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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

July 15, 2008

9:33 a.m.

Reported By:

Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 9:33 a.m. on July 15,
 3 2008, 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
 7 Ms. Royann Parker (Telephonically)
 8 Mr. Donald Lindholm
 9 Ms. Lori Daniels

10 OTHERS PRESENT:

11 Todd Lang, Executive Director
 12 Colleen McGee, Deputy Director
 13 Rita Azcona, Administrative Assistant III
 14 Paula Ortiz, Executive Assistant
 15 Michael Becker, Voter Education Manager
 16 Daniel Ruiz II, Campaign Finance Manager
 17 Tanja Shipman, Attorney General's Office
 18 Kevin Maniak, Legal Intern
 19 Jim Barton, Perkins Coie Brown & Bain PA
 20 Eric Ehst, Clean Elections Institute
 21 Bob Robson, State Representative

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P R O C E E D I N G

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3 CHAIRPERSON SCARAMAZZO: Good morning. It is
 4 Tuesday -- we're going to get going with this, okay?
 5 All right. Sounds good. We're a couple
 6 minutes late, so if we can call to order this meeting of
 7 the Citizens Clean Elections Commission for Tuesday,
 8 July 15th, 2008. It is 9:33.
 9 We have Commissioner Parker on the phone from
 10 San Diego. We're all immensely jealous at this time.
 11 And Commissioner Fairman called and he has apologized
 12 profusely. He is called out of town on work again, so
 13 he will be here at the next meeting. We certainly
 14 understand his need to be in a working environment.
 15 I may mention the Commission may vote to go
 16 into executive session today wh- -- which will not be
 17 open to the public for any item listed on the agenda for
 18 obtaining legal advice pursuant to A.R.S.
 19 38-431.03(A)(3).
 20 With that said, we'll move to Item Number II,
 21 which will be seeking approval of the June 19th, 2008
 22 Commission meeting minutes.
 23 COMMISSIONER DANIELS: Mr. Chairman, I move the
 24 approval of the June 19th, 2008 Commission min- --
 25 meeting minutes.

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1 COMMISSIONER LINDHOLM: Second.
 2 CHAIRPERSON SCARAMAZZO: It's been moved by
 3 Commissioner Daniels, seconded by Commissioner Lindholm
 4 to approve the June 19th, 2008 Commission meeting
 5 minutes.
 6 Discussion on this item? Todd.
 7 MR. LANG: I have a couple of corrections from
 8 Commissioner Parker.
 9 CHAIRPERSON SCARAMAZZO: Yes.
 10 MR. LANG: On page 32, line two, it reads
 11 "Commissioner Parker" but actually that was Commissioner
 12 Daniels.
 13 And then on -- I don't see this one, but on
 14 page 29, line 14 --
 15 COMMISSIONER PARKER: On line 15.
 16 MR. LANG: 15. There it is. The last word is
 17 "I've" and that should be changed to "is."
 18 CHAIRPERSON SCARAMAZZO: Oh, okay. Any other
 19 corrections to the minutes?
 20 Mover and second okay with the changes on page
 21 32, line two and page 29, line 15?
 22 COMMISSIONER LINDHOLM: I am.
 23 COMMISSIONER DANIELS: I am too.
 24 CHAIRPERSON SCARAMAZZO: All right. Any other
 25 discussion? All those in favor say "aye."

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1 (Chorus of ayes.)
 2 COMMISSIONER SCARAMAZZO: Opposed? Motion
 3 carries.
 4 Todd, Executive Director report, please.
 5 MR. LANG: Thank you, Commissioners. Good
 6 morning.
 7 Good news, we have our first corporation
 8 commission candidate who is qualified for Clean
 9 Elections' funding, that's Mr. John Allen, so...
 10 And there are a few others who are still
 11 working towards that, so that's good news.
 12 Our Website is now chockful of debates. I
 13 think they're very interesting. You might want to take
 14 a look at them. We post them as soon as we can. It's
 15 usually a few days after the debate. I've attended a
 16 few and then staff -- someone from staff attends every
 17 one. And -- and they've certainly been interesting.
 18 I mention in my report the Davis case by the
 19 U.S. Supreme Court. If you have questions about it,
 20 call me and we can talk about it, or I can send you a
 21 memo, you know, sort of outlining it. But basically
 22 what it does is it turns to -- it struck down what was
 23 called the millionaire's amendment in the -- in the big
 24 federal campaign finance reform legislation.
 25 The way that worked was, basically, if you have

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1 a very wealthy person who spends a great deal of money,
 2 after they go over a certain threshold, their opponent,
 3 say their limit was \$200 a contributor, now it is being
 4 doubled to \$400 a contributor. The theory being they
 5 need to raise a lot more money in order to compete with
 6 this person. The Court struck it down.
 7 And so the reason I mention this is because the
 8 usual suspects who criticize Clean Elections and would
 9 like to see it go, are now claiming that this somehow
 10 implicates our matching funds. And while we do have
 11 a -- a very different Supreme Court than we had a few
 12 years ago, I don't think that's the case at all. And
 13 that's why I wanted to bring it to your attention.
 14 Our matching funds work very differently and
 15 I'd be happy to go into detail with you after the
 16 meeting or an -- or whenever you like to explain that
 17 more. But I thought it was worth your time to hear so
 18 you know about the case and learn about our view of the
 19 case.
 20 CHAIRPERSON SCARAMAZZO: Okay.
 21 MR. LANG: Well, our participation rate right
 22 now is 67 percent, which is the highest it's ever been.
 23 That includes a number of folks who were formally
 24 opposed to Clean Elections, so -- and some who still are
 25 which, of course, we welcome. So that's good news.

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1 CHAIRPERSON SCARAMAZZO: Okay. Thanks, Todd.
 2 Let's move on then to Item No. IV, discussion
 3 and possible action on request for exemption for
 4 participation in primary election debate from Joe
 5 Bedgood, who is candidate for State Senate District 22.
 6 MR. LANG: Commissioners, as you can see from
 7 the letter at Agenda Item IV, Mr. Bedgood would like to
 8 be excused from the debate. And, of course, staff
 9 recommends that the Commission approve that request due
 10 to the illness -- he has a serious family illness he's
 11 attending to. And while that's not specifically
 12 outlined in the rules, we certainly consider that to be
 13 legitimate.
 14 The statement is always a tricky thing. We've
 15 had candidates ask for that before, but in this case I
 16 think a brief statement will be appropriate, if it's --
 17 if it's all right with you.
 18 CHAIRPERSON SCARAMAZZO: Lori.
 19 COMMISSIONER DANIELS: Mr. Chairman, Todd, have
 20 you turned down other people for statements in the past?
 21 MR. LANG: We've gen- -- when people have
 22 asked, in general, we've said no. But when they've
 23 asked in particular cases, we've said yes. For
 24 instance, Representative Paton was serving overseas and
 25 asked that a statement be read on his behalf at the

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1 And unless you have questions, I think that
 2 concludes my ED report.
 3 CHAIRPERSON SCARAMAZZO: Lori.
 4 COMMISSIONER DANIELS: Mr. Chairman, Todd, I --
 5 do you have a memo explaining your position on the
 6 Davis?
 7 MR. LANG: I don't, but I can write one up for
 8 you.
 9 COMMISSIONER DANIELS: I -- I don't want you
 10 to have to go to too much trouble, but if you would
 11 just --
 12 MR. LANG: Sure.
 13 COMMISSIONER DANIELS: -- give a synopsis, I'd
 14 appreciate it. I've read it. I know what's going on,
 15 but I just from the Director's perspective, I'd like
 16 that.
 17 MR. LANG: Sure. I'll write that up for you.
 18 COMMISSIONER DANIELS: Thank you.
 19 COMMISSIONER PARKER: I'd like a copy too.
 20 CHAIRPERSON SCARAMAZZO: Make sure it's
 21 available to everyone.
 22 MR. LANG: Yeah, I'll send it to everyone.
 23 CHAIRPERSON SCARAMAZZO: Okay. Anything else
 24 for Todd? Royann?
 25 COMMISSIONER PARKER: No.

