, any more
25 discussion? All those in favor of the pending

1 motion? Five to zero.

2 MS. LOWRY: Was it seconded?

3 CHAIR MATHESON: Yes.

4 MS. LOWRY: Okay.

5 CHAIR MATHESON: Commissioner Nass seconded
6 it. If so, which we just found so, when should
7 IDC have registered and filed as a Ballot
8 Question Committee, and, again, I'm looking-

9 MR. LEE: [Interposing] Can I state it? You
10 want me to state it?

11 CHAIR MATHESON: Go ahead and state it. You
12 do a better job than I.

13 MR. LEE: I move that we find that IDC
14 should've registered and filed as a BQC on or
15 before December 28th, 2015 by having received a
16 contribution of \$100,000 on December 21st of
17 2015.

18 MS. LOWRY: Second.

19 CHAIR MATHESON: Any other discussion? All
20 those in favor? Five. Those opposed. Zero.
21 What campaign report or reports was IDC
22 obligated to file and when?

23 MR. LEE: I move that we find that IDC was
24 required to file an initial report on December
25

1
2 28th of 2015, and further, that it was in fact
3 filed on April 24th of 2017.

4 MR. NASS: Second.

5 CHAIR MATHESON: Any further discussion?
6 All those in favor? Do you have something,
7 Commissioner, no, okay. All those in favor?
8 Five, zero. Thank you.

9 MS. LOWRY: So, I noticed that this chart
10 doesn't include any filing associated with the
11 \$100,000 received on 12/24/15.

12 [Background conversation]

13 CHAIR MATHESON: It's in the initial report.

14 [Background conversation]

15 MR. LEE: Right, there was no secondary
16 filing required because they were only three
17 days apart.

18 [Crosstalk]

19 CHAIR MATHESON: All right, we are down to
20 issue two: whether the campaign finance reports
21 filed by Horseracing Jobs Fairness Ballot
22 Question Committee substantially conformed to
23 the reporting requirements at the time they were
24 filed. For each report filed, what did
25 Horseracing Jobs Fairness BQC fail to report or

1
2 report inaccurately, and as a consequence, did
3 that report substantially conform to the
4 disclosure requirements?

5 MR. LEE: Maybe a little discussion would be
6 in order.

7 CHAIR MATHESON: Yeah, think so.

8 [Background conversation]

9 MR. PATTERSHALL: I think it bears saying
10 that there is no evidence that any amounts were
11 not reported. Sources that may have not been
12 reported properly, is that fair? All amounts
13 were reported.

14 MR. NASS: That appears to be, yeah.

15 MR. PATTERSHALL: Yeah. And that goes to
16 their argument that it's only amounts that you
17 can close the penalty - -.

18 MR. LEE: Because the reports that were made
19 were all made as if Lisa Scott was the one
20 making contribution-

21 MR. PATTERSHALL: [Interposing] Right.

22 MR. LEE: -when in fact the \$1,193,553.92
23 was primarily contributed by MDC, specifically
24 all of it except for the sum of \$115,000 which
25 was contributed by IDC.

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2 CHAIR MATHESON: Mm-hmm.

3 MR. LEE: Right and so we have to decide
4 then whether it's substantially-inaccurately
5 reporting the identity of the contributor,
6 whether that produces a failure to substantially
7 conform to the reporting requirements at the
8 time they were filed. Is that the issue that
9 we're looking at?

10 MR. PATTERSHALL: Yeah and I think it might
11 be worth making a finding of fact for purposes
12 of the record or if there is an appeal to say
13 that there were no amounts that were incorrect,
14 no chunks of change that were missing. In other
15 words, the sources may have been wrong, and I
16 think that's fair to do that for these
17 respondents.

18 [Crosstalk]

19 MS. LOWRY: I'm good with-that's what we're
20 deciding and I'm good with making a finding to
21 that effect.

22 MR. PATTERSHALL: Well, it's something that
23 could be eliminated as an issue and just focus
24 solely on the legal argument that they're making
25 with respect to penalties, so that just can just

1 be tidied up with a bow.

2 MS. LOWRY: Yes.

3 CHAIR MATHESON: But there's a discrepancy
4 of some money still, and I'm thinking that-

5 [Crosstalk]

6 MR. LEE: [Interposing] I thought that was
7 with MDC that the balances were very difficult.
8 Well, they couldn't be reconciled based on the
9 information that we had. I don't think that was
10 with IDC or with-

11 [Crosstalk]

12 CHAIR MATHESON: Okay.

13 MR. PATTERSHALL: I'm not remembering any
14 testimony or exhibits that showed that there was
15 something that was absent beside the correct
16 names.

17 [Background conversation]

18 MR. PATTERSHALL: Correct me if I'm wrong?

19 [Background conversation]

20 MR. PATTERSHALL: I think then you isolate a
21 legal issue as to whether having the wrong
22 identity of a source is substantial compliance
23 or not, and eliminate the issue of the money,
24 take it away.
25

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2 MR. LEE: So you're basically talking about
3 making a motion—

4 MR. PATTERSHALL: [Interposing] For a
5 finding of fact.

6 MR. LEE: —that the \$1,993,553.92 received
7 by HRJF, the amounts were reported accurately,
8 but the identity of the contributor... well, you
9 could actually split it into two motions I
10 imagine. That's what you're saying?

11 MR. PATTERSHALL: Yeah, that's what I'm
12 saying. I'd rather just limit it to there was
13 no misreporting of any amounts, and you don't
14 even have to make that finding, but I thought it
15 would be good for the record.

16 MR. LEE: You're suggesting a motion and
17 make a finding that the amounts reported by—

18 [Crosstalk]

19 MR. PATTERSHALL: I'm just discussing still.
20 I'm thinking this through.

21 MR. LEE: Sure.

22 [Background conversation]

23 MR. NASS: Brad, why don't you combine both,
24 the amounts were correct but the attribution,
25 the person recorded, were fairly incorrect.

1 [Crosstalk]

2
3 MR. PATTERSHALL: I just want to review
4 this. I just hope you understand we have a ton
5 of documents, and I want to make sure that we're
6 getting the right information, there's a lot of
7 stuff highlighted.

8 MR. LEE: And much of what we're doing here
9 is just establishing findings on a variety of
10 matters which really are not in contention in
11 terms of the amounts and the dates, but the
12 legal significance of them is something we're
13 going to have quite a bit of discussion on when
14 we get to that point, and nobody during any of
15 the testimony that we've had has disputed the
16 amount that came in, the date that it came in.
17 How that's to be characterized is a matter of
18 dispute, but the actual amounts and when it was
19 received, no one has objected to any of that
20 information at least during the hearing. But we
21 need to make findings pertaining to it, I
22 believe, Ms. Gardiner?

23 MS. GARDINER: Yes.

24 MR. LEE: Because anybody that would be
25 reviewing this otherwise would be saying 'well

1
2 is that accurate, did they make a finding to
3 that effect.'

4 MR. PATTERSHALL: Okay. I'll make a motion
5 that we make a finding of fact that all of the
6 amounts that were reported by HRJF on its
7 filings were accurate, and that there was no
8 amount of money that was not reported. The only
9 thing that was incorrect was the sources of some
10 of the funds. Can we find that as a fact?

11 MR. LEE: Why don't you just split it into
12 two?

13 MR. PATTERSHALL: Why don't you amend it?

14 MR. NASS: Why we can just do it as one.

15 MR. LEE: Well, it's got two parts to it,
16 and you said some of them were not reported.
17 The identity was reported accurately, but I
18 believe this none of them were reported
19 accurately.

20 MR. PATTERSHALL: All right, I'll move that
21 we make a finding of fact that there are no
22 incorrect amounts of money filed in the reports.

23 [Crosstalk]

24 MR. LEE: Second?

25 CHAIR MATHESON: Okay, discussion. Does

1 anybody else remember—and I can't tell you the
2 amounts, I can't tell you what it was relative
3 to, but I remember there was something about
4 there were still some issues that were not
5 known. And it might have not been this issue,
6 but does—

8 MR. LEE: [Interposing] I think it was
9 pertaining to MDC where there was a discrepancy
10 of one figure being reported as \$1.3 million and
11 another as something else being reported as
12 \$900,000—something.

13 [Background conversation]

14 MR. WAYNE: It does not relate to this
15 committee. Our former assistant made two
16 handwritten notations on the handwritten reports
17 that were given to us from MDC and Lisa Scott.
18 I believe it was not this committee.

19 MS. LOWRY: Okay.

20 MR. WAYNE: And respondents have taken an
21 exception to her making those notations, but it
22 was not this committee, it was two of the other
23 committees. Is that what you're referring to?

24 [Crosstalk]

25 MS. LOWRY: And in that case, any

1
2 discrepancy in the handwritten notes is not
3 reflected on what we're referring to now?

4 MR. WAYNE: Right, because it doesn't relate
5 to this committee. Those handwritten notes were
6 for Miami Development Concepts, and, I think,
7 for Lisa Scott initial's report. It was not-

8 MS. LOWRY: [Interposing] But even with
9 respect to them, those handwritten notes were
10 corrected and correctly referenced here in what
11 we're looking at.

12 MR. LEE: It has nothing to do with this.

13 [Crosstalk]

14 CHAIR MATHESON: Okay. All right then. Do
15 you have a comment?

16 MR. WAYNE: No, no, no. Yeah, I mean the
17 two dates from April and May 2016 that you're
18 looking at right here, \$150,000, \$300,000, those
19 I believe are accurate, and we can verify those.

20 CHAIR MATHESON: Okay.

21 MR. WAYNE: I don't see a problem. - - I am
22 not aware of any problems.

23 MR. LEE: I'm not asking anything.

24 MR. WAYNE: Yeah, okay.

25 [Background conversation]

1 MR. LEE: It was with MDC, not HRJF.

2 CHAIR MATHESON: Thank you. All right, so
3 the pending motion is a finding that the dollar
4 amounts were the dollar amounts, right? I mean
5 basically—who made the motion, I'm sorry?
6

7 [Background conversation]

8 MR. PATTERSHALL: It's a motion to find as
9 fact that all amounts that were contributed to
10 HRJF were accurately reported as to amounts
11 only.

12 MS. LOWRY: Amounts only, not dates?

13 MR. PATTERSHALL: I think the dates are
14 correct, but that's not part of the motion. I
15 think that the sources that may be incorrect.

16 [Crosstalk]

17 MR. PATTERSHALL: But I just want to limit
18 this motion as a finding, so we have a finding
19 of fact there was no misreporting of amounts
20 that were received by HRJF.

21 MR. LEE: Your motion has been seconded.

22 MR. PATTERSHALL: Right.

23 CHAIR MATHESON: Okay, so all those in
24 favor? Five, zero. Okay.

25 [Background conversation]

1
2 MR. LEE: How about I make a motion that
3 while the amounts reported were correct, the
4 amounts reported by HRJF were correct, the
5 identity of the contributor was not correct in
6 that Lisa Scott was listed as the contributor on
7 every donation when in fact all but \$115,000 of
8 the \$1,193,553.92 was contributed by MDC, and
9 the remaining \$115,000 was contributed by IDC.

10 MS. LOWRY: Oh okay, thank you.

11 MR. NASH: Second.

12 CHAIR MATHESON: Discussion? Could you just
13 repeat those numbers again the first number?

14 MR. LEE: First number I said all but
15 \$115,000 was actually contributed by M-

16 MS. LOWRY: [Interposing] DC.

17 MR. LEE: Right, all but \$115,000 of
18 \$1,193,553.92 was contributed by MDC, and the
19 remaining \$115,000 was contributed by IDC.

20 MS. LOWRY: Yes, thank you.

21 MR. LEE: It's just a much shorter way of
22 saying it than repeating about eight or ten
23 different donations.

24 MS. LOWRY: Yes, I agree, and thanks for
25 repeating it.

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MR. LEE: Sure.

MS. LOWRY: I'm satisfied.

CHAIR MATHESON: Is there discussion on this, and is this another finding?

MR. LEE: And, as a result, the reports did not substantially conform to the disclosure requirement.

CHAIR MATHESON: Thank you, yes.

MR. LEE: So, it's really a finding of fact and a conclusion of law wrapped into the motion itself, and that would need a second.

MR. NASS: Seconded, as modified.

MR. LEE: Yep.

MR. PATTERSHALL: Yeah, I'm not persuaded by the argument that because Lisa Scott is the sole member of both IDC and MDC that—and she's listed as the original contributor—that that's substantial compliance or conformity. The essence of an LLC, as Attorney Fallon came and lectured us on, is that it's a separate entity, and you create them to insulate yourself.

MR. PATTERSHALL: So, IDC and MDC and Lisa Scott are separate entities, and I have to say that because it's misidentified as the source.

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1 To me, that's substantial non-compliance or non-
2 conformity. That's why.

3 MS. LOWRY: Yes.

4 MR. PATTERSHALL: I think it's important
5 enough.

6 MR. LEE: I agree with your reason.

7 MR. PATTERSHALL: Okay.

8 MS. LOWRY: I do too.

9 MR. PATTERSHALL: But, I also- that's why I
10 made the finding of the fact that the amounts
11 were accurate, there's balancing that's going to
12 happen in my mind.

13 CHAIR MATHESON: Is there any further
14 discussion? So, it did not substantially
15 conform is the motion.

16 MS. LOWRY: I'm just thinking about the
17 reference to Attorney Fallon.

18 [Background conversation]

19 CHAIR MATHESON: Are we ready for the vote,
20 Commissioners? All those in favor of the
21 pending motion? Five. All those opposed.
22 Zero. If not, then which campaign reports were
23 late?
24

25 MR. LEE: I'd like to make a motion. We

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1 find that all of the campaign reports were late.
2 That's pretty general. Is that accurate?

3 [Background conversation]

4 MR. LEE: Well, I need to be more clear than
5 that. I just know that a very shorthand way of
6 describing this where we have... nine
7 contributions, eight by MDC, one by IDC.

8 [Background conversation]

9 MR. PATTERSHALL: I think you have seven if
10 I'm not mistaken.

11 CHAIR MATHESON: No. Seven reports that
12 were late.

13 [Background conversation]

14 CHAIR MATHESON: Seven, yes.

15 MS. LOWRY: Seven relate, there were nine
16 specific payments, contributions, yeah. But
17 using seven different reports.

18 [Background conversation]

19 MS. GARDINER: Joan's checking a factual
20 issue that's - - may be relevant.

21 MR. WAYNE: [Interposing] I'm sorry to offer
22 a factual circumstance that I probably should've
23 mentioned earlier which is—and I presume this
24 was just an oversight by Capital Insights, but
25

1
2 there actually is one contribution, the one that
3 was never reported on time, back when it was
4 made in December of 2015. And that's very first
5 one here on the chart.

6 MR. LEE: The IDC?

7 MR. WAYNE: Yup, the one from IDC to HRJF.
8 I've never received a contribution—

9 [Background conversation]

10 MS. LOWRY: So, it never showed up?

11 MR. WAYNE: Yeah, it was just neglected as
12 far as I can tell.

13 [Background conversation]

14 MR. LEE: Your finding of fact dealt with
15 amounts, not with dates.

16 [Background conversation]

17 MS. GARDINER: Yeah, we need to pause for a
18 moment.

19 MR. FRAWLEY: Because it sounds like you are
20 just making assumptions and telling the
21 Commission the facts.

22 MS. LOWRY: Al, I did not hear your
23 question.

24 MR. WAYNE: I just might need a little
25 patience, but I wonder if I—

1
2 MR. FRAWLEY: [Interposing] I just wonder if
3 there was evidence on this specific amount-

4 MR. WAYNE: [Interposing] Sure, but if
5 you'll just bear with me-

6 MR. FRAWLEY: Well isn't the evidentiary
7 portion closed? You can't enter if there's any
8 more evidence at this point, right?

9 MS. GARDINER: No, I think Madam Chair the
10 suggestion is we could just take a pause? It is
11 information that should be in evidence. If it
12 isn't, we'll withdraw the reference to it.

13 [Crosstalk]

14 CHAIR MATHESON: All right, take your
15 minute.

16 [Background conversation]

17 MR. LEE: Do you need a few minutes to work
18 something up?

19 MR. WAYNE: I may have it. I believe one of
20 the report of the Camden National Bank was
21 included among some of the materials. It's not
22 among our exhibits, but I think one of the
23 respondents produced a statement.

24 MR. FRAWLEY: If it wasn't part of the
25 exhibits, then, it's not part of the record,

1
2 right?

3 MR. WAYNE: I believe it was one of your
4 submissions.

5 Mr. FRAWLEY: But it wasn't introduced into
6 the records as an exhibit.

7 MR. WAYNE: You can argue that with Phyllis,
8 I'm just going to try to find the relevant
9 document.

10 [Background conversation]

11 CHAIR MATHESON: Do you know what, let's
12 take—What? Go ahead.

13 MR. WAYNE: We have the exhibits if you want
14 to go over them now. They are exhibits that are
15 already in evidence and I'd be happy to point
16 them out to you.

17 MS. LOWRY: Okay, thank you.

18 CHAIR MATHESON: All right.

19 MR. WAYNE: And, again, I only raised this
20 to make sure that your motion is factually
21 accurate.

22 MS. LOWRY: Thank you.

23 CHAIR MATHESON: Okay.

24 MR. WAYNE: And I'm only aware of this
25 transaction because HRJF has amended its

1 original reports because I think it recognized
2 this was an oversight in its original reporting.

3 MR. LEE: You're going to point out to us a
4 filing that was made, an amended filing? Is
5 that what we're going to be looking at?
6

7 MR. WAYNE: We don't have—the amended
8 filings are matter of public record. They're on
9 our website, but they weren't entered into
10 evidence. I was going to show you the original
11 filing where this particular transaction was
12 omitted. Then I was going to show you the
13 transaction in the bank statement which—

14 [Crosstalk]

15 MR. WAYNE: Okay. On Exhibit 23-007 if you
16 look at the page going down to about the eighth
17 transaction, there is a wire transfer debit on
18 December 28th, 2015 in the amount of \$115,000.

19 MS. LOWRY: Yes.

20 MR. LEE: That is money going out of the IDC
21 bank account.

22 MS. LOWRY: Okay.

23 [Background conversation]

24 MR. LEE: And that is what the record I have
25 says.

1
2 MR. WAYNE: Right, and so HRJF, it's matter
3 of public record—it's on our website—has now
4 reported that as a receipt from IDC.

5 CHAIR MATHESON: So, you're saying that
6 should be added into the amount that's reported
7 late?

8 MR. WAYNE: No.

9 CHAIR MATHESON: Oh.

10 MR. WAYNE: I'm sorry. I'm just offering.
11 I really feel bad that we're belaboring this.

12 CHAIR MATHESON: That's okay.

13 MR. WAYNE: The motion, I believe—

14 MR. PATTERSHALL: You're talking about the
15 motion I made where the amounts were accurate?

16 MR. WAYNE: Right, all of—

17 MR. FRAWLEY: [Interposing] The motion that
18 was already voted on?

19 MR. WAYNE: And before it's too late, I'm
20 just offering the additional factual information
21 that there was actually one of these
22 contributions was not originally reported on
23 time.

24 MR. FRAWLEY: We would object what's
25 essentially someone prosecuting this violation

1 giving what is essentially a jury new
2 information after they have reached a finding on
3 this point. I mean, can you imagine if we're in
4 a courtroom, the prosecutor—

5 CHAIR MATHESON: [Interposing] We're not in
6 a courtroom.

7 MR. FRAWLEY: But the idea of fairness still
8 applies.

9 CHAIR MATHESON: Absolutely.

10 MR. FRAWLEY: Someone prosecuting a
11 violation—

12 CHAIR MATHESON: [Interposing] Absolutely.

13 MR. FRAWLEY: —should not be speaking with
14 the deliberators during the deliberations. And
15 to the extent that he's allowed to do it, we
16 should be heard on these points.

17 MR. LEE: Just for clarification.

18 CHAIR MATHESON: Yes.

19 MR. LEE: The motion that was made and
20 passed unanimously that was made by Commissioner
21 Pattershall was that the amounts were reported
22 accurately, but we did not state a date.

23 MS. LOWRY: Correct.

24 MR. LEE: So, does that moot this whole
25

1
2 point?

3 MS. GARDINER: Because, yes, and HRJF has
4 since amended its report to reflect that then
5 the amount is in its amended report.

6 MR. FRAWLEY: Right, okay, so I'm happy with
7 the motion—

8 [Crosstalk]

9 MR. LEE: But you did not deal with dates?

10 MR. WAYNE: No.

11 MS. LOWRY: And was that amount included in
12 its amended report?

13 MR. WAYNE: Yes.

14 MS. LOWRY: Yeah, good, thank you.

15 CHAIR MATHESON: Are you withdrawing your
16 objection?

17 MR. FRAWLEY: No, not all.

18 CHAIR MATHESON: All right, well, then—

19 [Background conversation]

20 MS. GARDINER: [Interposing] Just note it
21 for the record.

22 [Crosstalk]

23 MR. FRAWLEY: You're taking testimony from
24 Mr. Wayne, so I'll feel obligated to object to
25 that testimony. I've said my piece, I've got

1 nothing more.

