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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
November 13, 2008
9:32 a.m.

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

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 9:32 a.m. on November
 3 13, 2008, at the State of Arizona, Clean Elections
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,
 5 Arizona, in the presence of the following Board members:

6 Mr. Gary Scaramazzo, Chairperson
 7 Ms. Royann Parker
 8 Ms. Lori Daniels
 9 Mr. Donald Lindholm

10 OTHERS PRESENT:

11 Todd Lang, Executive Director
 12 Paula Ortiz, Executive Assistant
 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 Tonja Shipman, Attorney General's Office
 18 Jim Barton, Perkins Coie Brown & Bain
 19 Eric Ehst, Clean Elections Institute
 20 Kevin Tyne, Secretary of State's Office
 21 Joe Kanefield, Secretary of State's Office
 22 Nancy McClain, House Representative District 3
 23 Michael Brewer, Citizen

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P R O C E E D I N G

1 COMMISSIONER SCARAMAZZO: Good morning.
 2 COMMISSIONER PARKER: Good morning.
 3 COMMISSIONER SCARAMAZZO: I'd like to call this
 4 meeting of the Citizens Clean Elections Commission to
 5 order.
 6 It's Thursday, November 13th, 2008. It is
 7 9:32. All Commissioners are present with the exception
 8 of Commissioner Fairman, and he is en route. He'll be
 9 here in just a few minutes. So, we'll get started.
 10 So, with that, I would move on to Item No. II
 11 on the agenda, which is seeking approval of the October
 12 23rd and October 24th, 2008, Commission meeting minutes.
 13 COMMISSIONER DANIELS: So moved.
 14 COMMISSIONER PARKER: Second.
 15 COMMISSIONER SCARAMAZZO: It's been moved by
 16 Commissioner Daniels, seconded by Commissioner Parker,
 17 to approve the minutes from October 23rd and October
 18 24th of 2008.
 19 Any discussion on this item? Hearing none, all
 20 those in favor say "aye."
 21 (Chorus of ayes.)
 22 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 23 carries.

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1 I was remiss, and I might wish to announce,
 2 though, that in the event that the Commission desires an
 3 executive session, that is on the agenda for this
 4 morning, and minutes of and discussions made in an
 5 executive session are confidential pursuant to ARS
 6 Section 38-431.03(B) and should not be released to
 7 anyone unless specifically authorized by law, okay?
 8 Thank you.

9 That moves us on to Item No. III, the Executive
 10 Director report.

11 Todd?

12 MR. LANG: Thank you, Mr. Chair. Good morning,
 13 Commissioners. If you have questions about the status
 14 of litigation, please give me a call, I'd be glad to
 15 talk to you about it.

16 As you can see, I noticed that the U.S. Supreme
 17 Court declined to issue certiorari for a review of the
 18 Fourth District -- the Fourth Circuit's decision
 19 upholding matching funds. And so we have a decision in
 20 this state -- a pending decision, an oncoming decision
 21 which I predict will be striking down matching funds
 22 when we do get to trial; and then we have this Fourth
 23 District Court of Appeals' decision upholding it. So we
 24 have a split. And if you have questions about that, let
 25 me know.

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1 The only other thing is I'd point out is on
 2 November 21st, I will be taking part in a CLE,
 3 continuing legal education, on lobbying; and my
 4 discussion will obviously be on changes to the Clean
 5 Elections law and campaign finance issues, and I'll
 6 certainly address matching funds at that presentation.

7 Joe Kanefield, State Election Director, and I
 8 will be doing a presentation on the various changes to
 9 the law. So, if you'd like to attend, let me know.
 10 Here's the flyer, and I'll help arrange that for you.

11 I'm also going to be doing a presentation on
 12 campaign finance issues at COGEL in December in Chicago.
 13 As you know, there are a number of states that have --
 14 that have enacted various forms of campaign finance
 15 reform and public funding, and so those discussions are
 16 always lively and interesting and it's always good to
 17 hear the latest. So, I will be doing a presentation
 18 there.