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1 debate, and it was when we permitted that. So we
 2 consider this sort of a similar circumstance.
 3 COMMISSIONER DANIELS: Well, and, Mr. Chairman,
 4 Todd, I don't have any problem with that. I was -- who
 5 did we just t- -- turn down and for what reason? I'm
 6 just curious.
 7 MR. LANG: No one in particular. It's just
 8 asked can we have statements read and we said, no, we
 9 want you to attend.
 10 COMMISSIONER DANIELS: Okay.
 11 CHAIRPERSON SCARAMAZZO: Which is in line with
 12 the philosophy unless there are extenuating
 13 circumstances.
 14 MR. LANG: That's right.
 15 COMMISSIONER DANIELS: Mr. Chairman, I would
 16 move that we would accept Mr. Bedgood's dis- --
 17 non-attendance at the debate.
 18 COMMISSIONER LINDHOLM: And his request to --
 19 COMMISSIONER DANIELS: And his request to have
 20 a statement read.
 21 COMMISSIONER LINDHOLM: Second.
 22 CHAIRPERSON SCARAMAZZO: All right. It's been
 23 moved by Commissioner Daniels, seconded by Commissioner
 24 Lindholm to approve the exemption for the participation
 25 in the primary election debate for Mr. Joe Bedgood and

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1 to allow a -- a statement to be read at the debate.

2 Any discussion on this item?

3 All those in favor say "aye."

4 (Chorus of ayes.)

5 CHAIRPERSON SCARAMAZZO: Opposed? Motion

6 carries.

7 I would like to move Item V to the bottom of

8 the agenda in case there is an executive session

9 scheduled there. That way, you know, people can choose

10 to stick around, great, but otherwise we won't hold you,

11 okay. This shouldn't take but a couple of minutes

12 anyways.

13 Item No. VI, discussion and possible action on

14 Representative Steve Farley's request for a no-action

15 letter reg- -- regarding the use of personal e-mail

16 lists.

17 Todd.

18 MR. LANG: Commissioners, as you recall we

19 tabled this because you wanted more information.

20 COMMISSIONER DANIELS: Uh-huh.

21 MR. LANG: The second page is -- is an e-mail

22 from Representative Farley dated July 8th in which he

23 provides more information, more detail in how he put

24 together the list. I think it assuages some of your

25 concerns, but I don't think it addresses all of them

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1 agree and I appreciate your comments.

2 I -- I -- it -- it's tricky because, of course,

3 if we make them, we could promulgate rules regarding

4 e-mail lists. And the reason we haven't is because as

5 soon as we promulgate a rule, somebody will exploit it,

6 some of the people in this room in particular.

7 So -- so that's why we hesitate. But we're

8 happy to do that. And I agree with you that is a tricky

9 area and it's an area that -- where candidates would

10 like some guidance. The problem is the -- the field

11 seems to change so quickly with e-mails and electronic

12 mail that it's ha- -- it's difficult to come up with a

13 rule that's fair.

14 COMMISSIONER LINDHOLM: Mr. Chairman.

15 CHAIRPERSON SCARAMAZZO: Don.

16 COMMISSIONER LINDHOLM: Todd, would you

17 refresh -- refresh me here. Give me -- I'm interested

18 in your analysis of this request and how it may or may

19 not violate the -- the statutes and the rules.

20 MR. LANG: The -- the -- the issue is

21 participating candidates -- and Mr. Farley is a

22 participating candidate -- cannot use their campaign

23 funds to endorse or support other folks, other

24 candidates. They have to use their Clean Elections

25 money for their own campaign. And here he wants to use

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1 because, you know, I -- I think while it's clear that

2 this is completely a private list, I think some of your

3 more general concerns just about e-mails, you know, are

4 still there.

5 That said, I'm happy to answer any questions

6 you might have.

7 COMMISSIONER DANIELS: Mr. Chairman.

8 CHAIRPERSON SCARAMAZZO: Lori.

9 COMMISSIONER DANIELS: Mr. Chairman, Todd, and

10 I know I had a lot of concerns this last time and I read

11 all this. I'm just wondering if we can outline

12 parameters for personal e-mails, like saying the list

13 could be maximum of a thousand, and then we would

14 approve it, but if it was less or -- if it's more than

15 that, we wouldn't. And I don't know that a thousand is

16 the magic number, but I just feel like maybe there needs

17 to be guidelines so that everybody understands what the

18 guidelines are.

19 And I know we talked about, you don't always

20 want to go forward with our specific rules, that you

21 wait until specific people ask and don't do blanket.

22 But I -- I don't know. I just -- I feel like if we take

23 this on a case-by-case basis, I want to make sure we're

24 consistent and doing the same thing for all candidates.

25 MR. LANG: Commissioner Daniels, I certainly

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1 his personal e-mail list to endorse other candidates.

2 So it raises that question now -- it's almost a -- it's

3 almost a -- what's the word?

4 COMMISSIONER LINDHOLM: Let me interrupt just

5 for continuity. Isn't that the use of personal

6 resources?

7 MR. LANG: Uh-huh. Yes. But if it's -- if

8 it's engaged in expressed advocacy, it would count as a

9 contribution towards his own campaign and towards any

10 other campaigns. He -- if it's -- if it's personal

11 resources, then he wouldn't violate a prohibition

12 regarding use of Clean Elections funds. And so the

13 question is then, is this really personal resources and,

14 you know, the nature of e-mails and where he got them

15 and --

16 COMMISSIONER LINDHOLM: Is that the sole issue?

17 MR. LANG: No, that's not the sole issue.

18 That's just one of the many issues that comes up with

19 e-mail.

20 The primary issue here is -- is more of a

21 concern about ge- -- wading into the whole e-mail issue

22 at all. Why -- you know, why would we give this

23 gentleman a no-action letter when it opens a Pandora's

24 box pro- -- possibly, in terms of people exploiting the

25 rule.

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1 In this case, he's not -- he's not using
 2 campaign funds, he's using personal funds. It's a list
 3 that he has not paid for, it's his personal e-mail list.
 4 It's a list that he's not used his office to obtain, at
 5 least not directly. And it's a minimal cost. The
 6 issue -- and so normally we would recommend a no-action
 7 letter, because, frankly, if someone filed a complaint
 8 about this sort of thing, I would recommend the
 9 Commission not take an action against them.

