

Chengny Thao
Testimony in Support of HB 2391
House Elections Committee
February 16, 2023

Dear Committee:

I want to tell you about the nightmare Mark Skoglund, Commissioner John Solbach, and the entire Governmental Ethics commission put us through for the past year. I want to tell you about the complete lack of accountability for their many unethical actions the commission and its staff committed against James Muir and me. **And I want you to fix the commission by increasing their accountability through the law and the courts.**

Fresh Vision OP is a small 501c4, a social welfare organization made up of neighbors who stand united for safe neighborhoods, quality schools and thoughtful housing development. Our members come from diverse backgrounds, religious and political affiliations. I am a Democrat, and there are Republican and Libertarian neighbors also associated with the group. We exist to promote a strong quality of life in the neighborhoods we live in—simply put, we exist to promote the common good and welfare of the community. We are farmers, teachers, business owners, social workers, doctors and much more.

In January 2021 of last year, the KS Governmental Ethics Commission falsely accused our tiny neighborhood organization of being a “political action committee” or “PAC.” Despite providing proof of our 501c4 status and our civic engagement activities going back years, the commission conducted a biased hearing on March 23, 2021 and deemed our entire organization a “PAC.”

James Muir and I both represented ourselves at the hearing. We didn’t have a lawyer, and neither of us are lawyers. At the beginning of the hearing, I asked Commissioner Solbach if Mark Skoglund, the Executive Director, was a licensed and practicing attorney. I asked this question because Mark did not appear to be knowledgeable with the basic laws of a 501c4 vs PAC even though he filed a complaint against us. I was surprised when Commissioner Solbach insisted he was an “licensed attorney.” Here is the full exchange:

John Solbach: Okay. I might ask before we begin that the witnesses be sworn. I'm not going to ask that Mark Skoglund be sworn. He's an attorney. He has an obligation to be candid with the tribunal. We are tribunal. But Ms. Thao and the others.

Chengny Thao: May I just ask, is Mr. Skoglund licensed to practice law in Kansas?

John Solbach: He certainly is. He's a licensed attorney, and he's subject to the jurisdiction of the disciplinary administrator, and he has an obligation to be candid with the Ethics Commission. Judge Hellmer, would you do the honors, please?

At this point (and later in the hearing when Brett Berry asked Mark Skoglund to give his legal opinion based on his “experience as an attorney”), Mark Skoglund did not clarify that his law license was suspended even though I verified he was suspended 30 minutes prior to our hearing via the state website. Come to find out, Mark Skoglund’s law license had been suspended for 7 years—a fact neither commission nor his own agency lawyer knew about when they held him out in our hearing as a licensed attorney. What is worse, Commissioner Solbach bullied me in shutting down my line of questioning

about Mark Skoglund's attorney status and refused to put Mark Skoglund under "oath" on the basis that he was an attorney, even though James Muir, our witness Gail Radke, and I all had to testify under oath under penalty of perjury:

John Solbach: Okay. Judge, would you like to swear all three of those people for us?

Jerome Hellmer: I can, one at a time. Mr. Muir, if you would raise your right hand, please. You'd solemnly swear the testimony you are about to give and the cause now in hearing be the truth, the whole truth, and nothing but the truth, so help you God?

James Muir: I do.

Chengny Thao: I do.

Jerome Hellmer: Thank you. Miss Thao, do you solemnly swear the testimony you're about to give and the cause now in hearing be the truth, the whole truth, and nothing but the truth, so help you God?

Chengny Thao: I do.

Jerome Hellmer: Thank you. And who's the third party?

John Solbach: Gail Radke.

Gail Radke: I'm here.

John Solbach: We've lost the judge.

Jerome Hellmer: Buffered again. The name of the third party, please.

John Solbach: Gail Radke.

Jerome Hellmer: Radke, if you'd raise your right hand. Solemnly swear the testimony you're about to give and the cause now in hearing be the truth, the whole truth and nothing but the truth, so help you God?

Gail Radke: I do.

This issue has never been about *whether* Mark Skoglund or the Executive Director of the "Ethics" Commission *should* be an attorney. This has always been about the fact that Mark Skoglund purposely allowed the commission to hold him out as something he was not at the same time he was accusing us of wrongdoing. He's the Executive Director of the Ethics Commission, for crying out loud, and he still doesn't think he did anything wrong!

Apparently the Kansas Board for Discipline of Attorneys has a slightly different opinion. My lawyer, Josh Ney, recently received a letter informing him that the Kansas Board for Discipline of Attorneys issued a letter of caution to Mark Skoglund about his actions in our hearing. I've attached that letter to my testimony today so you as legislators can know the whole story, and not just what the media decides to print.

