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THE STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona  
September 29, 2008  
1:02 p.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 1:02 p.m. on September  
 3 29, 2008, at the State of Arizona, Clean Elections  
 Commission, 1616 W. Adams, Conference Room, Phoenix,  
 Arizona, in the presence of the following Board members:

4 Mr. Gary Scaramazzo, Chairperson  
 Ms. Royann Parker (Telephonic)  
 5 Mr. Donald Lindholm (Telephonic)  
 Ms. Lori Daniels (Telephonic)

6 OTHERS PRESENT:

7 Today Lang, Executive Director  
 8 Colleen McGee, Deputy Director  
 Paula Ortiz, Executive Assistant  
 9 Rita Azcona, Administrative Assistant III  
 Michael Becker, Voter Education Manager  
 10 Daniel Ruiz II, Campaign Finance Manager  
 Tonja Shipman, Attorney General's Office  
 11 Carl Seel, Carl Seel in '08  
 Horst Kraus, Secretary GOP LD-6  
 12 Jim Barton, Perkins Coie Brown & Bain  
 Tony Bouie, Bouie for State Rep  
 13 Linda Gray, Senator  
 Wesley Waddle, Legislative District 17  
 14 Kyle Moyer, Campaign Consultant

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P R O C E E D I N G

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 3 CHAIRPERSON SCARAMAZZO: Okay. We have a  
 4 quorum now, so let's call to order this meeting of the  
 5 Citizens Clean Election Commission, Monday, September  
 6 29th, 2008. It is 1:02 p.m.

7 I appreciate everyone kind of indulging and  
 8 getting -- thank you -- getting here to make this  
 9 happen, and especially since we're doing it in the  
 10 afternoon.

11 So, with that said, we have four items on the  
 12 agenda today, the first being a couple of matters  
 13 concerning whether there's reason to believe violations  
 14 occurred. The first, MUR 08-0019 and MUR 08-0022,  
 15 Jackie Thrasher. Todd?

16 MR. LANG: Thank you, Mr. Chair.  
 17 Commissioners, thanks for attending the meeting.

18 Before you we have two enforcement matters  
 19 where I rec- -- where -- in regard to a possible reason  
 20 to believe that the violation may have occurred. The  
 21 first is Jackie Thrasher, Representative Jackie  
 22 Thrasher. I would point out that in -- in that  
 23 particular matter we also have, for your later  
 24 consideration, a conciliation agreement involving the  
 25 same enforcement matter. You should have in your

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1 packet -- you should have the complaint at Exhibit A,  
 2 the noncompliant complaint at Exhibit B, and  
 3 Representative Thrasher's response through her attorney,  
 4 Jim Barton, at Exhibit C.

5 You also note that this MUR has two numbers,  
 6 08-11 -- I mean 08-0019 and 08-0022. I recommend that  
 7 you dismiss the second MUR, -022. That's the MUR  
 8 related to the complaint that was not compliant. What  
 9 we're using is the information provided in that  
 10 complaint as -- as a -- an additional source of  
 11 information for your consideration of the first  
 12 complaint, -0019.

13 And this case is a simple one, actually. It  
 14 involves signs that were purchased during the primary by  
 15 the Thrasher Campaign, and communications that went out  
 16 from the Thrasher Campaign. And in both cases -- well,  
 17 actually, it was a flyer. And in both -- and the issue  
 18 with the flyer was it was a routine flyer, but the  
 19 problem was instead of saying vote during the -- with  
 20 the primary election date, it had the general election  
 21 date.

22 The second problem is although it went to high  
 23 efficacy Democratic voters, it also went to a number of  
 24 Republican voters. Both of these indicate, to staff and  
 25 to me, that this had a general election purpose.

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1 Representative Thrasher, and her  
 2 representative, Jim Barton, certainly assure us that  
 3 the -- these issues were unintentional, and there was no  
 4 intent to get any sort of benefit during the primary  
 5 election. And had there just been one mistake, I may  
 6 have been willing to recommend no reason to believe.  
 7 But because there were two mistakes, both the date and  
 8 who it was sent to, I think enforcement in this case is  
 9 appropriate.

10 You have before you the information on how much  
 11 the signs cost and -- and you also have Representative  
 12 Thrasher's response. Given that the -- I mean the  
 13 flyers. I keep calling them signs.

14 Given that the flyers did go to Republican  
 15 voters and other non-Democrats, and given that the  
 16 flyers mentioned the date of the primary -- of the  
 17 general election, so the primary, I ask that you find  
 18 reason to believe that a violation may have occurred.

19 I'd also mention that Mr. Barton is here today,  
 20 if you have any questions of him.

21 COMMISSIONER DANIELS: Mr. Chairman, do you  
 22 want a motion?

23 CHAIRPERSON SCARAMAZZO: That will be fine.  
 24 Now, before we do that, Lori, are you asking  
 25 then that the second part of this, 08-022, be dismissed,

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1 Todd?

2 MR. LANG: Yes.

3 CHAIRPERSON SCARAMAZZO: Okay.

4 COMMISSIONER PARKER: Is that the one with the

5 signs?

6 MR. LANG: In my view, Commissioner, the

7 complaint -- what I'm bringing before you is everything,

8 the signs and the flyers. And while the second

9 complaint wasn't notarized properly, the photos and the

10 other documentation -- the photos and the other

11 documentation I think are properly before you for your

12 consideration.

13 And so, I'd ask that we resolve this matter as

14 one complaint under the original complaint, and close

15 the other complaint.

16 MS. AZCONA: This is Rita.

17 TELECONFERENCE OPERATOR: Rita, I have

18 Mr. Lindholm on the line.

19 MS. AZCONA: Okay. Go ahead.

20 CHAIRPERSON SCARAMAZZO: Hi, Don.

21 COMMISSIONER LINDHOLM: Howdy.

22 CHAIRPERSON SCARAMAZZO: How are you?

23 COMMISSIONER LINDHOLM: I'm good. Thank you.

24 Was I supposed to call earlier or is this just

25 starting?