10 The problem is and I think Senator Huppenthal's
 11 issue that we addressed -- that you addressed last
 12 meeting raises: Well, when does the use of personal
 13 property become more than nominal? The concern with
 14 Senator Huppenthal was that he had a special phone
 15 machine, special software that's expensive, and -- and
 16 that became a question of -- of -- of whether or not
 17 that violated any of our rules.

18 In this case, everyone has e-mail and so it
 19 seems an easier case. But there were issues -- there
 20 were questions raised at the last meeting by a number of
 21 Commissions regarding: Well, wait a minute, if -- if
 22 one thing is fair, why isn't the other thing fair. You
 23 know, when -- where do we draw the line on personal use?

24 COMMISSIONER LINDHOLM: Would you have to
 25 monitor how the e-mail list is used?

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1 understand resistance to getting into that area as well.
 2 But I'm just -- I'm not real comfortable with this
 3 request. I'm not real comfortable with what may come of
 4 it.

5 MR. LANG: I suppose we could issue a no-action
 6 letter that said: So long as you -- you use this e-mail
 7 list, that you've obtained it from personal sources,
 8 that you didn't use your office to obtain, that you
 9 didn't pay for, and the number of people on the list is
 10 lower than a thousand, you do it more -- no more than
 11 once a month.

12 COMMISSIONER LINDHOLM: What if you were more
 13 generic than that and said: So long as this list is not
 14 used in a way which would be violative of the Commission
 15 rules.

16 MR. LANG: That doesn't provide them much
 17 guidance, or other people looking at it. Now, of
 18 course, no-action letters are only applicable to the
 19 person requesting it, so only Mr. Farley gets safe
 20 harbor if we issue it. But certainly others will look
 21 at it for guidance.

22 CHAIRPERSON SCARAMAZZO: Lori.

23 COMMISSIONER DANIELS: Mr. Chairman, if he said
 24 he goes -- the people go to his Website and sign up
 25 voluntarily, doesn't he have to pay for that Website and

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1 MR. LANG: I don't want to.

2 COMMISSIONER LINDHOLM: No, but if -- if we --
 3 if the Commission approves this request, would you then
 4 find yourself in a situation where you have to monitor
 5 the e-mail list use to determine how it's used? I mean,
 6 are there ways that could be used in which it would then
 7 violate rules or statutes?

8 MR. LANG: Certainly, it could be abused. But
 9 two things. One is we could ask Mr. Farley to let us
 10 know how it's used; and two, if he missuses it, I'm sure
 11 an opponent or someone from the other party will let us
 12 know. That's usually how these things work. That's the
 13 nice thing about our position, is that we have a -- an
 14 active group of investigators. And it's -- it's the
 15 numbers legion, it's every political operative out
 16 there.

17 So, in that sense, I'm not concerned. I'm not
 18 concerned that he will get away with something, but I'd
 19 rather not wade into this if it's going to cause us
 20 trouble in the future.

21 COMMISSIONER LINDHOLM: Well, I think we have
 22 to have some basis for not wading into it. That's
 23 what -- what I'm disturbed about. I -- I have -- I find
 24 some appeal to Lori's suggestion that there some -- be
 25 some standards applied to this. On the other hand, I

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1 is that out of campaign funds? That -- that was my --
 2 that was my other concern.

3 MR. LANG: My -- I -- my understanding, I
 4 didn't ask him to confirm this, my understanding is
 5 this -- that this is his officeholder Website, not his
 6 campaign Website.

7 COMMISSIONER DANIELS: Oh, then, Mr. Chairman,
 8 Todd, I think I have even more of a problem with that
 9 because that's paid for by the State of Arizona and
 10 that's government property.

11 MR. LANG: Right.

12 COMMISSIONER DANIELS: I understood it was his
 13 personal Website, which still, when you have a
 14 candidate, you know, you have a legislative Website and
 15 you have a c- -- you have a Website as a candidate that
 16 you pay for out of campaign funds.

17 (Whereupon a discussion was held off the
 18 record between Mr. Lang and Mr. Ruiz.)

19 MR. LANG: Okay. So it's not a campaign
 20 Website. It's a Steve Farley Website --

21 COMMISSIONER DANIELS: Right.

22 MR. LANG: -- paid for by his com- --
 23 constituent communication account.

24 COMMISSIONER DANIELS: Which --

25 MR. LANG: Which is not state money and not

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1 campaign money, and expressly permitted by our rules.
 2 So he's found a -- he's found a little spot there.
 3 Thanks, Daniel.
 4 COMMISSIONER DANIELS: Appreciate the
 5 clarification. Thank you.
 6 MR. ROBSON: From here?
 7 CHAIRPERSON SCARAMAZZO: Come on up and --
 8 MR. LANG: Identify yourself for the record and
 9 the whole bit.
 10 MR. ROBSON: Bob Robson. You need an address
 11 or?
 12 CHAIRPERSON SCARAMAZZO: No, that's fine.
 13 MR. LANG: No.
 14 MR. ROBSON: I really -- Chairman, Members, I
 15 really didn't come to testify on this one, but being
 16 that you bring some of the things up. One, your --
 17 under your officeholder account it should cease to exist
 18 any expenditures or funding should ceased to exist
 19 several months ago.
 20 MR. LANG: April 30th.
 21 MR. ROBSON: So if that's -- if that's what
 22 occurring, you're clearly in violation of the rules
 23 you've promulgated.
 24 Two, if it's a campaign Website, then it falls
 25 again within the rules that you've promulgated as well
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1 the -- the voluntariness of -- of going on a Website,
 2 whether it's your campaign Website or other Website, for
 3 some direction here because you do have rules that
 4 already deal with this issue.
 5 If I could answer any questions, if I haven't
 6 confused you totally.
 7 CHAIRPERSON SCARAMAZZO: Any questions for Mr.
 8 Robson?
 9 Okay. Thank you for your input.
 10 MR. ROBSON: Thank you.
 11 COMMISSIONER DANIELS: Well, Mr. Chairman, it's
 12 clear as mud to me right now.
 13 CHAIRPERSON SCARAMAZZO: Yeah.
 14 COMMISSIONER DANIELS: I --
 15 MR. ROBSON: I'd leave it alone.
 16 COMMISSIONER DANIELS: Yeah, I personally am
 17 not in favor of taking any action. I just am not
 18 comfortable with it, but obviously the Commission
 19 can make a --
 20 COMMISSIONER LINDHOLM: Should we consider
 21 inviting him in?
 22 CHAIRPERSON SCARAMAZZO: I don't think that
 23 that would...
 24 COMMISSIONER LINDHOLM: Doesn't do anything.
 25 MR. LANG: Should have had him in today.
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1 with respect to expressed advocacy. I agree with the --
 2 with the Director that you probably should stay away
 3 from the e-mail issues, but you should stay within the
 4 parameters, that you -- the guidelines that you've given
 5 candidates. And that is that if -- if you pay for it,
 6 then obviously it's got to be a matching fund, if -- if
 7 you go beyond the amounts.
 8 But here you've got if -- if -- if it's a
 9 constituent account that -- that's been used and funds,
 10 you know, didn't expire or you pay for it in advance,
 11 but it's still -- it's still -- it's still going on,
 12 that's still -- still an expenditure. If it's gotten by
 13 means of your office, that's legal. Those are all
 14 public -- those are all public records and everybody has
 15 a right to request those or obtain them through the
 16 Freedom of Information Request, if they so choose.
 17 I always tell people when they communicate with
 18 me at the Capital, you know, once you've -- once you've
 19 gone on that Website you're now in the public domain and
 20 all those correspondence potentially, unless involved in
 21 legal issues back and forth or whatever, or -- or just
 22 working on the legis- -- legis- -- legislative issue
 23 before it comes to the public, then you're open.
 24 And so I think your Director is -- is correct,
 25 probably staying away. But I would -- I would question
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1 COMMISSIONER DANIELS: And, Mr. Chairman, I --
 2 the -- the -- Daniel sent back, I -- I'm inviting him.
 3 MR. RUIZ: Yes, he was invited and I also let
 4 him know that he could participate via telephone
 5 conference.
 6 COMMISSIONER DANIELS: Via telephone too, so...
 7 CHAIRPERSON SCARAMAZZO: Okay. It sounds like
 8 the Commission is reluctant to make a move either way on
 9 this, so might be that a table would be in order if so
 10 desired.
 11 COMMISSIONER LINDHOLM: In -- in an address
 12 what's "igc.org"? In his address, his e-mail address,
 13 "igc.org," does that indicate anything?
 14 MR. LANG: Probably a public affairs group.
 15 That might be -- that might be his work e-mail outside
 16 of the legislature.
 17 COMMISSIONER DANIELS: Mr. Chairman, I --
 18 unless someone else wants to make a motion, I -- I move
 19 that this -- that we take no action on Item No. VI.
 20 COMMISSIONER LINDHOLM: For clarification,
 21 Lori, are you saying that in effect that we ignore him
 22 or are we saying that we -- that we --
 23 COMMISSIONER DANIELS: We're not going to --
 24 COMMISSIONER LINDHOLM: -- provide no no-action
 25 letter.
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1 COMMISSIONER DANIELS: Mr. Chairman, I'm saying
 2 that we don't provide a letter to him.
 3 CHAIRPERSON SCARAMAZZO: Okay.
 4 COMMISSIONER DANIELS: So we take no action.
 5 COMMISSIONER LINDHOLM: That we just don't act
 6 on the request.
 7 COMMISSIONER DANIELS: That we're not going to
 8 approve his request for a no-action letter at this time.
 9 COMMISSIONER PARKER: I'll second that.
 10 CHAIRPERSON SCARAMAZZO: Okay. Been moved by
 11 Commissioner Daniels, seconded by Commissioner Parker to
 12 basically not approve the no-action letter request from
 13 Representative Farley at this time.
 14 Todd.
 15 MR. LANG: I just wanted to clarify for the
 16 record, that this does not constitute a -- a finding by
 17 the Commission that there is anything improper
 18 happening.
 19 CHAIRPERSON SCARAMAZZO: No.
 20 MR. LANG: It's just that the Commission
 21 declines to take action.
 22 CHAIRPERSON SCARAMAZZO: Correct.
 23 COMMISSIONER DANIELS: Right. And Mr.
 24 Chairman, Todd, to this point, if he does ahead and
 25 moves forward, it doesn't mean that the Commission is
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1 closely with the Secretary of State on that issue
 2 because it obviously would implicate Clean Elections
 3 funding and would also implicate their office in terms
 4 of campaign finance reports.
 5 They're steadfastly against it in terms of
 6 having the reports filed with their office, but ba- --
 7 basically it's an unfunded mandate in terms of staff
 8 because that of course more than doubles the number of
 9 candidates.
 10 So that's where we are and we'll continue to
 11 work closely with them when that bill comes back,
 12 because I'm sure it will.
 13 CHAIRPERSON SCARAMAZZO: Any questions for
 14 Todd? Royann?
 15 COMMISSIONER PARKER: Do we also need to be
 16 spe- -- speaking with the County Recorders Offices about
 17 what will be required of them should those bills come to
 18 pass? And if we can provide them with the same
 19 recording software that they use with us and the
 20 Secretary of State would have that copy and each of the
 21 County Recorder Office could go there and do their
 22 recording and filings.
 23 MR. LANG: Mr. Chairman, do you want me to --
 24 CHAIRPERSON SCARAMAZZO: Yes, please.
 25 MR. LANG: Commissioner Parker, we're working
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1 going to take action on it either. I mean, it's just
 2 we're not giving him his request is the way I look at
 3 it.
 4 COMMISSIONER LINDHOLM: So we're disapproving
 5 his request?
 6 COMMISSIONER DANIELS: Yes.
 7 COMMISSIONER LINDHOLM: Okay. I can vote for
 8 that.
 9 CHAIRPERSON SCARAMAZZO: Okay. Any other
 10 questions or comments?
 11 All those in favor say "aye."
 12 (Chorus of ayes.)
 13 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 14 carries.
 15 Item No. VII, discussion and possible action on
 16 the monthly legislative status report.
 17 Todd.
 18 MR. LANG: Commissioners, no new news is good
 19 news. The bills we were concerned about did not make it
 20 out on the last few days which is, we think, a very good
 21 thing. So we'll wait until a special session is called
 22 or next year's session to retake up these issues.
 23 And Commissioner Parker was in contact with me
 24 about the issue with the election of judges. And I just
 25 wanted to assure you all that we are working very
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1 with Karen Osborn in particular of Maricopa County and
 2 so we're working with both the Recorder's and the
 3 Secretary of State's office.
 4 There were two versions of the bill, one -- but
 5 the primary version required that it was a split, as I
 6 recall. Some candidates in some counties filed with the
 7 Recorder's Office and others filed with the Secretary of
 8 State. And so we'll continue to work with them.
 9 Generally, my view -- my -- my view is that the
 10 Recorders would like to see them filed with the
 11 Secretary of State and the Secretary of State would like
 12 to see them filed with the Recorders.
 13 COMMISSIONER PARKER: Well, if they are running
 14 for a county office I would think they would have to be
 15 at the county office. But I guess my biggest question
 16 was we need to have some kind of facts to give the
 17 legislature as to how much it will cost approximately,
 18 you know, the Recorder's Offices to be up and running to
 19 receive the reports that these candidates will be filing
 20 with them.
 21 MR. LANG: Commissioner --
 22 COMMISSIONER PARKER: They would have the same
 23 software that's being used now, that we use and
 24 Secretary of State's use, why reinvent that wheel. And,
 25 you know, just be ready to go, because chances are this
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1 bill is going to come up again. And have our groundwork
2 done so we can show them what the -- the impact is going
3 to be for us, for the Secretary of State, and for the
4 County Recorders.

5 MR. LANG: Commissioner Parker, we actually --
6 Colleen McGee put together a cost chart, which I've
7 e-mailed to you. Because you're in San Diego, you have
8 not yet seen it. But I have sent it to you which breaks
9 down the cost and it's quite prohibitive actually of
10 funding these -- these races.

11 We can add also the cost of bringing the
12 software to the Recorder's Office. I think there will
13 be number of objections to that because it's not
14 software, it's a -- it's a computer -- it's a Website
15 program. It's not, you know -- in other words, the
16 campaign finance reports work through the Web, not on
17 your own individual computer.