2 MS. LOWRY: So noted, thank you.

3 CHAIR MATHESON: Okay, so if not, then which
4 campaign reports were late?

5 MS. LOWRY: All of them.

6 [Laughter]

7 CHAIR MATHESON: Didn't we just say that?

8 MS. GARDINER: On the last that I heard, you
9 said seven reports.

10 CHAIR MATHESON: Seven reports were late.

11 MS. GARDINER: Did I hear you correctly?

12 [Background conversation]

13 CHAIR MATHESON: Let's do it in a motion. I
14 move that because—

15 [Background conversation]

16 CHAIR MATHESON: [Laughter] Yeah, go ahead,
17 would you?

18 MS. LOWRY: Just before you start Bill, with
19 respect to prior BQCs, we also indicated when
20 there was an obligation to file, and I wonder if
21 we should do that with respect to HRJF as well?
22 Not just identifying which ones were late.

23 [Crosstalk]

24 CHAIR MATHESON: Yeah, consistent approach

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1 is always good.

2 MS. LOWRY: But also indicating when they
3 should've been filed and when they were actually
4 filed, which is what we've done with respect to
5 MDC and IDC.
6

7 MR. LEE: Okay, let me try this...

8 MS. LOWRY: And with respect to Lisa's.

9 MR. LEE: I move that we find, and this is
10 all in regard to HRJF filings, so I don't have
11 to repeat HRJF over and over again.

12 CHAIR MATHESON: Thank you.

13 MR. LEE: I move that we find that the
14 \$115,000 contribution was due on January 15th,
15 2016 and was filed on September 8th of 2017, and
16 therefore, was filed late. And, with your
17 permission, I'll go ahead with each one rather
18 than splitting this into seven different
19 motions.

20 CHAIR MATHESON: Absolutely, yep, thank you.

21 MR. LEE: And that the \$180,000 contribution
22 which refers to the 2016 11-Day Pre-Primary was
23 due on June 3rd of 2016 and was received on April
24 20th of 2017 and therefore was late. That the
25 \$25,000 contribution that was due on July 26th,

1
2 2016 as part of the 2016 42-Day Post Primary
3 report was filed on April 20th of 2017 and
4 therefore was late. That the \$300,000
5 contribution that was due to be filed on October
6 5th, 2016 as part of the 2016 October Quarterly
7 was filed on April 20th of 2017 and was therefore
8 late. That the \$523,100 contribution, the
9 filing of which was due on December 20th of 2016
10 as part of the 2016 42-Day Post General Report
11 was in fact filed on April 20th of 2017 and was
12 therefore late. That the \$35,000 contribution
13 that would've been due to be reported on January
14 17th, 2017 as part of the 2017 January Quarterly
15 was reported on April 20th of 2017 and was
16 therefore late. That the \$15,453.92
17 contribution that would've been due as part of
18 the April Quarterly of 2017 report due on April
19 10th of 2017 was in fact reported on April 20th
20 of 2017 and was therefore late.

21 MS. LOWRY: Second.

22 [Background conversation]

23 CHAIR MATHESON: The Chair needs to pause a
24 second here.

25 MR. LEE: And I will note that this

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1 information was previously offered, and no one
2 made any objection during the course of our
3 hearing to any of these numbers and dates, and
4 of course, the public record of this filing is
5 available. And it's an accurate reflection of
6 it.
7

8 CHAIR MATHESON: Okay, any discussion?

9 [Background conversation]

10 CHAIR MATHESON: All those in favor? Five.
11 All those opposed. Zero. Yeah, I'm going to
12 suggest we take about five minutes.

13 CHAIR MATHESON: Thank you, everyone, and
14 let's continue on. Commissioners, we shall
15 fight onward here. And now we are on suggested
16 area three which is whether any other entities
17 were required to register and file campaign
18 finance reports as a result of their activities
19 in support of the York County Casino Initiative?
20 So, we look to Bridge Capital LLC.

21 MR. LEE: So, the question is here whether
22 or not the funds transferred constituted a loan
23 to Capital Seven, but not a loan to Lisa Scott
24 or IDC?

25 CHAIR MATHESON: Yes, it is.

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1
2 MS. LOWRY: We received a copy of a credit
3 facility agreement that seemed to reflect that
4 the funds transferred by Bridge Capital to
5 Capital Seven were a loan, even though they are
6 related entities with some shared ownership. We
7 did not receive anything in evidence other than
8 Lisa's testimony. There were no documents
9 provided that indicated that the receipt of
10 monies by Lisa Scott and IDC were a loan. And
11 Lisa described the loan as being family and no
12 need for documents, but I'm concerned that there
13 is no documentation. There was documentation in
14 the case of one related company, and I
15 understand that when I say related company,
16 those are institutions or entities that are
17 related. And it has a different meaning than a
18 family relation, but to me it's meaningful that
19 there were documents for one and not the other,
20 and I don't have enough evidence that the monies
21 received by IDC and Lisa Scott were anything
22 other than—enough evidence to consider them a
23 loan with any obligation to pay back, any terms.

24 CHAIR MATHESON: Right.

25 MR. LEE: The capital facilities agreement

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1 states that-

2 MS. LOWRY: [Interposing] Credit facility.

3 MR. LEE: -credit facility, excuse me, that
4 the - - is a loan from Bridge Capital to Capital
5 Seven-

6 MS. LOWRY: [Interposing] Correct, yes.

7 MR. LEE: -with directions to have those
8 funds be transferred to Lisa Scott and at least
9 in some instance IDC. Is that your all
10 understanding of the facts?

11 MS. LOWRY: I'd have to look back.

12 MR. PATTERSHALL: I think that's what she
13 testified to.

14 MS. LOWRY: I don't know if there was
15 expressed contemplation in the credit facility
16 agreement that monies be forwarded. I'd have to
17 find it. Does it matter?

18 MS. GARDINER: It's Exhibit 51.

19 MS. LOWRY: 51, thank you.

20 CHAIR MATHESON: Well, and Ms. Scott's
21 testimony that it was all intended to go with
22 the potential exception of the environmental
23 impact study was also paid out of that funding,
24 but other than that the understanding was-her
25

1
2 testimony that it would go to the initiative
3 effort. Oh, no, I mean Regent Able. Never
4 mind, strike my last comment please.

5 MR. PATTERSHALL: The money Bridge Capital
6 lent was to Capital Seven not to Lisa, right?

7 MR. LEE: Though the money went to Lisa or
8 went to IDC.

9 MR. PATTERSHALL: I don't find that that's a
10 contribution.

11 MS. LOWRY: Capital Seven didn't have a bank
12 account we were told, and so the money was
13 forwarded to IDC and Lisa on behalf of Capital
14 Seven directly from Bridge Capital.

15 MR. LEE: And the question we're really
16 looking at here is whether or not there would've
17 been a filing registration requirement on the
18 part of Bridge Capital.

19 [Crosstalk]

20 MR. LEE: If all that Bridge Capital did was
21 make a loan and nothing more, then, that would
22 not be considered to be a contribution, and I
23 may ask for confirmation of that legal
24 conclusion through our legal counsel.

25 MS. GARDINER: Again, you can be specific

1 when you talk about loans whether you're talking
2 about loans from financial institutions.

3 There's two different kinds of loans referenced
4 in the definition of a contribution.

5
6 MR. LEE: Right, if money is contributed by
7 a financial institution and meets various legal
8 requirements and loans that money to a BQC, and
9 that's all that happened, then, that does not
10 trigger a registration requirement on the part
11 of the financial institution that makes the
12 loan. Is that correct?

13 MS. GARDINER: Well, a loan by a financial
14 institution is excluded from the definition of a
15 contribution, and the contributor doesn't always
16 have to file reports.

17 MR. PATTERSHALL: Right, and I think that's
18 where we should start. §1056-B. The question
19 is does Bridge Capital have to file as BQC. And
20 if we go back to looked at with Lisa, we found
21 that she should've filed because she had
22 received contributions. No evidence whatsoever
23 that Bridge Capital received contributions for
24 purposes of influencing this ballot. I mean
25 presumably they've got their own money, same

1 with Capital Seven and Regent Able for that
2 matter to me, and then, so they didn't receive
3 contributions. Did they make any expenditures
4 other than by contribution to a political action
5 committee?
6

7 [Background conversation]

8 MR. PATTERSHALL: Even if you say they made
9 expenditures and wound up with a political
10 action committee, right? I think, yeah, I
11 think they're exempted from this requirement.

12 MS. LOWRY: I don't think Bridge Capital is
13 required which is the question we're looking at
14 right now.

15 CHAIR MATHESON: Right.

16 MS. LOWRY: And I'll just note that Bridge
17 Capital did, apropos of nothing, but Bridge
18 Capital did present evidence that is a financial
19 institution in the Mariana Islands.

20 MR. PATTERSHALL: Do we want a motion?

21 MS. GARDINER: And you can combine all those
22 issues, you don't have to make separate motions
23 on each of these points as long as you're clear
24 in whatever motion you make, what you're finding
25 with respect to the financial institution status

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[Background conversation]

CHAIR MATHESON: The first bullet point I think we could actually bifurcate into two things: Do we find that the funds transferred by Bridge Capital to Lisa Scott and IDC constitute a loan to Cap Seven? We can find the yay or nay on that, and then, we can find yay or nay on the second half, and then, we maybe don't reach the...

MR. LEE: [Interposing] Yeah.

MR. PATTERSHALL: That's fine.

MS. MATHESON: Does that work?

MR. PATTERSHALL: Yes.

CHAIR MATHESON: I think that we can find from the exhibits and testimony that the funds transferred by Bridge Capital were a loan to Capital Seven because of things in the record and the evidence, Exhibit 51. So, that'd be my first.

MR. LEE: You looking for a motion?

CHAIR MATHESON: I think I just moved that. I'm looking for a second.

MR. PATTERSHALL: And not a loan to Lisa

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1
2 Scott or IDC, right?

3 CHAIR MATHESON: Well, yes.

4 MR. LEE: Could the motion be move that the
5 funds transferred by Bridge Capital to Lisa
6 Scott and IDC constitute a loan to Capital Seven
7 LLC pursuant to the credit facilities agreement,
8 but not as a loan to Lisa Scott or IDC?

9 CHAIR MATHESON: Certainly. I withdraw
10 mine. Is that a motion?

11 MR. LEE: So moved.

12 MR. NASS: Second.

13 MS. LOWRY: Do we want to reference 21-A
14 §1052(3)(A) or this a finding of fact?

15 MR. PATTERSHALL: Maybe in the next step.

16 MS. LOWRY: Okay.

17 CHAIR MATHESON: As far as discussion, I
18 think Commissioner Lowry sort of went towards
19 why it's not a loan to Lisa Scott. I mean there
20 was no indication of anything in any of the
21 exhibits. There was no loan amount or a maximum
22 that might be drawn against whatever was needed
23 is what we heard. There was no writing anywhere
24 to give any parameters of any kind about this
25 loan. There was no evidence of any obligation

1
2 to pay back. There's no evidence of an
3 enforceable-

4 MS. LOWRY: [Interposing] Any interest.

5 CHAIR MATHESON: Right, no interest, no
6 enforceable guarantee that anyone would
7 participate in any profit sharing if it came
8 further down the line as a dominoes went into
9 place.

10 MR. LEE: And the credit facilities
11 agreement specifically states that is a loan to
12 Capital Seven, not to Lisa Scott or IDC.
13 Capital Seven can direct where their funds are
14 to be transferred to.

15 CHAIR MATHESON: Yep.

16 MR. LEE: But the loan relationship is
17 between Bridge Capital and Capital Seven.

18 CHAIR MATHESON: Is there any more
19 discussion on that motion?

20 MR. PATTERSHALL: That's right.

21 CHAIR MATHESON: All right, all those in
22 favor? All those opposed. Five, zero. So, is
23 that loan exempt. I think we've answered the
24 question, it was not, it was a loan to Cap
25 Seven.

1 MR. LEE: Not to a political action - -.

2 CHAIR MATHESON: Right, I don't think-

3 MR. LEE: [Interposing] I move that we find
4 the loan is exempt from the definition of
5 contribution in §1052(3)(A), and therefore,
6 Bridge Capital was not required to register or
7 file reports as a BQC.
8

9 MR. PATTERSHALL: Second.

10 CHAIR MATHESON: Discussion? All right.
11 All those in favor? All those opposed? Five to
12 zero. Capital Seven Limited Liability
13 Corporation, did Capital Seven LLC provide funds
14 loaned to it from Bridge Capital to IDC and to
15 Lisa Scott for the purpose of initiating or
16 influencing York County Casino Direct
17 Initiative? Anyone care to make a motion?

18 [Background conversation]

19 MS. LOWRY: There was no question.

20 MR. Nass: Right, it was clear from Lisa's
21 testimony that, that was the case, that the
22 money flowed through, so.

23 CHAIR MATHESON: So, in the form of a
24 motion, Capital Seven provided funds loaned it
25 to from Bridge Capital to Lisa Scott for the

1
2 purpose of initiating or influencing York County
3 Casino Direct Initiative.

4 MR. NASS: Second.

5 CHAIR MATHESON: Thank you, second. Anyone
6 else? Discussion? All those in favor? All
7 those opposed?

8 MR. LEE: So, these next two bullets is
9 actually—so, the next one—should that actually
10 be worded: If so, then was Capital Seven
11 properly listed as a contributor? It seems an
12 affirmative statement when I think it's
13 actually—

14 CHAIR MATHESON: [Interposing] Yeah, it's a
15 question was Cap Seven.

16 MR. PATTERSHALL: Well, there's no penalty
17 if they're—is there a penalty if they were—they
18 listed on April—

19 [Background conversation]

20 MR. LEE: So the contributions were listed.

21 CHAIR MATHESON: Yeah.

22 MR. LEE: But, Capital Seven was listed as a
23 contributor. Lisa Scott was the—oh, in April of
24 2017, not going back.

25 MR. LEE: Again, that's why it's not framed

1 in the form of a question. I see that now.

2 MS. LOWRY: Okay, you have to bring me
3 along.

4 CHAIR MATHESON: Yeah, because I'm not
5 there.

6 MS. GARDINER: You might just want to take a
7 look at the-

8 [Background conversation]

9 MS. LOWRY: I see, okay, I get it.

10 MR. PATTERSHALL: And in April of 2017, the
11 loans from Capital Seven are all set forth.

12 [Background conversation]

13 MR. PATTERSHALL: Exhibit 141 for example.

14 CHAIR MATHESON: So, this is not part of our
15 Exhibit C. We're looking elsewhere.

16 MR. PATTERSHALL: I'm looking at the filings
17 from April of 2017 for the newly-formed Ballot
18 Question Committee.

19 [Background conversation]

20 MS. GARDINER: This was an issue listed in
21 your Notice of Hearing that you were going to
22 look at whether any of these other entities,
23 including Bridge Capital and Capital Seven or
24 Regent Able, were obligated to file any reports,
25

1 and so I thought you might want to-

2 [Crosstalk]

3 MR. LEE: Because it was a question whether
4 or not it was going to file as a BQC, so perhaps
5 a motion would be in order that-move that we
6 find that Capital Seven was properly listed as a
7 contributor on the reports filed by the Lisa
8 Scott and IDC BQCs in April of 2017 and
9 therefore was not legally required under the
10 statute to register or file reports as a BQC
11 itself.
12

13 MS. LOWRY: I would change your motion just
14 to remove the word, "therefore".

15 MS. GARDINER: Right, because if the Bridge
16 Capital funds were not a loan from a financial
17 institution, and there were-if Bridge Capital
18 were not a financial institution, then, the
19 meaning of that exemption to the definition of
20 contribution then its loan to Capital Seven
21 would've been a contribution. And then, Capital
22 Seven might've been in a different posture
23 because Capital Seven's money, as you just
24 found, the documents show, is a loan from a
25 financial institution. It's not a contribution

1 from Capital Seven. Capital Seven didn't
2 receive contributions. That's the legal
3 framework.
4

5 [Background conversation]

6 MR. PATTERSHALL: You can change the
7 "therefore" to "and".

8 MS. GARDINER: Yeah.

9 MR. LEE: Okay. Friendly amendment. Change
10 the word "therefore" to "and", in the motion
11 previously stated. Whoever seconded, okay with
12 that?

13 MR. PATTERSHALL: I'll second it now.

14 MR. LEE: It's a friendly amendment, not
15 requiring a separate vote.

16 MS. LOWRY: That's right.

17 CHAIR MATHESON: Okay.

18 MS. LOWRY: Before we vote, I'm just a
19 little bit uncomfortable with the way that we're
20 being asked to conclude Capital Seven was
21 properly listed as a contributor on the report
22 when it's not-

23 MR. LEE: [Interposing] The report is 2017
24 not earlier reports where it was not reported
25 having done anything.

1
2 MS. LOWRY: Right, and so this is the report
3 of April 26th, 2017, and Capital Seven shows up
4 as a lender.

5 MR. PATTERSHALL: Right, that's a subset of
6 a contribution. That's one of form of a
7 contribution.

8 [Background conversation]

9 MS. GARDINER: Is your point that you don't
10 agree that it was a lender? You've already
11 stated that you didn't agree it was a lender.

12 MS. LOWRY: And so it shows up a lender.
13 We're recharacterizing it as a contributor which
14 is appropriate.

15 CHAIR MATHESON: All right. All those in
16 favor?

17 MS. LOWRY: And we're concluding that
18 Capital Seven was not legally required to
19 register.

20 MR. LEE: Previously, no.

21 CHAIR MATHESON: Yeah, good. All those in
22 favor? All those opposed. Okay, we've just
23 captured this five to zero. We turn to Regent
24 Able Associate Company. Okay, did Regent Able
25 provide funds to Miami Development Concepts LLC

1
2 for the purpose of initiating or influencing
3 York County Casino Direct Initiative?

4 MR. LEE: Between the testimony of Lisa
5 Scott and the documentary evidence provided or
6 at least referenced to, absolutely, yes. Is
7 there any dispute about that?

8 MR. NASS: No.

9 MS. LOWRY: No.

10 CHAIR MATHESON: So, in the form of a
11 motion, Regent Able did provide funds to MDC for
12 the purpose of initiating or influencing the
13 York County Casino Direct Initiative.

14 MR. NASS: Second.

15 MR. LEE: Making that as finding of fact,
16 right?

17 MR. NASS: Yes.

18 CHAIR MATHESON: Any discussion? All those
19 in favor? Those opposed? Five-zero. Were
20 those funds in the form of a contribution or
21 loan?

22 MS. LOWRY: Contribution.

23 CHAIR MATHESON: Yep.

24 MR. LEE: Propose that the paperwork that
25 was introduced in the testimony of Lisa Scott

1
2 clearly indicates that this was money being
3 invested, not loaned, and with the result that
4 if this campaign initiative was successful,
5 there would be—

6 MS. LOWRY: [Interposing] Quid quo pro.

7 MR. LEE: —an equity interest in Capital
8 Seven.

9 MS. LOWRY: Going to Regent Able or its
10 principal, Toko.

11 CHAIR MATHESON: Yep.

12 [Background conversation]

13 MR. NASS: You want to incorporate the one
14 below it in this too, this motion?

15 CHAIR MATHESON: Sure, do you want to?

16 MS. LOWRY: I move that we—

17 MS. GARDINER: [Interposing] I just want to
18 look at the report because I think I have the
19 same issue you had with the last one.

20 CHAIR MATHESON: Okay.

21 MR. LEE: I think it would be clearer and
22 quicker to do it as two motions than trying to
23 wrap this all into one and get the wording
24 right. I move that we find that—

25 MS. LOWRY: [Interposing] Phyllis is just

1 taking one look.

2 [Background conversation]

3 MS. LOWRY: And that continues on Exhibit
4 143-10. I move that we establish a finding of
5 fact that Regent Able Associate Co. Limited
6 provided funds to MDC in the form of a
7 contribution.

8 MR. PATTERSHALL: Second.

9 MR. LEE: As shown by the testimony of Lisa
10 Scott and the documentary evidence we've
11 received?

12 MS. LOWRY: And the lack of documentary
13 evidence.

14 MR. LEE: No, we had some. We had a credit
15 facilities agreement—

16 [Crosstalk]

17 MR. LEE: There was a consulting agreement
18 that even though it says \$15,000 monthly, when
19 it was signed it said \$10,000 a month, so that
20 doesn't represent all of the funds. But, that
21 represents some funds. But through her
22 testimony, that in exchange for this large
23 infusion of capital, Regent Able LLC obtained an
24 equity interest in Capital Seven of unknown
25

1 percentage at least on the evidence provided.

2 MS. LOWRY: Or will receive based on the
3 outcome of the election. So, I'm modifying my
4 motion to say that it's based on testimony
5 received and documentary evidence reviewed.
6

7 CHAIR MATHESON: Okay.

8 MR. LEE: Second that.

9 CHAIR MATHESON: all right, any further
10 discussion? Nope, all right, all those in
11 favor? All those opposed? Five to zero. So,
12 the next question goes towards whether or not
13 Regent Able appeared to have any obligation to
14 register or file reports as a BQC.

