

THE STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

February 26, 2009

9:30 a.m.

Reported By:

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Certified Reporter (AZ 50803)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN  
 2 ELECTIONS COMMISSION, convened at 9:35 a.m. on February  
 3 26, 2009, at the State of Arizona, Clean Elections  
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,  
 5 Arizona, in the presence of the following Board members:  
 6 Mr. Gary Scaramazzo, Chairperson  
 Ms. Royann Parker (Telephonic)  
 7 Ms. Lori Daniels (Telephonic)  
 Mr. Jeff Fairman  
 8  
 9 OTHERS PRESENT:  
 10 Todd Lang, Executive Director  
 Tanja Shipman, Attorney General's Office  
 11 Mr. Donald Lindholm  
 Paula Ortiz, Executive Assistant  
 12 Colleen McGee, Deputy Director  
 Rita Azcona, Administrative Assistant III  
 13 Michael Becker, Voter Education Manager  
 Daniel Ruiz II, Campaign Finance Manager  
 14 Ann Eschinger, Clean Elections Institute  
 Rhonda Barnes, Perkins Coie Brown & Bain  
 15 Nancy Read, Office of Secretary of State  
 Mike Valder, AZ Advocacy Network  
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1 and I've enjoyed the acquaintance of each of you.  
 2 CHAIRMAN SCARAMAZZO: Well, we look forward to  
 3 seeing you in the future, okay?  
 4 COMMISSIONER LINDHOLM: All right.  
 5 CHAIRMAN SCARAMAZZO: Don, thank you much.  
 6 (Applause.)  
 7 COMMISSIONER LINDHOLM: I should just leave  
 8 now, shouldn't I?  
 9 CHAIRMAN SCARAMAZZO: You can take that with  
 10 you, and, you know, I've always dreamed of --  
 11 Good morning, how you doing?  
 12 COMMISSIONER DANIELS: I'm doing fine. I would  
 13 have called sooner. I didn't get the email because I  
 14 was being deposed all day yesterday.  
 15 CHAIRMAN SCARAMAZZO: Oh, fun.  
 16 COMMISSIONER LINDHOLM: You just missed the  
 17 applause. I'm leaving, and so they clapped.  
 18 COMMISSIONER PARKER: We will miss you. It's  
 19 been fun working with you.  
 20 CHAIRMAN SCARAMAZZO: Don, thank you so much.  
 21 Take care.  
 22 COMMISSIONER LINDHOLM: Thank you.  
 23 CHAIRMAN SCARAMAZZO: Okay, take care.  
 24 Okay. We just finished up Item II, Lori, so  
 25 we're moving on to Item III, seeking approval of the

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1 P R O C E E D I N G  
 2  
 3 CHAIRMAN SCARAMAZZO: Well, let's get started  
 4 with the meeting. We have a quorum now, so we'll get  
 5 going with on this. So with that, let me call the order  
 6 of this meeting of the Citizens Clean Election  
 7 Commission. It's Thursday, February 26th, 2009. It's  
 8 9:35 a.m.  
 9 So with call -- being called to order, the  
 10 first item of business on the agenda this morning is to  
 11 show appreciation to Don Lindholm for his service to the  
 12 Clean Elections Commission, and by a three-to-two vote  
 13 we decided we appreciated it, okay.  
 14 COMMISSIONER LINDHOLM: Who were the two?  
 15 CHAIRMAN SCARAMAZZO: And we asked Don to be  
 16 here today and he was gracious enough to take time out  
 17 of his schedule to come because we did want to present  
 18 you with this plaque of appreciation.  
 19 Don came to our rescue when we were in need of  
 20 a commissioner, filled in, and jumped right into it, and  
 21 we're going to miss you, and we appreciate everything  
 22 you've done for the Commission.  
 23 COMMISSIONER LINDHOLM: Well, I'm going to  
 24 miss you guys, and I think you're lucky to have a  
 25 wonderful staff. I have enjoyed my time here very much,

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1 January 27, 2009, Commission meeting minutes..  
 2 COMMISSIONER DANIELS: Okay, so moved.  
 3 COMMISSIONER PARKER: Second.  
 4 CHAIRMAN SCARAMAZZO: Hold on one second. Let  
 5 me get it on the floor, Todd.  
 6 Okay. It's been moved by Commissioner Daniels  
 7 and second by Commissioner Parker to approve the  
 8 January 27, 2009, Commission meeting minutes.  
 9 Discussion on this item, Todd?  
 10 MR. LANG: Thank you Mr. Chair, Commissioners.  
 11 On page 27, line 12, in a presentation by the  
 12 deputy director, Colleen McGee, she referred in the  
 13 first sentence -- the second sentence after, "That's  
 14 corrected," it should read, "That was 2007," not 2000.  
 15 And that's the only change I have, Commissioners.  
 16 CHAIRMAN SCARAMAZZO: Okay. 2007.  
 17 MR. LANG: Change 2000 to 2007.  
 18 CHAIRMAN SCARAMAZZO: Okay. Any other  
 19 corrections to the minutes?  
 20 Hearing none, then we'll make that change to  
 21 2007, on page 27, line 12.  
 22 Hearing nothing else, all those in favor say  
 23 "aye."  
 24 (Chorus of ayes.)  
 25 CHAIRMAN SCARAMAZZO: Opposed? Motion

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1 carries.  
2 Move on to Item IV, Executive Director Report.  
3 Todd?  
4 MR. LANG: Thank you, Mr. Chair.  
5 Good morning, Commissioners.  
6 As you see there, Secretary of State Bennett,  
7 has issued the biennial adjustments of our various  
8 funding amounts and dollar figures, and what this means  
9 is for the governor's race in 2010, primary funding will  
10 be at \$707,000. General funding will be just over a  
11 million dollars.  
12 For legislative races, to give you sort of a  
13 perspective, primary funding will be \$14.3 thousand and  
14 general funding will be \$21 and a half, or  
15 \$21.5 thousand.  
16 I also mentioned that Colleen McGee and I look  
17 forward to meeting Secretary Bennett. We'll be meeting  
18 with him next week, just as an introductory meeting.  
19 As you know, we work very closely with that  
20 agency, have a number of shared functions, and of  
21 course, rely on their computer system, their software  
22 system, so we look forward to meeting with him.  
23 The lawsuit by the Goldwater Institute and the  
24 so-called Institute for Justice is proceeding, and our  
25 attorney, Tanja Shipman, has been quite busy, as there

