

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO. 2484CV03009

SHANNON O'BRIEN,

Plaintiff,

v.

DEBORAH GOLBERG, Treasurer and Receiver
General of the Commonwealth of Massachusetts,

Defendant.

**SPECIALLY ASSIGNED TO
JUDGE GORDON**

**ADMINISTRATIVE RECORD
VOLUME I
Bates: 1-81**

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ John R. Hitt

John R. Hitt, BBO# 567235
Assistant Attorney General
Office of the Attorney General
Constitutional and Administrative Law Division
One Ashburton Place
Boston, MA 02108-1698
(617) 963-2084
John.Hitt@mass.gov

February 12, 2025

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Notice of Redactions: In Volume I, a black box denotes a redaction made pursuant to Standing Order 1-96, para. 2A or Supreme Judicial Court Rule 1:24.

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The Commonwealth of Massachusetts
OFFICE OF THE STATE TREASURER

STATE HOUSE, ROOM 227
BOSTON, MASSACHUSETTS 02133

DEBORAH B. GOLDBERG
TREASURER AND RECEIVER GENERAL
TEL: (617) 367-6900
FAX: (617) 248-0372

September 9, 2024

Via email ([REDACTED]), and UPS Express Mail

Shannon O'Brien
Chair, Cannabis Control Commission
[REDACTED]

Dear Chair O'Brien:

This letter will serve as notice of your removal for cause as a commissioner of the Cannabis Control Commission pursuant to M.G.L. c. 10, § 76, effective September 10, 2024.

As set forth in the attached "Decision on the Removal of Shannon P. O'Brien as a Commissioner of the Cannabis Control Commission" (the "Decision"), you are being removed from your position for reasons provided in M.G.L. c. 10, § 76(d). As detailed in the Decision, I find that you committed gross misconduct and are unable to discharge the powers and duties of the office.

The Commission will be notified of my decision so that it may take appropriate action to effect the termination of your employment as Chair of the CCC.

Sincerely,

Deborah B. Goldberg
State Treasurer & Receiver General

Enc.

cc: Max Stern, Esq.
William Gildea, Esq.
(both via email w/enc.)

**DECISION ON THE REMOVAL OF SHANNON P. O'BRIEN
AS A COMMISSIONER OF THE CANNABIS CONTROL COMMISSION**

I. INTRODUCTION AND EXECUTIVE SUMMARY

I appointed Shannon O'Brien as a commissioner of the Cannabis Control Commission ("CCC" or the "Commission"), and I designated her to be Chair of the Commission. She began her term on September 1, 2022.

In or about early 2023, Commission employees, including another commissioner, complained to the Commission's human resources department that Chair O'Brien had harassed and bullied them and made racially insensitive and offensive statements in the workplace. Chair O'Brien also complained that two commission employees bullied and discriminated against her because of her gender. In July and August 2023, the Commission's [REDACTED] complained that Chair O'Brien had interfered with [REDACTED] family leave rights, berated and threatened to fire [REDACTED], interfered with [REDACTED] management authority, tried to force [REDACTED] to resign, and publicly revealed [REDACTED] personal and confidential information. Chair O'Brien's [REDACTED] also complained that Chair O'Brien had engaged in abusive behavior toward [REDACTED].¹

In response to these complaints by and against Chair O'Brien, the Commission, through its outside counsel, engaged two highly respected and experienced investigators, both members of the Massachusetts Bar, to conduct two separate investigations into the complaints. The investigators set forth the results of their investigations in two separate reports, which the Commission provided to me in my capacity as Chair O'Brien's appointing authority. The first report addressed, as relevant here, allegations that Chair O'Brien made racially, culturally, and ethnically insensitive

¹ Chair O'Brien's conduct at a July 28, 2023 public meeting of CCC commissioners separately came to my attention and I met with her to discuss it, and express my concerns about it to her, on July 31, 2023.

statements in the workplace. The second report addressed the allegations of the Commission's [REDACTED], [REDACTED], and Chair O'Brien's [REDACTED], [REDACTED].

The results of the investigations were troubling. For example, the first report concluded, among other things, that Chair O'Brien "made racially, ethnically, culturally insensitive statements, and also engaged in professionally inappropriate conduct in the workplace in her generally rude and disrespectful statements and interactions with Agency staff and colleagues." The second report concluded, among other things, that Chair O'Brien threatened, intimidated, bullied, and humiliated, and interfered with the leave rights of, [REDACTED]. It further concluded she failed to conduct herself professionally as the Commission's leader in handling a disagreement with [REDACTED].

In early September 2023, after receiving a copy of a letter sent to the Commission from [REDACTED]'s attorney and a copy of the First Investigator's² report, I met with Chair O'Brien. Having made no conclusion as to whether she had engaged in any conduct warranting her removal, I believed that, as Chair O'Brien's appointing authority with the sole power to remove her under statutorily prescribed circumstances, it was incumbent upon me, and in the best interest of the Commission to which I had appointed her, to consider whether she had engaged in conduct that warranted my removing her as a commissioner of the CCC. In light of the gravity of her alleged conduct (some of which Chair O'Brien had admitted), and so that I could fully consider the issue, I suspended her with pay. The Commission forwarded me the Second Investigator's report at the end of December 2023 after it was completed. I then provided Chair O'Brien with a full and fair

² In using the terms "First Investigator" and "Second Investigator," respectively, I follow Chair O'Brien's practice, initiated in her court filings, of withholding the names of the two law firms/investigators who investigated complaints raised against her.

opportunity to respond to the investigators' conclusions that she had acted inappropriately and unprofessionally and had violated several Commission policies.

As Chair O'Brien's appointing authority, I may remove her as a commissioner if her conduct meets one or more of five enumerated grounds for removal. *See* M.G.L. ch. 10, § 76(d). I informed Chair O'Brien in writing that I was considering her removal and extended her an opportunity to be heard about whether she had engaged in conduct that warranted her removal. Largely on account of Chair O'Brien's actions and requests, the meeting was delayed for several months.³ In May and June 2024, I met with Chair O'Brien and her attorneys in five sessions totaling more than 19 hours. During the proceedings, which were directed by a neutral officiant, Chair O'Brien, through her counsel, cross-examined the two investigators about their investigations and reports. Chair O'Brien also presented witnesses to testify orally and in writing on her behalf, appeared herself, and submitted documents and other materials for my consideration. Through counsel, I questioned Chair O'Brien and other witnesses she presented.

After careful evaluation of all materials submitted into the record in connection with our meeting, including the testimony provided during the five meeting sessions and the documentary evidence, I have decided to remove Chair O'Brien as a commissioner of the CCC pursuant to my authority under M.G.L. ch. 10, § 76(d). I do so with much regret, because Chair O'Brien has a long history of valued public service. When I appointed her, I anticipated she would lead the

³ I first informed Chair O'Brien on October 4, 2023, that I was considering removing her as a commissioner, pending an opportunity for her to be heard. We scheduled a meeting for December 5, 2023. Before that meeting occurred, however, Chair O'Brien initiated a court action (which postponed our meeting), and then an appeal, related to our meeting's procedures. After the courts approved the procedural framework that I had established for our meeting, I wrote to Chair O'Brien on March 20, 2024, to provide an updated statement of the reasons I was considering for her potential removal, and I invited her to meet with me in April 2024 regarding those reasons. The meeting was then rescheduled to start in early May 2024 at Chair O'Brien's request.

Commission capably and conduct herself appropriately, at the heightened level of professionalism and sensitivity required of a leader at a government agency with a social equity mission.

I am removing Chair O'Brien as a commissioner because the sum and totality of her conduct described below amounts to gross misconduct, and because many of the instances described below individually constitute gross misconduct. Chair O'Brien also has demonstrated through her actions that she is unable to discharge the powers and duties of a commissioner.

In responding to the reasons for her potential removal, Chair O'Brien's mantra has been that she is doing what I asked her to do when I appointed her; that is, she is a "change agent." 5/31/24 Mtg. Tr. 16:17-20. The complaints against her, she repeatedly states, are merely responses to her efforts to reform a dysfunctional agency where people with bad motives are out to get her (and have co-opted me to assist them).

I understand that it can be challenging to change a government agency, but Chair O'Brien cannot use the excuse of being a "change agent" to bully, humiliate, and abuse her colleagues, much less to interfere with their leave rights. Nor can she shrug off objectively racially insensitive conduct as the "weaponization of HR claims" against her. *Id.* at 140:6-8.

As detailed below, the totality of Chair O'Brien's conduct amounts to gross misconduct and shows she is incapable of performing the duties of her position, as does each of several of her discrete actions. The backdrop to my conclusions is Chair O'Brien's view, repeatedly stated by her in various ways, that fundamental decency and workplace rules do not apply to her. As troubling as it is to learn that Chair O'Brien stated to an investigator that, as Chair, she is "not accountable to anyone [at the Agency]" and cannot be fired unless she is "in a coma," Ex. T-3 at TRE MTG_00019, it is worse to watch Commission meetings, preserved forever on video, during which she publicly ridicules [REDACTED], the agency's most senior non-commissioner employee,

in a manner that interferes with [REDACTED] right to take family leave, and to learn that she thought nothing of referring to the “blunt instrument” with which she could terminate [REDACTED]. 5/31/24 Mtg. Tr. 38:3-13. Her attempted explanation of her use of that term—that it represented a “binary choice” for the commissioners, *id.* at 38:14—is so lacking in appreciation for the reality of managing the departure of a senior executive that I do not credit it. I conclude she used the term “blunt instrument” just the way it sounds: to threaten and intimidate a Commission employee.

Notwithstanding their inexcusable offensiveness, taken individually, one might question whether the incidents of Chair O’Brien’s racially insensitive conduct amount to gross misconduct. In combination, and especially with her conduct toward [REDACTED], I have no doubt that what she has done surpasses that standard and warrants her removal.

Despite her prevarication on the topic, there can be no doubt that she used a term she knows is a derogatory slur that refers to people of Asian descent, and that she knows she should not have used. Government leaders simply cannot do that. And as the leader of an agency with a social equity-oriented mission, it was incumbent upon her to exercise heightened awareness of her actions and words. Similarly, Chair O’Brien’s habit of asking successful Black women if they know other successful Black women conveys an objectively race-based limitation on the scope of the listener’s contacts and therefore, particularly in a professional setting, on her capabilities. Some might call it a “micro-aggression”; I find it unacceptable. Also, Chair O’Brien’s volunteering to the First Investigator that a Black staff member does not have a trace of an accent and questioning whether the staff member was born in the United States, like Chair O’Brien’s unrestrained reference while on the record in our meeting to getting “Irish people mixed up,” *id.* at 62:12-13, reinforce my conclusion that Chair O’Brien cavalierly made racially and ethnically insensitive statements. In her position, such conduct cannot be tolerated.

Chair O'Brien's repeated references to CCC Chief [REDACTED] as Commissioner [REDACTED]'s "buddy," which Commissioner [REDACTED] perceived to be racially motivated because both [REDACTED] and [REDACTED] are Black, are notable primarily because Chair O'Brien persisted in doing so even after Commissioner [REDACTED] told Chair O'Brien that her use of the term in that context was offensive and asked her to stop. At that point, Chair O'Brien had no reason to continue to use the term other than to mistreat Commissioner [REDACTED]. Her needless repetition of the term, knowing it offended Commissioner [REDACTED], makes clear she intended to harm Commissioner [REDACTED] and adds to the unacceptably long list of the incidents of Chair O'Brien's inappropriate conduct.

Which leads back to Chair O'Brien's flagrant interference with the leave rights, and bullying, of [REDACTED]. Whatever Chair O'Brien may have thought of [REDACTED]'s managerial abilities—and her concerns may have been entirely legitimate—it did not justify her mistreating [REDACTED] in violation of the policies of the CCC, some of which overlap with the laws of the Commonwealth. Apparently because [REDACTED] refused to announce [REDACTED] resignation at Chair O'Brien's urging, Chair O'Brien publicly chastised and humiliated [REDACTED], falsely implying at a Commission meeting that [REDACTED] had reneged on a promise to announce [REDACTED] resignation, stating that [REDACTED] taking family leave would create "chaos" for the CCC, and referring to [REDACTED] leave in the context of the Commission being in "crisis." By other public statements, she disclosed [REDACTED] plan to leave [REDACTED] job before [REDACTED] was ready to make that announcement and in a way that put [REDACTED] under an ominous cloud and deprived [REDACTED] of a graceful exit from the Commission. In doing so, she not only harmed [REDACTED], but she put the entire agency at risk of claims by [REDACTED] and others under the policies and laws she disregarded.

In addition to intentionally and callously harming her colleagues, including Commissioner [REDACTED] and [REDACTED], Chair O'Brien's racially insensitive conduct and her interference with family leave rights undermined the CCC's social equity-oriented mission. I appointed her to chair a commission with an express legislative instruction, among its other mandates, "to administer a social equity program to encourage and enable full participation in the marijuana industry of people from communities that have been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities," M.G.L. ch. 94G, § 22, and a mission that includes developing an industry that includes robust participation of minorities, women, and veterans. *See About, Cannabis Control Commission*, <https://masscannabiscontrol.com/about/> (last accessed Aug. 29, 2024). It was always incumbent on her to demonstrate respect for that mandate and mission. Her conduct toward her own colleagues did the opposite. Family leave rights are historically fundamental to the participation of women and all caregivers in the workplace, yet she trampled on them. Her racially and ethnically insensitive conduct was anathema to the mission of repairing the damage prior drug policies did to communities of color.

For the reasons summarized above, and as more fully set forth below, I remove Shannon O'Brien as a commissioner of the CCC.

II. RELEVANT BACKGROUND

A. The Cannabis Control Commission.

Following a successful 2016 ballot initiative to legalize adult-use recreational marijuana, the Commonwealth of Massachusetts created the CCC in 2017. Ex. T-4 at TRE MTG_00025; Martha Bebinger, *Mass. Votes to Legalize Recreational Marijuana*, WBUR (Nov. 9, 2016); *see also* M.G.L. ch. 94G (creating the CCC); M.G.L. ch. 10, § 77 (creating a Cannabis Advisory Board). In establishing the CCC, the legislature emphasized the fundamental importance of "social equity" and extending support for communities that had previously experienced disproportionate

harm by marijuana prohibition and enforcement.⁴ In line with its equity-oriented legislative mandate, the Commission's stated mission is "to honor the will of the voters of Massachusetts by safely, equitably and effectively implementing and administering the laws enabling access to medical and adult-use marijuana in the Commonwealth." *See About, Cannabis Control Commission, supra* at 7. The Commission aspires to "foster the creation of a safely regulated industry" that, among other things, "will be characterized by . . . robust participation by minorities, women and veterans." *Id.* The Commission also strives to "develop policies and procedures to encourage and enable full participation in the marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and positively impact those communities." *Id.*⁵

B. M.G.L. ch. 10, § 76.

Pursuant to Massachusetts General Laws Chapter 10, Section 76, the CCC consists of five commissioners. M.G.L. ch. 10, § 76(a). The Governor, Attorney General, and Treasurer and

⁴ The legislature expressly empowered the Commission to "prioritize social equity program businesses and economic empowerment priority applicants . . . for expedited review during an evaluation of applications and inspections." M.G.L. ch. 94G, § 4(a)(xxx). It also required the Commission to adopt "procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities." *Id.* § 4(a½)(iv). And it mandated the creation of a "social equity program." *Id.* § 22. Relatedly, the legislature required the Cannabis Advisory Board membership to include, among others, individuals with backgrounds or expertise in "minority business development," "economic development strategies for under-resourced communities," and "women-owned business ownership," and a "subcommittee on market participation to develop recommendations on women, minority and veteran-owned businesses, local agriculture and growing cooperatives." M.G.L. ch. 10, § 77.

⁵ *See also* 5/31/24 Mtg. Tr. 27:2-6 (Chair O'Brien describing "help[ing] social equity applicants, especially persons of color, enjoy the financial benefits of a lucrative cannabis industry" as one of the CCC's "core missions"); *id.* at 123:4-124:4 (Chair O'Brien testifying that the CCC's mission includes serving the interests of disadvantaged communities in Massachusetts and "look[ing] at those persons and those communities that have been disproportionately impacted by the war on drugs," "with a particular interest in looking at racial disparities").

Receiver General (“Treasurer”) each appoint one commissioner, and they jointly appoint two commissioners. *Id.* The Treasurer’s appointee must “have experience in corporate management, finance or securities.” *Id.* The statute also provides that the Treasurer “shall designate” the Commission’s chair, *id.*, who “shall have and exercise supervision and control over all the affairs of the commission.” *Id.* § 76(h).

Section 76 also empowers each appointing authority (or authorities) to remove the commissioner she (or they) appointed if the commissioner “(1) is guilty of malfeasance in office; (2) substantially neglects the duties of a commissioner; (3) is unable to discharge the powers and duties of the commissioner’s office; (4) commits gross misconduct; or (5) is convicted of a felony.” *Id.* § 76(d). The statute further provides that before removal, a commissioner must “be provided with a written statement of the reason for removal and an opportunity to be heard.” *Id.*

C. Appointment of Shannon O’Brien as a Commissioner.

On August 30, 2022, I announced my appointment of Shannon O’Brien as a commissioner and designation as the Chair of the Cannabis Control Commission. *See Verified Complaint for Injunctive Relief* at ¶ 14, *O’Brien v. Goldberg*, No. 2384CV02183 (Mass. Super. Sept. 28, 2023), Dkt. 1;⁶ *see also Press Release*, Office of the Treasurer & Receiver General (Aug. 30, 2022). Chair O’Brien was sworn in on September 1, 2022. Dkt. 1 at ¶ 17.

⁶ Unless otherwise defined, I refer to filings in the Massachusetts Superior Court in *O’Brien v. Goldberg*, No. 2384CV02183, as Dkt. ___, and filings in the Court of Appeals (Single Justice) in *O’Brien v. Goldberg*, No. 2024-J-0032, as App. Dkt. ___. Although most court filings have not been added to the Meeting’s record as formal exhibits, I informed Chair O’Brien in advance of the Meeting that I might consider and rely on them in addition to the documents I shared with her. *See* Ex. T-2 (Mar. 20, 2024 Letter from C. Solomont to M. Stern); *see also* 5/2/24 Mtg. Tr. 11:8-15 (my counsel reiterating that I might consider publicly filed documents from Chair O’Brien’s lawsuit).

D. The First Investigation.

In late 2022 or early 2023, Chair O'Brien and then CCC Chief [REDACTED] made cross-complaints against each other, asserting allegations of harassment, bullying, and discriminatory treatment by the other, among other allegations. *See* Ex. T-3 at TRE MTG_00001. Chair O'Brien alleged [REDACTED] wrongful conduct toward her was based on her gender. *Id.* at TRE MTG_00020. [REDACTED] alleged Chair O'Brien's wrongful conduct toward [REDACTED] was based on [REDACTED] race. *Id.* [REDACTED] identifies as Black. *Id.* In February 2023, outside counsel for the Commission engaged a law firm (the "First Investigator") to investigate these allegations (the "First Investigation"). *See id.* at TRE MTG_00001; 5/3/24 Mtg. Tr. 23:15-24.⁷

While the First Investigation was ongoing, CCC Commissioner [REDACTED] and other Commission employees made complaints against Chair O'Brien. Ex. T-3 at TRE MTG_00001. Commissioner [REDACTED] complained that Chair O'Brien engaged in conduct that made Commissioner [REDACTED] "personally and professionally uncomfortable" and that Chair O'Brien at times made statements that had "racial motives and biases." *Id.* at TRE MTG_00014. Commissioner [REDACTED] identifies as "a [REDACTED] of color." *Id.* Counsel for the Commission asked the First Investigator to examine Commissioner [REDACTED]'s and other CCC employees' allegations in the First Investigation. *Id.* at TRE MTG_00001.