19 Otherwise, unless you have questions, that
 20 concludes my report.

21 COMMISSIONER SCARAMAZZO: Okay. Anything for
 22 Todd?

23 All right. That will move us on to Item No. IV
 24 then, discussion and possible repeal of Commission Rule
 25 R2-20-104(F), relating to officeholder expenses.

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1 Todd, go ahead.

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

3 Commissioners, you have in your packet a number of

4 letters and comments we've received by e-mail. I'd note

5 that we received e-mails -- I should also mention,

6 because it's not in there, he didn't send an e-mail, but

7 Representative Warde Nichols called me yesterday and

8 expressed his concerns about termination of the rule.

9 And I told him what we planned as an accommodation based

10 on the letters.

11 I'm -- I'm not sure what to make of the

12 comments, because, of course, there's some who call for

13 its immediate termination and others who think we

14 shouldn't get rid of it at all. And the nice thing

15 about it is it's bipartisan. The folks who think we

16 should -- I think that's a good thing. It might be a

17 bad thing, I'm not sure. But we have representatives

18 and senators of both parties who are suggesting we

19 should not get rid of the rule. And we have a number of

20 folks here who may want to comment, including

21 Representative Nancy McClain, and others.

22 So there you go. But the bottom line is, as

23 you know, for the reasons we discussed in the previous

24 meeting over 60 days ago, staff recommends that we

25 remove -- that the Commission remove this rule. For a

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1 participating candidates.

2 Based on the feedback, staff and I conferred,

3 and you can see I asked Mike to put together a list of

4 the status of the various accounts for the statewide and

5 legislative officeholders, and so you have that list,

6 and it's fairly extensive. But staff and I conferred,

7 and so we stand by our recommendation that the rule be

8 rescinded, but we also understand the concerns raised by

9 legislators and by statewide officeholders, and so we

10 suggest that you consider a sunset. That the rule would

11 stay in place through the end of this year and through

12 2009, which, of course, is not an election year. This

13 allows candidates -- I mean, officeholders, to continue

14 to use the accounts, spend their money, and communicate

15 with constituents with really no serious concern that

16 there be gaming because it's not even an election year.

17 So there's no real concern there that -- that any of the

18 communications could contain even elements of express

19 advocacy, or that they'd be that effective since it's

20 not an election year. And then so we recommend that you

21 terminate the rule -- the rule be terminated at the end

22 of 2009.

23 The reason we don't want to go into 2010, is

24 because it is an election year and also because we want

25 to treat everyone the same. Whether they're a

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1 number of reasons, including the issue of the advantage

2 it gives to incumbents; the concern raised that, you

3 know, the whole point of Clean Elections is to reduce

4 the money that goes to public officials and this is a

5 way around that; and, of course, the concern that

6 constituent communications may verge on express

7 advocacy. And you will recall you had some examples at

8 that same meeting of a concern raised by someone or a

9 complaint filed by a group because of some constituent

10 communications that were pretty lobbatory.

11 So, for all those reasons, we recommended that

12 you end this rule. We've now had the notice of comment,

13 and you've -- I know you've had an opportunity to review

14 it, so I won't go through it. Except to say that a

15 number of officeholders find the rule quite helpful.

16 The rule is necessary because of the definition of

17 contribution at 16-901, which includes money raised for

18 the purpose of communicating with constituents. So even

19 though it's not for the purpose of express advocacy, if

20 you contribute money to an officeholder so that they can

21 legitimately and educationally communicate with their

22 constituents, it still counts. And for that reason it

23 implicates Clean Elections matching funds and for

24 traditional -- for traditional candidates and even being

25 qualified to be a Clean Elections' candidate for

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1 legislative candidate or a statewide candidate, we think

2 everyone should be treated the same. It's an election

3 year for everyone in 2010, so we really see no reason to

4 distinguish legislative officeholders from statewide

5 officeholders. And this also enables new officeholders

6 who were just elected this past November -- well, last

7 week -- to also participate in the rule because it

8 doesn't seem fair to allow incumbents to have the

9 benefit of the rule, but new officeholders do not have

10 the benefit of the rule. So that's why we recommend the

11 extended period.