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1 that point of the agenda item.  
2 Unless you have questions, that concludes my  
3 report.  
4 COMMISSIONER PARKER: Todd, I have a question.  
5 Are they going to depose all of the commissioners, do  
6 you know?  
7 MR. LANG: Mr. Chair, Commissioner Parker, my  
8 understanding is that if you've not yet been noticed,  
9 you're safe.  
10 COMMISSIONER PARKER: Okay.  
11 MS. SHIPMAN: The discovery -- if I may,  
12 Commissioner?  
13 CHAIRMAN SCARAMAZZO: Please.  
14 MS. SHIPMAN: Discovery closes tomorrow, so I  
15 think that you can consider yourself fairly safe.  
16 COMMISSIONER PARKER: Okay.  
17 MS. SHIPMAN: Absent some kind of court order  
18 opening discovery up further, you will not be deposed.  
19 COMMISSIONER PARKER: Okay, thanks.  
20 MR. LANG: In my view, they have plenty of  
21 information so I can't imagine that this will come up  
22 again.  
23 CHAIRMAN SCARAMAZZO: I can't say that I'm  
24 disappointed.  
25 COMMISSIONER DANIELS: I am -- I was hoping

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1 have been deposed every day. And, Commissioner Daniels,  
2 congratulations on getting through what I am told was a  
3 very lengthy deposition yesterday of some seven hours.  
4 COMMISSIONER DANIELS: I feel like I deserve  
5 combat pay at this point. It was bad.  
6 MR. LANG: If it helps comfort you, I will be  
7 deposed this afternoon, and this will be for my third  
8 time, so --  
9 COMMISSIONER DANIELS: Well, I hope we pay you  
10 enough to go through that.  
11 MR. LANG: So yeah, but that's proceeding, and  
12 I mention this because, of course, it is very important  
13 but also to let you know that the Quelland enforcement  
14 matter is proceeding, but because of all the depositions  
15 and the various aspects of litigation, scheduling a  
16 mutually agreeable time for Mr. Davis's depo in the  
17 Quelland matter has taken some time.  
18 Tanja has managed to persuade Mr. Davis to  
19 appear on March 13th, for his deposition. After that,  
20 staff will have a recommendation for you. So it looks  
21 like now it may be April, because of the lateness of  
22 this deposition. But, of course, we will comply with  
23 any requests you have in that regard.  
24 And, you know, obviously I have some comments  
25 about the pending legislation, but I'll save that for

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1 the rest of you could go through this. I'm only  
2 teasing.  
3 CHAIRMAN SCARAMAZZO: Share the fun, huh?  
4 COMMISSIONER DANIELS: Yeah, I wouldn't wish  
5 it on my worst enemy, I promise.  
6 CHAIRMAN SCARAMAZZO: All right. Any other  
7 questions for Todd?  
8 Otherwise, we'll move into Item No. V,  
9 consideration of possible action -- thanks, Todd -- on  
10 the following proposed commission rule changes, and  
11 there are numbers of them so we should probably take  
12 these individually, I would assume. Okay. Todd? A,  
13 R2-20-101.  
14 MR. LANG: Thank you, Mr. Chair, and of  
15 course, Commissioners, this is the first consideration.  
16 If you approve these, they will be posted for notice and  
17 comment of 60 days. And then they would come back  
18 before you as you've approved them or with proposed  
19 changes for your consideration before they would be  
20 finally approved and then be take -- take effect after  
21 preclearance.  
22 And, of course, we anticipate and solicit and  
23 hope for a number of comments during that notice and  
24 comment period.  
25 Turning to the first -- the first proposed

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1 change, we've changed the definition, as you can see, in  
 2 101 of unopposed.  
 3 This was made at the suggestion of several  
 4 candidates, and it's simply designed to do two things.  
 5 One is to clarify what it means, and two, to spell out  
 6 that there are two meanings of unopposed in terms --  
 7 there are two applications of the term "unopposed" in  
 8 the law.  
 9 One is for purposes of initial funding, which  
 10 is a very broad -- which is a very narrow definition of  
 11 unopposed. Basically to get full funding under the Act,  
 12 you have to be un -- you have to be opposed.  
 13 And you're only unopposed if you have no  
 14 opposition in either the primary or the general. That's  
 15 one definition.  
 16 The other definition is for purposes of  
 17 matching funds. There it's -- you know, what it's --  
 18 what it's focused on is that particular race, either the  
 19 primary or the general.  
 20 And we believe these changes will make that  
 21 distinction clear and will help understand it, and so  
 22 we'd ask you for your approval.  
 23 COMMISSIONER PARKER: Mr. Chairman, I make a  
 24 motion we approve this rule change.  
 25 COMMISSIONER FAIRMAN: I'll second that.