The First Investigator interviewed nine witnesses, including Chair O'Brien (on March 17, 2023; March 29, 2023; and July 26, 2023), Commissioner [REDACTED], [REDACTED], and [REDACTED].

⁷ During the First Investigation, Chair O'Brien also made allegations against [REDACTED], then the CCC's Chief [REDACTED]. Ex. T-3 at TRE MTG_00009-10. Chair O'Brien alleged during a meeting in September 2022, [REDACTED] discriminated against her based on her gender when [REDACTED] was rude, spoke over her, and raised [REDACTED] voice at her in the presence of CCC staff. *Id.* The First Investigator also evaluated these allegations.

Id. at TRE MTG_00002; 5/3/24 Mtg. Tr. 50:15–51:1. The First Investigator also interviewed five other CCC employees, all of whom requested to remain anonymous due to fear that Chair O’Brien would retaliate against them for participating in the investigation. Ex. T-3 at TRE MTG_00002. To protect these individuals’ identities, the First Investigator did not disclose identifying information about these witnesses and, when possible, presented their statements in the aggregate. *Id.* The First Investigator gave all witnesses the opportunity to produce materials relevant to the investigation. *Id.* at TRE MTG_00003.

The First Investigator completed a written report on September 2, 2023 (the “First Report”). See 5/3/24 Mtg. Tr. 27:8-10. The Commission shared the First Report with my office on September 7, 2023. See Ex. T-13. In the First Report, the First Investigator concluded that Chair O’Brien’s allegations that [REDACTED] and [REDACTED] discriminated against [REDACTED] based on [REDACTED] gender were not supported by evidence or credible witness statements. Ex. T-3 at TRE MTG_00020. The First Investigator also concluded that [REDACTED]’s allegations that Chair O’Brien discriminated against [REDACTED] based on [REDACTED] race were not supported by evidence or credible witness statements. *Id.* The First Investigator also made findings related to Commissioner [REDACTED]’s and other CCC employees’ allegations against Chair O’Brien, which I address below.

E. The Second Investigation.

In July and August 2023, the Commission received additional allegations against Chair O’Brien from the Commission’s then [REDACTED], [REDACTED], and Chair O’Brien’s [REDACTED], [REDACTED]. Ex. T-4 at TRE MTG_00024, TRE MTG_00033. [REDACTED]’s allegations were set forth in emails [REDACTED] sent to the Commission’s Acting Chief People Officer (Human Resources) on July 28 and 31, 2023, and in a letter [REDACTED]’s attorney sent to the Commission’s outside counsel on August 31, 2023. See *id.*; see also Ex. T-12 (8/31/23 Ltr. from P. Washienko to J. Kugell). [REDACTED] alleged, among other things, that Chair O’Brien

interfered with [REDACTED] parental leave rights, berated and threatened to fire [REDACTED] and interfered with [REDACTED] management authority, tried to force [REDACTED] to resign, and publicly revealed [REDACTED] personal and confidential information. *See* Ex. T-4 at TRE MTG_00024. Separately, [REDACTED] alleged that on July 27, 2023, Chair O'Brien engaged in abusive behavior toward [REDACTED] after [REDACTED] had not prepared a script for the Commission's public meeting, and that Chair O'Brien asked [REDACTED] inappropriately personal questions about [REDACTED]. *Id.*

In August 2023, the Commission engaged a second law firm (the "Second Investigator") to investigate these allegations (the "Second Investigation"). The Commission asked the Second Investigator to make findings of fact and draw conclusions about whether, based on the findings, Chair O'Brien violated any of the Commission's workplace conduct policies. *Id.* The Second Investigator interviewed eleven witnesses, including Chair O'Brien (with her counsel) on October 23, 2023, and reviewed all materials the witnesses asked the Second Investigator to consider. *Id.* at TRE MTG_00032-33. The Second Investigator completed a written report on December 22, 2023 (the "Second Report"). *Id.* at TRE MTG_00024. The Commission provided the Second Report to me during the last week of December 2023, which I address in relevant part below.

F. Chair O'Brien's Suspension and Superior Court Litigation.

After I watched the video of the Commission's July 28, 2023 meeting, I met with Chair O'Brien on July 31, 2023 to discuss my concerns about her conduct at that meeting. *See infra* at Section III.D.8.

On September 7, 2023, Sarah Kim, Deputy Treasurer and General Counsel to the Treasurer and Receiver General of Massachusetts, sent Chair O'Brien the First Report and the letter from [REDACTED]'s attorney (on which Ms. Kim had been copied). *See* Ex. T-14. In her email to Chair O'Brien, Ms. Kim stated that my office would set up a time to discuss the two documents with Chair O'Brien as soon as possible. *Id.* That evening, Chair O'Brien acknowledged receipt of the

documents and stated that she looked forward to providing her response. Ex. T-15. On the afternoon of September 11, 2023, I met with Chair O'Brien and her attorney to discuss the First Report and the letter from [REDACTED]'s attorney. See Ex. T-11. Based on the seriousness of the allegations, and my concerns about how she comported herself at the July 28, 2023 meeting, on September 14, 2023, I suspended Chair O'Brien with pay from the Commission pending further evaluation of the allegations. See Ex. T-6.

On September 28, 2023, Chair O'Brien filed a lawsuit in Suffolk County Superior Court, seeking injunctive relief to end her suspension and to reinstate her as Chair of the Commission. See Dkt. 1. On October 4, 2023, I provided Chair O'Brien with a statement of reasons for her suspension with pay and potential removal as a commissioner, scheduling an initial date (November 7, 2023) for a meeting with me at which she would have an opportunity to be heard on those reasons (the "Meeting"). See Ex. T-7. On October 5, 2023, Chair O'Brien notified the Court that she was continuing indefinitely (that is, choosing not to have the court consider) her motion for a preliminary injunction. See Notice of Continuance, *O'Brien v. Goldberg*, No. 2384CV02183 (Mass. Super. Oct. 5, 2023).

By agreement with Chair O'Brien through counsel, the Meeting was postponed to December 5, 2023, in part to provide time for me to prepare a protocol for how the meeting would be conducted and to allow time for the Second Investigator to complete her investigation and any report she might make. Dkt. 9 at 3. On November 17, 2023, my outside counsel shared with Chair O'Brien's counsel a protocol for the Meeting. Dkt. 9 at 4. On November 22, 2023, I wrote to Chair O'Brien to notify her that, although the Second Investigator had not yet completed her investigation, in order not to delay the Meeting, Chair O'Brien's opportunity to be heard as to the findings in the First Investigator's report would begin on December 5, 2023. Ex. T-8. I also

informed Chair O'Brien that although the First Investigator would not be available for questioning on December 5, she would be made available at a subsequent meeting. *Id.*

On December 1, 2023, Chair O'Brien filed a motion for a temporary restraining order ("TRO") and preliminary injunction to prevent our December 5 meeting from moving forward as scheduled and seeking significant modifications to the meeting's protocol. *See* Dkt. 9. On December 4, 2023, I filed an Opposition to Chair O'Brien's motion, *see* Dkt. 12, and the Court held a hearing on Chair O'Brien's motion. The next day, the Court granted Chair O'Brien's TRO motion. *See* Dkt. 13. The Court stayed the planned December 5 meeting pending a preliminary injunction hearing. *Id.*

Following the Court's ruling, Chair O'Brien filed a Reply to my Opposition, *see* Dkt. 14, and I filed a Surreply, *see* Dkt. 18. I also filed a motion to dissolve the TRO, *see* Dkt. 17, and Chair O'Brien filed an Opposition, *see* Dkt. 19. Included as an attachment with my motion was a revised protocol for the opportunity to be heard meeting that addressed issues the Court raised in its December 5, 2023 order. *See* Dkt. 19 at Ex. 2. On December 14, 2023, the Court held a hearing on Chair O'Brien's motion for a preliminary injunction and my motion to dissolve the TRO. On December 22, the Superior Court denied Chair O'Brien's preliminary injunction request and dissolved the temporary restraining order, concluding that the "procedural protections" in the protocol "satisfy the requirements of G.L. c. 10, § 76(d) and Constitutional due process for the proceeding at hand." *See* Dkt. 20 at 1-2.

On January 19, 2024, Chair O'Brien filed a petition for interlocutory review with a Single Justice of the Appeals Court. App. Dkt. 1. I filed an opposition to the petition. App. Dkt. 5. Chair O'Brien then moved to file a reply brief, attaching a proposed brief. App. Dkt. 9. On February 6, 2024, the Single Justice denied Chair O'Brien's petition, concluding that her "review of the record

reveal[ed] no error of law or abuse of discretion” in the Superior Court’s December 22, 2023 order, and that “the procedural protections described in the revised protocol are adequate to satisfy” the process due to Chair O’Brien under Section 76(d). *See* Order re #1, *O’Brien v. Goldberg*, No. 2024-J-0032 (Mass. App. Ct. Feb. 6, 2024). Later that day, the Single Justice allowed Chair O’Brien’s motion to file a reply brief, which had not come to the Single Justice’s attention until after issuing the order disposing of the case. The Single Justice subsequently issued an order stating that, “[a]fter careful review,” her initial order was “to stand.” *See* Order re #9, *O’Brien v. Goldberg*, No. 2024-J-0032 (Mass. App. Ct. Feb. 6, 2024).

G. Final Statement of Reasons and Chair O’Brien’s Opportunity to Be Heard.

On March 20, 2024, pursuant to both M.G.L. ch. 10, § 76(d), and a finalized version of the court-approved protocol (the “Protocol”), I provided Chair O’Brien with an updated statement of reasons for her potential removal. *See* Ex. T-1; Ex. T-1 at Tab A (Protocol). My letter incorporated by reference the First Report and Second Report (the “Reports”), and identified findings and conclusions set forth in the Reports that might warrant her removal based on one or more of the first four grounds enumerated in Section 76(d). *See* Ex. T-1; Ex. T-1 at Tabs B, C (the Reports). I set April 10 and 11 as the dates for the two four-hour Meeting sessions provided for in the Protocol, and informed Chair O’Brien of her opportunity to cross-examine the First Investigator and Second Investigator at those meetings. Ex. T-1. Also on March 20, 2024, pursuant to the Protocol, I provided Chair O’Brien with the set of documents and materials on which I might rely in deciding whether to remove her as a commissioner. Ex. T-2.

In accordance with the Protocol, on April 3, 2024, Chair O’Brien submitted to me materials to consider in making my potential removal decision, as well as a list of witnesses she anticipated calling during the Meeting and the subjects of their expected testimony.

On the evening of April 8, 2024, Chair O'Brien's counsel contacted my counsel to request a postponement of the Meeting. The Meeting was rescheduled for May 2 and 3, 2024.

The Meeting began on May 2, 2024, in person. As set forth in the Protocol, Thomas F. Maffei, Esq., was present to "direct" this session of the Meeting, and all subsequent sessions of the Meeting, as the Meeting's "Officiant," to ensure presentation of information occurred "in a fair and orderly manner, understanding that the rules of evidence shall not apply, within the time allotted for the meeting." Ex. T-1 at Tab A.⁸ My counsel also placed into the record the materials (now organized as exhibits) that had previously been shared with Chair O'Brien on March 20, 2024. Chair O'Brien's counsel cross-examined the Second Investigator⁹ for nearly the entirety of the May 2 session. My counsel then briefly examined the Second Investigator, followed by further examination of the Second Investigator by Chair O'Brien's counsel. The session lasted more than five hours.

The Meeting resumed on May 3, 2024, in person. Chair O'Brien's counsel cross-examined the First Investigator for nearly the entirety of the session. My counsel examined the First Investigator for approximately ten minutes before the session's allotted time ended. The Meeting session lasted approximately four hours. After the conclusion of the second Meeting session, Mr. Maffei, pursuant to his authority under the Protocol to extend the Meeting beyond the planned two four-hour sessions, extended the Meeting to allow three additional sessions.

The Meeting continued virtually (by Zoom) on May 30, 2024. The session involved examination of the First Investigator by my outside counsel followed by additional cross-

⁸ Mr. Maffei also met with counsel for Chair O'Brien and my counsel on multiple occasions before some of the Meeting sessions began and as the Meeting sessions progressed, and he permitted or requested briefing to address various procedural matters raised by Chair O'Brien.

⁹ The Second Investigator, and all witnesses who presented live testimony during the Meeting sessions, were sworn.

examination of the First Investigator by counsel for Chair O'Brien. The session lasted approximately 2.5 hours.

On May 31, 2024, the Meeting continued in person for approximately 5.5 hours. Chair O'Brien began the session by reading a prepared statement. Her counsel then direct-examined her. Questioning of Chair O'Brien by my counsel followed. Chair O'Brien also called current CCC Commissioner Kimberly Roy as a witness, and Chair O'Brien's counsel examined Commissioner Roy.

The final Meeting session occurred in person on June 17, 2024. Chair O'Brien presented former CCC Chair Steven Hoffman as a witness. Chair O'Brien's counsel examined Mr. Hoffman, and my counsel then questioned him. Chair O'Brien also submitted written testimony—made under oath—from Edward J. Farley. Chair O'Brien's counsel then provided a closing statement, and I offered brief closing remarks. The June 17 session lasted approximately two hours.

On June 28, 2024, pursuant to the Protocol (which permitted me to request additional information after the Meeting's conclusion), I sent Mr. Farley, through Chair O'Brien's counsel, several questions about Mr. Farley's written testimony. I requested that Mr. Farley answer the questions under oath, just as he had in his affidavit that Chair O'Brien submitted on May 31, 2024. On July 11, 2024, Mr. Farley, through his counsel, sent an unsworn letter addressed to the Officiant, largely non-responsive to the questions I had asked. My questions to Mr. Farley and his response have been added to the record. Additionally, on July 1, 2024, in accordance with the Protocol, Chair O'Brien provided a supplemental written submission and two additional exhibits, which have also been added to the record.

The Meeting sessions totaled approximately 19 hours, more than twice the time allotted for the Meeting by the court-approved Protocol. In connection with the Meeting, I submitted into the

record 22 exhibits (marked T-__), including four videos; Chair O'Brien submitted 44 exhibits (marked C-__), including seven video and audio files. In addition to attending all Meeting sessions, I have reviewed and considered all materials in the record in preparing this written decision.

III. FINDINGS OF FACT RELEVANT TO THE GROUNDS FOR REMOVAL

The following findings of fact are derived from the materials submitted into the record by Chair O'Brien and me, and from written and oral testimony presented as part of the Meeting. In making these findings, I do not rely on statements in the First Report from witnesses who the First Investigator did not identify by name. This is because the Officiant, in response to Chair O'Brien's objection, concluded that those statements (i.e., from witnesses who requested anonymity due to fear of retaliation from Chair O'Brien and who were not named in the First Report) "lack . . . reliability and trustworthiness" and therefore "cannot be used . . . as evidence to support a ruling." T. Maffei, Memorandum and Ruling Regarding Shannon O'Brien's Objections to the Admissibility of Anonymous Sources in the First Report at 14-15 (June 12, 2024). For reasons conveyed to the Officiant by my counsel, I disagree with the Officiant. The Officiant thus concluded that those statements may "remain in the record as an offer of proof." *Id.* Accordingly, although my findings of fact in this Section, and my conclusions in Section IV, are not based on statements in the First Report attributed to unnamed witnesses, I make my findings without prejudice to my making supplemental findings and conclusions below (*see infra* Section VI) that take those unattributed statements into account.

A. Chair O'Brien and Chair O'Brien's Understanding of Her Position.

Prior to joining the Commission, Chair O'Brien served in several prominent leadership roles. For example, she served as State Treasurer and Receiver General of the Commonwealth of Massachusetts from 1999 to 2003, and she was the CEO of the Girl Scouts Patriots Trail Council

from 2005 to 2008. C-1 at CHAIR_002; C-7 at MA TRE SPO_0010-11 (resume). In those roles and others, she managed and supervised hundreds of employees. C-7 at MA TRE SPO_0010-11.

Chair O'Brien joined the Commission as a commissioner and Chair. Dkt. 1 at ¶ 17. In her role as a commissioner, Chair O'Brien became, among other things, a policymaker and public face of the Commission. 5/31/24 Mtg. Tr. 180:8-9. And in her role as Chair, she was the Commission's leader. By statute, the Chair of the Commission "shall have and exercise supervision and control over all the affairs of the commission." M.G.L. ch. 10, § 76(h); *see also* 5/31/24 Mtg. Tr. 22:16-24 (Chair O'Brien pointing out her statutory role). Chair O'Brien understood, based on that statutory language, that the Chair is meant to be the Commission's leader. 5/31/24 Mtg. Tr. 122:19-22; *see also id.* 173:1-2 ("[M]y job is to run the Cannabis Control Commission in the best interest of the public."). She also viewed her role as Chair as making her unique among other commissioners. She testified, for instance, that it is a "fiction" that all commissioners are equal and that "nobody has a greater voice or say." *Id.* 65:19-21.

Chair O'Brien viewed herself to be a "change agent" and believed that her mandate was to make improvements to an "obviously troubled state agency." 5/31/24 Mtg. Tr. 16:17-20; Ex. T-3A at TRE MTG_00139. In her position as a commissioner, Chair O'Brien understood herself to be effectively impervious to oversight and accountability. She told the First Investigator that commissioners "are not accountable to anyone [at the Agency]. I basically can't be fired unless I'm in a coma." Ex. T-3 at TRE MTG_00019 (alteration in original); *see also* 5/3/24 Mtg. Tr. 135:15-17 (First Investigator confirming Chair O'Brien made statement in interview). Chair O'Brien also viewed her position at the Commission as bestowing upon her significant power. She commented to the First Investigator that she could "blow up" the Commission and put it "under

the Treasury or the ABCC [Alcoholic Beverages Control Commission].” Ex. T-3 at TRE MTG_00019.

B. The Investigators and the Reports.

Following lengthy investigations, the First Investigator and Second Investigator each issued a report of their factual findings and conclusions about whether Chair O’Brien violated any Commission policies. *See* Exs. T-3, T-4. After closely reviewing the Investigators’ Reports and listening to their testimony, I find the First Investigator and the Second Investigator to be trustworthy and reliable.

