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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
October 23, 2008
9:30 a.m.

Reported By:
Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 ELECTIONS COMMISSION, convened at 9:30 a.m. on October
 2 23, 2008, at the State of Arizona, Clean Elections
 Commission, 1616 W. Adams, Conference Room, Phoenix,
 3 Arizona, in the presence of the following Board members:

4 Mr. Gary Scaramazzo, Chairperson
 Mr. Jeff Fairman
 5 Ms. Royann Parker
 Ms. Lori Daniels
 6 Mr. Donald Lindholm

7 OTHERS PRESENT:

8 Todd Lang, Executive Director
 Colleen McGee, Deputy Director
 9 Paula Ortiz, Executive Assistant
 Michael Becker, Voter Education Manager
 10 Rita Azcona, Administrative Assistant III
 Daniel Ruiz II, Campaign Finance Manager
 11 Tonja Shipman, Attorney General's Office
 Rhonda Barnes, Perkins Coie Brown & Bain
 12 Eric Ehst, Clean Elections Institute
 Lauren Kuby, District 17 Citizen
 13 Carl Seel, Seel in '08
 Andre Campos, Senate Candidate District 23
 14 Jeff Stapleton, Citizen
 Angela Cotera, Senate Candidate District 12
 15 Julie Flowers, Citizen
 Lee Miller, Miller LaSota & Peters
 16 Tony Bouie, Citizen

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P R O C E E D I N G

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 3 CHAIRPERSON SCARAMAZZO: Good morning. I'd
 4 like to call to order this meeting of the Citizens Clean
 5 Election Commission for Thursday, October 23rd, 2008.
 6 It is 9:30 a.m. in the morning.
 7 I hope everyone is having a good day and a good
 8 week.
 9 Let's go ahead to us being called to order.
 10 We'll move to Item II and we'll seek approval -- there's
 11 quite a few meetings here. We're seeking approval of
 12 the minutes for September 18th, September 29th, October
 13 7th, and October 10th, all in 2008.
 14 COMMISSIONER PARKER: I make a motion we
 15 approve those minutes.
 16 COMMISSIONER DANIELS: Second.
 17 CHAIRPERSON SCARAMAZZO: It's been moved by
 18 Commissioner Parker, seconded by Commissioner Daniels,
 19 to approve the September 18th, September 29th, October
 20 7th, and October 10, 2008 Commission meeting minutes.
 21 Discussion on this item?
 22 COMMISSIONER DANIELS: Well, Mr. Chairman, I
 23 just want you to know I don't have to make all the
 24 motions.
 25 COMMISSIONER PARKER: That's your job.

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1 COMMISSIONER DANIELS: Is it? Oh, okay.
 2 CHAIRPERSON SCARAMAZZO: So noted. Otherwise,
 3 all --
 4 MS. SHIPMAN: Get back to making motions.
 5 CHAIRPERSON SCARAMAZZO: Otherwise, all those
 6 in favor say "aye."
 7 (Chorus of ayes.)
 8 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 9 carries.
 10 Item No. III, Executive Director report. Todd?
 11 MR. LANG: Thank you, Mr. Chair.
 12 Commissioners, you have the report there. I won't
 13 reread it, but I would mention that we are working on
 14 legislation.
 15 As you can imagine, the recent litigation has
 16 spurred an interest in the legislature on making some
 17 changes, in particular with regard to matching funds and
 18 some other issues that have come up during the election
 19 cycle. And so, we're working with the legislature,
 20 staff is working with the legislature, to accommodate
 21 whatever they'd like us to do, and to try to address
 22 some of the issues raised.
 23 CHAIRPERSON SCARAMAZZO: Okay. Anyone have any
 24 questions for Todd?
 25 Okay. We're going to move the agenda around

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1 just a little bit this morning. I hope that's okay with
 2 everyone.
 3 Instead of moving on to violation matters in
 4 No. IV right now, I'd like to move up Item No. VI, which
 5 is discussion and possible action on whether to issue
 6 matching funds based on slate mailer exception, okay?
 7 So, let's move on to Item No. IV.
 8 Todd?
 9 MR. LANG: Thank you, Mr. Chair. We have a
 10 PowerPoint presentation for you.
 11 Yeah. Thanks. If you don't mind.
 12 Lee Miller, who is the attorney for Senator
 13 Huppenthal, asked us to review -- asked us to present --
 14 bring this to you for your review.
 15 What's happened is both parties are engaged in
 16 a number of slate mailers. And as you may know from
 17 news reports, there have been a ton of mailers this
 18 week, both mailers intended to be slate mailers, and
 19 just regular campaign mailers endorsing their candidates
 20 and criticizing their opponents. It's been very hot and
 21 heavy this week, and we've issued a lot of matching
 22 funds.
 23 In this case, this is in regard to slate
 24 mailers. And as you recall, slate mailers are exempted
 25 by the Arizona Revised Code at Section 16-901 from the

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1 definition of contribution and expenditures. And you
2 see the citations there. We also have a rule that
3 attempts to provide some guidance at 112. Let me get
4 that for my own reference.

5 And what's happened is there have been a couple
6 slate mailers that have come out, and -- and the concern
7 raised by Mr. Miller -- and he is here and he'll speak
8 to you -- is that these should have triggered matching
9 funds.

10 This is the mailer at issue. And as you can
11 see, it's a sort of generic attack on the Bush
12 Administration, which the last time I checked, President
13 Bush isn't running here in Arizona, but the Democratic
14 party is trying to tie his policies and his
15 administration to local races.

16 And here you see the backside. It has some
17 nice pictures of an iron worker there, and Harry
18 Mitchell, Congressman Harry Mitchell. And then it has
19 the sort of generic language which we permit, which the
20 FEC does not permit, and I'll get into that, about
21 building an economy, and special interests, and
22 Democrats will serve us better, that sort of generic
23 supportive language. And then you see the official
24 ballot there with the federal candidates and the local
25 state candidates.

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1 down. And they're just trying to tie into that.

2 And so, my view, this slate mailer effectively
3 endorses the Democratic position that we need change,
4 and they try to bring it to your local office by
5 endorsing this particular slate.

6 Also, I should mention that Rhonda Barnes is
7 here on behalf of the Democratic party, and she may well
8 want to address this issue for you.

9 Here is another slate mailer. This one was
10 done by the Republican party. This one also did not
11 trigger matching funds. And I put it up here for your
12 reference so you can see we're letting a lot of stuff
13 through that would not meet the FEC regulations.

14 A slate mailer really should just have the
15 names of the candidates -- in other words, the left side
16 of this piece -- and the beautiful picture of the
17 family. We all like that. The language, though,
18 "Fiscal responsibility, reducing taxes, fighting
19 wasteful spending," those start to get beyond what the
20 FEC would allow. Again, we allow it because it doesn't
21 attack their opponents and it's more general Republican
22 platform pieces.

23 And this is the back. And that one is
24 obviously pretty generic. It just has your guys that
25 you should be voting for, and, again, their theme of

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1 And we view this as a slate mailer. The
2 problem -- the challenge we have is that there's two
3 standards for slate mailers in the statute. And while
4 the language is similar in 16-901, depending on whether
5 you analyze it under the contribution standard or the
6 expenditure standard, it's not identical. And so, we've
7 looked to the FEC for guidance, and I think that's why
8 Lee cited the FEC regulations for you.

9 But, again, for your reference, the FEC
10 regulations are much more strict. Under their
11 regulations, this clearly would not be a slate mailer.
12 In fact, I don't think I've seen a slate mailer that
13 will qualify for a slate mailer -- as a slate mailer
14 under the FEC regulations.

15 So, there you have it. In my view, this --
16 and, no -- it doesn't even mention Senator Huppenthal.
17 And so, I was actually frankly a little surprised that
18 he asked for matching funds. But in his view this is
19 different than the other slate mailers, and the big
20 difference, and Lee addresses this in his letter, is
21 that this is negative.

22 Now, what's important to staff and myself is
23 that it's not negative about Senator Huppenthal, but
24 rather it's part of that whole Democratic theme, "we
25 need change." And that's from the Obama campaign on

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1 "Fiscal responsibility, reducing taxes, and fighting
2 wasteful spending." So, again, this one did not trigger
3 matching funds either.

4 And then here's another piece. In this piece,
5 this one has a lot more detail. You have the pictures,
6 you have the nice theme at the top, "The team you can
7 trust," the names, that's all fine. But then the text
8 below their pictures you can see gets fairly detailed
9 about what they're going to do: "Balance the budget,
10 fight tax increases, they're going to secure our border,
11 they're going to promote education, healthcare choices,
12 and control" -- they're going to do a lot. And so, you
13 see that this is quite a bit of detail, detail that I
14 think would go beyond what the FEC would permit.

15 And here we have exactly the same kind of
16 imagery. Again, you have an excerpt from the ballot
17 showing who you should vote for. And they've, very
18 helpfully, highlighted the Republicans there for you.
19 And so, in my view, this is almost identical to the
20 first piece.

21 There's the language from the statute. Let me
22 go back.

23 It's almost identical to the first piece that
24 Senator Huppenthal objects to. See, we have the same
25 ballot there, although theirs isn't so helpful since it

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1 doesn't even have the Republicans listed.

2 The -- the difference, though, is the tone.

3 This one obviously is negative about the Bush

4 Administration. But in my view -- and it's very clear,

5 and we've said this to all candidates when they're

6 running slate mailers, and I have to say both parties

7 have been great about working with us on their slate

8 pieces, and we really appreciate that. When we found

9 that something triggered matching funds, they've been --

10 both parties have been willing to provide the financial

11 information so that we can issue funds.

12 If this attacked Senator Huppenthal in any way,

13 we would have definitely recommended issuance of

14 matching funds. Because we've said all along to all

15 involved, no negative hit pieces. And this one is

16 negative in the sense that it -- it's criticizes the

17 president, but he's not running for anything. And in

18 our view, this is more of a theme, a Democratic party

19 theme, and it's really no different than the other.

20 In fact, this has less language than some of

21 the other pieces in regard to the state reps. I mean,

22 it says nothing about Mr. Mesh or Ms. Waters. It says

23 nothing about the Corporation Commission candidates.

24 It's just a general Democratic theme.

25 And so, in our view, this meets the

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1 that just names and a little theme, you know, "vote

2 Republican, stop taxes, vote Democratic, fix the

3 economy, whatever." We've allowed more language than

4 that because of this.

5 And so, for these reasons, I -- the staff and I

6 believe that matching funds were unnecessary in all of

7 the cases, and we ask that you not award matching funds

8 in this particular case. I would add, though, that if

9 you do award matching funds for the Democrat piece to

10 Senator Huppenthal and others, then we would want to be

11 able to re-evaluate the other slate pieces as well.

12 Can we have the lights?

13 Lee, do you need these pieces for your --

14 MR. MILLER: No, I'll focus more on --

15 MR. LANG: Okay.

16 CHAIRPERSON SCARAMAZZO: Mr. Miller?

17 MR. MILLER: Thank you very much, Mr. Chairman,

18 members. My name is Lee Miller. I'm in front of you

19 this morning on behalf of the Arizona Republican Party,

20 and our candidates are both the Corporation Commission

21 and Legislative District No. 20.

22 The slate piece exception is just that. And it

23 is an exception to the general rule, which says if

24 you're -- if somebody else, other than the candidate

25 himself or herself, is spending money to promote or

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1 requirements of a slate mailer, at least as much as this

2 one does. And there you have the exception. This is

3 the exception under contribution. This is the broader

4 exception, and it's, "Other written materials that

5 substantially promote three or more nominees of the

6 party for public office."

7 And in my view, the Democratic party slate

8 mailer does that. I assume what Mr. Miller will tell

9 you is it does more than that. It not only promotes

10 three or more nominees, but it criticizes the other

11 nominees.

12 In my view, that doesn't -- I understand his

13 point, but it's not persuasive to me because it doesn't

14 even mention the other candidates. And so, I'm not sure

15 how Senator Huppenthal can take it as a hit piece when

16 his name isn't even mentioned, his office isn't -- you

17 know, he's not eluded to in any way. No one is playing

18 any games here, in my view.

19 And then here's the definition for

20 expenditures, which is tighter. There it has to be

21 "other printed listing of three or more candidates."

22 And so, what the parties have seized upon is the

23 language "substantially promotes" as permitting more

24 language. And that's why you see, in all the slate

25 pieces I've shown you today, that there is more language

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1 attack a candidate, then we have to account for that and

2 we have to award matching funds, which is, again, the

3 general rule.

4 Why do we have that exception and why is that

5 exception important?

6 Well, first of all, as regulators, I think you

7 should be highly concerned about any exception -- any

8 exemption to a general rule because smart people will

9 look at those loopholes and, frankly, try and drive the

10 biggest possible truck they can through them until you

11 finally say, okay, that's too much, it's not what we

12 meant in the first place, let's get back to the simple

13 idea we had when we crafted that exemption.

14 And the simple idea behind the exemption for

15 slate pieces was, look, we really want to both maximize

16 the voter's knowledge of who the candidates are who are

17 running as Republicans or Democrats, and we want the

18 voters to know what day the election is, and where

19 they're supposed to be to vote. And as Todd suggested,

20 in the federal system, that's about all you can talk

21 about.

22 The Democratic piece you saw before had Harry

23 Mitchell's picture on it. That is not a federal slate

24 piece. Either the Arizona Democratic party is going to

25 have to make an in-kind contribution to Representative

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1 Mitchell's campaign, or there's going to have to be some
 2 other financial accounting back and forth between the
 3 Democratic party and the Mitchell campaign because that
 4 is not a federal slate piece.
 5 When the legislature crafted the slate
 6 exemption, if you talk about three or more candidates
 7 it's not a contribution exemption, and when you all
 8 articulated your rule to flesh that out a little more,
 9 substantial care was given to what those words on the
 10 paper mean. We don't just sort of put words on there
 11 willy nilly, without trying to make sure that each one
 12 has a meaning, each one leads you in the direction that
 13 the drafter intended.
 14 Perhaps the most important phrase for you all
 15 to ponder today is what does the phrase "substantially
 16 promote" mean?
 17 Does "substantially promote" limit the message
 18 of the exemption, the exception to, by and large, a
 19 positive message about the parties' own candidates, or
 20 is it okay for me to substantially promote, in my case
 21 the Republican candidates, by telling you why the
 22 Democratic candidates are bad people? That's the
 23 decision. That's the choice you're going to have to
 24 make in trying to interpret that phrase "substantially
 25 promote."