The letter states that the Kansas Board for Discipline of Attorneys was “concerned about the conduct of the respondent [Mark Skoglund] and directed that he be cautioned.” The letter went on to say:

Specifically, at the governmental ethics commission hearing on March 23, 2022, attendees at the hearing expressed the assumption that the respondent [Mark Skoglund] held an active law license that was in good standing. Though respondent did not make any affirmative statements at the hearing that would have created this incorrect assumption on the part of the attendees, he took no steps to correct the assumption. Though the committee concluded that the respondent’s failure to act did not rise to the level of a rule violation, it did direct that respondent be reminded of his obligations under the rule of professional conduct and that the better course of action for respondent be reminded of his obligations under the rule of professional conduct and that the better course of action for respondent at the hearing would have been correcting the false assumption rather than remaining silent.

As the Executive Director of the Ethics Commission who oversees the administration, interpretation, and enforcement of campaign finance and governmental ethics laws, the act of Mr. Skoglund not telling the truth is a clear violation of ethics. Lawyers take an oath to uphold the constitution and to conduct oneself with integrity and civility. How can he serve as the Executive Director of the “Ethics” Commission if he himself cannot be truthful? His act of omitting a material truth clearly demonstrates professional misconduct and shows of a double standard. Neither Mark Skoglund nor the Ethics Commission has apologized or taken responsibility for his actions. How can the KS Governmental Ethics Commission fairly and objectively apply campaign finance rules if they allow their own staff to misrepresent the truth and apply the rules in different ways to different people or groups? And then when they’re caught red handed, all they do is cover up and gaslight us into thinking the false statements were “not material” to our case?

Prior to our hearing, we asked numerous times for details of the complaint, and it was never provided. During the hearing, Commissioner Solbach and Mr. Skoglund bullied our entire group with formalities and dismissed the facts we presented supporting our 501c4 status. At one point during the hearing, Mr. Berry, the lawyer for Mark Skoglund, tried to get an exhibit into evidence (in the Zoom hearing) that hadn’t been provided to us, and Commissioner Solbach engaged in the following exchange with my co-defendant:

Brett Berry: Okay. You've exhibit... Or you, excuse me, you've identified exhibit one for the record. At this time, I would just go ahead and move to admit exhibit one.

John Solbach: What is Exhibit one again?

Brett Berry: It's a mailer that was sent out by Fresh Vision OP.

John Solbach: I don't seem to have that in my materials.

Brett Berry: Okay. It's not in the materials, it's going to be in the chat and there will be a link to that.

John Solbach: Okay.

Brett Berry: So if it's admitted then we'll go ahead and disclose the link so that that can be examined by-

John Solbach: Is there any objection to it being admitted, from the commission or the parties?

James Muir: I object because I don't know what it is.

John Solbach: Who was that?

James Muir: This is Mr. Muir.

John Solbach: Okay. Could you explain to Mr. Muir what that is, Mark?

Mark Skoglund: Yes, there were in discussions with Ms. Thao, we asked for the mailers that were sent by the organization. Ms. Thao produced two mailers. This is the first of those two mailers. I intend to introduce both.

John Solbach: That satisfy you Mr. Muir.

James Muir: Once again, I don't know what the mailer is.

John Solbach: Well, I think that you should know, and I'm going to go ahead and admit it.

Many times, Commissioner Solbach would not allow us to speak, even though we were representing ourselves. Clearly, the Kansas Governmental Ethics Commission made their ruling prior to our hearing – they wanted to send a message they are the judge, jury, and executioner.

Again, we didn't have a lawyer at this hearing. We were representing ourselves as accused individuals. And, Commissioner Solbach routinely took advantage of us, bullied us, shut us down, and allowed Mr. Berry and Executive Director Skoglund free license to run the hearing as they saw fit.

I encourage you to watch the whole hearing. It's available on YouTube at <https://www.youtube.com/watch?v=4uXYXn4MCvE>. The hearing starts at 17:45. You can see for yourself how Commissioner Solbach treats "pro se" individuals defending themselves. Ask yourself if this is how you'd want your sister or daughter treated if she were appearing in front of the commission to defend herself.

After the hearing, many friends told me that what the commission did was not right. The Commission tried to "suspend" the hearing to force us to register as a PAC and disclose the few local donors that had chipped in to our group. Given the level of political animosity our group faced from several Overland Park City Councilmen, including calls to the cops and reporting us to the governmental ethics commission, we were terrified of the political retribution that our donors would face in our hometown were our donors "outed" by the commission.