15 MS. LOWRY: I think we've got the number
16 three bullet. If so, then Regent Able was
17 properly-

18 CHAIR MATHESON: [Interposing] Oh, I'm
19 sorry.

20 MS. LOWRY: -as a contributor.

21 CHAIR MATHESON: I messed up.

22 MS. LOWRY: Don't worry about it.

23 CHAIR MATHESON: Go ahead.

24 MS. LOWRY: I move that we find that Regent
25 Able was-it's that word, "properly". It bothers

1 me just because.

2 [Background conversation]

3 MS. LOWRY: That Regent Able was a
4 contributor to MDC BQC and listed as such on the
5 reports filed by MDC BQC in April 2017.

6 CHAIR MATHESON: All right, second?

7 MR. Nass: Second.

8 MS. LOWRY: And I guess I don't know if
9 there's any reason for us to say that there's no
10 finding that Regent Able is a lender.

11 MR. PATTERSHALL: We've already found that
12 it made contributions.

13 [Background conversation]

14 MS. LOWRY: Okay, I'm good then.

15 MR. PATTERSHALL: Are we leaving out the
16 "properly"?

17 MS. LOWRY: I am, because they seem to be
18 claiming that it's a lender entitling to an
19 exemption for MDC.

20 MS. GARDINER: Loans listed on Schedule C
21 are in the form of a contribution.

22 MR. LEE: Right.

23 MS. GARDINER: So, you found that it was not
24 a loan, that it was a contribution. That it was
25

1
2 not a loan of any sort. You just found in a
3 previous motion that it wasn't a loan of any
4 sort.

5 MS. LOWRY: Mm-hmm.

6 MS. GARDINER: You may not need to make
7 further findings in regard to the report itself.
8 It's up to you. You've already found that this
9 contribution is not a loan.

10 MS. LOWRY: Mm-hmm.

11 MR. PATTERSHALL: We've not been asked to
12 impose some kind of penalty because it
13 identified it on the wrong schedule.

14 MS. GARDINER: Well, that's up to you. I
15 don't know if anybody-

16 [Background conversation]

17 MR. PATTERSHALL: So, it's your concern that
18 with the use of the word "properly" that it
19 should not be on the loans and repayments, but
20 they should be on - - contributions in Schedule
21 A? If that's something we're asked to penalize
22 them for.

23 [Background conversation]

24 MS. LOWRY: Are you okay with "properly"
25 left out?

1
2 MR. PATTERSHALL: It seems to be stating the
3 obvious. They're listed on the forms. I think
4 that's a conclusion—

5 MS. LOWRY: [Interposing] I can go with
6 "properly".

7 MR. PATTERSHALL: Yeah, for me it defined
8 for me that they're on the form as a public
9 record is pretty darn obvious. To say that
10 they're properly on it is, I think, a legal
11 conclusion that means that they complied with
12 the—

13 MR. LEE: [Interposing] On that date?

14 MR. PATTERSHALL: Yeah, I mean it's late,
15 yeah, but they at least—and that's the question
16 were they properly listed as a contribution on
17 the April 2017 report? I would say they are.

18 MR. LEE: I'm fine with the word "properly"
19 inserted.

20 MR. PATTERSHALL: Because they are listed as
21 a contributor, albeit maybe in the wrong
22 schedule.

23 MS. LOWRY: Works for me, so, I am modifying
24 my motion to include the word properly.

25 [Background conversation]

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1
2 CHAIR MATHESON: All those in favor? Any
3 opposed? Five to zero.

4 MR. LEE: I move to find that the funds that
5 Regent Able transferred to MDC—I move that we
6 find that we have no evidence that the funds
7 Regent Able transferred to MDC were solicited or
8 received from other sources for this purpose,
9 and from that, Regent Able had no obligation to
10 register or file reports as a BQC. It's a
11 combination of a finding of fact and a
12 conclusion of law.

13 CHAIR MATHESON: There we go.

14 MS. LOWRY: Second.

15 CHAIR MATHESON: Any discussion?

16 MR. PATTERSHALL: We don't have any evidence
17 of where Regent Able got its funding.

18 [Background conversation]

19 CHAIR MATHESON: All right, all those in
20 favor? All those opposed? Five-zero.

21 CHAIR MATHESON: So, now we're looking at
22 the roadmap which we are loosely following. We
23 are looking at the calculation of preliminary
24 and maximum penalties under 21-A MRSA §1062-A
25 for any findings of violations made above.

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1
2 Okay, and this does bring us to—we need, a re-
3 calculation? Yes, we do, and that's...

4 MR. LEE: That would be a recalculation on
5 the MDC BQC.

6 CHAIR MATHESON: [Interposing] So,
7 Attachment C, yep.

8 [Background conversation]

9 MR. LEE: Because our vote was that the
10 amount reported late in April 2016 was \$150,000,
11 and also that the reporting deadline, I believe
12 we ended up saying on that initial contribution,
13 was May 3rd—

14 MS. LOWRY: [Interposing] May 3rd.

15 MR. LEE: Yes. And I was looking at the
16 date.

17 MS. GARDINER: I think it means that it's
18 356 days late, instead of 362. Could anyone
19 check that math? So, it was \$150,000 and 356
20 days late instead of 362 days late.

21 [Background conversation]

22 CHAIR MATHESON: So, the amount reported
23 late was \$150,000.

24 MR. LEE: And somebody has to do the math on
25 that and then subtract the difference.

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1 [Background conversation]

2
3 MS. GARDINER: So, the preliminary penalty
4 column, remember, that you have to make your
5 determination as to what maximum penalties
6 apply, because that's what the staff filled in
7 on their Attachment C was the preliminary
8 penalty as they were calculating it. And you
9 have to make your own determinations of what the
10 maximum is.

11 [Background conversation]

12 MS. GARDINER: This piece of paper that's in
13 Attachment C does not actually multiply out the
14 amount reported late by the number of days. We
15 can give that number to you if someone's got a
16 calculator here. So, ignore the numbers in the
17 preliminary penalty column until you make your
18 determination about what the maximum is.

19 MS. LOWRY: Yes.

20 MS. GARDINER: Because if you multiply out
21 the number of days, you will exceed that thing.

22 [Background conversation]

23 MS. GARDINER: If you determine that this is
24 the maximum, you need to look at 1062--

25 [Background conversation]

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1
2 MS. GARDINER: I'm just suggesting that you
3 can correct the amount reported late column on
4 that chart in the days late column. Then you
5 want to be considering what your maximum
6 interpretation of the statute is.

7 MR. PATTERSHALL: Well, if it's over
8 \$50,000, which it is, I read this to say that if
9 it's a day late, the maximum is 100% of the
10 amount reported late, right, the maximum?

11 MS. GARDINER: Right. What the respondents
12 argued—you just need to address their argument.
13 They argued to you that the maximum penalty
14 should only apply if an amount was reported late
15 not if a source was incorrectly reported making
16 the report late. I've said that fairly?

17 MR. PATTERSHALL: Yeah, I think that's
18 right. I thought we were just correcting the -

19 [Background conversation]

20 MS. GARDINER: Yeah, that applies only to
21 HRJF. Which one, are you going to pick out one
22 BQC that you are looking at? Because we were
23 just making a correction to the numbers for MDC-

24 MR. PATTERSHALL: [Interposing] Yeah, I
25 thought we were just doing that right now.

1
2 MS. GARDINER: The source versus amount
3 issue is just with regard to HRJF only because
4 that's the only entity that filed reports on
5 time but with wrong sources.

6 MR. FRAWLEY: Look Phyllis, they HRJF did
7 report all the amounts - -.

8 MS. GARDINER: Yes, that's what they already
9 found. Exactly. I'm sorry, if I confused
10 matters. The issue I was just raising how a
11 maximum penalty relates to HRJF. I do not know
12 which BQC you're going to discuss right now.

13 [Background conversation]

14 MR. FRAWLEY: It applies to all of them.
15 Because if HRJF reported the total amount, then,
16 there was no total amount reported late.

17 MS. GARDINER: Okay, so then when I first
18 said is correct.

19 MS. LOWRY: Okay, then remind me the
20 provision that we're looking at is 1062...?

21 MS. GARDINER: 1062-A(4).

22 MS. LOWRY: Maximum penalties.

23 MS. GARDINER: Yes.

24 MR. LEE: We're presenting a legal question
25 of, is the phrase "financial activity" whether

1 that encompasses all the information that's
2 required, in other words the contributor, or
3 just deals with the money itself.
4

5 [Background conversation]

6 MR. GARDINER: We have Mr. Merrill's letter
7 of October 26th which lays out his argument, if
8 you need to reference that.

9 MR. PATTERSHALL: The statute says financial
10 activity.

11 MR. LEE: Does the phrase financial activity
12 only mean numbers, or does it mean numbers and
13 identifying data is the question?

14 MS. LOWRY: Reflect all of the required
15 information in a report.

16 MR. PATTERSHALL: They're saying that the
17 amounts were reported correctly. Therefore,
18 these statutory maximums are way out of line. I
19 think they're even arguing that it's zero,
20 because all the amounts were reported
21 accurately. I like it; it's a clever argument.
22 But, when I see financial activity reported late
23 to me, then that would include who are the
24 parties to the financial activity. Who did the
25 financial activity?

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1
2 MS. GARDINER: There's two parts to the
3 maximum penalty provision. The maximum penalty
4 under this subchapter is \$10,000 for reports
5 required under 1056-B or 1059, except that if
6 the financial activity reported late exceeds
7 \$50,000, the maximum, and the next one says two
8 maximums, either \$10,000 or it's 100% of the
9 amount reported late.

10 MR. PATTERSHALL: Okay, it's \$10,000 for any
11 contributions of \$50,000 or less, right, and
12 there are several of those. We have to go
13 through each one.

14 MS. GARDINER: And Mr. Merrill's letter of
15 October 26th at the bottom of page 11 and over to
16 the top of page 12-

17 MR. LEE: [Interposing] And what tab is that
18 under?

19 MS. GARDINER: It's tab five in the - -.

20 [Background conversation]

21 MR. LEE: What page?

22 MS. GARDINER: Bottom of 11 carrying over to
23 the top of 12. It's labeled as part three, the
24 argument that only applies to amounts reported
25 late.

1 [Background conversation]

2
3 CHAIR MATHESON: Let me just ask, does 1056-
4 B(2) content help us in trying to discern what
5 the meaning of "financial activity" is because
6 it specifically says that the report required
7 the date of each contribution, date and purpose
8 of each expenditure, the name and address of
9 each contributor, payee or creditor, the
10 occupation, principal place... I mean there are a
11 lot of things that are included here for every
12 single financial activity. I mean that's how I-
13 it's not just putting down an amount, and every
14 piece of activity that has to report it has to
15 have this.

16 MR. LEE: Well, isn't the fundamental
17 purpose of requiring this reporting to apprise
18 the public of the nature and amount of the
19 financial activity that has occurred?

20 MR. NASS: Nature being who it is?

21 MR. LEE: Yes.

22 [Crosstalk]

23 CHAIR MATHESON: That's the whole reason we
24 have this.

25 MR. LEE: The amount is important but-

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MR. NASS: [Interposing] Who it came from.

MR. LEE: -but who it came from is the first
and foremost.

MR. NASS: And when, is the other thing.
When you got it.

MR. LEE: Right, but if there's money
reported, but the public doesn't have the
opportunity to learn who contributed to it, it
would seem to defeat the purpose of the statute.

MR. NASS: Most of the activity along this
line has been about who contributed as opposed
to what the amount it is, and now we're in a
position where the amount is more important than
who, but in our past activity, it's always been
who and the amount and that was the whole
purpose of the legislation, I thought.

MR. LEE: And the filings gave us an amount
but incorrectly gave us the who.

MR. NASS: Right.

MR. PATTERSHALL: I don't so much care about
the policy, only the statute. I mean I have to
go by what it says.

CHAIR MATHESON: Right.

MR. PATTERSHALL: So, the maximum penalty

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1 under the subchapter is \$10,000 for reports
2 required under subsection 1056 except that if
3 the financial activity reported late exceeds
4 \$50,000, and I get this argument. I understand.
5 I'm on the fence here. The financial activity
6 reported late is not an amount. It's the who is
7 reported late. I understand it.

8 [Crosstalk]

9 CHAIR MATHESON: But if you just put down
10 amounts without who or you put the wrong who,
11 then, it is not an accurate—

12 MR. NASS: [Interposing] Representation of
13 what happened.

14 CHAIR MATHESON: And that was not the
15 activity. It wasn't given from that source. I
16 mean I don't know how you divide up the
17 contributor from the amount of the contribution.
18 They're inextricably linked or should be in
19 order to provide the kind of transparency these
20 laws are designed to enhance, right?

21 MR. NASS: Yeah, I mean the last big case
22 was more about who than the amount although the
23 amount was substantial.

24 MR. PATTERSHALL: They could have written

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it so much better.

[Background conversation]

CHAIR MATHESON: We don't have something that says financial activity means accurate dollar amounts reported. I think we have to take it in a context of the framework of campaign reporting.

MR. FRAWLEY: Madam Chair, if I could, I think you're misunderstanding our argument a little bit. I agree with what you're saying that financial activity encompasses the who and the nature, so this statute's saying that if the financial activity reportedly exceeds \$50,000—in this case, we concede it that does—then the maximum penalty provisions apply. So, we're conceding that in this case the maximum penalty provisions apply, but the statute says the maximum penalty is 100% of the amount reported late, not the nature of the amount. It's just the amount, so, yes, the maximum penalty applies. No question about it if you find a violation, but the penalty is limited to 100% of the amount, that's the argument we're making. In this case, no amounts were reported late, so

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1
2 there'd be a violation with no penalty based on
3 the wording of the statute.

4 MR. PATTERSHALL: Well, it'd still be
5 \$10,000.

6 MR. FRAWLEY: Well, yeah, I misspoke it
7 would be \$10,000, correct, or in certain cases
8 if people are unreporting amounts, then, it
9 could be well over \$10,000, but in this case,
10 there's no unreported amounts. So, we go back
11 to the \$10,000 based on the fact that there
12 might've been a violation.

13 MR. MERRILL: Correct, that's what I had on
14 the bottom of page 11 and beginning of 12 - -
15 letter.

16 MS. LOWRY: But there is also language about
17 what constitutes a reporting date. It has to be
18 substantially conforming, and this is not, and
19 so therefore, the amounts, to me, the entire
20 report including the amounts are reported late.

21 MR. FRAWLEY: That only goes to whether
22 there's a violation of the reporting statute,
23 not to the maximum penalty. That's what we're
24 arguing. So, yes, the fact that the sources
25 were wrong go to whether it's a violation. If

1 they did not substantially conform, it goes to
2 whether it's a violation. Assuming for the
3 purposes of my argument that there was a
4 violation, then you have to look at what the
5 maximum penalty is which the maximum penalty for
6 that violation, for the non-substantially
7 conforming report is 100% of the amount reported
8 late. And in this case, the statute focuses
9 just on that one aspect of the report, and in
10 this case, none of the amounts reported late
11 because they were all reported on time, just the
12 source was different than what the Commission
13 expected it to be.

14 [Background conversation]

15 CHAIR MATHESON: If the financial activity
16 reported late exceeds that...

17 MR. PATTERSHALL: So, they're saying what
18 the penalty is. They use the word amount in the
19 penalty. If maximum penalty is 100% of the
20 amount reported late, and so the question is, is
21 the wrong source meaning you've reported an
22 amount late? I don't know that it is.

23 [Background conversation]

24 MS. LOWRY: Can you help us find the
25

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substantially conforming provision?

MS. GARDINER: Substantially conforming is in...

MS. LOWRY: 1056?

MS. GARDINER: Yep.

[Background conversation]

MR. FRAWLEY: I believe it's in the timeliness, so if we go to when there's a violation not to the amount of penalty. So, we are conceding that the maximum penalty applies in this case. We're just disagreeing about the amount of the penalty. So, really, this statute is irrelevant until you get to the language the maximum penalty is 100% of the amount reported late.

[Background conversation]

MR. FRAWLEY: Right, for purposes of our argument, we're conceding that the maximum penalty applies. We're just arguing that, that penalty's limited to 100% of the amount reported late, so otherwise, it's \$10,000. Where cases where the amounts were underreported, it could be more than \$10,000, but in this case, you don't have any amounts reported late. So, the

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1
2 maximum penalty would be \$10,000.

3 MS. GARDINER: The substantially conforming
4 language is in 1062-A(2).

5 [Background conversation]

6 MS. GARDINER: 1062-A...

7 MS. LOWRY: Campaign finance reports.

8 MS. GARDINER: Right, it says a campaign
9 finance report is not timely filed unless a
10 properly signed or electronically submitted copy
11 of the report substantially conforming to the
12 disclosure requirements of this subchapter is
13 received by the Commission dot-dot-dot.

14 [Background conversation]

15 CHAIR MATHESON: Do you have public laws
16 here?

17 MS. GARDINER: We can pull them up on the
18 computer. We don't have a bound copy here.

19 CHAIR MATHESON: We don't? I just wanted to
20 look at chapter one.

21 [Background conversation]

22 CHAIR MATHESON: I wanted to look at 215
23 Chapter One, §10, Public Law.

24 MS. GARDINER: Well, I'm not on the
25 computer, but if somebody else is you can pull

1
2 that up.

3 [Background conversation]

4 CHAIR MATHESON: You're telling me I can't
5 look at the law? Oh, sorry.

6 MR. MINA: If the Commission wants, you can
7 adjourn and let us brief this for you. We
8 already gave you an argument—

9 MS. LOWRY: Thank you for the offer.

10 CHAIR MATHESON: Thank you.

11 MS. LOWRY: Thank you for the offer.

12 MR. PATTERSHALL: There's no cases on it,
13 right?

14 [Crosstalk]

15 MR. FRAWLEY: No, there's no legislative
16 history, as far as I can tell.

17 MR. PATTERSHALL: So briefing, I don't know
18 it will -

19 MR. WAYNE: [Interrupting] Madam Chair—

20 CHAIR MATHESON: [Interposing} Yes.

21 MR. WAYNE: -I would like to take their
22 procedural arguments seriously, but if you are
23 hearing oral argument on this particular issue,
24 I'd be pleased to offer a point of view.

25 MS. LOWRY: Thank you.

1 MR. WAYNE: And so would they.

2 [Crosstalk]

3 MR. LEE: They have had an oral argument.

4 Are you saying that you would like to respond to
5 their arguments?
6

7 MR. WAYNE: Just briefly.

8 CHAIR MATHESON: Okay.

9 MR. WAYNE: I don't understand the argument.
10 I mean if you look at your Schedule C, for
11 example, for Lisa Scott, there are number of
12 dates and amounts there that represent the
13 actual amounts that Bridge Capital paid to Lisa
14 Scott.

15 CHAIR MATHESON: Right.

16 MR. WAYNE: Those were never reported on
17 time.

18 CHAIR MATHESON: Right.

19 MR. WAYNE: Now maybe the way the funds
20 flowed, ultimately, what Lisa Scott did with the
21 money, what is reported in different amounts on
22 different dates, but those particular amounts
23 were not reported on time. I guess when I read
24 the brief, I thought it applied to HRJF in
25 particular, and I just don't understand how the

1
2 underlying funds that flowed from Bridge
3 Capital, you could say the amounts were reported
4 on time when they were never reported on time.

5 MR. FRAWLEY: But they were reported by
6 Horseracing Jobs Fairness. Horseracing Jobs
7 Fairness then overreported by three million, so
8 you're going to penalize entities for
9 overreporting?

10 MR. WAYNE: Well, you can't just take totals
11 of a different set of transactions and apply
12 them to-

13 [Crosstalk]

14 MR. FRAWLEY: But all the money ultimately
15 went to Horseracing Jobs Fairness anyways, so
16 that's where it all ended up, and Horseracing
17 Jobs Fairness reported all of those amounts. I
18 mean that's where it was spent from, so you can
19 look at it all as one pot because it all went to
20 that one pot.

21 MR. MINA: And your argument we'd have to
22 take every draw from Bridge Capital off the loan
23 and figure out the number of days between the
24 draw and the actual expenditure. You simply
25 couldn't take a date and time in past history

1 and say all that money coming forward is late.

2 MR. WAYNE: I don't think it's sufficient.
3 What should've have happened is Lisa Scott
4 should've registered, and she should've reported
5 all of these correct amounts on the correct
6 dates, and that never happened. Now a sum
7 roughly corresponding to this amount was
8 ultimately reported by HRJF with different
9 amounts and different dates. Ultimately, a
10 total amount was disclosed, but these amounts
11 were never reported. I guess I'm not quite
12 understanding the argument.
13

14 MR. MERRILL: Financial activity was
15 reported. That's what the statute says.
16 Financial activity.

17 MR. MINA: We could always ask the Superior
18 Court for an advisory opinion. We can move for
19 declaratory judgment jointly and get an answer
20 from the Court.

21 MR. PATTERSHALL: I don't know if you can do
22 that procedurally. Don't you have to have some
23 kind of decision from us?

