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THE STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

November 4, 2008

1:08 p.m.

Reported By:

Angela Furniss Miller, RPR  
Certified Reporter (AZ 50127)

1                   A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN  
2 ELECTIONS COMMISSION, convened at 1:08 p.m. on November  
3 4, 2008, at the State of Arizona, Clean Elections  
4 Commission, 1616 W. Adams, Conference Room, Phoenix,  
5 Arizona, in the presence of the following Board members:

6                   Mr. Gary Scaramazzo, Chairperson  
7                   Mr. Jeff Fairman  
8                   Ms. Royann Parker (Telephonic)  
9                   Ms. Lori Daniels (Telephonic)  
10                  Mr. Donald Lindholm (Telephonic)

11                  OTHERS PRESENT:

12                  Todd Lang, Executive Director  
13                  Colleen Mcgee, Deputy Director  
14                  Rita Azcona, Administrative Assistant III  
15                  Michael Becker, Voter Education Manager  
16                  Daniel Ruiz II, Campaign Finance Manager  
17                  Ed Ableser, Representative LD17  
18                  Eric Ehst, Clean Elections Institute  
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P R O C E E D I N G

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3 CHAIRPERSON SCARAMAZZO: Let's call this  
4 meeting of the Citizens Clean Election Commission to  
5 order.

6 It's Tuesday, November 4th, 2008 and it is  
7 1:08.

8 We have a couple items on the agenda for this  
9 afternoon. I appreciate everybody's indulgence in being  
10 able to participate today.

11 So, with that, we'll move on to Item No. II,  
12 discussion and possible action on estimated cost for  
13 equalization of funds for Ed Ableser, candidate for  
14 House Representative, District 7 [sic].

15 MR. LANG: Thank you, Commissioners. This is  
16 Todd Lang, for those of you on the phone.

17 I asked you to meet today because of two issues  
18 regarding expenditures in District 17. We learned  
19 yesterday that signs had appeared over the weekend  
20 criticizing Ed Ableser --

21 CHAIRPERSON SCARAMAZZO: Ableser, excuse me.

22 MR. LANG: -- Representative Ed Ableser in  
23 regard to his positions on a number of issues. And so,  
24 I have a PowerPoint for you, if I could convince the  
25 Chair to move a little to the left.

1                   CHAIRPERSON SCARAMAZZO: Okay.

2                   COMMISSIONER PARKER: Is it the same PowerPoint  
3 that Rita attached to our e-mail?

4                   MR. LANG: That's right. The first page is in  
5 blue and gray, and it reads, "Discussion and possible  
6 action on estimated cost."

7                   COMMISSIONER PARKER: Okay. That's where I'm  
8 at.

9                   MR. LANG: All right. So, the first page after  
10 that is a picture of the sign. That's just so you can  
11 see how it looks. It's a smaller size sign, and you can  
12 see the "paid for by" language and there's a phone  
13 number there.

14                   Daniel Ruiz tried to call that number -- or,  
15 did call the number at least three times and left a  
16 message indicating we planned to issue matching funds  
17 and that we'd like to get information in regard to the  
18 expenditure amounts. And, of course, we got no  
19 response. That's why we couldn't issue funds earlier,  
20 because we had to get the Commission's approval because  
21 it was an estimate.

22                   The next page is a response to a voter survey.  
23 This is Representative Ableser's response to a number of  
24 education issues, including high school kids who have  
25 grown up in Arizona who want to attend a public

1 institution, but don't have citizenship.

2 And then the next page is the statutory  
3 definition of independent expenditure. And as best we  
4 can tell, this sign was an independent expenditure. The  
5 reason I put it that way is there's some indication that  
6 some volunteers for some of Mr. Ableser's opponents may  
7 have also been -- been involved in the volunteer work  
8 for these signs as well, but that's not before you  
9 today. We're treating this as an independent  
10 expenditure, and it meets that definition.

11 Whether or not it's express advocacy, you turn  
12 to the old definition at 16-901.01. In this case, the  
13 key parts of the -- of the question are at the part I've  
14 outlined for you on the PowerPoint, the quote from  
15 16-901.01. And, primarily, what you want to look at is  
16 in context: Can have no other reasonable meaning than  
17 to advocate for the election or defeat as a candidate.

18 Like the other signs we considered earlier,  
19 this sign links this candidate with giving illegal  
20 aliens discounted rates to college. Given the fact that  
21 it came out days before election, I think it's  
22 reasonable to interpret it as having no other reasonable  
23 meaning than to advocate for the defeat of  
24 Representative Ableser; and, therefore, I recommend that  
25 the Commission issue matching funds.

1                   COMMISSIONER DANIELS: Mr. Chairman, Todd,  
2                   what's the total amount on that?

3                   MR. LANG: On the last page you see some  
4                   numbers. We've been able to fill in some of the details  
5                   for you. Initially when we first were contacted by  
6                   Representative Ableser -- who is here today, by the way,  
7                   Commissioners, to answer any of your questions -- he  
8                   estimated 250 signs. He and his volunteers went around  
9                   and counted the signs. Since that time, another 130  
10                  appeared. So, now our estimate is 380 signs. And,  
11                  again, he can testify to that if you wish.

12                  The staff contacted Metro Screen Printing and  
13                  obtained a quote for signs with stakes of that size and  
14                  color, and with printing only on one side. And it came  
15                  out to be \$3.50 each, plus another \$280 for labor. The  
16                  total cost then for the signs is \$380 times \$3.50, which  
17                  equals \$1,330. You take out the -- you add the \$280 for  
18                  the labor, which makes it \$1,610. And so, we'd  
19                  recommend that you issue matching funds of \$1,610 minus  
20                  the six percent for fundraising.

21                  I should also point out that the second agenda  
22                  item also involves this race. And because of the  
23                  recalculations recommended therein, assuming you agree  
24                  with staff's recommendations in both cases, Mr. Ableser  
25                  will not get the full \$1,600, but rather he'll get the

1 difference between the \$1,600 here and the money he's  
2 required to return because we gave him too much money  
3 initially in the other matching funds. Again, that's up  
4 for the next agenda item. But I'd ask for this -- for  
5 purposes of this match, that you award him the \$1,610  
6 minus six percent.