18 For our purposes, because of that, to issue
19 matching funds and to monitor accounts, we really need
20 it to be filed with the Secretary of State.

21 COMMISSIONER PARKER: Okay.

22 MR. LANG: But I'm sure there's a way we can
23 work it so that if it was filed with the Recorder's
24 office, so long as they were part of the Secretary of
25 State system, we can do that.

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1 But I can tell you that it's going to be a
2 challenge, both logistically and in term of the
3 politics.

4 COMMISSIONER PARKER: Okay.

5 MR. LANG: But we are prepared and we'll --
6 we'll certainly supplement our report regarding any cost
7 re -- in regard to the computer adjustment.

8 COMMISSIONER PARKER: Okay. Thanks, Todd.

9 CHAIRPERSON SCARAMAZZO: Anything else? Okay.
10 Todd, anything?

11 MR. LANG: That's all I have on the legislative
12 update.

13 CHAIRPERSON SCARAMAZZO: Okay. Sounds good.
14 Thank you.

15 Move on then to Item No. VIII, consideration
16 and decision whether there is reason to believe a
17 violation occurred in MUR 08-0006, Angela Cotera.

18 MR. LANG: Thank you, Mr. Chair.

19 Commissioners, Ms. Cotera submitted a letter to us on
20 July 8th in which she acknowledged she violated the Act.
21 She took some campaign photos and paid out of her own
22 funds \$125 when she only had \$25 in her campaign
23 account. The -- in a sense that was -- by contracting
24 and ordering, that was a debt. It's a violation and she
25 reimbursed herself less than a week later with campaign

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1 funds. So we had a violation of \$100 for less than --
2 for four calendar days. And quite important to me is
3 that she self-reported this very minor violation.

4 This is a violation. The Commission certainly
5 can find reason to believe because there is reason to
6 believe there was a violation, but I would suggest or
7 it's staff's recommendation that the Commission decline
8 to find reason to believe because of the small amount
9 involved, because she self-reported, and because it was
10 only for four days.

11 This is not a situation where someone is trying
12 to exploit a loophole in the rule to get a huge
13 advantage. This is simply a small error, and we think
14 that her corrective actions is satisfactory.

15 COMMISSIONER LINDHOLM: Chair, ready for a
16 motion?

17 CHAIRPERSON SCARAMAZZO: Certainly.

18 COMMISSIONER LINDHOLM: I move that the
19 Commission adopt and approve the recommendation of the
20 Director regarding this matter.

21 COMMISSIONER DANIELS: Second.

22 Mr. Chairman, before we vote I have one
23 question.

24 CHAIRPERSON SCARAMAZZO: Okay. Let me get it
25 on the floor real quick, okay.

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1 It's been moved by Commissioner Lindholm,
2 seconded by Commissioner -- Commissioner Daniels to
3 decline to find reason to believe in following the
4 recommendation of the Executive Director in MUR 08-0006.
5 Lori.

6 COMMISSIONER DANIELS: Mr. Chairman, Todd,
7 re- -- refresh my memory, if you can. Probably my first
8 or second meeting we were doing an audit of an account
9 and it was over bottles of water that he brought for his
10 workers and didn't have a receipt for. Didn't we not
11 fine him a little bit of money on that?

12 MR. LANG: Generally, when we fine minor
13 violations, we fine them the amount they exceed the
14 limits by.

15 COMMISSIONER DANIELS: Okay.

16 MR. LANG: So in this case, we would recommend
17 a hundred-dollar fine.

18 COMMISSIONER DANIELS: Okay. And -- and Mr.
19 Chairman, I'm just -- I'm not saying that at this point,
20 I'm just trying to see if we're consistent in -- in
21 following the rules the way that they're stated.

22 MR. LANG: Th- -- that -- that would certainly
23 be a reasonable outcome in this case, a hundred-dollar
24 fine. We just felt that because it was just a hundred
25 dollars and it was four days, that it was minor enough

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1 that we'd let it go.

2 COMMISSIONER LINDHOLM: And it was

3 self-reported.

4 MR. LANG: And self-reported, which we consider

5 to be very important.

6 We have a couple of other self-reported

7 violations, that obviously we're going to -- when they

8 come to you, we're going to recommend obviously less

9 than the full penalties, but they are more significant

10 than this and so we are going to recommend reason to

11 believe.

12 CHAIRPERSON SCARAMAZZO: Lori.

13 COMMISSIONER DANIELS: Mr. Chairman, I --

14 I just -- I have a question of legal counsel.

15 We have the option to do that, to -- to waive

16 them as -- I mean, the statute states specifically where

17 we're supposed to fine the amounts and some different

18 things. Can you show me where it says that we can

19 change those statutes or change the amounts? I just

20 want to make sure we're not exceeding our authority.

21 MS. SHIPMAN: I believe it -- the -- the

22 statute says you have discretion.

23 COMMISSIONER DANIELS: Okay.

24 MS. SHIPMAN: But let me find them.

25 COMMISSIONER DANIELS: I would appreciate that.

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1 COMMISSIONER PARKER: I only have one revised

2 and it's Item VIII is this particular issue.

3 MS. SHIPMAN: Yeah, we shouldn't --

4 COMMISSIONER DANIELS: We shouldn't be -- Mr.

5 Chairman, I would withdraw my motion and ask that we

6 table this until next meeting since it's not posted

7 correctly.

8 CHAIRPERSON SCARAMAZZO: Not posted correctly,

9 okay. Okay.

10 COMMISSIONER DANIELS: And in the meantime, you

11 can find my answer.

12 MS. SHIPMAN: I'm trying to -- exactly -- find

13 it.

14 COMMISSIONER DANIELS: Thank you. Searching

15 frantic.

16 MR. LANG: We changed it in time, but

17 apparently it didn't get up on the Website.

18 So, Mr. Chair, I'd recommend we table this

19 matter.

20 CHAIRPERSON SCARAMAZZO: Yes, and let's err on

21 the side of caution here, okay.

22 So, Commissioners Daniels, Commissioner

23 Lindholm, is it okay --

24 COMMISSIONER LINDHOLM: Yes.

25 CHAIRPERSON SCARAMAZZO: -- to remove that then

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1 CHAIRPERSON SCARAMAZZO: Eric, you're next up.

2 MR. EHST: Mr. Chairman, Eric Ehst repre- --

3 CHAIRPERSON SCARAMAZZO: Hold on until -- until

4 we get this answer and then jump right in. Come on up

5 and sit down, please.

6 MR. EHST: Actually this may -- act- -- my

7 comment may make the answer moot.

8 CHAIRPERSON SCARAMAZZO: Okay. Go for it.

9 MR. EHST: Eric Ehst, representing the Clean

10 Elections Institute. I want to point out to the

11 Commission, that Item VIII on the agenda that is

12 currently on the Website and is on the table here is

13 call for public comment. That -- that complaint issue

14 was -- is not on the current revised-three version of

15 the Commissions' agenda.