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1 COMMISSIONER DANIELS: Mr. Chairman, I would  
 2 move that we approve this change.  
 3 CHAIRMAN SCARAMAZZO: Okay. All right. It's  
 4 been moved by Commissioner Daniels, second by --  
 5 COMMISSIONER FAIRMAN: Second.  
 6 CHAIRMAN SCARAMAZZO: -- Commissioner Fairman  
 7 to approve the changes to R2-20-104(5). Any discussion  
 8 on this item?  
 9 All those in favor say "aye."  
 10 (Chorus of ayes.)  
 11 CHAIRMAN SCARAMAZZO: Opposed? Motion  
 12 carries.  
 13 C is -- has been removed from the agenda this  
 14 morning. That will come back to us, I assume, at the  
 15 next meeting?  
 16 MR. LANG: That's correct.  
 17 CHAIRMAN SCARAMAZZO: Okay. So we'll move on  
 18 to D, R2-20-109, reporting requirements.  
 19 MR. LANG: Commissioner, C was removed simply  
 20 because there were some suggested changes from the  
 21 public that went beyond what the -- the meeting notice  
 22 would permit, so we felt better to take the whole  
 23 thing -- take that -- that particular rule as a whole  
 24 rather than do it piecemeal this meeting and the next  
 25 meeting.

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1 CHAIRMAN SCARAMAZZO: Okay. It's been moved  
 2 by Commissioner Parker, second by Commissioner Fairman  
 3 to approve the change to R2-20-101, (23)(a)(b)(c)  
 4 definitions. Discussion on this item?  
 5 None? All those in favor say "aye."  
 6 (Chorus of ayes.)  
 7 CHAIRMAN SCARAMAZZO: Opposed? Motion  
 8 carries.  
 9 Todd, Item No. 2, R2-20-104.  
 10 MR. LANG: Thank you, Mr. Chair. As you can  
 11 see at part V, this is a rather straightforward change.  
 12 We simply removed the requirements that the treasurer  
 13 attend the training..  
 14 The focus of the Clean Elections Act is on the  
 15 candidates. It's absolutely essential that the  
 16 candidates attend the training, and we want the rule to  
 17 focus on that requirement.  
 18 We, of course, encourage and help any  
 19 treasurer who would like to attend the trainings. We  
 20 love that.  
 21 But we think that so long as the candidate  
 22 attends the training, that's where the requirements  
 23 should stop, and so that we ask -- we ask that you  
 24 approve this change as well.  
 25 CHAIRMAN SCARAMAZZO: Okay.

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1 CHAIRMAN SCARAMAZZO: Okay.  
 2 MR. LANG: 109 is a change to who may  
 3 authorize the purchase of goods or services.  
 4 We've changed the term from "agent," which is  
 5 a term of art, to "person." The reason for this change  
 6 is because the definition of agent doesn't include  
 7 candidate, and we've had a number of candidates who  
 8 wanted to make purchases on behalf of both themselves  
 9 and a running mate. For instance, two legislative  
 10 candidates in the same district in the same party, and  
 11 this rule change would permit that to happen.  
 12 So what you see there is the change at 3, 3A,  
 13 3C and 4 from agent to person. I should point out that  
 14 3A -- the word agent there is as Commissioner Parker  
 15 noted. That word agent should also be changed to person  
 16 as well.  
 17 The rules still require, of course, that each  
 18 candidate pay their proportional share of the ad, so  
 19 nothing has changed. This isn't really a change in  
 20 policy in that regard.  
 21 And in fact, as you see in 3B and 3C, the  
 22 candidate who is not making the purchase, but is part of  
 23 the -- part of that communication, still has to have the  
 24 money on hand to make the payment. It can't be a loan.  
 25 All the usual requirements apply.

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1 So this isn't loosening up the requirements  
 2 that you have the money on hand and there not be loans.  
 3 It simply allows candidates to more easily make these  
 4 sorts of purchases for signs or ads or what-have-you,  
 5 without requiring two checks, one from each candidate.  
 6 This allows for that sort of reimbursement.  
 7 And this is something we've had a lot of  
 8 feedback on, all positive, in terms of asking for this  
 9 change.  
 10 COMMISSIONER DANIELS: Mr. Chairman, can I ask  
 11 a general question?  
 12 CHAIRMAN SCARAMAZZO: Sure.  
 13 COMMISSIONER DANIELS: Todd, are all these  
 14 rule changes basically coming from candidates that have  
 15 participated and thought that we needed to do these  
 16 changes to make things more understandable?  
 17 MR. LANG: I'd say 90 percent of them are,  
 18 Commissioner Daniels, including these changes. And  
 19 staff's shaking their head, they agree.  
 20 COMMISSIONER DANIELS: Okay.  
 21 MR. LANG: Most of the changes you have before  
 22 you today, Commissioner, are changes suggested by staff  
 23 based on the feedback they received from Candidates, and from,  
 24 you know --  
 25 COMMISSIONER FAIRMAN: I would add to that. I

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1 CHAIRMAN SCARAMAZZO: It's been moved by  
 2 Commissioner Daniels, second by Commissioner Parker to  
 3 approve the rule change for R2-20-109. Further  
 4 discussion on this item?  
 5 All those in favor say "aye."  
 6 (Chorus of ayes.)  
 7 CHAIRMAN SCARAMAZZO: Motion carries.  
 8 Move on to E, R2-20-111, books and records  
 9 requirements. Todd?  
 10 MR. LANG: Thank you, Mr. Chairman.  
 11 Commissioners, this is a change to F, and  
 12 again, this follows the theme I just mentioned, which is  
 13 if you're going to use petty cash, that's fine so long  
 14 as you comply with the rules, but you need to provide  
 15 the detail of subcontractors and subvendors, even if  
 16 you're using petty cash.  
 17 It really -- you shouldn't be able to obscure  
 18 the use of subcontractors through the use of petty cash.  
 19 I don't think anyone intentionally did this as a method  
 20 of hiding something. But the fact is it could be done,  
 21 and so this requirement simply makes the petty cash rule  
 22 consistent with our other financial disclosure rules.  
 23 COMMISSIONER FAIRMAN: I'd like to make a  
 24 motion to approve.  
 25 COMMISSIONER PARKER: Second.