24 CHAIR MATHESON: You don't get a advisory
25 opinion.

1
2 MR. FRAWLEY: There is a dispute about the
3 law, so I think we could ask for a declaratory
4 judgment on who's right. You know it wouldn't
5 be an advisory opinion. It would be the
6 opinion. This is the law because we clearly
7 have a genuine dispute about what the law means.
8 I mean unless someone can resolve it, we need
9 people smarter than us to tell us what the
10 answer is.

11 MR. MINA: That's the whole purpose for the
12 Declaratory Judgment Act.

13 MR. NASS: I'm comfortable with the original
14 purpose of this was to report the who and the
15 amount and when, and that doesn't appear to have
16 been accomplished by this. We've got bits and
17 pieces, and they might add up to the story that
18 somebody if they at a distance could figure out
19 it would be accurate, but that wasn't what the
20 intention was. The intention was to be able to
21 tell the citizens of Maine who was contributing
22 and how much, and we can't put that story
23 together all in one piece here.

24 MR. MERRILL: Well, with all due respect,
25 you can't use this maximum penalty statute to do

1 what you want to do. It doesn't permit it.

2 MR. MINA: You can impose a fine. It just
3 can't be the maximum penalty because you're
4 dealing with that word "amount", and-

5 [Crosstalk]

6 MR. MERRILL: [Interposing] and "financial
7 activity" -

8 MR. MINA: [Interposing] Commissioner
9 Pattershall pointed out that's the word.

10 MR. NASS: The financial activity includes
11 the who and the amount.

12 MR. LEE: Right.

13 MR. PATTERSHALL: And if either one is
14 missing-

15 [Crosstalk]

16 MR. FRAWLEY: Right, and then, the question
17 becomes what's the penalty, and the penalty
18 focuses only on the amount. It does not focus
19 on the financial activity.

20 MR. MERRILL: It doesn't say that there's
21 financial activity reported late. It says the
22 amount reported late.

23 [Crosstalk]

24 MR. PATTERSHALL: One could read this to say

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1 that if you get the wrong people, we're going to
2 get you for \$10,000 each time. If you get the
3 wrong amount, however, where you hide the money,
4 we're going to really get you.

5 MR. NASS: Yeah.

6 MR. PATTERSHALL: And they're saying all the
7 amount—I totally get this argument. They said
8 all the amounts were reported, and I think there
9 was one that was reported late. But we're not
10 hiding the money. We're not disclosing the
11 source.

12 CHAIR MATHESON: I understand what they're
13 saying, but you've really twisted the—

14 MS. LOWRY: [Interposing] I do too.

15 MS. LOWRY: —the intent. I mean this was a
16 Citizen's Initiative.

17 [Crosstalk]

18 MR. PATTERSHALL: I don't look at intent if
19 the statute says, I mean you can't even go past
20 the language, isn't that fundamental? Intent
21 doesn't matter, if you got a statute. It's what
22 they wrote, not what they thought.

23 MS. LOWRY: So, Brad, what would you think
24 if it read the maximum penalty is 100% of the
25

1 financial activity reported late?

2 MR. PATTERSHALL: That would make a
3 difference, sure, wouldn't it? That would make
4 a difference.
5

6 MR. LEE: You get into the question of when
7 they're using the word amount there, using that
8 as trying to give the base from which to
9 calculate the penalty, and you get into the
10 meaning of "reported" as well. It's not just
11 the word "amount" that we have to focus on here.
12 Is it a gem of construction, grammatically?
13 Linguistically? I wouldn't say that it is.

14 MS. GARDINER: You may also want to think
15 about whether it applies differently to HRJF
16 from the other BQCs because you're looking, per
17 BQC, at what this means, and HRJF reported all
18 of the amounts, you found that as a fact
19 unanimately - -. The other BQCs obviously-

20 CHAIR MATHESON: [Interposing] Didn't report
21 anything.

22 MS. GARDINER: -didn't report. So, whether
23 you see that as a distinction under the way you
24 interpret the statute, I don't know, but you
25 might want to think that through.

1 [Background conversation]

2
3 MR. LEE: So in other words, the
4 interpretation urged by Lisa Scott, et al.,
5 would produce a difference with the penalty
6 calculation on HRJF, but not necessarily produce
7 any difference in the penalty calculation on MDC
8 on the IDC and - -.

9 MS. GARDINER: Well, if you make a
10 distinction that would be the consequence,
11 that's not their argument. Their argument is
12 since all the money was reported by HRJF-

13 [Background conversation]

14 MS. GARDINER: The dates don't line up
15 either.

16 MS. PATTERSHALL: I could be persuaded by
17 that if HRJF got a credit for the overreporting
18 it did and it somehow - -.

19 MR. FRAWLEY: One last thing I'd like to
20 point out-Mr. Day pointed this out to me-that
21 old statute did say the amount of financial
22 activity unreported, so the statutes change from
23 what you all were discussing to just amount.

24 CHAIR MATHESON: Do you have the public law
25 there?

1
2 MR. LEE: I have the old statute. It's in
3 Attachment B.

4 [Background conversation]

5 MS. GARDINER: Public Laws of 2015, Chapter
6 One, it's the Citizen's Initiative.

7 CHAIR MATHESON: It's the Citizen's
8 Initiative.

9 MR. WAYNE: That's in the exhibits.

10 CHAIR MATHESON: Is it?

11 MR. WAYNE: Yeah, it's in the bottom of -

12 [Background conversation]

13 MR. WAYNE: Madam Chair, since Mr. Frawley
14 added something, at the appropriate time, I'd
15 like to offer another point on legal argument.

16 CHAIR MATHESON: Yes, thank you.

17 [Background conversation]

18 CHAIR MATHESON: 145, and here we go 144
19 public hearing - -.

20 [Background conversation]

21 CHAIR MATHESON: Thank you. Thank you.

22 [Background conversation]

23 MR. LEE: 145-007.

24 [Background conversation]

25 MS. GARDINER: 145-007 is the Citizen's

1 Initiative.

2 [Background conversation]

3 CHAIR MATHESON: What did it do, sorry?

4 MR. LEE: It just changed the fraction is
5 all.

6 CHAIR MATHESON: I wanted to see what it
7 did.

8 [Background conversation]

9 MR. FRAWLEY: Yeah, this is not the same
10 one. This changes from one-fifth to 100%.

11 [Background conversation]

12 MR. FRAWLEY: Yeah, it changes it from one-
13 fifth to 100%, but if you look at, I misspoke,
14 it's the penalties for failure to file report
15 were added to say the amount of financial
16 activity not reported.

17 CHAIR MATHESON: Okay.

18 MR. FRAWLEY: So, because the statute says
19 if we fail to file at all, it's the amount of
20 financial activity. The proceeding section,
21 that's 100% the amount for late filing, which is
22 what is at issue here, would be limited to the
23 amount not reported, not the financial activity
24 not reported.

25 **Ubiquis**

1
2 MR. MINA: Which goes to your very question.

3 [Background conversation]

4 CHAIR MATHESON: So, that language, the
5 amount reported, would not change.

6 MS. GARDINER: Right, but the language below
7 in §11 is what they're contrasting. They're
8 contrasting what's in §10 of the Initiative Bill
9 versus what's in §11, and the ways in which
10 those two revisions to §1062-A got amended.

11 MS. LOWRY: Tell us again where we should be
12 looking?

13 MS. GARDINER: Exhibit 145, page 7, so 145-
14 007 shows you two provisions of law of two
15 subsections of 1062-A that were amended by the
16 Citizen's Initiative. The first one is §4 under
17 minimum, maximum penalties, and second one is
18 (8) (A) which we're not dealing with today in
19 substance. But, that has a different type of
20 wording change, and that's what they're pointing
21 out to.

22 MR. NASS: I still think that supports the
23 amount of financial activity not reported,
24 whichever is greater.

25 MS. LOWRY: But, we're not dealing with

1
2 (8) (A). We're dealing with one above.

3 CHAIR MATHESON: I'm looking at the
4 testimony from Phil Bartlett, had it been in
5 effect would it face maximum penalty but instead
6 of penalty of up to \$300,000 to \$500,000, so
7 somebody contemplated that too.

8 MR. Mina: Chair Matheson, it seems that
9 we're struggling to determine a complex issue of
10 law. Would the Commission consider authorizing
11 its counsel to join with counsel for the
12 respondents to seek a judicial opinion on this
13 complex issue under the Declaratory Judgment
14 Act?

15 MS. LOWRY: Not at this time.

16 CHAIR MATHESON: I do not think we are there
17 yet.

18 MS. LOWRY: [Interposing] Jonathan, you had
19 something that you wanted to offer.

20 MR. WAYNE: I'd just like to say that—I'm
21 trying to bring your focus to Lisa Scott, MDC
22 and IDC. Isn't it clear that the amount of
23 financial activity that they reported late does
24 exceed \$50,000? They never filed reports on
25 time. So, their argument is because HRJF filed

1
2 roughly some totals that are—that somehow that
3 those amounts that were filed on time, somehow
4 translates back, relates to the maximum penalty—
5 I'll just finish my statement, if you want to
6 give them a chance to respond. It seems to me
7 that there's no question in it. Lisa Scott, MDC
8 and IDC, their financial activity reported late
9 exceeds \$50,000 regardless of what HRJF did.

10 CHAIR MATHESON: I mean our own findings
11 today have been that these were all late.

12 MR. WAYNE: They should be allowed to
13 respond, but it seems to me that their financial
14 activity that was reported late far exceeds
15 \$50,000 notwithstanding what HRJF did. It seems
16 to me that's a separate reporting obligation.

17 MR. MERRILL: And I think as Commissioner
18 Pattershall started to say, that we ought to get
19 a credit from the overreported by HRJF.

20 CHAIR MATHESON: It doesn't work that way.
21 The activity that was reported—

22 MR. FRAWLEY: [Interposing] You can't have
23 HRJF report the amounts for the other BQCs.
24 Does that make sense? One entity reported all
25 of the amounts, so a couple entities didn't, but

1 that goes to the nature of the money. It goes
2 back to what we were talking about. All the
3 amounts, all these total contributions were
4 reported by one entity. If a different entity
5 should've reported some of them, that doesn't go
6 to the amount that was late. It goes to the
7 character of what was reported late. It goes to
8 the financial activity, and that's exactly what
9 the statute says is the financial activity only
10 factors into the penalty when you're doing
11 failure to file at all, because it's a greater
12 harm to not file, to hide it, as opposed to
13 being late, particularly in this case where the
14 late filings happened months before the election
15 and all the harm has been cured. It makes
16 perfect sense why the penalty would be less for
17 late filings and more for non-filing.

18
19 MR. PATTERSHALL: You're drawing a
20 distinction between 8-A-

21 [Background conversation]

22 MR. PATTERSHALL: -the amount of financial
23 activity not reported, and sub 4, amount
24 reported late, and aren't those the same?

25 MR. FRAWLEY: No, because one of those is

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1 amount of financial activity which would
2 encompass more than just a dollar figure. It
3 would—

4 [Crosstalk]

5 MR. FRAWLEY: If they were the same, why
6 wouldn't they stay the same? We can't just
7 assume that this was a typo. That's the way we
8 interpret statutes. We have to assume that this
9 was done intentionally, especially when the
10 edits were made at the same time to the maximum
11 penalty provisions, one of them through
12 financial.

13 MR. PATTERSHALL: But in the ones that you
14 don't file, by the definition amounts that were
15 never reported, so it's always the case that if
16 you don't file a report, there's going to be an
17 amount that wasn't filed.

18 CHAIR MATHESON: It wasn't filed, right.

19 MR. PATTERSHALL: So, you don't even have to
20 look at that.

21 MR. FRAWLEY: But, they're trying to signal
22 that when you don't file at all, you should be
23 subject to a far greater penalty than if you
24 filed late, and I think we can all—
25

1
2 MR. PATTERSHALL: [Interposing] I don't
3 think that's true. if you misrepresent the
4 numbers, right? I mean would you agree with
5 that?

6 MR. FRAWLEY: Right, but we didn't
7 misrepresent the numbers.

8 MR. PATTERSHALL: That's what I'm saying.
9 There's no greater penalty.

10 MR. FRAWLEY: Yeah, I get what you're
11 saying. If we had said Lisa Scott only
12 contributed \$10,000 when she really contributed
13 \$1,000,000, then, it wouldn't be limited to this
14 \$10,000. It would be a far greater number, but
15 in this case, we're talking about the source.
16 We're talking about the nature not the amount.
17 I think we're on the same page.

18 MR. LEE: One of the questions being raised
19 is when you use the term "financial activity" in
20 that second line of §4, isn't it used again in
21 the next line when calculating an amount? And I
22 understand your arguments you're making, but the
23 alternate argument I think might be that quite
24 simply they're using the word "amount" rather
25 than "financial activity" because there's a

1
2 mathematical computation to be made here.

3 MS. LOWRY: Mm-hmm.

4 MR. MERRILL: But I think the stronger
5 argument is the cardinal rule of legislative
6 interpretation that if the word is used in two
7 or three other spots and not used in this
8 section, then, it was by design, and you got it
9 in the next two sections where they talk about
10 "financial activity" as being the barometer for
11 the what the fine is going to be. And in this
12 one, it says the "amount", so if they wanted to,
13 when they amended it because it was all done at
14 the same time, they could've put 100% of
15 financial activities reported late. And they
16 didn't, so it's amount.

17 [Background conversation]

18 MS. GARDINER: Taking that interpretation
19 though and then the suggestion that you should
20 read them differently because these two
21 provisions were amended differently at that same
22 time, you'd still have to address whether the
23 fact that one BQC reported, HRJF, reported.
24 They're trying to attribute the fact that HRJF
25 reported the dollar amounts correctly to excuse

1
2 or take care of the fact that other BQCs that
3 never registered and filed and reported they - .

4 [Crosstalk]

5 MR. MERRILL: But Phyllis, it's the same pot
6 of money.

7 MS. GARDINER: I understand that's your
8 argument. I understand that, but if you're
9 applying the statute, it's different reporting
10 entities. Every one of these BQCs, because
11 these BQCs were formed and registered and filed,
12 they're being found to have filed late. So, all
13 I'm saying is, right or wrong, I'm just saying,
14 you're trying to attribute HRJF's reporting of
15 amounts as - - .

16 MR. FRAWLEY: I think it's a very
17 complicated question that we can't seem to
18 figure out here. The penalty in this case is
19 going to be determined based on our
20 interpretation of this section. It's going to
21 have a very significant impact on the outcome of
22 the election, and to basically guess at what the
23 statute means now, a couple days before the
24 election, is just wrong. We have a mechanism
25 where we can get the right answer, and we should

1
2 take advantage of that mechanism so that the
3 election that's coming up won't be swayed based
4 off of a report that certain entities are
5 getting fined a large amount when in reality
6 they should be getting fined a small amount. I
7 think that's only fair because none of us here—
8 we can argue all we want—none of us here have
9 the answer. The answer lies in the courts, and
10 we have the duty to get this right that's the
11 way the process is fair, and we have a mechanism
12 to do it. We can do it very quickly. I don't
13 know if it'll happen before the election, but we
14 need to take advantage of the process that's
15 prescribed for us to resolve this especially in
16 a case like this where—

17 MR. NASS: [Interposing] I don't know why
18 you think the courts are going to have any more
19 insight into this than we do.

20 MR. MINA: Well, because they have to.

21 [Crosstalk]

22 MR. NASS: They make a judgment then. We're
23 a quasi-judicial. We can make the same kind of
24 judgment call on this that they will.

25 [Crosstalk]

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1
2 MR. MERRILL: If you are wrong you may have
3 unduly prejudiced-

4 MR. NASS: [Interposing] Well, they could be
5 wrong too.

6 MR. MINA: Well, we have to live with that
7 law.

8 MR. PATTERSHALL: But, if you analogize us
9 to a trial court, we're not, but if we were a
10 trial court, you wouldn't take, you would have
11 an interlocutory appeal, you couldn't just go
12 right up without a decision from the trial
13 court.

14 [Crosstalk]

15 MR. MERRILL: That's why we ask counsel to
16 permit, to join in a joint motion for
17 declaratory judgement.

18 MR. MINA: It's not us against the
19 Commission. It's an argument which-

20 [Crosstalk]

21 MR. PATTERSHALL: I mean the Court's an
22 appeal for you.

23 [Crosstalk]

24 MR. FRAWLEY: - - is the Court wouldn't
25 render a final judgment. The Court might say

1 well this is what I think the issue is, so you
2 all can vote on what you think your
3 interpretation of the statute is. Then, we
4 should be permitted to go challenge that
5 immediately before you make a final judgment in
6 any court case. In a civil case, a judge would
7 say, well, look, here's my ruling on summary
8 judgment, but it's a very complicated question.
9 Well, I'm not sure I'm right, so you get an
10 interlocutory appeal. The final decision gets
11 stayed until we get the answer.
12

13 [Crosstalk]

14 MS. LOWRY: Jonathan, did you have something
15 that you wanted to-

16 MR. WAYNE: [Interposing] I just had two
17 things to say.

18 MS. LOWRY: Thank you.

19 MR. WAYNE: One is-I mean, four of you are
20 attorneys. You have a duty to apply the law. I
21 don't see why you can't use your legal judgment
22 and apply the law in a way that makes sense to
23 you. And my point about how to appropriately
24 apply the statute is this: If you're thinking
25 through what is the maximum penalty for Lisa

1
2 Scott's late filing, you look to what is the
3 amount of financial activity that Lisa Scott
4 reported late. You don't look at other filers
5 and whether their amounts or financial activity
6 was on time. You look at what was Lisa Scott's
7 late financial activity.

8 MR. FRAWLEY: It doesn't say "financial
9 activity" though. You're reading that word into
10 the statute.

11 MR. WAYNE: Here's the clause I'm reading
12 from: "Except that if the financial activity
13 reported late exceeds \$50,000..." and I'm saying
14 Lisa Scott's financial activity reported late
15 exceeds \$50,000. So, the fact that HRJF filed
16 correct amounts, great, but that doesn't affect
17 what the maximum penalty is for Lisa Scott. We
18 should be looking at her late financial
19 activity.

20 MR. LEE: The phrase "financial activity" of
21 course is broader than just the amount. There
22 are a number of requirements necessary to make
23 the report complete, and then, if you don't have
24 that, then, you're considered to be late. And I
25 understand the argument here. The alternate

1 argument is, okay, now it's time to calculate
2 what the amount is that is owed, and that
3 becomes a mathematical computation. And that's
4 why the word "amount" is used but not the term
5 "financial activity" which includes other than
6 numbers. What's being calculated at the end
7 here is a dollar figure. It's a mathematical
8 calculation, and I can see that as a reason for
9 not using the word financial activity again
10 which includes non-numerical matters. They're
11 calling it here's how you calculate the amount,
12 and to say the amount, and to say the amount you
13 wouldn't be required to use the word financial
14 or the phrase financial activity. You just look
15 at what the dollar amount in question is.
16 Obviously, many people could differ on this, but
17 that's the way I am looking at this right now.

18
19 CHAIR MATHESON: And I think that's a
20 reasonable interpretation, and it takes the
21 whole concept of why any of this is required
22 into account. I agree that is a fair reading of
23 the statute.

24 MS. LOWRY: Right, as was clearly the intent
25 of-

1
2 MR. LEE: [Interposing] You hid a million
3 dollars underneath ABC corporation, and then, it
4 turns out the million dollars really came from
5 some international syndicate, and you say, hey,
6 whoa, you're limited here. You can't go beyond
7 the \$50,000 because there was a report made
8 somewhere with a right amount at the right time,
9 but the whole purpose of the legislation is
10 amount and identity, and I can see the
11 difference again. We're using the phrase
12 financial activity in line two and not repeating
13 it again in line three because in line three,
14 you're making a mathematical calculation, and in
15 that sense, you then talk about a dollar figure
16 and that's why the use of the word "amount".
17 Financial activity includes identity. We're not
18 going to be taking 100% of someone's identity.
19 We're going to be taking 100% of an actual
20 amount.

21 MR. MERRILL: The problem with that, with
22 all due respect Commissioner, is another rule of
23 statutory construction is: where the statute is
24 clear on its face, you can't put another meaning
25 to it other than one that's clear, and this one

1 is clear the word amount was chosen.

2 MS. LOWRY: That's certainly not the case
3 where you have lawyers in different parts of the
4 room reading it differently. Jonathan is also
5 an attorney, Phyllis.
6

7 MR. MINA: When all of us lawyers, and all
8 of you, cannot get to the bottom of it, how can
9 we expect the public to understand it?

10 MR. FRAWLEY: And, why should we be making
11 decisions at this late hour so close to the
12 election, based off of what's essentially a
13 guess?

14 MR. NASS: It's not a guess. It's our best
15 judgment.

16 MS. LOWRY: Yes.

17 MR. NASS: And it's important that we do it
18 before the election because this is information
19 that the voters have a right to have.