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1 District 20, and those three Corporation Commission
 2 candidates.
 3 They absolutely, positively want to associate
 4 those candidates with their message that President
 5 Bush's economic policies have been bad for us. And if
 6 President Bush's economic policies have been bad for us,
 7 why in the world would you ever want to vote for these
 8 other Republicans?
 9 Both sides of that piece are a substantially
 10 negative message. There's hardly any effort made at all
 11 to promote the Democratic candidates other than, you
 12 know, maybe 25 percent of one side of the page: Oh, by
 13 the way, here's our candidates.
 14 For those reasons, I would suggest to you that
 15 the particular mail piece at issue this morning is
 16 outside of the slate exemption. It is just a simple
 17 express advocacy piece, and be treated as such, and
 18 matching funds be awarded appropriately.
 19 Thank you. If anybody as any questions.
 20 CHAIRPERSON SCARAMAZZO: Thank you. Please,
 21 any questions for Mr. Miller?
 22 MR. MILLER: Thank you, Mr. Chairman, members.
 23 CHAIRPERSON SCARAMAZZO: Thank you.
 24 COMMISSIONER PARKER: I have a question for
 25 Todd.

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1 Mr. Lang and I have spent a great deal of time
 2 over the past six weeks copyediting a number of pieces
 3 we have sent back and forth. And in just about every
 4 one of those conversations, at one point or another
 5 we've said, you know, for the next cycle we're going to
 6 need more and more detailed regulations on the
 7 parameters of a slate piece versus what's not a slate
 8 piece.
 9 I would suggest to you today, though, that the
 10 rules you have, that the statutes that are already on
 11 the books, clearly draw the line at negative messages,
 12 and saying negative messages outside the exemption that
 13 can't possibly be -- I can't possibly be substantially
 14 promoting my candidate when I spend the bulk of my
 15 communication telling you why the other side are bad
 16 people.
 17 Mr. Lang focuses on President Bush. George
 18 Bush isn't on the ballot. Why does John Huppenthal
 19 care, you know, what message the Democrats choose to
 20 convey about George Bush? Well, trust me, they spent a
 21 lot of time pondering that message and looking for the
 22 right images to try and convey the message that they
 23 want to get out there. They absolutely, positively want
 24 to associate Senator Huppenthal, Jeff Dial, John
 25 McComish, the three Republican candidates in Legislative

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1 CHAIRPERSON SCARAMAZZO: Please.
 2 COMMISSIONER PARKER: Todd, was this mailer
 3 given out in any other district than District 20?
 4 MR. LANG: I don't think so, but I don't know
 5 for a fact. I'll have to check with the Democratic
 6 party.
 7 That -- that analysis, where it's going, is
 8 part of the analysis of whether or not it's express
 9 advocacy. Is it targeted to the electorate? And
 10 clearly this is express advocacy under that definition
 11 for District 20. But that's not the issue today,
 12 because, remember, this is about the exception. I think
 13 everybody in here would agree it's express advocacy, but
 14 this is a question of whether it meets the exception.
 15 The only standard there is whether it meets the slate
 16 mailer exception.
 17 COMMISSIONER PARKER: It doesn't mention the
 18 election date at all? There's nothing, the polling
 19 place information, which, to me, is what slate mailers
 20 do.
 21 MR. LANG: Well, actually, if you -- if we go
 22 back and look at the Republican slate mailers, they're
 23 the same in that regard. They're all -- most of the
 24 slate mailers I've seen -- and I'm sure Lee and Rhonda
 25 can dig up examples that don't meet -- that aren't this

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1 way, but most of the ones I've seen are sales pitches
 2 that are about the candidates and about Republican and
 3 Democratic themes, and you don't see the specific
 4 information about where to vote.
 5 In fact, I don't think I've ever seen a mailer
 6 that says where to vote.
 7 CHAIRPERSON SCARAMAZZO: Lori?
 8 COMMISSIONER DANIELS: Mr. Chairman, Todd, is
 9 this the only negative one that we've seen this year?
 10 MR. LANG: In terms of slates?
 11 COMMISSIONER DANIELS: Slates.
 12 MR. LANG: Yes. Yes. Because, you know,
 13 obviously, both parties know that we will match anything
 14 that -- like, for instance, if they had said Senator
 15 Huppenthal agrees with George Bush 98 percent of the
 16 time, this we would have matched. If they tried to tie
 17 -- if any -- any time they attack any of the candidates,
 18 we would match, and they know that, and so they're not
 19 going to do that.
 20 COMMISSIONER PARKER: Isn't it implied?
 21 COMMISSIONER DANIELS: That's what I --
 22 MR. LANG: Well, I think it's clear -- in my
 23 view, this is a criticism of the Bush Administration and
 24 a call for change, and then they give you the list of
 25 candidates to change. I don't agree necessarily that
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1 what's been done by the Democratic party.
 2 And at first blush, they all appeared to be
 3 very much similar to me, and I would -- agreed with your
 4 assessment that if we provide matching funds for one, we
 5 ought to do for the other.
 6 But I think this may just push the envelope
 7 just a tiny bit too far in that, first of all, assuming
 8 that any of these individuals are going to have -- maybe
 9 with the exception of Harry Mitchell -- have any direct
 10 effect on the problems that we're in right now with
 11 regard to the federal government, that is kind of a
 12 stretch for me as well.
 13 I'm not saying that this is a really negative,
 14 hard-hitting negative piece, but I think it really kind
 15 of gets very close to where this -- it's appropriate for
 16 this group to be looking at it. And I might have a
 17 tendency to believe that it does slightly go over the
 18 line more so than the Democratic pieces that we viewed
 19 as well. It's just my thoughts.
 20 CHAIRPERSON SCARAMAZZO: Okay. Well, one thing
 21 that I struggle with on this, though, is the fact that
 22 we've had discussions in the past about the power of
 23 incumbency. And we've seen in Secretary of State
 24 discussions where somebody uses their office in an
 25 appropriate manner that puts them in a positive light
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1 this is an attempt to say Senator Huppenthal is somehow
 2 responsible for whatever perceived failures -- whatever
 3 the Democrats perceive are failures of the Bush
 4 Administration. I think rather it's trying to get
 5 people in favor of change, and here's who you vote for.
 6 COMMISSIONER PARKER: I guess I see this as an
 7 implied that -- not only for the state legislature, but
 8 your commission people too that are being painted with
 9 this same brush.
 10 MR. LANG: Exactly.
 11 COMMISSIONER PARKER: And I don't see that as a
 12 slate mailer at all.
 13 MR. LANG: Had it mentioned any of the
 14 Republican Corporation Commission candidates, or any of
 15 the legislative candidates, or said anything negative
 16 about them, I would agree. In my view, though, because
 17 it's just a negative piece about the Bush Administration
 18 and a call for change, I see it as actually, in a sense,
 19 a positive piece in regard to the Democrats present
 20 change. And that's why I didn't want to match it.
 21 CHAIRPERSON SCARAMAZZO: Jeff?
 22 COMMISSIONER FAIRMAN: I'm having a little -- a
 23 little trouble with this in that I really kind of agree
 24 with where we're going with this whole thing. I was
 25 even more confused than when you gave us the examples of
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1 towards re-election issues.
 2 This kind of reverses the roles a little bit.
 3 And to me, I mean, it is what it is. And just by the
 4 numbers that you have, you know, President Bush, who's
 5 very unpopular right now, and the economic crisis that
 6 hits, it kind of, you know, smacks of the same type of
 7 deliberation to me, you know. I look at it and say,
 8 hey, you know he's an incumbent, and that's fair game to
 9 me.
 10 COMMISSIONER PARKER: But he's not the one
 11 running.
 12 CHAIRPERSON SCARAMAZZO: I know. I know. But
 13 the economy is an issue. If he was popular, would a
 14 piece have him in a pro light?
 15 COMMISSIONER DANIELS: Mr. Chairman, to that
 16 point, I was just sitting here thinking if this was a
 17 Democratic mailer, if this was a Republican mailer, and
 18 instead of "the failed years of President Bush," had
 19 said "the economic hardship that Governor Napolitano has
 20 put," and then you did it the other way, I think I'd
 21 think that was over the top too.
 22 Whether it was Republican or Democrat, I think
 23 if you have someone at the top, where you're talking
 24 about failing, I think it's very implied and I think
 25 it's a broad brush. It concerns me that if we don't do
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1 this, that it's going to get, inch by inch, further and
 2 further into that. So, that's where I'm coming from.
 3 And I think -- at this point I think we're probably kind
 4 of all over the board as far as the Commission.
 5 I didn't know, are we going to hear from the
 6 Democratic party?
 7 CHAIRPERSON SCARAMAZZO: I would hope so, yes.
 8 COMMISSIONER DANIELS: Because I would like to
 9 see what they have to say, too.
 10 CHAIRPERSON SCARAMAZZO: Any further
 11 discussion?
 12 Yes, please.
 13 MS. BARNES: Mr. Chair, members, yes, I'm
 14 Rhonda Barnes, and I'm an attorney for the Arizona
 15 Democratic party.
 16 And I just want to reiterate what Todd has
 17 said, that we have worked very closely with staff in
 18 this in coming up with the parameters for the slate
 19 mailers, and, in fact, have come down and brought pieces
 20 to the staff to show them before we've sent them to
 21 print, so that we're all operating on the same
 22 understanding of what's going to be matched this cycle.
 23 And this particular piece is a piece that's
 24 promoting our candidates with the message of change.
 25 That is, the message that the Democratic party is

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1 you.
 2 COMMISSIONER LINDHOLM: I asked him to put the
 3 statute back up.
 4 COMMISSIONER PARKER: I can't read that fast.
 5 MR. LANG: Lee Miller mentioned, Commissioners,
 6 that he and I have been discussing the rules, and we've
 7 -- I think we all agree that more guidance would be
 8 useful to candidates because they -- you know, in a
 9 better system, they wouldn't need to contact us
 10 beforehand to get our views. I mean, obviously, I
 11 encourage -- we encourage communication. We do it in
 12 all aspects of the law, not just slate mailers. And we
 13 certainly appreciate it.
 14 But we would like for them to have more
 15 guidance. And I think one rule we could -- and, of
 16 course, this is all subject to -- remember matching
 17 funds are in question any way, so we'll see what happens
 18 by the next election cycle.
 19 But assuming matching funds are around, we will
 20 provide more guidance. And I think one of the policy
 21 decisions we can make is not only can you not go
 22 negative on the opponent, but negative themes will not
 23 be permitted as well. And I think that would address
 24 the concerns that -- the very valid concerns that the
 25 three of you have raised today about the nature of this

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1 embracing this cycle. And so, it's not intended to be a
 2 negative piece or to imply Republican candidates, but
 3 rather it is saying that there is a need for change.
 4 There's clearly an economic situation that requires
 5 leadership, and our candidates, the Democratic
 6 candidates, are the ones that you should vote for to
 7 bring that positive change.
 8 That was the intent of the piece. We've tried
 9 very carefully to work within that slate mailer
 10 exception. And the statute that Todd had up there, if
 11 it doesn't have any meaning, it's got to be that it fits
 12 in with pieces like this that promote our candidates and
 13 express our message for our candidates.
 14 And that's why the legislature, as Mr. Miller
 15 said, was very careful in choosing its words and making
 16 sure there was an exception to the contribution and
 17 expenditure restrictions, because the role of the party
 18 is to promote its candidates and to promote its message.
 19 And that's what that statute allowed. And I believe
 20 that's what this piece fits in.
 21 I'd be happy to answer specific questions.
 22 CHAIRPERSON SCARAMAZZO: Any questions?
 23 THE COURT REPORTER: I'm sorry, Commissioner.
 24 COMMISSIONER DANIELS: She couldn't hear you.
 25 THE COURT REPORTER: I'm sorry. I didn't hear

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1 particular piece.
 2 But, again, because it didn't go negative on
 3 the particular candidates who are asking for matching
 4 funds, and because it was just -- and we've seen this
 5 Democratic theme in every ad they've run nationwide,
 6 this changed theme. I think Obama's posters even say
 7 that.
 8 And so, I think it's just part of the
 9 Democratic theme. And because it doesn't hit the other
 10 folks, it shouldn't be matched. But, again, I hear what
 11 you're saying, and I understand what you're saying, and
 12 I would agree with you. I'd rather not even have a
 13 negative theme, and I'd like to do something about that
 14 as well.
 15 COMMISSIONER LINDHOLM: Can I see the other
 16 statute as well?
 17 MR. LANG: Yeah. The other statute we don't
 18 apply generally because all they have to do is
 19 coordinate, and then this statute doesn't apply, which
 20 is goof -- it's not a good way to make policy because
 21 what you have is people coordinating, which risks
 22 illegal contributions if they don't meet the statutory
 23 requirements.
 24 This was written, of course, prior to Clean
 25 Elections, and so it doesn't -- as many of the election

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1 laws, this one doesn't quite work well with matching
 2 funds.
 3 Do you want me to keep this up, Commissioners,
 4 or can I turn it?
 5 COMMISSIONER LINDHOLM: No.
 6 MS. BARNES: Do you have any questions for me?
 7 Anything else I can help with?
 8 Thank you.
 9 CHAIRPERSON SCARAMAZZO: Thank you.
 10 COMMISSIONER PARKER: Mr. Chairman, I'd like to
 11 make a motion.
 12 CHAIRPERSON SCARAMAZZO: Okay.
 13 COMMISSIONER PARKER: I'd like to move that we
 14 issue matching funds in this regard.
 15 COMMISSIONER DANIELS: Second.
 16 CHAIRPERSON SCARAMAZZO: Okay. It's been moved
 17 by Commissioner Parker, seconded by Commissioner
 18 Daniels, that in regard to a slate mailer, that matching
 19 funds be issued.
 20 Discussion on this item? Jeff.
 21 COMMISSIONER FAIRMAN: Despite what I was --
 22 what I've said, and I still believe that what I said was
 23 correct, I'm not sure -- I don't think that I would vote
 24 for matching funds, just that there were other things on
 25 the other side that came very close to doing the same

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1 I think you would the next time for sure.
 2 Because I think it's just -- I think all the
 3 others -- and I think it's really important that we say
 4 absolutely nothing negative on a slate mailer, period.
 5 And that's why I would support the motion. Because I
 6 think we need to make a really strong statement so that
 7 we don't get into this negative attack campaigns through
 8 slates. And I really believe this, with a very broad
 9 brush, does that.
 10 CHAIRPERSON SCARAMAZZO: Thank you.
 11 Further discussion on this item?
 12 All those in favor say "aye."
 13 COMMISSIONER PARKER: Aye.
 14 COMMISSIONER DANIELS: Aye.
 15 CHAIRPERSON SCARAMAZZO: Opposed?
 16 COMMISSIONER FAIRMAN: Nay.
 17 COMMISSIONER LINDHOLM: Nay.
 18 CHAIRPERSON SCARAMAZZO: Nay.
 19 The motion fails.
 20 That will move us on -- thank you, Mr. Miller.
 21 MR. MILLER: All right. Thank you.
 22 CHAIRPERSON SCARAMAZZO: That will move us on
 23 back to Item No. IV.
 24 And in regards to Item No. VI, I think Todd
 25 probably gets the message from the Commission.

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1 thing.
 2 My concern is that it's -- as far as the
 3 Republicans crossed the line or the Democrats crossed
 4 the line, I don't think either one of those trigger
 5 matching funds. I don't think it's that bad. But I do
 6 believe very strongly that this needs to be looked at
 7 so, Todd, you and the staff and the Commission are not
 8 put in the middle of these kind of things and we're very
 9 specific about what a slate mailer can or cannot say.
 10 So, I would not be able to support that, but I
 11 do believe it needs to be looked at in the future.
 12 CHAIRPERSON SCARAMAZZO: Don?
 13 COMMISSIONER LINDHOLM: Mr. Chairman, I agree
 14 wholeheartedly. I think this does fall within the
 15 technical parameters of the exception. I understand the
 16 other Commissioners' criticism of it. It's unfortunate
 17 that we get into these kinds of details, and the further
 18 we go down that slope, the slicker it gets, but I don't
 19 -- I don't see this as anything other than a valid
 20 exception. I would not vote in favor of the motion.
 21 CHAIRPERSON SCARAMAZZO: Lori.
 22 COMMISSIONER DANIELS: Hello, Mr. Chairman. I
 23 would just say that I think we're really going down a
 24 slippery slope, and I think the next step is going to be
 25 one that we're -- if you can't issue matching funds now,

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1 MR. LANG: I do. It's clear.
 2 COMMISSIONER DANIELS: We're not very subtle,
 3 are we?
 4 CHAIRPERSON SCARAMAZZO: Good deal.
 5 MR. LANG: And I appreciate that.
 6 CHAIRPERSON SCARAMAZZO: Item No. IV,
 7 discussion and possible action on whether there's reason
 8 to believe violations occurred in numerous matters. The
 9 first, MUR 08-0016, Juan Valdez.
 10 MR. LANG: Thank you, Mr. Chair.
 11 Commissioners, this is in regard to a candidate,
 12 Robert -- I mean Juan Valdez -- who -- who received
 13 matching funds at the very last minute. And what you
 14 have in front of you is -- Exhibit A is the complaint,
 15 Exhibit B is the response filed by Mr. Valdez, and
 16 Exhibit C are affidavits he provided from his vendors.
 17 And as you can see, we just received those on 10/18, and
 18 those actually changed our recommendation in this
 19 matter. And it's a very close call.
 20 So, this is a particularly important one. It's
 21 really the question of -- of can a -- when can a
 22 candidate spend money, and if they get a bunch of money
 23 at the last minute, are they able to pull off an
 24 effective campaign?
 25 And the concern raised by the complainants here

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1 is they did pull off an effective campaign in the sense
2 they got a lot of signs and a lot of flyers out on the
3 last couple of days.
4 If you turn to Exhibit A, you see the timeline.
5 And what's interesting about it is it's very tight. On
6 Tuesday the 26th -- actually, let me go to -- oh, here
7 we go. At Exhibit B, if you look there, you see the
8 timeline.
9 On Tuesday the 26th at 4:00, a little after
10 4 o'clock, we approved Mr. Valdez for Clean Elections
11 funding. This is the week before the election. So, one
12 week before the election he was approved for funding.
13 We called him around 4:20 and told him: You can go
14 ahead and spend your money, you'll get your check
15 tomorrow. But in the last week we allow people to
16 encumber the funds right away, for obvious reasons.
17 Then on the 27th, according to the timeline
18 provided by him, they ordered the brochures. Actually,
19 they ordered them that evening of the 26th. The
20 brochures one through five were all printed on the 27th
21 and then mailed on the 28th, which is a Thursday. All
22 five brochures went out on the 28th, and then -- and he
23 has a mailing receipt from the Post Office.
24 Some question was raised, just in case you
25 noticed it. There's a handwritten date on it. And so,
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1 affidavits, which subjects them to criminal penalties.
2 And so, at this time, we recommend no reason to believe.
3 CHAIRPERSON SCARAMAZZO: Lori?
4 COMMISSIONER DANIELS: Mr. Chairman, Todd, are
5 they, in any way, in violation of the Clean Elections
6 law, if you talk to a printer and say: If I get
7 matching funds, can you hold the presses for me? There
8 is nothing wrong with that, correct?
9 MR. LANG: That's right. Great question,
10 Commissioner. Because, in fact, you can get drafts and
11 that sort of thing. You can negotiate with folks before
12 you get your money, but you cannot obligate yourself or
13 order until you have --
14 COMMISSIONER DANIELS: Okay.
15 CHAIRPERSON SCARAMAZZO: You can't commit.
16 MR. LANG: You can't commit until the funding.
17 So, I'm sure that there had been work done before this
18 date, but still, it's still very quick.
19 CHAIRPERSON SCARAMAZZO: Lori, please.
20 COMMISSIONER DANIELS: Mr. Chairman, I'd like
21 to make a motion that we find no reason to believe in
22 the matter of No. MUR 08-0016.
23 COMMISSIONER PARKER: I'll second.
24 COMMISSIONER DANIELS: And as an explanation, I
25 would say that because there are sworn affidavits, what
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1 the question was raised about the validity of the Post
2 Office receipt. But you can see at the bottom right of
3 the receipt there's a Post Office date stamp. So, I
4 have no reason to believe that this isn't a valid
5 receipt.
6 Anyway, it shows that the documents were mailed
7 on the 28th. On the 29th, the signs were produced, and
8 sent out, and then were distributed out that weekend, on
9 the day before the election.
10 This timeline was so close, and the printing
11 job and mail job done by the vendors were so amazingly
12 efficient, they basically did it overnight or in one
13 day -- apparently, they had no other business -- that we
14 recommended a reason to believe so we could look into it
15 further.
16 But since that time, Mr. Valdez has provided
17 affidavits of his campaign consultant, Philip Armenta,
18 who did all the sub -- you know, obviously they have to
19 pay directly to the subvendors. But Mr. Armenta is the
20 one who did this for him. And the other providers --
21 Jose Munoz did the art, and then the sign company.
22 Given those affidavits in which they validate
23 the timelines, we recommend no reason to believe. I
24 would say, though, that it's very close because the
25 timelines are so tight. But they've given us sworn
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1 Todd said, I'm going to believe what is sworn and
2 realize that people can be -- they can go to jail. They
3 can be fined. They can be in all kinds of trouble for
4 perjury. And so, I'm going to go on the face value and
5 say that I believe what's going on, and I think we can
6 find no reason to believe.
7 CHAIRPERSON SCARAMAZZO: Okay. Further
8 discussion on this item?
9 It's been moved by Commissioner Daniels,
10 seconded by Commissioner Parker, to find no reason to
11 believe a violation occurred in MUR 08-0016.
12 Further discussion? Anyone from the audience?
13 Okay. Hearing none, all those in favor say
14 "aye."
15 (Chorus of ayes.)
16 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion
17 carries.
18 MR. LANG: Thank you, Commissioners.
19 CHAIRPERSON SCARAMAZZO: Item (B), MUR 08-0021,
20 Carl Seel.
21 MR. LANG: Thank you, Mr. Chair.
22 Commissioners, what you have in your packet is a new
23 version of this document based on information we
24 actually received yesterday and the day before from the
25 Seel campaign. I'd also note that this is agenda Item
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1 IV(B). Agenda Item IV(D) is also in regard to Mr. Seel.
 2 And so, I'd ask, Mr. Chair and Commissioners, that you
 3 consider IV(D) after you consider IV(B), just so --
 4 CHAIRPERSON SCARAMAZZO: Continuity.
 5 MR. LANG: -- Mr. Bouie and Mr. Seel can have
 6 these issues resolved for them, and continuity, even
 7 better.
 8 Okay. This first one is rather lengthy. But
 9 what you have is a complaint by Mr. Bouie on September
 10 10th, and all the attached exhibits, your response by
 11 Mr. Seel on the 18th, and then you have a reply by
 12 Mr. Bouie on the 2nd, and a new bit of information and a
 13 reply by Mr. Seel on the 22nd, which was yesterday. And
 14 so, I ask you to review all that as we go through this.
 15 The -- okay. The first issue is early
 16 contribution limits. And this one is fairly
 17 straightforward. Bob Haran gave what appeared to be two
 18 contributions of \$130, which would have been a
 19 violation. But as you can see, it was simply a clerical
 20 error. They reported it twice. And so, obviously, on
 21 that issue, we recommend no reason to believe.
 22 On the second one, use of Clean Elections
 23 funds, the first issue was on transportation. The first
 24 issue was when Mr. Seel reimbursed travel expenses of
 25 \$350 for his gas expense and travel. This is permitted.

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1 purposes, and they were used in some significant fashion
 2 during the primary. And so, they're appropriate.
 3 Obviously, he'll be able to benefit from them during the
 4 general, but that's not a violation of our rules so long
 5 as they have some real use during the primary.
 6 I'd also mention that both Mr. Seel and
 7 Mr. Bouie are here so that, you know, obviously, you can
 8 hear from them.
 9 On meal expenses, he's fined there as well. I
 10 understand why Mr. Bouie was concerned because they did
 11 exceed the numbers, but the fact is it's per person.
 12 And so, you can buy -- you can buy your volunteers food,
 13 if you choose to use your money in that fashion. And
 14 so, that was appropriate as well.
 15 Finally, we have -- well, not finally, but the
 16 last rather quick issue is in-kind contributions. This
 17 is in regard to the Right Report on a radio station,
 18 KFNX. And basically what we discovered there is that he
 19 was getting market rates. It appears to be a cheap
 20 rate, but it appears that if I wanted to do a show on
 21 KFNX, they would have charged me the same rate.
 22 I'm sure my show would have been quite good,
 23 but --
 24 CHAIRPERSON SCARAMAZZO: I'm sorry we missed
 25 that opportunity.

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1 It's not required, but it's permitted. And it did not
 2 exceed the state reimbursement rate, so it is
 3 permissible. And there's no requirement that you
 4 reimburse for all of the travel. You can reimburse
 5 partially. So, again, we recommend no reason to believe
 6 on this.
 7 He also paid for gas for a volunteer, which is
 8 technically a violation, but you are allowed to
 9 reimburse travel for volunteers, and the travel expense
 10 would have been greater than the gas he paid for. And
 11 so, in this one, while sometimes we enforce technical
 12 violations, in this particular case we recommend that
 13 you not find reason to believe because there was,
 14 obviously, no intent, and, in fact, he paid less than he
 15 would have otherwise.
 16 The next issue, part two, is expenditures not
 17 related to the campaign. On the day before of the
 18 election -- or, actually, on September 2nd, he purchased
 19 a laptop battery and a GPS system. His response
 20 indicates that these were, in fact, for election
 21 purposes. He was using the GPS system to help move
 22 volunteers around, and he needed the battery because his
 23 old battery wasn't working, and he was trying to use his
 24 computer that day.
 25 We found that these are legitimate campaign

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1 MR. LANG: Yeah. So, we don't view that as an
 2 in-kind contribution. Obviously -- and in all cases,
 3 you can reopen this. If it turns out that KFNX would
 4 not have given -- would not give me the rate, or would
 5 not give a candidate that rate, then it's something we
 6 could reexamine down the road.
 7 Finally, the part of the recommendation that
 8 changed the joint expenditures, this is in regard to
 9 wire frames, T-shirts, autodialers, and cards. Those
 10 were the four issues. And, basically, on a number of
 11 occasions, he split the cost with what I call his
 12 running mate, Sam Crump, his teammate, Representative
 13 Sam Crump.
 14 There were two autodialer calls made in
 15 conjunction with Sam Crump. And the campaign finance
 16 report and Crump's report confirm that these were, in
 17 fact, properly split and properly paid to the vendors.
 18 The issue that raised was the question about the \$847
 19 call because it was so much more expensive. It might
 20 appear to the viewer of the campaign finance report
 21 that -- that Mr. Seel was paying for both himself and
 22 Crump because it was basically more than twice what he
 23 had paid for the others, but you can see from his
 24 response that, in fact, this was not for Crump. It was
 25 solely for Seel. It was a longer call and was simply

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1 more expensive. And he did pay the whole cost, but that
 2 was okay because it wasn't -- it wasn't a teammate call.
 3 The wire frames were confirmed by the campaign
 4 finance reports as well. They were properly split.
 5 Then going to the T-shirt and palm cards. This
 6 is where we have some questions. There is a slight
 7 discrepancy that remains, but it's not enough for me to
 8 recommend a reason to believe.
 9 As you can see, Sam Crump need not pay the same
 10 person to be splitting the cost. And in one case Crump
 11 paid a different vendor entity than Seel did. But in
 12 both cases they were splitting the cost for the T-shirts
 13 and they were splitting the cost for the palm cards.
 14 For whatever reason, and we think it's a
 15 mistake from the vendor, and that's what Mr. Seel would
 16 confirm, there was a \$10 discrepancy. But, frankly, I
 17 honestly believe that that's just a typo or a mistake by
 18 the vendor. It's certainly not enough to find a reason
 19 to believe.
 20 What -- the additional information that we
 21 received from Mr. Seel -- I'm getting all my Mr.'s mixed
 22 up -- is at the back of your packet at Exhibit -- I
 23 believe it's G -- and you can see it's at the very end,
 24 the last two pages -- three pages. It's a letter dated
 25 yesterday that shows -- that confirms he -- it's a sworn

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1 reason to believe that the Respondent has violated
 2 ARS 16-946.
 3 COMMISSIONER LINDHOLM: Second.
 4 CHAIRPERSON SCARAMAZZO: Okay. It's been moved
 5 by Commissioner Fairman, seconded by Commissioner
 6 Lindholm, to find no reason to believe a violation
 7 occurred in MUR 08-0021. Appropriate?
 8 COMMISSIONER FAIRMAN: Yes, thank you.
 9 MS. SHIPMAN: Okay. Because there was a
 10 discrepancy between -- you said the ARS 16-946 and
 11 then --
 12 MR. LANG: That's the statute.
 13 COMMISSIONER FAIRMAN: Oh, that's the statute,
 14 rather than -- I'm sorry. That's my mistake.
 15 MS. SHIPMAN: I just want to make sure. And
 16 you clarified that, Commissioner. Thank you.
 17 CHAIRPERSON SCARAMAZZO: Okay. Great. Any
 18 further discussion on this item?
 19 Anyone from the audience?
 20 MR. BOUIE: Hello, Commissioners. I appreciate
 21 the opportunity to come before you. My name is Tony
 22 Bouie.
 23 CHAIRPERSON SCARAMAZZO: Welcome.
 24 MR. BOUIE: I'm the former primary candidate
 25 against Carl Seel. I have a few -- a few points to make

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1 statement again, so I certainly am happy to rely on it,
 2 that he paid half to the vendor, and that it was his
 3 understanding that that was half of the total expense,
 4 and that he did not pay for Crump and get reimbursed.
 5 And then you see the vendor's bill and the invoices
 6 below.
 7 Because of that, I'm now satisfied that -- with
 8 his explanation, and I no longer recommend that you find
 9 reason to believe in regard to this particular
 10 transaction. In the earlier draft that you probably
 11 read in preparation, I did recommend finding reason to
 12 believe. But this additional information enables me to
 13 recommend that you find no reason to believe.
 14 I'll be happy to answer any questions.
 15 COMMISSIONER DANIELS: Mr. Chairman? Oh, go
 16 ahead.
 17 COMMISSIONER FAIRMAN: Mr. Chairman, first of
 18 all, I would like to thank you, Todd, for all the work
 19 you did on this. This is a rather complicated issue and
 20 you came full circle and did a great job on it. I
 21 appreciate that.
 22 MR. LANG: Daniel Ruiz did a great deal of work
 23 on this as well.
 24 COMMISSIONER FAIRMAN: Thank you, Daniel.
 25 I'd like to make a motion that we find no

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1 before you make your final decision on whether or not
 2 Carl Seel has violated rules, one of which is we have
 3 reason to believe that Carl Seel has been disingenuous
 4 with the materials set forth on explaining his
 5 positions. We, as I'm sure you may know by now,
 6 requested a public inspection of his records, some of
 7 which those records have not been so far given, as far
 8 as bank statements and the like.
 9 Now, what we found -- and I'll give you a quick
 10 rundown on why we believe the GPS system that Carl
 11 Seel's campaign purchased on the day of election is
 12 reason to believe that it is an unnecessary purchase.
 13 Some of the receipts that we received -- and I'll give
 14 you a rundown by the hour of what Mr. Seel's campaign
 15 did during that day.
 16 Now, I remind you his response was that the GPS
 17 system was needed to install and uninstall campaign
 18 signs. The receipt -- well, let's go back.
 19 At 10:16 in the morning he paid cash for two
 20 cups of coffee at Denny's. 10:16 in the morning.
 21 At 11:22 he purchased batteries. Mind you, two
 22 separate types of laptop batteries, not for the same
 23 computer. At 11:22, just over an hour later.
 24 At 12:05, they went to Sardella's, purchased
 25 pizza.