12 COMMISSIONER SCARAMAZZO: Royann.

13 COMMISSIONER PARKER: The only comment I have

14 is, I think for the statewide officeholders they went

15 into this knowing they would have the money available to

16 them until 2010. That's why I'd favor extending it for

17 statewide officeholders through 2010, just because that

18 was the rule that they came in with.

19 COMMISSIONER SCARAMAZZO: Okay. Lori.

20 COMMISSIONER DANIELS: Mr. Chairman, and

21 Commissioner Parker and I have spoke, too. I believe

22 that 2009 is adequate. And the reason I say that is

23 that the legislature can change the statute, and then

24 we're not in violation of the statute and this can

25 remain in place. So they have an entire legislative

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1 session to change that.

2 My biggest concern is this is in violation of

3 the law right now. This rule is. And so, that was my

4 concern to begin with. It's not to punish officeholders

5 currently, it's to -- I'm sorry, the law is the law and

6 you either change the law or you adhere to it.

7 I have no problem with sunseting it in 2009,

8 though, because I don't -- even though the rules are

9 changing and I do want to adhere to the law, I think

10 once we repeal it and then if the legislature does

11 choose to change it, then that's their option.

12 COMMISSIONER SCARAMAZZO: Okay. Todd.

13 MR. LANG: Mr. Chair, Commissioners, I share

14 Commissioner Daniels' view and I should have made that

15 clear, that this gives the legislature more time to

16 enact a statute should they deem that appropriate than

17 if we just terminate the law today before session is

18 even started.

19 COMMISSIONER SCARAMAZZO: Okay. Fair enough.

20 COMMISSIONER DANIELS: Do you want a motion,

21 Mr. Chairman?

22 COMMISSIONER SCARAMAZZO: Yeah, let's get this

23 on the floor, please.

24 COMMISSIONER DANIELS: Mr. Chairman, I would

25 move that the Commission repeal Rule R2-20-104(F), with

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1 portion of my district and which, like it says, you

2 can't get there from here.

3 To get -- I represent the cities of Lake

4 Havasu, Kingman, and Bullhead City where I live, also

5 the Arizona strip over to Page which is in Coconino

6 County, down into Quartzsite and La Paz County.

7 The -- the folks that live in the Arizona

8 strip, from Beaver Dam and Littlefield over to Page,

9 have always felt they didn't have any representation

10 because of former legislators really didn't pay them

11 much attention. It's a small area. It's hard to get

12 to. But I made a firm commitment to them when I was

13 running originally that I would be their representative,

14 and I would pay attention to them and recognize what

15 their needs and wishes were.

16 And so I've made a point to make at least two

17 trips. It's very difficult. If I leave my home in

18 Bullhead City, I have to go through Las Vegas and

19 Mesquite, Nevada, over into Beaver Dam and Littlefield.

20 I spend some time there with the folks there. I drive

21 up into Utah, because you can't get to Colorado City,

22 which is in my district, through Arizona, so I go into

23 Utah and go down and visit with the folks in Colorado

24 City then over to Fredonia, and then back into Utah to

25 get to Page. And then to get home, unless I want to

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1 a sunset clause of December 31st, 2009.

2 COMMISSIONER PARKER: I'll second.

3 COMMISSIONER SCARAMAZZO: Okay. It's been

4 moved by Commissioner Daniels, seconded by Commissioner

5 Parker, to repeal R2-20-104, and do that with a sunset

6 clause of 2009.

7 Okay. Discussion on this item?

8 Please. Welcome.

9 MS. MCCLAIN: Thank you. Thank you. For the

10 record, I'm Nancy McClain. I represent Arizona District

11 No. 3 in the House of Representatives. And I'm glad to

12 hear that Todd has made this recommendation to extend

13 it. I was not aware of that, or I probably wouldn't

14 have driven down from Bullhead City to appear before you

15 today.

16 MR. LANG: I'm sorry.

17 MS. MCLAIN: Not a problem. I didn't mean it

18 quite that way.

19 But I just did want to give the Commissioners a

20 perspective on what it's like to be a rural legislator

21 and why these officeholder accounts are so important to

22 me, particularly. That's my perspective, anyway.