The First Investigator is a highly experienced attorney who practices employment law and has conducted internal investigations for decades. 5/3/24 Mtg. Tr. 19:6-9, 20:12-14; *see also* 5/30/24 Mtg. Tr. 10:16–18:5 (First Investigator’s testimony regarding her experience, training, and leadership roles in legal community). Her prior investigation experience includes multiple investigations for state agencies in Massachusetts, at least one of which involved an appointed public official. 5/3/24 Mtg. Tr. at 21:5-11; 5/30/24 Mtg. Tr. 75:8-14. The First Investigator provided Chair O’Brien a robust opportunity to be heard, interviewing her three times. 5/3/24 Mtg. Tr. 50:10–51:1. Chair O’Brien also corresponded with the First Investigator outside of interviews and provided the First Investigator materials for her consideration. Ex. T-3 at TRE MTG_00003; *see, e.g.*, Ex. T-3A at TRE MTG_00154. I do not credit Chair O’Brien’s claim that the First Investigator was biased against her. *See* 5/31/24 Mtg. Tr. 143:2–145:6 (Chair O’Brien: “I think [the First Investigator] meant to harm me by not doing a fair and unbiased investigation.”). Chair O’Brien disagreed with the First Investigator’s conclusions and the way she conducted the investigation. But Chair O’Brien offered no credible evidence of the First Investigator’s bias or, just as importantly, any motive or reason for the First Investigator to be biased against Chair

O'Brien. Nor did I observe any bias of the First Investigator in her Report or during her presentation at the Meeting.

The Second Investigator is also a highly experienced attorney who has been practicing employment law for more than 25 years. 5/2/24 Mtg. Tr. 14:6-11. She has performed dozens of employment-related investigations for clients. *Id.* at 15:6-10. The Second Investigator provided Chair O'Brien a fulsome opportunity to participate in the investigation, including interviewing Chair O'Brien for more than four hours. *Id.* at 175:5-6. Chair O'Brien testified that she did not think the Second Investigator was biased against her in any way. 5/31/24 Mtg. Tr. 147:5-7. Chair O'Brien's counsel also told the Second Investigator that he thought she handled Chair O'Brien's interview professionally. 5/2/24 Mtg. Tr. 190:6-12.

C. Chair O'Brien's Allegedly Racially, Ethnically, and Culturally Insensitive Conduct.

As relevant here, the First Report discusses allegations that Chair O'Brien engaged in conduct that was, or was perceived to be, race-based or, at a minimum, to be racially, ethnically, or culturally insensitive. In this subsection, I address conduct of Chair O'Brien to which she admits, that witnesses identified in the First Report alleged, and/or that is corroborated by documentary or video evidence.

1. The Chair's Use of a Racially Derogatory Slur to Refer to Asians.

The First Investigator asked Chair O'Brien about a meeting in fall 2022 during which Chair O'Brien allegedly used the term "yellow" to refer to people of Asian heritage. Ex. T-3 at TRE MTG_00017. Chair O'Brien explained to the First Investigator that a local real-estate developer used the term in a conversation with her and that she merely repeated his words. *Id.* Chair O'Brien also said to the First Investigator: "I should have cleaned it up. It's difficult sometimes to know how to say the right thing." *Id.* In court filings and during the Meeting, Chair O'Brien elaborated

on what she said at the fall 2022 meeting. According to Chair O'Brien, she relayed a discussion in which the local real-estate developer explained that he had organized a group of "black, brown and yellow" investors to create business opportunities for people of color. Dkt. 9 at 19-20; App. Dkt. 3 at 20 n.22; 5/31/24 Mtg. Tr. 28:6-10. She claims she repeated the "phrasing to share [her] excitement about the new ideas for the CCC social equity mission that [she] was charged with, and that's all." 5/31/24 Mtg. Tr. 28:16-19.

I find that Chair O'Brien used the term "yellow" during the fall 2022 meeting because she has admitted that she did. Dkt. 9 at 19-20; App. Dkt. 3 at 20 n.22; 5/31/24 Mtg. Tr. 28:6-10. I find that when she used the term, she did so in reference to people of Asian descent. The slur she used is a well-known racial epithet for people of Asian heritage, and it is clear from the context of the statement she admits she made ("black, brown, and yellow" investors) that the terms are being used to refer to individuals of certain races/ethnicities. I also find that Chair O'Brien used the term even though she knew it was an unacceptable way to refer to people of Asian descent. Chair O'Brien admitted during the Meeting that the term she used to refer to a person of Asian descent is a "derogatory slur." 5/31/24 Mtg. Tr. 28:15. She also knew that using it was wrong, based on her comment to the First Investigator that she "should have cleaned it up." Ex. T-3 at TRE MTG_00017.

Although Chair O'Brien denies that she told the First Investigator that she "should have cleaned it up" and that it is "hard to know what to say sometimes," *id.*, I find she made those statements to the First Investigator. The First Investigator testified that when she used quotations in the First Report, she was providing a verbatim quotation. 5/3/24 Mtg. Tr. 134:20-22. Given the First Investigator's professional experience and after hearing her testimony, I do not doubt that the First Investigator accurately reported what Chair O'Brien said to her. I also question the

credibility of Chair O'Brien's testimony regarding what she told the First Investigator about this remark. During the Meeting, Chair O'Brien denied telling the First Investigator that she should not have used the term "yellow." 5/31/24 Mtg. Tr. 133:19-22 ("Q. Chair, you told [the First Investigator] that you should not have used the term yellow, correct? A. No."). Yet Chair O'Brien represented to both the Superior Court and the Appeals Court that she "acknowledged to Investigator 1 that she should not have used the real estate developer's exact words." Dkt. 9 at 20; App. Dkt. 3 at 20 n.22. She also admitted that her representation to the court was "not false." 5/31/24 Mtg. Tr. 136:6-10. I find Chair O'Brien was dishonest during the Meeting about her discussion with the First Investigator regarding her use of the racial slur, and that she made the statements to the First Investigator as reported in the First Report.

Relatedly, I find that Chair O'Brien has repeatedly attempted to elude accountability for making the statement by offering the justification that she was simply repeating what a "well-known and respected African-American real estate developer" said first. Dkt. 9 at 19-20; App. Dkt. 3 at 20 n.22; 5/31/24 Mtg. Tr. 27:19-28:10 ("These were his words, not mine."). Chair O'Brien also refused to concede during the Meeting that she should not have used the term when recounting what the real-estate developer said, retorting that she would only concede that her use of the term has been "weaponized against [her]." 5/31/24 Mtg. Tr. 133:1-12. Chair O'Brien also justified her use of the term by arguing that she did not use it in reference to "an Asian individual." *Id.* at 28:13-15. I find that to be a distinction without a difference. As Commissioner Roy, who was present when Chair O'Brien used the term, testified, Chair O'Brien was referring to the Asian community. *Id.* at 209:12-15 ("[S]he was referring to communities, communities of color."). Chair O'Brien made the statement during an executive session of a Commission meeting. *Id.* at

208:14-21. And again, Chair O'Brien has acknowledged that "referring to Asian people as yellow is derogatory." *Id.* at 131:12-14.

2. Commissioner ██████'s Complaint.

In a memorandum dated May 24, 2023, Commissioner ██████ made a "[f]ormal complaint" about Chair O'Brien to the Commission's Acting Chief People Officer ("CPO"). Ex. T-3A at TRE MTG_000142-44. The memorandum detailed several allegations about Chair O'Brien's behavior and statements, which Commissioner ██████ believed had "racial motives and biases" and made the Commission "a challenging environment to work in." *Id.* at TRE MTG_000142. The First Investigator interviewed Commissioner ██████ about ██████ complaint as part of the First Investigation. Ex. T-3 at TRE MTG_00002. I address the allegations of Commissioner ██████ that are relevant to my decision.

a. The "Lydia Edwards" Comment.

Commissioner ██████ alleged in ██████ complaint that Chair O'Brien, in conversations with others, often referenced individuals who Chair O'Brien perceives to share a similar ethnic or racial background as the person with whom Chair O'Brien is speaking. Ex. T-3 at TRE MTG_00015. Commissioner ██████, who identifies as a ██████ of color, *id.* at TRE MTG_00014, stated that this occurred to ██████ in March 2023, when Chair O'Brien said to Commissioner ██████: "I don't know [State Senator] Lydia Edwards[,], you probably know her." Ex. T-3A at TRE MTG_00144. Senator Edwards is Black. Ex. T-3 at TRE MTG_00015; *see also* Dkt. 9 at 20 (Chair O'Brien describing Senator Edwards as a "wom[a]n of color"). Commissioner ██████ indicated in ██████ memorandum and to the First Investigator that she never told Chair O'Brien that ██████ knew or had any affiliation with Senator Edwards. Ex. T-3A at TRE MTG_00144; 5/30/24 Mtg. Tr. 66:2-6; *see also* 5/3/24 Mtg. Tr. 104:17-19 (Commissioner ██████ told the First Investigator in ██████ interview that she did not know Senator Edwards). Commissioner ██████ believes that Chair

O'Brien's assumption that Commissioner [REDACTED] knows Senator Edwards was motivated by racial bias, i.e., "assuming that all people of color know one another." Ex. T-3 at TRE MTG_00015.

I find that Chair O'Brien made this statement to Commissioner [REDACTED] because she implicitly admitted making it. *See* 5/31/24 Mtg. Tr. 31:3-4 ("I thought it was reasonable that they likely crossed paths at some time."). Chair O'Brien, however, disputes that she made the comment based on a racial assumption. She contends that it was reasonable to believe Commissioner [REDACTED] and Senator Edwards "crossed paths" because they are both "activists and leaders in Boston's communities of color," have been involved in Democratic campaigns and cannabis policy work, and Senator Edwards was previously a Boston City counselor and Commissioner [REDACTED] lives in Boston. *Id.* at 30:22-31:20.

Although Chair O'Brien offers possible explanations for why Commissioner [REDACTED] and Senator Edwards might know each other (or, at least, know *of* each other), I find Chair O'Brien made the comment at least in part because of an assumption that Commissioner [REDACTED] knew Senator Edwards because they are the same race. For one thing, in a court filing Chair O'Brien pointed to Commissioner [REDACTED] and Senator Edwards's race when explaining why she thought they knew each other. *See* Dkt. 9 at 20 ("Senator Edwards and Commissioner [REDACTED] are both [REDACTED] of color who are government officials in the Boston area."); App. Dkt. 3 at 21-22 n.25 (same). For another, the First Investigator reported that Chair O'Brien made similar assumptions about the First Investigator, who is Black, during her interviews. The First Investigator, a neutral professional, explained that she "directly experienced and was subjected to Chair O'Brien's references, comments and remarks regarding BIPOC [Black, Indigenous, and People of Color] business leaders and politicians, with Chair O'Brien, at times, stating to this investigator, 'You

know that person, right?’ or ‘You probably know “X.”’” Ex. T-3 at TRE MTG_00022; *see also* 5/30/24 Mtg. Tr. 66:10–67:10 (recounting similar information during testimony, including that Chair O’Brien suggested the First Investigator likely knew Senator Edwards). Because the First Investigator “directly experienced similar comments and behavior by [Chair O’Brien],” she found Commissioner [REDACTED]’s allegation that Chair O’Brien made a race-based assumption to be credible. Ex. T-3 at TRE MTG_00015. In view of Chair O’Brien’s previous representation and the First Investigator’s experience with Chair O’Brien, I find that Chair O’Brien’s comment to Commissioner [REDACTED] about Senator Edwards was, at least in part, rooted in a raced-based assumption.

b. The “Buddy” Comments.

Commissioner [REDACTED] alleged in [REDACTED] complaint that Chair O’Brien repeatedly intimated that Commissioner [REDACTED] and [REDACTED] have a “special relationship,” including on several occasions referring to [REDACTED] as Commissioner [REDACTED]’s “buddy,” sometimes in the presence of CCC colleagues. Ex. T-3 at TRE MTG_00014-15. Commissioner [REDACTED] alleged that she asked Chair O’Brien to stop referring to [REDACTED] as Commissioner [REDACTED]’s “buddy,” but Chair O’Brien continued to do so. *Id.* at TRE MTG_00015. Commissioner [REDACTED] also alleged that Chair O’Brien suggested that Commissioner [REDACTED] received preferential treatment from the CCC’s Communications team (led by [REDACTED] during the relevant time period) because of Commissioner [REDACTED]’s and [REDACTED]’s relationship. Ex. T-3A at TRE MTG_00142-43. Commissioner [REDACTED] perceived these comments by Chair O’Brien to be condescending and racially motivated, believing Chair O’Brien paired Commissioner [REDACTED] and [REDACTED] together because they both identify as Black. *Id.*; Ex. T-3 at TRE MTG_00015. Chair O’Brien testified that Commissioner [REDACTED] and [REDACTED] are friends, and that

Commissioner [REDACTED] calls [REDACTED].” 5/31/24 Mtg. Tr. 31:22–32:2. She also denied there being any “racial animus surrounding my comment.” *Id.* at 32:5.

I find that Chair O’Brien made the “buddy” comments, because she admitted to saying that [REDACTED] was Commissioner [REDACTED]’s “buddy.” Ex. T-3 at TRE MTG_00015; 5/3/24 Mtg. Tr. 96:14–97:3. I also find that Chair O’Brien persisted in using the term “buddy” even after Commissioner [REDACTED] asked her to stop and indicated [REDACTED] was offended by Chair O’Brien’s use of the term, including because it suggested that Commissioner [REDACTED] had anything other than a professional and appropriate work relationship with [REDACTED]. *See* Ex. T-3A at TRE MTG_00143. I find that Chair O’Brien’s continued use of the term “buddy” was disrespectful, rude, and condescending because she knew but disregarded that Commissioner [REDACTED] had asked her to stop using the term. *Id.* Further, I understand why, based on Chair O’Brien’s conduct, Commissioner [REDACTED] might perceive Chair O’Brien’s repeated “buddy” comment to be “racially motivated.” *Id.* Commissioner [REDACTED] and [REDACTED] are both Black and, based on the First Report and testimony at the Meeting, Chair O’Brien does not appear to have referred to any other pair of people at the Commission as “buddies.” While I do not condone Chair O’Brien’s conduct and find it unprofessional and inappropriate, in this instance there is insufficient evidence in the record to find that racial animus drove Chair O’Brien to continue to inappropriately refer to Commissioner [REDACTED] and [REDACTED] as “buddies.”

c. The “Qualifications” Comment.

Commissioner [REDACTED] also stated in [REDACTED] complaint that [REDACTED] felt “belittled” when Chair O’Brien “made disparaging remarks about [Commissioner [REDACTED]’s] professional qualifications.” Ex. T-3A at TRE MTG_00143. According to Commissioner [REDACTED], Chair O’Brien made comments to the media and in a governance meeting suggesting that candidates who had applied for the Chair position in 2022 were “not qualified,” all while knowing that

Commissioner Concepcion and Commissioner [REDACTED], both [REDACTED] of color, had applied for the position. *Id.* In support of [REDACTED] complaint, Commissioner [REDACTED] pointed to Chair O'Brien's responses to inquiries from blogger/journalist Grant Smith Ellis. *Id.*; *see also* C-41 (recording of January 12, 2023 interview). Having reviewed the video of Chair O'Brien's response to Ellis, I find that Chair O'Brien implied that the other candidates were not qualified for the Chair position. The First Investigator also reported that Chair O'Brien said during an interview that "Commissioner [REDACTED] *never* would have been appointed as [CCC] Chair, but *maybe* Commissioner Concepcion would." Ex. T-3 at TRE MTG_000016 (emphases and alteration in original). The First Investigator found that it was "plausible that Commissioner [REDACTED]," like Ellis, "perceived Chair O'Brien as stating that Commissioner [REDACTED] was not qualified for the role of CCC Chair." *Id.*

The First Investigator asked Chair O'Brien whether she had publicly stated that Commissioner [REDACTED] or other candidates were not qualified to be the Commission's Chair. According to the First Investigator, Chair O'Brien "did not directly answer the question nor explicitly deny that her remarks may have created the impression that she thought Commissioner [REDACTED], as well as other CCC Chair candidates, were not qualified for the role." Ex. T-3 at TRE MTG_000016. Instead, Chair O'Brien explained that she told Ellis to look at the enabling statute (M.G.L. ch. 10, § 76(a)), which indicates the background experience (corporate management, finance, or securities) required to be the Treasurer's appointee to the Commission, and that she satisfied the criteria. *Id.*

While this too was inappropriate and unprofessional, in that Chair O'Brien commented negatively to a blogger about the qualifications of her colleagues on the Commission, I do not find Chair O'Brien's comments to the blogger were racially motivated.

d. Additional Findings Regarding Commissioner ██████'s Complaint.

Chair O'Brien has sought to cast doubt on the veracity of Commissioner ██████'s complaints by questioning Commissioner ██████'s motives. She contends that Commissioner ██████ has a vendetta against her. 5/31/24 Mtg. Tr. 30:19-21. Chair O'Brien also testified at the Meeting that Commissioner ██████ "campaigned" to be named Chair and was "deeply disappointed" when ██████ did not get the role. *Id.* at 30:17-19. As a result, Chair O'Brien contends, Commissioner ██████ has "had it out for" Chair O'Brien since the start of Chair O'Brien's tenure. *See id.* at 30:19-21. Chair O'Brien separately made a point to present testimony from multiple witnesses about Commissioner ██████'s interest in succeeding Steven Hoffman as the Commission's Chair in 2022. *See* C-42 (Affidavit of Edward J. Farley)¹⁰ at ¶ 10; 6/17/24 Mtg. Tr. 17:5-20 (Testimony of S. Hoffman). Chair O'Brien's counsel also suggested that Commissioner ██████'s complaints should be discounted because ██████ "wanted [Chair O'Brien's] job, and still wants the job," and is "self-interested." 6/17/24 Mtg. Tr. 56:11-15.

The thrust of Chair O'Brien's proffer of evidence regarding Commissioner ██████'s motives is that Commissioner ██████'s allegations must be fabricated, or at least viewed with significant skepticism, because Commissioner ██████ is purportedly gunning to take Chair O'Brien's job. I find this theory to be wholly speculative and unsupported. To the contrary, Chair

¹⁰ Attempting to show that Commissioner ██████ wanted to be Chair of the CCC seems to be the primary, if not sole, even arguably material point of the Written Testimony of Edward J. Farley. For the reasons set forth below, *see infra* at 30, Chair O'Brien's theory that Commissioner ██████ fabricated claims against Chair O'Brien because Commissioner ██████ wanted to have Chair O'Brien removed so ██████ could be Chair is far-fetched and without evidentiary support in the record. In all events, I do not credit Mr. Farley's Written Testimony. Among other things, he refused to answer under oath and largely ignored altogether the written questions that I asked him. At the same time, if I did credit Mr. Farley's Written Testimony, it would not change any of my findings or conclusions herein.

O'Brien has admitted to the factual underpinnings of several of Commissioner ██████'s claims, even though she disagrees with Commissioner ██████'s perception of events. Based on the evidence before me, I cannot draw Chair O'Brien's desired inference: that Commissioner ██████'s past and purported ongoing interest in the Chair position, combined with ██████'s disappointment that Chair O'Brien received the appointment to that role instead of ██████, made ██████ so vindictive as to present fictional or embellished complaints to oust Chair O'Brien from office. I find it disappointing, unseemly, and, frankly, either paranoid or manufactured, that Chair O'Brien would insinuate a colleague would "weaponize" feelings of being marginalized and treated differently because of ██████ race to try to force Chair O'Brien out of office and somehow secure the Chair position for herself.¹¹ 5/31/24 Mtg. Tr. 140:6-8.