16 MR. LANG: It's on the one posted on the

17 Website.

18 MR. EHST: It's -- I pulled it off the Website

19 at 6 o'clock yesterday afternoon and this is the version

20 that's on the Website. And Item VIII is call for

21 public -- call for public comment, and that's what's

22 also on the table here.

23 MS. SHIPMAN: Oh, that's a good point.

24 COMMISSIONER DANIELS: Mr. Chairman, we should

25 probably --

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1 and I would then look for a substitute motion to table.

2 COMMISSIONER DANIELS: Mr. Chairman, I'd make a

3 substitute motion that we table Item -- the

4 consideration of whether to believe there was a

5 violation under MUR 08-0006 on Angela Cotera.

6 CHAIRPERSON SCARAMAZZO: Okay.

7 COMMISSIONER LINDHOLM: Second.

8 CHAIRPERSON SCARAMAZZO: It's been moved by

9 Commissioner Daniels, seconded by Commissioner Lindholm

10 to table Item No. VIII, MUR 08-0006. No discussion on

11 the table.

12 All those in favor say "aye."

13 (Chorus of ayes.)

14 CHAIRPERSON SCARAMAZZO: Opposed? Motion

15 carries.

16 Okay. That brings us then back to Item No. V,

17 discussion and possible action on Commission Rule

18 R2-20-104(F), officeholder expenses.

19 Todd.

20 MR. LANG: Thank you, Mr. Chair.

21 Commissioners, you have before you a copy of the rule at

22 issue which is 104. The part that we're actually

23 discussing is 104(F), which is the third page in your

24 packet. We've doubled-spaced it for you so you can read

25 it more easily.

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1 CHAIRPERSON SCARAMAZZO: I thought that was
 2 just for my eyesight, but I appreciate it.
 3 MR. LANG: It was for my eyesight, but thank
 4 you.
 5 And then we also have, just as a reminder, the
 6 Senator Huppenthal issue which shows the kind of issues
 7 that comes up with constituent communication accounts or
 8 officeholder expense accounts.
 9 I've also distributed -- Commissioner Parker, I
 10 apologize, I don't have a copy -- I didn't send a copy
 11 to you, but it's a copy of 16-901 which is the
 12 definitional section of the election law statutes. And
 13 16-901(5) governs the definition of contribution. And
 14 169- -- 16-901(5)(a)(ii) defines as a contribution
 15 which, of course implicates both Clean Election and
 16 traditional campaign finance law. Contribution is
 17 defined as: Money or the fair market value of anything
 18 directly or indirectly given or loaned to an elected
 19 official for purposes of defraying the expense of
 20 communications with constituents, regardless of whether
 21 the elected official has declared his candidacy.
 22 That basically defines constituent
 23 communication monies as contributions. That is the
 24 origin of why this rule was promulgated many years ago
 25 before I was in this current position.

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1 opposed to the rule, that they think it -- it goes
 2 beyond the Commission authority.
 3 The problem -- the -- the challenge that we
 4 have as staff with the rule is that we prohibit
 5 expressed advocacy. And -- and we also in order to
 6 create a sort of to inoculate constituent
 7 communications, we don't allow them to be done after
 8 April 30th of an election year. That way there's no
 9 question of -- about a particular communication or at
 10 least usually not.
 11 But as we've seen in the example you have from
 12 Senator Huppenthal and some examples you're going to get
 13 next month and examples you've had in the past, there
 14 are constituent communications that come close to
 15 expressed advocacy. And that is a problem because it
 16 frustrates the officeholders who feel like they're doing
 17 nothing wrong, it frustrates their opponents who feel
 18 like their abusing the system, and it -- it becomes
 19 quite a challenge to implement and enforce the rule.
 20 Given all that, I'd like the Commission to
 21 consider possibly doing away with the rule or at least
 22 putting it out there for public discussion. The problem
 23 of course is. If you get rid of the rule, we are back
 24 in square one on those constituent communication funds
 25 will trigger matching fund and the like.

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1 The purpose was -- the problem was, the -- the
 2 policy issue that the Commission addressed was the
 3 concern by some of the sitting legislatures that they be
 4 able to cons- -- communicate with their constituents
 5 without -- without triggering matching funds for their
 6 opponent in the case of non-participating candidates or
 7 traditional candidates. And in the case of
 8 participating candidates, the concern was that they
 9 become ineligible because they wanted to simply update
 10 their constituents on what is going on at the
 11 legislature, which the Commission at that time viewed as
 12 a reasonable goal.
 13 Since that time the -- the Commission's
 14 considered a number of issues and had a number of
 15 challenges regarding this particular rule. We currently
 16 have a number of requests from legislatures to extend
 17 the rule so that it began -- so that they can send out
 18 Christmas cards, for instance, ri- -- or even
 19 Thanksgiving cards right after the election. They'd
 20 like to be able to spend more money. They'd like to be
 21 able to raise more money. There's lots of different
 22 requests regarding expansion of the rule.
 23 There was a statutory change that went fairly
 24 far in the legislature a few years back. At the same
 25 time we had a number of -- of -- of legislatures who are

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1 The solution, as I see it, there's two. One,
 2 is and I think the best one is a statutory change to
 3 16-901 to expressly permit some sort of constituent
 4 communication, which would provide clear guidance to the
 5 Commission and clear -- clear guidance to candidates.
 6 The other possibility is a different rule, some
 7 other Commission rule, which provided guidance on -- on
 8 what candidates can do in regard to constituent
 9 communications that won't trigger matching funds.
 10 The problem is that, if we go that route, the
 11 definition of contribution is still super broad. It
 12 doesn't have to be expressed advocacy to be considered a
 13 contribution. It can be a very legitimate newsletter
 14 that's, you know: Here's what's happening at the
 15 legislature, let me know what you think kind of
 16 newsletter. Doesn't even praise the cand- -- the
 17 particular officeholder. It doesn't even say how great
 18 he is. It just says: Hi, I'm Todd Lang and I'm your
 19 state rep and I want to know what you think of these 10
 20 issues. Completely legitimate newsletter under these --
 21 under the statute would trigger matching funds.
 22 And so that's the real challenge for us. I --
 23 I do not recommend that the Commission repeal it today,
 24 because I think we need to hear primarily from the
 25 officeholders, the state representatives and the