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1 also see a number of changes that are a direct result of  
 2 something that we've seen during the last year come  
 3 before us. And I always appreciate that because you're  
 4 paying attention and the changes make it that much  
 5 easier for the next year.  
 6 So that's where I see a lot of these coming  
 7 from as well. That's very appreciated.  
 8 MR. LANG: Mr. Chair, would you like me to  
 9 discuss the other change?  
 10 CHAIRMAN SCARAMAZZO: Yeah, please.  
 11 MR. LANG: In IV, we also specify that if you  
 12 use -- if you use another person to make these  
 13 purchases, your report also has to have that detail,  
 14 that subcontractor detail.  
 15 As you know, we require that participant  
 16 candidates provide all the detail regarding the use of  
 17 subcontractors so that the voters and the general public  
 18 have the opportunity to know exactly where the money is  
 19 going. So this is simply a reaffirmation of that  
 20 requirement in this context, the new sentence at the end  
 21 of IV.  
 22 CHAIRMAN SCARAMAZZO: Okay.  
 23 COMMISSIONER DANIELS: Mr. Chairman, I would  
 24 make a motion that we approve this change.  
 25 COMMISSIONER PARKER: Second.

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1 CHAIRMAN SCARAMAZZO: It's been moved by  
 2 Commissioner Fairman, second by Commissioner Parker to  
 3 approve rule changes to R2-20-111. Discussion on this  
 4 item?  
 5 All those in favor say "aye."  
 6 (Chorus of ayes.)  
 7 CHAIRMAN SCARAMAZZO: Motion carries.  
 8 F, political party exceptions, R2-20-112.  
 9 MR. LANG: Thank you, Mr. Chair.  
 10 Commissioners, this is a more ambitious  
 11 attempt to clarify the exceptions for political parties.  
 12 The first paragraph there is a little bit  
 13 unusual in our rules. It's simply an explanatory  
 14 paragraph, which is not something we normally do, but we  
 15 had a few questions from folks about what was this, why  
 16 do we have this rule, and what was this about? And this  
 17 is a very brief attempt to explain that.  
 18 And basically, it comes down to this. When  
 19 someone hits you with an attack ad, you get matching  
 20 funds from the Commission so that you can respond, so  
 21 that the voters can hear both sides of the story, or so  
 22 that you can correct the record.  
 23 And as we saw in the last election cycle, that  
 24 was quite important as there were some -- there were  
 25 some nasty attack ads out there.

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1 An exception exists for communications by  
2 political -- from the usual matching funds provisions.  
3 An exception exists for political parties so that they  
4 can engage in their "get out the vote" efforts, their  
5 slate mailers, their traditional activities, without  
6 that triggering matching funds. And that makes sense.  
7 You know, parties should be able to let their  
8 members know. Democrats should be able to let Dem --  
9 members of the Democratic party, and Republicans should  
10 let members of the Republican party know, "Hey,  
11 here's -- here are the folks on the ballot. Here's your  
12 simple ballot. Here's who you should vote for."  
13 And so the law has an exception for that sort  
14 of activity. And as you know from our lengthy  
15 discussions in various enforcement and matching funds  
16 cases over the last couple of years, the parameters of  
17 that exception are somewhat debatable.  
18 The fact is that this was not a hot issue  
19 before Clean Elections. And I don't think these  
20 exceptions were closely scrutinized because these  
21 exceptions existed before Clean Elections. But now that  
22 we have Clean Elections and matching funds are at stake,  
23 these exceptions become quite important.  
24 The changes here are an attempt to simplify  
25 how the exceptions work.

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1 Staff has some concerns about his proposal,  
2 but are also pleased to receive it and are looking  
3 forward to working with him and Ms. Barnes and whomever  
4 else on ways to incorporate their concerns and their  
5 suggestions. But at this point, we're not ready to  
6 adopt or recommend that you adopt Mr. Barton's proposal.  
7 We'd also, of course, like to wait to hear  
8 from Lee Miller or any other representative of the  
9 Republican party to hear their point of view as well,  
10 and we've solicited his comments.  
11 And so during the notice and comment period  
12 that's how we plan to proceed.  
13 CHAIRMAN SCARAMAZZO: Jeff?  
14 COMMISSIONER FAIRMAN: I think my only concern  
15 would be the fact that we are changing formats, and I  
16 think this is starting something that we -- it's a path  
17 we may not end up liking at some point.  
18 MR. LANG: Are you talking about the preamble?  
19 COMMISSIONER FAIRMAN: Yeah, the preamble to  
20 this.  
21 And I would only ask that maybe during this --  
22 this discovery period that we find a way that that be  
23 incorporated into the balance in a more traditional  
24 manner.  
25 That would be the only thing I would look for.

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1 And what we've done is taken out the  
2 references to cooperation. Because while that was --  
3 when that was written, it tracked the statute at 16901,  
4 which defined expenditures and contributions and  
5 included the exceptions for political party  
6 communications.  
7 Candidates found it confusing and it sort of  
8 put the emphasis in the wrong place. The emphasis  
9 shouldn't be on coordination. It should be on what the  
10 activity is, what the communication is.  
11 And so these changes are an attempt to move  
12 away from coordination, and then try to, as much as  
13 possible, harmonize the exception from contribution,  
14 with the exception from expenditure, and -- because for  
15 reasons that aren't -- are a bit obscure, the  
16 definitions are slightly different.  
17 And so I'd ask that you approve these changes,  
18 understanding that there's going to be the 60-day notice  
19 and comment period.  
20 You have before you in the packet comments by  
21 Jim Barton and his colleague -- I should mention his  
22 colleague, Rhonda Barnes, is here today to answer any  
23 questions you may have about their view.  
24 And you can see Mr. Barton has an ambitious  
25 proposal that streamlines the rule a bit.