3. The "Articulate" Comment.

The First Investigator asked Chair O'Brien about a statement Chair O'Brien allegedly made in October 2022 about the CCC's Constituent Service Associates. Ex. T-3 at TRE

¹¹ In a further attempt to cast doubt on the veracity of complaints made against her, Chair O'Brien asserted at the Meeting that the Commission has a "toxic culture [that] has resulted in the weaponization of false human resources claims because of personality differences," 5/31/24 Mtg. Tr. 18:22-24, and contended that she has "been the victim of weaponization of HR claims," *id.* at 140:6-7. She points a finger at ██████ specifically for allegedly "us[ing] the staff ██████ controlled to . . . lodge false accusations to force [her] out." *Id.* at 23:16-18. Based on my review of the First Report (including ██████'s and Commissioner ██████'s complaints) and the Second Report (including ██████'s and ██████'s complaints), as well as testimony at the Meeting and record materials, I do not see a basis to conclude that the complaints made against Chair O'Brien were done in anything other than good faith. I also do not see evidence that they were somehow orchestrated by ██████. The fact that the Investigators found that some claims against Chair O'Brien could not be substantiated (e.g., ██████'s) or that they did not amount to a CCC policy violation (e.g., ██████'s) does not indicate bad faith or fabrication. If logic compelled such an inference, then Chair O'Brien's complaints of gender discrimination against ██████ and ██████—both of which the First Investigator found were unsupported—would need to be considered to have been made in bad faith, too. Presumably, Chair O'Brien would strongly resist that conclusion, and with fair reason. On the record before me, I do not question the sincerity of any complainants in the Reports (including Chair O'Brien) or have a credible basis to find that fictitious claims were "weaponized" against Chair O'Brien.

MTG_00019. Chair O'Brien explained to the First Investigator that she said, "Many of *these people* who answer the phones may or may not be college grads, but they are *articulate*." *Id.* (emphasis added in First Report). *Id.* I find Chair O'Brien made this statement because she told the First Investigator that she did. I find that suggesting that employees who may not have a college education ("these people," according to Chair O'Brien) are "articulate" implies surprise that someone with lesser education can speak articulately, which she knew or should have known is offensive.

4. Additional Statements by Chair O'Brien.

In addition to comments reported by witnesses that were the subject (in part) of the First Investigator's investigation, the First Report documents insensitive statements that Chair O'Brien made directly to the First Investigator during her interviews. I have described some of those statements above (e.g., Chair O'Brien's assumptions that the First Investigator must know other Black people). Another example included in the First Report is Chair O'Brien's "volunteer[ing]" about a Black staff member: "I think she's first generation because she doesn't have a trace of an accent. She told me where her family came from, so I'm not sure if she was born here [in the United States]." Ex. T-3 at TRE MTG_00018 (emphasis removed) (alteration in original). Chair O'Brien testified during the Meeting that she has no recollection of making the statement and contended that the First Investigator made it up. 5/31/24 Mtg. Tr. 140:23–143:13.

I find that Chair O'Brien made this statement to the First Investigator. As noted, the First Investigator testified that where she included quotations in the First Report, she was quoting a witness verbatim. 5/3/24 Mtg. Tr. 134:20-22. And for reasons I previously explained, I have no reason to doubt the accuracy or honesty of the First Investigator's reporting of Chair O'Brien's statements. I also find Chair O'Brien's unsupported and unpersuasive allegation that the First Investigator invented the comment to harm her causes me to discredit Chair O'Brien's veracity on

this issue (and generally with respect to the First Report). I also find the fact that Chair O'Brien made a race-related statement like this to the First Investigator buttresses the likelihood she made other race-related statements.

I also take note of an unprompted comment that Chair O'Brien made during the Meeting. While Chair O'Brien's counsel was cross-examining the Second Investigator, he accidentally referred to Chair O'Brien as "[REDACTED] O'Brien." 5/2/24 Mtg. Tr. 62:7-10. Another of Chair O'Brien's counsel offered a correction: "Shannon. Shannon O'Brien." Before Chair O'Brien's counsel could resume his questioning, Chair O'Brien blurted out, "You're getting all us Irish people mixed up." *Id.* at 62:12-13. Chair O'Brien's ethnicity-focused interjection in the context of a meeting to address, among other things, whether Chair O'Brien has been insensitive about such matters, was shocking. Her comment reinforces the credibility of witnesses' reporting to the First Investigator that Chair O'Brien made racially, ethnically, and culturally insensitive statements in the workplace. It also makes even clearer that she lacks the sensitivity and discipline to refrain from making comments that are ethnically and racially tainted.

D. Chair O'Brien's Conduct Toward [REDACTED].

The Second Investigation primarily concerned [REDACTED]'s allegations against Chair O'Brien. The Second Investigator concluded that "some, but not all, of Chair O'Brien's behavior toward [REDACTED] violate[d] Commission policies." Ex. T-4 at TRE MTG_00033. I summarize below the findings relevant to my decision, with additional references to other relevant testimony and materials in the record.

1. [REDACTED]'s Service as [REDACTED] of the Commission.

[REDACTED] was the Commission's [REDACTED]. Ex. T-4 at TRE MTG_00025. [REDACTED] served in that role from December 2017 until [REDACTED] resigned in early [REDACTED] 2023. *Id.* at TRE MTG_00024-25 & n.2; 6/17/24 Mtg. Tr. 10:4-9. As [REDACTED], [REDACTED] was "the

██████████ of the commission.” *See* M.G.L. ch. 10, § 76(j). Steven Hoffman, the Commission’s first Chair, testified that ██████████ was “absolutely the right person to be ██████████ at the beginning of the Commission.” 6/17/24 Mtg. Tr. 12:2-4. This was in part because ██████████ developed deep knowledge of the cannabis industry while employed as ██████████ Affairs in the ██████████’s Office. ██████████ had the responsibility of preparing the ██████████’s Office—which had been slated to oversee the Commission in the original voter initiative in 2016—to be responsible for the Commission. *Id.* at 12:13-23.¹² Mr. Hoffman also testified that ██████████ deserves credit, along with other Commission leaders, for meeting “every legislative mandate” and standing up the Commission “with fewer hiccups” than similar agencies in “any other state.” *Id.* at 23:16-24. In line with Mr. Hoffman’s testimony, the Second Investigator found that ██████████ is “widely viewed as doing an excellent job building the agency from scratch,” and as possessing strong policy-making skills. *Id.* at TRE MTG_00025; *see also* 5/31/24 Mtg. Tr. 46:7-9 (Chair O’Brien testifying that she gives ██████████ “a great deal ... of credit for having set up this industry”).

Despite ██████████’s strengths, ██████████ had challenges effectively managing Commission employees. 6/17/24 Mtg. Tr. 13:14-15. According to the Second Investigator, most of the current commissioners “believe ██████████ management skills are not strong, ██████████ could do a better job with communications, and ██████████ does not do enough to hold Commission staff accountable.” Ex. T-4 at TRE MTG_00025; *see also* 5/2/31 Mtg. Tr. 39:4–40:16 (Second Investigator’s testimony regarding those findings). Mr. Hoffman also thought that ██████████ “had challenges being an effective manager,” but testified that the Commission never considered putting ██████████ on a

¹² The State Legislature subsequently modified the voter initiative to establish the Commission outside of the Treasurer’s Office. 6/17/24 Mtg. Tr. 12:24–13:4.

performance improvement plan and [REDACTED] never told [REDACTED] [REDACTED] was being considered for termination due to [REDACTED] shortcomings as a manager. 6/17/24 Mtg. Tr. 13:14-15, 21:24–22:18. Chair O'Brien thought it was "clear from the outset" that [REDACTED] was not doing [REDACTED] job, 5/31/24 Mtg. Tr. 37:3-5, and that [REDACTED] performance worsened over time, *id.* 169:9-15.

As [REDACTED], [REDACTED] served "at the pleasure of the commission," which the enabling statute defines to be the five commissioners. M.G.L. ch. 10, §§ 76(a), 76(j). Witnesses expressed differing opinions, however, as to whom [REDACTED] reported at the Commission. Mr. Hoffman testified that the enabling statute was not clear as to whether [REDACTED] reported to the Chair as opposed to all commissioners, "and that was a source of debate." 6/17/24 Mtg. Tr. 11:7-14. The Second Investigator testified that she understood [REDACTED] to report to all five commissioners. 5/2/24 Mtg. Tr. 34:20–35:16, 38:22–39:2. Chair O'Brien, meanwhile, believes [REDACTED] reported directly to her, pointing to an undated job posting for the [REDACTED] position that states the [REDACTED] reports to the Commission's Chair. 5/31/24 Mtg. Tr. 36:20-23; Ex. C-3 at CHAIR_026; *cf.* 6/17/24 Mtg. Tr. 11:15-18 (Hoffman testifying he did not recall an internal document stating the [REDACTED] reported to the Chair).

Over time, and before Chair O'Brien joined the Commission, [REDACTED] began to feel burned out. Ex. T-4 at TRE MTG_00025. Shortly after Chair O'Brien assumed her position, [REDACTED] told Chair O'Brien that [REDACTED] might not stay at the Commission much longer. *Id.* In February 2023, [REDACTED] told the commissioners that [REDACTED] was interviewing for a job outside of the CCC. *Id.*

2. Berating and Threatening to Fire [REDACTED].

[REDACTED] "alleged that Chair O'Brien continually berated [REDACTED] and threatened to fire [REDACTED], repeatedly claiming she had a 'blunt instrument' at her disposal to address the problems she believed needed to be fixed at the Commission, i.e., if [REDACTED] would not fix those problems, she

would exercise the blunt instrument of termination.” Ex. T-4 at TRE MTG_00038. As examples, ██████ told the Second Investigator that Chair O’Brien (1) used the term “blunt instrument” in reference to possibly terminating ██████’s employment in a conversation in March or April 2023; (2) shouted at ██████ in fall 2022 about the CCC’s communication staff’s handling of questions about her former affiliation with a Commission licensee; and (3) demanded ██████’s resignation before the Commission’s July 27, 2023 public meeting (which I address in another section below). *Id.* at TRE MTG_00025, TRE MTG_00038.

I find that Chair O’Brien engaged in this alleged conduct because she admitted to the Second Investigator that these interactions occurred. *Id.* at TRE MTG_00038. Like the Second Investigator, I also find that the Chair’s shouting at ██████ “because she was angry about how the communications team handled inquiries about her [was] intimidating.” *Id.* at TRE MTG_00039.

With respect to the March/April 2023 conversation, the Second Report explains that Chair O’Brien used the term “blunt instrument” while speaking with ██████ about her belief that ██████ was not doing enough to address problems she saw at the Commission. Ex. T-4 at TRE MTG_00025. Chair O’Brien told the Second Investigator that she conveyed to ██████ that ██████ “could be fired,” and that ██████ needed to be “held accountable” and “fix” the Commission. *Id.* at TRE MTG_00038; 5/31/24 Mtg. Tr. at 36:20-38:2 (similar). The Second Investigator found Chair O’Brien’s account to be consistent with how ██████ described how Chair O’Brien would berate ██████: lecturing ██████ about “how this place sucks because of” ██████, telling ██████ ██████ was a terrible manager, and accusing ██████ of hiding incompetence among ██████ staff. Ex. T-4 at TRE MTG_00038. ██████ also told the Second Investigator that Chair O’Brien used the term “blunt instrument” repeatedly. *Id.* at TRE MTG_00038-39. The Second Investigator found that

“Chair O’Brien criticized [REDACTED]’s performance and used the term ‘blunt instrument’ to remind [REDACTED] that [REDACTED] could be fired.” *Id.* at TRE MTG_00038.

I find that Chair O’Brien used the term “blunt instrument” in the March/April 2023 conversation informing [REDACTED] that [REDACTED] could be replaced as [REDACTED] because she admitted she did. *Id.*; *see also* 5/31/24 Mtg. Tr. 38:3-21.¹³ Although Chair O’Brien contends that her use of the term was “not a threat,” 5/31/24 Mtg. Tr. 38:10, I do not find her assertion credible. Chair O’Brien made clear to the Second Investigator and in her testimony at the Meeting that both the March/April 2023 conversation’s context and her use of the term “blunt instrument” centered on crudely conveying to [REDACTED] that [REDACTED] could be fired if [REDACTED] job performance did not improve. Ex. T-4 at TRE MTG_00038; 5/31/24 Mtg. Tr. 37:3-38:21. There is nothing inappropriate in a supervisor advising an employee about the possibility that continued poor performance could result in the employee’s termination. It becomes troublesome and inappropriate, however, when the supervisor uses terms like “blunt instrument”—a menacing phrase that evokes imagery of a weapon—to describe her tools to bring about the termination. *See Blunt Instrument*, Merriam-Webster.com Dictionary (last accessed Aug. 30, 2024) (“[A]n object without sharp edges or points that is used as a club. [E.g.,] He was hit over the head with a blunt instrument.”).

Chair O’Brien attempted to justify her use of the term “blunt instrument” by explaining that it was an “acknowledgment that [she] didn’t have a fine-tooth easy method” for replacing

¹³ It is also likely Chair O’Brien used the term “blunt instrument” with [REDACTED] on multiple occasions. [REDACTED] sent an email to himself on July 18, 2023 memorializing a conversation with Chair O’Brien in which Chair O’Brien purportedly “again referenced that she has a blunt instrument at her disposal, which is to fire the [REDACTED]” Ex. T-4A at TRE MTG_00179. Chair O’Brien also told the First Investigator—in a separate investigation unrelated to [REDACTED]—that her “only blunt instrument to fix this place is to fire [REDACTED] [REDACTED], bring people back to the office and create a culture of respect.” Ex. T-3 at TRE MTG_00019 (alterations in original). The Chair’s use of the unique term “blunt instrument” in a different setting strongly suggests that the term was part of her regular lexicon.

██████ because the Commission's enacting statute provides that only an affirmative vote of three commissioners (i.e., not just her) could remove ██████ as ██████. 5/31/24 Mtg. Tr. 38:3-13. She also said it represented the "binary choice" commissioners have with respect to hiring and firing the ██████. *Id.* at 38:14-21. I question whether this is merely a post-hoc justification for why she used the term. In any event, I find that as an experienced manager, Chair O'Brien knew or should have known that using the term "blunt instrument" when informing an employee that ██████ employment could be terminated could reasonably be perceived as threatening.

3. May 22, 2023 Discussion.

On May 22, 2023, before the Commission's public meeting, ██████ and Chair O'Brien discussed ██████'s potential departure from the Commission. Ex. T-4 at TRE MTG_00026. According to Chair O'Brien, ██████ told her that ██████ planned to announce at the meeting that ██████ would be resigning in December and that ██████ would take parental leave starting in September, after ██████ completed ██████ parental leave. 5/31/24 Mtg. Tr. 70:22-71:11. In response, Chair O'Brien says she asked ██████ not to announce ██████ plans that day because at the time the Commission was in the process of conducting searches for multiple high-level positions. *Id.* 41:11-17, 72:3-9. ██████ did not announce any plans at the May 22 meeting. Ex. T-4 at TRE MTG_00026.

4. July 13, 2023 CCC Public Meeting.

On July 13, 2023, the Commission held a public meeting. *See* Ex. T-4 at TRE MTG_00028; Ex. T-16 (July 13, 2023 CCC Public Meeting recording at 2:28:00 to 2:30:30). The five commissioners and ██████ were present at the meeting. *See* Ex. T-16. During the meeting, ██████ addressed the implementation of a new ██████ role. *Id.* Chair O'Brien stated that, as the Commission prepared to create the next year's budget, she would

like the CCC to perform an organizational assessment. *Id.* She then commented on the Commission's work "five years in," queried whether it has the right structure and positions, and emphasized the importance of having a conversation about how the CCC functions, "being mindful of . . . [REDACTED]'s personal issues . . . in terms of having a new child" *Id.* [REDACTED] responded: "Personal issues?" *Id.* Chair O'Brien then said: ". . . not personal, but this came up when you had a new child, and you were out for a couple weeks" *Id.*¹⁴

I find that Chair O'Brien referred to [REDACTED]'s having a new child as a "personal issue" because there is video recording establishing that she did. Based on my viewing of the video recording, [REDACTED]'s surprised reaction to Chair O'Brien's comment makes clear the comment was unwelcome and that [REDACTED] found it off-putting. *See also* Ex. T-4 at TRE MTG_00038 (Second Investigator finding [REDACTED] felt Chair O'Brien's comments at the July 13 meeting were unwelcome). I also find, like the Second Investigator found, that describing something as a "personal issue" can have a negative connotation. Ex. T-4 at TRE MTG_00036. As the Second Investigator explained, "calling parental leave an 'issue' suggests it is a problem." *Id.* Indeed, that is how [REDACTED] perceived it. According to the Second Investigator, [REDACTED] found Chair O'Brien's remarks to be troubling and felt they implied [REDACTED] should not take additional parental leave. 5/2/24 Mtg. Tr. 82:10-12. Further, I find Chair O'Brien made her comment in a public setting, in front of [REDACTED]'s colleagues, which amplified the potential for embarrassment. Chair O'Brien is a seasoned public official who knew she was speaking publicly and being recorded. She spoke deliberately and had plainly given thought to her comments. Any suggestion

¹⁴ [REDACTED]'s child was born on [REDACTED], [REDACTED], [REDACTED]. Ex. T-4 at TRE MTG_00026. [REDACTED] took parental leave, which the Commission had approved, from Monday, June [REDACTED] to Friday, June [REDACTED], 2023. *Id.*

that she did not intend to refer to ██████'s parental leave as a "personal issue" negatively would be disingenuous.

5. July 18, 2023 Conversation.

On July 18, 2023, ██████, Chair O'Brien, and another Commission employee had a conversation that was the focus of some of ██████'s allegations. T-4 at TRE MTG_00036. During this discussion, Chair O'Brien referred to her own, brief parental leave. Ex. T-4 at TRE MTG_00037 (noting Chair O'Brien admitted discussing her leave with ██████); 5/31/24 Mtg. Tr. 41:4-8 (admitting same). Although Chair O'Brien denies that she intended to be critical of ██████ in describing her brief leave, the Second Investigator found that Chair O'Brien's comment caused ██████ to feel Chair O'Brien was pressuring ██████ not to take longer leave. Ex. T-4 at TRE MTG_00037. Based on the Second Investigator's assessment, I adopt that finding. Although the Second Investigator did not make any finding as to Chair O'Brien's intent, 5/2/24 Mtg. Tr. 47:3-49:17, I find that Chair O'Brien, as a highly experienced public official, supervisor, and manager, knew or should have known that, in the context of talking to ██████ about ██████ parental leave, referring to her substantially shorter parental leave while she served in an important management role would likely make any employee also in an important public management role, and as to whom Chair O'Brien was in a supervisory relationship, question ██████ ability to exercise ██████ full leave rights.