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1 senators -- state senators in particular as well as the
 2 statewide officeholders. And they've been very busy
 3 with session, so we haven't heard anything from them,
 4 even though this has been on the agenda for a while. I
 5 think we can contact them directly and let them know
 6 what we're doing and ask for feedback. And there will
 7 be some who will praise us and some who --
 8 CHAIRPERSON SCARAMAZZO: Not praise us.
 9 MR. LANG: -- criticize us.
 10 CHAIRPERSON SCARAMAZZO: Yes.
 11 COMMISSIONER PARKER: Mr. Chairman.
 12 CHAIRPERSON SCARAMAZZO: Yes, Royann.
 13 COMMISSIONER PARKER: Todd, is there -- would
 14 it be pro-active on our part maybe to draft up what we
 15 would -- maybe some proposed legislation to present next
 16 session that would, you know, be helpful to the -- the
 17 officeholders as well as to us as kind of a starting
 18 place for a bill?
 19 MR. LANG: Yeah, we certainly can do that.
 20 Unfortunately, our biggest advocate for possible
 21 statutory change isn't going to be in office next year
 22 at -- at the legislative level. But -- but, yeah, we
 23 can do that. We can draft up something and -- and ask,
 24 you know, the usual suspects to consider running it.
 25 COMMISSIONER PARKER: I'm thinking it would
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1 to solve this problem. I think, however, your current
 2 rule is a little bit overreaching.
 3 I think at some point you're probably telling a
 4 legislature how they can legislate, when they should
 5 legislate, what they should legislate. I think when
 6 you -- when you -- you're strictly -- you strictly deal
 7 with elections and not with what's done in office. And
 8 that's a -- a real -- that's a real -- it's a real fine
 9 line for you, and I recognize -- I recognize that. But
 10 I think once you step over that line and you determine
 11 what is within the bounds of communication, and how
 12 you're going to communicate, and when you're going to
 13 communicate, and what you're going to communicate, I
 14 think is a -- is a major, major threat to the offices
 15 that people hold.
 16 And so I -- I -- but I've worked, I think
 17 fairly well with, and I -- and I -- and I'd really like
 18 to say, if I can at this time, just egress a little bit,
 19 your staff is tremendous. They're -- they're overly
 20 cooperative, which is really nice. Any time any one of
 21 us call or have a question, they're always -- always
 22 available to answer them and -- and I appreciate that.
 23 Whether I agree with Clean Elections or disagree with
 24 Clean Elections, I appreciate that.
 25 This issue here though, I -- I think is a very
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1 show them that we -- we're -- you know, as this
 2 Commission we want to -- to be as helpful as possible to
 3 everyone and to also have the -- the rules be fair.
 4 And --
 5 MR. LANG: That's a good idea.
 6 CHAIRPERSON SCARAMAZZO: Yes, sir. Come on up.
 7 And I might mention this isn't the Commission's
 8 first run at this. A couple of years ago there was a
 9 committee from the legislature. We were all trying to
 10 figure out a solution and it was -- how do they say,
 11 like economists, you lay them end to end and they point
 12 in all directions. You know, one of those deals.
 13 Yes, sir, welcome again.
 14 MR. ROBSON: Mr. Chairman, Members,
 15 Representative Bob Robson. This time it's for my w- --
 16 my legislature role.
 17 You may be aware, Chair of the rules committee
 18 for the last four years and was on it for the past eight
 19 years. During that period of time, been pan- --
 20 corresponding I think since 19- -- no, since 2005 on
 21 this issue with the Commission.
 22 I don't believe it's within your statutory
 23 authority to promulgate a rule relevant to this issue.
 24 I -- I have no problems with the Commission working on
 25 some sort of legislation, po- -- potential legislation
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1 slippery slope and -- for -- for the Commission to deal
 2 with ultimately. I mean, I held off on asking the
 3 Attorney General's office to give me the final rule -- a
 4 final decision on this. I know I requested it and I
 5 know the Commission requested it. Because I want to
 6 give you the opportunity, as Commissioners, whether --
 7 whatever process you are going to use, to try to work
 8 through this. But I think you always have to remember,
 9 no matter what action you take, are you taking an action
 10 that will prevent me from performing the duties of my
 11 office in the way I see fit?
 12 If I'm saying vote for Bob Robson, I've stepped
 13 over the line. If I'm saying I've -- I've -- I've
 14 worked diligently as your representative over the past
 15 year, and these bills were signed into law by the
 16 Governor or I worked hard on this issue on -- on -- on
 17 the community's behalf, is that expressed advocacy? And
 18 I think once you start determining what the speech
 19 patterns are of the legislature, I think you've made --
 20 I think you've made some major mistakes -- or any
 21 officeholder for that matter. I think you are making a
 22 grave mistake. And I think the -- the enabling la- --
 23 actions that you were given don't -- don't -- didn't
 24 perceive it would ever go that far.
 25 COMMISSIONER DANIELS: Well, Mr. Chairman --
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1 CHAIRPERSON SCARAMAZZO: Lori.
 2 COMMISSIONER DANIELS: -- Mr. Robson, I -- I
 3 think you're a little bit stretching in this in one
 4 respect. I don't think Clean Elections saying that
 5 something triggers matching funds does anything at all
 6 to determine what you can or cannot say in office. You
 7 can express whatever you want, whatever actions you
 8 take, doesn't -- the Commission is in no way saying you
 9 can't take that. The Commission may say that they
 10 believe that is expressed advocacy and in that respect
 11 turn around and trigger matching funds to a
 12 participating candidate.
 13 So I -- I don't think we're in any way, shape,
 14 or form trying to determine what can or cannot be done
 15 in office. But I think what we're trying to look at is
 16 how funds are used and what exactly -- and maybe, Todd,
 17 you can help me with this. Do we have a complete
 18 definition of expressed advocacy somewhere in statute or
 19 in law --
 20 MR. LANG: Uh-huh.
 21 COMMISSIONER DANIELS: -- because I'd like --
 22 I -- I -- I know it's there and I'd like to see it again
 23 just to refresh my memory.
 24 MR. LANG: It -- it's not in your rule book.
 25 MR. ROBSON: It's in there.

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1 the -- maybe the how, what.
 2 COMMISSIONER LINDHOLM: Mr. Chairman?
 3 MR. ROBSON: But I -- I don't agree. I don't
 4 believe you have the -- I don't believe you have --
 5 through the enabling Act, I don't think you have the
 6 ability to regulate outside of what you do with respect
 7 to Clean Election accounts and -- and campaigns.
 8 CHAIRPERSON SCARAMAZZO: Thank you. Don.
 9 COMMISSIONER LINDHOLM: When I -- when I --
 10 I -- I'm new to this whole debate. When I look at
 11 16-901 and I come down to Item (5) that defines
 12 contribution and includes it's made for the purpose of
 13 influencing an election, I'm not entirely sure how broad
 14 that is. I -- I suppose it depends on how you want
 15 to -- on how you want to define what it is to influence
 16 an election. I think you can conceive of a -- of a
 17 definition that says anything an officeholder does who,
 18 you know --
 19 MR. ROBSON: Expends funds.
 20 COMMISSIONER LINDHOLM: Yeah.
 21 -- is trying to influence the election or is --
 22 or is influencing an election.
 23 It seems to me like -- like we might spend a
 24 little time trying to get a good grasp on really what
 25 that really means, because that's pretty broad.