7 COMMISSIONER DANIELS: Mr. Chairman, Todd, do  
8 you have a calculator? I don't. I was just wondering  
9 if you had an exact figure on that, the \$1,600 minus the  
10 six percent.

11 MR. LANG: I do not.

12 COMMISSIONER DANIELS: Okay. I was just trying  
13 to figure it for a motion.

14 COMMISSIONER PARKER: It's about \$85, I think.  
15 10 percent will be \$160.

16 COMMISSIONER DANIELS: Mr. Chairman, did you  
17 want a motion?

18 CHAIRPERSON SCARAMAZZO: That will be fine.

19 COMMISSIONER DANIELS: Mr. Chairman, I would  
20 move that we issue matching funds of \$1,600 minus the  
21 six percent in the case of Representative Ableser. And  
22 I'm not sure I say his name right. I apologize.

23 MR. LANG: For reasons that are unclear to me,  
24 Commissioner, I get it wrong a lot too, and it's really  
25 quite simple, so it's...

1 CHAIRPERSON SCARAMAZZO: I apologize also.

2 With a name like Scaramazzo, I'm very -- you know...

3 MR. LANG: By my calculations, the six percent  
4 is \$96.60. And so, I'd ask that you award him \$1,610  
5 minus \$96.60.

6 COMMISSIONER DANIELS: So moved.

7 COMMISSIONER FAIRMAN: I'd like to second that.

8 CHAIRPERSON SCARAMAZZO: Okay. It's been moved  
9 by Commissioner Daniels, seconded by Commissioner  
10 Fairman, to approve equalization of funds to Mr. Ed  
11 Ableser in the amount of \$1,610 minus \$96.60.

12 Any discussion on this item?

13 All those in favor say "aye."

14 (Chorus of ayes.)

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

17 That brings us to Item No. III, consideration  
18 and possible ratification of issuance of matching funds  
19 for reported independent expenditures in the Legislative  
20 District 17.

21 Todd?

22 MR. LANG: Thank you, Commissioners. This  
23 issue also involves Representative Ableser, and in  
24 District 17. And it involves sort of a -- what I  
25 consider a problem with the statute that we should

1 correct, if we have an opportunity to do so, with new  
2 legislature.

3 16-952(C)(6) governs how matching funds are  
4 issued when candidates are running -- mentioned in the  
5 piece, are running for more than one office. Basically  
6 what this means is that if all the -- if the piece hits  
7 three candidates, for instance, all running for the same  
8 office, they'll all get matching funds equal to the  
9 amount of that expenditure, which is reasonable because  
10 they all need to respond to it. And that furthers the  
11 purpose of the rule and it implements, I think, the  
12 intent of the rule -- or the statute.

13 But if they're running for different offices,  
14 it has to be broken down based on size, length, and  
15 prominence, which means instead of getting the full  
16 match, candidates only get a partial match for their  
17 percentage. So, it ends up resulting in a lot less  
18 money.

19 If you look at the PowerPoint on this one,  
20 which begins with, "Consideration and possible  
21 ratification of issuance of matching funds." If you go  
22 to the next page -- if you go to the next page, there's  
23 a timeline. And the reason we did this is because we  
24 issued matching funds to Representative Ableser and to  
25 his seat mate, Representative Schapira, last week.

1           You see, on Halloween, there was an independent  
2           -- we received information regarding an independent  
3           expenditure in favor of Mark Thompson, who is a  
4           candidate running against them in that district. We  
5           approved matching funds in accordance with the law. And  
6           so, Mr. -- Representative Ableser and Schapira, and the  
7           other participating candidate in the race, the  
8           Republican, Mr. Waddle, all received full matching funds  
9           of approximately \$1,500 minus the fundraising expenses.

10           Then over the weekend, we received a copy of  
11           the independent expenditure, which shows that it also  
12           attacked Senator Meg Burton-Cahill, another Democrat in  
13           the district and another incumbent. On Monday she  
14           requested matching funds and we realized that we had to  
15           recalculate the matching funds.

16           Unfortunately, those of you on the -- on the  
17           phone won't be able to see this, but where you see the  
18           little icon with the special election day coverage on  
19           the third page, that's actually an imbedded video that  
20           Daniel came up with, and I'm going to play it now.

21           (Whereupon, the video is played.)

22  
23           COMMISSIONER DANIELS: Todd, I can't hear that  
24           at all.

25           COMMISSIONER PARKER: Neither can I.

1 MR. LANG: I will run it again next to your  
2 phones.

3 COMMISSIONER DANIELS: Thank you.

4 CHAIRPERSON SCARAMAZZO: It's very difficult to  
5 hear also. It's very low.

6 MR. LANG: Let's see if I can pull this off.

7 Is there a way to turn up the volume? Pump up  
8 the volume.

9 MR. RUIZ: It may be up all the way.

10 MR. LANG: Yeah, I thought it was.

11 All right. I'm going to run it again. And,  
12 Commissioners, it's up all the way. Unfortunately, it  
13 didn't occur to me that this might be an issue.

14 (Whereupon, the video was played.)

15  
16 MR. LANG: Commissioners, that's the whole  
17 piece. And you have the transcript of it in the  
18 presentation, so all the language is there for you. You  
19 just don't get to see the first half.

20 The first half is a -- what I would call a  
21 stock video of -- of the three blind mice. And it's the  
22 sappy music, the three blind mice music, with  
23 superimposed pictures of Representatives Ableser, and  
24 Schapira, and Senator Meg Burton-Cahill on the mice.  
25 And, of course, they're stumbling around while the

1 negative language of the ad is in the background.

2 And it says, "Cahill, Schapira, and Ableser,  
3 three politicians who turned a blind eye to the budget,  
4 education, and immigration. We can do better."

5 Clearly, that's critical. That's the first  
6 half of the piece. And, clearly, that's critical of the  
7 three of them and advocates a vote against them. Then  
8 the second half is simply a positive piece about Mark  
9 Thompson that they've spliced together. There's  
10 actually another campaign piece done by Mark Thompson,  
11 which has the same first half and then a different  
12 second half. It has the same three blind mice piece at  
13 first, and then it has this other second half.

14 But in this case, what I'm recommending is if  
15 you go to the next page of the presentation, you can see  
16 how it should be broken down. The total advertisement  
17 cost was \$1,500. And we do appreciate that the  
18 independent expenditure committee was quite cooperative  
19 and gave us the information right away and worked with  
20 Daniel on that. So -- and that -- that's obviously  
21 appreciated.

22 The first half, as you can see, we  
23 determined -- staff determined the first half of the ad  
24 is just a hit on Ableser, Schapira, and Burton-Cahill.  
25 So, we broke that down to \$750 of value, one-third to

1 each of them. So, that's only \$250 each.

2 The second half of the ad is simply an ad in  
3 support of Mark Thompson. So, that's the other half of  
4 the \$1,500, which equals \$750. And, again, it's  
5 one-third. It's one-third to each of Thompson's  
6 opponents: Ableser, Schapira, and Waddle. So, again,  
7 it's \$250 each. And you see the totals: Ableser and  
8 Schapira get \$500. Meg Burton-Cahill and Waddle get  
9 \$250. That's, of course, minus -- we would then  
10 subtract out the six percent.

11 And the challenge and the frustration, I think,  
12 for Representatives Ableser and Schapira is they already  
13 received \$1,500 from us for this ad because while we  
14 appreciate the cooperation, the information we got on  
15 Friday was it was just the House race. There was no  
16 indication that Meg Burton-Cahill was part of the ad.  
17 We didn't see the ad. And because it was all for one  
18 race, the numbers came out quite different.

19 So, as a result of all this, we need to ask  
20 that Schapira and Ableser return their funding over and  
21 above the amounts you see recommended here. As we have  
22 done in the past, when this has happened, and candidates  
23 have, in good faith, spent the money, we have asked for  
24 it back, but if it's no longer available, it's not a  
25 problem. It's not a violation. And we don't ask for

1           them to refund it. What we do ask is that if there's  
2           any contracts they can cancel, or any amounts left, we  
3           do ask them to return that.

4                     In this case, Mr. Schapira indicates that the  
5           money is all spent, and the same for Mr. Ableser. The  
6           problem for him is, of course, we're about to give him a  
7           bunch of money. And so, what I suggest you do is  
8           subtract the money we're giving him for the first agenda  
9           item, subtract the amount that he owes for this, which  
10          means a little less than a thousand dollars. So, he'll  
11          still get a match today. It just won't be the full  
12          amount.

13                    So, I ask that you ratify staff's decision to  
14          award matching funds in this case, and authorize giving  
15          -- or ratifying the award of \$250 minus the six percent  
16          fundraising expense for Meg Burton-Cahill, and that you  
17          approve our decision to request a refund -- or a return  
18          of funds, actually, for the other three candidates who  
19          received the larger amounts on Friday, with the  
20          understanding that they may well have spent that money  
21          already. But if they have not, we ask for that money  
22          back.

23                    And that you further approve the deduction of  
24          the monies owed by Representative Ableser from the money  
25          we're giving him because of the signs at the first

1 agenda item.

2 And, again, he's here today if you'd like to  
3 ask him any questions.

4 COMMISSIONER PARKER: So, Todd, this is Royann.  
5 So, we gave already to Ableser and Schapira and Waddle  
6 \$1,500 each?

7 MR. LANG: Minus the six percent, yes.

8 COMMISSIONER PARKER: Okay. And Schapira and  
9 Waddle have said that they've spent it all?

10 MR. LANG: Yes.

11 COMMISSIONER PARKER: Okay. And what did we  
12 give -- have we given Burton-Cahill any money yet?

13 MR. LANG: We gave her money yesterday and  
14 we're now asking you to ratify that decision.

15 COMMISSIONER PARKER: How much did we give her?

16 MR. LANG: \$250 minus the six percent.

17 COMMISSIONER PARKER: Okay. Okay. All right.  
18 I think I'm clear now.

19 MR. LANG: Mr. Waddle has to return the most,  
20 but, again, I assume he's spent that money.

21 COMMISSIONER PARKER: Have we talked to him?

22 MR. LANG: We've contacted him, but we don't  
23 know what the status of that money is, in terms of  
24 whether he's spent it or not.

25 COMMISSIONER DANIELS: Well, Mr. Chairman, I'd

1 make a motion to do what Todd just said, because I can't  
2 get it all down pat as far as how to word this motion.  
3 I've been trying to sit here, figuring that out.

4 There's just -- I -- I move that we ratify it  
5 and do what staff is recommending, and ask for the money  
6 back in the cases where we need to.

7 COMMISSIONER PARKER: I'll second that.

8 CHAIRPERSON SCARAMAZZO: Okay. It's been moved  
9 by Commissioner Daniels, seconded by Commissioner  
10 Parker.

11 Todd, phrase this again because -- make sure we  
12 get it right.

13 MR. LANG: Thank you, Mr. Chair, Commissioners.  
14 I'd also mention that I think there's some folks who  
15 would like to speak before you vote.

16 CHAIRPERSON SCARAMAZZO: Yeah. We're going to  
17 get to that.

18 MR. LANG: I'd ask that you ratify our decision  
19 to award matching funds for this particular ad. I guess  
20 that would be the first thing.

21 CHAIRPERSON SCARAMAZZO: Okay. In the numbers  
22 listed here?

23 MR. LANG: Yes, in the numbers listed here.  
24 \$500 for Ableser, \$500 for Schapira, \$250 for Meg  
25 Burton-Cahill and Mr. Waddle, minus the six percent

1 fundraising expenses.

2 CHAIRPERSON SCARAMAZZO: Okay.

3 COMMISSIONER PARKER: So moved.

4 COMMISSIONER DANIELS: Second.

5 CHAIRPERSON SCARAMAZZO: Well, that's already  
6 on a -- I'm just having him clarify the motion.

7 MR. LANG: And then there'd be a second motion  
8 too.

9 COMMISSIONER FAIRMAN: Are we doing these as a  
10 series of motions?

11 MR. LANG: There will be two motions. This  
12 would be the award, and the second would be to deduct  
13 this award from any money already awarded.

14 COMMISSIONER FAIRMAN: Okay.

15 CHAIRPERSON SCARAMAZZO: Okay. Then it's moved  
16 and seconded to approve the awards as outlined, with  
17 \$500 to Mr. Ableser, \$500 to Mr. Schapira,  
18 Ms. Burton-Cahill \$250, Mr. Waddle \$250, minus the six  
19 percent, correct? Okay.

20 COMMISSIONER DANIELS: Yes.

21 CHAIRPERSON SCARAMAZZO: Okay. Any discussion  
22 on this item?

23 MR. LANG: It's \$30.

24 CHAIRPERSON SCARAMAZZO: \$30, yeah.

25 Yes, sir?

1           MR. ABLESER: Hi, Commissioners. This is  
2           Representative Ed Ableser from Tempe, Arizona. My  
3           address as well?

4           CHAIRPERSON SCARAMAZZO: No, you're fine.

5           MR. ABLESER: Okay. Thank you all for coming  
6           today. I appreciate your time, and especially doing it  
7           early in the day.

8           I have looked at what staff has prepared for  
9           you to consider. I do -- I do agree with the logic  
10          behind the re-awarding of these monies. The one aspect  
11          that I would like to offer to you, from my perspective,  
12          is when it comes to the deduction, if I am considered to  
13          be -- to have spent -- well, to be deducted just in --  
14          with this new re-awarding of money, and asked to give  
15          back a thousand dollars, even though I've committed that  
16          and spent that since the time that was given to me, and  
17          so have the other candidates today, the new signs that  
18          you awarded me matching funds for, to take my money from  
19          that puts me somewhat at a disadvantage at the new  
20          attacks on me in my district.

21          And so, it sort of puts me at a disadvantage in  
22          money. And even though it's 1 o'clock today, you know,  
23          if you approve it, I can go out and do something for the  
24          next five hours for my campaign to get my message out to  
25          somewhat combat these signs that are out all across my

1 district.

2 So, again, for the motions today, I know you  
3 have two motions, I agree with re-awarding it the way  
4 that staff prepared it, but then when it comes to using  
5 the matching funds that were just awarded to me  
6 previously, I think that that puts me at a disadvantage  
7 where I'm the only one getting hit. The other two  
8 candidates aren't getting hit. If all three of us spent  
9 our money already, they're not being put at a  
10 disadvantage and being deducted in the same way that I  
11 am because of that. So, that would be my -- my offer to  
12 you.

13 CHAIRPERSON SCARAMAZZO: Any questions?

14 COMMISSIONER PARKER: Mr. Chairman?

15 CHAIRPERSON SCARAMAZZO: Yes.

16 COMMISSIONER PARKER: Mr. Ableser, this is  
17 Commissioner Parker.

18 MR. ABLESER: Hi.

19 COMMISSIONER PARKER: What -- what would you  
20 spend the money doing for the next five hours?

21 MR. ABLESER: The plan -- and talking -- again,  
22 we found out about these signs on Friday, so I had  
23 actually a previous plan, which was newspaper ads. And,  
24 unfortunately, I can't do that at this late in the game.

25 My goal is to actually hire people to take my

1 signs and stand at polling locations, because I don't  
2 have the resources for that, and that would -- and pass  
3 out my literature to people going into the polls. The  
4 4:00 to 7:00 rush is the biggest rush of the election  
5 day, and that would certainly give me an advantage to  
6 combat -- remember, there's 68 polling locations in my  
7 district for 71 precincts. And so far, there's two of  
8 these signs at every single polling location, but I  
9 don't have -- I don't have enough people to put at those  
10 places. And so, I would use the money to -- for staff  
11 purposes to get people to combat the messages that are  
12 being conveyed.

13 COMMISSIONER PARKER: Okay.

14 CHAIRPERSON SCARAMAZZO: Jeff -- oh, okay.

15 COMMISSIONER PARKER: And in the first amount  
16 of money that you were given for this mailer, what did  
17 you spend that money on?

18 MR. ABLESER: I spent that money on two  
19 separate robo calls. We spent it on Joe TV -- campaign  
20 -- well, Joe TV Coordination over the weekend, and we  
21 spent it on new literature to be passed out at the  
22 polls, all of which have already taken place over the  
23 weekend.

24 COMMISSIONER PARKER: Okay. Thank you very  
25 much.

1 MR. ABLESER: Thank you.

2 CHAIRPERSON SCARAMAZZO: Thanks, Commissioner.  
3 Jeff?

4 COMMISSIONER FAIRMAN: Thank you.

5 Help me understand this a little bit, Todd, or  
6 Mr. Ableser. We've asked some of the other candidates  
7 to return that money, they've not been able to do so  
8 because that money has already been spent. Doesn't -- I  
9 mean, I almost see a disadvantage for Mr. Ableser  
10 because he hasn't had an opportunity to spend that  
11 money, wasn't aware this was going to come down the way  
12 it has, so I'd like to know your opinion, Todd, if, in  
13 your mind, that is somewhat of an unfair advantage or an  
14 opportunity.

15 MR. LANG: Commissioners, the question is  
16 whether or not this appears to be an unfair disadvantage  
17 for Mr. Ableser. And the answer is everyone -- all  
18 three candidates got their money last week and spent it,  
19 the \$1,500, to respond to the TV ad. And so, they've  
20 all had an opportunity to respond to it. And so, in  
21 that sense it's all been very fair. And it turns out  
22 because of a mathematical calculation required by  
23 statute, we gave them too much money. And so, in a  
24 sense, that's unfair because they got money they should  
25 not have received.

1           On the other hand, as a policy matter, I think  
2           the law should be changed so they always get the full  
3           match. So, it really doesn't strike me as that unfair.

4           As for what's happened now, only Mr. Ableser is  
5           entitled to more money. And so, while none of them are  
6           in a position to return the money, whether the Democrat  
7           or Republican, both -- both -- Republican -- both parties  
8           are not in a position -- both candidates of both parties  
9           are -- are not in a position to return the money because  
10          they've already spend it.

11          Mr. Ableser, because of an unfortunate  
12          independent expenditure that hit him, is entitled to  
13          receive more money. And so, he is in a position to  
14          return some of the excess money.

15          And so, as a matter of policy, based on what  
16          we've done in the past, any time we give you money to  
17          which you're not entitled, we're required to ask for it  
18          back. However, we're also entitled to waive that  
19          requirement, and we always have when the money was spent  
20          in good faith. And so, that would have been the outcome  
21          here, but for the fact that Mr. Ableser gets more money.

22          Is it fair that he not be able to respond fully  
23          to the value of the signs? Well, that's a -- that's a  
24          decision, I think, ultimately for the four of you to --  
25          the five of you to make. I certainly understand his

1 argument. And if I were in his position, I would feel  
2 exactly the same way, because he needs the full  
3 allocation to be able to respond fully. The fact is,  
4 though, he owes us the money. And so, we're entitled  
5 legally to deduct it.

6 As to whether we should deduct it, I think  
7 that's a policy decision for the Commissioners to make.  
8 Basically it comes down to do you want to give him a  
9 full opportunity to respond to this -- these signs, or  
10 do you think the difference, which I think is about  
11 \$600, will be enough?

12 I think you have the latitude to award this  
13 amount and tell him that he owes us the money for the  
14 other signs, because this is a separate award. But  
15 that's an interesting legal question that I suppose our  
16 counsel might have something to say about.

17 COMMISSIONER DANIELS: Well, Mr. Chairman,  
18 that's what I was just going to ask, if we could hear  
19 from legal counsel if we aren't, by statute, required to  
20 ask for the money back and take it back, knowing that he  
21 has it, because I don't want to violate statute in any  
22 way.

23 MS. SHIPMAN: I've just been looking at the  
24 statute, and I don't -- I, unfortunately, don't see  
25 where you can -- where it's within your discretion to

1       alter what you award, where you couldn't ask for the --  
2       where you don't ask for the money back. I -- but I  
3       honestly have not gone in-depth research. Just the  
4       language of the statute says, you know, "it shall be  
5       allocated of -- according to the relative size or  
6       length, and relative prominence to the reference to  
7       candidates."

8                So, just that "shall" language indicates that  
9       it will be allocated that way, and you don't have the  
10      discretion not to ask for the money back. Even if  
11      someone says that -- like they have to find a way to  
12      give that money back.

13              But I -- that said, I have not -- I have not  
14      read through the whole statute with that in mind, so I  
15      don't feel I can give you a kind of --

16              CHAIRPERSON SCARAMAZZO: Clear, concise.

17              MS. SHIPMAN: -- clear and concise legal  
18      opinion about that right now, unfortunately.

19              CHAIRPERSON SCARAMAZZO: Okay.

20              MS. SHIPMAN: Is there -- is there some aspect?

21      No.

22              CHAIRPERSON SCARAMAZZO: Jeff?

23              COMMISSIONER PARKER: Mr. Chairman?

24              CHAIRPERSON SCARAMAZZO: Oh, Jeff first.

25              COMMISSIONER FAIRMAN: Just a quick question of

1           counsel. So, you are saying that we do not have -- or  
2           the staff or the Commission does not have the discretion  
3           to not ask for the money back? We have to ask for the  
4           money back and expect payment of that money? Is that a  
5           fair addition to that?

6                   MS. SHIPMAN: I think so. There is -- the rule  
7           -- unfortunately, the rule is based only on what the  
8           statute says. So, I understand if there's ambiguity or  
9           -- you have to -- you can only create a rule within the  
10          parameters of what the statute says. And if I look at  
11          the language of the statute it says: "It shall be  
12          allocated in this manner," as opposed to may, which  
13          would allow you some discretion.

14                   And what -- you know, what --

15                   MR. RUIZ: 704.

16                   MS. SHIPMAN: 704. I'm being pointed to a  
17          rule. Let me just look and see what the statutory basis  
18          is for that rule.

19                   Because it -- there's a portion of the rule at  
20          704. It says: "They'll repay what the Commission  
21          determines to be repayable." Is that the one in which  
22          -- right. And I see there's the -- 16-953 talks about  
23          return of monies to Citizens Clean Election funds. And  
24          it talks about monies that were --

25                   MR. LANG: It says "may" not "shall."

1 MS. SHIPMAN: Right. That's a rule, though.

2 MR. LANG: That's what we're talking about.

3 MS. SHIPMAN: I'm talking about the statutory  
4 language.

5 CHAIRPERSON SCARAMAZZO: Royann, hold on one  
6 sec, okay.

7 MS. SHIPMAN: I'm sorry. I'm trying to read  
8 quickly.

9 CHAIRPERSON SCARAMAZZO: Whether in rule or  
10 statute, I guess my confusion is does it differentiate  
11 between two separate issues here?

12 We have an issue here where he's been paid  
13 money already, which is a separate issue. Then we have  
14 this issue where he's entitled to this amount of money.  
15 I don't hear anything telling me that I should look at  
16 it -- you know, in my mind, I got to deal with these  
17 issues separately.

18 MS. SHIPMAN: Right.

19 MR. LANG: Commissioners, in my view,  
20 Representative Ableser is entitled to the full match for  
21 this particular expenditure, but our rules say, at  
22 704(A)(5), that: "The Commission may withhold the  
23 portion of funds required to be repaid from future  
24 payments to a participating candidate if the Commission  
25 has made a repayment determination."

1           So, in other words, you can -- this -- that  
2           rule expressly authorizes you to withhold monies he's  
3           entitled to today if you have already determined that he  
4           owes money from a prior determination.

5           COMMISSIONER FAIRMAN: We shall or we may?

6           CHAIRPERSON SCARAMAZZO: We may.

7           MR. LANG: May.

8           So, you -- in my view -- and I realize I'm not  
9           your lawyer -- but in my view, you're not required to  
10          withhold that money. He does owe it, though.

11          CHAIRPERSON SCARAMAZZO: Jeff?

12          COMMISSIONER FAIRMAN: Mr. Chairman, my concern  
13          is that Mr. Ableser would be basically penalized for,  
14          one, either not spending the money; or, two, being  
15          honest about the fact that he has not spent the money.  
16          And that's what I'm trying to avoid in this discussion.

17          COMMISSIONER LINDHOLM: Mr. Chairman?

18          CHAIRPERSON SCARAMAZZO: Yes, Don.

19          COMMISSIONER LINDHOLM: I don't know if you're  
20          ready for a motion yet, but when the motion is made I  
21          will be voting for the offset, and I'm not persuaded by  
22          the fact that we're -- somebody is suggesting, though,  
23          that we're penalizing Mr. Ableser for being candid and  
24          forthright and honest. I think we expect all of the  
25          candidates to be candid and forthright and honest, and

1           then we act accordingly.

2                     In my opinion, we're required to make the  
3           offset, and that's the way I would vote.

4                     CHAIRPERSON SCARAMAZZO: Okay. We already have  
5           a motion on the floor where we're dealing with the  
6           awards presently, so let me get to Royann.

7                     I apologize, Royann.

8                     COMMISSIONER PARKER: No, that's okay. I was  
9           having a hard time hearing our legal counsel. It was  
10          kind of cutting in and out.

11                    And my question is the requirement that the  
12          candidates repay overpayments, is that in statute or is  
13          that in our Clean Elections rulemaking?

14                    MS. SHIPMAN: I think it's in the rules only,  
15          because in the statute it just talks about at the end of  
16          certain cycles what money is remaining in the account.  
17          It doesn't address overpayments.

18                    COMMISSIONER PARKER: Okay. But does the  
19          statute say anything about this, having to pay money  
20          back if it's been overpaid to them?

21                    MS. SHIPMAN: No.

22                    COMMISSIONER PARKER: No.

23                    MS. SHIPMAN: The statute doesn't.

24                    COMMISSIONER PARKER: Okay. Mr. Chairman, can  
25          you reread the motion that we're looking at?

1                   CHAIRPERSON SCARAMAZZO: Yeah. The motion on  
2 the floor is to award -- can you put those back up so we  
3 can get the figures?

4                   MR. LANG: Sorry.

5                   CHAIRPERSON SCARAMAZZO: Yeah, hold on one sec.  
6 He's pulling them back up so we'll have the awards  
7 outlined here. Or, hold on, Daniel has it for us.  
8 Thank you.

9                   Okay. The awards that are part of the motion  
10 right now is that Mr. Ableser would receive \$500,  
11 Mr. Schapira \$500, Burton-Cahill \$250, and Waddle \$250.

12                  MR. LANG: Minus the fundraising.

13                  CHAIRPERSON SCARAMAZZO: Minus the six percent.

14                  That's the motion on the floor presently. And  
15 then we'll come back to deal with this issue of  
16 repayment or potential repayment.

17                  COMMISSIONER PARKER: Okay. My understanding,  
18 Mr. Chairman, is that they have already received those  
19 monies that we're approving; is that correct?

20                  MR. LANG: That's correct.

21                  CHAIRPERSON SCARAMAZZO: That's correct. Okay?

22                  COMMISSIONER PARKER: Okay. Thank you.

23                  MR. LANG: This part of it is straightforward.

24                  CHAIRPERSON SCARAMAZZO: Yeah. This part is  
25 straightforward. Eric?

1 MR. EHST: Actually, I don't believe it is.

2 CHAIRPERSON SCARAMAZZO: Okay.

3 MR. EHST: Eric Ehst representing the Clean  
4 Elections Institute.

5 Mr. Chairman, Commissioners, I'd like to throw  
6 a different wrinkle, I think, into the mix, and -- and  
7 challenge the reasoning and interpretation of the  
8 statute that the staff used in coming up with this  
9 amount that you have before you in a motion.

10 I think we can all agree that the first half of  
11 the ad, which attacks candidates for multiple offices,  
12 comes under ARS 16-952(C)(6), where you have to split up  
13 among the various participating candidates the amount of  
14 the award. But the second half of the -- of the ad  
15 clearly is in favor of a single non- -- or a single  
16 candidate for a single office and should be interpreted  
17 under 16-952(C)(3), in which case the second half of the  
18 ad, the \$750 that is just in favor of -- of election of  
19 Mark Thompson, should be given equally -- the full  
20 amount should be given equally to all of Mr. Thompson's  
21 opponents.

22 So, I believe that for that half of the ad,  
23 each -- each of the three opponents, Representatives  
24 Ableser, Schapira, and Mr. Waddle, should each receive  
25 \$750 for that independent expenditure in favor of a

1 single candidate for a single office.

2 MR. LANG: Mr. Chair?

3 CHAIRPERSON SCARAMAZZO: Yes, Todd.

4 MR. LANG: May I respond?

5 CHAIRPERSON SCARAMAZZO: Oh, certainly.

6 MR. LANG: It's an attractive argument, and I  
7 thank Eric for presenting it, but ultimately,  
8 Commissioners, this is -- and because, frankly, I think  
9 it fulfills the purpose of matching funds, his view,  
10 because you need the full amount to properly respond to  
11 these sorts of things.

12 That said, the statute couldn't be more clear  
13 about what -- how this is broken down. And it's broken  
14 down in proportion. This is one ad, and so, either the  
15 ad fits this rule or it doesn't, the statutory  
16 provision, and in this case because part of the ad  
17 attacks someone who's not running for the same office,  
18 this ad is subject to the proportionality statute.

19 So, you can't take, oh, well, this 10 percent  
20 of the ad only addresses one part, this 30 percent of  
21 the ad addresses a different office, because I think it  
22 would completely destroy the statute.

23 So, despite the fact that I think as a policy  
24 matter I like Eric's argument, ultimately this is one  
25 ad, and it's subject to the provision that requires you

1 to break it down into -- by proportion.

2 We're not allowed to take the ad apart and say,  
3 well, this part meets that, and this other part doesn't  
4 meet that. And, thus, reach a result we like. And so,  
5 I would suggest that Eric is incorrect, though, I  
6 think -- again, I think he's -- he's coming -- I know he  
7 disagrees, but I think part of the reason he's coming to  
8 you with this is because I think his result is probably  
9 a more fair result. But I think my result is the  
10 correct one, legally.