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1 Mr. Barton, anything?

2 MR. BARTON: No.

3 CHAIRPERSON SCARAMAZZO: Okay.

4 MR. BARTON: This is Jim Barton, Perkins, Coie,

5 Brown & Bain. I don't have anything on this. I'll talk

6 in support of the conciliation agreement, which is

7 farther down the agenda.

8 CHAIRPERSON SCARAMAZZO: Okay. Great. Thank

9 you.

10 Any further discussion on this item?

11 Otherwise, all those in favor say "aye."

12 (Chorus of ayes.)

13 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion

14 carries.

15 COMMISSIONER DANIELS: Mr. Chairman?

16 CHAIRPERSON SCARAMAZZO: Yes, Lori.

17 COMMISSIONER DANIELS: I would make a motion

18 that we dismiss MUR No. 08-0022.

19 COMMISSIONER PARKER: Second.

20 CHAIRPERSON SCARAMAZZO: Okay. It's been moved

21 by Commissioner Daniels, seconded by Commissioner

22 Parker, to dismiss MUR 08-0022. Discussion on this

23 item?

24 All those in favor say "aye."

25 (Chorus of ayes.)

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1 CHAIRPERSON SCARAMAZZO: Well, we just got

2 started here a minute ago. We're called to order, and

3 we're on Item II of the agenda under heading (A).

4 COMMISSIONER LINDHOLM: All right. Thank you.

5 I'm right with you on that here.

6 CHAIRPERSON SCARAMAZZO: Okay. Super.

7 So, Lori, what -- what it looks like Todd is

8 requesting is we use the information in MUR 08-0022 just

9 strictly as back up.

10 COMMISSIONER DANIELS: Right. My understanding

11 is that you would need two different motions; is that

12 correct, Mr. Chairman?

13 CHAIRPERSON SCARAMAZZO: Correct.

14 COMMISSIONER DANIELS: One to find reason to

15 believe in MUR 08-0019 and then a second motion to

16 dismiss the other one?

17 CHAIRPERSON SCARAMAZZO: Yes.

18 COMMISSIONER DANIELS: Okay. Mr. Chairman, I

19 would move that we find reason to believe in the matter

20 of MUR No. 08-0019.

21 COMMISSIONER PARKER: Second.

22 CHAIRPERSON SCARAMAZZO: It's been moved by

23 Commissioner Daniels and seconded by Commissioner Parker

24 to find there is reason to believe a violation occurred

25 in MUR 08-0019. Discussion on this item?

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1 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion

2 carries.

3 Thank you. We'll move on to item (B), MUR

4 08-0020, Wesley Waddle.

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

6 Commissioners, you have before you a complaint against

7 Wesley Waddle, a participating candidate in regard to

8 signs he purchased right before the primary. Exhibit A

9 is the complaint dated the 5th of September, a response

10 dated the 19th of September is Exhibit B. Exhibit C is

11 the second response. I've labeled it Exhibit C. It's a

12 second response by the Waddle Campaign that corrects a

13 number of errors in the first response. And then you

14 also have received by e-mail today a supplemental packet

15 with photographs of various street corners that the

16 complainant felt was relevant to a consideration of

17 whether or not those signs were up before the primary.

18 There's three separate allegations, and I'll go

19 through them in turn, with the third being the one that

20 I think requires your most careful scrutiny.

21 The first part was the candidate used personal

22 supplies and stamps worth about just under \$40 for his

23 campaign and failed to report them. He is now aware of

24 that, and has agreed to amend his report to include the

25 \$37 in stamps and campaign supplies.

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1 For that reason, I recommend that you find no  
 2 reason to believe, although this could -- this could be  
 3 technically a violation.  
 4 The second part is expenditures in regard to a  
 5 website. There, as you can see from his response, he,  
 6 in fact, did report these -- these -- these items. He  
 7 just simply failed to explain that communications for  
 8 \$295 was a reference to the website.  
 9 Therefore, staff and I recommend that you find  
 10 no reason to believe in regard to that portion of the  
 11 complaint.  
 12 The third portion of the complaint involves the  
 13 candidate's campaign signs. His initial response  
 14 acknowledged, or appeared to acknowledge, that the signs  
 15 were not put in use until after the primary. And there  
 16 were a number of reasons given, but ultimately that was  
 17 the explanation. However, after consulting with his  
 18 campaign advisor, and with this office, Mr. Waddle  
 19 amended his response and gave us a new response. That's  
 20 the one dated 9/24. And in that one you can see he has  
 21 indicated the signs, or at least 85 of the signs, were  
 22 out before the primary in time for the -- the 9/2  
 23 primary election date. Only 15 were not put out.  
 24 And as you know, our rules require that -- that  
 25 you can use or permit items purchased for the primary to

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1 primary money on signs. He didn't get it until the last  
 2 minute, so, really, in my view, he did the best he  
 3 could. And that's probably the biggest reason I  
 4 recommend that we not find -- that the Commission not  
 5 find reason to believe.  
 6 Given the changing stories, given the  
 7 photographs supplied today, which show a few street  
 8 corners where his signs weren't up, which I certainly  
 9 don't think is conclusive in any fashion, but it does  
 10 indicate his signs weren't widespread.  
 11 But given his efforts, and given the fact that  
 12 his statement is sworn, and so he is subject to criminal  
 13 charges if he lied, and we could always re-open it if  
 14 that happened, I recommend that the Commission find no  
 15 reason to believe.  
 16 CHAIRPERSON SCARAMAZZO: Okay. Thanks, Todd.  
 17 MR. LANG: I don't know if he's here today.  
 18 Mr. Waddle is here today.  
 19 CHAIRPERSON SCARAMAZZO: Commissioners able to  
 20 hear that okay?  
 21 COMMISSIONER DANIELS: Yes.  
 22 COMMISSIONER PARKER: Yes.  
 23 CHAIRPERSON SCARAMAZZO: Okay. Good.  
 24 COMMISSIONER DANIELS: Mr. Chairman, do you  
 25 want a motion?