20 MR. FRAWLEY: But they don't have a right to
21 know wrong information.

22 MR. MERRILL: They don't have a right to
23 know the penalty.

24 MR. LEE: That is a good indication of the
25 degree of violation.

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1
2 MR. FRAWLEY: But, if you give them the
3 wrong information—

4 [Crosstalk]

5 MS. LOWRY: I think it's time to vote.

6 CHAIR MATHESON: I think we need a motion,
7 and I think we need a vote.

8 [Background conversation]

9 MR. NASS: We were waiting for calculations.
10 Is anybody calculating the maximum?

11 CHAIR MATHESON: Wait a second.

12 [Background conversation]

13 MS. LOWRY: So, this is the calculation of
14 preliminary maximum penalties.

15 [Background conversation]

16 CHAIR MATHESON: Okay, so, actually we're
17 going to page four at the very top. What's the
18 preliminary statutory penalty for each BQC that
19 filed late? Okay, let's take them in the order,
20 Horseracing Jobs Fairness.

21 MS. LOWRY: We're not addressing the maximum
22 first, which is at the bottom of page three?

23 CHAIR MATHESON: Right. Oh, okay.

24 [Crosstalk]

25 CHAIR MATHESON: Well, we've had a robust

1 discussion on that. Do you want to vote on
2 whether we feel it comes under, the maximum is—

3 MR. NASS: [Interposing] 100%.

4 MR. LEE: I don't think we have to take a
5 separation motion—

6 [Background conversation]

7 MR. LEE: On B1, it said what's the
8 applicable maximum penalty for each BQC pursuant
9 to §1062-A(4), and then, what is the—

10 MS. LOWRY: [Interposing] Preliminary, so
11 thinking about it now, I would think there is—I
12 mean they're the same.

13 CHAIR MATHESON: Right, but there was a
14 question about whether we were going to say
15 well, it's \$10,000 for everybody, that was the
16 question.

17 [Crosstalk]

18 MS. LOWRY: We'll do the math.

19 CHAIR MATHESON: Yep, so Horseracing Jobs
20 Fairness BQC.

21 [Background conversation]

22 MS. LOWRY: So, the one place where we had a
23 dollar difference was with respect to MDC and
24 specifically contributions received by MDC. I
25

1 don't think there's a math difference with
2 respect to Horseracing Jobs Fairness BQC.

3 CHAIR MATHESON: No. I think you're right.

4 MS. LOWRY: But, this is the place that we
5 might consider the argument that's been put
6 forward with respect to Horseracing Jobs
7 Fairness, and for myself I'm pretty comfortable,
8 I could be pretty comfortable going forward. I
9 guess I'm struggling a little bit. This is the
10 only BQC for which I would agree. I can see
11 myself agreeing that a maximum penalty is—

12 CHAIR MATHESON: [Interposing] We're just
13 saying what is the preliminary.

14 MS. GARDINER: That is the maximum.

15 [Crosstalk]

16 MS. GARDINER: What is shown in this column
17 is a max based on the 100% of the amount/source
18 reported late.

19 [Background conversation]

20 MS. LOWRY: No. I understand the
21 preliminary is the maximum, but you don't think
22 that if we accept Lisa Scott's reasoning that
23 the calculation for the preliminary penalty is
24 impacted?
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MS. GARDINER: Yeah, it is.

MS. LOWRY: It is, but you still think that the preliminary totals are over a million dollars, then, we have the impact of §1062-A(4).

[Crosstalk]

MS. GARDINER: If you conclude that HRJF, because it did report, even though its reports were not substantially conforming as you've already found and therefore were late, if you find that the first clause in 1062-A(4) applies, then, this chart for HRJF would be different because the amount reported late would...

[Crosstalk]

MS. GARDINER: When you look back at §1062-A(3), you start at the basis for the late filing penalty is the total contributions or expenditures, whichever is greater, multiplied by the number of calendar days, so since it was contributions where they reported the wrong source, it would be the—and these are the contributions, right, okay, so you do that by 2% which you get a maximum of \$10,000 for each report, if you apply the \$10,000 maximum because every one of these is multiplied by 2% times the

1 amount of contributions times the number of
2 days, which far exceed \$10,000. So, you'd get a
3 maximum of \$10,000 for each of those reports
4 which raises—

5
6 MS. LOWRY: [Interposing] All for a total of
7 \$70,000.

8 MR. PATTERSHALL: There was one amount that
9 was in fact reported late, that amount, the
10 \$115,000 right?

11 [Crosstalk]

12 MR. NASS: That's \$175,000, \$115,000 plus
13 \$60,000.

14 MS. LOWRY: Mm-hmm.

15 CHAIR MATHESON: But, that is if you accept
16 that—

17 MR. PATTERSHALL [Interposing]: If you
18 accept that argument.

19 MS. GARDINER: With respect to the last one,
20 somebody needs to do the math on the last line
21 the \$15,453.92 times ten days times 2%.

22 [Crosstalk]

23 MS. GARDINER: So, that would be \$3,090.98.

24 MR. PATTERSHALL: I don't think that's
25 right. I think it's \$10,000.

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[Crosstalk]

MS. GARDINER: So, the top line on the Horseracing Jobs Fairness chart there on Attachment C would be the \$115,000 if I'm following Commissioner Lowry's reasoning. The five lines would be at \$10,000, and the last line would be \$3,090.73 - -.

MS. LOWRY: Yeah.

MR. PATTERSHALL: Why would it not be \$10,000? I don't get that.

MS. GARDINER: Because you compute the penalty, it's 2% times the amount reported late, which is \$15,453 times 10 days.

MR. PATTERSHALL: What if we're not buying the argument? If we're going to ten on all the other ones, based on the argument that counsel has been asserting, it wouldn't be a finding that there was an amount reported late, and therefore, you default to the \$10,000.

[Crosstalk]

MS. GARDINER: Look at subsection 3 of §1062-A. That's basis for penalties. That's where you always start.

MR. PATTERSHALL: Right.

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2 MS. GARDINER: You don't get to the maximum,
3 until you start. So, this is a second
4 violation, I'm sorry. These are all being
5 treated as first violations, 2%, and the penalty
6 for the late filing of a report, and we know
7 that substantially non-conforming reports is a
8 late filing. It's a percentage of total
9 contributions or expenditures for the filing
10 period, whichever is greater.

11 [Crosstalk]

12 MS. GARDINER: Not financial activity. It's
13 total contributions for a filing period.

14 MR. PATTHERSHALL: Okay, got you. Thank you
15 for that.

16 [Crosstalk]

17 MS. GARDINER: And I believe that 2% times
18 \$15,453.92 times ten days gets you to \$3,090.78,
19 so you don't hit any maximum on that last April
20 2017 Quarterly.

21 MS. LOWRY: Okay, so I think you've got two
22 of us doing math now.

23 [Background conversation]

24 CHAIR MATHESON: \$16,809.

25 MS. LOWRY: So, my calculator tells me it's

1
2 \$3,090.80.

3 MR. NASS: I got 78.

4 MS. LOWRY: You got 78, great.

5 MR. NASS: I got 68.

6 MS. GARDINER: So it's \$168,090.

7 [Crosstalk]

8 MS. GARDINER: Again, that would be
9 preliminary.

10 MS. LOWRY: And you can tell from the way
11 I've presented this that I am undecided, but
12 it's useful for me to have done the math with
13 respect to Horseracing Jobs Fairness, and what
14 we're looking at is a maximum that is either as
15 I understand it \$1,141,190.78 or \$168,090.78,
16 and I'm ready to move to hold this one open and
17 move on to the other BQCs.

18 CHAIR MATHESON: I'm ready to take your
19 advice. Five minutes, everyone.

20 CHAIR MATHESON: All right, everybody, we
21 are on the preliminary statutory penalties for
22 each BQC that filed late. We're leaving HRJF
23 alone for now. We're going to Lisa Scott BQC,
24 and we'll do MDC BQC and IDC BQC. So,
25 preliminary penalties, if you are in Attachment

1
2 C, we go to-

3 MR. NASS: [Interposing] Lisa Scott.

4 CHAIR MATHESON: -yes, 2.5.

5 MS. LOWRY: I'm comfortable noting that the
6 preliminary statutory penalty for Lisa Scott BQC
7 is \$2,500,000.

8 [Background conversation]

9 CHAIR MATHESON: You're right, okay.

10 MS. LOWRY: Want to do IDC next because it's
11 easier than MDC?

12 MR. LEE: Well, we haven't voted.

13 [Crosstalk]

14 MS. LOWRY: I suggested that-

15 MR. LEE: [Interposing] I think we have to
16 vote on that.

17 CHAIR MATHESON: Well, we didn't vote on the
18 first one yet, either.

19 MR. LEE: And we are passing on that for the
20 moment.

21 MS. LOWRY: Do you want to vote on this one?
22 I'm comfortable voting on this one.

23 MR. PATTERSHALL: Okay. Let's vote on the
24 list of them. Let's get them all down on the
25 list.

1
2 CHAIR MATHESON: Well, we can't because we
3 don't know which way people are falling on that
4 one. All right, so move something.

5 MR. NASS: I move that the preliminary
6 penalty for Lisa Scott BLQ be \$2.5 million.

7 CHAIR MATHESON: Second. I second. Is there
8 a discussion? No?

9 MR. PATTERSHALL: I would just say, well,
10 one thing you should know, too: one of these
11 reports has \$2.4 million preliminary penalty.
12 It would be better for anybody to split those up
13 into \$50,000 increments. because under any
14 reading of the statute, you would have a lot
15 less preliminary penalty. Do you see what I'm
16 saying? That would be 50 different payments of
17 \$50,000.

18 [Background conversation]

19 MR. LEE: Not at all.

20 MR. PATTERSHALL: Okay, well, whenever it's
21 \$50,000 or less, right, the maximum penalty is
22 \$10,000.

23 [Crosstalk]

24 MR. PATTERSHALL: I don't agree with the
25 reading that arrives at \$2.5 million. I can't

1 do it reading that statute, and I do accept this
2 argument. That's the part I had most trouble
3 with.
4

5 Ms. LOWRY: Mm-hmm.

6 MR. NASS: So, you're going to vote against
7 it.

8 CHAIR MATHESON: So, you're going to vote
9 against that?

10 MR. PATTERSHALL: I don't agree that the
11 proper reading of subsection 4 of §1062-A
12 mandates a preliminary penalty of \$2,500,000 for
13 Lisa Scott's BQC. I disagree with that reading.

14 MS. LOWRY: So your preliminary penalty
15 would be \$40,000?

16 MR. PATTERSHALL: That's right.

17 MS. LOWRY: Okay. Can we vote on a motion?

18 CHAIR MATHESON: So, let's vote on the
19 motion, all right, and the current motion is
20 \$2,500,000. All those in favor? All those
21 opposed. Four to one. Thank you,
22 Commissioners. IDC. \$200,000 looks to me to be
23 preliminary - -

24 [Crosstalk]

25 CHAIR MATHESON: I would move that the

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1 preliminary penalty for IDC is \$200,000.

2 MS. LOWRY: Second.

3 CHAIR MATHESON: Thank you, discussion?

4 MR. PATTERSHALL: I can't for the same
5 reasons.

6 CHAIR MATHESON: Same thing?

7 MR. PATTERSHALL: Yeah.

8 CHAIR MATHESON: So, you'd go to \$20,000?

9 MS. LOWRY: No, \$10,000.

10 CHAIR MATHESON: \$10,000, oh, that's right,
11 sorry, excuse me.

12 MR. PATTERSHALL: More specifically the statute
13 says the amount reported late. To me there's
14 one amount, there's a big pot that's one amount,
15 okay. I think that's what they're saying,
16 right? There's one amount, and it was reported.
17 That amount was reported save for \$115,000 that
18 was late over April - -. So, as I read that
19 statute, I'm saying the amount, it's true that
20 IDC did not report the amount. But the amount
21 was reported. That's how I come down, so I
22 won't say it again.

23 CHAIR MATHESON: I understand. I mean, you
24 can say it because we're going to vote it.
25

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MR. PATTERSHALL: Go ahead and vote.

CHAIR MATHESON: All right, all those in favor of the pending motion? All those opposed? Four to one. Okay, MDC that's going to change, and I believe it's now \$760,000?

MS. LOWRY: Let's slow down and do the math here. Looking at the initial report, I think the date due we've shifted to May 3, 2016, right? The date filed stays the same. The penalty rate stays the same, and the amount reported late stays the same. The days late-

[Crosstalk]

MS. GARDINER: No.

[Crosstalk]

MS. LOWRY: It's \$150,000, thank you.

MS. GARDINER: And the days late would be 356, I believe.

[Background conversation]

MR. LEE: Do the numbers, and it comes out way above that.

CHAIR MATHESON: Okay. So, instead of \$910,000, I believe it's now \$760,000.

MR. LEE: Yes.

MS. LOWRY: So, the preliminary penalty for

1 that initial report is now \$150,000?

2 CHAIR MATHESON: Yes.

3 [Crosstalk]

4 MR. LEE: It's got to be \$150,000 because
5 you're dealing with 2% and once its 50 days
6 late, you're dealing with 100%.

7 MS. LOWRY: Yes, thank you. You guys were
8 all ahead of me, and it's \$760,000.

9 CHAIR MATHESON: And it's something
10 different under the other calculation.

11 MS. LOWRY: Yes.

12 MR. LEE: So, is your motion to fine the
13 maximum statutory penalty-

14 MS. LOWRY: [Interposing] The preliminary
15 penalty.

16 MR. LEE: -right, which is the maximum-

17 CHAIR MATHESON: [Interposing] Yeah.

18 MR. LEE: -is for the MDC BQC is \$760,000?

19 MS. LOWRY: It is.

20 MR. LEE: Second that.

21 CHAIR MATHESON: Discussion? All those in
22 favor? Opposed? Thank you very much. Four to
23 one. Okay, so let's go back up to Horseracing
24 Jobs Fairness.

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[Background conversation]

CHAIR MATHESON: All right, so we have no motion on this, so let's have a motion, and then, let's have discussion.

MS. LOWRY: Okay.

MR. NASS: If we did a new calculation on this, bring us to-

CHAIR MATHESON: [Interposing] Well, that's if we think that the amount-

MR. NASS: [Interposing] Why was this one different than the other one? What was the-

MS. LOWRY: [Interposing] Here's what we've done in connection with HRJF, we haven't made a decision. Instead, we have said if we accept Lisa Scott's argument with respect to assigning a penalty for HRJF, the preliminary penalty before any consideration of mitigating factors would be \$168,090.78; whereas if we do not accept Lisa Scott's argument, then, the preliminary penalty would be \$1,141,190.78, and this is just for the one BQC Horseracing Jobs Fairness.

MR. LEE: Can you repeat the number again?

MS. LOWRY: Yes, okay.

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1 MR. LEE: I got the \$168,090.78.

2 [Crosstalk]

3 CHAIR MATHESON: And your rationale for
4 having us look differently at this one than the
5 other is?
6

7 MS. LOWRY: Well, I am undecided.

8 CHAIR MATHESON: Okay.

9 MS. LOWRY: I think that in our lasering in
10 on one word, it undercuts what I think is the
11 expected and more readily understood
12 interpretation of maximum penalty. I think
13 that, that this is, in a word, Ethics
14 Commission. We are considering whether there's
15 been the right type of disclosure associated
16 with this Ballot Question Initiative. It's a
17 Ballot Question Initiative that affords Lisa
18 Scott and others the opportunity to make a huge
19 amount of money. In my view, there was a
20 failure to make required disclosures, and I
21 think that what I think is the plain meaning of
22 our statutory scheme regarding required
23 disclosures and Ballot Question Committees would
24 point to a penalty of the \$1,141,190.78. And
25 I'm bringing an open mind to this determination,

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1
2 and I hear one Commissioner and several lawyers
3 suggest that there's probably no plain reading.
4 And that a better reading would lead us to
5 assign a way smaller penalty, one that's under
6 \$170,000. So, I'm struggling with it.

7 [Background conversation]

8 MS. GARDINER: Does it make any difference
9 in your view that HRJF is a BQC that did
10 actually file a report and did actually report
11 amounts? Its reports were substantially non-
12 conforming, because it didn't correctly identify
13 the source, and you've already found that as a
14 violation. But, with respect to reading the
15 maximum penalty language, is that a distinction
16 in your mind? You seem to be looking at two
17 possible ways of a reading the statute as it
18 applies to HRJF whereas the other BQCs didn't
19 file anything.

20 [Crosstalk]

21 MS. GARDINER: Is that a distinction makes -
22 - interpretation or not? I'm just trying to
23 understand.

24 MS. LOWRY: This is me struggling silently.

25 MR. NASS: If I make a motion, we're going

1 to force you vote on it.

2 MS. LOWRY: A little more discussion?

3 MR. LEE: Well, we can move second and
4 properly have the discussion after the second.

5 MS. LOWRY: That works for me.

6 CHAIR MATHESON: We're deliberating, but if
7 we don't follow that, we're okay.

8 MR. LEE: Just to get it on the table.

9 CHAIR MATHESON: All right.

10 MS. NASS: So, I will move that the
11 preliminary fine for Horseracing Jobs Fairness
12 be \$1,141,190.78.

13 CHAIR MATHESON: Second. Any discussion?

14 MR. LEE: Sure, is what is troubling you,
15 Commissioner, that HRJF did file and reported
16 amounts, but in listing Lisa Scott as the
17 contributor, that was incorrect because that
18 money came from MDC and IDC?

19 MS. LOWRY: Mm-hmm.

20 MR. LEE: I've got that correct? But the
21 fact is that while the contributor was
22 incorrect, the actual amount was there, as
23 opposed to with MDC and IDC and Lisa Scott
24 individually, they qualified as BQCs, but they
25

1 had not filed anything. That'd be your
2 distinction?
3

4 MS. LOWRY: That would be my distinction,
5 and when I look at the big picture, I consider
6 how hard we had to fight to bring Lisa Scott
7 here. There was a-

8 MR. LEE: [Interposing] I'm looking at the
9 statutory interpretation.

10 MS. LOWRY: Okay.

11 MR. LEE: That's all I'm focusing on.

12 MS. LOWRY: Thank you.

13 MR. LEE: And when we get to the point where
14 we're looking at mitigating circumstances,
15 there's all sorts of things that come to play,
16 an overlap of committees and so forth.

17 MS. LOWRY: Thank you.

18 MR. LEE: So, is that where you're
19 suggesting there's a difference based on that
20 statute? That, in fact, of the four BQCs, this
21 one, at least, reported something.

22 MS. LOWRY: Mm-hmm.

23 MR. LEE: And that, that might be a cause
24 for a difference in the matter and then produce
25 a calculation where you would be a maximum of

1
2 \$20,000 for each report that was filed late,
3 right, assuming that the amount involved
4 exceeded \$50,000. If it didn't, then, it'd be
5 just be applying the percentages, and I guess
6 they're two or three. Three of the reports are
7 less than \$50,000, right?

8 CHAIR MATHESON: Yep.

9 MS. GARDINER: First report was \$115,000.
10 Count it as the maximum because that amount was
11 not reported until September 8th, 2017.

12 CHAIR MATHESON: Right.

13 MR. LEE: Say that again.

14 MS. GARDINER: You went over this earlier.
15 I'm just repeating.

16 MR. LEE: Yeah, the September 8th-

17 MS. GARDINER: [Interposing] The \$115,000
18 amount did not appear on the Horseracing Job
19 Fairness' reports. They omitted that, so they
20 didn't actually report that amount. So, in
21 regards to the source issue, they didn't report
22 that amount.

23 [Crosstalk]

24 MS. GARDINER: So, when Commissioner Lowry
25 computed \$168,090.78, that was based on counting

1
2 \$115,000 for the first late report, \$10,000 each
3 for the next five, and then, obviously the
4 \$3,078 for the one that hasn't hit the maximum.

5 MS. LOWRY: So, why did we not limit that
6 late filed report?

7 CHAIR MATHESON: Because it wasn't reported
8 until-

9 MS. GARDINER: [Interposing] The amount was
10 not reported.

11 CHAIR MATHESON: -until 9/8/2017.

12 MR. PATTERSHALL: As opposed to an incorrect
13 source, there was an omission of the amount
14 which was likely an oversight.

15 MS. LOWRY: Thank you.

16 [Background conversation]

17 CHAIR MATHESON: While I respect that you
18 are drawing that distinction and see the
19 distinction, I think I'm still comfortable with
20 the articulated reading that Commissioner Lee so
21 eloquently gave to us before our break.

22 [Background conversation]

23 CHAIR MATHESON: And so I am going to be
24 voting for the current motion before us. That's
25 just me - -.

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MR. PATTERSHALL: Is there a motion pending?

CHAIR MATHESON: Yes. And I'm respectful of their arguments that are being made.

[Background conversation]

MS. LOWRY: Right, I'm deciding in favor of the motion as it was made. I think this speaks to the—I'm satisfied that the language reflects the basic purpose of the campaign finance laws, and that the larger preliminary penalty is the best way to read the maximum penalty provision.

CHAIR MATHESON: All right, let's call the vote then. All those in favor of the pending motion? All those opposed? Four-one. Thank you. Okay, the next sort of series that we're going to look at has to do with factors that the statutes allow us take into account as far as mitigating.

[Background conversation]

CHAIR MATHESON: So, as in response to HRJF BQC, is the preliminary penalty disproportionate—which we voted on—to Cheryl Timberlake's level of experience as the person filing the reports?