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1 MS. SHIPMAN: It's in the statute.
 2 MR. ROBSON: In the statute.
 3 MR. LANG: 16-901.01, okay.
 4 COMMISSIONER DANIELS: Sorry, I keep asking for
 5 stuff. Okay.
 6 MR. ROBSON: Mr. Chairman --
 7 MR. LANG: And I -- I'll e-mail it to you.
 8 COMMISSIONER DANIELS: I'd appreciate that.
 9 MR. ROBSON: Mr. Chairman and Commissioner
 10 Daniels, I -- I don't disagree with you. I think
 11 maybe -- maybe I was misunderstood. I don't believe
 12 that this should -- I don't even that this should be a
 13 discussion, quite candidly. I don't think you should
 14 have a rule dealing with constituent accounts. I think
 15 it's dealt with under -- it's dealt with in statute
 16 under Title 16. So do away -- do away with the
 17 officeholder account, because I don't believe you have
 18 the right to regulate an officeholder account. And if
 19 you can show me that in the -- the enabling legislation,
 20 I -- I'd really be happy to see that, but I don't
 21 believe you have that right.
 22 So what I was trying to say to you is, if
 23 you -- even if you -- if you started working on rules,
 24 just be careful you don't go over the bounds of saying
 25 who, what, when, where, why, and how so to speak. Maybe

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1 CHAIRPERSON SCARAMAZZO: Todd.
 2 MR. LANG: Mr. Chair, Commissioner Lindholm,
 3 the way we've interpreted that and generally the way
 4 we've approached that, because, as you've said, it is
 5 quite broad, is we turn then to 16-901.01 for expressed
 6 advocacy. That's when we -- if something is expressed
 7 advocacy, that gives us pretty safe and clear guidance
 8 on what we can regulate. And generally we only regulate
 9 expressed advocacy or something that meets the
 10 definitions through some other provision. Like, for
 11 instance, this definition of money raised to defer the
 12 cost of communicating with constituents.
 13 Even though that's not expressed advocacy, it's
 14 constitutes contribution and, therefore, we have to
 15 match it. And it's that a conundrum that this rule
 16 attempts to address.
 17 MR. ROBSON: Mr. Chairman, what I'm saying is
 18 if you go back to the way things were before you put
 19 this rule in effect, then we're on legal footing as to
 20 whatever actions you take. If you continue on the path
 21 with this rule, then I don't believe -- I don't believe
 22 you have legal footing with respect to being able to do
 23 it. And I've -- I've -- I've waited over a long period
 24 of time because I didn't want to put anybody at risk
 25 with respect to this election cycle.

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1 I mean, Mr. Lang realizes that because they --

2 they were doing what they thought was -- was proper.

3 But I think you need to have some discussion with your

4 legal counsel relative to this issue. And it is whether

5 or not it is well within the -- whether it's within the

6 parameters of the Clean Elections Commission to have

7 this rule to begin with. If you want to put it out to

8 the public too, that's fine.

9 I'm just trying to -- but I think ultimately

10 it's going to rest within the legal -- legal confines.

11 MR. LANG: Mr. Chair, I want to acknowledge, as

12 I've told you in our own personal conversations, that I

13 really appreciate Representative Robson's willingness to

14 work with us on this issue. He has certainly let me

15 know his views for quite sometime, but he agreed with me

16 that we should wait until after the election cycle to do

17 anything if we -- if the Commission decides to do

18 anything because we didn't want to have anything that

19 would impact this election, and -- and so I certainly

20 appreciate that.

21 CHAIRPERSON SCARAMAZZO: Good deal.

22 COMMISSIONER LINDHOLM: Mr. Chairman, are you

23 talking about all of the Rule R2-20-104?

24 MR. ROBSON: Uh-huh. Yes, sir.

25 COMMISSIONER LINDHOLM: Thank you.

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1 CHAIRPERSON SCARAMAZZO: Okay. Let's reconvene

2 back into regular session.

3 It is 10:40, and we're back on Item No. V. We

4 have received legal advice from our counsel concerning

5 this issue, and then we'll open it back up for

6 discussion on Item V.

7 COMMISSIONER DANIELS: Mr. Chairman, I would

8 make a motion that we table Item V due to the fact that

9 it deals with 104(F) and I believe as a Commissioner I

10 need some more information and more discussion on the

11 whole Rule 2-20, not just 104(F).

12 CHAIRPERSON SCARAMAZZO: Okay.

13 MS. SHIPMAN: You mean 2-20-104(F)?

14 COMMISSIONER DANIELS: Yeah, yeah. 2-20-104,

15 yeah. Clarification.

16 COMMISSIONER LINDHOLM: Second.

17 CHAIRPERSON SCARAMAZZO: Okay. It's been moved

18 by Commissioner Daniels, seconded by Commissioner

19 Lindholm to table Item No. V, discussion and possible

20 action on Commission Rule R2-20-104(F), officeholder

21 expenses.

22 All those in favor say "aye."

23 (Chorus of ayes.)

24 CHAIRPERSON SCARAMAZZO: Opposed? Motion

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1 COMMISSIONER DANIELS: Mr. Chairman, I would

2 like to make a motion that we go into executive session

3 for purposes of legal --

4 CHAIRPERSON SCARAMAZZO: Legal advice?

5 COMMISSIONER DANIELS: Yeah. That's what I

6 want. I want expressed advice.

7 CHAIRPERSON SCARAMAZZO: Okay. Is there a

8 second to that motion?

9 COMMISSIONER PARKER: Second.

10 CHAIRPERSON SCARAMAZZO: Okay. It's been moved

11 by Commissioner Daniels, seconded by Commissioner Parker

12 to recess into executive session.

13 All those in favor say "aye."

14 (Chorus of ayes.)

15 CHAIRPERSON SCARAMAZZO: Opposed? Motion

16 carries. Thank you.

17

18 (Whereupon the public retires from the meeting

19 room.)

20

21 (Whereupon the Commission is in executive

22 session from 10:24 a.m. until 10:40 a.m.)

23

24 (Whereupon all members of the public are

25 present and the Commission resumes in general session.)

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1 carries.

2 That brings us to Item No. IX, which is -- oh,

3 Lori.

4 COMMISSIONER DANIELS: Just before we leave

5 that, Mr. Chairman --

6 CHAIRPERSON SCARAMAZZO: Certainly.

7 COMMISSIONER DANIELS: -- can we put this back

8 on next -- next agenda?

9 MR. LANG: Oh, sure.

10 COMMISSIONER DANIELS: Thank you.

11 CHAIRPERSON SCARAMAZZO: Item No. IX, call for

12 public comment. Anyone from the public have any items

13 of interest? Discussion?

14 Okay. Making it easy.

15 Then we'll go to Item No. X, seeking

16 adjournment.

17 COMMISSIONER DANIELS: So moved.

18 COMMISSIONER LINDHOLM: Second.

19 CHAIRPERSON SCARAMAZZO: Moved and seconded.

20 All those in favor say "aye."

21 (Chorus of ayes.)

22 CHAIRPERSON SCARAMAZZO: Opposed? Motion

23 carries.

24 Royann was the first one to approve the

25 adjournment. Enjoy yourself over there.

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1 COMMISSIONER PARKER: I will.
 2 CHAIRPERSON SCARAMAZZO: Thanks, Royann.
 3 COMMISSIONER PARKER: Thanks a lot. Bye-bye.
 4 CHAIRPERSON SCARAMAZZO: Thanks everyone for
 5 your participation today.

6
 7 (Whereupon the proceeding concludes at 10:44
 8 a.m.)
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C E R T I F I C A T E

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 2
 3 I, Angela Furniss Miller, Certified Reporter,
 4 do hereby certify that the foregoing pages numbered 1
 5 through 50, inclusive, constitute a full and accurate
 6 printed record of my stenographic notes taken at said
 7 time and place, all done to the best of my skill and
 8 ability.

9 DATED, at Phoenix, this 18th day of July,
 10 2008.
 11

12
 13
 14 Angela Furniss Miller, RPR
 Certified Reporter (AZ50127)

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