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1 At 12:17, they had another purchase at
 2 Sardella's for pizza. Now we're at noon.
 3 At 1:19 p.m., they went to Wal-Mart, purchased
 4 a GPS system. And, mind you, a two-year service plan on
 5 that GPS system.
 6 At 1:39 p.m., 20 minutes later, they purchased
 7 a whole lot of party supplies for the evening's
 8 festivities.
 9 Some time during the day, I can't read the
 10 receipt, but they went to Costco as well, and purchased
 11 other supplies, carrot cake and the like.
 12 At 6:52 there's a receipt to Sardella's, going
 13 back for more pizza. Apparently they have a penchant to
 14 love pizza.
 15 All these locations are within several miles of
 16 his home.
 17 Now, on August 19th, there is a Clean
 18 Election's, quote, unquote, "Commission" in the State of
 19 Maine that had the same type of issue, as far as
 20 purchasing a GPS system. They found that it was
 21 unnecessary and fined the gentleman to repay it in full.
 22 I -- I have no idea why you would need a GPS
 23 system at 1:30 in the afternoon on Election Day. Now,
 24 polls open at 6:00. So, for, what, five-and-a-half
 25 hours, six-and-a-half hours he didn't need it, and then
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1 for T-shirts for Crump and Seel.
 2 In that receipt you don't see any -- any
 3 shipping. Now, mind you, United Threads, on the
 4 receipt, is in San Fernando Valley, California. You
 5 don't see any shipping. You don't see any tax. Now,
 6 for me -- I mean, it may be minor to you, but if
 7 somebody is not paying taxes, no matter how large or how
 8 small, it's an issue. Whether there should be an
 9 in-kind contribution from UPS, or FedEx, or someone, or
 10 an in-kind contribution from the California Tax Board,
 11 there is none.
 12 We've asked also, because on August 19th is the
 13 official coming out date for the Crump and Seel campaign
 14 as running as a slate. Now, we all knew internally that
 15 they were running together, just unofficially. But they
 16 made it official on August 19th. You'll see a myriad of
 17 expenses together that they have done going forward from
 18 that point.
 19 The -- there is some autodialers that we just
 20 completely disagree that they were separate. You know,
 21 there would be really no reason, at this point, after
 22 they have officially come out, because now you have a
 23 non-incumbent tagging onto an incumbent's campaign. Why
 24 he would not, on everything that he does after an
 25 official coming out party, wouldn't do it together? And
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1 for the remaining five-and-a-half he did need it?
 2 That's -- that, to me, in his response, not
 3 knowing at the time when he responded that we would ask
 4 to see the receipts, wants to steer the Commission in a
 5 way that does not want them to -- does not want you to
 6 look further into his -- his Election Day doings.
 7 In regard to the -- to the Bob Haran issue on
 8 donating more money to his campaign -- and maybe it's a
 9 clerical issue, maybe it's not -- you may take a first
 10 word, but in order to ultimately clarify the issue, you
 11 would think that we could suggest that he goes to the
 12 bank and requests the documents for the counter checks.
 13 On that day that would determine if two checks
 14 were really deposited for Bob Haran. That would solve
 15 the issue, point blank, rather than just taking
 16 somebody's word. The bank -- the bank won't lie.
 17 For the issue of the reimbursements for the gas
 18 for a volunteer, several issues. You'll -- if you
 19 notice the receipts -- and we'll -- and I'll provide
 20 these to the Commission for your review. If you notice
 21 the receipts, they are receipts made directly to the gas
 22 station, which is improper as far as reimbursing a
 23 volunteer. You give it to the volunteer, not the gas
 24 station. We mention the -- that there's a receipt in
 25 his -- that he submitted for United Threads, which was
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1 you have Carl Seel's campaign saying they paid for an
 2 extensive autodialer that was only for him. I think
 3 it's hard to believe.
 4 What we've asked for is an original record
 5 of -- of the tape on what was said, an audio recording,
 6 and a script. Nothing has been given. It's been
 7 ignored. You know, we can't determine why. I leave
 8 that up to your -- your conclusion.
 9 I've had the opportunity to look through other
 10 Clean Election candidates, not just in the Republican
 11 Party, but the Democratic party as well, and you'll
 12 notice that, to a "T," one, I haven't seen anybody else
 13 purchase a GPS system, not one.
 14 Two, I've noticed that other candidates and
 15 campaigns are following the instructions on providing
 16 the subvendor on which they are purchasing through in
 17 regard to High Noon.
 18 High Noon Corporation or LLC is run by a
 19 gentleman named Constantine Querard. This is not a
 20 company that has a printing machine in his garage or a
 21 facility like that. Everything that runs through High
 22 Noon Communications or Promotions, whatever it is, is
 23 sublet. Every expense to High Noon does not list a
 24 subvendor. None of them. Blatant disregard for the
 25 rules.
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1 So, what we're trying to do is we're concerned,
 2 obviously, about the integrity of our elected officials.
 3 Also concerned about how the taxpayers' money is being
 4 used. What -- what is being shown is a systematic and
 5 undeniable blatant disregard for the rules. You may
 6 think they are all small, but when you add them up
 7 together, it paints a picture, a very powerful picture
 8 on this particular candidate.
 9 Now, it's -- I'm not here to tell you what to
 10 do. I'm just here to state the facts. After I -- we
 11 continue to go through all the receipts and make
 12 additional requests for the information that was not
 13 submitted by the Seel campaign, I'll have another report
 14 to bring before you on exactly what we're finding,
 15 because we're finding that some of the deposits aren't
 16 matching the receipts from the bank. You've got Clean
 17 Elections checks that do not match what the bank says.
 18 And I'm letting you know that this is a systematic,
 19 blatant disregard for the rules of the Clean Elections
 20 Commission.
 21 With that, I'll answer any questions. If there
 22 are no questions, I'll --
 23 CHAIRPERSON SCARAMAZZO: Royann?
 24 COMMISSIONER PARKER: Who is "we"?
 25 MR. BOUIE: My wife is the -- our committee
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1 MR. BOUIE: Yeah, but his actual campaign
 2 report off of the CCEC Website. I don't have that with
 3 me.
 4 But not -- I don't think you're -- you're
 5 looking at the actual receipts. If you look on -- on
 6 his filed reports within the Website, you know, you look
 7 at the pre-primary, the post-primary, all those reports,
 8 you'll see various payments to High Noon.
 9 COMMISSIONER PARKER: Okay.
 10 MR. BOUIE: And no -- no mention of
 11 subcontractors, subvendors. If you look at other
 12 campaigns, you'll -- you'll see that.
 13 COMMISSIONER PARKER: Okay. Thank you.
 14 CHAIRPERSON SCARAMAZZO: Daniel, do you have
 15 something?
 16 MR. RUIZ: I would just like to let the
 17 Commission know that I did look into the subvendor
 18 issue, and one of the things that came to my attention
 19 is if you look at Exhibit G, you will see an invoice for
 20 Sam Crump's campaign. And it's for his half of the
 21 \$800. Participating candidates are required to pay the
 22 vendor directly. And you will actually see Carl Seel
 23 pay the vendor directly. In the campaign finance
 24 reports, he directly paid United Threads. And as far as
 25 I can tell, the vendor was paid directly by Carl Seel.
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1 treasurer, so we go through them together.
 2 COMMISSIONER PARKER: What's the name of your
 3 committee?
 4 MR. BOUIE: Bouie for --
 5 COMMISSIONER PARKER: Okay. So, you're talking
 6 about your campaign?
 7 MR. BOUIE: Yeah, my campaign.
 8 COMMISSIONER PARKER: Okay. I wasn't quite
 9 sure --
 10 MR. BOUIE: I'm sorry.
 11 COMMISSIONER PARKER: -- what the concept of
 12 "we" was.
 13 MR. BOUIE: Yeah. My committee.
 14 COMMISSIONER PARKER: Okay. And then the only
 15 invoice I show from High Noon is the autodialer calls.
 16 So, you're saying that High Noon doesn't have the
 17 ability to make their own autodialer calls?
 18 MR. BOUIE: I'm not sure about the autodialer,
 19 but let me see if I have -- I don't -- I don't have
 20 the --
 21 COMMISSIONER PARKER: In our packet, the only
 22 thing from High Noon are the autodialers.
 23 MR. BOUIE: I don't have the campaign report
 24 for Seel.
 25 MR. LANG: Here's High Noon.
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1 CHAIRPERSON SCARAMAZZO: Thank you.
 2 MR. BOUIE: The issue with that is if Crump's
 3 campaign is paying for his half of the United Threads
 4 invoice to High Noon, High Noon has not paid the Carl
 5 Seel campaign the money, the half, because Carl Seel
 6 pays for a complete is what I think Daniel is saying.
 7 MR. LANG: No. No. The way I understand it is
 8 Crump just pays the consultant his half. Seel pays the
 9 actual vendor his half. That's our understanding, and
 10 that's why we changed our recommendation.
 11 CHAIRPERSON SCARAMAZZO: Any further questions?
 12 Thank you.
 13 MR. BOUIE: Thank you.
 14 CHAIRPERSON SCARAMAZZO: Yes, sir?
 15 MR. SEEL: Commissioner, Commission --
 16 Commission members, thank you for your time today.
 17 I didn't necessarily plan on speaking today. I
 18 wanted to see if Mr. Bouie had decided to testify before
 19 you. I didn't want to take more of your valuable time
 20 and my valuable time in this upcoming race, but I feel
 21 compelled to deal with some of the accusations that
 22 Mr. Bouie has levelled at me here today.
 23 Some of the things that he's levelled at me is
 24 that I have refused or denied any records that he has
 25 requested. That is patently false. I provided any and
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1 all records, and I made it abundantly clear to the
 2 Commission and the staff of the Commission that I'm
 3 prepared to produce anything that they ask for, no
 4 subpoenas, no legal action necessary. And I've been
 5 fully compliant with the Commission in that regard.
 6 If Mr. Bouie is concerned that I sent a
 7 surrogate in the form of Constantine to the event,
 8 Saturday is a very busy day and it's an extremely
 9 important day for me to reach voters. So, I was busy
 10 campaigning that day. It was extremely important that I
 11 do so for the objectives of our campaign. So, I
 12 apologize that I wasn't there in person, but I feel that
 13 we met. I produced any and all documents for Mr. Bouie.
 14 As to the GPS and the use of it, the -- it's
 15 very clear, in the use of my campaign, I had well over
 16 60 volunteers, 57 voting locations, and movement
 17 happening during that time, and close communications
 18 with several of those volunteers, and the use of a
 19 laptop and advanced technology made it possible for me
 20 to coordinate those and move those people.
 21 I'm prepared, if this Commission asks for it,
 22 or the staff asks for it, I'll be happy to have my
 23 volunteers produce affidavits to that effect as well. I
 24 didn't feel it was necessary, based on the response, but
 25 I'm happy to do that and I can do that.

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1 that I have in regards to that autodial message and/or
 2 transcript thereof, but Mr. Bouie's campaign has never
 3 asked for it.
 4 And I guess that's basically -- I thank the
 5 Commission for your time and your involvement, and I
 6 appreciate working with the staff on the myriad of
 7 things.
 8 Apparently I was hoping that today would mark
 9 the end of what I believe is Mr. Bouie's assault on my
 10 campaign, and using this Commission inappropriately, in
 11 my opinion only, to launch a salvo of political
 12 vendetta, I guess, over the campaign.
 13 Once again, I am fully prepared and willing to
 14 be as transparent as possible in any and all requests
 15 that this Commission has of me, but I would ask that
 16 future communications with the Bouie campaign,
 17 particularly levelling allegations of not providing
 18 documents, which I have done, that he continue to
 19 communicate in writing, and make any written request so
 20 that we have a nice solid paper trail that I am indeed
 21 complying with any and all requests.
 22 And I would really, really appreciate to focus
 23 on my campaign instead of dealing with a myriad -- from
 24 what we can see here, at least in this item, a myriad of
 25 baseless, no reason to believe a violation has occurred

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1 Interestingly enough too, Mr. Bouie made
 2 allegations of me that Mr. Haran's -- that if I produced
 3 the checks. I did produce all the bank statements, by
 4 the way. They are there. And I'm happy to produce them
 5 again. Mr. Haran also volunteered -- I did not ask him
 6 too, but he volunteered. He said he'd be willing to
 7 provide a statement that he only donated the \$130 if
 8 necessary. So, prepared to do that. Mr. Haran would
 9 contact the staff, or in any written fashion you'd like.
 10 We dealt with the gas vouchers. The T-shirts,
 11 I think, are pretty clear. The staff has dealt with
 12 fairly clearly, as far as that I indeed only paid my
 13 half. And my understanding with the vendor is that I
 14 was paying half, and so, I paid the presented invoice
 15 for half the order of the T-shirts and the palm cards,
 16 or particularly the T-shirts, obviously, in this case.
 17 The autodialer, I think, is pretty clear, the
 18 one autodialer that Mr. Lang clearly articulated that we
 19 did ourselves. It was my campaign. It was a minute in
 20 length. Mr. Bouie has never, I repeat, never asked for
 21 a transcript of that autodialer or a copy of that tape.
 22 At this point, I would ask and hope that
 23 Mr. Bouie submit any future request of my campaign in
 24 writing through the staff. And if they ask for it in
 25 that regard, I'd be happy to produce copies of the tapes

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1 actions.
 2 So, once again, I'm sorry to have to address
 3 you today. I didn't necessarily plan to do that. I
 4 thank that the Commission exists. I appreciate the
 5 opportunity to run for public office. And, quite
 6 honestly, if it wasn't for the Clean Election Commission
 7 and the Clean Election fund, I wouldn't be running. I
 8 wouldn't have the opportunity to run and represent the
 9 ideals that I'm after. And I sincerely appreciate the
 10 Commission's effort to that regard.
 11 So, with that, is there any other questions
 12 that the Commission or the staff have of me?
 13 CHAIRPERSON SCARAMAZZO: Don?
 14 COMMISSIONER LINDHOLM: One of the things that
 15 caught my attention in Mr. Bouie's remarks was that --
 16 and I don't recall the exact numbers, but he specified
 17 that the GPS was bought at shortly after noon, or 1
 18 o'clock, or something on the day of the election. And
 19 his inquiry was why was the GPS not required for the
 20 first half of the day and was required in the second
 21 half of the day. I'd just like to hear your
 22 explanation.
 23 MR. SEEL: The first half of the day, in
 24 implementing and moving the people to the resources
 25 became -- was very much a challenge. And then we looked

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1 at where we were in the campaign and said: What tool
2 would alleviate the afternoon? The afternoon is the
3 busiest time. From 4:00 to 7:00 at the polling
4 locations is quintessentially the most turnout. The
5 morning is not as much.

6 But the headaches that we ran into in the
7 morning precipitated, said, okay, what resources do we
8 have at our disposal to solve that problem so we can
9 move the people around the way we need to? And the
10 thing that came up with my -- I was working with my
11 campaign staff live that day, and that was the
12 recommendation that came up, and then we looked at it
13 and we had the laptop and the Internet connections. So,
14 we said, okay, yes, that will work. And fortunately it
15 did.

16 We went from -- we had a significant increase
17 in the number of proper polling locations covered and
18 much better use of the volunteer resource rather than
19 having people go home on us. So, I had too many
20 duplicates in the morning of the same volunteers or
21 multiple volunteers at the same polling location, which
22 deflates them, and some of them call and go home. I'd
23 rather have them at another location than have that
24 happen. So, we had proper -- much better use of
25 volunteers.

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1 And what's interestingly enough, Commissioner,
2 when you look at the voter turnout by precinct, that --
3 and I look at what I did in my campaign -- the voter
4 turnout for the precincts that I properly positioned
5 volunteers at had a noticeable increase in voter turnout
6 for my ticket. I see a correlation there. Thank you.

7 CHAIRPERSON SCARAMAZZO: Thank you.
8 Any further questions or comments? Thank you.
9 Hearing none, we do have this MUR 08-0021 on
10 the floor, and with a no reason to believe a violation
11 occurred.

12 Hearing no further discussion, all those in
13 favor say "aye."

14 (Chorus of ayes.)

15 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion
16 carries.

17 So, we move on to (D) then, Todd.

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

19 Commissioners, this is another complaint filed by
20 Mr. Bouie against Mr. Seel.

21 And, you know, I would mention on the other
22 complaint that, you know, although I recommended no
23 reason to believe, I think Mr. Bouie had legitimate
24 concerns, I just think Mr. Seel has addressed them. You
25 know, for instance, the double check for \$130. That

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1 appears to be a problem. And we would encourage folks
2 to file a complaint about that. But Mr. Seel explained
3 it. It was simply a clerical error. He only got one
4 check, and I certainly believe him. And that's all I
5 want to say about that.

6 Moving on to MUR No. 08-0026, this is in regard
7 to use of former assets. You have a complaint dated
8 9/16, Mr. Seel's response dated 9/24, and Mr. Bouie's
9 supplement dated 10/3 at Exhibit C.

10 The first issue is the use of old assets. As
11 you know, if you use old campaign assets, you have to
12 pay for them. Generally this comes up in signs, but in
13 this case it's other equipment. And what you see is
14 Mr. Seel denies using old assets, but acknowledges he
15 did use a camera. And he proposes to resolve it by
16 pointing out that had he paid properly for the camera,
17 he would have had to pay about \$65.

18 Again, the one-fifth rule doesn't mean you only
19 can pay that. You can pay more. It's what you think
20 it's worth. So, I would suggest, in many cases, it's
21 worth more than \$65, and probably in this case. But
22 regardless of that, he returned \$348. And so, that more
23 than covered any value of the camera. And so, I agree
24 with him in the sense that there was no benefit. It was
25 clear this was an unintentional violation, in my view.

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1 He received no benefit from the violation, as he had
2 more money on hand than he needed to pay for it.

3 That said, I recommend the Commission find a
4 reason to believe, not because we need to do further
5 investigation, because it's a fairly clear problem, but
6 because it was a violation.

7 There's really three options for the
8 Commission: No reason to believe because you determine
9 that, well, he had enough money on hand to pay for it;
10 or you could find reason to believe, but instruct staff
11 not to look into it further and close the matter there,
12 where you're finding a violation, but you agree with us
13 that it wasn't a significant problem, and the reason to
14 believe is enough; or, you could find reason to believe
15 and ask us to look into it further, to examine whether
16 or not he used other equipment and didn't properly pay
17 for it.

18 So, that's what I view your three options. And
19 we recommend that you find reason to believe, but we
20 don't think further investigation is necessary.

21 CHAIRPERSON SCARAMAZZO: Okay.

22 COMMISSIONER DANIELS: Mr. Chairman, I would
23 move that we find reason to believe in MUR 08-0026, but
24 direct staff not to investigate any further.

25 COMMISSIONER LINDHOLM: Second.

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1 CHAIRPERSON SCARAMAZZO: It's been moved by
 2 Commissioner Daniels, seconded by Commissioner Lindholm,
 3 to find there is reason to believe a violation occurred
 4 in MUR 08-0026, but to direct staff that no further
 5 investigation will be necessary.
 6 Any discussion on this item?
 7 All those in favor say "aye."
 8 (Chorus of ayes.)
 9 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion
 10 carries. Thank you.
 11 That'll take us back then to Item (C),
 12 MUR 08-0024, Sylvia Allen.
 13 MR. LANG: Thank you, Mr. Chair. This is
 14 another reason -- no reason to believe recommendation.
 15 This is in regard to the use of petty cash. You have a
 16 complaint filed on the 15th of September and you have a
 17 response filed on the 29th.
 18 In the middle -- this is an unusual case
 19 because Senator Allen was actually running for State
 20 Representative as a participating candidate. And then
 21 when she was appointed to the office, she switched to
 22 non-participating status. This is an allegation
 23 regarding petty cash, but I'd say to you I think her
 24 response covers everything. It's very helpful to get
 25 her ledger books on how she spent her cash. We see a
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1 inquiry.
 2 COMMISSIONER PARKER: I agree.
 3 COMMISSIONER DANIELS: Mr. Chairman, I would
 4 move that we find no reason to believe in MUR 08-0024.
 5 COMMISSIONER FAIRMAN: I'll second that.
 6 CHAIRPERSON SCARAMAZZO: It's been moved by
 7 Commissioner Daniels, seconded by Commissioner Fairman,
 8 that the Commission find no reason to believe a
 9 violation occurred in MUR 08-0024.
 10 Any discussion on this item?
 11 Yes, ma'am?
 12 MS. BARNES: Very briefly. Again, Rhonda
 13 Barnes from the Arizona Democratic party.
 14 I recognize that the rules allow candidates to
 15 have an aggregate limit that seems to exceed the \$120
 16 for petty cash. And I know you can't make any changes
 17 to that right now, but I would just implore that in the
 18 future, going forward, that the Commission might
 19 consider changing that rule.
 20 Because the way the reporting is done, it looks
 21 like three, or four, or five hundred dollars in petty
 22 cash expenditures at one time because they're not broken
 23 down. So, it could be that somebody could spend petty
 24 cash at Kinko's, and at Home Depot, and at some other
 25 place, and that their reporting shows just one aggregate
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1 nice running total of her petty cash balance. We can
 2 see very clearly that she never exceeded the petty cash
 3 limits, although she did go in the hole, which is a
 4 violation. It's on page two of her spreadsheet, which
 5 is at Exhibit B at the very top.
 6 I'd also point out it may have confused you.
 7 She has her -- I assume she produced this spreadsheet
 8 for us because she has her titles backwards. (D) should
 9 be deposits and (E) should be expenses, not the other
 10 way around.
 11 Anyway, you can see she went \$16.90 in the
 12 hole. She explains, at some length, as to how she took
 13 care of this. So, this is a violation of our petty cash
 14 rules, but I recommend that you find no reason to
 15 believe because she reconciled it with personal funds.
 16 Oh, right. Right. Thank you.
 17 Daniel points out our rules allow loans to
 18 campaigns, so long as they're reimbursed within seven
 19 days. That's something new you enacted last year in
 20 order to address the realities of campaigning --
 21 campaign workers buy things and get reimbursed later.
 22 That's not what happened here, so it's not directly
 23 designed for this situation, but I think it works. And
 24 I think she remedied the problem. And this is a
 25 16-dollar problem that I don't think merits further
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1 amount of petty cash of perhaps \$500. And so, it looks
 2 like a violation to people looking at the reports
 3 because it's more than \$120 for that line in their
 4 report.
 5 And maybe going forward we can alleviate some
 6 of these complaints if there was clarity that you have
 7 to put in your report specific petty cash expenditures
 8 that are under \$120, or whatever the limit will be next
 9 year. I think that would benefit candidates and parties
 10 both.
 11 CHAIRPERSON SCARAMAZZO: Thank you. Todd?
 12 MR. LANG: Commissioners, I actually agree. I
 13 think what we could do is require no -- no detail.
 14 That's the whole point of petty cash. But if you're
 15 going to do an entry in your report that appears to
 16 exceed the limit, you need to break it down in that
 17 instance so that we don't add a lot of burden to petty
 18 cash reports which are already -- we get grumbling
 19 about. But at the same time, we get clarity for folks
 20 reviewing them, so that they understand how the money is
 21 being spent, and so that they know there's no violation.
 22 That's something we can consider in the off season, as I
 23 call it.
 24 CHAIRPERSON SCARAMAZZO: Fair enough. Thank
 25 you.
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1 Otherwise, there is a motion on the floor. All
 2 those in favor say "aye."
 3 (Chorus of ayes.)
 4 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion
 5 carries.
 6 Item No. (E), MUR 08-0027, Mark Thompson.
 7 MR. LANG: Thank you, Mr. Chair. We have a
 8 complaint filed by Lauren Kuby on 9/16. And I point out
 9 that she's here today and would probably like to speak.
 10 CHAIRPERSON SCARAMAZZO: Okay.
 11 MR. LANG: And there's a response dated 9/23.
 12 And then there's also information provided by the sign
 13 vendor at 10/14.
 14 On August 26th, Mr. Thompson received his Clean
 15 Elections funding, but there's a report that indicates
 16 he made a sign expenditure of \$2,381 on 8/19, which
 17 would be clearly a violation, and obviously what has
 18 prompted this complaint.
 19 The -- the response indicates, well, this was
 20 simply a campaign -- this was a vendor error, and an
 21 error in the campaign finance report. The report has
 22 been amended and we received an affidavit from the sign
 23 vendor indicating that the date had been corrected, and
 24 that it was actually 8/29.
 25 I'd note that the sign vendor is Jim Torgeson,
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1 Daniels, seconded by Commissioner Parker, to find no
 2 reason to believe a violation of MUR 08-0027. Lori?
 3 COMMISSIONER DANIELS: Mr. Chairman, I think
 4 I'd like to ask our legal counsel. Do we ever
 5 investigate any of these sworn statements to see? It
 6 seems like we're -- and I want to believe people.
 7 That's my general rule of thumb. But -- and we have
 8 signed statements.
 9 Have we ever had an investigation, since Clean
 10 Elections has been around, on any sworn statements made
 11 by people?
 12 MS. SHIPMAN: I don't know of any, but I
 13 haven't looked into it.
 14 COMMISSIONER DANIELS: Mr. Chairman, I wouldn't
 15 want you to spend hours going into it at all. I was
 16 just curious because we do have a lot of sworn
 17 statements.
 18 MR. LANG: Mr. Chair, Commissioners, as you
 19 know, I had Tonja's job several years ago, and we never
 20 did either. We've had sworn statements that were
 21 fictitious or were not correct, and the AG has
 22 prosecuted those cases. We've not individually looked
 23 into them because we've never had cause to.
 24 If we got evidence that a sworn statement was,
 25 in fact, incorrect, we would recommend an investigation,
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1 who we've been dealing with on those little signs that
 2 say "Open Borders Ableser." Just an interesting
 3 coincidence. Well, this is the same district.
 4 So, based on the sign vendor's sworn statement,
 5 we recommend no reason to believe.
 6 I think there's some folks out there who have
 7 some raised eyebrows because it is quite a change. But
 8 we have a sworn statement, he'd be subject to criminal
 9 prosecution, and so, we rely on that. And so, for that
 10 reason, we recommend that the Commission find no reason
 11 to believe and no need to investigate further.
 12 CHAIRPERSON SCARAMAZZO: Lori?
 13 COMMISSIONER DANIELS: Mr. Chairman, should I
 14 make a motion prior to, and then I can have a
 15 discussion?
 16 CHAIRPERSON SCARAMAZZO: Okay. Great.
 17 COMMISSIONER DANIELS: I make the motion that
 18 we have no reason to believe in MUR 08-0027.
 19 COMMISSIONER PARKER: Second.
 20 COMMISSIONER DANIELS: Mr. Chairman, I think
 21 I'd like to ask --
 22 CHAIRPERSON SCARAMAZZO: Let me get that on the
 23 floor.
 24 COMMISSIONER DANIELS: Okay. Sorry.
 25 CHAIRPERSON SCARAMAZZO: Moved by Commissioner
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1 if not criminal prosecution. That just hasn't happened,
 2 but if it does, we would certainly recommend it.
 3 COMMISSIONER DANIELS: Okay. Thank you.
 4 COMMISSIONER FAIRMAN: Not related to this
 5 necessarily, but if -- if we were to find today that
 6 there's no reason to believe, then the issue would
 7 simply be over with and gone, so there would be no
 8 reason for a further investigation. There would be no
 9 reason to ever look back at this; is that correct?
 10 MR. LANG: That's right, but --
 11 COMMISSIONER FAIRMAN: This would have to occur
 12 early on in the process.
 13 MR. LANG: But it's -- say there was a
 14 misrepresentation here, and someone felt guilty and came
 15 clean, or if somebody who knew the parties involved,
 16 which is more likely, told us the truth, or if we got
 17 other evidence, we could re-open the case. We can
 18 always re-open a case if we find evidence of
 19 misrepresentation, or if we just simply get more
 20 evidence.
 21 Now, Mr. Bouie raised new issues. You could
 22 have re-opened the case based on the new issues. We can
 23 always do that.
 24 COMMISSIONER FAIRMAN: Thank you.
 25 CHAIRPERSON SCARAMAZZO: Okay. Comments,
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1 please.

2 MS. KUBY: Yes. Thank you for allowing me to

3 speak.

4 My name is Lauren Kuby and I'm a volunteer with

5 Ed Ableser and David Schapira campaigns. And I guess I

6 just want to point to the fact this isn't a simple case

7 of Jim the vendor. There's really a lot of underlying

8 motivations that are here that I wanted to speak to.

9 And I know the Commission has already found that Jim

10 Torgeson, Jet Media, has made an independent expenditure

11 against the three candidates, including Meg

12 Burton-Cahill.

13 And in that case, Torgeson did claim that the

14 signs, he thought, were actually helping to get out our

15 candidates' message. And the Commission disagreed with

16 that and awarded matching funds, \$200 for each

17 candidate.

18 Well, of course, I cannot prove that the

19 affidavit is false. I can point to the illogic --

20 illogicness -- that's not a word. I can point to how

21 illogical it is that you would invoice someone and use

22 the date the week before, and not use the present date,

23 but, obviously, that's a legal point.

24 But I would ask you respectfully to look at the

25 history of Jet Media and Jim the vendor. There was a

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1 disingenuous there.

2 But in a memo -- in a memo dated 10/19 -- and I

3 do have copies of this to give you all. Excuse me. In

4 a memo that's dated Sunday, Mark Thompson -- and it was

5 sent out to all Maricopa County Republicans from the

6 list, and a friendly Republican supporter sent it to us.

7 Mark Thompson referred, in the subject line, to campaign

8 signs being stolen. There was an issue of an ASU

9 student taking down one of the Ableser open border

10 signs. In telling the people about this, telling fellow

11 Republicans about this, he mentioned that there are

12 campaign signs that were taken. So, he's even

13 associating with these signs.

14 And so, it sort of undermines the argument that

15 maybe Jim Torgeson isn't just this independent sign

16 maker who is just doing this on his own.

17 So, I believe -- what I believe, I think the

18 matter just requires further investigation. And what I

19 see is the point of investigation is there were deposits

20 supposedly made on August 19th that was supposedly

21 invoiced in error, and August 26th. There were deposits

22 made. So, wouldn't there be bank records that showed

23 when the deposits were made? Or wouldn't there be a

24 credit card statement that would show when the deposits

25 were made?

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1 law, a sign law that was in the legislature about a year

2 and a half ago. And Jim had very decided opinions about

3 it, and wanted to meet and talk, and did talk, I think,

4 with Ed Ableser and Meg Burton-Cahill, but was very

5 unsatisfied with the response and that he wasn't -- they

6 weren't willing to agree with his lobbying efforts.

7 And so, at that time he did avow publically --

8 and I'm sorry that I don't have the e-mail with me, but

9 I can get that -- that he would do what he could to

10 support any opponent of Ed Ableser and Meg

11 Burton-Cahill's.

12 So, as you say, there were independent

13 expenditures that you guys found, but they -- these

14 expenditures have continued unabated. In fact, it's

15 been a ramped-up series of these signs that have going

16 out all over Tempe.

17 In, addition Mark Thompson, who is the

18 candidate running against David Schapira and Ed Ableser,

19 Mark Thompson has said publically, in today's Arizona's

20 Republic -- assuming he was quoted correctly -- that

21 these -- that there's no involvement in his campaign

22 with these signs. And Jim Torgeson continues to claim

23 that he did this on his own, and that indeed he is

24 trying to get out the candidates' message. It's really

25 a pro-Ableser, pro-Schapira sign. So, that's a little

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1 And I respectfully ask that the Commission, and

2 Todd and Daniel to look into that one aspect. Because,

3 to me, that might answer some questions. I just sort of

4 throw that out for there as a possible source for

5 further information on this case.

6 And I thank you for allowing me to speak.

7 CHAIRPERSON SCARAMAZZO: Thank you. Any

8 questions?

9 COMMISSIONER DANIELS: Mr. Chairman, I don't

10 have a question, but I guess I would make a comment. I

11 understand your frustration, and I understand today

12 we've seen a lot of complaints come forward. But

13 regardless of who's doing it, I think as a Commission we

14 have a responsibility that we have to investigate,

15 whether we agree with the person, whether we think this

16 is frivolous, and we're going forward. I still believe

17 we have to look at it because of the law, and the way

18 that the Clean Elections law is written.

19 So, while I understand we get frustrated too,

20 and we see names and see what happens, we still have an

21 obligation to investigate and look forward.

22 MS. KUBY: I completely understand. That's why

23 I think that if the Commission could take just that

24 simple step of looking at the bank records, and for

25 August 19th, let's see, there was a deposit made --

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1 supposedly a deposit made that day of \$500 or something.
 2 And on the 26th there's also a deposit made. So, it
 3 seems to me there should be bank records that reflect
 4 when that deposit was actually made. And it might
 5 reveal that it was on August 19th, in which case he
 6 would be in violation, and he'd also be making a false
 7 statement.

8 CHAIRPERSON SCARAMAZZO: Thank you.

9 MS. KUBY: Thank you.

10 COMMISSIONER DANIELS: Mr. Chairman, I'm not
 11 making this motion, but can we make a substitute motion
 12 to table this issue until our next meeting, or a
 13 conference call, and they look at the bank statements?

14 Because I don't want to find a reason to
 15 believe for staff to investigate at this point, but I
 16 don't know if that's even a proper motion, I guess is
 17 what I'm asking.

18 CHAIRPERSON SCARAMAZZO: It would be. Todd,
 19 you wanted --

20 MR. LANG: Normally -- Commissioners, normally
 21 what we would do to get the bank records, we can
 22 subpoena them or, you know, obviously, first we just ask
 23 the campaign for them, but we can subpoena them. But
 24 normally we do that in a course of an investigation
 25 after finding a reason to believe. It's not necessary,

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1 but that's how we've always done it.

2 I would point out -- and certainly that -- I
 3 certainly understand Ms. Kuby's point. I mean, it would
 4 -- Ms. Kuby's point. It would be a fairly
 5 straightforward inquiry. So, if you want us to do that,
 6 that's fine.

7 I would point out one thing that's missing from
 8 this case that would have caused me more concern is
 9 there's -- we don't have any affidavits from anyone
 10 indicating they've seen signs out before the 26th. Now,
 11 it may be that if he did violate the law and ordered
 12 them on the 19th, they weren't available until the 26th,
 13 and that may well be why.

14 But there's no -- in other words, there's no
 15 secondary or contextual information indicating that
 16 they're not telling the truth, other than the fact that,
 17 you know, other than the sort of other issues raised by
 18 Ms. Kuby. It's clear --

19 MS. KUBY: May I address that?

20 MR. LANG: Yeah.

21 MS. KUBY: The fact funds were committed on the
 22 19th, it doesn't necessarily mean that the signs would
 23 be out within the week. You don't know the printer's
 24 schedule. It could be the --

25 MR. LANG: Right. That's what I said.

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1 MS. KUBY: Thank you.

2 CHAIRPERSON SCARAMAZZO: Lori?

3 COMMISSIONER DANIELS: Mr. Chairman and Todd, I
 4 think the reason I would like to not say there's a
 5 reason to believe and further investigation that I'd
 6 rather table it until the next meeting is because of
 7 what the press puts out. And I think we have to be
 8 aware of it.

9 I'm not saying we have to directly react,
 10 because we're -- because the press says something that's
 11 incorrect. And I think in particular of Mr. Schmuck, I
 12 think he feels like he lost the election because of the
 13 way that the Arizona Republic printed down what our
 14 actions were.

15 So, until I know that this was a real
 16 investigation, I feel like if we just table this, then
 17 there is no reason to believe. And I understand where
 18 you are, but then, you know, look into it a little bit
 19 further. So, that's -- I'd like to make a substitute
 20 motion that we table Item IV(E) under MUR 08-0027.

21 CHAIRPERSON SCARAMAZZO: Okay.

22 COMMISSIONER PARKER: I'll second it.

23 CHAIRPERSON SCARAMAZZO: It's been moved by
 24 Commissioner Daniels, seconded by Commissioner Parker,
 25 to table MUR 08-0027.

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1 There is no discussion on the table, though.

2 MS. SHIPMAN: I just want to make a comment
 3 about that. The only issue -- and that was the issues
 4 Todd was trying to say -- is that without finding a
 5 reason to believe, we are perhaps limited in our
 6 investigatory powers.

7 So, if you want to table it and see if we can
 8 get cooperation. If not, then that might be necessary,
 9 in your discretion, whether or not you want to do that
 10 in order to have the enforcement power to subpoena a
 11 record because someone needs to be under investigation
 12 for us to subpoena, is my understanding.

13 CHAIRPERSON SCARAMAZZO: Don?

14 COMMISSIONER LINDHOLM: My question is along
 15 those lines. I was wondering about investigative power
 16 of staff, particularly with respect to Jet Media
 17 Promotions, because it seems like that would be the much
 18 easier way to find out the validity or invalidity of
 19 these representations, you know, when you look at the
 20 invoice.

21 I presume it's somebody that's savvy can
 22 examine something at the other end of this and determine
 23 whether that invoice was actually printed on the 19th of
 24 August or not. And I presume that's done on a computer.
 25 The computer retains that, no matter what they do. But

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1 I don't know how far into that you can go with a
 2 non-candidate.
 3 COMMISSIONER PARKER: I don't know if you can
 4 go out to the businesses like that or not.
 5 COMMISSIONER DANIELS: Mr. Chairman, are we
 6 violating Robert's rules by discussing a tabled motion
 7 in this way?
 8 CHAIRPERSON SCARAMAZZO: Yes, but it seems like
 9 you're on a roll.
 10 MS. SHIPMAN: I started it, unfortunately.
 11 COMMISSIONER DANIELS: Well, and Mr.
 12 Chairman -- okay. Mr. Chairman, I make a motion to
 13 withdraw my tabled motion so we can discuss this
 14 further.
 15 COMMISSIONER PARKER: I'll second.
 16 CHAIRPERSON SCARAMAZZO: Okay. It's moved.
 17 Okay, the maker and second.
 18 COMMISSIONER DANIELS: And I don't know even
 19 know if that's legal.
 20 CHAIRPERSON SCARAMAZZO: The maker has removed
 21 your motion from the table. So, go at it, you know.
 22 COMMISSIONER DANIELS: Well, Mr. Chairman, I
 23 guess my -- and I understand that we would be limited on
 24 our investigative power, we could not do subpoena, but I
 25 guess I want to see are they going to be cooperative.

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1 discussion.
 2 All those in favor say "aye."
 3 (Chorus of ayes.)
 4 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion
 5 carries. Thanks, everybody.
 6 (F), MUR 08-0028, John Altmann.
 7 MR. LANG: Thank you, Mr. Chair.
 8 Commissioners, this is a pretty straightforward
 9 complaint filed on September 18th by Margaret Clouse in
 10 regard to using another campaign account to pay for
 11 flyers.
 12 It appears -- and, again, you know, we've
 13 recommended a lot of no reasons to believe, but these
 14 were all fairly legitimate issues, and I think this one
 15 was as well. I just completely believe Mr. Altmann's
 16 explanation, which is a rather straightforward one.
 17 On his Website he had -- he had a draft piece
 18 that had the wrong disclaimer on it. It had an old
 19 disclaimer and he probably used old artwork and just
 20 changed the office sought, and he failed to repair the
 21 disclaimer -- failed to change the -- edit out the
 22 disclaimer so that it reflected his current campaign.
 23 No pieces went out with the wrong disclaimer, and no
 24 money was provided from the old account.
 25 So, I am satisfied in his response that no

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1 And I'd like to take that first step in a way that we
 2 would move forward and just see if we get cooperation.
 3 Then if not, then we can come back and find reason to
 4 believe and do the subpoena and more investigative. So,
 5 that's my discussion on it. So, everybody else.
 6 CHAIRPERSON SCARAMAZZO: Jeff?
 7 COMMISSIONER FAIRMAN: I absolutely agree with
 8 that logic. Let's see who wants to be involved in this,
 9 who wants to respond to questions we have, and it'll
 10 give us all the information we need to be able to move
 11 in a direction at the next meeting without negatively
 12 affecting this campaign. I think that's the wiser --
 13 the wiser choice.
 14 CHAIRPERSON SCARAMAZZO: Okay. With that
 15 said --
 16 COMMISSIONER DANIELS: Mr. Chairman, would you
 17 like another motion?
 18 CHAIRPERSON SCARAMAZZO: All right.
 19 COMMISSIONER DANIELS: Mr. Chairman, I move
 20 that we table the motion -- or we table the matter on
 21 MUR No. 08-0027.
 22 COMMISSIONER FAIRMAN: I'll second that.
 23 CHAIRPERSON SCARAMAZZO: All right. It's been
 24 moved by Commissioner Daniels, seconded by Commissioner
 25 Fairman, to table MUR 08-0027, and this time no

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1 violations of law occurred, and that, therefore, I
 2 recommend no reason to believe.
 3 COMMISSIONER DANIELS: Mr. Chairman, I move
 4 that we find no reason to believe in the matter of
 5 MUR No. 08-0028.
 6 COMMISSIONER PARKER: Second.
 7 CHAIRPERSON SCARAMAZZO: It's been moved by
 8 Commissioner Daniels, seconded by Commissioner Parker,
 9 to find no reason to believe a violation occurred in
 10 MUR 08-0028.
 11 Discussion on this item?
 12 Hearing none, all those in favor say "aye."
 13 (Chorus of ayes.)
 14 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion
 15 carries.
 16 Item (G), MUR 08-0029, Andre Campos.
 17 MR. LANG: Thank you, Mr. Chair. You have in
 18 front of you a complaint filed on September 17th by Mary
 19 Desio, and you have a response filed on September 30th
 20 by Andre Campos.
 21 This one is interesting. It's just simply a
 22 question of whether or not the participating candidate
 23 properly disclosed properly reported subvendors, and --
 24 and the claim is that he did not. The other interesting
 25 part of the complaint, if you read her letter at Exhibit