MS. LOWRY: Does it create any ease if we start with the three other BQCs?

1 CHAIR MATHESON: I will take any-where do
2 you want to start.

3 MS. LOWRY: I'd like to start with Lisa, MDC
4 or IDC.

5 CHAIR MATHESON: Okay. All right, let's go
6 to Lisa Scott. Is the preliminary penalty
7 disproportionate to Lisa Scott's level of
8 experience as the person filing reports?
9

10 MS. LOWRY: I'm taking a moment to take a
11 look at the staff recommendation.

12 CHAIR MATHESON: Okay.

13 MS. LOWRY: I'm interested to see the staff
14 application of mitigating factors.

15 MR. LEE: Do you want a minute to read? I'm
16 ready to start the discussion on it.

17 MS. LOWRY: I don't want to stand in your
18 way. Please go ahead.

19 MR. LEE: Well, actually, this is her as a
20 BQC?

21 CHAIR MATHESON: Right.

22 MS. LOWRY: Yes.

23 MR. LEE: And once she got around to filing
24 the report, then, it wasn't really a problem.
25 The whole issue is failure to register. There

1
2 is some evidence that Lisa Scott relied on
3 Cheryl Timberlake to advise her as to whether or
4 not there's going to be a registration
5 requirement because the money she received had
6 come from another source. But, I think there
7 were texts, asking whether there's a
8 Massachusetts problem, and some indication that
9 she was advised that there wasn't a
10 Massachusetts problem. I haven't seen any legal
11 opinion that the legal advice was received to
12 that effect, but this was something received
13 from the treasurer who certainly had a lot of
14 knowledge about different things. So, it seems
15 to me that there is a factor to be considered
16 there, to some degree.

17 MR. NASS: Yeah, I would agree with that.
18 You can't separate Lisa Scott BQC from Lisa
19 Scott. She testified, and I think she was
20 genuinely relying on Cheryl to provide
21 information, so I'm willing to support the idea
22 that the preliminary penalty is disproportionate
23 to Lisa Scott's level of experience.

24 CHAIR MATHESON: I mean, she's told us and I
25 think that some of the underlying e-mails and

1 things sort of—and I'm not casting aspersions.
2 I'm using Ms. Scott's words that she's not a
3 detailed person about many things. You didn't
4 want to deal with those details, and I think
5 that her level of experience in having to file
6 these kinds of things is non-existent, so I
7 agree that this is a mitigating factor.

8
9 MR. NASS: Once we go down through this
10 list, we're not going to try to assign a number.

11 CHAIR MATHESON: Well, we're going to assign
12 a number at the end.

13 [Crosstalk]

14 MR. NASS: Do you want a motion on this one?

15 MR. PATTERSHALL: I'm just thinking did Lisa
16 file her own?

17 MR. NASS: Eventually.

18 [Crosstalk]

19 MR. NASS: She filed as treasurer, but I got
20 the impression that Cheryl did most of the work.

21 [Crosstalk]

22 MS. LOWRY: So, it was Lisa who filed in her
23 capacity as both treasurer and principal.

24 [Background conversation]

25 MR. NASS: But, I had the impression that

1
2 most of that actual work, that Cheryl just
3 refused to sign on as treasurer.

4 [Crosstalk]

5 MR. LEE: Right, I could have an assistant
6 type it all up for me, but I sign it, and I file
7 it. It's mine.

8 MR. NASS: Got it.

9 [Background conversation]

10 MR. PATTERSHALL: And my analysis, I started
11 at a different preliminary penalty, but I have
12 to accept that you voted on, but to me, it's
13 grossly disproportionate.

14 [Background conversation]

15 MS. LOWRY: And, so just to consider other
16 mitigating factors, I do not understand that
17 there was a valid emergency of the committee
18 treasurer.

19 [Background conversation]

20 MS. LOWRY: I'm looking at §1062-A(2). For
21 purposes of this section mitigating
22 circumstances means—

23 MR. PATTERSHALL: [Interposing] Before you
24 get there, look just up above it.

25 MS. LOWRY: Yes.

1
2 MR. PATTERSHALL: Can we just address the
3 level of experience of filer? See it's in the
4 body of that subsection before you get down to
5 the definition of mitigating; and then, there's
6 another category that's harm suffered by the
7 public.

8 [Crosstalk]

9 MR. PATTERSHALL: Is the fine
10 disproportionate to the harm suffered by the
11 public.

12 MS. LOWRY: Okay, hold on, I just want to
13 see where-

14 MR. LEE: [Interposing] We're discussing

15 MR. PATTERSHALL: I just think we should go
16 right in that order.

17 MR. LEE: There's two basic factors then
18 there is also an argument made that there was a
19 bona fide attempt - -.

20 [Background conversation]

21 MR. LEE: So, we've got three things we're
22 looking at here.

23 MS. LOWRY: You say three different things?

24 MR. LEE: Yeah, level of experience, harm
25 suffered to the public, and then, was there a

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MR. PATTERSHALL: Yeah.

MR. LEE: What about the fact that \$1.3 million came from Toko Kobayashi through Regent Able.

MR. PATTERSHALL: That's a little bit different.

MR. LEE: The public didn't know about that until relatively recently. Certainly, during the qualifying stage where the funds were contributed back in April of 2016—I think the funds started coming in April 20th to be specific, which is not a small sum of money. In terms of Lisa represented in press releases that this was her project, and it was also represented that it was her money, the two are consistent. The reality is it's Shawn Scott's project, and Lisa is really more of an agent, and it was primarily Shawn Scott's money—well, let me put it this way, the money of Bridge Capital of which he is one of the principals. I think a fellow by name of Baldwin is the other one. And so, what was represented to the public was this was all Lisa Scott's project. This is all Lisa Scott's money. And the reality is none

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1 of the money was Lisa Scott's, it was her
2 brother's and Regent Able Associates. And the
3 level of direction and control by Shawn Scott
4 and to some extent Toko Kobayashi over this
5 project really put Lisa in the position of being
6 an agent for them, not the principal mover.
7 And, that does end up deceiving the public. I
8 think it's certainly mitigating that it's not
9 hard to make the connection between a brother
10 and a sister, and it's his entity which is going
11 to benefit if this, in fact, passed. And, I
12 believe legal counsel wants to say something.

14 MS. GARDINER: Yeah, I just wanted to make
15 sure you're keeping an eye on which BQC and
16 which contributors because Regent Able—

17 MR. LEE: [Interposing] It's true. I may be
18 looking at some of the others.

19 MS. GARDINER: Right, MDC is the entity that
20 received the money from Regent Able, and Lisa
21 Scott's BQC, all of those funds came from Bridge
22 Capital on behalf of Capital Seven.

23 MS. LOWRY: Thank you.

24 MS. GARDINER: So, in terms of thinking
25 about harm to the public with respect to Lisa

1
2 Scott's BQC, you want to only think about-

3 [Crosstalk]

4 MR. LEE: I stand corrected, which
5 strengthens the argument, Richard, that you made
6 which is the brother-sister connection although
7 the same idea of whose project this was, I still
8 stand on what I said there because really Lisa
9 was his agent. And, it was his money or the
10 money of his company, and the "his" is Shawn
11 Scott I am referring to.

12 MR. PATTERSHALL: And for the last seven
13 months, everybody's known who the sources are.
14 They've been accurate, so maybe the people that
15 signed the petition originally might not have
16 known. But, I can tell you when I go to the
17 post office, and the, people come up are you
18 registered to vote here, can you sign this;
19 nobody looks at who's funding it. The harm to
20 the public to this, is grossly disproportional
21 to \$2.5 million, I'll tell you that.

22 MR. LEE: I agree, and it would seem to me
23 than rather than treating the four of these as
24 being complete standalones, we have to recognize
25 that they are interrelated in terms of any

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2 penalty that's ultimately imposed here. We have
3 money that goes from one entity to another to
4 another in essence, and you end up with an
5 overlap to some degree, and while they are
6 separate legal entities, MDC and IDC, Lisa Scott
7 is a sole principal of each of them. And, it's
8 not to be ignored in assessing a penalty here.

9 CHAIR MATHESON: Can we move to discussion
10 on C? To me, we had wildly divergent testimony,
11 but one thing that came out of it was I think a
12 belief on both the parties—and I think it was
13 Ms. Scott articulated a belief—and I think it
14 was a firmly held belief of hers—that in fact it
15 was all hers. While I find that was a mistaken
16 belief, I believe that she believed that the
17 money was hers, and that the three agents or the
18 three BQCs were formed really were sort of
19 almost one in the same in her mind still. Now
20 from a legal perspective, I dismiss that
21 argument, but I think that, that lends some
22 credence to this, the IDC and the MDC, that
23 there was a bona fide effort. I do find that.

24 MR. PATTERSHALL: I find the whole, all of
25 the evidence to me makes of a far less nefarious

1 plan here than some people are hinting at. I
2 really do. I thought she was truthful.

3 MS. LOWRY: But, I also felt that there was
4 an undertaking to not disclose other sources,
5 and that, that was reflected in e-mails and in
6 responses to the press and to questions asked.
7 There was a steady deflecting. It was part of
8 the program and plan.

9 MR. NASS: It was damaging to the public,
10 the public's information what was available to
11 the public.

12 MR. LEE: You elaborate on that, please?

13 MR. NASS: Well, I think in the end, the
14 deception, I guess, was harmful to the public's
15 ability to know what was happening.

16 MR. LEE: But do you agree with Commissioner
17 Pattershall's analysis that the harm here is not
18 nearly as great as it would be if the
19 contributor to Lisa Scott were some third-party
20 unconnected to her family, so that nobody would
21 be able to connect the dots so to speak?

22 MR. NASS: Yes.

23 MR. LEE: Because I mean there's no question
24 you have the name Scott, and you have the name
25

1
2 Scott. You have the brother and sister, and
3 he's the one who's going to benefit or his
4 company, Capital Seven, once you drill down
5 through the three different layers of him in the
6 language of the ballot question. I'll stop here
7 a second.

8 [Background conversation]

9 MR. NASS: No, I agree with you. I can't
10 believe that there was any contemplation that
11 would escape the public's attention. Why the
12 question wasn't more carefully worded.

13 MR. PATTERSHALL: Well, they hired counsel
14 here in Augusta to advise them on what the
15 filing requirements are. There's evidence of
16 the billing in the record, and I think an
17 exhibit is a bill from the law firm, and to me
18 that's evidence of making a good faith attempt
19 to try to comply with the law and it's
20 mitigating factor for sure.

21 MR. NASS: But, after that, they seem to
22 have tried to hide the fact or diminish the fact
23 that it was the Scott family involved. I mean
24 it just wasn't something that could be hidden.

25 MR. PATTERSHALL: Well, Lisa delegated to

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1 Cheryl, and Cheryl testified I'm not lawyer, so
2 they know she's not a lawyer. So, they're
3 relying on counsel to give them advice. That's
4 taking some steps to try to do it right.
5

6 MR. NASS: Yeah.

7 MR. PATTERSHALL: And, that's a bona fide
8 effort, so that's evidence of a bona fide
9 effort. Could they have done more? Yes. She
10 testified that she had—I remember she said we
11 have a lawyer, and I asked who's the we, and she
12 said she a lawyer review the contract between—I
13 think it was it MDC and Regent Able? I can't
14 remember, but there was just one review by the
15 counsel here in Augusta. It could've been more
16 maybe a second opinion or something else.

17 [Crosstalk]

18 MR. LEE: Again, there's certainly the memo,
19 if you read through it, giving you examples and
20 so forth which would have a cautious person look
21 into it further. At the same time, it's easy
22 for me to say that as an attorney.

23 MR. PATTERSHALL: And then, you've got that
24 statute it is a little bit confusing. I can go
25 back to 1056, and I remember reading it the same

1 way, and it's not that clear.

2 MR. LEE: It could be drafted better.

3 MR. PATTERSHALL: It could be drafted
4 better, and to me that's-

5 [Crosstalk]

6 MR. PATTERSHALL: Maybe just first
7 impression we have just different viewpoints.
8 That would go to mitigation to me, but obviously
9 not full mitigation.

10 CHAIR MATHESON: I would've been camped out
11 in the hallway.

12 [Crosstalk]

13 MR. LEE: Underneath it all, what was being
14 represented was this was Lisa Scott's project,
15 and this was Lisa Scott's money, and there's no
16 question after I've reviewed the submissions of
17 counsel, the staff report, listened to the
18 evidence, took extensive notes when Cheryl
19 Timberlake testified, when Lisa Scott testified.
20 And the clearer picture is this would've been
21 represented to be Lisa Scott's project and Lisa
22 Scott's money. And the fact of the matter is
23 neither of those, well, the money was not true
24 at all. And, at best and it being Lisa's

1
2 Scott's project would only be partially true
3 because there was so much direction and control,
4 right down to small expenditures, made by Shawn
5 Scott in the funding and the bills, the strategy
6 to be employed, the type of press release to be
7 made, what could be said, what could not be
8 said. Numerous requests from the press trying
9 to find out the source of the funds were
10 routinely denied. That all points to "we want
11 to keep Shawn out of this." At the same time,
12 they've obviously, a close connection, and
13 anybody spending any time thinking about it
14 would realize that close connection between
15 brother and sister. And the evidence did come
16 out some months ago, although it didn't come out
17 during the signature gathering.

18 MR. PATTERSHALL: That would be the
19 timeframe-

20 MR. LEE: [Interposing] That would be the
21 greatest harm to the public.

22 [Crosstalk]

23 MR. PATTERSHALL: I'm not saying it's not
24 important, but the signature collectors I've
25 never thought to say "tell me who's sponsoring

1 that before I sign it," and I probably should.
2
3 Maybe I should.

4 [Crosstalk]

5 [Background conversation]

6 MR. NASS: Yeah, the more you know about the
7 signature gathering, the worse it gets, and the
8 legislature had discussed doing something about
9 it. They just never have. Going to Portland,
10 Bangor, and Lewiston you can get all your
11 signatures and it does more harm in recent
12 years.

13 [Background conversation]

14 MR. NASS: So, I'm sympathetic to each of
15 these things. I think there's some level of
16 mitigation in each of these things.

17 MS. LOWRY: I do too.

18 MR. NASS: I don't know how in the end we're
19 going to come up with some kind of-

20 MR. LEE: [Interposing] I'll throw an idea
21 out there to you. In terms of this BQC, Lisa
22 Scott, if there were a preliminary penalty,
23 excuse me, if there were a penalty in the range
24 of a calculation made using the alternative
25 explanation of the statute, I think that there

1
2 is a strong message being sent to the public and
3 a strong recognition of mitigating factors.

4 MR. NASS: What would that be?

5 MR. LEE: That would \$168,090.78, and I'm
6 not suggesting that exact amount, but I'm just
7 pointing that ends up being a little bit more
8 than 15% of the—14% maybe.

9 [Crosstalk]

10 MS. LOWRY: It's HRJF that's the ones
11 stated.

12 MR. PATTERSHALL: Yes, if you made that
13 calculation, but based on what we had voted on,
14 the preliminary penalty is \$1.14—

15 [Crosstalk]

16 MR. LEE: I personally think that a penalty
17 of 10% of the figure under the circumstances
18 might even be a little bit on the high side.

19 MR. NASS: I would be interested in 10% if
20 that's where you want to go on this one. That's
21 \$250,000.

22 [Crosstalk]

23 MR. PATTERSHALL: The highest fine I can
24 remember since I've been here is, I think, is
25 9%.

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[Background conversation]

MR. NASS: We've had conversations before about what when are we going to recognize the new referendum language, and we said it was going to be this year.

MR. PATTERSHALL: If she didn't file at all until this-

[Crosstalk]

MR. PATTERSHALL: She would get the same penalty that we're talking about even though there's all kinds of-at least there was a lot of disclosures, right? All the money was disclosed except-

[Crosstalk]

MR. LEE: Of course, the amount of money involved that's the driver, yes. It has dwarfed anything that's - - before us.

MR. NASS: But, that's going to happen on all the subsequent cases if we in fact are going to pay attention to that, but we still have the opportunity to mitigate, but there's got to be some recognition. The voters have said to double.

MR. LEE: And also, to future BQCs there has

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1
2 to be a deterrent effect. This can't be looked
3 at something just the price of doing business.

4 CHAIR MATHESON: Well, I don't want to get
5 off task. It almost falls into the discussion
6 about the leadership PAC we had at our last
7 regular meeting.

8 MS. LOWRY: So, I would go higher than 10%.
9 I suggested that we consider HRJF last because I
10 think that's in some respects I mean at least
11 vis-a-vis Cheryl there are additional mitigating
12 factors to consider, and so 10% seems low in
13 this instance. I don't know if I'm being clear
14 in what I say.

15 MR. LEE: If this were the only one, and we
16 look at how the campaign was presented, this is
17 Lisa's Scott's project, that is Lisa Scott's
18 money, and if this were the only thing we we're
19 looking at, I would tend to agree. But, we've
20 got three others that are here, and to some
21 extent, we're having them and we will have
22 penalties imposed legitimately. But, they are
23 related, so that's why I think we have to take
24 into account what we're going to be voting on in
25 just another couple of minutes and when we do

1 something here, and I can't support 10%.

2 MR. PATTERSHALL: You can?

3 MR. LEE: Cannot, for me it'd need to be a
4 lower figure because we're doing things once,
5 twice, three times and four, and the reason some
6 of them are before us including this one is to
7 some extent people thinking that if they had the
8 money in their possession, and then, they spend
9 it; that's all that had to be reported. That's
10 not the case, and the public has a right to know
11 where that money did come from and not have it
12 go through shell corporations and so forth, but
13 it just strikes me 10% seems high.

14 MR. NASS: Where you are? What number are
15 you at?

16 MR. LEE: 10% would be \$250,000.

17 MR. NASS: That's right, yeah.

18 MS. LOWRY: Mm-hmm.

19 MR. NASS: I'm ready to go 10% or maybe even
20 slighter higher.

21 CHAIR MATHESON: 10%'s about my happy number
22 sort of.

23 [Crosstalk]

24 MR. LEE: It's an enormous amount, and the

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1
2 thing is it's not the only number, and Lisa
3 Scott is the sole principal of MDC and IDC and
4 HRJF. I mean we have at least times four here.

5 [Crosstalk]

6 MS. LOWRY: So, I think it's interesting
7 that we're talking about a \$250,000 figure as
8 being huge when the estimates that I've read of
9 the value of the gaming license if the vote goes
10 in that direction, is \$200 million. And with
11 that as some perspective—

12 MR. PATTERSHALL: [Interposing] We can't use
13 that as a factor, though.

14 MS. GARDINER: It is not information in your
15 record.

16 MS. LOWRY: Okay.

17 MR. PATTERSHALL: Plus, even if it was, to me
18 it is totally irrelevant. To me. I'm just
19 looking at the statutes. If they want to make
20 money off it, then, I don't begrudge them that.
21 It's legally on the ballot. And if they make
22 \$200 million, good for them.

23 MR. LEE: What is relevant is the amount of
24 money involved in the project in determining the
25 penalty because obviously the higher the amount

1 that there is the more that needs to be as a
2 penalty. Or, there's no deterrent effect. If
3 somebody can—I was going to analogize something.
4 I'm not going to do that because it'd be taken
5 out of context, but this cannot be seen as the
6 price of doing business or else the next time
7 there's a referendum, there's going to be
8 somebody say, well, okay, maybe we can get away
9 with this. But, if they catch us, not much is
10 going to happen.

11
12 MS. LOWRY: Right.

13 MR. NASS: That's pushing you up.

14 MR. LEE: Well, I'm just viewing that there
15 are going to be fairly significant penalties
16 with the others, and the reality is if Lisa
17 didn't have MDC or IDC—if it was just Lisa, she
18 hadn't bothered form a separate legal entity,
19 and it is a separate legal entity. Is it IDC
20 that was the Hawaiian bank account? That was
21 convenient to have it out there and have a legal
22 entity. It is different, but reality is there's
23 nobody else involved. And so, if you take a
24 penalty here and realize that we may effectively
25 be multiplying it times four, it doesn't take

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1 very long before we dealing with a large amount
2 of money. And, I think it has a sufficient
3 deterrent effect to it.
4

5 [Crosstalk]

6 MR. NASS: Give us a number. Don't keep
7 talking like a lawyer, just give us a number.

8 [Crosstalk]

9 MR. LEE: I'd be more like \$150,000.

10 MS. LOWRY: Okay, well, I will go ahead and
11 make a motion that—I don't want to do it
12 backwards and jump right to D.

13 MR. NASS: Why not? That's where we're
14 ready to go.

15 CHAIR MATHESON: We are at D.

16 MS. LOWRY: Okay, so then in my motion, I
17 will say that given that the preliminary penalty
18 is disproportionate to Lisa Scott's level of
19 experience, given that the preliminary penalty
20 is disproportionate to the harm suffered by the
21 public from the late disclosure—this part is
22 hard for me because I do not think that there
23 was a bona fide effort to comply with statutory
24 requirements. Given that Lisa Scott did not
25 make a bona fide effort to comply, I'm not going

1
2 to refer to C. I'm going to say that we have
3 two indications that the preliminary penalty is
4 disproportionate to both Lisa's level of
5 experience and to the harm suffered by the
6 public, and based on the consideration of those
7 above factors, I move that the preliminary
8 statutory penalty should be reduced to \$250,000
9 which represents 10% of the preliminary
10 penalties.

11 MR. LEE: Second.

12 CHAIR MATHESON: Okay, discussion?

13 MR. PATTERSHALL: I could probably impose
14 that penalty if there had been no filing at all.
15 The first filing from Lisa Scott BQC came this
16 April, and that was the first time we learned of
17 a \$2.58 million that were put into the campaign.
18 But those amounts were disclosed all along.
19 Wrong donors. The penalties for not reporting
20 at all and the penalties for being late here
21 we're saying exactly the same. To me this is a
22 totally different scenario. Not reporting it to
23 me would be a very big deal. Significant
24 reporting is not perfect, but it is 90% of the
25 way there for me. Given the connections, and

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2 how one can look behind the scenes and find out
3 who is funding this—it's not that difficult, so
4 I'd be with you if there's no filing at all of
5 the funds, \$2.85 million until this April, but
6 there had been funds that disclosed that amount.
7 And, I think it's apples and oranges.

8 [Background conversation]

9 MR. NASS: \$250,000 is a 90% reduction-

10 MR. PATTERSHALL: [Interposing] From the
11 number that you start with and I start with a
12 different number based on the reading of that
13 statute. Because I just think that it is apples
14 and oranges, and again, if you had no filing at
15 all every single amount would be late. If
16 there's \$2.58 million for the first time comes
17 up in April, then, you got 100% of the amount of
18 financial activity not reported, \$2.58 million
19 not reported, but the money was reported. It
20 was just reported by the wrong BQC. That means
21 a lot to me, and that's how I read that. That's
22 how, in my mind, I jibe those statutes.

23 MR. LEE: Again, the voters have said to
24 pump these penalties up. I mean the people
25 weren't identified properly. Identifying the

1
2 amounts is interesting, and you didn't identify
3 the people, and you didn't do it on time, right?

4 MR. PATTERSHALL: It's just a basic reading
5 of the statute. It's not a policy argument.

6 [Crosstalk]

7 MR. LEE: I am not going to say my number.
8 It is significantly lower than that based on a
9 lower starting point.

10 CHAIR MATHESON: What did you say for a
11 number, or you're not comfortable with a number?

12 MR. LEE: I felt in light of the fact that
13 there were going to be penalties imposed, I
14 expect because the Commission is going to be
15 voting. We haven't gotten there but based on
16 the other findings that have been made, I've
17 been uncomfortable saying that it's going to be
18 \$250,000 when there are these other three
19 somewhat related, somewhat different BQCs that
20 we have to vote upon.

21 MR. NASS: This is the largest of them too,
22 right? The largest preliminary penalty is this
23 one?

24 CHAIR MATHESON: Right.

25 [Crosstalk]

1
2 MR. LEE: But when we look at mitigating
3 factors, they're not necessarily the same in
4 each one.

5 MR. NASS: Right.

6 MR. LEE: When we get to the situation with
7 MDC for example where the funding came from an
8 entity that nobody had heard about, I view that
9 significantly different than Shawn Scott
10 funneling money to his sister. When it's coming
11 from this third-party, no disclosure, I don't
12 view the mitigating factors to be the same
13 there, so given her testimony, as I've said, I'd
14 be more comfortable with a penalty in the
15 \$150,00 range.

16 MS. LOWRY: Right, and I would more
17 comfortable with a penalty higher than \$250,000.

18 CHAIR MATHESON: I'm going to call it. All
19 those in favor of the current motion? Opposed?
20 Three-two. Thank you, everyone.

21 MS. LOWRY: Should we do MDC next or IDC?

22 CHAIR MATHESON: Let's do MDC.

23 [Background conversation]

24 MR. PATTERSHALL: We could say level of
25 experience is the same because it's the same

1
2 filer. Same with IDC.

3 CHAIR MATHESON: Right, exactly.

4 [Crosstalk]

5 MR. PATTERSHALL: The harm to the public is
6 pretty much the same.

7 MR. LEE: The purpose behind this disclosure
8 law is so that the public gets to know the
9 amount and the identity of the contributors, and
10 while in this last case we just voted upon—the
11 close connection is pretty easy to figure out.
12 In this situation, there was I believe \$1.3
13 million that came from an LLC known as Regent
14 Able which I think it may be based in Japan, and
15 the principal officer of which is Toko
16 Kobayashi. And he obviously had a very
17 significant influence on this campaign. He was
18 directing Lisa Scott. There was a contract
19 created where he was directing things, a very
20 large amount of money. The public did not get
21 to find that out until long, long after the
22 money was provided and spent. So, I don't see
23 the same level of mitigation with this one as I
24 did with concerning Lisa Scott BQC.

25 [Background conversation]

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2 MS. LOWRY: How much does the dollar amount
3 matter to you because I'm trying to remember
4 whether some of the \$1.3 million was, went
5 towards the Massachusetts campaign. Phyllis,
6 did you have something?

7 [Crosstalk]

8 MS. GARDINER: You have that Attachment C as
9 your reference that you used for all your
10 findings today, and that reflects that with
11 \$150,000 - -.

12 [Crosstalk]

13 MS. GARDINER: You have to look at the
14 contributions reported late, and that first one
15 drops to \$150,000, so it's actually \$800,000.

16 MR. LEE: \$800,000?

17 MS. GARDINER: If you look at the January
18 2017 Quarterly report, it doesn't hit the same
19 maximum.

20 MS. LOWRY: Okay, so \$800,000 came from
21 Regent Able.

22 MR. NASS: Why didn't we come up with a
23 preliminary penalty on MDC of \$760,000?

24 [Crosstalk]

25 MS. GARDINER: The last one listed there was

1
2 an expenditure of \$50,000. It didn't go over
3 \$50,000, so it didn't hit the maximum. You
4 don't apply the maximum, 100% of what was
5 received or spent, if you aren't exceeding
6 \$50,000.

7 MR. NASS: But, that's reflected in the
8 preliminary penalty which is \$10,000.

9 MS. GARDINER: Correct, but you were asking
10 just now what the total amount of the money is
11 that's infused into the campaign.

12 MR. LEE: I got you, I'm sorry.

13 MS. GARDINER: And the total amount of money
14 you have to look at the bottom part of the page.

15 MS. LOWRY: And so, if anybody is looking at
16 page 61 of the staff report, the MDC figure
17 should be reduced from \$910,000 to \$760,000.

18 [Background conversation]

19 MS. LOWRY: And then, the numbers that
20 follow in the chart also shift.

21 [Background conversation]

22 MS. GARDINER: And, you're making findings,
23 the staff did an analysis, what you do today are
24 now your findings.

25 MS. LOWRY: Yes. But, it doesn't change the

1 fact that I find that the staff report is useful
2 guidance. Is it useful to anybody if we
3 complete that line in the chart too, or it's not
4 needed with the new numbers? Not needed, okay.
5 That's fine.

6 [Background conversation]

7 MR. LEE: The mitigation is not as great,
8 and is there some mitigation here? This is
9 different money.

10 MR. NASS: Some mitigation? We're talking
11 90% mitigation. [Laughter] It's not some,
12 almost all of it.

13 MR. LEE: Well, we haven't talked about a
14 number.

15 MR. NASS: I know we haven't, but we seem to
16 be honing in on a mitigation factor that's
17 larger than percentage basis and larger than
18 again what we started with substantial which I'm
19 okay with. I mean I'm not shooting for some
20 bigger number, but we're talking on the last one
21 90% reduction. That's not a little bit. That's
22 a lot.

23 [Crosstalk]

24 MR. NASS: I will agree that there's some

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2 disproportionate reason to reduce the
3 preliminary penalty based on Lisa Scott's level
4 of experience on this one and all the other
5 things that we've talked about that are
6 mentioned here, but I'm still that this one
7 probably ought to be 15% which is, you haven't
8 figured it out yet.

9 MR. LEE: If the penalty were \$100,000, it'd
10 be a little less than 15%.

11 MR. NASS: 15% would be \$114,000.

12 MR. LEE: Right, that's what I'm saying, so
13 if it were \$100,000, it be a little bit less
14 than that in terms of a round number.

15 MR. NASS: So, I am willing to move
16 \$100,000.

17 MR. LEE: I'm willing to second that.

18 MS. LOWRY: What do you think, Meg?

19 CHAIR MATHESON: I'm comfortable at the 10%
20 mark again which is \$760,000. I do understand
21 that you see and perhaps potentially more harm
22 to the public. I get that.

23 [Crosstalk]

24 MR. LEE: Nobody was going to connect
25 someone named Toko Kobayashi to Lisa Scott where

1
2 somebody would connect Shawn Scott to Lisa
3 Scott. Particularly since the ballot question
4 was all about him. Or his entity, Capital
5 Seven.

6 MS. LOWRY: Not that that's apparent from a
7 reading of the provision.

8 [Background conversation]

9 MR. LEE: Right, even though it's not
10 apparent, I think everybody's known that for
11 quite some time whereas this Mr. Kobayashi and
12 Regent Able, no way the public would have any
13 idea about this entity and this person and what
14 he represents and have the opportunity to look
15 into it. And, there was a very considerable
16 period of time where that information was kept
17 from the public eye, and it should not have been
18 that way.

19 [Crosstalk]

20 MR. LEE: It was reported as being Lisa
21 Scott's or MDC's money, and it wasn't MDC's
22 money. It was Regent's Able's money being
23 contributed to one of her BQCs, and that totally
24 puts it below the radar screen. That's why I
25 move the higher percentage.

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MS. LOWRY: I'm ready to make a motion.

CHAIR MATHESON: We have a motion and a second right now.

MS. LOWRY: We have a motion and a second?

[Background conversation]

CHAIR MATHESON: Don't we?

MS. GARDINER: Yes, at \$100,000.

[Crosstalk]

MR. LEE: Second.

[Background conversation]

MR. PATTERSHALL: But I agree there's less mitigation with respect to MDC than I believe with respect to Lisa Scott, as far as a percentage of where we started.

MS. LOWRY: Yes.

CHAIR MATHESON: So, the motion is \$100,000, and it's been seconded. Is there any more discussion? All those in favor? Those opposed? Four to one, thank you, announce it for the record.

MR. NASS: Next, IDC?

MS. LOWRY: Yes.

[Background conversation]

CHAIR MATHESON: IDC, \$200,000 was the

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1
2 preliminary.

3 MS. LOWRY: No, I'm now going backwards.

4 CHAIR MATHESON: Oh, don't go backwards.

5 MS. LOWRY: [Laughter]

6 CHAIR MATHESON: Oh, no, I'm kidding.

7 Again, I think the same reasons that we
8 discussed about Lisa Scott BQC, I think those
9 still hold here. I think the same arguments
10 that were made about the harm suffered by the
11 public was, I don't know, probably not the
12 mitigation. The degree of mitigation is not as
13 large here because there was no connection to
14 the Scott name, so it was more misleading I
15 think perhaps, but I do think again that the
16 bona fide effort was here.

17 [Crosstalk]

18 MR. LEE: I'm backing up here. We made a
19 motion to second MDC. Should that have been on
20 MDC, LLC and MDC, the BQC?

21 MS. GARDINER: You haven't addressed any
22 joint and several. You can come back to that
23 later.

24 CHAIR MATHESON: Oh, oh, I missed it
25 completely.

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[Background conversation]

MS. LOWRY: Joint and several isn't relevant.

[Background conversation]

MS. LOWRY: Of course, it is.

MS. GARDINER: - - at some point you'll have to decide. It's up to you whether you want to deal with that now, or whether you just want to just follow your train of thinking about - -.

[Background conversation]

MS. GARDINER: Because you didn't do it with Lisa Scott's or MDC-

MR. LEE: [Interposing] Because we have not gotten into the substantive discussion on IDC, I'd make motion that we find joint and several liability on MDC LLC, and MDC, and the BQC for the penalty of \$100,000.

MS. LOWRY: And Lisa Scott personally.

MR. LEE: Yes.

MR. NASS: Second.

CHAIR MATHESON: So, that's on which ones now?

MR. LEE: MDC, BQC, MDC LLC, and Lisa Scott individually.

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[Crosstalk]

MR. LEE: I move that we find joint and several liabilities of the \$100,000 penalty on MDC LLC, MDC, BQC, and Lisa Scott.

CHAIR MATHESON: Okay.

MS. LOWRY: And there's a motion, and there's a second. Discussion?

CHAIR MATHESON: All those in favor? All those opposed? Okay.

MR. LEE: Back to IDC.

[Background conversation]

MS. LOWRY: Now IDC.

CHAIR MATHESON: Okay, so, I don't know where to go with it, and as far as the bona fide effort, I mean again from the testimony, I mean not only did Ms. Scott not see this sort of as a separate entity. She saw it as a bank and just took different checking account, you know what I mean? And I fault her legal reasoning on it, but I think it was a truly beheld belief of hers, and I think that lends to the bona fide effort to comply argument here.

MR. PATTERSHALL: So, the level of experience harm suffered by the public are

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1
2 pretty much, aren't they the same as the Lisa
3 Scott BQC?

4 MR. NASS: I think so.

5 MR. PATTERSHALL: This is the Hawaiian
6 account.

7 MS. LOWRY: And we voted for a 10% penalty.

8 MR. NASS: Yup. Ready for a motion on that
9 one?

10 MS. LOWRY: With respect to Lisa Scott?

11 MR. NASS: I move that the penalty be 10% of
12 the preliminary penalty for IDC BQC.

13 MS. LOWRY: So, that it's a penalty in the
14 amount of \$20,000.

15 MR. NASS: \$20,000.

16 MS. LOWRY: We need a second.

17 MR. LEE: Second.

18 CHAIR MATHESON: For some reason I find this
19 one harder. I don't know why, but I just-

20 MR. NASS: [Interposing] The dollars are
21 building up. That's why we use those.

22 CHAIR MATHESON: No, it's because the way it
23 was set up in her mind is very different.

24 MR. NASS: Yeah, but the money's still
25 coming in from this effort.

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CHAIR MATHESON: Absolutely, and it's-

MR. NASS: [Interposing] \$200,000.

MR. LEE: It'd be hard for you not to vote for 10% since you voted for 10% the first time.

[Background conversation]

CHAIR MATHESON: So, we have a motion, and we have a second which goes to \$20,000. All those in favor of the motion? Opposed? Thank you. Four-one, for the record.

MR. NASS: Do we need to do joint and several on this one?

MS. LOWRY: Yes, we do. Thank you for reminding us, so I move that we find that there is joint and several liability of IDC BQC, IDC LLC and Lisa Scott, individually, for the \$20,000 penalty associated with IDC BQC.

MR. LEE: Joint and several.

[Background conversation]

CHAIR MATHESON: Do I have a second?

MR. LEE: Second.

CHAIR MATHESON: Discussion?

[Background conversation]

CHAIR MATHESON: All those in favor? Four-one, for the record.

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MS. LOWRY: And back to HRJF.

CHAIR MATHESON: Yes. Okay, is the preliminary penalty disproportionate to Cheryl Timberlake's level of experience as the person filing the reports?

MS. LOWRY: And the preliminary penalty is over a million dollars. You said it exactly right.

CHAIR MATHESON: Thank you.

MS. LOWRY: I'm just reminding that the preliminary penalty is over a million dollars, and it approaches \$1,150,000.

MR. PATTERSHALL: That's an easy "yes" for me, very disproportionate.

MR. NASS: I'd say it's not as disproportionate as it was with Lisa, because I think Cheryl had background information. She's been working this beat, sort of speak, for a long time, and so I agree that it's disproportionate but not to the same level that it was on somebody that doesn't spend that time here, that the years that she has.

[Crosstalk]

CHAIR MATHESON: But, she hasn't been doing

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1 campaign financing. She's been lobbying.

2 MR. NASS: Right, she's been working on the
3 fringes of a lot of these committees for years,
4 decades. Just by osmosis, she's known a lot of
5 this stuff.
6

7 MR. LEE: I think when you look at her
8 testimony, it will give you some indication of
9 whether she has the level of experience to know
10 what she should be doing. Obviously, you had
11 diametrically opposing testimony in terms of
12 Cheryl's knowledge or lack of knowledge of an
13 outside source of funds from Bridge Capital and
14 from Regent Able. And a fellow named, I think,
15 it was Lawrence Hamilton-

16 MS. LOWRY: [Interposing] Mm-hmm.

17 MR. LEE: -yeah, he appeared on the scene.
18 He's a numbers guy, and when Cheryl was
19 interviewed by the staff in the summer, she
20 said, "oh, I just met him once". And then, here
21 when she testified, she said, "well, no, that's
22 not correct" because when it was pointed through
23 the various e-mails confirming different
24 meetings that she had met with him a number of
25 times. But when we asked what was his

1 connection to everything, she was very vague.
2 She claimed not to know exactly what his role
3 was. Now I understand the first time you meet
4 with somebody, you might not know that, but when
5 you've met with somebody up to a half dozen
6 times or more, you're going to know exactly what
7 that person is up to, and her testimony was
8 evasive on that point. And Lisa testified
9 everybody clearly understood that was basically
10 a front person for Toko to determine whether or
11 not he should invest a large sum of money and to
12 really to look into things. And her knowledge
13 of meeting with him shifted from the summer to
14 when she first started testifying here and said
15 I only met with him once in Maine, and then, she
16 talked about some other meeting. I asked where
17 that was. She said, well, that was in Portland.
18 Well, then, I said you've met with him twice in
19 Maine, and then, it then shifted to, well, I
20 only met with him once about the Maine
21 initiative. Well, we got three different
22 versions there. The vagueness of who this
23 person was I cannot accept. She's obviously a
24 very astute person. She would learn quite

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1 quickly what this person's role was, and then,
2 you look at the e-mails. It's interesting, and
3 yet, she said, okay, but then, you have to look
4 at the surrounding circumstances. There was an
5 e-mail from Cheryl to Lisa Scott on April 25th of
6 2016 that said, "...given the relationship with
7 the new investor," and then it goes on. And
8 that language by itself says that the sender and
9 the receiver know that what that relationship
10 is. When questioned about that, Cheryl said,
11 oh, no, investor, somebody who might, there was
12 nobody definite, might be somebody considering
13 to invest at some point in the future, maybe
14 after things got approved, then, again got very
15 vague. Well, the reality is the very next day
16 Toko Kobayashi contributed \$150,000 to MDC, and
17 I don't think it passes a straight face test to
18 think that, that somehow is just an
19 extraordinary coincidence. And given the
20 relationship with the new investor, I can't come
21 to any other conclusion that she knew very well
22 who that investor was, and what was going on,
23 and there are several other e-mails from her
24 where she refers to "the investor". And when

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2 there was going to be a press release, don't
3 discuss the Scott family. It all points to a
4 pattern of full knowledge of everything that was
5 going on and being a participant and presenting
6 the story that it was Lisa as the project
7 developer and Lisa as the sole funder of the
8 project which obviously was not the case. But,
9 just by itself, the juxtaposition of her e-mail
10 with-stating that given the relationship with
11 the new investor and then 24 hours later
12 \$150,000 come in from Toko, to think that she
13 didn't know what that was, I don't think passes
14 a straight face test. So, in terms of level of
15 experience, I see lots of experience here, and
16 I'm having a hard time in terms of Cheryl
17 Timberlake finding, at least under that
18 criterion, much to mitigate. This was testimony
19 under oath.

20 MR. PATTERSHALL: I think that speaks to the
21 bona fide effort, that she may have not made a
22 bona fide effort to sort everything out in her
23 report, but I don't know if it goes to her level
24 of experience as a filer because she did testify
25 that she was never served as treasurer, first

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1
2 time, even though she's familiar. I'm sure
3 she's familiar. I mean she's a lobbyist, but I
4 don't think she's ever been treasurer before.

5 MR. LEE: But did the lack of experience
6 have anything with the lack of filing here? I
7 mean the money coming in is pretty obvious.

8 MR. PATTERSHALL: Right and I think that
9 goes to—

10 [Crosstalk]

11 MR. LEE: I see level of experience in a
12 fairly broad sense being a sophisticated person
13 in the market.

14 MR. PATTERSHALL: Okay.

15 MR. LEE: It's not somebody who's just there
16 and hasn't been involved in anything related to
17 finances, lobbying, campaigning or anything
18 else. She's obviously an experienced lobbyist
19 who deals with filing requirements in a variety
20 of ways. That's why I find the idea of lack of
21 experience to be a minimal mitigating factor
22 here.

23 MR. NASS: Pick a number?

24 MR. LEE: I'm just giving my feelings based
25 on reviewing the staff report, listening to the

1
2 testimony of the witnesses, reviewing all of the
3 exhibits one by one, and I'm interested in what
4 other commissioners have to say.

5 CHAIR MATHESON: Well, as far as bona fide
6 effort, I mean Ms. Timberlake said on more than
7 one occasion that she knew and understood the
8 contribution trigger, and to me that helped and
9 explained her reluctance to actually make some
10 more direct questioning that I think others of
11 us might have actually done. You know what I'm
12 saying? I think she didn't want to hear,
13 perhaps, an answer, so didn't ask a direct
14 question, and I don't know if she has a duty to
15 ask a direct question about where's this money
16 really coming from.