6. July 27, 2023 Conversation and CCC Public Meeting.

On Thursday, July 27 and Friday, July 28, 2023, the Commission met to discuss publicly their draft social equity regulations. Ex. T-4 at TRE MTG_00031. Before the July 27, 2023 public meeting, ██████ and Chair O'Brien spoke in Chair O'Brien's office. *Id.* According to the Second Report, Chair O'Brien's and ██████'s recollection of that conversation differ, but they "agree that Chair O'Brien was frustrated because she was not sure how the meeting would run that

day and [REDACTED] had not returned her call earlier in the week; [REDACTED] said [REDACTED] was going to take leave beginning that Monday (July 31); and [REDACTED] was upset because [Chair O'Brien] had made calls about replacing [REDACTED]." *Id.* at TRE MTG_00042. On the remaining aspects of the conversation, the Second Investigator generally credited Chair O'Brien's recounting. *Id.* The Second Investigator ultimately found that [REDACTED] initially agreed to announce [REDACTED] resignation that day, as had been [REDACTED] plan in May, but then Chair O'Brien and [REDACTED] got into an argument when Chair O'Brien admitted to [REDACTED] that she had been calling people about finding someone to succeed [REDACTED] *Id.* at TRE MTG_00043. Chair O'Brien then "more assertively demanded" [REDACTED]'s resignation, [REDACTED] agreed to provide it "someday" (i.e., not that day), and then [REDACTED] indicated [REDACTED] would be taking leave starting Monday, July 31. *Id.*; see also *id.* at TRE MTG_00038 (noting that Chair O'Brien admitted she demanded [REDACTED]'s resignation before the July 27 public meeting). I adopt the Second Investigator's finding as to how Chair O'Brien's conversation with [REDACTED] occurred.

The commissioners and [REDACTED] then met in person for the Commission's public meeting. At the conclusion of the meeting, Chair O'Brien questioned [REDACTED] as follows:

- **Chair O'Brien:** "[REDACTED] Director, do you have any comments you'd like to make?"
- [REDACTED]: "Not at this time."
- **Chair O'Brien:** "Are you going to be making any announcements today?"
- [REDACTED]: "No."
- **Chair O'Brien:** "When are you going to be making your announcement?"
- [REDACTED]: "After I've been able to have discussions with colleagues."

Ex. T-17 (July 27, 2023 CCC Public Meeting recording at 6:56:00 to 6:57:00).

I find that, in the end-of-meeting questioning, even though Chair O'Brien knew that [REDACTED] did not intend to make any announcement that day about resigning, she was pressuring [REDACTED] to announce [REDACTED] resignation and potentially [REDACTED] plan to take leave beginning on July 31. Although an outside observer may not have known what announcement Chair O'Brien was seeking

to elicit, ██████ plainly understood, as ██████ explained that ██████ would make ██████ announcement after ██████ had an opportunity to speak with colleagues. I also find that Chair O'Brien's pressuring of ██████ to make an announcement, despite knowing from their earlier conversation that ██████ was not going to make an announcement that day, was deliberately and unnecessarily hostile.

On the morning of July 28, 2023, ██████ sent a complaint to the Commission's Acting Chief People Officer about Chair O'Brien. *See* Ex. T-4A at TRE MTG_00201-04. The complaint outlined several allegations regarding Chair O'Brien's conduct toward ██████ *Id.* Among other things, ██████ stated in ██████ email, "I now actively question whether it is appropriate for me to use the remaining 10 weeks of parental leave and what consequence I may suffer if I do." *Id.* at TRE MTG_00202-03.

7. July 28, 2023 CCC Public Meeting.

The next day, on July 28, 2023, the commissioners reconvened by video conference to continue their public meeting regarding the draft social equity regulations. Chair O'Brien had made plans two months earlier to go to Las Vegas to celebrate her sister's birthday and she needed to leave the meeting early to catch a flight (as she had told the other commissioners). 5/31/24 Mtg. Tr. 102:14-23. Shortly before leaving the meeting, Chair O'Brien took an agenda item out of order to address "New Business Not Anticipated at Time of Posting." Ex. T-4 at TRE MTG_00031-32; Ex. T-18 (July 28, 2023 CCC Public Meeting recording at 2:37:30 to 2:51:30).

Still in a public session, Chair O'Brien began by describing to the commissioners her conversations with ██████ on May 22 and July 27, announcing that ██████ was planning to resign at the end of the year and that ██████ would be commencing "family leave" starting on Monday. Ex. T-18. Chair O'Brien then explained she had consulted with "labor attorneys" about ██████'s plan to take leave and referenced a 30-day notice requirement for taking such leave.

Id. She commented about wanting to respect the legal rights of employees to “enjoy their family leave,” but immediately thereafter said that the Commission was “in crisis.” *Id.* She added that she wanted to provide notice to the commissioners so they would have time to prepare for the discussion and noted they might need to enter executive session to protect [REDACTED]’s rights. *Id.*

After Chair O’Brien concluded her initial remarks about [REDACTED], Commissioner Camargo raised her hand to comment. *Id.* Commissioner Camargo, who appeared stunned by Chair O’Brien’s comments, said that she needed “a moment to process; that was a lot, I think a little inappropriate.” Chair O’Brien responded, “It is.” *Id.* Commissioner Camargo continued by saying, “I think it is highly inappropriate,” and then decided she needed more time to collect herself before speaking further. *Id.* Commissioner Concepcion, who also appeared alarmed, spoke next, explaining why she thought the commissioners should “put a pin in” what Chair O’Brien raised. *Id.* Chair O’Brien responded that she did not think what she was raising was “inappropriate.” *Id.* Rather, she explained, her announcement was her responding to [REDACTED]’s telling her the day before that [REDACTED] was about to take leave “[REDACTED] is entitled to, but it creates chaos for us.” *Id.* Commissioner Camargo then commented that she thought everyone was “in shock,” to which Chair O’Brien said, “I was.” *Id.* Commissioner Bruce Stebbins, who also appeared uneasy about the discussion, then addressed Chair O’Brien and said, “I just want to be mindful of the conversation you just initiated ... and obviously wanting to make sure that we’re not infringing upon anybody’s – anybody’s rights as an employee.” *Id.*

Chair O’Brien then reiterated that she wanted to provide enough notice “to protect the functioning of the Commission and protect the rights of all employees” to their leave. *Id.* She also said that she knew “this is uncomfortable,” adding “trust me—my jaw dropped yesterday.” *Id.* At the conclusion of the approximately 13 minutes of discussion, Commissioner Camargo

commented that she wanted to clarify when she used the word “shock,” she meant that she was surprised the Commissioners were “having this conversation right now, in public.” *Id.* The meeting then resumed its business as previously planned, although Chair O’Brien only remained in the meeting for approximately 30 minutes longer and then left around 50 minutes before the meeting ended.

Chair O’Brien and the other commissioners made these statements publicly and on video, so I do not need to determine whether they said them; they did. That said, I need to address one point about what Chair O’Brien said on July 28. During the Meeting, Chair O’Brien asserted that she never said ██████’s leave was “highly inappropriate,” but that it was Commissioner Camargo “who made the statement.” 5/31/24 Mtg. Tr. 44:4-7. Chair O’Brien appears to have been making the point that the Second Investigator mistakenly misattributed the words “highly inappropriate” to Chair O’Brien. *See id.* at 163:18–165:24;¹⁵ *see also* Ex. T-4 at TRE MTG_00032. As is clear in the video, Chair O’Brien did not say the words “highly inappropriate” during the July 28 meeting. I do not agree, however, with Chair O’Brien’s contention that she never implied ██████’s use of leave was inappropriate, or with her insinuation that Commissioner Camargo’s use of the term “highly inappropriate” was a reference to ██████’s actions. 5/31/24 Mtg. Tr. 165:22-24.

After Chair O’Brien’s initial announcement about ██████’s plans, Commissioner Camargo said, “that was a lot, I think a little inappropriate,” to which Chair O’Brien responded, “it is.” Ex. T-18. Commissioner Camargo then said, “I think it highly inappropriate.” *Id.* From the context, it is clear Commissioner Camargo was indicating that she thought *Chair O’Brien’s*

¹⁵ During Chair O’Brien’s testimony on this point, she incorrectly stated that the First Investigator, rather than the Second Investigator, reported about Chair O’Brien’s statements during the July 28 public meeting.

comments were inappropriate. *See id.* This is confirmed by Commissioner Camargo's later explaining that when she said she was in "shock," she meant it was surprising the commissioners were "having this conversation right now, in public." *Id.* Chair O'Brien, meanwhile, responded "it is" when Commissioner Camargo said, "I think it is a little inappropriate." *Id.* Chair O'Brien plainly did not believe her own comments were inappropriate, as Commissioner Camargo did. Chair O'Brien therefore could only have been indicating by her retort that she thought ██████'s course of action, including ██████ plan to take parental leave, was inappropriate. Indeed, Chair O'Brien made other remarks on July 28 conveying her view that ██████'s actions were inappropriate, including her referencing discussions with "labor attorneys" and a 30-day notice requirement; indicating his leave would "create chaos" for the Commission; and sharing that her "jaw dropped" when ██████ had spoken with her about ██████ plans to take parental leave.

Chair O'Brien offered several reasons why she chose to announce ██████'s plans publicly on July 28. I do not find these explanations to be credible or to justify her conduct. To start, I do not find Chair O'Brien to be credible when she says she needed to make the announcement at the July 28 public meeting because she was concerned ██████'s absence would hinder the Commission's ability "to do its business." 5/31/24 Mtg. Tr. 101:12-13. Chair O'Brien testified extensively about how she thought ██████ was failing as the organization's ██████ and was, in practice, already absent. *See, e.g.,* 5/31/24 Mtg. Tr. 37:3-5 (testifying that it was "clear from the outset" that ██████ was not doing ██████ job); *id.* at 35:8-9 ("It's undisputed that ██████ was missing at critical times[.]"); *id.* at 35:21-23 (testifying that "by late 2022, ██████ had already had a foot out the door and ██████ wasn't giving ██████ best effort"); *id.* at 169:9-15 (testifying ██████'s performance got worse over her time at the Commission); *id.* at

21:22–22:2 (testifying ██████ was “MIA for months, leaving the organization without the strong leadership it needed during a critical time”); *see also id.* at 219:2–11 (Commissioner Roy testifying that she told ██████ “that the perception and reality is that [there] are individuals managing this agency and you are not one of them”). Two months prior to the public meeting, Chair O’Brien even expressed to me that she thought it was time for ██████ to be replaced given her assessment that ██████ performance was dismal. *See* Dkt. 7 at ¶ 28; 5/31/24 Mtg. Tr. 172:9–12.¹⁶ Given Chair O’Brien’s extensive statements that ██████ was not operating the Commission effectively and had essentially gone missing, her assertion that she was concerned that ██████ taking parental leave would undermine the Commission’s ability to function is not credible.

I further find unpersuasive Chair O’Brien’s contention that she was worried about ██████’s absence because of the Commission’s significant regulatory writing responsibilities at the time. 5/31/24 Mtg. Tr. 105:22–24 (“I was kind of by the seat of my pants. Knowing that I

¹⁶ According to Chair O’Brien, she told Ms. Kim and me during our April 27, 2023 quarterly check-in meeting that she thought it was “time as chair of the Commission that [she] lead this effort to move to a new executive director.” 5/31/24 Mtg. Tr. 172:9–12. Chair O’Brien claims that, in response, Ms. Kim “became visibly upset,” “objected,” and “strongly defend[ed]” ██████, including pointing out that ██████’s ██████ was expecting a baby. Dkt. 7 at ¶ 29; 5/31/24 Mtg. Tr. 95:21–24. Chair O’Brien also testified that after the April 27 meeting, her relationship with ██████ “deteriorated.” Dkt. 7 at ¶ 31; *see also* 5/31/24 Mtg. Tr. 96:1–6. Based on the record before me, I see no causal connection between the April 27 meeting and any downturn in Chair O’Brien and ██████’s relationship. Chair O’Brien testified that she had no awareness “at the time” that our April 27 conversation had somehow impacted her relationship with ██████. 5/31/24 Mtg. Tr. 96:4–6. Her relationship with ██████ was poor before April 27. *See, e.g.,* 5/31/24 Mtg. Tr. 23:13–15 (Chair O’Brien testifying that ██████ had declined to meet with her regularly during her first five months as Chair). And the only example Chair O’Brien identified for how her relationship with ██████ “deteriorated” after the meeting was ██████’s alleged attempt in mid-July 2023 to “set her up” for a claim that she violated another employee’s parental leave rights (an assertion that I do not find to be supported). *Id.* at 96:7–99:16; *see also* Ex. T-4 at TRE MTG_00028–31 (Second Investigator describing the event). Furthermore, Chair O’Brien admitted during the Meeting Ms. Kim’s alleged reaction on April 27 probably did not cause her to do anything different as the Commission’s chair. 5/31/24 Mtg. Tr. 172:13–173:23.

had a crisis, knowing that I was trying to figure out – we had to get these regs done.”). Chair O’Brien testified that ██████ “did very little” in the regulatory writing process. *Id.* at 73:15-17. She also explained that ██████ had appointed someone else to “run the process” and testified that ██████ was “very uninvolved in the process.” *Id.* at 73:18–74:21; *see also* Ex. T-4 at TRE MTG_00037 (noting Chair O’Brien admitting she may have referred to ██████ as “MIA” with respect to the regulatory writing process). Based on Chair O’Brien’s own testimony, then, ██████’s absence would have had minimal, if any, impact on the Commission’s regulatory writing work.

I also do not credit Chair O’Brien’s assertion that she could not have gone into executive session because of timing constraints. 5/31/24 Mtg. Tr. 104:3-4. Chair O’Brien testified that she did not go into executive session because doing so requires “48 hours advance” notice.¹⁷ *Id.* But as explained, Chair O’Brien’s assertion that to protect the functioning of the Commission she needed to urgently share ██████’s plans—and could not wait 48 hours to raise ██████ plans with the other Commissioners appropriately—is at odds with her testimony that ██████ was already “missing in action.” If ██████ was “MIA” as Chair O’Brien asserted, then waiting 48 hours to share the information—effectively the same as if ██████ was out sick for two days—would not have been a problem. Nor ought it have been a problem even if ██████ was integral to the regulatory writing process or the Commission’s functioning. There was no evidence that waiting

¹⁷ Massachusetts’s Open Meeting Law provides: “*Except in an emergency*, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting.” M.G.L. ch. 30A, § 20(b) (emphasis added). The statute defines “emergency” as “a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.” *Id.* at § 18. To the extent Chair O’Brien genuinely thought ██████’s plan to take leave constituted an emergency (as her testimony seemed to suggest), she could have called for an emergency meeting in executive session, as the Second Investigator testified. 5/2/24 Mtg. Tr. 130:17–131:7.

a few days to share the information about ██████'s plan to take parental leave and/or to announce ██████ eventual resignation would impact the then-ongoing regulatory writing process. And to the extent Chair O'Brien and the other commissioners were concerned about ██████'s longer-term absence, they could have, at the appropriate time, taken steps to appoint an acting ██████. 5/31/24 Mtg. Tr. 106:20-22 (Chair O'Brien explaining commissioners can appoint an acting ██████). In short, I am unconvinced that Chair O'Brien's asserted justifications for her conduct explain the true basis for her conduct.

On the record before me, I find that Chair O'Brien chose to announce ██████'s plans because she was (1) upset ██████ had not publicly shared ██████ plan to resign when she had told ██████ to do so the day before, and (2) angry that ██████ was going to take leave on short notice, which she thought was inappropriate. I find that Chair O'Brien knew it was improper—or at least legally risky—for her to announce publicly ██████'s plans, and that she knew it would be harmful to ██████, but she chose to disregard that risk and to harm ██████. Chair O'Brien explained during the Meeting that she chose to consult “legal counsel” after learning on July 27 about ██████'s plan to take leave beginning July 31. 5/31/24 Mtg. Tr. 43:19-44:1. In the morning before the July 28 meeting, Chair O'Brien spoke on the phone with the Commission's outside counsel. *Id.* at 103:3-5; *see* Ex. C-10 (7/28/23 email from J. Kugell to S. O'Brien).¹⁸ During that call, the Commission's outside counsel advised Chair O'Brien that she should address ██████'s leave plans with the other commissioners in executive session rather than at the public meeting. *See* Ex. C-10; 5/31/24 Mtg. Tr. 106:1-4. Chair O'Brien ignored that advice,

¹⁸ I note that the email from the Commission's outside counsel to Chair O'Brien is marked as protected by the attorney-client privilege. The Commission's outside counsel objected to Chair O'Brien's submission of the email (and Chair O'Brien's discussion of advice she received from outside counsel) into the record, but the Officiant overruled the objection.

despite admitting in the Meeting that she is “not an expert in open meeting law” and that she called the Commission’s counsel because she was not sure what she should do, 5/31/24 Mtg. Tr. 105:6-13, and despite stating during the public meeting that the commissioners might need to go into executive session to address the issue, *see* Ex. T-18. I find that Chair O’Brien intentionally chose to disregard the advice of counsel about how to address ██████’s plans.

I further find that Chair O’Brien chose to publicly embarrass and ridicule ██████. This finding is reasonable for several reasons. First, Chair O’Brien deliberately disregarded the advice of counsel about addressing ██████’s plans privately in executive session, opting instead to announce it publicly and dramatically. Second, Chair O’Brien was angry with ██████ because ██████ had defied her demand the day before to announce ██████ resignation. Third, Chair O’Brien felt animosity toward ██████ because she believed ██████ was out to get her. For example, Chair O’Brien claimed at the Meeting that ██████ “used the staff ██████ controlled to undermine [her] and lodge false accusations to force [her] out.” 5/31/24 Mtg. Tr. 23:16-18. Fourth, Chair O’Brien’s relationship with ██████ had soured by July 28. As the Second Investigator explained, there was “increasing tension” between ██████ and Chair O’Brien in the two weeks after she called ██████’s parental leave a “personal issue” at the July 13, 2023 public meeting. Ex. T-4 at TRE MTG_00028. Based on all of the above, it is clear that Chair O’Brien sought to publicly shame and deride ██████ with her announcement at the July 28 meeting.

But even if Chair O’Brien did not intend to ridicule ██████, I find that she knew her announcement could embarrass ██████ and nevertheless chose to proceed with it. ██████ had not given Chair O’Brien permission to announce ██████ resignation. Chair O’Brien knew that ██████ was not ready to make ██████ announcement based on their brief back-and-forth at the conclusion of the prior day’s public meeting about needing to talk to ██████ colleagues. *See*

supra Section III.D.6. And Chair O'Brien knew [REDACTED] had dedicated five years of [REDACTED] career to building the Commission from scratch, and therefore knew or should have known that an announcement about [REDACTED] departure from the Commission would be significant and impactful for [REDACTED]. Ex. T-4 at TRE MTG_00043. Still, Chair O'Brien chose to announce [REDACTED]'s plans to resign without [REDACTED] consent. Further, Chair O'Brien testified that she could not go into executive session because [REDACTED]'s plan to take leave and resign concerned [REDACTED] "performance," and discussion of performance is not exempted from the open meeting law. *Id.* at 105:14-18. Yet she admitted during the Meeting that discussion of [REDACTED]'s performance in a public meeting has the potential to be "embarrassing and harmful" to [REDACTED]. *Id.* at 108:24-109:10. Chair O'Brien therefore knew that making her announcement about [REDACTED] could be harmful to [REDACTED] but still chose to make the announcement.