11 MS. SHIPMAN: I -- this is -- this is Tonja  
12 Shipman. The distinction is that if it was one ad for  
13 Mark Thompson, then Mr. Ehst would be correct, and it  
14 would be Subsection (C)(2) that would apply. And,  
15 unfortunately, it -- this is one ad, and it does address  
16 candidates for different offices.

17 So, yeah, the last half of it does address --  
18 is a promotion for Mark Thompson, but it's all part of  
19 one ad. So, you take the ad and you -- you can't just  
20 split one-half -- the last half of it and apply this  
21 other rule. Once it addresses more candidates for  
22 different offices, then it -- it fits under Subsection  
23 (C), and that's -- I have the same interpretation as  
24 Mr. Lang.

25 CHAIRPERSON SCARAMAZZO: Thank you. Thanks,

1 Eric.

2 Further discussion on this item?

3 Okay. There is a motion on the floor to award  
4 these awards as noted: \$500, \$500, \$250, and \$250. All  
5 those in favor say "aye."

6 (Chorus of ayes.)

7 CHAIRPERSON SCARAMAZZO: Aye. Opposed? Motion  
8 carries. Thank you.

9 Todd, the second part of this then we're going  
10 to discuss the repayment?

11 MR. LANG: Yes.

12 CHAIRPERSON SCARAMAZZO: Or potential  
13 repayment.

14 MR. LANG: Mr. Chair, the discussion you just  
15 heard is -- pretty much sums it up, so I won't repeat  
16 it. But, basically, we ask for your approval to deduct  
17 the amount of money owed by Mr. Ableser because we paid  
18 him too much for the other agenda item, from the amount  
19 we awarded him today for this -- this ad.

20 COMMISSIONER DANIELS: Mr. Chairman?

21 CHAIRPERSON SCARAMAZZO: Yes, Lori.

22 COMMISSIONER DANIELS: While I understand where  
23 Mr. Ableser is coming from, I would make that motion  
24 that we do subtract at this time because I think we have  
25 to follow the statute specifically. And I think to do

1 anything else wouldn't be following the law.

2 COMMISSIONER LINDHOLM: Second.

3 CHAIRPERSON SCARAMAZZO: Okay. It's been moved  
4 by Commissioner Daniels, seconded by Commissioner  
5 Lindholm, to deduct the amount owed from prior award  
6 from the amount -- what are the specific amounts again?

7 MR. LANG: We previously gave Mr. Ableser  
8 \$1,500.

9 CHAIRPERSON SCARAMAZZO: Right.

10 MR. LANG: Minus the six percent, which would  
11 be, I guess, \$90. So, we gave him \$1,410. And he owes  
12 the difference between \$1,410 and what we awarded him  
13 today, which was \$500, minus the six percent, which  
14 would be \$30 -- \$30. So, it would be \$1,410 -- the  
15 difference between \$1,410 and \$470, and we'd like to  
16 subtract that, which would be 900 and --

17 COMMISSIONER LINDHOLM: It should be \$940.

18 MR. LANG: \$940. We'd like to subtract that  
19 \$940 from the matching funds you awarded him in the  
20 first agenda item that we planned to give him after this  
21 meeting, which will be, I think, 16 -- I believe it's  
22 \$1,610, minus six percent, minus \$940, whatever that  
23 number is.

24 CHAIRPERSON SCARAMAZZO: Okay. Everybody have  
25 that motion?

1           Okay. Discussion on this item.

2           Jeff?

3           COMMISSIONER FAIRMAN: Just -- Mr. Chairman,  
4           just so you know, I'm going to be voting no on this only  
5           because I see it as an -- I understand it's a legal  
6           issue, but I also see it as an issue of fairness, and I  
7           would encourage us, as a Commission, to take a look at  
8           this in the upcoming months.

9           CHAIRPERSON SCARAMAZZO: Okay. Thanks, Jeff.

10          I also -- I just look at it as a fairness issue  
11          also here. And it is a rule, it is not statute, so  
12          we're not breaking the law. And I think it's up to the  
13          Commission to determine whether, in fact, you know,  
14          because a mistake inadvertently was performed on behalf  
15          of the accounting from the Commission's side, whether  
16          that penalty should then be born by the candidate, even  
17          though that candidate continues to be assaulted through  
18          this sign -- through these signs being put out.

19          And I -- you know, we asked the other  
20          candidates if, in fact, they've expended their monies,  
21          their funds, they say yes, we take their word for it.  
22          This candidate here, we ask if those monies have been  
23          expended, we say, yes, they have -- and we ask them for  
24          verification of that, he explains where those monies  
25          have been expended.

1                   I guess I just don't see -- I don't see one  
2                   impacting the other at this time. I see these as two  
3                   separate issues in my mind.

4                   COMMISSIONER DANIELS: Well, Mr. Chairman, I'd  
5                   like to explain why I'm going to support this motion.  
6                   And that's because in the past, many times, I have  
7                   heard, in the public, some of the complaints from the  
8                   Clean Elections Commission have been that the rules kind  
9                   of change as we go along, and sometimes things are this  
10                  way and sometimes they're not.

11                  And I think we need to be real consistent and  
12                  real specific. And in the past we have taken money back  
13                  from people. I think we need to continue to do so. It  
14                  doesn't matter who it is. It's a matter of policy to  
15                  me. And we've had this policy in our rules to this  
16                  point, and I think we should continue, unless we change  
17                  the rule.

18                  COMMISSIONER LINDHOLM: And Mr. Chairman?

19                  CHAIRPERSON SCARAMAZZO: Yes, Don.

20                  COMMISSIONER LINDHOLM: This is Don. I -- I  
21                  have absolutely no inclination whatsoever for my vote to  
22                  be considered any kind of punishment or admonition or  
23                  criticism of Ed Ableser. I'm simply -- I'm simply  
24                  driven by the notion that we do have the rule in place.  
25                  It's perhaps unfortunate -- it is unfortunate for

1 Mr. Ableser that on the one hand we're giving him the  
2 money, so we know it's not spent, and, therefore, we  
3 have to impose the rule and offset against it what he  
4 owes back to the Commission.