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1 be used in the general, so long as they receive  
 2 significant use during the primary. And so, that raises  
 3 the question of what constitutes significant use. But  
 4 in our practice, we've generally said that if it's out  
 5 before the primary, in the case of signs or mailers,  
 6 that it's permissible.  
 7 So, the inquiry here, if I had recommended a  
 8 reason to believe, would have been into the changing  
 9 responses that we received from Mr. Waddle, and into the  
 10 allegations made by the complainant, including the  
 11 photographs.  
 12 However, given a number of things: First,  
 13 Mr. Waddle didn't receive his funding until August 26th.  
 14 And we require that candidates not spend their money  
 15 until they receive it. So, in other words, he couldn't  
 16 order signs any earlier had he -- you know, if he wanted  
 17 to comply with our rules, so, he was sort of stuck  
 18 behind a -- he was stuck in a difficult situation. He  
 19 ordered the signs right away.  
 20 And in view of his second response, put them up  
 21 as expeditiously as possible. There was a bit of funny  
 22 capers going on that weekend, which explained why his  
 23 signs weren't put up until the very last minute, but  
 24 ultimately, in my view, he did endeavor to comply with  
 25 the requirements of the Act. He wanted to spend his

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1 CHAIRPERSON SCARAMAZZO: Please.  
 2 COMMISSIONER DANIELS: Mr. Chairman, I move  
 3 that we have no reason to believe that there's anything  
 4 to find in matter MUR 08-0020.  
 5 COMMISSIONER PARKER: I'll second.  
 6 CHAIRPERSON SCARAMAZZO: It's been moved by  
 7 Commissioner Daniels, seconded by Commissioner Parker,  
 8 to find there is no reason to believe a violation  
 9 occurred in MUR 08-0020. Any discussion on this item?  
 10 Yes, sir, Mr. Barton.  
 11 MR. BARTON: Jim Barton, Perkins, Coie, Brown &  
 12 Bain. Just to be clear, I'm speaking on my own behalf  
 13 now, not about on behalf of the Thrasher Campaign.  
 14 I don't know the specifics of this. I mean, I  
 15 don't know that much about what went on with the  
 16 investigation. But I just would caution the Commission  
 17 to make sure that we apply the same standard to all the  
 18 candidates, as far as benefit of the doubt goes, and,  
 19 you know, taking them at their word. I think that it's  
 20 very important -- and this may be a good case where the  
 21 Commission staff has -- has vetted this story and  
 22 they're comfortable, and they believe him, and that's  
 23 fine.  
 24 But I can tell you, as an outside observer, you  
 25 know, I always have some qualms when I -- you know, I

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1 want to make sure that if -- that if -- that we're  
 2 believing all the candidates with the same level -- that  
 3 we're finding the same level of -- the same benefit of  
 4 doubt to all candidates.  
 5 So, if there's a question...  
 6 CHAIRPERSON SCARAMAZZO: Okay. That's fair.  
 7 You bet.  
 8 MR. BARTON: Thanks.  
 9 CHAIRPERSON SCARAMAZZO: Thank you.  
 10 Any comments for Mr. Barton? Hearing none.  
 11 Thank you.  
 12 And that is something we -- we're trying to do.  
 13 I think we're bending over backwards to make sure we  
 14 look at everybody in the same light and try to bring  
 15 uniformity to the decisions. I appreciate your bringing  
 16 that up.  
 17 Any further discussion on this item? All those  
 18 in favor say "aye."  
 19 (Chorus of ayes.)  
 20 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion  
 21 carries.  
 22 We'll move on to Item No. III, which is  
 23 discussion and possible action of conciliation  
 24 agreements in a couple of matters. The first, MUR  
 25 08-0019 and MUR 0- -- well, 08-0022 is moot then, since  
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1 election.  
 2 In this case, Ms. Thrasher's Campaign, the  
 3 communications that occurred in this case were of  
 4 marginal utility because they were -- they were sent out  
 5 so far before the general election. In fact, they were  
 6 sent out during the primary election, and I'm sure many  
 7 of you recipients just viewed them as more primary  
 8 election materials. Therefore, they're of marginal  
 9 utility. That's relevant because it shows she didn't  
 10 get a benefit, a significant benefit, from her mistake.  
 11 Nonetheless, there was a violation, and so we  
 12 recommended some sort of penalty be put in place. In  
 13 this case what we've recommend is a -- a transfer of  
 14 money from her general election fund back to the  
 15 Commission in order to reimburse the Commission for the  
 16 money spent on this communication.  
 17 The reason we settled at 75 percent is because  
 18 in other related matters, including the "Montgomery for  
 19 AG" matter in 2006, and another similar matter involving  
 20 candidates of both parties, this was the -- was in line  
 21 with those settlements, that a partial repayment was  
 22 appropriate.  
 23 Frankly, I think this repayment amount is  
 24 fairly harsh. It's -- it's an appropriate amount, but  
 25 given how much money she has for her general election  
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1 that's been dismissed, correct?  
 2 MR. LANG: That's correct.  
 3 CHAIRPERSON SCARAMAZZO: Okay. And that's for  
 4 Jackie Thrasher.  
 5 So, Item (A) is on the floor. Todd?  
 6 MR. LANG: Thank you, Mr. Chair.  
 7 Commissioners, you just considered the reason to believe  
 8 in the Jackie Thrasher matter. This is a proposed  
 9 conciliation agreement in regard to that -- that reason  
 10 to believe.  
 11 As you know, it's in my view that  
 12 Ms. Thrasher's Campaign violated the Act by using  
 13 primary money for general election purposes when she  
 14 inadvertently put the general election date, instead of  
 15 the primary date, on her communications, and when she  
 16 sent out flyers to folks who could not vote in the  
 17 primary election.  
 18 Given that, I think some sort of resolution is  
 19 in order also, but, however, given the fact that our  
 20 rules are primarily -- the primary for general rule  
 21 is -- the primary harm that could occur is when someone  
 22 buys a bunch of signs, or flyers, or whatever, TV ads,  
 23 and then uses them during prime time during the general  
 24 election. You know, they buy their flyers now and send  
 25 them out right when early voting starts in the general  
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1 spending, this -- this amount represents a huge portion  
 2 of that, over \$5,000. So, this is a very significant  
 3 penalty, in my view. But at the same time, I think it's  
 4 a fair resolution. And so, I'd ask that you approve it.  
 5 And, again, Mr. Barton is obviously here today.  
 6 CHAIRPERSON SCARAMAZZO: Once we get it on the  
 7 floor, we'll -- okay.  
 8 Commissioners?  
 9 COMMISSIONER DANIELS: Do you want me to do a  
 10 motion again, Mr. Chairman?  
 11 CHAIRPERSON SCARAMAZZO: You're on a roll, but,  
 12 you know, whoever would like to get this moving.  
 13 COMMISSIONER DANIELS: Mr. Chairman, I move  
 14 that we approve the conciliation agreement in the matter  
 15 of MUR 08-0019, Jackie Thrasher.  
 16 COMMISSIONER PARKER: I'll second.  
 17 COMMISSIONER LINDHOLM: It's actually -- excuse  
 18 me. It actually includes the 08-0022 also, doesn't it?  
 19 CHAIRPERSON SCARAMAZZO: No.  
 20 COMMISSIONER DANIELS: We dismissed that.  
 21 CHAIRPERSON SCARAMAZZO: We dismissed that in  
 22 Item II on the agenda.  
 23 COMMISSIONER LINDHOLM: Okay. The only reason  
 24 I ask that is the conciliation agreement, on its face,  
 25 includes that number.  
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1 CHAIRPERSON SCARAMAZZO: Okay.