I also credit the Second Investigator's finding that Chair O'Brien's actions on July 28 "effectively extinguished any chance [REDACTED] could define the terms on which [REDACTED] left the Commission, and she set off a media firestorm from which [REDACTED] feels [REDACTED] career cannot recover." Ex. T-4 at TRE MTG_00043.¹⁹

8. July 31, 2023.

After I had an opportunity to view the July 28 public meeting, I requested a meeting with Chair O'Brien. 5/31/24 Mtg. Tr. 107:9-14. We met by Zoom on July 31, 2023. *Id.* In that meeting, I conveyed to Chair O'Brien that I had watched the recording and was troubled by her comments about the [REDACTED]. *Id.* at 107:15-18. I also told her I was concerned by her

¹⁹ See, e.g., Colin A. Young, *Mass. Cannabis Commission "in Crisis," Chair Says, in Announcing Executive Director's Exit*, Bos. Globe (July 28, 2023, 5:54 p.m.), <https://www.bostonglobe.com/2023/07/28/marijuana/cannabis-marijuana-cannabis-control-board/>.

demeanor at the meeting and that she should decide whether she should continue in her role at the Commission. *Id.* at 107:15–108:1. At the Meeting, Chair O’Brien testified that she was trying to be “slow and measured” at the July 28 public meeting. *Id.* at 107:18-19. I do not share Chair O’Brien’s impression of her demeanor at the public meeting and think the video speaks for itself. Indeed, Chair O’Brien even apologized to her fellow commissioners at next public meeting for the way she made the announcement. *See infra* Section III.D.9.

Also on July 31, 2023, [REDACTED] sent a follow-up complaint to the Commission’s Acting Chief People Officer. Ex. T-4A at TRE MTG_00199. In [REDACTED] email, [REDACTED] stated that [REDACTED] had not resigned and did not give Chair O’Brien permission to discuss or disclose information about [REDACTED] “FMLA [Family Medical Leave Act] status.” *Id.* [REDACTED] also stated that [REDACTED] was “not sure as to the status of [REDACTED] remaining parental leave, as it appears as though the Commission, at least the titular head, believes anything more than 2 weeks of leave is inappropriate.” *Id.* at TRE MTG_00200.

9. August 10, 2023 CCC Public Meeting.

The CCC held a public meeting on August 10, 2023. *See* Ex. T-19 (Aug. 10, 2023 CCC Public Meeting recording at 0:01:30 to 9:00). At the start of the meeting, Chair O’Brien read a prepared statement that apologized to the other commissioners for “the way [she] made an announcement before [she] left the July 28, 2023 meeting” and for any “confusion” that she caused. *Id.* She also acknowledged she caught the other commissioners “off guard” and “there was some concern about that.” *Id.* Chair O’Brien then offered justifications for her July 28 remarks. *Id.*; *see also* Ex. T-4 at TRE MTG_00032. Chair O’Brien did not apologize to [REDACTED] in her statement, nor did she seek to make clear that she supports employees exercising their right to take family leave.

Again, because Chair O’Brien made these statements publicly and on video, I do not need to determine whether she said them; she did. I also find Chair O’Brien did not express any remorse

for her treatment of [REDACTED] on July 28 or seek to remedy any doubt she may have caused about employees' ability to exercise their entitlements to take leave.

E. Chair O'Brien's Conduct Toward [REDACTED].

Before the Commission's July 27, 2023 public meeting, Chair O'Brien and [REDACTED] raised their voices at each other in an "immature-sounding back-and-forth over who would prepare the [meeting] script." Ex. T-4 at TRE MTG_00044. The Second Investigator found that [REDACTED] had not performed her job duty (i.e., preparing the script) as Chair O'Brien expected and that Chair O'Brien had grounds to address that with [REDACTED], but Chair O'Brien did not behave professionally or model leadership in handling the situation. *Id.* at TRE MTG_00045. The Second Investigator concluded that Chair O'Brien's conduct toward [REDACTED] on July 27 did not violate the Commission's anti-bullying policy because the single instance the Second Investigator was asked to investigate was insufficiently severe to violate the policy without evidence of repetition. *Id.* I adopt the Second Investigator's findings with respect to [REDACTED]'s complaint against Chair O'Brien and agree Chair O'Brien's actions in this incident were unprofessional and contrary to how a leader should behave and treat a colleague but not, by themselves, bullying.

F. Chair O'Brien's Evasiveness and Lack of Candor During Interviews with the Investigators.

1. Statements During Interviews with the First Investigator.

In the First Report, the First Investigator noted multiple times that Chair O'Brien evaded the First Investigator's questions during interviews. For example, the First Report states: "[T]hroughout the interviews with Chair O'Brien, the undersigned investigator observed the Chair, at times, avoided directly answering questions and, instead, read from prepared notes, rather than respond to the queries presented." Ex. T-3 at TRE MTG_00003. As another example, the First Investigator asked Chair O'Brien about her statements to new staff members, both of whom are

Black, that included an assumption about where those staff members lived. *Id.* at TRE MTG_00018. The First Report commented: “However, the Chair was, as this investigator often experienced, evasive and would not provide an explanation regarding her assumptions.” *Id.*

I find these statements by the First Investigator about Chair O’Brien’s evasiveness during her interviews to be credible. I do not have reason to doubt the First Investigator’s assessment of Chair O’Brien’s responsiveness and forthrightness during her interviews. My finding is further supported by my own observation of Chair O’Brien’s evasiveness to certain lines of questioning during the Meeting. For example, Chair O’Brien did not provide a straight answer to a question by my counsel about whether she would “agree that any perception by internal constituents of ethnic bias by a commissioner of the [CCC] would not be in the best interests of the Commission.” 5/31/24 Mtg. Tr. 128:2-13. As another example, when my counsel asked Chair O’Brien if she understood she needed to abide by Commission policies as the Commission’s leader, Chair O’Brien deflected and suggested she was not the leader. *Id.* at 121:11-12 (“I’d like to clarify. You call me the leader. I was not the executive director.”). Chair O’Brien, however, had made a point in her opening remarks to emphasize that she, as Chair, was responsible for “exercise[ing] supervision and control over all the affairs of the commission” (quoting the enabling statute) and that the Executive Director was her subordinate. *Id.* at 22:16-18, 23:10-11, 49:3-5.

2. Statements During Interview with the Second Investigator.

According to the Second Investigation Report, Chair O’Brien told the Second Investigator—during a meeting in which Chair O’Brien’s counsel was present—that she was unaware [REDACTED] was on parental leave when she contacted [REDACTED].²⁰ Ex. T-4 at TRE

²⁰ The Second Investigator found that during [REDACTED]’s two-week leave in June 2023, Chair O’Brien sent [REDACTED] 19 emails (most of which were “FYI” in nature), as well as one Microsoft

MTG_00035; *see also* Ex. C-40 at 2:53:55 (Second Investigator: “You said you had no idea [REDACTED] was on leave. At some point did you learn that [REDACTED] was actually taking a couple of weeks of parental leave?” Chair O’Brien: “I never knew [REDACTED] was on leave.”). The Second Investigator found Chair O’Brien’s assertion was not credible because it was “belie[d]” by emails between Chair O’Brien and the [REDACTED] before and during the two-week leave period. *Id.* Based on the Second Investigation Report and the documents in the record (*see, e.g.*, Ex. T-4A at TRE MTG_00408, 00422, 00433, 00453, 00458, and 00485), I agree with the Second Investigator and find Chair O’Brien’s assertion that she was unaware the [REDACTED] was on leave when she contacted [REDACTED] in early June 2023 is not credible.

Testimony from Chair O’Brien and Commissioner Roy that the commissioners were never formally notified about the commencement of [REDACTED]’s leave does not alter my conclusion. 5/31/24 Mtg. Tr. 42:6-8 (Chair O’Brien), 194:1-4 (Commissioner Roy); *see also* Ex. T-4A at TRE MTG_00337 (11/1/23 email from Commissioner Roy to D. Hilton-Creek).²¹ Apart from whether the commissioners were formally notified by the Commission’s Acting Chief People Officer, [REDACTED] had been communicating with Chair O’Brien about the anticipated birth of [REDACTED] child and [REDACTED] planned absence. On June 1, 2023, [REDACTED] emailed Chair O’Brien, with the subject line “DRAFT – OOO Delegations,” a draft memorandum that [REDACTED] had been “updating/developing

Teams message and one text message, both asking the [REDACTED] to speak. *See* Ex. T-4 at TRE MTG_00026.

²¹ I am suspicious about the circumstances of Commissioner Roy’s November 1, 2023 email to the Commission’s Human Resources about [REDACTED]’s leave in June 2023. Commissioner Roy wrote “to confirm” to the CPO that commissioners were not formally notified by the Acting CPO that [REDACTED] was exercising [REDACTED] right to leave in the first two weeks of June 2023. Ex. T-4A at TRE MTG_00337. She sent the email nearly six months after [REDACTED]’s leave, and just one week after Chair O’Brien’s interview with the Second Investigator (October 23, 2023). Ex. T-4 at TRE MTG_00033. Commissioner Roy forwarded her email to the CPO to the Second Investigator on November 3, 2023, Ex. T-4A at TRE MTG_00337, and sat for interviews with the Second Investigator on November 3 and 7, 2023. 5/31/24 Mtg. Tr. 203:21-24.

regarding any temporary (2 weeks) absence.” Ex. T-4A at TRE MTG_000458. Chair O’Brien responded that she hoped [REDACTED] was feeling alright, and asked if [REDACTED] had time to chat the next day, commenting “I hate to step into your personal time now.” *Id.* Based on this exchange, Chair O’Brien plainly understood [REDACTED] was preparing for an absence of approximately two weeks. She also understood the reason why [REDACTED] was taking leave, as indicated by her comment about [REDACTED]. *See also* 5/31/24 Mtg. Tr. 39:14-18 (Chair O’Brien explaining she had discussed baby names with [REDACTED] before the baby was born). So even if the commissioners were not formally notified of [REDACTED]’s parental leave, Chair O’Brien’s direct communications with [REDACTED] show she knew [REDACTED] was going to be temporarily out of the office because of the birth of [REDACTED] child.

Inconsistency in Chair O’Brien’s testimony about this issue causes me to question the veracity of what Chair O’Brien says she knew at the time. Chair O’Brien testified that “at the time, [she] didn’t know exactly what family leave benefit all CCC employees were entitled to.” 5/31/24 Mtg. Tr. 41:8-10. Yet she also testified moments later that [REDACTED] improperly failed to provide commissioners “the legally required 30-day notice about [REDACTED] planned leave.”²² *Id.* 42:19-21. Nearly within the same breath, Chair O’Brien disclaimed that she had any knowledge of employees’ entitlement to parental leave yet claimed to know with certainty that [REDACTED] had not provided proper notification for [REDACTED] leave.

²² Chair O’Brien’s assertion regarding [REDACTED]’s purported duty to notify commissioners is inaccurate. The Commission’s Handbook only requires that employees provide 30-days’ notice—to the CPO—of their intent to take parental leave when practicable. Ex. T-4A at TRE MTG_00562; *see also* 5/2/24 Mtg. Tr. 61:18—62:2 (Second Investigator testifying that the Commission’s policy required employees to give 30-days’ notice to the CPO, not to the commissioners). Federal law similarly requires 30-days’ notice to the “employer” when practicable for an employee to exercise FMLA leave for the birth of a new child. *See also* 29 U.S.C. § 2612(e)(1).

I also find it likely that Chair O'Brien was dishonest with the Second Investigator given my observation of other instances of Chair O'Brien's dishonesty. For example, as explained above, Chair O'Brien denied at the Meeting that she had told the First Investigator that she should not have used an ethnic slur. *See supra* at 22-23. But she represented to the Superior Court and Appeals Court the opposite: she had acknowledged to the First Investigator that she should not have repeated the real estate developer's words. *Id.*

G. Relevant Workplace Policies.

As Chair and a commissioner of the CCC, an agency of the Commonwealth of Massachusetts, Chair O'Brien was subject to several workplace policies. These policies included (1) the CCC Employee Handbook ("Handbook"); (2) the CCC Enhanced Code of Ethics ("Code of Ethics"); and (3) Manager Code of Conduct issued by the Executive Office for Administration and Finance. Chair O'Brien received these three policy documents on August 31, 2022, following her appointment to the CCC. *See* Ex. T-9; *see also* 5/31/24 Mtg. Tr. 115:20–116:4 (Chair O'Brien "[g]enerally" recalled receiving this email). Chair O'Brien admitted—and I agree—that it was important for her as the incoming Chair of the CCC to be familiar with these policies and that she should abide by them. 5/31/24 Mtg. Tr. 119:19–120:5; *see also* M.G.L. ch. 10, § 76(k) (requiring commissioners to comply with M.G.L. ch. 268A—the code of conduct for public officials and employees—and the Commissions' enhanced code of ethics); Ex. T-9 at TRE MTG_00706 (Manager Code of Conduct § 3.03) (requiring compliance "with all of the policies and operating procedures of the agency/department in which [the manager] work[s]"). She also admitted to reading each of these documents to varying degrees. 5/31/24 Mtg. Tr. 118:21–119:18.

IV. ASSESSMENT OF GROUNDS FOR REMOVAL

Based on my review of the record, I conclude that Chair O'Brien should be removed as a commissioner of the CCC because she has committed gross misconduct and is unable to discharge the powers and duties of a commissioner. M.G.L. ch. 10, § 76(d).

A. "Gross Misconduct"

Section 76(d) does not define the phrase "gross misconduct." Nor is there any decision I have located by a Massachusetts court (or otherwise) interpreting the phrase in the context of Section 76(d) or other statutes that allow for removal of a public official for "gross misconduct." *See, e.g.*, M.G.L. ch. 12A, § 2 (removal of inspector general); M.G.L. ch. 41, § 91 (removal of constables). I therefore look to other sources to provide guideposts for the phrase's meaning.

Black's Law Dictionary defines "gross misconduct in the workplace" as "intentional²³ or reckless²⁴ behavior that might harm someone, esp. a fellow employee, or the employer." *See Gross Misconduct in the Workplace*, Black's Law Dictionary (11th ed. 2019). The definition continues: "Gross misconduct may include acts in disregard²⁵ of the safety of others, unlawful discrimination, libel, harassment, and various criminal offenses." *Id.*

²³ "Intentional" means "[d]one with the aim of carrying out a given act," or "performed or brought about purposely." *Intentional*, Black's Law Dictionary (12th ed. 2024).

²⁴ "Reckless" means "[c]haracterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash. Reckless conduct is much more than mere negligence: a gross deviation from what a reasonable person would do." *Reckless*, Black's Law Dictionary (12th ed. 2024). "Recklessness" means "[c]onduct whereby the actor does not desire harmful consequence but nonetheless foresees the possibility and consciously takes the risk," or "[t]he state of mind in which a person does not care about the consequences of his or her actions." *Recklessness*, Black's Law Dictionary (12th ed. 2024).

²⁵ "Disregard" means "[t]he action of ignoring or treating without proper respect or consideration." *Disregard*, Black's Law Dictionary (12th ed. 2024).

There is also Massachusetts case law interpreting the phrase “gross misconduct,” albeit in the context of other statutes. In *Hellman v. Board of Registration in Medicine*, the Supreme Judicial Court discussed the phrase’s meaning while reviewing a decision by an administrative board to discipline a doctor for “gross misconduct” in the practice of medicine. 404 Mass. 800, 804 (1989). In law, the Court explained, the term “misconduct” is “more than that conduct which comes about by reason of error of judgment or lack of diligence. It involves intentional wrongdoing or lack of concern for one’s conduct.” *Id.* And whether an act constitutes misconduct depends on “the facts surrounding the act, the nature of the act, and the intention of the actor.” *Id.* The word “gross,” the Court continued, generally means “flagrant” or “extreme,” and has been defined to mean “[o]ut of all measure; beyond allowance; not to be excused; flagrant; [or] shameful[.]” *Id.* (first alteration in original) (citations omitted).

The phrase “gross misconduct” also appears in the context of cases involving eligibility for COBRA benefits. Under federal law, a former employee becomes eligible for a COBRA election after a qualifying event, which includes termination other than by reason of the employee’s “gross misconduct.” 29 U.S.C. § 1163(2). The COBRA statute does not define “gross misconduct,” but Massachusetts federal courts have interpreted the phrase in resolving coverage disputes. In *Moore v. Williams College*, Judge Michael Ponsor explained that “gross misconduct” involves more than “mere ‘negligence or incompetence,’” and that courts have not found gross misconduct when “the behavior at issue was inadvertent or sporadic—for example, where a forgetful employee occasionally neglected an employer’s instructions.” 702 F. Supp. 2d 19, 24 (D. Mass. 2010), *aff’d*, 414 F. App’x 307 (1st Cir. 2011) (table). He noted several examples in which courts have found gross misconduct, including when “an employee called a co-worker a racial slur and threw an apple at her” and when “an employee repeatedly and persistently refused to follow the instructions

of his supervisor.” *Id.* (citations omitted). “In short,” Judge Ponsor concluded, “the conduct at issue must generally be ‘outrageous, extreme or unconscionable’ to constitute gross misconduct.” *Id.* (citation omitted).

In view of these sources, I interpret “gross misconduct” in Section 76(d) to describe certain harmful conduct performed intentionally or recklessly, i.e., with disregard for the risk of, or lack of concern about, the consequences of one’s actions. The harmful conduct must be flagrant, extreme, inexcusable, outrageous, and/or shameful, including (but not limited to) acts disregarding the safety or rights of others (e.g., the right to be free from unlawful discrimination or harassment, or the right to exercise an entitlement to leave). Unless sufficiently severe, the conduct also typically involves repeated, rather than single or sporadic, actions.

Based on the findings of fact set forth above, I conclude that Chair O’Brien’s actions set forth below, some individually, and even where not individually, collectively, amount to gross misconduct and thus warrant Chair O’Brien’s removal as a commissioner of the Commission.

1. Chair O’Brien’s Racially, Ethnically, and Culturally Insensitive Conduct.

By statute, social equity is at the core of the CCC’s mission and operations. *See supra* Section II.A. For example, in creating the Commission, the legislature required the Commission to adopt procedures and policies to promote and encourage full participation in the marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities. M.G.L. ch. 94G, § 4(a½)(iv). Chair O’Brien understood the Commission’s mandate. She explained at the Meeting, for instance, that one of the Commission’s “central responsibilities” is to “promot[e] access to” the cannabis industry for “targeted groups, such as persons of color, women, LGBTQ community, disabled persons, and veterans.” 5/31/24 Mtg. Tr. 19:13-19; *see also id.* at 27:2-6 (Chair O’Brien

describing “help[ing] social equity applicants, especially persons of color, enjoy the financial benefits of a lucrative cannabis industry” as one of the CCC’s “core missions”).

Chair O’Brien understood that, in assuming the position of Chair of the Commission, she was expected “to provide leadership to promote social equity.” 5/31/24 Mtg. Tr. 16:4-6. Chair O’Brien is also a public face and leader of the Commission. *Id.* at 180:8-9; M.G.L. ch. 10, § 76(h). Chair O’Brien thus had a responsibility, if not a heightened responsibility, to make certain her conduct comported with the Commission’s social equity-oriented mission and her leadership of the organization.

In that context in particular, Chair O’Brien’s use of the term “yellow”—a term she acknowledges is a “derogatory slur,” *id.* at 28:15—to refer to people in the Asian community was reckless and casts shame on her and the Commission. Chair O’Brien essentially conceded as much when she acknowledged to the First Investigator that she “should have cleaned it up” and that it is “hard to know what to say sometimes.” Ex. T-3 at TRE MTG_00017. The cover she seeks in hindsight in contextualizing that she was repeating someone else’s use of the term does not excuse her conduct. Rather than take responsibility for the statement, Chair O’Brien excuses and deflects by saying that she was quoting an “African American real estate developer.” Dkt. 9 at 19. Repeating racially derogatory slurs is not acceptable in any context. We all are aware of derogatory slurs for people who are Black, Jewish, Irish, and other groups of people, the use of which in any context—including repeating another’s use of them—is utterly unacceptable. That is no less the case for the slur for Asians uttered by Chair O’Brien. And it is outrageous when coming from the leader of an organization charged with advancing the economic interests and opportunities of people of color, among other targeted groups.