23 District 3 is a very large district. It's not the

24 largest district in the state; however, I have the added

25 complication of the Grand Canyon, which runs through a

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1 reverse that trip, which is a very long trip, I go

2 through Flagstaff and across I-40, back through Kingman

3 down to Bullhead City. That's a trip of about 800

4 miles. And when I stop and visit with folks along the

5 way, it's -- I can do it in three days, but a good trip

6 is four days to be able to have some time.

7 Now, the State does not reimburse me for the

8 expenses that I have. Gas, which as we know, is

9 fortunately coming down but it's been very high. I have

10 to stay overnight in a hotel at least two nights,

11 usually three. And, again, I'm not reimbursed for

12 those.

13 And so I -- I really rely on my constituent

14 services account to reimburse myself for those trips. I

15 don't consider them campaign trips. As I said, I do it

16 two times -- at least two times a year, sometimes three.

17 I will be going up, December 8th I'll start another trip

18 because I did promise the folks that I'd make my second

19 trip before the end of the year.

20 So this is not a campaign trip. It's simply to

21 talk to the people, see what their issues are, let them

22 know what I see are priorities coming up in the

23 legislative session that begins in January, and see if

24 there's something I can do for them.

25 Now, obviously, we have e-mails, we have

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1 phones, we have all sorts of things. I do get letters
 2 and e-mails. But there's just something about sitting
 3 down in a room, just such as this, and talking with
 4 community leaders or having an open forum where folks
 5 can come and visit with me and ask me questions, that
 6 sort of thing.

7 So, from my perspective, these officeholder
 8 accounts are extremely important, and I would like to
 9 see them continue. And I know there's some other issues
 10 swirling around this, but to me it seems that there
 11 needs to be some way that officeholders such as myself
 12 can -- can receive money that will help us reimburse
 13 these. Now, whether it means the State setting up some
 14 sort of fund -- I doubt that's going to happen this
 15 year, the State has no money for anything.

16 And I would also mention, I know there's been
 17 some talking swirling around that the only folks that
 18 contribute to these accounts are lobbyists. In my case
 19 that's not true at all. Folks up in Page, folks in
 20 Beaver Dam and Littlefield area, have made contributions
 21 because they understand that I have a commitment to them
 22 and they want to help me be able to make that commitment
 23 come true.

24 COMMISSIONER SCARAMAZZO: Lori.
 25 COMMISSIONER DANIELS: Mr. Chairman,
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1 Page, I appreciate your efforts. I understand that
 2 drive.

3 MS. MCLAIN: Well, if there's no questions,
 4 then I'm finished. Thank you so much for letting me
 5 speak.

6 COMMISSIONER SCARAMAZZO: Thank you.
 7 Yes, sir.

8 MR. TYNE: Mr. Chairman, members, my name is
 9 Kevin Tyne. I'm the Deputy Secretary of State. And I
 10 appreciate the opportunity to speak for a moment.

11 I do point out that the Secretary of State's
 12 office, following up on Commissioner Parker's point,
 13 many legislators have -- have been in to talk to us
 14 about the officeholder accounts at the Secretary of
 15 State's office. For reporting purposes, I know what Ms.
 16 Parker was noting about -- the current reporting and the
 17 current process at the Secretary of State for folks
 18 using the officeholder account is that they must spend
 19 their money by the end of April 2010 in the election
 20 cycle.

21 So it makes some sense, I suppose, from keeping
 22 a consistency and employing the rule as members come to
 23 our office to report, that rather than creating a new
 24 date of December 31st for the end of that reporting, it
 25 may make some sense in the matter of consistency from my
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1 Representative McClain, have you ever approached the
 2 Speaker of the House as far as being reimbursed for
 3 this? Because in the decade I was there, it was a
 4 regular basis that those kinds of expenses would be
 5 reimbursed. And I understand the budget dilemma at this
 6 point, but hopefully we won't be there forever.

7 MS. MCLAIN: Right. I have approached the
 8 Speaker, and in my first year of service, I was
 9 reimbursed a small amount, not -- not the entire cost.
 10 But in the last few years, I have put in a request and
 11 it has been denied.