2 MR. LANG: May I?

3 CHAIRPERSON SCARAMAZZO: Certainly.

4 MR. LANG: Commissioner, I ask that you approve

5 it with that number -- that reference removed from the

6 agreement. When we -- if you approve it, and we have

7 Mr. Barton or Ms. Thrasher sign the document, we'll

8 remove reference to that enforcement matter.

9 CHAIRPERSON SCARAMAZZO: Is that okay, Don?

10 COMMISSIONER LINDHOLM: Yes, that'll be okay.

11 You know, it includes -- it's repeated throughout the

12 agreement. So, as long as Todd has somebody take the

13 number out, I don't have a problem with it.

14 CHAIRPERSON SCARAMAZZO: Okay. Good. Thanks

15 for bringing that up.

16 Okay. It's been moved by Commissioner Daniels,

17 seconded by Commissioner Parker, to approve the

18 conciliation agreement in MUR 08-0019. Discussion on

19 this item?

20 MS. GRAY: I'll give it to Mr. Barton. Go

21 ahead.

22 CHAIRPERSON SCARAMAZZO: You sure?

23 MS. GRAY: Yes.

24 MR. BARTON: It's Jim Barton again on behalf of

25 Representative Thrasher.

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1 But I also support the recommendation by the

2 Commission, which includes that part, so I appreciate

3 you hearing me. Thank you.

4 CHAIRPERSON SCARAMAZZO: Thank you.

5 Okay. Any other comments? Questions?

6 Hearing none, the motion is on the floor to

7 accept the conciliation agreement in MUR 08-0019. All

8 those in favor say "aye."

9 (Chorus of ayes.)

10 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion

11 carries.

12 Item (B) MUR 08-0018, Carl Seel.

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

14 Commissioners, as you know, you found reason to believe

15 at the last meeting in regard to a number of flyers

16 produced and distributed by the Seel Campaign during the

17 primary.

18 I'd mention that both Mr. Seel is here today,

19 and his primary opponent, Mr. Bouie. So they may have

20 questions or want to comment. I don't know.

21 But as you know, this -- this came down to

22 acknowledgment of a clear violation in one of the

23 flyers, and then a sort of informal debate between

24 myself and Mr. Seel's advisor, Constantine Querard,

25 regarding the other flyers. But what you have before

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1 And I guess most of my comments are just that

2 we did come to an agreement with Commission staff on --

3 on the conciliation agreement. These were inadvertent

4 errors in both cases, however, we recognize that there's

5 an appearance of impropriety given the two mistakes, as

6 Todd said in his comments, and for that reason we were

7 willing to accept, as Todd said, a pretty harsh penalty

8 of about three-quarters of the expenditure pulled out of

9 our general fund.

10 So, I'll be happy to answer any questions.

11 CHAIRPERSON SCARAMAZZO: Okay. Commissioners,

12 did you hear Mr. Barton okay?

13 COMMISSIONER DANIELS: Yes.

14 CHAIRPERSON SCARAMAZZO: Okay. Any questions

15 or comments for him?

16 Okay. There are none. Thank you.

17 MS. GRAY: Well, thank you for hearing me. I'm

18 Linda Gray. I'm the one who received the brochure in

19 the mail. As a Republican, I could not vote for Jackie

20 Thrasher in the primary. But I also indicated, in my

21 notarized letter to you, that her campaigns on the

22 street also say to vote for her November 4th. So, even

23 though the technical throwing out of -- I think it was

24 Mr. Hopkins' complaint about the signs, my complaint

25 also includes that.

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1 you is a settlement agreement, a conciliation agreement,

2 that proposes to resolve everything here and now.

3 In it we agree that the full -- the first flyer

4 was a clear violation, but we agree to disagree on the

5 remaining flyers where it says -- the remaining flyers

6 that all feature the pictures of Mr. Seel and Mr. Crump,

7 and have the language at the top which indicated you

8 should vote for both of them.