Similarly reckless and inexcusable—for similar reasons—is Chair O’Brien’s assuming of women of color, including Commissioner [REDACTED] and the First Investigator, that they must know certain other people of color. The notion that all women of color in politics, or all successful women of color, in Boston must know one another is ludicrous. And saying to women of color that they must know certain individuals in whole or in part because they are of the same race, *see supra* at 24-26, is obtuse, outrageous, and intolerable—particularly for the leader of a government agency that puts social equity, and advancing the economic interests of women and minorities, at the forefront of its mission. Chair O’Brien’s offensive remark implying her surprise that Constituent Service Associates (“these people”) could be articulate is similarly troubling.

I also conclude that statements made by Chair O’Brien to the First Investigator and at the Meeting reflect her callousness and/or recklessness and lack of sensitivity as to racial and ethnic issues. It is confounding why the Chair volunteered to the First Investigator her surmise about the country of origin and lack of accent of a Black member of the Commission’s staff. What does the birth country, or the accent or lack of accent, of the staff member have to do with anything material to the CCC or the First Investigator’s investigation? Likewise confounding, and reflecting Chair O’Brien’s lack of sensitivity, or ability, to avoid making ethnic comments, was her ethnicity-focused interjection at the Meeting about her lawyer “getting all us Irish people mixed up.” 5/2/24 Mtg. Tr. 62:12-13. While intended to be humorous, in the context of a proceeding focused in part on whether she makes racially inappropriate comments, her ethnicity-focused remark reflected a shocking insensitivity to the issues at hand.

2. Chair O'Brien's Interference with [REDACTED]'s Parental Leave Rights.

The Second Investigator concluded that Chair O'Brien interfered with [REDACTED]'s parental leave rights in violation of Sections 6.7 and 6.9 of the Handbook. Ex. T-4 at TRE MTG_00036-37. Based on my assessment of the record, I agree with that conclusion.

Sections 6.7 and 6.9 provide eligible employees, including [REDACTED] protected leave to care for a new child. Section 6.7 describes employees' entitlement to family and medical leave under federal and state law. Ex T-9 at TRE MTG_00652. Section 6.9 describes employees' entitlement to parental leave. *Id.* at TRE MTG_000652-54. The Second Investigator concluded that Chair O'Brien did not interfere with [REDACTED]'s initial two-week leave in violation of the Handbook. Ex. T-4 at TRE MTG_00035. I do not disturb that conclusion. The Second Investigator concluded, however, that Chair O'Brien's actions after [REDACTED] returned from [REDACTED] initial two-week leave violated the Handbook because they interfered with [REDACTED]'s right to take the remainder of the leave to which [REDACTED] was entitled. *Id.* at TRE MTG_00036. I agree with that conclusion. Chair O'Brien's conduct on July 13 (the "personal issues" comment at the public meeting), July 18 (comparing her brief leave to [REDACTED]'s leave), and July 28 (indicating in a number of ways at a public meeting that [REDACTED]'s plan to take leave was inappropriate), as described in detail above, together deprived [REDACTED] of assurance that [REDACTED] could avail [REDACTED] of [REDACTED] leave rights under the Handbook without consequence, thereby interfering with those rights. *Id.* at TRE MTG_00036-37.

Chair O'Brien seeks to avoid culpability for her actions by arguing that there could not be interference because [REDACTED] purportedly received all the leave to which [REDACTED] was entitled. Her argument misses the point. Discouraging someone from exercising a protected right interferes with the individual's exercise of the right, regardless of whether the individual is ultimately able

to exercise the right. Under the FMLA, for example, employers may not “interfere with, restrain, or deny the exercise of *or the attempt to exercise*” any FMLA right. 29 U.S.C. § 2615(a)(1). Chair O’Brien’s actions caused [REDACTED] to question—in an email to the Commission’s Acting CPO—whether [REDACTED] could take leave without consequence, thereby hindering [REDACTED] attempt to exercise [REDACTED] rights. Her actions also would have caused any reasonable person to question whether they could take protected leave without consequence. And, while it is difficult to know, the public nature of her statements potentially caused other employees of the Commission, and potentially members of the public who have viewed or may in the future view the Chair’s conduct at the public meeting, to question whether they can and should take protected leave without consequence.

Chair O’Brien’s interference with [REDACTED]’s parental leave rights constitutes gross misconduct. Her violation of the Handbook, which she had read and admitted she was expected to know/abide by, is evidence of the wrongfulness of her conduct. But even separate from the finding that Chair O’Brien violated the Handbook, Chair O’Brien’s actions, all done intentionally or recklessly, as discussed above, *see supra* at 37-49, were inexcusable and demonstrated a lack of concern about the consequences of her actions, namely, the potential of interfering with [REDACTED]’s right to use [REDACTED] full entitlement of parental leave. It is flagrant and shameful to behave in a manner that would—and did—cause an employee to think [REDACTED] could not take leave to which [REDACTED] was entitled by law and under the Handbook. It is especially outrageous for the person causing the interference to be a supervisor of the employee and the organization’s leader. These conclusions are all the more resonant because, as noted above, family leave rights are historically fundamental to the workforce participation of caregivers, including women, one of the constituencies the legislature singled out for protection in the legalization statute. M.G.L. ch. 10,

§ 77. Chair O'Brien's conduct is also inexcusable because it exposed the Commission to potential legal liability, given that family/parental leave is protected by federal and state law.

3. Chair O'Brien's Bullying, Intimidating, and Disrespecting Colleagues.

a. Additional Conduct Toward Commissioner [REDACTED]

Commissioner [REDACTED] took offense to Chair O'Brien's repeatedly referring to [REDACTED] as Commissioner [REDACTED]'s "buddy," despite Commissioner [REDACTED] asking Chair O'Brien not to do that. Commissioner [REDACTED] took offense to this because, with [REDACTED] and her being people of color, [REDACTED] perceived Chair O'Brien's unwelcome "buddy" references to be racially motivated. In Commissioner [REDACTED]'s view, Chair O'Brien was "pair[ing]" her with [REDACTED] because they are both people of color, "putting all Black people together in the same bucket." Ex. T-3 at TRE MTG_00015. Chair O'Brien claimed that she referred to [REDACTED] as Commissioner [REDACTED]'s buddy because [REDACTED] and Commissioner [REDACTED] appeared to her to have a uniquely special relationship, which Chair O'Brien claims she understood from Commissioner [REDACTED] using a nickname ("[REDACTED]") in communicating with [REDACTED]. That might make sense if Chair O'Brien had not continued to refer to them as "buddies" after Commissioner [REDACTED] repeatedly requested that Chair O'Brien stop. Chair O'Brien offered no explanation as to why she continued to refer to [REDACTED] as Commissioner [REDACTED]'s "buddy" even after Commissioner [REDACTED] explained that [REDACTED] was simply a work colleague with whom [REDACTED] had a professional working relationship. If nothing else, Chair O'Brien's continuing references to [REDACTED] as Commissioner [REDACTED]'s "buddy" was harassing (in any lay definition sense of the word), particularly because it was repeated and intentional, and in disregard of any harm it was causing Commissioner [REDACTED], her peer and colleague. It was also contrary to the Handbook's affirmation that the CCC is "actively committed to providing a safe and collegial work

environment based on mutual respect” and “free from discrimination or harassment.” Ex. T-9 at TRE MTG_00634.

b. Bullying and Threatening [REDACTED]

Chair O’Brien’s conduct at the Commission’s July 28, 2023 public meeting was flagrant, extreme, inexcusable, outrageous, and shameful.

As described in detail above, *see supra* Section III.D.7, at that Friday meeting, Chair O’Brien:

- Publicly announced without the permission of [REDACTED] the Commission’s long-time [REDACTED] that [REDACTED] had told her that [REDACTED] intended to resign;
- Made the announcement in a way that implied [REDACTED] had reneged on a promise to announce [REDACTED] resignation;
- Disclosed that [REDACTED] had told her the day before of [REDACTED] plan to take “family leave” beginning the following Monday (a leave to which the Chair stated at the July 28 meeting [REDACTED] was “entitled”);
- Indicated [REDACTED] leave was inappropriate, including through her response to her colleagues’ reactions to the announcement and her declarations that [REDACTED]’s leave would create “chaos” for the CCC, that the CCC relatedly was in “crisis,” and that she was “in shock” and her “jaw dropped” when [REDACTED] had told her of [REDACTED] plan to take leave; and
- Implied that the way she understood [REDACTED] was going to be taking family leave violated labor laws.

And Chair O’Brien raised this information regarding [REDACTED] at a public meeting against the advice of the Commission’s counsel. *See supra* at 47-48.

While it is not the basis for my conclusions, I note that the spontaneous, contemporaneous reactions of the other commissioners at that July 28 meeting support my conclusions about the wrongfulness and severity of Chair O’Brien’s conduct at the meeting. At the beginning of Commissioner O’Brien’s diatribe against [REDACTED] Commissioner Camargo, clearly sensing the inappropriateness of the Chair’s conduct, tried to interrupt the Chair, interjecting “I am so confused . . .” Ex. T-18. Chair O’Brien, however, insisted on continuing. After Chair O’Brien stopped

speaking and finally allowed comment by the other commissioners, Commissioners Camargo and Concepcion, obviously taken aback by the Chair's unexpected attack on [REDACTED] both indicated they needed a moment to process what the Chair had just done. *Id.* Commissioner Concepcion then said that she thought it best not to address the substance of the Chair's tirade, empathetically saying that she "[w]ant[ed] to give our [REDACTED]" "some space to digest what has happened and an opportunity here." *Id.* Commissioner Camargo expressed the view that Chair O'Brien's public statements about [REDACTED]'s purported intentions about announcing [REDACTED] resignation and about [REDACTED] parental leave were "highly inappropriate" and had left everyone in "shock" that Chair O'Brien had raised the information in a public setting. *Id.* Commissioner Stebbins similarly expressed his concern that the Chair had infringed [REDACTED]'s rights, saying he "want[ed] to be sure we're not infringing on anybody's rights as an employee." *Id.*

In the Second Report, the Second Investigator concluded that "[i]t is difficult to imagine any reasonable person could watch the July 28 meeting (which is available to view by anyone online) and conclude the Chair's public comments, without more, would not embarrass and humiliate [REDACTED]" Ex. T-4 at TRE MTG_00043; *see also id.* at TRE MTG_00039-40 (concluding that "a reasonable person would find [Chair O'Brien's] public proclamations that [REDACTED] is leaving [REDACTED] job at the end of the year, before [REDACTED] had made any final plans or shared those plans with [REDACTED] colleagues, [was] abusive and humiliating"). The Second Investigator went on to say that Chair O'Brien's conduct was "especially severe and egregious due to both the content and the public setting." Ex. T-4 at TRE MTG_00043. The Second Investigator concluded:

[Chair O'Brien] effectively extinguished any chance [REDACTED] could define the terms on which [REDACTED] left the Commission, and she set off a media firestorm from which [REDACTED] feels [REDACTED] career cannot recover. While that remains to be seen, the Chair's decision to publicly deprive [REDACTED] of a graceful exit from the agency [REDACTED] built and, for the most part, led competently for years cannot be viewed as anything other than bullying behavior in violation of Section 3.11 [of the Handbook].

Id. Putting aside whether Chair O'Brien's behavior violated the Handbook, I agree and adopt the Second Investigator's conclusions, including that Chair O'Brien was doing nothing short of bullying [REDACTED]²⁶

As explained above, *see supra* at 47, I find that she engaged in this abhorrent conduct because she was mad at [REDACTED] because [REDACTED] had not acceded the day before (at the July 27, 2023 public meeting) to her expectation, if not demand, that [REDACTED] announce [REDACTED] intent to resign; and she was angry [REDACTED] was going to take leave on short notice. I do not credit Chair O'Brien's claimed justifications for shaming and bullying [REDACTED] in this way. *See id.* For example, at the July 28, 2023 public meeting, Chair O'Brien claimed to need to disclose publicly all of this highly personal (and potentially confidential²⁷) information about [REDACTED] because she claimed

²⁶ Section 3.11 of the Handbook prohibits, among other things, "bullying [] employees or using threatening language." Ex. T-9 at TRE MTG_00638. Without a definition in the Handbook, I turn to the dictionary, where I find that bullying means: "to treat (someone) in a cruel, insulting, threatening, or aggressive fashion." *Bully*, Merriam-Webster.com Dictionary (last accessed Aug. 29, 2024). I note that the Second Investigator used a more detailed definition for "abusive conduct," which is conduct "a reasonable person would find abusive, based on the severity, nature, and frequency of the conduct, including, but not limited to: repeated verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature; or the sabotage or undermining of an employee's work performance. . . . A single act normally shall not constitute abusive conduct, but an especially severe and egregious act may meet this standard." Ex. T-4 at TRE MTG_00039 (alteration in original). The Second Investigator concluded that Chair O'Brien bullied [REDACTED] in violation of the Handbook, based on (1) her conduct at the July 28, 2023 public meeting alone; and (2) the totality of her conduct toward [REDACTED], including her conduct at the July 28, 2023 public meeting. Ex. T-4 at TRE MTG_00039-40, TRE MTG_00043. The Second Investigator's conclusion that Chair O'Brien violated the Handbook is evidence of the wrongfulness of Chair O'Brien's conduct and supports my conclusion that she committed gross misconduct. Chair O'Brien disregarded her obligation to comply the Commission's policies (with which she was familiar and knew she needed to abide by) and maintain proper standards of conduct.

²⁷ Chair O'Brien may have breached the Code of Ethics in disclosing without permission [REDACTED]'s plans to resign and exercise a protected leave right, both of which arguably constitute personnel file information under Massachusetts law and thus should not have been publicly disclosed. Section 12 of the Code of Ethics prohibits Commission personnel, including commissioners, from "improperly disclos[ing] confidential information acquired by them in the

to believe that [REDACTED]'s giving too little notice of when [REDACTED] leave would start "could have an impact on the regulations [then being drafted] and everything else that [the Commission] need[ed] to do" and "created chaos for us." Ex. T-18. At the Meeting, Chair O'Brien similarly justified her disregard for [REDACTED] as to [REDACTED] planned leave by claiming she "had to protect the ability of the commissioners to determine how the CCC would function during a ten-week absence where we might not be able to even communicate with the [REDACTED]" 5/31/24 Mtg. Tr. 44:18-22.

Through her own testimony, however, Chair O'Brien, has refuted any claim, and undermined her credibility in contending, that a leave taken by [REDACTED] would compromise the Commission's work. *See supra* at 44-47. She testified repeatedly that [REDACTED] was essentially never present to do work. *See, e.g.*, 5/31/24 Mtg. Tr. 21:22–22:2 (testifying [REDACTED] was "MIA for months, leaving the organization without the strong leadership it needed during a critical time"); *id.* at 35:1-2 (testifying [REDACTED] was missing in action from the CCC when [REDACTED] wasn't on leave"); *id.* at 36:12-13 ("[REDACTED] wasn't around during these critical times."); *id.* at 37:3-5 ("My duty as chair is to make sure the [REDACTED] does [REDACTED] job. It was clear from the outset [REDACTED] was not doing so.").

Nor did Chair O'Brien demonstrate in any credible way the reason why she could not have addressed the issues in executive session, out of the public eye, as the Commission's lawyer had urged her to do. While she understood that 48-hours' notice was required to go into executive

course of their official duties" or "us[ing] such information to further their personal interest." Ex. T-9 at TRE MTG_00736. The Code of Ethics defines "confidential information" to include personnel file information. *Id.* Chair O'Brien's public announcement of [REDACTED]'s plans, which she had learned about in the course of her duties as Chair, therefore may have violated the Code of Ethics. I do not need to resolve the issue, however, because I find that, at the very least, Chair O'Brien acted with reckless disregard as to whether she was disclosing [REDACTED]'s personal, and potentially confidential, information in violation of the Code of Ethics.

session, *id.* at 104:3-4, she provided no credible explanation for why discussion of any issues concerning ██████ could not wait for 48 hours, or more.

In short, I view Chair O'Brien's rationalization for shaming and bullying ██████ to be pretextual. She was not genuinely concerned about the repercussions for the Commission's work if ██████ took the leave to which, by the Chair's own understanding, ██████ was entitled. Rather, she was angry at ██████ for not having announced ██████ resignation as she had instructed the day before and informing her on short notice of ██████ intent to take leave. As she told the First Investigator, Chair O'Brien did not view herself as "accountable to anyone [at the Agency]." Ex. T-3 at TRE MTG_00019 (alteration in original). That is how she comported herself at the July 28 meeting. Her deliberate (or, at a minimum, reckless) mistreatment of ██████ was petty and vindictive, and inexcusable for the leader of a government agency.

For all of these reasons, Chair O'Brien's actions on July 28 alone constituted gross misconduct. But even beyond her severe and egregious actions that day, the totality of Chair O'Brien's conduct toward ██████ described above, *see supra* Section IV.D, which occurred over the course of just 11 months (from September 2022 through July 2023), constitutes gross misconduct. This conduct included: yelling at ██████ about the CCC's communication staff's handling of questions about her former affiliation with a Commission licensee; publicly pressuring ██████ at the July 27, 2023 public meeting to announce ██████ plan to resign; using (and likely repeatedly using) the menacing term "blunt instrument" when conveying to ██████ that ██████ could be fired due to ██████ performance; and making public comments about ██████'s parental leave, including describing ██████ two-week absence in June 2023 as a "personal issue" and ridiculing and humiliating ██████ on July 28, as detailed above. These repeated instances of abusive conduct toward ██████ demonstrate, at a minimum, that Chair O'Brien operated with reckless

disregard for [REDACTED]'s entitlement as a Commission employee to be in a "safe and collegial work environment based on mutual respect" and free from "bullying" or "threatening language." Ex. T-9 at TRE MTG_00634, TRE MTG_000638. Chair O'Brien's conduct toward [REDACTED] was extreme, outrageous, and inexcusable, especially for a supervisor, experienced manager, and leader of a government agency. Altogether, Chair O'Brien's bullying actions constitute gross misconduct.

4. Collectively, Chair O'Brien's Behavior at Issue Amounts to Gross Misconduct.

Although some or all of each of the individual instances of gross misconduct described above independently warrant Chair O'Brien's removal as a commissioner under M.G.L. ch. 10, § 76(d), the totality of Chair O'Brien's conduct, as described above in the findings of fact and conclusions, also clearly constitutes gross misconduct and warrants her removal. Chair O'Brien's racially, ethnically, and culturally insensitive conduct; disrespectful and harassing conduct toward Commissioner [REDACTED]; threatening, abusive, and humiliating conduct toward [REDACTED] that deprived [REDACTED] of assurances that [REDACTED] could take parental leave to which [REDACTED] was statutorily entitled and amounted to bullying; raising her voice at [REDACTED] her public disclosure of highly personal (and potentially confidential) information about [REDACTED] and her dishonest and evasive answers to certain questioning by the Investigators into allegations about her behavior—all during her short tenure as a public face and leader of an important state agency committed to the promotion of social equity—collectively was flagrant, extreme, and outrageous, and showed a lack of concern for her colleagues and the Commission as a whole. She violated multiple Commission policies and may well have violated federal and state laws governing leave, exposing the Commission to legal liability. I therefore conclude that Chair O'Brien should be removed as a commissioner for this additional, independent reason.