17 MR. LEE: She certified when she files it
18 that this information is true and accurate to
19 the best of her information and belief.

20 CHAIR MATHESON: I'm just saying that she
21 articulated on more than one occasion that she
22 knew that trigger was there, and she would've
23 been on it. And I do think that she, like Ms.
24 Scott, believed that the other two entities,
25 that IDC and MDC, I think in her mind were

1 pretty much synonymous with Ms. Scott. I give
2 some credence to that on her part. It's not a
3 good legal argument, but that was her point of
4 view. She truly believed that is what I'm
5 trying to say.

6
7 MR. NASS: Do we want to differentiate this
8 one from the other ones we've done? We're at
9 10% except for one, the MDC one, which is 13% of
10 the preliminary figure.

11 CHAIR MATHESON: You're already at the
12 figure.

13 MR. NASS: Oh, yeah.

14 MS. GARDINER: Yeah, can you discuss all the
15 factors just so it helps us - - findings-

16 CHAIR MATHESON: [Interposing] We haven't
17 talked about harm.

18 MS. LOWRY: So far, in connection with HRJF,
19 we've spoken only about Cheryl's testimony, and
20 I think that there was a straightforward
21 undertaking to show where her testimony differed
22 from what we understand to be what actually
23 transpired. And the one thing that has been
24 said so far about Lisa's testimony is that one
25 of the Commissioners found her to be credible,

1
2 and I feel compelled now because there's been an
3 upfront discussion of Cheryl's credibility to
4 say that I found Lisa's testimony at the end of
5 the day to suffer some lack of credibility. I
6 felt that each of these women were earnest, and
7 yet with respect to Lisa's testimony, it was a
8 lot about family and closeness and ease. And
9 there was also was an undertaking, as shown
10 through the e-mail exchanges, to keep the back
11 room workings of the campaign safely and
12 carefully in the back room, and I don't
13 completely buy that there was no understanding
14 that that needed to be disclosed. And the
15 reason that I feel compelled is that we are
16 eventually going to consider joint and several
17 liability if we find that there was a violation
18 by Horseracing Jobs Fairness BQC. I think it's
19 great that we do our deliberations out loud and
20 on the record, and I find it very difficult in
21 the same breath with people here who are
22 directly impacted.

23 CHAIR MATHESON: Nobody's talked to the
24 preliminary penalty disproportionate to the harm
25 suffered by the public from the late disclosure.

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2 MR. PATTERSHALL: The late disclosure
3 clarifies that the money had not come from Lisa
4 Scott but came from two LLCs in which she is the
5 sole member, right. That to me is a little
6 different than the Regent Able/Kobayashi
7 contributions to MDC. The harm suffered by the
8 public was in the delay in not knowing, oh, it
9 wasn't Lisa, it was a sole member LLC of which
10 she is the sole member that actually gave them
11 money. To me that doesn't really—that's not
12 really harmful to me. I think in comparing the
13 level of the preliminary penalty that you voted
14 on to the harm suffered, it is, again, grossly
15 disproportionate.

16 CHAIR MATHESON: So, we've been having
17 discussions all around A, B, and C. Are we able
18 to look at D at this point? Based on
19 consideration of the above factors, should the
20 preliminary statutory penalty be waived in whole
21 or in part? And if in part, by how much? As
22 some of these areas we are not in complete
23 agreement, but I think it's okay because I think
24 we can answer this question based on the answers
25 or the things that we've discussed under A, B,

1
2 and C. Before making a motion, I just would
3 like to say that I do feel that there are some
4 mitigating factors that exist here, and I am
5 certainly willing to I'll look at the statutory
6 penalty be waived in whole or in part. And, I
7 guess that's where I'm not sure where yet where
8 I fall, but I think a preliminary penalty of
9 \$1,141,190.78, peculiarly, is really-

10 MR. LEE: [Interposing] Do you fall above or
11 below a 10%?

12 CHAIR MATHESON: Personally, I'm not sure.

13 MR. NASS: I will move \$150,000 penalty,
14 which is somewhere in the middle between 10% and
15 15%, about 13%, which is as high as we've gone.

16 MS. LOWRY: Say it again.

17 MR. NASS: \$150,000, just a tad over 13%
18 which is as high as we've gone which was on-

19 CHAIR MATHESON: [Interposing] MDC.

20 MR. NASH: Yep.

21 MS. LOWRY: I will second that.

22 CHAIR MATHESON: What was the motion again?
23 What was the amount?

24 MR. NASS: \$150,000.

25 CHAIR MATHESON: And that's about 13%?

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1 MR. NASS: A tad over 13%.

2
3 MR. LEE: I don't find the mitigation for
4 the bona fide effort to be particularly present
5 here. I think that Cheryl was well aware of how
6 everything was being conducted, and with the
7 goal with Lisa having be the front person and
8 being the developer and being the funder. I
9 think that the penalty, the way this comes out
10 is obviously way, way high for the harm suffered
11 to the public, but there still is a significant
12 harm. And, both look at the harm to the public,
13 and you also look at it from a deterrent
14 standpoint which is factored into this--well, not
15 expressly, but that's one of purposes of a
16 penalty without it having being expressed. So,
17 I would probably support what Commissioner Nass
18 is proposing. If I were making the motion
19 myself, it would probably be just a little bit
20 lower.

21 CHAIR MATHESON: Mm-hmm.

22 MR. LEE: Let me ask--

23 MR. NASS: [Interposing] Well, I'd be happy
24 to withdraw my motion if you want to express
25 what a little bit lower means.

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MR. LEE: \$130,000.

MR. NASS: I'll support that too.

MS. LOWRY: I'd be comfortable with-

[Background conversation]

CHAIR MATHESON: So, you're withdrawing yours?

MR. NASS: I am withdrawing my motion.

MR. LEE: I'll make a motion that we reduce the statutorily-calculated penalty to \$130,000.

MS. LOWRY: I'll second that.

CHAIR MATHESON: Is there any more discussion on it? No? All those in favor? Four. Those opposed? That's all right.

MS. LOWRY: Now we should discuss joint and several.

CHAIR MATHESON: Joint and several.

MR. LEE: Is there any reason it shouldn't be? I'll throw it out to you that way.

[Background conversation]

MS. GARDINER: What the statute says is that you impose the penalty on the BQC, and then, you may-and it's discretionary-you may-

MR. FRAWLEY: You think maybe they should have known that before they voted? That it

1
2 wasn't automatic.

3 [Crosstalk]

4 MR. NASS: We've discussed this before.

5 MR. PATTERSHALL: We know that.

6 MR. LEE: That's why we've been taking
7 separate votes.

8 MS. LOWRY: And, we are happy to have
9 reminders in the same breath.

10 MS. GARDINER: And, at the end of a long day,
11 to recap the way it's worded is that Commission
12 may hold the treasurer and principal officer—and
13 any organization that established the BQC
14 jointly and severally liable with the BQC for
15 any fine assessed against the BQC.

16 MS. LOWRY: Yes. This is why we mentioned
17 the LLC as a forming entity.

18 MR. LEE: I don't see how it can be anything
19 but joint and several. You had Lisa Scott and
20 Cheryl Timberlake agreeing on a way of reporting
21 the funds, and I mean the publicly stated
22 purpose was that Lisa was the developer and Lisa
23 was the funder, and Cheryl as the preparer of
24 the documents, and Lisa as the recipient of
25 funds. And I think that for reasons I

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1
2 previously stated, I think that Cheryl
3 Timberlake was well aware where the money was
4 coming from, and I base that partly on what I
5 said and partly on some of the other testimony
6 that Lisa Scott has given us, that Lisa Scott
7 and Cheryl Timberlake go back a long way. This
8 is described as best friends, 100% confidence,
9 et cetera. I see this whole thing being done in
10 concert, and it would be hard to separate out
11 and say, well, one's liable, the other's not.
12 Concept of a joint liability is people acting in
13 concert having responsibility together, and it
14 certainly appears that way to me.

15 MR. PATTERSHALL: I'd say Cheryl's fault, if
16 we want to use that word, is her failure to
17 attribute certain payments that were made by MDC
18 and IDC, where she attributed them to Lisa
19 originally, where they should've been to Lisa's
20 LLCs. To me that's not the crime of the
21 century, and to impose joint and several
22 liability of \$130,000 is very, very penal.

23 MS. NASS: So, what's the alternative?

24 CHAIR MATHESON: Just against the BQC.

25 MS. LOWRY: Or the BCQ and the LLC and Lisa.

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CHAIR MATHESON: Oh, that's true.

MS. LOWRY: Any combination of the four.

[Background conversation]

MR. FRAWLEY: You can't do that to - -.

MS. LOWRY: Of course we can.

MS. GARDINER: Why doesn't the word "may"
allow them to - -.

MR. FRAWLEY: You can't just hang it all on
one of them and not the other, that's why it
says joint and several.

MS. LOWRY: So, I can't help but overhear
what Al has to say, and he's suggesting that we
should avoid hanging it on one of them. We had
direct testimony that Cheryl is not indemnified.
We haven't asked Lisa, but we've heard about the
close family relationships, and to me that's
really, this makes it very difficult, and I
think it's fair to consider whether we want
joint and several liability to extend to all
four of the actors in connection with HRJF. I
find this really, really hard.

MR. FRAWLEY: It's a mistake to make these
hard decisions so late at night.

MR. LEE: Yes.

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[Background conversation]

MR. MINA: Ten times more than the maximum penalties for murder!

CHAIR MATHESON: Excuse me.

MR. NASS: I will make a motion that HRJF LLC, HRJF BQC, Cheryl Timberlake individually and Lisa Scott individually be held joint and severally liable for the penalty that we just voted on for HRJF BQC.

MR. LEE: Second.

CHAIR MATHESON: Discussion?

MR. LEE: I'd like to hear what the other Commissioners have to say.

MR. PATTERSHALL: If the number was way smaller, I'd do it.

[Laughter]

MR. PATTERSHALL: It's not funny.

MS. LOWRY: It's not funny.

[Background conversation]

MR. LEE: Commission Matheson, you're pondering.

CHAIR MATHESON: I am pondering.

MR. LEE: What are you pondering?

CHAIR MATHESON: I'm put in mind what we

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1 heard as testimony was so wildly different, but
2 I come down to the fact that the bona fide
3 effort piece I heard both of the witnesses
4 saying—and I guess it goes more to fault. This
5 has more to do with how we're holding—

6 [Crosstalk]

7 CHAIR MATHESON: I guess I will support
8 this. To be consistent with the others, I would
9 support the pending motion.
10

11 MS. LOWRY: I'm thinking of abstaining.

12 [Background conversation]

13 MR. NASS: Do you have to give a reason?

14 CHAIR MATHESON: I think you have to - -.
15 Can I just allow an abstention?

16 MS. GARDINER: I don't know a reason that
17 you can't, that a Commissioner can't abstain.
18 Does anyone know of a procedural rule - -.

19 CHAIR MATHESON: It doesn't seem fair to the
20 other Commissioners who have to make a difficult
21 choice.

22 [Background conversation]

23 MR. LEE: We're still in the discussion
24 phase, so I said I'm interested in hearing how
25 you feel about this, and I'm hoping to hear it.

1 Arguments one way or the other.

2 MS. LOWRY: I actually think that there is
3 some credibility to Cheryl saying that she felt
4 skunked. I think she used the word "skunked".
5 I don't think I'm introducing that, and I think
6 that she said you've got to indemnify me and
7 severed her relationship when that wasn't
8 offered.

9 MR. LEE: Of course, that was after
10 everything, and all the funds had been donated
11 and certainly most of them spent if not all.

12 MS. LOWRY: I'm thinking, too, of who would
13 agree to act as treasurer without some form of
14 indemnity.

15 MR. PATTERSHALL: I can't imagine many
16 treasurers get any kind of insurance or
17 indemnity. I mean, the people who are usually
18 before us - -.

19 [Background conversation]

20 MS. LOWRY: So, I'm finding this really
21 tough, and I get it this is not akin to serving
22 as a treasurer for a local Republican or
23 Democratic county. This is not the same as
24 public service supporting a particular
25

1 candidate. This is for financial gain.

2 [Background conversation]

3 MS. LOWRY: I'm sorry?

4 CHAIR MATHESON: And it's \$4 plus something
5 million that was injected into it.

6 MS. LOWRY: Okay, I don't think it's fair to
7 abstain when other people are making a difficult
8 decision that's consistent with what we've
9 heard, so I won't abstain. I just don't think I
10 should.

11 MR. LEE: Thank you.

12 MS. LOWRY: Mm-hmm. Should we move towards
13 the vote?

14 CHAIR MATHESON: I think we should. All
15 right, pending motion is to hold HJRC BQC, LLC,
16 Lisa Scott, and Cheryl Timberlake jointly and
17 severally liable for the penalty.

18 MS. LOWRY: Just it's HRJF.

19 CHAIR MATHESON: All those in favor of the
20 pending motion? All those opposed? Thank you.
21 That was four to one in favor of the motion.
22 I'd like a vote for the Commission to direct the
23 staff-

24 MS. LOWRY: [Interposing] Before we do, I am

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2 moving that the staff report was a material part
3 of our consideration of these complicated
4 matters, and that it be made public.

5 MR. LEE: You're making a motion for public
6 disclosure of the Commission report?

7 MS. LOWRY: Yes, I am.

8 MR. LEE: And would you be including with
9 that—and that may be a question for Ms. Gardiner
10 on that. There are also submissions by Mr.
11 Merrill, Mr. Day addressing issues within the
12 staff memo or staff report. Do they in any way
13 fit? Wouldn't they be automatically public, or
14 would you separately vote on that? That's I
15 guess my question.

16 MS. GARDINER: You could vote separately on
17 that, but the status at the moment is the staff
18 report is a confidential working paper, and as a
19 consequence the attorney submissions which are
20 not by themselves confidential working papers,
21 but all reference to the staff report and
22 discussion or paraphrasing or quoting from it
23 were redacted so as not to violate the
24 confidentiality of the staff report, so if you
25 were to vote to disclose the staff report, I

1
2 don't think there would be any reason—I guess I
3 think ought to hear from counsel, but I don't
4 see any reason why the full text of their
5 position wouldn't also be made public.

6 MR. LEE: Without having to separately vote
7 on it. Because if there's a vote to have the
8 staff's report be public under the statutory
9 grounds—

10 MS. GARDINER: [Interposing] You could put
11 it into the same motion. I think the key is to
12 follow the statute closely in terms of the
13 confidential working papers statute. If you're
14 going to vote on this tonight, the issue is
15 whether it's for disclosure, you may disclose if
16 the information on the record is materially
17 relevant to finding of fact, violation, or other
18 decision that you made on this matter.

19 MR. LEE: Ms. Lowry?

20 MS. LOWRY: You have the statute before you,
21 and so you'll—

22 MR. LEE: [Interposing] Can I rework that a
23 little bit?

24 MS. LOWRY: Thank you. I'd appreciate it.

25 MR. LEE: I move that pursuant to Title 21-A

1
2 §1003(3-A), specifically the last paragraph,
3 that we make the staff report public because
4 have relied upon it in part for the various
5 findings and conclusions that we have made in
6 reaching the decision that we have made here
7 today.

8 MS. LOWRY: In reaching each of the
9 decisions that we've made here today.

10 MR. LEE: The decisions we have made here
11 today.

12 MS. GARDINER: Okay. You've stated that
13 you've relied upon it. Be specific about what
14 you find to be materially relevant - -.

15 [Crosstalk]

16 MR. LEE: I find the information within the
17 report to be materially relevant to the various
18 findings of fact that we have made in our
19 overall decision here today. If we get a
20 second, I'll-

21 CHAIR MATHESON: [Interposing] Second.

22 MR. LEE: -say a little more. It's open for
23 discussion. The staff report is a distillation
24 of about 7,500 pages of documents. I reviewed
25 it. I read it twice. I read all of the

1 exhibits that were attached. I likewise read
2 the report or the submission from Mr. Day, the
3 submission from Mr. Merrill. We've heard
4 arguments from all of them, and they've argued
5 against certain conclusions or statements made
6 within the staff report, and I believe we've
7 considered all of that as well as the testimony
8 of Lisa Scott and Cheryl Timberlake in reaching
9 the decisions we've made here today. And since
10 we have in part relied upon the staff report and
11 found it materially relevant to the various
12 findings of fact that we've made, I think we
13 have to make it public. We can't say-

14 MS. LOWRY: [Interposing] Yes.

15 MR. LEE: -I made this decision, and say,
16 well, part of the basis of our decision that's
17 going to be kept secret. That just seems to fly
18 in the face of the Freedom of Information Act
19 which is to be liberally construed to achieve
20 its purpose of public disclosure of information.
21 Having said that, as you can tell by the
22 discussion we've had here today, the findings
23 we've reached, we've disagreed in many respects
24 with a number of recommendations and statements
25

1 that have been made within that report. But it
2 has been materially relevant to the various
3 findings of fact that we have made. It is a
4 good distillation of huge amount of information,
5 and I know from watching each of you read and
6 comments that you've made, we've all gone
7 through 160 exhibits plus the exhibits submitted
8 by Mr. Merrill, Mr. Mina, as well as the legal
9 arguments that were made, the submissions by Mr.
10 Day. They all play into it, but the report from
11 staff is certainly part of our recommendations,
12 so I say it would not be fair to the public to
13 not have it be disclosed.

14
15 CHAIR MATHESON: Anything else?

16 MR. PATTERSHALL: Is Mr. Day and Mr.
17 Merrill's submissions part of the motion as
18 well?

19 MR. LEE: I did not make them part of this
20 motion based on what Ms. Gardiner said-

21 MR. PATTERSHALL: [Interposing] I'm sorry.
22 That they are already not confidential.

23 MS. GARDINER: Well, it might be clearer to
24 add it to the motion-

25 [Crosstalk]

1 MR. LEE: I'll make a friendly amendment:

2 And the submissions of Mr. Day and Mr. Merrill
3 and any other submissions anyone has made
4 relating to the pending issue before us be
5 disclosed to the public.
6

7 MS. GARDINER: It may be more precise to say
8 that I think it was the submissions made on
9 October 26th, and Mr. Day is October 26th which
10 had redactions related to the staff report.

11 [Crosstalk]

12 MR. GARDINER: And you would release an
13 unredacted version of those letters in
14 conjunction with the staff report.

15 MR. LEE: Right, because with a vote to make
16 the Commission report public, there is no reason
17 to have redactions within the submissions that
18 have been made by Mr. Day and Mr. Merrill. And
19 I'm happy to have my motion amended to reflect
20 that.

21 CHAIR MATHESON: I'm in agreement. All
22 those in favor? Opposed? Five-zero.

23 [Background conversation]

24 MS. LOWRY: So, I move that the Commission
25 directs staff to prepare written determination

1
2 for review and adoption by the Commission with
3 findings of fact, determinations of violations
4 and determinations regarding penalties.

5 MR. NASS: Second.

6 CHAIR MATHESON: Any discussion? All those
7 in favor? All those opposed? Five-zero.

8 MS. GARDINER: That would come back at your
9 next regular meeting?

10 MR. LEE: November 30th, is that right?

11 MR. PATTERSHALL: The proposed findings of
12 fact will be submitted to counsel - -.

13 MS. GARDINER: We have, yes. In the past,
14 the Commission has always, when we have had a
15 written determination like this, it has always
16 been provided to counsel for parties involved in
17 an investigation with an opportunity to comment,
18 in writing and then it comes to you.

19 MR. PATTERSHALL: That would be before a
20 meeting, correct?

21 CHAIR MATHESON: So, is that enough time?

22 MR. WAYNE: I do have to say we have pushed
23 aside a lot of other work for the last several
24 weeks-

25 CHAIR MATHESON: [Interposing] In December?

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2 MR. WAYNE: Well, we'll do our best. I'm
3 just saying a very important - -

4 MR. LEE: [Interposing] Is there a time
5 deadline?

6 MR. WAYNE: - - having a great IT e-filing
7 site for the entire political community here in
8 Maine and that is coming to a head in the next
9 three weeks.

10 CHAIR MATHESON: Oh my God.

11 MR. WAYNE: That's okay, we will do our best
12 to have it ready for November 30th. I just
13 wanted to make you aware there are other
14 priorities too.

15 MS. LOWRY: Yes, thank you. Motion to
16 adjourn?

17 MR. NASS: Second.

18 MR. PATTERSHALL: I won't dissent on this
19 one.

20 CHAIR MATHESON: All those in favor?
21 Unanimous, thank you.

22 [END RECORDING]

C E R T I F I C A T E

I, Jessica M. McDonald certify that the foregoing transcript of In Re: Campaign Financing of York County Casino Initiative Meeting of the Commission on Governmental Ethics and Election Practices was prepared using standard electronic transcription equipment and is a true and accurate record to the best of my ability. I further certify that I am not connected by blood, marriage or employment with any of the parties herein nor interested directly or indirectly in the matter transcribed.

Signature: Jessica M. McDonald

Date: November 13, 2017