9 In order to resolve it, though, Mr. Seel's

10 Campaign agreed to pay \$500 as a fine, and as

11 acknowledgment in order to resolve the dispute. And we

12 certainly appreciate that.

13 I'd also mention that there are two other

14 flyers in which we did not include in our consideration

15 on our resolution of this case. The flyer with the

16 records of the four candidates on the back: Seel,

17 McCain, Obama, and Bouie. We didn't consider that an

18 endorsement of Sam Crump, though initially we -- I

19 recommended reason to believe because I wanted to look

20 into it further. After discussions with staff and

21 Mr. Seel, we agreed that that one did not constitute an

22 endorsement of Mr. Crump.

23 And then the second we did not proceed on was

24 the -- the pro-life piece with the babies, in which it

25 instructs, "You may vote for two." We felt that that

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1 was a close enough call that in the interest of  
 2 settlement we wouldn't pursue that one as well, though  
 3 we reserve the right to pursue those sorts of  
 4 endorsements in the future.  
 5 But in the case of Mr. Seel, this will resolve  
 6 all complaints in this matter before him. And I  
 7 recommend that you approve the settlement. As you can  
 8 see, it's for a very significant amount of money,  
 9 \$1,211.44, which he'll pay in installments.  
 10 If you have any questions, I'm happy to answer  
 11 them, but that's my recommendation.  
 12 CHAIRPERSON SCARAMAZZO: Thank you.  
 13 COMMISSIONER DANIELS: Mr. Chairman, do you  
 14 want a motion?  
 15 CHAIRPERSON SCARAMAZZO: Okay.  
 16 COMMISSIONER DANIELS: Mr. Chairman, I move  
 17 that we approve the conciliation agreement in MUR  
 18 08-0018, Carl Seel.  
 19 COMMISSIONER PARKER: Second.  
 20 CHAIRPERSON SCARAMAZZO: It's been moved by  
 21 Commissioner Daniels, seconded by Commissioner Parker,  
 22 to approve the conciliation agreement in MUR 08-0018,  
 23 Mr. Carl Seel. Discussion on this item?  
 24 Yes, sir.  
 25 MR. SEEL: Thank you, Mr. Chairman,  
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1 we can make a clear and brighter line for future  
 2 candidates in regards to these types of questions.  
 3 But with that, and seeing the testimony, once  
 4 again, I really -- I sincerely appreciate the  
 5 Commission's effort and the staff's effort to resolve  
 6 this quickly, succinctly. And I am quite pleased with  
 7 the agreement, aside from the aforementioned concerns.  
 8 And I would sincerely appreciate the Commission  
 9 approving this agreement today so that I can put this  
 10 behind me and move our campaign forward.  
 11 CHAIRPERSON SCARAMAZZO: Okay. Thank you.  
 12 MR. SEEL: Thank you.  
 13 CHAIRPERSON SCARAMAZZO: Any questions for  
 14 Mr. Seel?  
 15 COMMISSIONER DANIELS: I had a very hard time  
 16 hearing what he was saying. Can you kind of give me a  
 17 synopsis of what he said?  
 18 COMMISSIONER PARKER: It was cutting out like  
 19 every other syllable.  
 20 CHAIRPERSON SCARAMAZZO: Would you like to go  
 21 ahead and maybe move up a little bit and just paraphrase  
 22 what you said so Commissioner Parker can hear that okay?  
 23 MR. SEEL: Can you all hear me better now?  
 24 COMMISSIONER DANIELS: Yes.  
 25 COMMISSIONER PARKER: Yes.  
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1 Commissioners, and Todd.  
 2 I appreciate the degree, the speed, and the  
 3 efficiency by which the Commission and the staff have  
 4 arrived at this. And I think it's very helpful in the  
 5 process of the campaign, so I wanted to thank the  
 6 Commission for that.  
 7 A couple areas of concern the Executive  
 8 Director covered very aptly. The only ones that I would  
 9 want to further articulate on or make clear, that is, we  
 10 are agreeing to disagree as to the other pieces, that  
 11 is, not the one we stipulated to, but any and all the  
 12 others. And I appreciate that the staff has agreed that  
 13 the life piece and the other piece is ostensibly not  
 14 express advocacy, reserving the judgment on the  
 15 remaining, and that we agree to disagree.  
 16 The other thing I wanted to make sure that we  
 17 did include in the agreement, which I see is there, but  
 18 I wanted to make sure it got into testimony, is that I  
 19 have volunteered, as well as Mr. Querard, in the  
 20 rulemaking process, where we can be helpful as  
 21 firsthand -- me as a firsthand candidate, as well as  
 22 Mr. Querard's vast experience, where we can be helpful  
 23 in the rulemaking process in the future. And would urge  
 24 the Commission to look at that in the rulemaking  
 25 process, in terms of how that's going to be defined, so  
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1 MR. SEEL: Good. Excellent. Thank you.  
 2 What I wanted to articulate is that I  
 3 appreciate how quickly and smoothly and succinctly the  
 4 staff and the Commission have addressed the matter. I  
 5 appreciate the agreement as it's structured. I just  
 6 wanted to further clarify and make sure it got into the  
 7 record, although it is there from the Executive  
 8 Director's initial testimony regarding this issue, but I  
 9 wanted to clarify and make sure it's well-known that the  
 10 staff and I, and my campaign, have agreed to disagree as  
 11 to the question of express advocacy regarding all other  
 12 six items. And thankful that we've agreed that two of  
 13 the other six items, the life piece and the other piece,  
 14 the ostensibly immigration piece, are deemed not express  
 15 advocacy.  
 16 And, therefore, we also wanted to make sure  
 17 that it was clear that we -- that is, myself and  
 18 Mr. Querard -- are volunteering to participate in any  
 19 and all rulemaking process in the future where we can be  
 20 helpful, and urge the Commission to engage this question  
 21 in the rulemaking process so as to make a very clear and  
 22 bright line for future candidates.  
 23 And I wanted to, once again, thank the  
 24 Commission for their speedy resolution of this matter,  
 25 and I would urge you all to please approve this  
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1 agreement so that I may move forward with my campaign in  
 2 the general election.  
 3 COMMISSIONER DANIELS: Thank you.  
 4 CHAIRPERSON SCARAMAZZO: Thank you.  
 5 MR. SEEL: Thank you.  
 6 CHAIRPERSON SCARAMAZZO: Any other comments?  
 7 Commissioners, anything else?  
 8 COMMISSIONER DANIELS: No.  
 9 CHAIRPERSON SCARAMAZZO: Okay. Hearing none  
 10 then, we have a motion on the floor to approve the  
 11 conciliation agreement in MUR 08-0018. All those in  
 12 favor say "aye."  
 13 (Chorus of ayes.)  
 14 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion  
 15 carries.  
 16 Item IV, discussion and possible action on  
 17 estimated cost for equalization of funds for Ed Ableser,  
 18 candidate for House Representative District 17. Thank  
 19 you. Todd?  
 20 MR. LANG: Thank you, Mr. Chair.  
 21 Commissioners, in addition to the memo, you also have an  
 22 exhibit which includes some e-mails from Representative  
 23 Ableser and some photographs of the signs in question.  
 24 As you can see, these are small signs that were  
 25 put up around both Mr. Ableser's Campaign signs and  
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1 was appropriate. So, we deducted six percent  
 2 nonetheless.  
 3 And so we ask that you find that this does  
 4 constitute express advocacy against Ableser and that you  
 5 award \$951.85 in matching funds.  
 6 Just for your reference, had this been a case  
 7 where the group actually reported this amount and  
 8 complied with the laws, this would not have -- this may  
 9 not have come before you because we would have been able  
 10 to issue the amount without the estimation. However,  
 11 given the novel nature of the actual exhortation, which  
 12 is "Support Ableser - Open Borders," we probably would  
 13 have brought this before you anyway because it is the  
 14 first time we've had to deal with this kind of  
 15 shenanigan.  
 16 So, given that, I ask that you agree that this  
 17 is an attempt to undermine the Ableser Campaign and  
 18 award the appropriate matching funds.  
 19 CHAIRPERSON SCARAMAZZO: Thank you.  
 20 COMMISSIONER DANIELS: Mr. Chairman?  
 21 CHAIRPERSON SCARAMAZZO: Yes, Lori.  
 22 COMMISSIONER DANIELS: I move that we approve  
 23 of the matching funds in this matter, that they be  
 24 issued for Representative Ableser.  
 25 COMMISSIONER PARKER: Second.  
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1 Mr. Schapira's Campaign signs. Unfortunately, because  
 2 this was done illegally, these signs, there is no  
 3 reporting. And by "illegal" I just simply mean they  
 4 didn't comply with any of the reporting requirements.  
 5 For all we know, it's -- it's a renegade group of merry  
 6 pranksters. But the bottom line is the signs meet the  
 7 definition of express advocacy, and, therefore, matching  
 8 funds were appropriate.  
 9 Where this case is novel is in that these signs  
 10 purport to support Ed Ableser by saying, "Support open  
 11 borders." But as you can see in the memo, it's staff's  
 12 view and my view that these are intended to undermine  
 13 Mr. Ableser's Campaign because anyone who supports open  
 14 borders is sure to -- that's an unpopular position,  
 15 regardless of which party you are in, and it sure did  
 16 not help his campaign.  
 17 Given that, we asked for information regarding  
 18 -- and we looked into information regarding the value of  
 19 the signs, and talked to a vendor and reached the number  
 20 1,000 -- \$1,012.61. Although no deduction is necessary  
 21 in this case, the six percent deduction, because, of  
 22 course, we don't know the exact amount, it could have  
 23 been much more or much less, and we don't know -- the  
 24 group completely failed to comply with the reporting  
 25 requirements, we felt that compliance with the statute  
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1 CHAIRPERSON SCARAMAZZO: It's been moved by  
 2 Commissioner Daniels, seconded by Commissioner Parker,  
 3 to approve the estimated cost of equalization funds in a  
 4 campaign of Mr. Ed Ableser in the amount of \$951.85.  
 5 Any discussion on this item?  
 6 COMMISSIONER LINDHOLM: Chairman, a question?  
 7 CHAIRPERSON SCARAMAZZO: What was that, Don?  
 8 COMMISSIONER LINDHOLM: A question, please.  
 9 CHAIRPERSON SCARAMAZZO: Yes.  
 10 COMMISSIONER LINDHOLM: I -- I'm having a  
 11 little -- a little bit of a challenge in reconciling  
 12 express advocacy with these signs that say "Support  
 13 Ableser - Open Borders," and concluding that there's no  
 14 other reasonable interpretation of that other than that  
 15 these are signs advocating against Ableser.  
 16 I wonder -- I wonder, Todd, if you'd develop  
 17 that a little bit more for me. I'm having a little  
 18 struggle reconciling that.  
 19 MR. LANG: Well, Commissioner -- all the  
 20 Commissioners -- this is a tricky scenario that we've  
 21 not had to face yet. It's been brought up a lot. And  
 22 any time you have a recommendation that goes against the  
 23 text of the -- the communication, I think that the  
 24 question raised by Commissioner Lindholm is a fair one.  
 25 Because any time you have this sort of  
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1 shenanigans happening, there's no doubt that -- that  
2 it's -- it's going to be more difficult. For instance,  
3 if it said -- if the sign said: Vote Janette  
4 Napolitano, she's in favor of criminal rights; or she's  
5 in favor of free heroin clinics, it would be more  
6 difficult because perhaps the group really believes in  
7 free heroin clinics.

8 But the way the analysis works is you look to  
9 -- you know, 2(a) under the statute 16-901.01, and it  
10 can have no reasonable meaning other than to advocate  
11 the election or defeat of the candidate. You can look  
12 at the information that's provided. Had a group come  
13 forward that said we are for open borders, and we love  
14 Ed Ableser because we think he supports it, it might  
15 have been a more difficult determination.

16 The fact is there is no one here today opposing  
17 the award because, frankly, I think no one -- no  
18 rational person viewing this would ultimately conclude  
19 that this, in any way, was intended to help Ed Ableser.

20 So, why I agree with you that the language, the  
21 text of the sign does indicate some support, which  
22 could -- could constitute ambiguity in the minds of  
23 some, I think given the context of the political meaning  
24 of those signs, and their placement, I think there's no  
25 reasonable meaning other than this was intended to

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1 undermine his signs.

2 It was placed in front of both his signs and  
3 his running mate's signs, which to me is an indicia that  
4 it was placed by someone who opposed both candidates.  
5 For whatever reason, they decided not to make the same  
6 signs for Representative Schapira. But, nonetheless, I  
7 believe that that was the purpose.

8 I think there's no reasonable meaning other  
9 than this was intended to undermine Ed Ableser. We have  
10 no one here saying: Oh, no, we intended it to support  
11 him. And I, frankly, think there is no one out there  
12 who could say it. So, ultimately it's a judgment call  
13 for the Commission. And while I share your concern,  
14 ultimately I think it's the Commission's proper role to  
15 issue matching funds in this situation so that  
16 Mr. Ableser can respond to these -- these signs.

17 COMMISSIONER LINDHOLM: Mr. Chairman, a  
18 follow-up question if I may.

19 CHAIRPERSON SCARAMAZZO: Certainly, Don.

20 COMMISSIONER LINDHOLM: So -- so, Todd, then,  
21 what we have to -- what you're asking us to conclude is  
22 that the sign, "Support Ableser - Open Borders," has no  
23 reasonable construction other than advocating the  
24 candidacy of someone other than Ableser? Is that -- is  
25 that what you're saying?

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1 MR. LANG: No. Actually, I'm not. I'm glad  
2 you asked that question. It can either advocate the  
3 election of someone other than Ableser or it can  
4 advocate the defeat of Ableser. And in my view, these  
5 advocate the defeat of Ableser. It doesn't say vote him  
6 down because he supports open borders. It cleverly says  
7 vote for him for open borders. And I think it's done  
8 precisely to create the sort of doubt that exists in  
9 your mind so that perhaps matching funds would have been  
10 avoided.

11 But it certainly -- Mr. -- it's certainly my  
12 view, and I think staff's view, that there is no other  
13 reasonable meaning here than to try to get Ableser --  
14 try to cost Mr. Ableser votes, to try to get people who  
15 are opposed to open borders, which is the majority of  
16 the electorate, to vote for someone other than Ableser.

17 COMMISSIONER LINDHOLM: Another question, if I  
18 may. Then that requires us to concludes that it's  
19 unreasonable to assume that anyone in the electorate  
20 would advocate open borders; is that right?

21 MR. LANG: I -- I don't think so, Commissioner.  
22 I think -- because you're going to find someone,  
23 somewhere, with certainly any view you could imagine. I  
24 think what it has to -- what you have to do when you  
25 look at the -- when you look at the language of this

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1 statute is simply say: Does it have any other  
2 reasonable meaning? And I think the reasonable meaning  
3 standard is a vote against.

4 I understand your point, which is some people  
5 could actually take that as a good thing. But I think  
6 even open borders advocates, who are aware of, you know,  
7 the politics of this state and of that district, would  
8 know this sign wasn't intended to encourage their vote,  
9 but it was intended to advocate against Ableser.

10 So, I think the reasonable person would all  
11 agree that this has only one reasonable meaning, even  
12 though open borders advocates might think it's a good  
13 thing to vote for Ableser.

14 COMMISSIONER LINDHOLM: Well, again, another --  
15 a follow-up, then, Mr. Chairman, if I may.

16 I -- personally I guess -- I guess Todd is  
17 characterizing me in advance as a person -- as an  
18 unreasonable person.

19 MR. LANG: No.

20 COMMISSIONER LINDHOLM: Maybe he didn't mean to  
21 do that, but I don't know.

22 I think there are enough -- enough  
23 extraordinary or unusual positions out there in the  
24 electorate that I can't -- I can't bring myself to  
25 conclude that there's no other reasonable meaning here

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1 other than advocating the defeat of Ableser. I think  
2 there are some people that might find appeal to this. I  
3 don't know. It's too -- it's too amorphous for me. I  
4 -- I just can't -- I can't agree that there's no other  
5 reasonable interpretation. So, when we get to the vote,  
6 when I vote, I'll vote "nay."

7 CHAIRPERSON SCARAMAZZO: Todd?

8 MR. LANG: If I could address that.

9 Commissioner -- and I certainly respect your position  
10 and I think it's quite reasonable, although my  
11 recommendation is different.

12 I'm looking at Mr. Seel's piece, and it says,  
13 "Always Conservative Seel." And it says, "Arizona's  
14 Right to Life Slate." Now, we all agree that this is a  
15 piece of express advocacy that encourages you to --  
16 encourages you to vote for Seel. Yet, there's no doubt  
17 that there are a number of people out there who will see  
18 this who are not conservative, and not pro-life, who  
19 will certainly take -- take this information and cause  
20 it -- cause them to vote against Mr. Seel. That doesn't  
21 change the nature of the piece. It's still a piece of  
22 express advocacy that has no other reasonable meaning  
23 than to encourage a vote for Seel.

24 And by the same sort of reasoning, I think the  
25 anti-Ableser piece is similar. Of course there are

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1 people who are in favor of open borders out there. And  
2 they're reasonable people, and it's reasonable to think  
3 that they'll see that information and -- and -- and use  
4 it as a plus in favor of Ed Ableser. But that doesn't  
5 change the fact that the express advocacy in that piece  
6 is a vote against him. That was the purpose of the  
7 piece. That's what it's communicating. He is in favor  
8 of open borders.