12 COMMISSIONER DANIELS: Mr. Chairman,
 13 Representative McClain, maybe with a new Speaker it
 14 won't be if you try again. You can hope is what I'll --
 15 and I understand exactly what you're saying. I
 16 understand the expenses that you are going through. And
 17 I have no problem if the legislature wants to change the
 18 statute. My problem is we're in violation of it right
 19 now by allowing this and that's what my concern is.

20 MS. MCLAIN: I -- I understand that. And, we
 21 certainly don't want to do anything that conflicts.
 22 But, again, I just wanted to give some folks here who
 23 might not be aware of what really the demands are on
 24 someone who is a so-called rural legislator.

25 COMMISSIONER SCARAMAZZO: As a resident of
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1 office to let people continue -- let officeholders
 2 continue through what is really April of 2010, not the
 3 full year of 2010, and thus not have us change whatever
 4 documentation or whatever other materials we have in
 5 instructing candidates.

6 So I just point to the merit of Ms. Parker's
 7 concern about letting it go through the full reporting
 8 period and spending period that currently exists, which
 9 ends in April of 2010.

10 COMMISSIONER SCARAMAZZO: Okay. Lori.
 11 COMMISSIONER DANIELS: Mr. Chairman, Kevin, do
 12 you see the legislature having any problem passing a
 13 statute to change this in this next session?

14 MR. TYNE: Mr. Chairman, Commissioner, I don't
 15 really have a -- a crystal ball to determine what the
 16 new legislature really feels about this, with the new
 17 makeup, so --

18 COMMISSIONER DANIELS: Mr. Chairman, my only
 19 point is when we see all the names on this list and all
 20 the letters that we've gotten, it seems -- it is very
 21 much bipartisan support as Todd was saying. So, I see
 22 it put as one of the first bills that goes through the
 23 legislative process this next session so that they can
 24 continue to have that. But I do understand your
 25 logistical concerns too.
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1 MR. TYNE: Okay.

2 COMMISSIONER SCARAMAZZO: Thank you.

3 MR. TYNE: Thanks.

4 CHAIRPERSON SCARAMAZZO: Other comments?

5 Eric.

6 MR. EHST: Thank you, Mr. Chairman. Eric Ehst

7 representing the Clean Elections Institute.

8 I submitted a comment in favor of doing away

9 with this rule. We have felt historically that -- that

10 allowing legislators or officeholders, particularly

11 those elected using Clean Elections, to raise private

12 funds to do their officeholder expenses, is at least in

13 spirit in violation of the intent of the Clean Elections

14 Act.

15 We do recognize that there is definitely a need

16 for officeholders to have funds available to communicate

17 with their constituents. And that's what most of the

18 comments that have been received from elected officials

19 say, we need money to be able to do our jobs to

20 communicate with our constituents. The letter from the

21 -- the Democratic representatives said: We believe that

22 permitting officeholders to raise funds that we do not

23 receive at the legislature in order to better serve our

24 constituents, makes sense.

25 Our position is that the constituent

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1 district.

2 Would you be opposing the legislative change

3 knowing that you feel like it violates to some extent

4 the intent of Clean Elections, when it is proposed at

5 the legislature?

6 MR. EHST: Commissioner Daniels, no. No, we

7 support the legislature giving adequate funds to its

8 members to communicate with their constituents, assuming

9 that those funds are restricted to things that are --

10 that are actual -- those -- those needs and not -- could

11 not be used for electioneering or some other purpose

12 that actually increases the advantage that incumbent

13 officeholders already have in elections.

14 So, we would -- we would encourage the adoption

15 of restrictions similar to what's in the current rule,

16 that restricts how the money can be used, restricts that

17 it can't be used after April 30th of an election year,

18 or some such reasonable restrictions like that. So that

19 -- so that there's no way that those funds could be

20 reasonably interpreted as being used to influence an

21 election. But we definitely agree that officeholders

22 have needs to communicate with their constituents to do

23 their jobs properly and that the -- the legislature is

24 the proper place to address those needs.

