



## **ETHICS REVIEW COMMISSION**

## **MEETING MINUTES**

**Wednesday, November 13, 2019**

The Ethics Review Commission (“Commission”) convened in a regular meeting on Wednesday, November 13, 2019, City Hall, Room 1027, 301 W. 2<sup>nd</sup> Street, Austin, Texas.

Chair Mary Kahle called the meeting to order at 6:02 p.m.

Commissioners in attendance: Chair Mary Kahle, Vice-Chair Luis Soberon, Secretary Kenneth “Tray” Gober, and Commissioners Debra Danburg, Raafia Lari, Robin Lerner, Donna Beth McCormick, J. Michael Ohueri, and Pedro Villalobos. Commissioners Betsy Greenberg and Nathan Ryan were absent. Commissioner Debra Danburg left the meeting before the final vote on evidentiary issues for final hearing on agenda item no. 2. Chair Kahle abstained from participation in items 1 and 2.

City Staff in Attendance: Lynn Carter, Commission Executive Liaison & Assistant City Attorney, and Sue Palmer, Commission staff liaison, Law Department.

### **1. EXECUTIVE SESSION**

The Ethics Review Commission may announce it will go into Executive Session pursuant to Chapter 551 of the Texas Government Code to receive advice from legal counsel on any matter specifically listed on this agenda (Private Consultation with Attorney-Section 551.071).

The Commission went into executive session to discuss legal issues related to:

A complaint filed by Robert Mark Littlefield against Unconventional Austin SPAC, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-32 (Reporting of Direct Campaign Expenditures).

**The Commission went into executive session at 6:07 p.m., and the open meeting resumed at 6:29 p.m.**

### **2. PRELIMINARY HEARING**

Discussion and possible action regarding the following:

A complaint filed by Robert Mark Littlefield against Unconventional Austin SPAC, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-32 (Reporting of Direct Campaign Expenditures).

Attending for the parties: Complainant Mark Littlefield and Fred Lewis, General Counsel for Respondent, Unconventional Austin SPAC. At the conclusion of the preliminary hearing, Commissioner Villalobos made a motion to proceed to a final hearing as there are reasonable grounds to believe a violation within the jurisdiction of the Commission has occurred. Commissioner Danburg seconded the motion, which passed on a unanimous vote of the eight commissioners in attendance. Voting in favor: Vice-Chair Soberon, Secretary Gober, and Commissioners Danburg, Lari, Lerner, McCormick, Ohueri, and Villalobos. Chair Kahle recused herself from this item and was not present in the meeting room during the discussion or vote. Commissioners Greenberg and Nathan were absent.

Vice-Chair Soberon moved to request the following records and witnesses related to the complaint, and the motion was seconded by Commissioner McCormick:

**RECORDS REQUESTED:**

- (1) Records of any and all advertisements (described as Facebook Ads in Unconventional Austin's initial campaign finance report) that Unconventional Austin ran (or that Vici Media ran at the request of Unconventional Austin); records showing the dates the advertisements ran; any records showing what the advertisements looked like to the user or reader; and any records showing how the advertisements (or how the dates of the advertisements) relate to the actual expenditure of \$3,000 reported by Unconventional Austin SPAC.
- (2) Records of any and all poll(s) or polling (including specifically what each portion of the poll looked like to users/readers/poll takers); records showing the dates the poll(s) ran or were available to a user/reader/poll taker; and records showing how the poll(s) (or how the dates of the poll(s)) relate to the actual expenditure of \$3,000 reported by Unconventional Austin SPAC.
- (3) Records of all documented communications between Vici Media and Unconventional Austin SPAC (or between representatives or agents of the entities).
- (4) To the extent not addressed in request no. 2 above: Records of the poll or polling questions; all optional answers in the poll; all displays of the poll to the user (what the viewer/user/poll taker of the poll viewed on the computer screen), and all communications to the reader/user/poll taker in regard to any part of the poll, including messages or available links to information about Unconventional Austin or the ballot proposition at issue. In summary, the Commission has requested records of the poll as the user/reader/poll taker would have experienced it, including all options and links available to the user/reader/poll taker.
- (5) All reporting of poll results or advertising results by Vici Media or Facebook that was received by, communicated to, or available to Unconventional Austin SPAC.
- (6) A copy of the September 3, 2019 email referenced by Mr. Lewis during the November 13, 2019 hearing.
- (7) A copy of Unconventional Austin SPAC's campaign treasurer appointment.