9 And so, ultimately, despite the misleading, and  
10 I think unethical way that they've presented the  
11 information, I think there's no other reasonable meaning  
12 but to conclude that this is a piece of express advocacy  
13 against Ed Ableser, and I ask that you award the  
14 matching funds.

15 CHAIRPERSON SCARAMAZZO: I also wonder, Don, if  
16 by going ahead and voting against this, if I'm not going  
17 to go ahead and open the door for people to run around  
18 and deface everybody else's political signs in whatever  
19 manner they think is justifiable, whether it's pro or  
20 con.

21 If Mr. Ableser had said, yeah, I'm in favor of  
22 -- these additions to my -- to my political signs were  
23 paid for out of his campaigns, then I'd be prone to say,  
24 well, that could be a different story. But it just  
25 seems to me this is a midnight raid.

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1 COMMISSIONER LINDHOLM: Well, if I can respond.  
2 I -- I don't disagree with you for a heartbeat that we  
3 can't encourage the defacement of political signs. But  
4 I'm just reluctant to -- I think express advocacy is a  
5 very high standard. I mean, it -- the statute tells us  
6 that there can be no other reasonable interpretation.  
7 And I just can't bring myself to accept that there can  
8 be no other reasonable interpretation of this sign.

9 I -- I -- I don't know what the -- what part of  
10 the electorate supports open borders, but some part of  
11 the electorate out there could be persuaded by this sign  
12 to advocate to vote for Ableser.

13 Now, let me -- maybe I'm -- maybe I'm starting  
14 to get a little more linear on this. I suppose that if  
15 I extend that line of logic, if this sign would persuade  
16 some voters to vote for Ableser, and would persuade --  
17 intend to persuade some voters to vote against Ableser,  
18 but in either event it would be attempting to advocate  
19 for or against Ableser, is that then express advocacy,  
20 Todd?

21 CHAIRPERSON SCARAMAZZO: Go ahead, Todd.

22 MR. LANG: Commissioner Lindholm, in my view it  
23 is, because remember what the whole standard is out of  
24 Wisconsin Right to Life and the other Supreme Court  
25 cases that's embodied in our statute, including

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1 Furgatch. It is a way to distinguish between express  
2 advocacy and issue advocacy.

3 COMMISSIONER LINDHOLM: Ah.

4 MR. LANG: And all these pieces are a question  
5 of: Well, are they advocating for Ableser or against  
6 him? Is the always conservative title advocating for  
7 Seel or against him? Well, that's in the eyes of  
8 beholder. If you're pro-choice, you're not going to  
9 vote for Carl Seel. And if you are in favor of open  
10 borders, you're going to -- you're -- if you believe the  
11 sign, you're going to vote for Ed Ableser.

12 But the standard that you're -- you're having  
13 trouble applying here, because I agree with you it's a  
14 tough call, really isn't designed to ferret out fraud or  
15 shenanigans. It's designed to distinguish between issue  
16 advocacy over like, say, life issues or border issues  
17 and express advocacy. And here I don't think anyone --  
18 and there's certainly no one who has come forward, which  
19 I think is important, to claim that this is an issue  
20 advocacy piece in favor of open borders, or for that  
21 matter, against open borders.

22 This is an express advocacy piece against Ed  
23 Ableser. And I think the hard -- the hard and very  
24 careful, I think, and nuanced application you're trying  
25 to give it, which I appreciate, I think is trying to

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1 apply something that distinguishes between express  
 2 advocacy and issue advocacy, which isn't what the issue  
 3 is here. The issue is here is this for or against  
 4 Ableser.  
 5 COMMISSIONER LINDHOLM: So, to clarify it in my  
 6 own mind, if I may, what you're saying is that  
 7 regardless of whether this expressly advocates in favor  
 8 of Ableser or whether it expressly advocates against  
 9 Ableser, it is, nonetheless, express advocacy?  
 10 MR. LANG: Yes. In my view, it is. And  
 11 whether it's for or against depends on your view on the  
 12 issue, I suppose, just like Carl Seel's piece.  
 13 COMMISSIONER LINDHOLM: I think I -- I think I  
 14 understand it better now. I think I could buy into  
 15 that.  
 16 CHAIRPERSON SCARAMAZZO: Okay.  
 17 COMMISSIONER LINDHOLM: I'm sorry to take  
 18 everybody's time.  
 19 CHAIRPERSON SCARAMAZZO: No, not at all, Don.  
 20 That's what we're here for. Thank you for the  
 21 discussion.  
 22 Any further questions or comments?  
 23 Okay. There is a motion on the floor, and that  
 24 is to issue equalization funds to Mr. Ableser to his  
 25 campaign for \$951.85. All those in favor say "aye."

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1 (Chorus of ayes.)  
 2 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion  
 3 carries. Thank you.  
 4 That brings us to Item No. V, which is call for  
 5 public comment. Anyone from the audience have any items  
 6 they wish to bring forth? You're certainly welcome to  
 7 do so.  
 8 Quiet group.  
 9 Okay. Then we'll move on to Item No. VI, which  
 10 is adjournment.  
 11 COMMISSIONER PARKER: So moved.  
 12 COMMISSIONER DANIELS: Second.  
 13 CHAIRPERSON SCARAMAZZO: Moved and seconded.  
 14 All those in favor say "aye."  
 15 (Chorus of ayes.)  
 16 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion  
 17 carries. Thanks, everyone.  
 18  
 19 (Whereupon the proceeding concludes at 1:49  
 20 p.m.)  
 21  
 22  
 23  
 24  
 25

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1 C E R T I F I C A T E  
 2  
 3 I, Angela Furniss Miller, Certified Reporter,  
 4 do hereby certify that the foregoing pages numbered 1  
 5 through 39, 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 1st day of October,  
 10 2008.  
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Angela Furniss Miller, RPR  
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