25 COMMISSIONER DANIELS: Thank you.

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1 communications ability of an officeholder should not be

2 contingent upon their fundraising ability. That every

3 officeholder should have an equal opportunity to

4 communicate with their constituents, which would mean

5 that they would get either an equal amount of money

6 based on the office that they hold, or some amount of

7 money based on if it's a rural district that requires

8 more -- more communications or something like that.

9 Some -- some method of doing that.

10 So, we fully support the -- the Executive

11 Director's recommendation that this be -- this rule be

12 eliminated with a sunset that allows the legislature to

13 act to -- to make a legislative fix to this problem and

14 gives the officeholders who have money in their accounts

15 the time to expend that money and zero out their

16 accounts and know that this change is coming at some

17 specified date in the future.

18 COMMISSIONER SCARAMAZZO: Lori.

19 COMMISSIONER DANIELS: Mr. Chairman, Mr. Ehst,

20 knowing where you're coming from, and I -- I feel a lot

21 the same way, we've talked about this, that I believe

22 that the legislature -- whether you're a rural

23 legislator or an in-county one, that you should have a

24 fund from the House or the Senate that allows you to do

25 constituent services, allows you to travel within your

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1 COMMISSIONER SCARAMAZZO: Thank you.

2 Yes, sir.

3 MR. BARTON: My name is Jim Barton, from

4 Perkins Coie Brown & Bain. I'm here on behalf of the

5 Democratic party.

6 We oppose repealing this rule because we -- we

7 think that it will put Clean Elections candidates at a

8 disadvantage in the ability to raise money to

9 communicate to their constituents. I will have to

10 respectfully disagree with Mr. Ehst that this violates

11 the -- the spirit of Clean Elections. I think the

12 spirit of Clean Elections is to sort of open the doors

13 to let more people run for office. I don't think

14 allowing people to communicate with their constituents

15 after they get into office is -- violates the spirit of

16 Clean Elections.

17 It's true you have to be careful with these

18 accounts to make sure they follow the rules. And I

19 think the April 30th deadline is a good deadline --

20 that's something we should -- that we should leave in

21 place. But I think we're sort of throwing the baby out

22 with the bath water by saying that maybe sometimes these

23 accounts can be abused by leaving Clean Elections

24 candidates, candidates that run clean, in sort of an

25 awkward position in trying to figure out how to

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1 communicate with their constituents.
 2 One thing I've heard is that, well the
 3 legislature ought to change this. I think Commissioner
 4 Parker made that point or Daniels made that point. That
 5 -- I hope they do change it, that would be great if they
 6 took care of it. But it seems to me that if we think
 7 that legislative change is on its way, it's more prudent
 8 to see if that legislative change happens, rather than
 9 get rid of this rule and sort of put the Clean Elections
 10 candidates in this awkward position and then in the
 11 hopes that the legislature will come in and fix it.
 12 It seems to me it would be better to -- to hold
 13 off on repealing the rule and then see if the
 14 legislature comes and fixes it. So we don't end up in a
 15 situation where Clean Elections candidates, candidates
 16 who chose to run clean, are at a significant
 17 disadvantage to communicate with their constituents.
 18 CHAIRPERSON SCARAMAZZO: Lori.
 19 COMMISSIONER DANIELS: Mr. Chairman, I don't
 20 know if I have a question for you but maybe for our
 21 legal counsel: We are in violation of the statute with
 22 this rule, correct? That's what we -- came to the
 23 conclusion?

24 MS. SHIPMAN: Not -- not the fact there are
 25 officeholder accounts, the fact that they are deemed not

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1 to be contributions.
 2 COMMISSIONER DANIELS: Okay.
 3 MS. SHIPMAN: That -- that one portion.
 4 COMMISSIONER DANIELS: Yeah. And, Mr.
 5 Chairman, that's why -- it has nothing to do -- I want
 6 legislators, both parties, rural, all of them, to be
 7 able to communicate, to be able to do this. But when we
 8 have a rule on the books that's in violation of current
 9 statute the way it's administered, where we're not
 10 adhering to it, I have a real issue with that. I think
 11 my number one job as a Commissioner is make sure that
 12 we're adhering to the law that is written.
 13 And the legislators have -- it's very easy for
 14 them to change the law. I understand in the past that
 15 there's been a lot of hesitation about changing a lot of
 16 Clean Elections laws because they don't particularly
 17 like it. However, this is one that benefits probably 85
 18 percent of the legislators down there. I could be wrong
 19 on my percentage on who's participating, but --
 20 MR. LANG: It benefits non participating
 21 candidates.
 22 COMMISSIONER DANIELS: Yeah, non participating.
 23 So, I'm just saying, to this point I just think
 24 we need to change it because I just think we need to
 25 adhere to the law.

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1 MS. SHIPMAN: And Commissioner Daniels, I just
 2 want to point out, that we're not talking about the
 3 Clean Elections Act at this -- we're talking about the
 4 Title 16. The actual -- this is in the definitions of
 5 all the election statutes. So it's not -- it doesn't go
 6 through the specific taxpayer protection -- the
 7 different requirements of the Clean Elections -- this
 8 isn't a Clean Elections issue, this is an elections
 9 issue.
 10 COMMISSIONER DANIELS: Thank you.
 11 COMMISSIONER SCARAMAZZO: Certainly. Thank
 12 you --
 13 MR. BARTON: Thank you.
 14 COMMISSIONER SCARAMAZZO: -- Mr. Barton.
 15 Commissioners wish to have an executive session
 16 on the legal aspects of some of these questions --
 17 COMMISSIONER PARKER: I do.
 18 COMMISSIONER SCARAMAZZO: -- where you feel
 19 comfortable?
 20 COMMISSIONER PARKER: I make a motion we go
 21 into executive session.
 22 COMMISSIONER SCARAMAZZO: Okay. Is there a
 23 second to that motion?
 24 COMMISSIONER DANIELS: I'll second it.
 25 COMMISSIONER SCARAMAZZO: Okay. It's been

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1 moved by Commissioner Parker, seconded by Commissioner
 2 Daniels, to adjourn into executive session.
 3 All those in favor say "aye."
 4 (Chorus of ayes.)
 5 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 6 carries.
 7 I might just mention that Commissioner Fairman
 8 has called; he will not be able to make it. He got tied
 9 up.
 10 Thank you, folks.
 11 (Whereupon the public retires from the meeting
 12 room.)
 13 (Whereupon the Commission is in executive
 14 session from 9:57 a.m. until 10:19 a.m.)
 15 (Whereupon all members of the public are
 16 present and the Commission resumes in general session.)
 17 COMMISSIONER SCARAMAZZO: We'll reconvene back
 18 into regular session at 10:19.
 19 Thanks to everyone for your indulgence with us
 20 there.
 21 Okay. We're back into the regular session,
 22 back dealing with the issue of Item No. IV on the

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1 agenda, possible repeal of Commission Rule R2-20-104(F).
 2 Commissioners?
 3 COMMISSIONER LINDHOLM: I have some further
 4 discussion on the motion.
 5 COMMISSIONER SCARAMAZZO: Sure, Don.
 6 COMMISSIONER LINDHOLM: I think that because of
 7 what would be reasonable expectations by contributors to
 8 these office accounts, that those funds would remain
 9 available for the payment of those expenses until April
 10 30, 2010, I think that we should consider a revision to
 11 the pending motion.
 12 I would vote for a motion that terminates the
 13 rule with a sunset provision of April 30, 2010.
 14 COMMISSIONER DANIELS: Mr. Chairman, just as a
 15 way of discussion, I think legal counsel made it real
 16 clear that we're in violation and the best thing would
 17 be to repeal it immediately, but that's from a legal
 18 standpoint and none of us want to hurt the current
 19 officeholders who have constituent service
 20 communications that they need to work with.
 21 I have no problem with April 30th of '10. I
 22 just -- I just know we're in violation of the law. And
 23 if we were to do what I consider to be the right thing,
 24 we would repeal it immediately, but that's not the fair
 25 thing. So I understand the balance between those two.

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1 articulating the concerns. We certainly don't like to
 2 operate in a fashion that may be construed from some
 3 perspectives as being contrary to some existing law.
 4 On the other hand, it appears to me that there
 5 are reasonable expectations of the electorate to
 6 consider here. It seems to me that there is an
 7 opportunity here to insert equity into this technical
 8 confrontation, and so I would vote for the motion.
 9 COMMISSIONER SCARAMAZZO: Further discussion on
 10 the item?
 11 All those in favor say "aye."
 12 (Chorus of ayes.)
 13 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 14 carries.
 15 Thanks everyone for input today on this. We do
 16 appreciate it. Thank you. Thank you.
 17 You don't want to stick around for the audit
 18 selection here and see who the lucky candidates are?
 19 Thanks.
 20 Item No. V is a random audit selection of
 21 statewide offices and legislative districts for the 2008
 22 general election cycle. And we apologize this.
 23 MR. LANG: You apologize in advance?
 24 COMMISSIONER SCARAMAZZO: Yes.
 25 COMMISSIONER DANIELS: To put people through

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1 So if Commissioner Lindholm wants to change the
 2 motion to April -- to make an amendment to the motion,
 3 I'd support that.
 4 COMMISSIONER SCARAMAZZO: Don, is that a
 5 motion?
 6 COMMISSIONER LINDHOLM: Yes.
 7 COMMISSIONER SCARAMAZZO: Okay. All right.
 8 COMMISSIONER DANIELS: Second.
 9 COMMISSIONER SCARAMAZZO: And second?
 10 Okay. It's been moved by Commissioner
 11 Lindholm, seconded by Commissioner Daniels, to amend the
 12 motion on the floor to substitute December 31st, 2009,
 13 with an ending date of April 30th of 2010. Okay?
 14 COMMISSIONER LINDHOLM: Yes.
 15 Any discussion on the amendment?
 16 All those in favor of the amendment signify by
 17 saying "aye."
 18 (Chorus of ayes.)
 19 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 20 carries.
 21 Okay. We're back to the original motion then
 22 on the floor.
 23 Any further discussion on this item?
 24 COMMISSIONER LINDHOLM: I think, you know -- I
 25 think that Commissioner Daniels has done a good job of

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1 that, huh?
 2 COMMISSIONER LINDHOLM: This is not a lottery
 3 -- this is not a lottery you want to win.
 4 MR. LANG: Put it back in. Let's let Gary draw
 5 it.
 6 COMMISSIONER SCARAMAZZO: I really don't.
 7 COMMISSIONER DANIELS: Then you're responsible.
 8 COMMISSIONER SCARAMAZZO: Yeah, I know. Here
 9 come the phone calls.
 10 COMMISSIONER LINDHOLM: This is not a lottery
 11 you want to win.
 12 COMMISSIONER SCARAMAZZO: No. Exactly.
 13 You want to open that one?
 14 How many of these are we doing?
 15 MS. AZCONA: Three.
 16 COMMISSIONER PARKER: House 9.
 17 COMMISSIONER SCARAMAZZO: House 9. All right,
 18 sorry House 9.
 19 COMMISSIONER PARKER: House 4.
 20 COMMISSIONER DANIELS: How many do we have to
 21 do?
 22 MR. LANG: Just three.
 23 COMMISSIONER PARKER: House 13.
 24 COMMISSIONER DANIELS: A lot of House right
 25 now.

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1 COMMISSIONER SCARAMAZZO: Okay. All right.
 2 That takes care of Item No. V.
 3 Brings us to Item No. VI, which is a call for
 4 public comment. Anyone from the audience have any
 5 items? Further items?
 6 Okay. That will leave us with adjournment
 7 then.
 8 COMMISSIONER DANIELS: So moved.
 9 COMMISSIONER PARKER: So moved. Second.
 10 COMMISSIONER SCARAMAZZO: Moved twice.
 11 Moved and seconded. All those in favor say
 12 "aye."
 13 (Chorus of ayes.)
 14 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 15 carries. Thanks everyone.
 16
 17 (Whereupon the proceeding concludes at 10:23
 18 a.m.)
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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 30, 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 17th day of November,
 2008.

 Angela Furniss Miller, RPR
 Certified Reporter (AZ50127)

01:02:20
 01:02:20

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