B. Unable to Discharge the Powers and Duties of the Commissioner's Office.

Section 76(d) also permits removal of a commissioner who is “unable to discharge the powers and duties of the commissioner’s office.” M.G.L. ch. 10, § 76(d). Oxford English Dictionary defines “unable” as “not having ability or power[] to do or perform . . . something specified,” or “lacking ability in some implied respect; incompetent; inefficient.” *Unable*, Oxford English Dictionary Online (last accessed Aug. 29, 2024). “Discharge,” as relevant to this context, means to “perform (a duty).” *Discharge*, Oxford English Dictionary Online (last accessed Aug. 29, 2024). This enumerated ground thus permits removal of a commissioner who is incapable, unfit, or lacking in ability to perform competently the powers and duties of a CCC commissioner.

Chair O’Brien has argued that the “unable to discharge” provision of Section 76(d) only permits removal if she develops a “disability or illness that prevents her from doing her job.” Dkt. 9 at 10; *see also* 6/17/24 Mtg. Tr. 35:6-7 (Chair O’Brien’s counsel referring to this ground as requiring “[i]ncapacity”). I believe that is an overly narrow reading of the statute. The provision’s language—“unable to discharge the powers and duties of the commissioner’s office”—does not use the terms “disability,” “illness,” or “incapacity.” Significantly, however, elsewhere in the same statute (Section 76) the legislature *did* use the term “disability.” In Section 76(j), the legislature provided: “In the case of an absence or vacancy in the office of the executive director or in the case of *disability* as determined by the commission, the commission may designate an acting executive director to serve as executive director until the vacancy is filled or the absence or *disability* ceases.” M.G.L. ch. 10, § 76(j) (emphasis added). When the legislature wanted to address the question of “disability” in Section 76, it used the word “disability.” The absence of the word “disability” in the “unable to discharge” provision of Section 76(d) indicates that the legislature intended to address circumstances other than, or at least more than, “disability.” To be sure, the phrase “unable to discharge” seemingly could apply when a commissioner has a

“disability” rendering her physically incapable of fulfilling the responsibilities of her position. But the legislature, which clearly knew how to indicate when it was addressing “disability,” did not use that term in Section 76(d) and instead chose a phrase that captures the inability to perform the duties of office more broadly than just health-related incapacity. *See Commonwealth v. Dones*, 492 Mass. 291, 294 (2023) (explaining that courts “presume . . . that the Legislature intended what the words of the statute[] say” (citation omitted)).

Under a plain reading of the statute, Chair O’Brien has proven herself unable to discharge the duties of a commissioner. Among the duties of a commissioner—especially the Chair, the Commission’s leader, M.G.L. ch. 10, § 76(h)—is to conduct oneself in accordance with the Commission’s policies, including the Handbook and Code of Ethics. *See supra* at 55; *see also* M.G.L. ch. 10, § 76(k) (requiring commissioners to comply with M.G.L. ch. 268A—the code of conduct for public officials and employees—and the Commissions’ enhanced code of ethics). The Manager Code of Conduct, also applicable to Chair O’Brien, reinforces that Chair O’Brien was required as a commissioner to abide by the Commission’s policies. Ex. T-9 at TRE MTG_00706 (Section 3.03) (requiring compliance “with all of the policies and operating procedures of the agency/department in which [the manager] work[s]”). Chair O’Brien admitted that it was important for her as Chair to be familiar with these policies and that she should abide by them. 5/31/24 Mtg. Tr. 119:19–120:5. Yet as described in detail above, Chair O’Brien has shown herself to be incapable of performing the duty of adhering to Commission policies, having violated several Commission policies, including Sections 3.11, 6.7, and 6.9, during her first year as Chair.

Separately and independently, another of Chair O’Brien’s duties as a commissioner is to advance the Commission’s mission. As explained above, the Commission’s mission is derived from the Commission’s legislative mandate to promote “social equity” in the Commonwealth’s

cannabis industry. *See supra* Section II.A. The CCC emphasizes that it seeks to encourage “robust participation by minorities” in the industry and aims to positively impact communities that were “disproportionately harmed by marijuana prohibition and enforcement.” *Id.* As Chair O’Brien recognized, “help[ing] social equity applicants, especially persons of color, enjoy the financial benefits of a lucrative cannabis industry” is one of the CCC’s “core missions.” 5/31/24 Mtg. Tr. 27:2-6. Racially, culturally, and ethnically insensitive conduct by anyone at the Commission—especially a commissioner—is antithetical to that mission. Such conduct casts reasonable doubt—internally and externally to the CCC—that the Commission is making unbiased decisions and operating in accordance with its mandate. As a result, Chair O’Brien—who has engaged in racially, culturally, and ethnically insensitive conduct, as explained above—has shown herself incapable of fulfilling the important duty of advancing the Commission’s social equity mission.

A commissioner, especially the Chair, also has a duty to be a leader. Chair O’Brien understands that her position made her leader of the Commission. 5/31/24 Mtg. Tr. 122:19-22; *see also id.* at 173:1-2 (“[M]y job is to run the Cannabis Control Commission in the best interest of the public.”). She also understands that good leaders conduct themselves in a manner that sets a positive example for others in the organization to follow, take care to communicate effectively, and take responsibility for their actions. *Id.* at 138:6-19. Chair O’Brien has failed on each of these scores. Her violations of the Handbook and repeated negative interactions with colleagues are directly contrary to the positive example that a good leader should model. *See, e.g.,* Ex. T-4 at TRE MTG_00045 (“Chair O’Brien was the leader and should have set an example of how to behave under pressure [when interacting with ██████████]; she failed to do so.”). Her conduct at multiple public meetings and in private communications with colleagues shows an inability to convey information responsibly and appropriately. And her statement at the August 2023 public

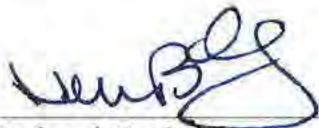
meeting (addressing her conduct at the July 28 meeting without apologizing to [REDACTED]), her evasiveness with the First Investigator, and her defiance at the Meeting when asked about certain allegations show an inability to take responsibility for her actions. *See, e.g.*, 5/31/24 133:1-7 (“Q. Chair, you – you concede that you should not have used the word yellow when you recounted what [the real-estate developer] said, correct? ... A. I – I concede that this has been weaponized against me[.]”).

I am removing Chair O’Brien as a commissioner for this additional, independent statutory ground.

V. CONCLUSION

For the foregoing reasons, pursuant to Massachusetts General Laws Chapter 10, Section 76(d), I remove Shannon P. O’Brien as a commissioner of the Cannabis Control Commission effective Tuesday, September 10, 2024.

Dated: September 9, 2024


Deborah B. Goldberg
Treasurer & Receiver General
Commonwealth of Massachusetts

SUPPLEMENTAL FINDINGS AND CONCLUSIONS BELOW

VI. SUPPLEMENTAL FINDINGS AND CONCLUSIONS

As noted in my operative findings and conclusions above, my decision to remove Chair O'Brien as a commissioner is *not* based on statements in the First Report attributed to unnamed witnesses. This is out of deference to the conclusion of the Officiant that statements from witnesses not identified by name in the First Report lacked reliability and trustworthiness and therefore ought not be used as evidence to support my decision. *See* T. Maffei, Memorandum and Ruling Regarding Shannon O'Brien's Objections to the Admissibility of Anonymous Sources in the First Report at 14-15 (June 12, 2024). Given that, through my counsel, I had urged that there be no constraints on my consideration of those statements, the Officiant permitted them to "remain in the record as an offer of proof." *Id.* As detailed in my supplemental findings and conclusions below, insofar as it is ever found that the statements of unnamed witnesses referenced in the First Investigator's Report are appropriate for my consideration as to whether Chair O'Brien should be removed pursuant to G.L. c. 10, § 76(d), they further support my decision to remove Chair O'Brien as a commissioner of the CCC.

The First Investigator interviewed nine witnesses during her investigation. Four of those witnesses the First Investigator identified in the First Report by name, including Chair O'Brien. The remaining five witnesses, all Commission employees, requested to remain anonymous because they feared Chair O'Brien would retaliate against them for participating in the investigation and sharing their complaints about Chair O'Brien's conduct. Ex. T-3 at TRE MTG_00002. The First Investigator found the employees' concerns "to be credible and compelling," and therefore agreed not to disclose the identities of these witnesses in the First Report. *Id.* To protect the employees' identities, she included their statements in the First Report without attribution or, when possible, by presenting their statements in the aggregate. *Id.* The First Investigator also did not disclose the five witnesses' identities when she was questioned at

the Meeting, although she referred to the witnesses by number (e.g., Witness 1, Witness 2) when addressing questions about those witnesses' statements.²⁸

A. Supplemental Findings of Fact.

1. The Unidentified Witnesses Credibly Fear Retaliation from Chair O'Brien, and the First Investigator Reasonably Decided to Offer Anonymity.

The First Investigator testified that the unidentified witnesses raised the issue of anonymity with her during their interviews and expressed concerns that Chair O'Brien would retaliate against them for reporting Chair O'Brien's conduct and participating in the investigation. 5/30/24 Mtg. Tr. 27:1–36:4. Witness 1, for example, told the First Investigator that they did not want their name to be revealed and was “concerned about negative consequences, either from the chair or individuals perceived as allies of the chair,” for speaking with the First Investigator. *Id.* at 27:23–28:9. Witness 2 similarly “indicated their hesitation to speak without anonymity” and that they were “concerned about potentially losing their job because they shared some concerning behavior or interactions that they observed or experienced regarding the chair.” *Id.* at 29:16-23. The First Investigator found the five witnesses' concerns of retaliation to be “credible and compelling” and granted them anonymity to obtain their participation. Ex. T-3 at TRE MTG_00002.

I find the First Investigator's determination that the five unidentified witnesses credibly feared retaliation from Chair O'Brien to be trustworthy and reliable. The First Investigator is an experienced investigator who has conducted internal employment-related investigations for decades. 5/3/24 Mtg. Tr. 19:6-9, 20:12-14. She therefore is highly qualified to assess witness credibility, including with respect to their fears of retaliation. Further, based on my findings

²⁸ The First Investigator did not disclose the unidentified witnesses' identities at the Meeting on instruction from the Commission's outside counsel, who had engaged the First Investigator for the investigation. 5/30/24 Mtg. Tr. 71:2-8. The unnamed witnesses' identities have not been made known to me.

concerning Chair O'Brien's hostile and bullying conduct toward her colleagues, as well as her apparent belief that she cannot be held accountable as a commissioner (i.e., that she "basically can't be fired unless [she's] in a coma," Ex. T-3 at TRE MTG_00019), these employees reasonably feared that they could suffer negative consequences from Chair O'Brien for reporting Chair O'Brien's conduct.

Chair O'Brien's and Commissioner Roy's belief that there is a culture of retribution at the Commission provides additional credence to the five witnesses' concerns. Chair O'Brien testified that the Commission has a "toxic internal work culture," and that licensees "are fearful of retribution from CCC staff." 5/31/24 Mtg. Tr. 18:13-14, 20:5-6. She also asked the First Investigator not to interview a former commissioner as part of the investigation because "if anything got out that she might be making comments about staff, it could be used as reason to harm her professionally.... Industry people remain fearful of retribution for bringing issues up the food chain at the Commission." Ex. T-3A at TRE MTG_00157. Commissioner Roy testified that she was fearful of retaliation because she was providing testimony in support of Chair O'Brien. 5/31/24 Mtg. Tr. 177:18-24. She also testified that many people, including Commission staff, believed that [REDACTED] rather than [REDACTED] was "running the agency." *Id.* at 219:13-14. But she refused to identify—and demanded Chair O'Brien's counsel not ask her about—who on the CCC staff held that belief because she wanted to "protect them." *Id.* at 219:15-17. If the Commission's culture is as toxic and beset with fears of retribution as two of the Commission's leaders describe, then the Commission employees' concerns of retaliation unfortunately appear to be legitimate and well founded.

The existence of anti-retaliation laws does not undermine the reasonableness of the First Investigator's decision to offer and maintain anonymity. As the First Investigator testified,

retaliation may still occur despite the existence of laws and policies prohibiting retaliation for participating in a workplace investigation, as evidenced by various agency and court proceedings involving claims of retaliation. 5/30/24 Mtg. Tr. 22:12–23:20. She further testified that she regularly interviews witnesses who are skeptical that anti-retaliation laws or policies will sufficiently protect them from retaliation or reprisal. *Id.* It is not unreasonable to believe that witnesses here distrusted that an anti-retaliation statute would protect them when the potential violator is the highest-ranking official in the organization. *Id.* at 20:10–21:23. In other investigations the First Investigator has permitted witnesses to remain anonymous when witnesses “were fearful of retribution by high ranking executives.” *Id.* at 23:21–24:6.²⁹

2. The “Upham’s Corner” Comment.

Two unidentified witnesses described to the First Investigator a regulatory meeting in 2023 in which there was discussion about Massachusetts communities, including Upham’s Corner in Dorchester. Ex. T-3 at TRE MTG_00017. According to the First Investigator, Upham’s Corner is perceived by some to be a “community of color, specifically, African American.” 5/30/24 Mtg. Tr. 48:19-24; Ex. T-3 at TRE MTG_00018. The unidentified witnesses told the First Investigator that during the meeting, Chair O’Brien looked at staff of color and said, “You should be able to talk about Upham’s Corner,” or a substantially similar statement. Ex. T-3 at TRE MTG_00017. The First Investigator found the witnesses to be credible. *Id.* When the First Investigator asked Chair O’Brien about the statement, Chair O’Brien said she did “not recall the context” of the conversation or “making that statement.” *Id.* The First Investigator testified that one witness (Witness 5) was present at the meeting during which Chair O’Brien made the alleged comment,

²⁹ The Second Investigator also testified that she has, in an investigation involving a staff member of an academic institution whose behavior was intimidating, granted anonymity to make witnesses who feared retaliation comfortable coming forward with their concerns. 5/2/24 Mtg. Tr. 188:16–190:1.

and the other witness (Witness 4) heard about the statement from other individuals. 5/30/24 Mtg. Tr. 42:3–48:17.

I find that, more likely than not, Chair O'Brien said to staff of color at a meeting that they "should be able to talk about Upham's Corner," or a substantially similar statement. The First Investigator found that two witnesses credibly reported to her that Chair O'Brien made such a statement, and I do not have a reason to doubt the First Investigator's assessment that these witnesses made the statements attributed to them and were credible. My finding that Chair O'Brien more likely than not made the statement is also based on my findings, as noted above, that Chair O'Brien made other race-based comments and assumptions, which makes the likelihood that she made this specific statement more credible. I also find that asserting that a person of color should be able to speak about a geographic area perceived to be a community of color is an offensive, raced-based assumption.

3. Additional Allegations and Findings About Chair O'Brien's Conduct.

The First Investigator reported that, in addition to the examples identified in the First Report,³⁰ there were "several additional incidents of rude comments, racially insensitive remarks and other professionally inappropriate conduct that are not detailed herein for the sake of brevity relative to this summary report." Ex. T-3 at TRE MTG_00017. The First Investigator noted, however, that witnesses had "repeated observations of and negative interactions with Chair

³⁰ I note that, while Chair O'Brien admitted to using the term "yellow" during a meeting in the fall of 2022, *see supra* at 22, and Commissioner Roy testified this was at an executive session of the Commission's commissioners, *see* 5/31/24 Mtg. Tr. at 208:14-21, the statements to the First Investigator by an unnamed witness (so-called "Witness 2"), established, credibly in my view, that the witness, an employee of the Commission, was present when the Chair made the derogatory slur. *See* 5/3/24 Mtg. Tr. at 109:1-2; 5/30/24 Mtg. Tr. at 39:4-15 (First Investigator testifying that a Commission employee at the meeting heard Chair O'Brien use the derogatory slur.)

O'Brien" while trying "to work collaboratively with the Chair during her tenure at the Commission." *Id.*

The First Investigator also concluded:

[T]he undersigned investigator finds all the witnesses—Agency leadership, management and staff—unanimously experienced multiple negative interactions, problematic behavior and professionally inappropriate conduct during interactions with Chair O'Brien in the workplace. Based on the multitude of credible witness statements—from both BIPOC and non-BIPOC individuals—there is a shared consensus that the comments, remarks, and statements made by Chair O'Brien are perceived to be race-based or, at a minimum, to be racially, ethnically and culturally insensitive.

Id. at TRE MTG_00022; *see also id.* at TRE MTG_00023 (making similar conclusion). I find these statements by the First Investigator, in which she summarizes the information she heard from numerous witnesses, to be credible and trustworthy. Again, the First Investigator is an experienced attorney and investigator, I found her testimony at the Meeting to be credible, and I trust that she is reporting her assessment of witness complaints accurately and fairly.

B. Supplemental Conclusions.

The foregoing supplemental findings of fact support my determinations that Chair O'Brien committed gross misconduct and is unable to discharge the duties of a commissioner, and that she should be removed as commissioner. Eight CCC employees interviewed by the First Investigator "unanimously experienced negative interactions, problematic behavior and professionally inappropriate conduct during interactions with Chair O'Brien in the workplace." That alone is inexcusable and outrageous and warrants removal. The same is true for Chair O'Brien's presumption that people of color, merely because of their race, are familiar with a neighborhood perceived to be a community of color. And it is similarly alarming that five witnesses—all Commission employees in the agency overseen by Chair O'Brien—were so afraid of retaliation from Chair O'Brien that they sought to remain anonymous when sharing their concerns about her

conduct. Chair O'Brien's conduct demonstrated, at a minimum, reckless disregard for her colleagues' entitlement under the Handbook to a "safe and collegial work environment based on mutual respect" and "free from discrimination or harassment." Ex. T-9 at TRE MTG_00634.

The context in which Chair O'Brien engaged in this conduct exacerbates its flagrancy. As described above, by legislative mandate, social equity is central to the Commission's purpose and operations. It therefore is completely unacceptable for anyone at the organization, let alone its titular leader, to engage in racially, ethnically, and culturally insensitive conduct. Even the appearance of racial bias is detrimental to the Commission's mission of ensuring full participation in the cannabis industry of minorities and other groups that have been disproportionately harmed by marijuana prohibition and enforcement. No one in the agency (or any workplace) should engage in such conduct, and certainly not its leader.

Chair O'Brien's recurring racially, ethnically, and culturally insensitive conduct, as described in these supplemental findings and the findings and conclusions above, alone, and certainly in combination with her other conduct detailed in my main findings above, constitutes gross misconduct and warrants her removal from the Commission pursuant to M.G.L. ch. 10, Section 76(d).

Dated: September 9, 2024

A handwritten signature in blue ink, appearing to read "Deborah B. Goldberg", written over a horizontal line.

Deborah B. Goldberg
Treasurer & Receiver General
Commonwealth of Massachusetts