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1 MR. LANG: That's a good suggestion.  
2 COMMISSIONER FAIRMAN: But other than that, I  
3 would make a motion that we approve this for notice and  
4 comment.  
5 COMMISSIONER DANIELS: Second.  
6 CHAIRMAN SCARAMAZZO: Okay. It's been moved  
7 by Commissioner Fairman, second by Commissioner Daniels  
8 to approve this and move it to notice and comment  
9 period, R2-20-112, with the suggestions as outlined.  
10 Any discussion on this item?  
11 COMMISSIONER PARKER: Mr. Chairman.  
12 CHAIRMAN SCARAMAZZO: Yes.  
13 COMMISSIONER PARKER: I would like for staff  
14 also to, during this comment period, maybe devise some  
15 samples that would be acceptable so that the campaigns  
16 could know, kind of a -- you know, a sample of what  
17 would be accepted under this -- this new rule that would  
18 not trigger matching funds.  
19 Because it seems that we had a lot of problems  
20 with that this year, that they would put out a piece,  
21 thinking they -- they fit under this rule, and they  
22 didn't. And I think we need to be able to give them  
23 some hard cut examples of what is and isn't acceptable.  
24 CHAIRMAN SCARAMAZZO: Good point.  
25 MR. LANG: Commissioner Parker -- may I?

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1 CHAIRMAN SCARAMAZZO: Sure.  
2 MR. LANG: Commissioner Parker, we will  
3 certainly do that, and I think it's a great idea plus we  
4 have a -- a staff person who loves to do graphics so I'm  
5 sure he'd love to make up some fake slate mailers.  
6 I would just mention that we had a good  
7 relationship with both parties, and while they  
8 occasionally didn't agree with our view, they were able  
9 and willing to submit slate mailers before they issued  
10 them to make sure that we weren't going to find that  
11 they triggered matching funds.  
12 And so while I agree with you that these  
13 illustrations are very important and would be helpful,  
14 and again, this rule is going to be a topic of great  
15 scrutiny and discussion for the next 60 days with the  
16 representatives of the parties, we did have a good  
17 relationship, I think, last cycle.  
18 COMMISSIONER PARKER: Well, I'm sure that we  
19 did. I'm just thinking that for clarity purposes, you  
20 know, to make sure everybody understands where we as the  
21 Commission are coming from, I think it would be helpful  
22 for them to say, "Is what we're proposing close to what  
23 this example is?"  
24 MR. LANG: I think it's a great suggestion.  
25 Thank you.

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1 traditional candidate raises a huge amount of money that  
2 they have no intention of using in this particular race,  
3 the fact is we are required by statute to match it.  
4 And we had a couple of cases where candidates  
5 asked us if they could segregate money into a future  
6 account. "Look, I'm going to use \$20,000 for my  
7 legislative race. I want to put this \$200,000 aside for  
8 my secretary of state race," or what-have-you. "Can I  
9 do that and will you not match?" And the answer is no,  
10 we -- we would have to match.  
11 And that's based on a 2000 case involving the  
12 Commission, in which you'll remember former  
13 representative Steve May was actually on the cover of  
14 Time magazine and he received a great deal of national  
15 financial support, and he's a traditional candidate who  
16 actually was a plaintiff in one of the lawsuits against  
17 Clean Elections.  
18 But he asked to segregate monies that he had  
19 received into future accounts and the Commission decided  
20 not, you know, to permit that and to not issue matching  
21 funds.  
22 The Commission was sued. They went before an  
23 administrative law judge and the law judge held that  
24 without a rule you can't segregate and you have to issue  
25 matching funds.

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1 COMMISSIONER PARKER: Okay.  
2 CHAIRMAN SCARAMAZZO: And they'll follow  
3 through on that, Royann.  
4 COMMISSIONER PARKER: Okay.  
5 CHAIRMAN SCARAMAZZO: Anything we can do to  
6 minimize the impact of having to sit here and vote on  
7 31, 30 seconds of something --  
8 COMMISSIONER PARKER: Yeah, exactly.  
9 CHAIRMAN SCARAMAZZO: -- will certainly make  
10 it easier on everybody, okay. So good deal. Any  
11 further comments on this item?  
12 Hearing none, all those in favor say "aye."  
13 (Chorus of ayes.)  
14 CHAIRMAN SCARAMAZZO: Opposed? Motion  
15 carries.  
16 Moves us to G, calculation of equalizing funds  
17 R2-20-113.  
18 MR.. LANG: Commissioners, as you know, we  
19 issue matching funds or equalizing funds, which is  
20 designed to allow the participating candidate to have a  
21 competitive race. Nothing's ever perfectly equal. It's  
22 not designed to be perfectly equal. It's designed to  
23 make races competitive and to encourage folks to  
24 participate in the program.  
25 That said, if a candidate raises -- a

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1 This rule would permit the Commission to --  
2 this is a pol -- obviously a policy change. This  
3 would -- this is -- by enacting this rule, the  
4 Commission is saying you can't -- you can segregate  
5 funds, and we will not match if you do it in the proper  
6 manner.  
7 And what we've done here is -- is created a  
8 certification of nonuse with penalties so that if a  
9 candidate segregates funds and then all -- all of a  
10 sudden the race becomes hot or close or for whatever  
11 reason they decide they want to dip into it, they would  
12 be penalized because we can't -- obviously, that's not  
13 fair to anyone.  
14 We're trying to accommodate them, and for them  
15 to go then -- after we've accommodated them by allowing  
16 them to segregate, for them to go back and spend that  
17 money would be highly unfair.  
18 So you see there's penalty provisions in here.  
19 And again, this is designed to allow  
20 candidates to segregate money that won't trigger  
21 matching funds.  
22 And if they're not gonna -- if they're really  
23 not gonna spend it, then there's no need for the  
24 participating candidate to get matching funds.  
25 So we'd ask you to put that out there for

1 notice and comment..

2 COMMISSIONER DANIELS: Mr. Chairman.

3 CHAIRMAN SCARAMAZZO: Yes.

4 COMMISSIONER DANIELS: I was wondering, Todd,

5 other than Mr. May, have we had other candidates that

6 have asked us, or was that just kind of a unique

7 situation that year?