5 But I wouldn't want that to be construed as  
6 punishment. I think that's just sometimes you're a  
7 little luckier than other times. And it's clear that  
8 the money is available for us, and that's what we should  
9 do.

10 CHAIRPERSON SCARAMAZZO: Are we going to  
11 request Commission staff to go back and ask the other  
12 candidates for a refund of monies?

13 COMMISSIONER DANIELS: Mr. Chairman, I thought  
14 the staff had already done so. I thought that they had  
15 talked to --

16 CHAIRPERSON SCARAMAZZO: No, they asked if it  
17 had been spent.

18 COMMISSIONER DANIELS: Well, Mr. Chairman --

19 MR. LANG: Mr. Chairman?

20 COMMISSIONER DANIELS: -- it was my  
21 understanding from Todd that we asked if the money is  
22 spent, and if they say it is, we -- we don't -- we can't  
23 take the money back, but if it's not, we take -- we ask  
24 for the money back. And I think's that's been the  
25 policy of the Commission for a while now.

1 Am I wrong, Todd?

2 CHAIRPERSON SCARAMAZZO: Go ahead.

3 MR. LANG: Mr. Chair, Commissioners, that's  
4 correct. We -- I actually had an a -- an in-person  
5 conversation with Representative Schapira yesterday and  
6 asked him if he had spent the money, after explaining to  
7 him the situation. And he indicated that he had. And I  
8 reminded him that, well, if there's \$12 left, \$50 left,  
9 or whatever, please don't spend it, and if you can  
10 cancel any contacts without penalty, please do so. And  
11 he indicated he would. But he also indicated, and I  
12 think understandably, that he felt that that was  
13 unlikely.

14 So, yes, he spent all the money. But, yes, he  
15 understands if there are a few dollars here or there,  
16 he's required to return that and not encumber it  
17 further.

18 I would also --

19 MS. SHIPMAN: I'm sorry. Go ahead.

20 MR. LANG: -- I'd also point out that I just  
21 conferred with Colleen, and she reminded me that we have  
22 deducted from matching funds in the past.  
23 Representative Downing received matching funds in excess  
24 of what he was entitled to after we got accurate amounts  
25 from the vendor. And when his next match came up, we

1           deducted from that match. So, it has happened. Not  
2           like this, though, where it's last minute. You know, it  
3           was much earlier in the race. I think the equities here  
4           are tougher.

5                   MS. SHIPMAN: And this is Tonja Shipman.

6                   I just -- I've been reading through the statute  
7           and I focused on this language that the Commission --  
8           they're -- the matching funds shall be allocated among  
9           the candidates based on the statute.

10                   So, my concern is that by taking one from  
11           another -- I mean, if you look at them both separately,  
12           as the Chairman has suggested, then you are allocating  
13           them in that matter, and then the repayment is a  
14           separate issue.

15                   But I also agree that the policy has been if  
16           you know there are funds available, that the repayment  
17           then is then taken -- deducted from it. That's  
18           internal. But I don't feel -- my concern is that  
19           somehow the allocation is deemed greater because you're  
20           allowing -- you're allocating the full amount in one  
21           instance and the full amount in another instance.

22                   COMMISSIONER FAIRMAN: To clear that up for me,  
23           so the allocation is by statute and the refund is by  
24           rule?

25                   MS. SHIPMAN: Right.

1 COMMISSIONER FAIRMAN: Okay. Thank you.

2 MS. SHIPMAN: And since there's no statute that  
3 expressly denies the right to ask for a refund, you're  
4 permitted to follow the rule in that regard.

5 I know. It's sort of strange.

6 CHAIRPERSON SCARAMAZZO: Thank you for that  
7 clarification.

8 Further discussion on this item?

9 Okay. Hearing none, the motion on the floor is  
10 to deduct the amount owed as outlined. All those in  
11 favor say "aye."

12 COMMISSIONER DANIELS: Aye.

13 COMMISSIONER LINDHOLM: Aye.

14 COMMISSIONER PARKER: Aye.

15 CHAIRPERSON SCARAMAZZO: Opposed?

16 COMMISSIONER FAIRMAN: No.

17 CHAIRPERSON SCARAMAZZO: No.

18 I believe that was three ayes, correct?

19 COMMISSIONER DANIELS: Correct. From me.

20 CHAIRPERSON SCARAMAZZO: Okay.

21 COMMISSIONER LINDHOLM: And me.

22 CHAIRPERSON SCARAMAZZO: Okay. Three to two,  
23 motion carries.

24 MR. ABLESER: Thank you all. I got to get back  
25 to campaigning.

1 CHAIRPERSON SCARAMAZZO: Good luck. Thank you.  
2 Okay. That will bring us to Item No. IV, call  
3 for public comment.

4 Eric, you're it.

5 MR. EHST: No further comment.

6 CHAIRPERSON SCARAMAZZO: Okay. Sounds good.  
7 Otherwise, we're set to an adjourn at 2:56  
8 [sic].

9 COMMISSIONER DANIELS: Motion to adjourn.

10 COMMISSIONER LINDHOLM: Second.

11 CHAIRPERSON SCARAMAZZO: Or, excuse me, 1:56.  
12 It didn't go on that long. I'm sorry about that.

13 Okay. Moved and seconded. All those in favor  
14 say "aye."

15 (Chorus of ayes.)

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

18 Thanks, everyone, for your time and efforts.

19

20 (Whereupon the proceeding concludes at 1:56  
21 p.m.)

22

23

24

25

C E R T I F I C A T E

I, Angela Furniss Miller, Certified Reporter,  
do hereby certify that the foregoing pages numbered 1  
through 41, inclusive, constitute a full and accurate  
printed record of my stenographic notes taken at said  
time and place, all done to the best of my skill and  
ability.

DATED, at Phoenix, this 7th day of November,  
2008.

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Angela Furniss Miller, RPR  
Certified Reporter (AZ50127)