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1 A, is that the vendor at issue here is owned primarily
 2 by Mr. Campos.
 3 And so, I recommend that we find reason to
 4 believe in this case, just so we can look into it, in
 5 regard to disclosing payments to the subvendors. And
 6 I'm not saying that there's been a clear violation of
 7 law, but I think this one -- there is reason to believe
 8 that there was a violation in regard to the subvendor,
 9 and I think it's worth our attention.
 10 COMMISSIONER PARKER: Mr. Chairman, I make a
 11 motion that we find reason to believe in
 12 MUR No. 08-0029.
 13 COMMISSIONER DANIELS: Second.
 14 CHAIRPERSON SCARAMAZZO: It's been moved by
 15 Commissioner Parker, seconded by Commissioner Daniels,
 16 to find there is reason to believe a violation occurred
 17 in MUR 08-0029.
 18 Discussion on this item? Yes, sir.
 19 MR. CAMPOS: Andre Campos.
 20 CHAIRPERSON SCARAMAZZO: Welcome.
 21 MR. CAMPOS: Good morning, everyone. Thank you
 22 for your time.
 23 I contracted with Image Design Communications
 24 to prepare the Website. If they decided to subcontract
 25 it for business reasons of their own, as a candidate
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1 subvendors. And so, in this case, if you did not, that
 2 would be a violation. It doesn't mean the end of world,
 3 but it's something we need to look into.
 4 CHAIRPERSON SCARAMAZZO: Anything else,
 5 Mr. Campos?
 6 MR. CAMPOS: I'm just not aware of that -- that
 7 you're required -- that that statement that you said in
 8 training, that if a vendor -- but we'll -- if it is the
 9 case, we'll fix it.
 10 MR. LANG: We can talk about it.
 11 MR. CAMPOS: Yes. Oh, and then expect a
 12 sharply worded voice mail. Image Design is not a
 13 company that sells clothing.
 14 MR. LANG: Okay.
 15 MR. CAMPOS: I'm sure someone will call you
 16 about that.
 17 MR. LANG: Okay. I appreciate you correcting
 18 that.
 19 MR. CAMPOS: Thank you.
 20 CHAIRPERSON SCARAMAZZO: Thank you.
 21 Okay. Further discussion on this item?
 22 All those in favor say "aye."
 23 (Chorus of ayes.)
 24 CHAIRPERSON SCARAMAZZO: Aye. Motion carries.
 25 (H), MUR 08-0030, Angela Cotera.
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1 that's beyond the scope of my knowledge or requirements
 2 to report. So, basically I contacted IDC, they said
 3 they would do the Website, the Website was up. As a
 4 candidate, I'm perfectly happy with the services they
 5 provided.
 6 Oh, and also the expense from -- was recorded
 7 as an expenditure to IDC for the Website, so it has been
 8 recorded or reported.
 9 CHAIRPERSON SCARAMAZZO: Okay. Questions?
 10 Todd, response?
 11 MR. LANG: It's my understanding that IDC uses
 12 subvendors, and, therefore, there's an obligation that
 13 he pay those subvendors. It may be that there's not a
 14 problem here, but it's something I want to look into
 15 whether or not he properly paid the vendor or the
 16 subvendors.
 17 MR. CAMPOS: I would like to inquire, how would
 18 I, as a candidate, know that the company I contracted
 19 with used a subvendor?
 20 MR. LANG: You might want to ask them. I mean,
 21 really that's all you do, you inquire. That's what all
 22 the candidates have to do. It's not nefarious or
 23 illegal. What I'm -- what I'm concerned about is simply
 24 not what we require. Our rules clearly require, and our
 25 training sessions clearly require that you pay the
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1 MR. LANG: This is a self-reporting violation,
 2 and so I'm -- I'm particularly sympathetic to the
 3 situation here. That said, I do think there's reason to
 4 believe a violation may have occurred. It's obviously
 5 up to you as to what we should do about it.
 6 She submitted the letter on September 2nd,
 7 which outlines some payments that she made that went
 8 over the limit. Basically she forgot to write down or
 9 report an expenditure of \$15.84.
 10 And so, when she made a major payment to a
 11 vendor on September 2nd, she exceeded her spending
 12 limit. She also incurred another expenditure on that
 13 same day. So, she tried to put personal money into her
 14 account to avoid the overcharge, but the bank charged
 15 her an overdraft fee.
 16 And so, she -- she technically violated the
 17 permitted spending limit by -- as you can see, the
 18 calculation is \$24.57.
 19 COMMISSIONER DANIELS: Mr. Chairman?
 20 CHAIRPERSON SCARAMAZZO: Yes, Lori.
 21 COMMISSIONER DANIELS: Mr. Chairman, Todd, then
 22 would you want us to find that there is reason to
 23 believe that a violation had occurred, but that the
 24 staff do no more investigation?
 25 MR. LANG: If you believe no penalty is in
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1 order, then, yes.

2 CHAIRPERSON SCARAMAZZO: And this was

3 self-reported, correct?

4 MR. LANG: That's right.

5 COMMISSIONER DANIELS: Mr. Chairman, I would

6 make a motion that we find reason to believe in the

7 matter of MUR No. 08-0030, but direct the staff to do no

8 more investigation.

9 COMMISSIONER FAIRMAN: Second.

10 CHAIRPERSON SCARAMAZZO: It's been moved by

11 Commissioner Daniels, seconded by Commissioner Fairman,

12 to find there is reason to believe a violation occurred

13 in MUR 08-0030, but also direct staff that no further

14 investigation is necessary.

15 Discussion on this item?

16 All those in favor say "aye."

17 (Chorus of ayes.)

18 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion

19 carries.

20 Item No. V, discussion and possible action on a

21 request for exemption for participation in general

22 election debate from David Stevens, candidate for State

23 Representative District 25.

24 Todd?

25 MR. LANG: Mr. Chair, Commissioners, as you
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1 This isn't -- you know, the -- the debate

2 issues that have come up this election cycle have caused

3 me to evaluate our procedures, the staff procedures in

4 regard to these requests. And in the future we will be

5 more diligent in presenting the Commission with all the

6 information on history and records in regard to how many

7 times folks have been excused.

8 In the past we've dealt with it on an ad hoc

9 basis and dealt with each request individually. But I

10 think it -- based on some of the issues that have come

11 up this cycle, I'd like to be more diligent on that.

12 And so, we will be. But in this particular case, I

13 recommend that matching funds be issued -- be permitted.

14 CHAIRPERSON SCARAMAZZO: Royann?

15 COMMISSIONER PARKER: Mr. Chairman, Todd, to

16 that point, on the one e-mail from Mr. Stevens, he says

17 he contacted Colleen Bagnall about his absence. Do we

18 not have some kind of a formal procedure where they

19 contact us as a Commission rather than a moderator of

20 the debate, so that we are aware of that?

21 MR. LANG: We don't have a formal procedure in

22 regard to the moderator. The formal procedure is they

23 have to contact us. But it shows some diligence on his

24 part that he at least contacted the moderator.

25 We need to, obviously, specify, in our
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1 know, we discussed this at the last meeting, at the last

2 full meeting, not -- at the -- let me rephrase that --

3 at the last regularly scheduled meeting.

4 Since that time, Mary Ann Black, who was the

5 candidate who signed the acknowledgment form that had

6 been notified of the debate, contacted us and said that,

7 in fact, she did not have his permission to sign the

8 form. She did so because she wanted to read a statement

9 on his behalf. She was not permitted to read his

10 statement, but that that's why the form was signed.

11 Of course, it raises the question, how did --

12 why did he have a statement ready if he didn't know

13 about the debate. But in my view, there's been enough

14 questions raised here. I think it's pretty clear that

15 in some sense he knew about the debate, and he should

16 have done more. He should have been much more

17 pro-active in asking for permission to be excused from

18 the debate, but he did contact us within the five days

19 after the debate. He didn't do it in writing as we

20 requested, but he did contact us.

21 And given the fact that the form was signed

22 without his permission, even though I have some

23 questions about how diligent the campaign was, the fact

24 is he was out of the country. And so, I recommend that

25 the Commission permit him to receive matching funds.
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1 agreements with the moderators, that we'd be notified,

2 and that they be instructed on to how to proceed,

3 whether that's -- whether the moderator is to be

4 acceptable or the moderation immediately instruct him to

5 contact us in writing or what have you. We need to

6 formalize those requirements in our agreements.

7 CHAIRPERSON SCARAMAZZO: I think it would be

8 easier to just go ahead and make sure the candidates

9 know not to contact the moderator.

10 COMMISSIONER PARKER: Exactly.

11 MR. LANG: Right.

12 COMMISSIONER PARKER: That was my point, was

13 what do we tell the candidates, you know, if you're not

14 going to be there, who do you call? Do you call the

15 moderator or do you call us?

16 MR. LANG: And what we can do is require the

17 moderator to put that information in the notice they

18 send. It was natural for him to contact the moderator

19 since the moderator was the one who contacted him with

20 the debate information.

21 COMMISSIONER PARKER: Oh, so we don't do those

22 notifications?

23 MR. LANG: No, the moderator does that.

24 COMMISSIONER PARKER: Okay. That's where the

25 confusion is.
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1 CHAIRPERSON SCARAMAZZO: There's the confusion,
 2 yeah.
 3 MR. LANG: So, perhaps that's something we can
 4 look at as well.
 5 COMMISSIONER PARKER: Yeah.
 6 MR. LANG: Michael Becker and I will take a
 7 look at that. But in this regard, I think he's
 8 presented enough information that matching funds are
 9 okay.
 10 CHAIRPERSON SCARAMAZZO: Okay.
 11 COMMISSIONER PARKER: Mr. Chairman?
 12 CHAIRPERSON SCARAMAZZO: Yes.
 13 COMMISSIONER PARKER: Todd, has he fulfilled
 14 the requirements to run as a Clean Election candidate?
 15 Has he gotten all his \$5 contribution?
 16 MR. LANG: Oh, yeah. He's fully --
 17 COMMISSIONER PARKER: Okay.
 18 MR. LANG: His campaign staff did that.
 19 COMMISSIONER PARKER: Well, I know the last
 20 time we were talking about this issue you said at that
 21 point he had not.
 22 MR. LANG: He is qualified.
 23 COMMISSIONER PARKER: Okay. Very good.
 24 COMMISSIONER DANIELS: Mr. Chairman, I would
 25 move that we issue matching funds in the case of David
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1 of issue. It's why I think we're going to have to
 2 tighten up our rules in regard to this.
 3 COMMISSIONER FAIRMAN: I agree.
 4 CHAIRPERSON SCARAMAZZO: Yes?
 5 MS. BARNES: Mr. Chairman, Commissioners,
 6 Rhonda Barnes again. I would respectfully disagree that
 7 the rules aren't particularly clear. And just for
 8 reference, I'm looking at R2-20-107 regarding candidate
 9 debates.
 10 I mean, it does say -- excuse me, under
 11 Subsection (F), that a participating candidate may
 12 request to be exempt from participating by doing the
 13 following, and submit a written request to the
 14 Commission at least one week prior to the scheduled
 15 debate.
 16 And I know I don't have the record that you all
 17 have in front of you, but my understanding is that he
 18 did not do that. And I think it's pretty clear that he
 19 did not do that. He's required to submit it to the
 20 Commission one week before. Clearly, he knew he wasn't
 21 going to be there and he failed to follow that rule.
 22 And my understanding is that Mr. Stevens has
 23 also run for office before. I think this is the third
 24 time he's run. And so, he's clearly been aware of these
 25 rules for many years, and just simply failed to follow
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1 Stevens.
 2 COMMISSIONER PARKER: I'll second that.
 3 CHAIRPERSON SCARAMAZZO: Okay. It's been moved
 4 by Commissioner Daniels, seconded by Commissioner
 5 Parker, to issue matching funds in the campaign of
 6 Mr. David Stevens.
 7 Discussion on this item?
 8 Jeff?
 9 COMMISSIONER FAIRMAN: Just very quickly, I
 10 have some concerns because I'm going to vote to -- to
 11 provide matching funds, but at the same time there seems
 12 to have been several story lines that have woven their
 13 way through this entire process. And I think it
 14 behooves us, and especially staff, to make sure that
 15 these kinds of things don't happen again in the future.
 16 I hate making these kind of judgment calls when the
 17 roles aren't really very clear on what should be done
 18 and what shouldn't be done.
 19 I would certainly have my doubts that you could
 20 run an effective campaign from Kuwait. I think that's
 21 kind of an interesting process, but that's not for me to
 22 judge. But I just think that this is really a curious
 23 -- a curious case for us.
 24 MR. LANG: I'd say the outlying cases make the
 25 rules often. This is the first time we've had this sort
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1 them.
 2 And I understand that the rule under (H) allows
 3 them to submit reconsideration to the Commission, and it
 4 doesn't specify that it has to be in writing, but my
 5 understanding was always that that request had to be
 6 within five days, and a written request, which he also
 7 failed to do.
 8 So, I would submit that because he has done
 9 this before, because he knew what the rules were,
 10 because he's gone through Clean Elections Commission
 11 training and signed an agreement that he would abide by
 12 these rules, that he should be held accountable to those
 13 rules. And they're very clear in what his requirement
 14 is prior to the debate, he failed to do that, and so he
 15 should not be eligible for matching funds pursuant to
 16 this Commission's own rules.
 17 CHAIRPERSON SCARAMAZZO: Todd?
 18 MR. LANG: Do you have questions?
 19 CHAIRPERSON SCARAMAZZO: No.
 20 MR. LANG: I think she raises a valid -- I
 21 think Ms. Barnes raises a valid point about (H). It
 22 should say "written." It does not. And that's why --
 23 that's the reason why even though his written request
 24 wasn't done in five days, the fact is he made a verbal
 25 request within the five days. I think we should change
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1 the rule to require written. I also think we need to
 2 change the rule so that (F) and (H) aren't alternatives.
 3 (H) is designed for unforeseen failure to attend the
 4 debate, and (F) is for when you know you're not going to
 5 make it ahead of time.
 6 And so, really (F) is the provision -- and I
 7 know Ms. Barnes would agree -- (F) is the provision that
 8 should apply to this case. The problem is we have a
 9 rule, which is (H), which allows you to ask for
 10 forgiveness. It's better to ask for forgiveness than
 11 permission, I suppose.
 12 But this allows you to ask for forgiveness
 13 after the fact. And it doesn't preclude you from doing
 14 so, even if you could have acted under (F), which is
 15 what this gentleman should have done. Mr. Stevens
 16 should have acted under (F). He should have been -- as
 17 I've said all along, he should have been much more
 18 diligent in this effort. He wasn't. But our rules are
 19 not tight enough, I think, to disqualify him from
 20 receiving funds.
 21 And so, while I think Ms. Barnes raises a
 22 number of valid issues, I still recommend that he be
 23 given matching funds because he has technically, and
 24 only in the barest sense, complied with the requirements
 25 of (H).