8 MR. LANG: No. We had -- Commissioner

9 Daniels, we had at least one traditional candidate that

10 asked us this past election cycle to do just that, and

11 we told her, "We're sorry, but this Steve May case

12 happened and it's not permitted."

13 COMMISSIONER DANIELS: Okay.

14 MR. LANG: But based on her request, we

15 realized that this might happen more in the future and

16 we decided to accommodate her concerns and address her

17 concerns with this proposed rule.

18 CHAIRMAN SCARAMAZZO: Jeff?

19 COMMISSIONER FAIRMAN: Mr. Chair, I have a

20 question.

21 This, to me, opens up a can of worms. If --

22 if a -- if a candidate then dipped into this segregated

23 fund say in the last 24, 48 hours of the campaign and we

24 were required to offer, to issue matching funds, yes,

25 they may be fined at some point, but that also could

1 MR. LANG: So arguably -- and we would -- if

2 we decide to promulgate this rule after 60 days' notice

3 and comment, and I'm sure the parties would be

4 interested in commenting on this, this person would be

5 subject to the disqualification from office rule.

6 I think that would be sufficient deterrence to

7 assure that that won't happen.

8 COMMISSIONER FAIRMAN: Okay, thank you.

9 Given that, I'd like to make a motion that we

10 put this out for approval for notice and comment,

11 please.

12 CHAIRMAN SCARAMAZZO: With the change to 942?

13 COMMISSIONER FAIRMAN: With the change to 942.

14 CHAIRMAN SCARAMAZZO: Okay.

15 COMMISSIONER FAIRMAN: In 2A.

16 CHAIRMAN SCARAMAZZO: All right. Is there a

17 second?

18 COMMISSIONER PARKER: I'll second.

19 CHAIRMAN SCARAMAZZO: Okay. It's been moved

20 by Commissioner Fairman, second by Commissioner Parker

21 to approve for notice and comment R2-20-113 with a

22 change of 942 and 2A.

23 Further discussion on this item?

24 COMMISSIONER DANIELS: Yeah, Mr. Chairman, I

25 just want to let you know I -- I'm going to vote no on

1 turn an election, be the, you know, the basis of winning

2 or losing. So the fine may not be that much of a

3 disincentive in -- in that kind of a situation.

4 So I -- I have concerns about well, you know,

5 you -- you sign an oath, you're not supposed to do this.

6 However, how -- how do we get around that?

7 MR. LANG: Well, Commissioner -- Commissioner

8 Fairman, that's a fair question.

9 I've been waiting all year for that.

10 COMMISSIONER FAIRMAN: Oh, good.

11 MR. LANG: We have penalties in place because

12 that might happen, and we would obviously -- that

13 wouldn't be a case we'd settle, that -- that would be a

14 case where we'd do the maximum penalty, but frankly, it

15 could happen.

16 If you look at 16945, A and C, which are the

17 penalties we incorporate through this rule, they are

18 quite significant.

19 And in particular -- actually 945 are the

20 limits. Penalties are at 942, so I'm glad you asked,

21 because we need to change 945 to 942.

22 And as you can see, the penalties are quite

23 severe. And as -- and you'll recall 942C is the most

24 severe. It's disqualification from office.

25 COMMISSIONER FAIRMAN: Mm-mm.

1 this one.

2 I'm not comfortable with raising funds for

3 another office. I -- I've always been a firm believer

4 that when you're running for one office, that's where

5 you raise the funds, and you don't go over and above and

6 start thinking about the future when it's illegal for

7 you to announce for an office while in -- in one, you

8 know, intention to run. So I'm going to not support it

9 for that reason.

10 CHAIRMAN SCARAMAZZO: That's a good point.

11 COMMISSIONER PARKER: That is a good point.

12 COMMISSIONER FAIRMAN: That's a very good

13 point.

14 MR. LANG: My only suggestion, Commissioners,

15 is this is not the final promulgation of the rule and so

16 you would always have the option in 60 days that if you

17 decide that that -- that point raised by Commissioner

18 Daniels wins the day, that you could vote not to enact

19 the rule after the 60 days.

20 CHAIRMAN SCARAMAZZO: Just wondering how much

21 effort will be put in amongst people if the Commission

22 doesn't have a desire to move in that direction to begin

23 with.

24 COMMISSIONER PARKER: Well, I think I -- I

25 would vote no also, Mr. Chairman.

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1 CHAIRMAN SCARAMAZZO: Well, let's go ahead and  
2 take a vote then, have some fun with this one, okay.  
3 All those in favor say "aye."  
4 COMMISSIONER FAIRMAN: Aye.  
5 CHAIRMAN SCARAMAZZO: All those opposed say  
6 "nay."  
7 Nay.  
8 COMMISSIONER PARKER: Nay.  
9 COMMISSIONER DANIELS: Nay.  
10 CHAIRMAN SCARAMAZZO: Motion fails.  
11 All right. We'll move on to the last item  
12 under 5 and that is R2-20-702.01, use of assets.  
13 Todd.  
14 MR. LANG: Thank you, Mr. Chair.  
15 Commissioners, in your packet you had a -- a  
16 different version of this that had an extra sentence  
17 added.  
18 After speaking with Commissioner Hoffman, he  
19 made the suggestion that simplified it, and so the new  
20 version that we emailed to you is much simpler. I just  
21 want to make sure you have the right version.  
22 In this new version, the second line, it  
23 reads -- should read, "Only if the candidate -- only  
24 after the candidate's current campaign," and then the  
25 new language is, "pays for the assets in an amount equal