## **WITNESSES REQUESTED**

### **1. One or more witnesses from Vici Media Inc. to testify on the following subject matters:**

- a. Any Facebook advertising prepared for or on behalf of Unconventional Austin by Vici Media.**
- b. Any poll(s) or polling prepared for or on behalf of Unconventional Austin by Vici Media.**
- c. Communications with Vici Media regarding the above including dates of communications and the advertisements, poll(s), or poll results.**

**The motion passed unanimously. Voting in favor: Vice-Chair Soberon, Secretary Gober, and Commissioners Lari, Lerner, McCormick, Ohueri and Villalobos. Chair Kahle recused herself from this item and was not present in the meeting room during the discussion or vote. Commissioners Danburg, Greenberg, and Nathan were absent.**

### **3. NEW BUSINESS**

Discussion and possible action regarding the following:

- (a) Commission regular meeting schedule for 2020.**

**Secretary Gober made a motion to adopt the regular meeting schedule as proposed; Commissioner McCormick seconded the motion. The motion passed unanimously. Voting in favor: Chair Kahle, Vice-Chair Soberon, Secretary Gober, and Commissioners Lari, Lerner, McCormick, Ohueri, and Villalobos. Commissioners Danburg, Greenberg, and Nathan were absent.**

- (b) Review, evaluation, and recommendation to Council regarding the dollar limits established in Chapter 2-2 (Campaign Finance).**

**The Commission took no action on this item.**

- (c) Candidate and Officeholder Campaign Finance Brochure.**

**Commissioner Lerner moved to accept the Law Department's recommended revisions to the Candidate and Officeholder Campaign Finance Brochure as presented to the Commission. The motion was seconded by Commissioner Villalobos.**

**Vice-Chair Soberon made a motion to amend to revise the first line under "Applicable State Law Provisions" on the first page to read "Texas Election Code Title 15" by striking "Vernon's" and "Statutes and Codes Annotated,". Commissioner Lari seconded the motion to amend. The amendment motion passed unanimously. Voting in favor: Chair Kahle, Vice-Chair Soberon, Secretary Gober, and Commissioners Lari, Lerner, McCormick, Ohueri and Villalobos. Commissioners Danburg, Greenberg, and Nathan were absent.**

**The Commissioners then voted unanimously in favor of Commissioner Lerner's original motion as amended. Voting in favor: Chair Kahle, Vice-Chair Soberon, Secretary Gober, and Commissioners Lari, Lerner, McCormick, Ohueri and Villalobos. Commissioners Danburg, Greenberg, and Nathan were absent.**

(d) Rules for Citizen Communications and Public Testimony.

Following citizen communication on the agenda item, a presentation by the executive liaison, and discussion, Commissioner Villalobos made a motion to revise the Commission's rules for citizen communication to move general citizen communications to follow the "Call to Order" on the agenda; to limit the number of speakers during General Citizen Communications to ten speakers; and to limit the time limit for public speakers to three minutes per speaker. Following discussion, Commissioner Villalobos withdrew his original motion and offered a substitute motion to increase the speaker limit during General Citizen Communications to 10 speakers. The motion was seconded by Commissioner Ohueri. Voting in favor: Chair Kahle, Vice-Chair Soberon, Secretary Gober, and Commissioners Lari, Lerner, McCormick, Ohueri, and Villalobos. Commissioners Danburg, Greenberg, and Nathan were absent.

Commissioner Villalobos' final motion to amend the Commission's current rules for citizen communications and public testimony follows (inserting the underlined language and removing the language shown by strikethrough formatting):

- (1) General citizen communications will follow the "Call to Order" on the agenda, but will not be a numbered agenda item ~~[be moved to the end of the agenda]~~;
- (2) General citizen communications will be limited to 5 speakers;
- (~~3~~ [2]) Citizen communications on a specific agenda item will be permitted at the beginning of each agenda item on that agenda item, except for an item posted as a briefing;
- (~~4~~ [3]) The time limit for general citizen communications and citizen communications on an agenda item will be limited to three minutes per speaker ~~[on the agenda item]~~, except that the time limit will be doubled to six minutes if the member of the public needs translation or an accommodation for a disability;
- (~~5~~ [4]) A sign-up sheet will be required for a person to speak on an agenda item and during general citizen communications;
- ~~[(5) Speakers will receive notice that if an agenda item is not identified by the speaker on the sign-in sheet, the speaker will be called to speak during the general citizen communications item on the agenda.]~~

**4. APPROVAL OF MINUTES OCTOBER 9, 2019 REGULAR COMMISSION MEETING**

This item was postponed.

**5. FUTURE AGENDA ITEMS**

After discussion, the Chair advised she would add to the February meeting's future agenda items: at the March meeting, the working groups will report to the Commission on their progress.

**6. GENERAL CITIZEN COMMUNICATION**

Each person who signed up to speak prior to the meeting being called to order and who

designated this item on which to speak, or who did not designate an agenda item on which to speak will be allowed two-minutes to speak.

One speaker spoke on this item.

## **ADJOURNMENT**

**Chair Kahle adjourned the meeting at 8:24 p.m.**