So we hired Josh Ney, our lawyer, and he immediately filed a motion to dismiss the case based on the "material prejudice" Mark Skoglund's omissions caused against us. In April, the commission refused to dismiss the case but they did order a new hearing because the statutes require all witnesses, even so-called "lawyers" like Mark Skoglund to testify under oath. Minutes after they denied the motion to dismiss on April 27, 2022, Commissioner Solbach told our lawyer in the motion hearing:

Commissioner Solbach: Mr. Ney, I bring you back to the real issues here and we found that your clients were a PAC. Why? Because the majority of money that they raised was spent to support or oppose a particular candidate. All we're asking and all the law asks is that be disclosed. So this isn't dark money, it's a little late to influence that election but that's the only issue here. **And you're proposing something that I think is going to be very expensive for someone, not for us, but for someone and it may end up with the same result.**

I would urge you to counsel your client about the cost-benefit analysis of what you're trying to propose and **instead of simply accepting the fact that you're a PAC, doing the paperwork, and being done with it.** But that's up to you and to your client. I might ask the chairman if you would authorize me as hearing officer to hold a scheduling conference with the two counsel when they're ready to do so. Okay?

After Commission Solbach made this statement (and requested to be the hearing officer again), Commissioner Solbach proceeded to fight us at every turn (as the "hearing officer") and run up a \$20,000 lawyer bill by requiring motion after motion from our lawyer for the simplest things. When our lawyer asked for a subpoena to depose Mark Skoglund on his investigation, the whole commission, led by Commissioner Solbach, fought us at every turn and made our lawyer write several expensive motions. When our lawyer asked for a subpoena for Chris Newlin (the guy who reported us to Skoglund) and Logan Heley (an OP councilman), the commission stonewalled us over several months-worth of hearings, even though we have a right to subpoena witnesses for a hearing under the campaign finance laws.

Eventually, Mark Skoglund and the commission decided they'd rather dismiss the case with prejudice than face deposition questions about their investigation. I still don't know if Mark Skoglund knows or knew Chris Newlin or Logan Heley on a personal level. Maybe that would be a good thing for one of you to ask since he refused to be deposed by our counsel during the "redo" on the hearing this summer.

When Mark Skoglund and our lawyer came to an agreement in June 2022 to dismiss the case given the fact that the PAC laws are so vague, the Commission (again, acting as the "judge" in this case) didn't want to allow Mark Skoglund to dismiss his own case until we agreed to not to sue the individual commissioners for malicious prosecution! We refused to give up our constitutional rights, but to get it over with, they bullied us into signing a "civil release" holding the commissioners and KGEC staff harmless for repeatedly stomping on our due process rights. I still can't believe the JUDGES in a case wouldn't dismiss a case the prosecutor and defendant were asking them to dismiss until the defendant legally agreed to not sue the JUDGES. I thought Mark Skoglund's actions in the case were unethical, but the commissioners took it to a whole new level. I've attached the "Release" the Commission made us sign before dismissing our case with prejudice. The maximum fine I could have received if I had just "rolled over" and not pushed back was \$5,000.00. After their botched March 23, 2022 hearing, James and I spent over \$20,000 in legal fees successfully defending ourselves (after Commission Solbach early on threatened that fighting this was going to be "expensive" for us), and the Commission still refused to dismiss our case until we waived our rights to seek attorney fees and civil damages from the Commission for our mistreatment at our hands.

For the past year, the commission has made our lives difficult and drained our pocket books, all because we had the gall to rally against a concert venue being build next to our houses in southern Overland

Park. They lied to us as constituents, they bullied us, and most shockingly, challenged the very core of the first amendment, the freedom of speech and cornerstone of our democracy. The Freedom of speech gives us the right to express opinions without government censorship. In the last year, our group has been treated like criminals and subjected to threats of a subpoena for personal and financial records.

As I stated earlier, we are simply neighbors who are farmers, social workers, and business owners advocating for the good of our community. We were threatened all because the commission did not like the wording on our mailer. So how do you stand up to bullies especially when it is the government? You stand up for yourself and your neighbors and say: "No, I will not allow you to misuse your powers by applying the law as you see fit" and hire a lawyer with our own money to argue your rights. As a result of our appeal, the commission realized its mistake and dismissed our case. This example of a government entity censoring Freedom of Speech is outrageous! I am disgusted that a governmental "ethics" agency lacks the integrity to operate fairly and objectively. It is terrifying that if this can happen to a group of neighbors, it can happen to any constituent—whether Democrat, Republican, Libertarian, or independent. It seems like the commission's message to Kansans is "it's safest and cheapest to just shut up about politics." Is that what the legislature created the ethics commission to do?