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1 COMMISSIONER FAIRMAN: I'll go ahead and make  
2 a motion to approve for notice and comment.  
3 COMMISSIONER DANIELS: I'll second.  
4 CHAIRMAN SCARAMAZZO: Okay. Then moved by  
5 Commissioner Fairman, second by Commissioner Daniels to  
6 approve the changes to R2-20-702-01, use of assets and move it to  
7 notice and comment. Any discussion on this item?  
8 All those in favor say "aye."  
9 (Chorus of ayes.)  
10 CHAIRMAN SCARAMAZZO: Opposed? Motion  
11 carries.  
12 That moves us into Item No. VI, consideration  
13 and possible action on the Commission's 2008 Annual  
14 Report.  
15 Todd.  
16 MR. LANG: Thank you, Mr. Chair.  
17 Commissioners, it's that time of year again.  
18 It's time for the annual report and I know you've had an  
19 opportunity to review it. It's due at the end of the  
20 month. We have had a couple of changes from you. Thank  
21 you, on your biographies.  
22 If anyone would like -- anyone who has not  
23 submitted a change would like to do so, please get it to  
24 us by the end of the day. We could actually accommodate  
25 you tomorrow, but it would be much better if you could

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1 to the fair market value of assets."  
2 The purpose of this -- as you know, candidates  
3 are permitted to use prior assets from old campaigns as  
4 long as they pay fair market value.  
5 And the rule stipulates that that has to be at  
6 least one-fifth of the original value. And this may  
7 come as a shock to you, but I think virtually every  
8 instance in which someone uses old campaign materials,  
9 they always say it's one-fifth of the value. They never  
10 value it higher.  
11 But we -- we know -- the staff noticed a  
12 problem, which was several campaigns appeared to be  
13 paying for these items at the end of the cycle as  
14 opposed to when they actually started using the assets.  
15 And as you know, you can't use or borrow  
16 anything unless you have the money on hand to pay for it  
17 at the time you either promise to pay or actually start  
18 using it.  
19 And prior assets are no different.  
20 And so what this change does is it makes it  
21 clear that you can use prior equipment, as it says,  
22 "only after the campaign pays for it."  
23 So it's not just acquiring it. You have to  
24 pay for it before you can use it. And we think that  
25 change is important, and we'd ask that you adopt it.

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1 get it to us by the end of the day so we can incorporate  
2 this.  
3 With that said, unless you have questions,  
4 this is our annual report. As you can see, it -- it  
5 lists the commission members, our vision, our mission,  
6 the staff duties, what we did in the last year, and the  
7 participating -- you can see the stat -- the statistics  
8 on page 8 of the number of participating candidates we  
9 had and -- and some updates on rule changes and  
10 litigation and some financial information.  
11 We'd ask that you approve it so that we can  
12 issue it as required by statute.  
13 COMMISSIONER DANIELS: Make a motion that we  
14 approve it.  
15 COMMISSIONER PARKER: Second.  
16 CHAIRMAN SCARAMAZZO: It's been moved by  
17 Commissioner Daniels, second by Commissioner Parker to  
18 approve the 2008 annual report and get that so we meet  
19 statutes on it. Discussion on this item?  
20 Anything?  
21 I'd like to thank staff, and a little on the  
22 brevity side this year, this is good, so we appreciate  
23 it.  
24 Otherwise, all those in favor say, "aye."  
25 (Chorus of ayes.)

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1 CHAIRMAN SCARAMAZZO: Opposed? Motion  
2 carries.  
3 Item No. VII, consideration and possible  
4 action on a monthly legislative status report.  
5 MR. LANG: Thank you, Mr. Chair.  
6 Commissioners, I wanted to update you on the  
7 legislation. As you can imagine, legislation is getting  
8 quite busy and active.  
9 I just wanted to point out a few things and  
10 then answer any questions you might have.  
11 The first bill you see on the -- I hope you  
12 have Mike's memo. He -- he put this together, and has  
13 been updating it whenever either he or I or -- or anyone  
14 else lets us know about a new bill, we put it in there.  
15 We discovered a -- a new bill last night that  
16 removes the references to the appellate court  
17 appointments commission, and so we'll be monitoring  
18 that. Obviously we have no concerns about that since  
19 that's not part of the -- that was struck down years  
20 ago.  
21 I will mention a few things if I could,  
22 Mr. Chair.  
23 CHAIRMAN SCARAMAZZO: Please.  
24 MR. LANG: House Bill 2139, which moves up the  
25 qualifying period is actually being heard today, and the

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1 Both of those allow the legislature to take  
2 money from voter protected funds in times of fiscal  
3 emergency.  
4 Currently the bills have no guidelines on how  
5 that would be done, on the order in which it would be  
6 done, on whether it would be based on a percentage,  
7 on -- based on whether it would cripple the Commission's  
8 mission and the like.  
9 So we remain opposed to that because, frankly,  
10 they could take every penny.  
11 And as you know, we are not funded by the  
12 legislature. We're funded by a surcharge on fines and  
13 penalties, and so that's why we recommend opposing that.  
14 Let's see if there's others. The others speak  
15 for themselves. If you have questions, I'd be happy to  
16 answer them.  
17 I would mention there is a bill -- House Bill  
18 2483, which has not yet been heard by Representative  
19 Campbell, that would create the office holder expense  
20 account as a matter of law.  
21 As you know, the Commission repealed that law  
22 effective at the end of the 2010 -- that rule that we've  
23 had in place for several years, effective at the end of  
24 the 2010 election cycle.. This would replace that.  
25 We take no position on that currently.

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1 sponsor was aware that I could not attend because, of  
2 course, this meeting, but our lobbyist is there.  
3 My recommendation is that we actually support  
4 this bill. As you see in the memo, we recommended a  
5 neutral position.  
6 And the reason that I recommended that we  
7 support this bill is I talked to some of the folks who  
8 worked on the original law, the Clean Elections Act, I  
9 mean, and also I reflected on -- on concerns raised by  
10 Representative Campbell and others about that. When you  
11 qualify with only a day or two to spend all that money,  
12 how efficient is that, and is there a better way to do  
13 it?  
14 And so when you balance the interest of having  
15 as many people qualify as possible, which are late date  
16 serves, versus having people qualify with time to  
17 actually engage in effective communication without  
18 cutting corners, my calculus was that moving it up by 15  
19 days would be -- would serve that end without unfairly  
20 impinging on the opportunities to qualify.  
21 And so I -- I would suggest that we become --  
22 that we endorse this bill as it stands now.  
23 We have two concurrent resolutions of concern.  
24 You see SCR 1009 on the first page there, and then on  
25 the third page we have HCR 2028.

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1 I would also point out to you on page 3 that  
2 House Bill 2240, regarding a moratorium on rulemaking,  
3 it appears that the Commission is exempt. That's why  
4 we're proceeding with our rulemaking today.  
5 We're a self-funded agency. There's no danger  
6 of any cost to the State from our rules. Moreover, of  
7 course, we have the exigent circumstances of the  
8 requirements by statute that any rules that we enact,  
9 that -- that are to take place for the 2010 election  
10 cycle must be enacted before the end of 2009.  
11 So we're proceeding normally, and it's my  
12 understanding that there's no concern there from any of  
13 the interested parties.  
14 And then finally, I point out House Bill 2603,  
15 Representative Rich Crandall and others are sponsoring a  
16 bill that would make a number of changes to clean  
17 elections. You have copies of that bill, and I've  
18 circulated that bill and pointed out to you some of its  
19 provisions. I would also point out to you that it's  
20 going to be radically changed.  
21 It was put in -- it was dropped at the time --  
22 it was dropped because there was a timeline and a  
23 deadline and our lobbyist was concerned that we might  
24 miss the opportunity.  
25 And so it was there to promote discussion, and

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1 of course, as you recall when we passed House Bill 2690  
 2 two years ago, that bill was radically changed as  
 3 discussions took place, compromises took place..  
 4 And it's my understanding the interested  
 5 parties are going to get together on 2603 and make a  
 6 number of proposals.  
 7 So while I urge you to review that bill, I  
 8 also want you to take heart that some of the more  
 9 interesting provisions probably won't be in the final  
 10 version of the law.  
 11 If you have any questions, I'm happy to answer  
 12 them, but that's where we are.  
 13 CHAIRMAN SCARAMAZZO: Questions for Todd?  
 14 COMMISSIONER FAIRMAN: Mr. Chairman.  
 15 CHAIRMAN SCARAMAZZO: Please.  
 16 COMMISSIONER FAIRMAN: I just want to let you  
 17 know I -- I appreciate this very much. We're getting  
 18 these on -- in a lot of different areas in a lot of the  
 19 organizations that I'm part of, and this is one of the  
 20 most concise and easiest to read and deal with, so I  
 21 appreciate that. Thank you, Staff.  
 22 MR. LANG: That's Mike Becker's good work  
 23 there.  
 24 COMMISSIONER FAIRMAN: It's very good.  
 25 CHAIRMAN SCARAMAZZO: My question is, is this

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1 VIII, Call for Public Comment. We'll certainly open the  
 2 floor to anyone who has any items they'd like to address  
 3 to the Commission. We'd certainly welcome you at this  
 4 time. Anyone? You guys are easy today.  
 5 All right -- must have places to go here.  
 6 Hearing none then, we will move on, and that  
 7 leaves us with Item No. IX, which is simply adjournment.  
 8 COMMISSIONER FAIRMAN: I make that motion.  
 9 COMMISSIONER PARKER: Second.  
 10 CHAIRMAN SCARAMAZZO: It's been moved by  
 11 Commissioner Fairman, second by Commissioner Parker to  
 12 adjourn this meeting from Thursday, February 26, 2009.  
 13 All those in favor say "aye."  
 14 (Chorus of ayes.)  
 15 CHAIRMAN SCARAMAZZO: Opposed? Motion  
 16 carries.  
 17 Thanks, everyone, for all the efforts, and  
 18 we'll see you next time.  
 19 (Whereupon the proceeding concludes at  
 20 10:15 a.m.)  
 21  
 22  
 23  
 24  
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1 more informational? What are we voting on here?  
 2 MR. LANG: No, you don't -- you could take  
 3 action if you wanted me to -- if you wanted to instruct  
 4 me in a particular fashion.  
 5 You know, at this point I'm not asking for  
 6 that instruction, but, of course, if you want to provide  
 7 it, that's fine. When we get to a point where there  
 8 might be some provision of a bill that I believe  
 9 requires Commission approval, I'll certainly ask for it.  
 10 CHAIRMAN SCARAMAZZO: All right.  
 11 MR. LANG: We're not there yet.  
 12 CHAIRMAN SCARAMAZZO: That's fine.  
 13 MR. LANG: But the reason I brought it up for  
 14 discussion is because there have been some -- you know,  
 15 the bill that I just mentioned, Mr. Crandall's bill, has  
 16 a number of controversial provisions that I don't think  
 17 will be in the final version, and I wanted to be  
 18 available to answer your questions if you had any.  
 19 CHAIRMAN SCARAMAZZO: Okay. And that's -- we  
 20 appreciate that and we need this information. It's just  
 21 I didn't see anything there to vote on.  
 22 MR.. LANG: Thank you, Mr. Chair.  
 23 CHAIRMAN SCARAMAZZO: Any further questions  
 24 for Todd?  
 25 All right. Then we'll move on to Item No.

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1  
 2 **C E R T I F I C A T E**  
 3  
 4 I, Lisa A. Blanks, Certified Reporter,  
 5 do hereby certify that the foregoing pages numbered  
 6 1 through 40, inclusive, constitute a full and  
 7 accurate printed record of my stenographic notes taken  
 8 at said time and place, all done to the best of my  
 9 skill and ability.  
 10 DATED, at Phoenix, this 3rd day of February,  
 11 2009.  
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 15 \_\_\_\_\_  
 16 Lisa A. Blanks, RPR, CRR  
 17 Certified Reporter (AZ 50803)  
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