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1 matching funds if you don't show up without a proper
 2 excuse, but you can ask for reconsideration of that
 3 automatic effect if you do so within five days.
 4 That said, I think she raises another valid
 5 point, which is the wording could be better and more
 6 clear. And so, again, this is just another -- I look
 7 forward to working with Ms. Barnes on rewriting these
 8 particular rules.
 9 CHAIRPERSON SCARAMAZZO: Any further comments?
 10 Okay. There is a motion on the floor to issue
 11 matching funds for Mr. David Stevens.
 12 All those in favor say "aye."
 13 (Chorus of ayes.)
 14 COMMISSIONER LINDHOLM: Nay.
 15 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion
 16 carries.
 17 COMMISSIONER LINDHOLM: I voted nay.
 18 CHAIRPERSON SCARAMAZZO: Oh, nay. Excuse me.
 19 Don. One nay. Duly noted. Sorry.
 20 All right. We've dealt with Item No. VI.
 21 We'll move on to No. VII.
 22 Sorry, Don. I apologize.
 23 COMMISSIONER LINDHOLM: That's okay.
 24 CHAIRPERSON SCARAMAZZO: Discussion and
 25 possible action regarding current pending litigation in

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1 CHAIRPERSON SCARAMAZZO: Okay.
 2 MS. BARNES: Mr. Chairman, Commissioners, to
 3 that point, I would also say that (H) allows for
 4 submitting a request for reconsideration for the
 5 Commission, which would indicate that the Commission has
 6 already made a decision adverse to that candidate. You
 7 wouldn't request reconsideration for something that's
 8 never been decided yet.
 9 So, I would say that a fair reading of these
 10 rules would be that when a candidate fails to get this
 11 written request five days -- a week in advance of the
 12 debate, and this Commission determines that he's no
 13 longer eligible for matching funds, then the provisions
 14 of (H) kick in, and it's a reconsideration of the
 15 Commission's prior decision.
 16 So, at this point I really do believe we're
 17 operating under (F).
 18 Any questions? Thank you.
 19 CHAIRPERSON SCARAMAZZO: Thank you.
 20 MR. LANG: My -- my response, may I?
 21 CHAIRPERSON SCARAMAZZO: Certainly.
 22 MR. LANG: Sorry, Mr. Chair.
 23 My response to Ms. Barnes' point is that
 24 reconsideration is simply because the effects of the
 25 penalty are automatic. You no longer qualify for

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1 Federal Court.
 2 COMMISSIONER DANIELS: Mr. Chairman, I
 3 apologize. I need to leave. I have a meeting outside
 4 of here, and I'm not going to make it if I don't get
 5 going.
 6 CHAIRPERSON SCARAMAZZO: Okay. Thank you,
 7 Lori, for being here today.
 8 COMMISSIONER DANIELS: No problem.
 9 (Whereupon, Commissioner Daniels is no longer
 10 present. 11:21 a.m.)
 11
 12 MR. LANG: Mr. Chairman, unless Ms. Shipman has
 13 additional information, I'd just simply note that you
 14 have the copy -- I've e-mailed you copies of the
 15 decision, and you have a printed copy of the decision in
 16 your packets.
 17 Obviously, call me if you have any questions.
 18 The ruling was not a surprise, based on comments she
 19 made earlier in the case. We're going to -- the -- the
 20 procedure here on out, unless you've been told that
 21 they're going to appeal now.
 22 MS. SHIPMAN: I think it indicates they are not
 23 going to appeal --
 24 MR. LANG: The denial?
 25 MS. SHIPMAN: -- the denial of the preliminary

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1 injunction motions.

2 MR. LANG: So, what Tonja will be doing next is
3 getting this case set for trial. We don't have a trial
4 date yet. There's a proposal that we just simply take
5 the schedule from the other case, the ones that they
6 sort of snuck their way out of when they were forum
7 shopping, and got the new judge, that we take the
8 timeline from the other case and apply it to this one,
9 which will mean there is a trial in June?

10 MS. SHIPMAN: The proposal in the other case
11 was July '09.

12 MR. LANG: July, okay.

13 So, you would have a trial date in July. And
14 what would happen -- I don't know if that'll work. I
15 don't know if it will be sooner. But in the meantime,
16 obviously, the record will be supplemented. I don't
17 imagine Judge Silver is going to change her mind, so
18 what is happening between now and the trial date is
19 supplementing the record in regard to the government
20 interest and those sorts of things.

21 MS. SHIPMAN: And I just want to note that the
22 other cases that were pending, the Martin vs. Brewer
23 case, they -- they have stipulated to the dismissal of
24 that case, and then there was also an appeal going to
25 the Ninth Circuit. They had filed a motion to -- they

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1 had filed an appeal -- they filed a motion to vacate the
2 lower court's -- the decision in that case, which had
3 been, I think, in '04, that where we won a motion to
4 dismiss the case, they filed a motion to vacate that and
5 the Court denied that motion. They were appealing
6 denial of the motion to vacate this lower ruling up to
7 the Ninth Circuit. They've also dismissed that appeal
8 because of this new case.

9 CHAIRPERSON SCARAMAZZO: Thank you.

10 MS. SHIPMAN: It's a little complicated.

11 COMMISSIONER PARKER: I got lost.

12 CHAIRPERSON SCARAMAZZO: I don't know, but I
13 think maybe so.

14 MS. SHIPMAN: We just have one case now.
15 That's what I'm trying to say.

16 COMMISSIONER FAIRMAN: Thank you.

17 CHAIRPERSON SCARAMAZZO: All right. Thank you.

18 That will bring us to Item No. VIII, call for
19 public comment.

20 MS. BARNES: Commissioners, Rhonda Barnes
21 again. I just want to go back to Stevens and raise one
22 question. And I don't know if this is the appropriate
23 way to do that, but the decision to allow Mr. Stevens to
24 be eligible for matching funds, is it from this point
25 going forward?

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1 MR. LANG: My recommendation would be it would
2 be retroactive, but that's obviously your decision.

3 MS. BARNES: I don't think there's anything in
4 the rule, Mr. Chairman, Commissioners, that gives us
5 guidance on that. But because it is such a close call,
6 and because we disagree on this, I would ask that a
7 middle ground might be to make the decision going
8 forward and not retroactive.

9 CHAIRPERSON SCARAMAZZO: We have a legal
10 question there.

11 MS. BARNES: And I recognize that that may be
12 the process, and I might have messed up because I didn't
13 raise it at the time.

14 MR. LANG: The \$25,000 question.

15 MS. BARNES: It could be worth that much.

16 MS. SHIPMAN: Yeah, there's nothing in the rule
17 that says -- that limits you when you decide whether or
18 not to issue, if you wanted to make it retroactive.

19 And my understanding, what you're saying is
20 that the -- well, first of all, my understanding is that
21 Mr. Stevens, right now, is there's no matching funds
22 that have not been issued because of this rule.

23 MR. LANG: We have not issued matching funds.
24 He is eligible to receive them. And assuming the
25 Commission approves them, he will receive them.

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1 MS. SHIPMAN: Right.

2 MR. LANG: There is a check in the pipeline.

3 MS. SHIPMAN: Oh, there is. All right.

4 Because I was just wondering by -- by what you're
5 asking --

6 MR. LANG: Hers is not an academic question.

7 MS. SHIPMAN: Right. No, no, no. But what
8 you're asking is that the time when whatever monies
9 would accumulate would start today, as opposed to back,
10 I guess, from the beginning of the -- the general?

11 MS. BARNES: Mr. Chairman, Commissioners, yes,
12 that's what we are asking, that as of today he would
13 become -- be eligible.

14 MS. SHIPMAN: So, then you would sort of roll
15 back the time, I guess, the amount of money to zero
16 towards his -- whatever the amount would be used to
17 trigger it?

18 MS. BARNES: I think it would start today.

19 MS. SHIPMAN: It would start today.

20 CHAIRPERSON SCARAMAZZO: Don't

21 COMMISSIONER LINDHOLM: You know, it's an
22 interesting question. The reason I voted no on that is
23 I think I was one of the people that's inquisitive, when
24 it first came up, as to when the gentleman knew he was
25 going to be out of the country, and for how long,

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1 because I have anecdotal experience with people who have
2 gone back and forth on security assignments to the
3 Middle East. This gentleman reports to us that he was
4 gone for a long period of time, from January to October,
5 or December.

6 MR. LANG: December.

7 COMMISSIONER LINDHOLM: I mean, it's a very
8 prolonged period of time. Apparently, he knew about it.
9 From what we're being told, was a previous candidate had
10 gone through the training session, knew what the rules
11 were. It seems to me that under those circumstances,
12 the rules should have been applied to him.

13 Now the question comes up, well, is he entitled
14 to receive funds from initiation or should there be some
15 adjustment to providing him funds here forward from
16 approval. And it seems to me that it would be
17 appropriate, if we can do that, to provide funds from
18 the point of approval forward. That would be my take on
19 it.

20 COMMISSIONER PARKER: Do we know what the
21 difference is in the costs that would be approved, Todd?

22 MR. LANG: I called it a \$25,000 question
23 because I think that's what he's entitled to right now
24 if he's approved for matching funds.

25 Is that about right?

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1 are able to do that.

2 You can either look -- you know, have a -- move
3 to have some kind of reconsideration and move to have it
4 put -- or ask that the staff put it on the agenda for
5 the next meeting or have a special meeting soon
6 hereafter. But, yeah, I'm -- I don't know for certain
7 that the maker of the first motion has to be there.

8 CHAIRPERSON SCARAMAZZO: Don't

9 COMMISSIONER LINDHOLM: If this hadn't come
10 up -- Todd, if I may? If this hadn't come up during the
11 public comment session, and, in fact, I think we are
12 past the item on the agenda, how would the staff have
13 then proceeded to deal with it?

14 MR. LANG: If you had -- unless you instructed
15 us otherwise, we would proceed to give a check to -- to
16 this gentleman.

17 COMMISSIONER LINDHOLM: For the full amount,
18 regardless of the circumstance? In other words, no
19 discretion?

20 MR. LANG: That's right. If you awarded
21 matching funds -- if you approved that he's eligible for
22 matching funds, we would awarded them.

23 COMMISSIONER LINDHOLM: Well, I really think
24 that's where we are. I mean, I'm concerned that we
25 don't go back to a closed item agenda, particularly with

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1 MR. RUIZ: Yes.

2 MR. LANG: So, as I said, it's not an academic
3 question.

4 CHAIRPERSON SCARAMAZZO: Right.

5 MR. LANG: And Tonja can correct me, I would
6 suggest that if you want to discuss this, that we
7 re-open the agenda item. And remember we're at the
8 public comment period, and I think we should re-open --

9 CHAIRPERSON SCARAMAZZO: Yeah, we can. You
10 know, to me, that issue was -- you know, it's already
11 passed, and the maker of the motion is not even here.
12 So I don't know that we can re-open that.

13 To me, if I was going to look at that, I would
14 say that if the Commission has a concern on this item,
15 that they could look at a reconsideration of that item,
16 but in order to do that, the maker has to, within 24
17 hours, be able to bring that up or --

18 MS. SHIPMAN: I -- I have to admit I don't --
19 I'm not -- it's not clear to me that the maker is the
20 person that has to be here as long as you have a quorum
21 of the Board that you can reconsider. But that is
22 something that you have more experience, and I have not
23 looked at specifically regarding open meeting law.

24 So, in abundance of caution, we should probably
25 not tread down that path unless we're certain that we

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1 one member departed. I don't think that's a good
2 practice.

3 MS. BARNES: Mr. Chairman, Commissioners, if I
4 may just briefly, we all have a quorum. And if you
5 don't feel that this question is raised appropriately,
6 then, I mean, I would request that maybe no action be
7 taken on this until we have an opportunity to talk to
8 staff about this and see if there's a way we can remedy
9 it. Because if we walk away today, then that check is
10 written and I have no way to get it back.

11 CHAIRPERSON SCARAMAZZO: The action has been
12 taken already. We can't just go back right now and
13 pretend we didn't do that.

14 MS. BARNES: No, I understand, Mr. Chairman and
15 Commissioners. I'm not asking you to undo anything,
16 certainly. But because there is ambiguity in this, and
17 because of the situation, and you have a quorum still,
18 it seems like it would be a possibility to move forward
19 on it.

20 CHAIRPERSON SCARAMAZZO: I would -- I guess my
21 opinion would be I'm going to leave this up to staff
22 then to either get back with the Commission so we need
23 to revisit this or, you know, if there's nothing
24 precluding legally us going ahead and releasing those
25 monies, then I don't know what option we have.

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1 COMMISSIONER PARKER: Well, I think,
 2 Mr. Chairman, seeing as we found that he was entitled to
 3 those matching funds, he's entitled to the matching
 4 funds today. And to make him wait to expend those
 5 matching funds I think would be wrong on our part, given
 6 the time constraints of this election.
 7 CHAIRPERSON SCARAMAZZO: Jeff?
 8 COMMISSIONER FAIRMAN: I really agree with
 9 Commissioner Parker. This is an item that should have
 10 been brought up during the discussion. And this is, I
 11 think, really the wrong place for this to be discussed.
 12 The Commission has taken action earlier in this meeting
 13 and I think that action ought to move forward based on
 14 the presumption that you had, Todd, as it wouldn't
 15 typically be the case.
 16 MS. SHIPMAN: Okay.
 17 CHAIRPERSON SCARAMAZZO: Don?
 18 COMMISSIONER LINDHOLM: And I agree with my
 19 colleagues. I think that the discussion is occurring at
 20 the wrong point. I wish that issue had come up earlier,
 21 but I don't -- I don't think we could go back now.
 22 MS. SHIPMAN: Under open meeting law you can
 23 legally go back and open agenda items while the meeting
 24 is still going on and change decisions. And if that's
 25 what you're concerned about, that is -- that is

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1 what you did under R2-20-107(H)(2) is to excuse the
 2 candidate from penalties imposed. And it doesn't say
 3 excuse the candidate from partial penalties imposed. By
 4 the action that you took on the agenda item, you excused
 5 the candidate from all of the penalties imposed, which
 6 means matching funds would be issued for the entire
 7 period.
 8 CHAIRPERSON SCARAMAZZO: Thank you.
 9 Okay. Anything else under the public portion
 10 of the agenda?
 11 Hearing none, I'd entertain a motion to
 12 adjourn.
 13 COMMISSIONER PARKER: So moved.
 14 COMMISSIONER FAIRMAN: Second.
 15 CHAIRPERSON SCARAMAZZO: Moved and seconded.
 16 All those in favor say "aye."
 17 (Chorus of ayes.)
 18 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion
 19 carries.
 20 Thank you.
 21
 22 (Whereupon the proceeding concludes at 11:34
 23 a.m.)
 24
 25

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1 permitted.
 2 CHAIRPERSON SCARAMAZZO: Hearing anything from
 3 the Commission then?
 4 COMMISSIONER LINDHOLM: I'm not inclined to
 5 re-open that matter, particularly in the absence of one
 6 of the Commissioners that participated in it. I think
 7 it's coming up late. It should have come up and been
 8 discussed then, and we'll pass.
 9 MS. BARNES: Mr. Chairman, Commissioners, I
 10 apologize for not bringing it up at that moment. I
 11 wasn't aware that the money was pending at that time,
 12 and I didn't want to interrupt the next agenda item.
 13 So, that's why I waited until the public comment period,
 14 so that I wasn't disrupting the flow of the agenda.
 15 CHAIRPERSON SCARAMAZZO: I do appreciate that,
 16 but I don't hear anything from the Commission to move in
 17 any other direction.
 18 MS. BARNES: I understand.
 19 CHAIRPERSON SCARAMAZZO: Thank you.
 20 Eric?
 21 MR. EHST: Mr. Chairman, thank you. Eric Ehst
 22 from the Clean Elections Institute.
 23 And I realize I think you've just resolved the
 24 matter, so this is probably moot. But I just wanted to
 25 point out that the rule under question in that case,

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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 104, 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 28th day of October,
 10 2008.
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 14 Angela Furniss Miller, RPR
 15 Certified Reporter (AZ50127)
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