I am testifying today to as an example of how the current KS Governmental Ethics Commission misused its powers. You set those powers by law—they are not dictators. They are not judge, jury, executioner. The legislature needs to increase the checks and balances on this "ethics" commission, or find a different governmental agency that can operate more fairly. I think HB 2391 is a good start.

STATE OF KANSAS
OFFICE OF THE DISCIPLINARY ADMINISTRATOR



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Disciplinary Administrator
MATTHEW J. VOGELSBURG
Chief Deputy Disciplinary Administrator
W. THOMAS STRATTON, JR.
Director of Investigations

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ALICE L. WALKER
JULIA A. HART
AMANDA G. VOTH
Deputy Disciplinary Administrators

January 11, 2023

Joshua A. Ney
900 S. Kansas Ave., Ste. 402
Topeka, KS 66612

Re: *Mark N. Skoglund*, Case No. DA13,829

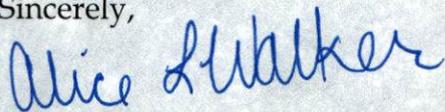
Dear Mr. Ney:

An investigation has been made into the available facts concerning your complaint. A report has been made and all of the materials and the recommendation of the disciplinary administrator have been forwarded to and considered by the review committee of the Kansas Board for Discipline of Attorneys.

The review committee of the Kansas Board for Discipline of Attorneys has directed that the complaint be dismissed, though it did not find the complaint to be meritless. A violation of the Kansas Rules of Professional Conduct must be established by clear and convincing evidence. Although the committee did not find the evidence rose to this level, it was concerned with the conduct of the respondent and directed that he be cautioned. Specifically, at the government ethics commission hearing on March 23, 2022, attendees at the hearing expressed the assumption that the respondent held an active law license that was in good standing. Though respondent did not make any affirmative statements at the hearing that would have created this incorrect assumption on the part of the attendees, he took no steps to correct the assumption. Though the committee concluded that the respondent's failure to act did not rise to the level of a rule violation, it did direct that respondent be reminded of his obligations under the rule of professional conduct and that the better course of action for respondent at the hearing would have been correcting the false assumption rather than remaining silent.

The dismissal with caution constitutes final disposition of the action.

Sincerely,



Alice L. Walker

Deputy Disciplinary Administrator

ALW/mrd

cc: S. Lucky DeFries

Roger D. Fincher

John J. Ambrosio

RELEASE

WHEREAS an amended complaint alleging a violation of the Kansas campaign finance act, has been filed against each of the undersigned individual persons, Chengny Thao (Complaint 715) and James Muir (Complaint 716);

WHEREAS, in the interests of the economy of justice the parties have agreed to resolve this matter by dismissal with prejudice and release by Respondents of claims listed below;

NOW THEREFORE THE UNDERSIGNED, Chengny Thao and James Muir, as individual persons, in consideration of the dismissal of Complaints 715 (Thao) and 716 (Muir) with prejudice, do hereby and for their heirs, executors, administrators, representatives, successors and assigns, release, acquit and forever discharge the Kansas Governmental Ethics Commission, and its commissioners, employees, directors, attorneys, and/or agents, in their official and individual capacities, from all claims, demands, rights, damages, costs, attorney fees, expenses, and compensation related to Complaints 715 and 716, including all legal and equitable claims and claims related to a civil action against the Kansas Governmental Ethics Commission for malicious prosecution pursuant to K.S.A. 25-4162, **provided** that Respondents reserve and expressly do not release rights to:

- 1) bring any legal or equitable claim related to each individual Respondent's constitutional rights against the Kansas Governmental Ethics Commission, and its commissioners, employees, directors, attorneys, and/or agents solely in their official capacities, regarding any issue related to Complaints 715 and 716; and
- 2) lobby, engage, or seek redress from the Kansas Legislature, other elected representatives, or any other legislative or executive branch agency or official regarding any issue related to Complaints 715 and 716.

EXECUTED THIS 30 day of September, 2022.

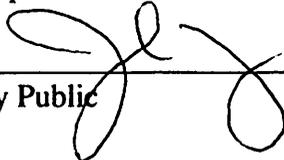

Chengny Thao


James Muir

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This is to certify that on the 30 day of September, 2022, there appeared before me, Chengny Thao and James Muir, who being duly sworn and upon oath, stated that they have read the foregoing release carefully and that they executed the release of their free acts and volition and acknowledged that they fully understood the same and signed the same for the consideration therein set forth in my presence.



Notary Public

My commission expires:

