

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

July 30, 2009

9:32 a.m.

Reported By:

Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

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2

1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 9:32 a.m. on July 30,
 3 2009, 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 (Telephonic)
 8 Ms. Lori Daniels
 9 Mr. Louis Hoffman

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 Tanja Shipman, Attorney General's Office
 18 Jim Barton, Perkins, Coie, Brown & Bain
 19 Nancy Read, Office of the Secretary of State
 20 Mike Valder, AZ Advocacy Network
 21 Andy Garcia, Perkins, Coie, Brown & Bain

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3

P R O C E E D I N G

1 CHAIRPERSON SCARAMAZZO: Good morning. I'd
 2 like to call to order this meeting of the citizens Clean
 3 Elections Commission.
 4 It's Thursday, July 30th, 2009. We're at
 5 9:32 a.m.
 6 Welcome to everybody. I missed everybody. It
 7 seems like it's been a couple of months since we've been
 8 here. So, hopefully everyone is having a good summer,
 9 and we'll get started with the agenda then.
 10 And we have the call to order taken care of.
 11 So, we'll seek approval of the May 15th, 2009,
 12 Commission meeting minutes.
 13 COMMISSIONER DANIELS: I move the approval of
 14 the May 15th, 2009, Commission minutes.
 15 COMMISSIONER HOFFMAN: Second.
 16 CHAIRPERSON SCARAMAZZO: It's been moved by
 17 Commissioner Daniels, seconded by Commissioner Hoffman,
 18 to approve the May 15, 2009, Commission meeting minutes.
 19 Any discussion on this item?
 20 She's going to call in here, okay?
 21 Hearing none, all those in favor say "aye."
 22 (Chorus of ayes.)
 23 CHAIRPERSON SCARAMAZZO: Opposed? Motion

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4

1 carries.
 2 Move on to Item No. III, the Executive Director
 3 report. Todd?
 4 MR. LANG: Thank you, Mr. Chair. Good morning,
 5 Commissioners.
 6 The administrative hearing in the Quelland
 7 enforcement matter is set for next week, August 6th, all
 8 day and then the morning of August 7th. And we'll be
 9 meeting with our lawyers, Daniel and I, to prepare for
 10 that this week.
 11 There is lots of interest, lots of questions
 12 from interested parties and from the press, on the Clean
 13 Elections 2010 bill. As you know, that legislation made
 14 it through the House 58, one to one, and had a majority
 15 of votes in the Senate, but just fell short after a
 16 procedural snafu. And lots of folks were interested in
 17 that bill coming around because they want certainty for
 18 the 2010 elections because of the un- -- uncertainty
 19 about matching funds.
 20 And so, I don't think it will be brought up
 21 this session which ends tomorrow; as you know, they're
 22 still working on the budget. But, I'm fairly certain
 23 that the Governor will be calling another special
 24 session, of course, to complete the budget and continue
 25 to work on the budget in a few weeks, and we hope to

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5

1 have that as part of her call in that session. So this
 2 bill may come back for consideration. We're still
 3 working on some of the Senate members, and we'll keep
 4 you posted.
 5 The latest news on the budget is -- was good.
 6 It sounds like they had reached an agreement, but I
 7 guess this morning it sounds like there's still some
 8 disagreements, that's why they're going to continue on.
 9 One concern is there is a referral to the ballot as part
 10 of that agreement, which would allow the legislature to
 11 raid the Prop 105 protected funds, which, of course,
 12 includes Clean Elections. One sitting Senator made it
 13 clear that he intended to raid Clean Elections; so,
 14 that's a concern.
 15 The Auditor General completed their review of
 16 our -- our records, documents, and files. Staff worked
 17 closely with them, and they'll be preparing the report
 18 and let us know how we did. And, of course, we think
 19 we've done a great job, but the Auditor General will let
 20 us know exactly how we're doing and what we can improve
 21 upon, and we'll keep you posted on that as well, of
 22 course.
 23 Our software consultants are working with staff
 24 to make a number of improvements to the software for the
 25 next election cycle. And it should make -- we're hoping

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6

1 -- we're working with the Secretary of State on this, of
 2 course, and we're -- we're hoping that it will make it
 3 much more flexible, much more usable, and user-friendly,
 4 and I think -- I think you'll really like it. That's
 5 your preview. That's all I'll tell you about that for
 6 now until we have more information.
 7 Unless you have questions, that concludes my
 8 report.
 9 COMMISSIONER HOFFMAN: Who is the hearing
 10 officer in the Quelland matter?
 11 And you say in the report that Jose Rivera
 12 would represent the Commission, is that as an attorney
 13 or is that as a --
 14 MR. LANG: I -- the -- I can get you the name
 15 of the Commissioner. I'm not -- I've not appeared
 16 before him myself -- I mean, the administrative law
 17 judge.
 18 As for Jose Rivera, he's our attorney. He's
 19 the attorney for the Commission.
 20 (Whereupon Commissioner Parker joins the
 21 meeting via teleconference.)
 22
 23 COMMISSIONER HOFFMAN: Okay. So he's the --
 24 the ALJ is -- is a -- somebody who works for the State
 25 on different Commission matters -- or different agency
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8

1 COMMISSIONER HOFFMAN: Thank you.
 2 COMMISSIONER PARKER: Yes, I am. I didn't want
 3 to interrupt the discourse.
 4 CHAIRPERSON SCARAMAZZO: Okay. Thanks for
 5 coming on today.
 6 COMMISSIONER PARKER: I apologize for being
 7 late. We just finished my daughter's doctor
 8 appointment.
 9 CHAIRPERSON SCARAMAZZO: No problem.
 10 COMMISSIONER PARKER: Yeah.
 11 CHAIRPERSON SCARAMAZZO: We're just moving on
 12 to Item No. IV, unless anybody has any questions for
 13 Todd. Any other questions?
 14 COMMISSIONER PARKER: I did not hear the
 15 report, but I don't want him to repeat it, so I'll talk
 16 to him later about it.
 17 CHAIRPERSON SCARAMAZZO: Okay. We'll move on
 18 then to Item No. IV. You've touched on it already,
 19 Todd, but anything else you want to put into the
 20 legislative update?
 21 MR. LANG: Mr. Chair, thank you. I got excited
 22 during my ED report and started talking about the
 23 legislation. So, really that covered it. I just wanted
 24 to get you up to date on where we were with the Clean
 25 Elections legislation and the 105 referral.
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7

1 matters, all over the Governor?
 2 MR. LANG: That's right. That's right.
 3 COMMISSIONER HOFFMAN: Okay. When is the time
 4 table on that -- and I understand the hearing is August
 5 6th and 7th, what is the next steps in the sequence?
 6 MR. LANG: He'll -- he has 30 days to issue a
 7 decision. Is it 30 days or two weeks?
 8 MS. MCGEE: Two weeks.
 9 MR. LANG: Two weeks. He has two weeks to
 10 issue a decision, which is obviously a pretty short
 11 timeline. And then it will come back to the Commission.
 12 If we get it before the -- the August Commission date,
 13 it will be on your agenda for you to approve it, your
 14 review. In which you can either agree and approve with
 15 what the ALJ decided, reject what he decided, or modify
 16 what he decided.
 17 Once that's done, then notice will be given to
 18 Representative Quelland, and if he's not happy with
 19 whatever decision we reach, he has the right to appeal
 20 to Superior Court and then it will be heard in Superior
 21 Court.
 22 COMMISSIONER DANIELS: And that could be months
 23 away?
 24 MR. LANG: That could be months.
 25 CHAIRPERSON SCARAMAZZO: Royann, are you there?
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9

1 CHAIRPERSON SCARAMAZZO: Okay. Good deal.
 2 MR. LANG: Commissioner Parker, just briefly,
 3 we don't think that the 2000- -- the Clean Elections
 4 2010 repair, fix bill will be heard this session, which
 5 ends tomorrow, but we're hopeful that it will be part of
 6 the Governor's call for the next session which will
 7 probably begins in a few weeks.
 8 COMMISSIONER PARKER: Okay.
 9 MR. LANG: That's the rumors we're hearing, but
 10 you know, none of that is confirmed and, she could
 11 easily not do that. But that's -- that's what we're
 12 hearing.
 13 COMMISSIONER PARKER: Okay. Thank you.
 14 CHAIRPERSON SCARAMAZZO: Anything else under
 15 legislative updates?
 16 Okay. Let's move on then, Item No. V,
 17 discussion and possible action on proposed Commission
 18 meeting dates for August through December of 2009.
 19 I guess what staff is looking for are any, you
 20 know, problem areas that might exist in -- in everyone's
 21 calendar or schedule that might be a conflict.
 22 COMMISSIONER DANIELS: That's fine with me.
 23 COMMISSIONER PARKER: The only conflict I can
 24 think of for me would be in October, that last week.
 25 MR. LANG: The 29th is bad for you?
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10

1 COMMISSIONER PARKER: Yes.

2 MR. LANG: The -- the proposal is the 22nd, so

3 we should -- that's okay? That's not -- the 22nd is not

4 the last week.

5 COMMISSIONER PARKER: Oh, okay. That would be

6 fine.

7 CHAIRPERSON SCARAMAZZO: Okay. I guess we

8 could go ahead, then, and approve these meeting dates as

9 outlined, and we always can be flexible if something

10 does come up.

11 COMMISSIONER DANIELS: Do you need a motion to

12 do that?

13 CHAIRPERSON SCARAMAZZO: Let's do that.

14 COMMISSIONER DANIELS: Mr. Chairman, I move

15 that we approve the Commission meeting dates of:

16 August 27th, September 17th, October 22nd,

17 November 19th, and December 17th, 2009.

18 COMMISSIONER PARKER: I'll second.

19 CHAIRPERSON SCARAMAZZO: It's been moved by

20 Commissioner Daniels, seconded by Commissioner Parker,

21 to approve the proposed Commission meeting dates as

22 outlined. Any discussion?

23 All those in favor say "aye."

24 (Chorus of ayes.)

25 CHAIRPERSON SCARAMAZZO: Opposed? Motion
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12

1 coordinated campaign piece with that person. But, once

2 you've done a coordinated campaign piece with that

3 person -- in other words, worked together -- in a sense

4 you're -- so that you're not competing with each other,

5 you can no longer -- you are no longer entitled to

6 matching funds from that person.

7 This strikes people as -- the comment -- the

8 folks who've -- who have expressed concern about that,

9 are concerned about the appearance of fairness and that

10 sort of thing.

11 Now, we know that folks game the system and

12 have gamed the system and have done this before, and

13 will find new ways to game the system. And we're

14 talking about traditional funding, I mean, traditional

15 campaign laws as well as Clean Elections laws. But this

16 -- this addresses the concern that was raised by a

17 number of folks, including a few Commissioners.

18 So, if you have questions, I'll be happy to

19 answer them.

20 CHAIRPERSON SCARAMAZZO: Lori.

21 COMMISSIONER DANIELS: Mr. Chairman, Todd, do

22 we have any idea about how much money that would have

23 saved us this last campaign cycle if this had been in

24 force at that time?

25 MR. LANG: Commissioner, I didn't look at that.
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11

1 carries. Thank you.

2 Move on to Item No. VI, consideration and

3 possible action on the following proposed rule and rule

4 change, and we have three items. The first,

5 R2-20-113(A)(1) and (B), calculation of equalizing

6 funds. Todd?

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

8 Commissioners, actually item -- Agenda Item (A) and (B)

9 are related, so I'd ask you to refer to (B), as it is

10 just a continuation of the change that we're doing in

11 (A).

12 CHAIRPERSON SCARAMAZZO: Okay.

13 MR. LANG: What we've done here is addressed,

14 frankly, the -- the Solar Team challenge. And what this

15 basically provides, these rule changes you see at

16 (A)(1), (B), and then can skip a page and at (F),

17 basically provide that matching funds are always awarded

18 -- I mean, are awarded as usual. But if there's been a

19 coordinated or joint expenditure between two candidates,

20 no matching funds will be awarded to that candidate.

21 In other words, if you're running with someone

22 in the Democratic primary, and one is traditional and

23 one is -- one is participating, and the traditional

24 candidate spends more than the limit and triggers

25 matching funds, that's fine, and you can then later do a
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13

1 COMMISSIONER DANIELS: I'm just curious.

2 MR. LANG: It was -- I mean, we can find that

3 out pretty quickly for you, but it was a significant

4 amount of money.

5 COMMISSIONER DANIELS: That's what I thought.

6 Thanks.

7 CHAIRPERSON SCARAMAZZO: Okay.

8 MR. LANG: The other thing I'd mention that, of

9 course, if the litigation goes poorly and there are no

10 matching funds, this would be a moot point. And if the

11 legislation goes well and it's passed for 2010 -- and

12 remember, the legislation is only for 2010 -- it would

13 also be a moot point, because it would get rid of

14 matching funds for the 2010 cycle.

15 But it seems appropriate and prudent to put

16 this in place so that if matching funds are here and you

17 like this policy, then it will be in place for 2010.

18 CHAIRPERSON SCARAMAZZO: Okay.

19 COMMISSIONER DANIELS: Mr. Chairman, do you

20 want separate motions on each one of the rule --

21 proposed rule changes?

22 CHAIRPERSON SCARAMAZZO: Yeah. Let's do them

23 separately since they're listed separately, okay?

24 COMMISSIONER DANIELS: Mr. Chairman, I would

25 move for approval of R2-20-113(A)(1), (B), calculation
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14

1 of equalizing funds.

2 COMMISSIONER HOFFMAN: Second.

3 COMMISSIONER DANIELS: And (F), I'm sorry.

4 COMMISSIONER HOFFMAN: Second.

5 CHAIRPERSON SCARAMAZZO: Okay. It's been moved

6 by Commissioner Daniels, seconded by Commissioner

7 Hoffman, to approve R2-20-113(A)(1), (B), and (F),

8 calculation of equalizing funds.

9 MS. SHIPMAN: I'm sorry to interrupt,

10 Commissioner, but the (F) is not on the agenda.

11 CHAIRPERSON SCARAMAZZO: Oh, that's true.

12 MS. SHIPMAN: So modify the motion.

13 CHAIRPERSON SCARAMAZZO: Strike (F).

14 COMMISSIONER DANIELS: Yeah. Mr. Chairman,

15 I'll make my motion as original.

16 CHAIRPERSON SCARAMAZZO: Okay. It's okay with

17 the second, right?

18 COMMISSIONER DANIELS: It's not on the agenda.

19 CHAIRPERSON SCARAMAZZO: (F) is not listed.

20 COMMISSIONER DANIELS: So it's (A)(1), (B).

21 MR. LANG: We'll do that at the next meeting.

22 I apologize, Commissioners.

23 CHAIRPERSON SCARAMAZZO: I'm sure we'll see

24 that at the next meeting.

25 Okay. With that in mind, any discussion on
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16

1 CHAIRPERSON SCARAMAZZO: Sure.

2 COMMISSIONER DANIELS: Mr. Chairman, I move the

3 adoption of R2-20-702, use of campaign funds, be

4 adopted.

5 COMMISSIONER HOFFMAN: (C)(7).

6 MS. SHIPMAN: (C)(7).

7 COMMISSIONER DANIELS: I'm sorry, (C)(7).

8 COMMISSIONER PARKER: I'll second.

9 CHAIRPERSON SCARAMAZZO: Okay. It's been moved

10 by Commissioner Daniels, seconded by Commissioner

11 Parker, to approve R2-20-702(7), use of campaign funds.

12 Discussion on this item?

13 All those in favor say "aye."

14 (Chorus of ayes.)

15 CHAIRPERSON SCARAMAZZO: Opposed? Motion

16 carries.

17 Brings us to (C), R2-20-112, political party

18 exception. Todd?

19 MR. LANG: Commissioners, this has been a -- a

20 challenging rule for us throughout our -- our history

21 here at Clean Elections. The exceptions for political

22 parties. As you know, parties are involved heavily in

23 elections, and we -- we think that's a good thing. We

24 love all that political speech out there in the

25 marketplace of ideas, and we certainly want to encourage
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1 that item?

2 COMMISSIONER HOFFMAN: Yeah. I'd -- I'd like

3 to say that I think it's just unfair for coordinates to

4 -- to -- for participating candidates to coordinate with

5 nonparticipating candidates in an effort to get a leg up

6 on, you know, on competition. And I think that we have

7 the power to do something about it and watch it.

8 CHAIRPERSON SCARAMAZZO: Okay. Anything else?

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

10 (Chorus of ayes.)

11 CHAIRPERSON SCARAMAZZO: Okay. Motion carries.

12 That will bring us to (B) then, R2-20-702(7),

13 use of campaign funds.

14 MR. LANG: Mr. Chair, this is the -- sort of

15 the bookend to this proposal, basically provides that

16 participating candidates cannot use money in a joint

17 expenditure with someone who has triggered matching

18 funds to them. It just makes it clear on both ends: We

19 won't give the money and you can't use the money.

20 CHAIRPERSON SCARAMAZZO: Okay.

21 COMMISSIONER HOFFMAN: This also would apply to

22 the initial allocation when it's not matching?

23 MR. LANG: That's right.

24 CHAIRPERSON SCARAMAZZO: Okay.

25 COMMISSIONER DANIELS: Motion?
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17

1 it.

2 At the same time, if a -- if a participating

3 candidate is hit by a piece from the opposing party, the

4 general theme of Clean Elections is we give them an

5 opportunity to respond to those sorts of independent

6 expenditures, whether they're by a party or by anyone

7 else, because the voters deserve to hear both sides of

8 the story. The voters deserve to have the record

9 corrected when there's an inaccuracy, that sort of

10 thing.

11 So matching funds have always been viewed as a

12 great opportunity to improve the political discourse and

13 to reduce the appearance of corruption that's caused by

14 these attack ads. There's an exception, though, in the

15 law for political parties when they're communicating

16 with their members about the ballot. And there's been

17 some disagreement and some discussion about how broad

18 that exception is.

19 Our statutes aren't clear, and so what this

20 rule is intended to do is improve 112, and what you have

21 in your handout is the old version 112, just for your

22 reference, and then the new version is in your -- is in

23 your binder with the Agenda Item VI (C) at the bottom.

24 And, basically, I've -- I've sent out these --

25 the proposed changes to both the Republican and
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1 Democratic party and got back comments. And what you
2 see here is the result of a lot of input, particularly
3 from Jim Barton, the Democratic party who is here today,
4 and other folks. And what it does is, is it -- the old
5 rule sort of tracked the statutes and was confusing and
6 -- and a bit difficult to understand because it was
7 based on coordina- -- whether there was coordination or
8 not, which is a tough starting point for analysis and
9 hard for people to understand, even though it tracked
10 the statute.

11 And the new rule just lays things out and makes
12 it clear. And what it -- what it does is it allows that
13 exception to continue, primarily for slate cards and
14 sample ballots. And then the -- the tricky one for you
15 to look at with care is number three under (A), in that
16 first page, "other written materials." And what we've
17 attempted to do here is to allow that to be as broad as
18 the statute intended, but at the same time, making it
19 clear that it's about your party, and not about attacks
20 on the other party.

21 It's, you know, it's designed -- the exception
22 is designed --the original -- the federal rules are
23 really tight and only allow printed listing of names and
24 party affiliations. Our rule would allow it to be
25 broader and would allow thematic statements and that

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1 sort of thing, the usual campaign pieces. It just
2 doesn't allow attacks. And so we think this is a nice
3 compromise that would allow parties to engage in
4 independent expenditures without triggering matching
5 funds, so long as they do it within the parameters of
6 what we think the original intent of the statutes were.

7 We also added a definition of billboards, just
8 for this rule, simply because we found no definition in
9 the law and -- and there was some concern raised by a
10 number of officeholders and candidates about large signs
11 fitting the exception. And what this makes it clear is
12 that billboards do not fit the exception. However, the
13 definition of billboards is fairly -- fairly broad here.
14 So it gives them some latitude, but it also limits them
15 to 32 -- 32 square feet, which is four-by-eight.

16 COMMISSIONER DANIELS: Or eight-by-four.

17 COMMISSIONER HOFFMAN: I'm sorry. Can you --
18 can you repeat the beginning part of that part of the
19 billboards thing? This was meant to distinguish
20 billboards from --

21 MR. LANG: It's meant to -- yard signs are
22 permitted under the rule. And what some folks claimed
23 was happening was that the yard signs were approaching
24 the size of billboards, there were these enormous signs.
25 And so what we said is yard signs are fine, as they've

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1 always been, but once they get larger than 32 square
2 feet, four-by-eight, which is a big sign, which is much
3 bigger than your average yard sign --

4 COMMISSIONER HOFFMAN: So that's about
5 two-thirds of this table.

6 MR. LANG: Yeah, it's a large sign.
7 -- then it's no longer permitted.

8 COMMISSIONER DANIELS: Mr. Chairman --

9 MR. LANG: You can make it smaller, but --

10 COMMISSIONER DANIELS: I know, I get
11 four-by-eight, so I know what size those are. Having
12 said that, I know that one candidate in particular took
13 four four-by-eights and put them together and made a big
14 sign. But that violated city code so that they had to
15 take it down. So, I -- I think this is probably
16 accurate. And -- and anybody who puts those signs up
17 you don't want more than a four-by-eight.

18 MR. LANG: Let me just say for the record,
19 Commissioner, that if someone did that, we would
20 recommend that it match -- be matched and that it not
21 fit the exception. In other words, if you put two signs
22 together, we will treat it as one sign.

23 COMMISSIONER DANIELS: So, your first name is
24 on one and second name is on -- yeah.

25 MR. LANG: Right.

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1 COMMISSIONER DANIELS: Okay. Mr. Chairman, I
2 have a question on --

3 CHAIRPERSON SCARAMAZZO: Certainly.

4 COMMISSIONER DANIELS: I -- -- three, and I --
5 my memory is not what it used to be. Having said that,
6 we had that one campaign piece that we looked at where
7 two of the candidates that were Republicans that were
8 pushed with, like, Bush and how -- how do we -- do you
9 remember, Todd, how we ruled on that particular piece?
10 And would this -- our ruling have been different if this
11 rule would have been in place, is what I'm asking. And
12 I -- I probably have to go back and look at campaign
13 material to show you exactly what I -- which one I'm
14 talking about.

15 MR. LANG: Yeah. My recollection is we treated
16 that --

17 MS. SHIPMAN: It's the one that -- the
18 depression.

19 MR. LANG: Yeah. We treated that -- remember,
20 we went over -- we went through the tone and the, you
21 know, the whole -- and we felt that it was not within
22 the party exception.

23 And that's one of the discussions that actually
24 prompted this rule. Because the folks behind that ad
25 were obviously concerned, because they did -- they

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1 intended it to comply with the exception. So, we hope
2 that this makes that much more clear. Under this rule,
3 it would have been clear that that -- that would be
4 matched. We think under the old rule it was clear, but
5 there was honest disagreement about that. And -- and,
6 frankly, this -- the old rule was subject to different
7 interpretations. And, so, we think the new rule
8 clarifies that and will satisfy everyone, I think.

9 COMMISSIONER HOFFMAN: I have a number of
10 questions, if you're --

11 COMMISSIONER DANIELS: I'm finished. Go ahead.

12 COMMISSIONER HOFFMAN: Okay. First of all,
13 this is simply Rule 112(A). Does that imply that (B),
14 and (C), and (D) from the previous version continue, or
15 does this replace everything?

16 MR. LANG: This is the new -- the new (A).

17 Actually, that's a good point. It's actually
18 intended to replace (A) and (B).

19 MS. SHIPMAN: Keep seeing those.

20 MR. LANG: Yeah.

21 COMMISSIONER HOFFMAN: Okay. Hang on just a
22 second. Just want to read that.

23 Okay. So, it -- it is consistent with the --
24 the existing (C) and (D), are consistent, as far as you
25 have been able to determine, with the new (A)? Or does

1 that require some further checking?

2 MR. LANG: Well, it does not -- it does not
3 include the specific provisions at B(1), (2), and (3);
4 but the theory is, because of the clarity of the new
5 rule, those -- those provisions aren't -- aren't
6 necessary, but they could stay in.

7 COMMISSIONER HOFFMAN: No, I'm talking about
8 (C) and (D).

9 MR. LANG: What about (C) and (D)?

10 COMMISSIONER HOFFMAN: Have you had an
11 opportunity to determine whether the old (C) and (D) --

12 MR. LANG: Oh, they're consistent, yes.

13 COMMISSIONER HOFFMAN: -- that you intended to
14 be retained were consistent with the new (A).

15 MR. LANG: Yes, they are.

16 COMMISSIONER HOFFMAN: Okay. Is -- okay. My
17 next question is: In part number three, it says towards
18 the end that the other written materials would not --
19 "... does not feature or otherwise depict opposing
20 candidates..."

21 I wanted to know what "feature or otherwise
22 depict" means. Is any mention allowed at all?

23 MR. LANG: In my view, no. The feature is
24 obviously the name: Lori Daniels. Otherwise, "depict"
25 could be a picture, a silhouette, something that clearly

1 refers to someone. Because --

2 COMMISSIONER HOFFMAN: I wondered about --

3 MR. LANG: -- some of the attack ads -- go
4 ahead.

5 COMMISSIONER HOFFMAN: No, go ahead.

6 MR. LANG: Some of the attack ads referred to
7 President Bush indirectly, but it was clear what was
8 being said.

9 COMMISSIONER HOFFMAN: Okay. Okay. "Feature"
10 suggests that if the person was simply mentioned but not
11 prominently that that would not be feature; and depict
12 has a visual aspect, not a textual aspect. So, I was
13 wondering, you know, if we meant mention, we ought to
14 say "mention."

15 MR. LANG: We could change "depict" to
16 "mention."

17 The intent of "depict" was to be broader than
18 just visual.

19 COMMISSIONER HOFFMAN: Okay. Is -- so, with
20 your President Bush example, is that a parallel to the
21 federal level? If somebody really did, you know,
22 identify a can- -- a candidate of the opposing party
23 that was not in-state -- like a national candidate,
24 President Obama or President Bush -- that would not be
25 an opposing candidate or candidates --

1 MR. LANG: Of.

2 COMMISSIONER HOFFMAN: -- of another party or
3 would it?

4 MR. LANG: I think it would. Because President
5 Bush, though no longer a candidate, was a candidate of
6 another party.

7 COMMISSIONER HOFFMAN: The word "opposing,"
8 however --

9 MR. LANG: It's "or," though, not "and."

10 COMMISSIONER HOFFMAN: Where?

11 MR. LANG: See, it's -- I think what it should
12 say: Or otherwise depict or mention. I think it should
13 be both, because they could claim that they weren't
14 mentioning him, even though he was depicted by some
15 cartoon or silhouette or something.

16 COMMISSIONER HOFFMAN: Okay. But, I'm going --

17 MR. LANG: And then: Opposing candidates or
18 candidates of another party. It says: "Or another
19 party," but it's "of."

20 COMMISSIONER HOFFMAN: Ah. Okay. So, I had
21 read this as opposing candidates or opposing candidates
22 -- oh, I see. Opposing candidate -- I'm sorry, I was
23 reading "candidate or candidates."

24 MR. LANG: Yeah, that was a typo. "Or" should
25 be "of" at the end.

26

1 COMMISSIONER HOFFMAN: All right. What if it
 2 mentions a single opposing candidate?
 3 MR. LANG: Well, I think somebody could get
 4 hyper technical and try to claim that that's okay, but
 5 clearly that's not the intent.
 6 COMMISSIONER HOFFMAN: Okay. All right.
 7 Then --
 8 MR. LANG: We could put in the "S" in
 9 parenthesis.
 10 COMMISSIONER HOFFMAN: Yeah. I'll -- I'll -- I
 11 will be moving to amend in a moment, but let me -- let
 12 me -- let me finish in the question form and then we
 13 can -- we can work out appropriate language, I think.
 14 So, on number four it says: "Are defined to
 15 include invitations to party-sponsored events" and so
 16 forth. Are those the only things or is it defined as --
 17 or is it -- is this a nonexclusive list?
 18 MR. LANG: It -- my view it's exclusive, but
 19 I'm certainly open to your thoughts on that.
 20 COMMISSIONER HOFFMAN: Was there thought -- let
 21 me ask it this way: Was there thought put in by your
 22 representatives of the parties, and by, you know, your
 23 sta- -- you and your staff as to whether these really
 24 were the only things that might be?
 25 MR. LANG: We did not discuss that. You're
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28

1 standard if we were to reduce that -- that square
 2 footage?
 3 MR. LANG: Right. Frankly, four-by-eight is
 4 not a billboard. I mean, it's big, and it's bigger than
 5 I think what a yard sign normally is.
 6 COMMISSIONER HOFFMAN: Sure.
 7 CHAIRPERSON SCARAMAZZO: But it corresponds to
 8 an average size of plywood.
 9 COMMISSIONER HOFFMAN: Correct.
 10 COMMISSIONER DANIELS: And driving down the
 11 road, that's where they're wanting it. It's not in
 12 front of someone's house where you can see it, but
 13 driving fast down a road.
 14 COMMISSIONER HOFFMAN: Right. If it's on a
 15 major highway then, you know --
 16 COMMISSIONER DANIELS: The intent is so they
 17 can read it.
 18 COMMISSIONER HOFFMAN: Yeah. You need to have
 19 pretty large print to see it.
 20 So, is -- is -- is there any way to
 21 specifically -- that you thought of to specifically
 22 address the issue of multiple signs in the same location
 23 or in concert, that cumulatively would -- would exceed
 24 the 32 square feet? Or is that something that we just
 25 have to deal with on an evasion kind of basis?
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27

1 raising the issue as -- as you present it for the first
 2 time.
 3 COMMISSIONER HOFFMAN: Okay.
 4 MR. LANG: The Republicans aren't here today,
 5 but a representative of the Democratic party is here
 6 today.
 7 COMMISSIONER HOFFMAN: Okay. And on number
 8 five, with regard to the 32 square feet, has there
 9 been -- was the feedback -- was there feedback from the
 10 parties or people who are involved in campaign
 11 activities frequently, that a sign that was as large as
 12 four-by-eight -- you know, a single sign that was as
 13 large at four-by-eight, was -- you know, would seem to
 14 be an acceptable yard sign or -- or that that was even
 15 excessive?
 16 MR. LANG: I thought it was. I, of course,
 17 wanted a smaller size. But the parties made it clear
 18 that four-by-eights are used routinely.
 19 COMMISSIONER HOFFMAN: Okay.
 20 MR. LANG: To say "routinely," doesn't mean to
 21 use the majority of the time, but they're around. And,
 22 in fact, Commissioner Daniels referred to the fact she's
 23 used them.
 24 COMMISSIONER HOFFMAN: Right. So, it would be
 25 considered to be a change in the generally accepted
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29

1 In other words, is there a way to put people on
 2 notice that that would be --
 3 MR. LANG: Well, there's two things we could
 4 do. One, is we could amend the rule to be that
 5 specific. I don't recommend that simply because there
 6 are always going to be games played and we can't
 7 legislate for every game. And the other way we could do
 8 it is put it in our FAQs on the Website: If billboards
 9 are defined as larger than four-by-eight, what if I put
 10 two signs right next to each other, "vote" on one,
 11 "Smith" on the other, and we would then answer.
 12 COMMISSIONER PARKER: Then we're going to
 13 become sign cops and that's not our job.
 14 MR. LANG: No, it's not. And -- but I -- I
 15 think that -- I think it's clear, you know, from the
 16 record today, and if we want to put something in our
 17 Website, we can make it clear, you can't game the system
 18 like that. And what we would say is that's not
 19 permitted, we would ma- -- that wouldn't fit the
 20 exception, and similar attempts to be creative.
 21 COMMISSIONER HOFFMAN: Okay. Thank you. I
 22 have one more question and that is on number six, it
 23 says: That the materials defined in the slate card,
 24 sample ballots, and other written materials or listings
 25 of candidates. It says: Shall not be distributed or
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30

1 displayed prior to the election -- general election
 2 period.
 3 Is that intended as an absolute ban or is that
 4 simply saying if it is, it would not be within the
 5 political party exception?
 6 MR. LANG: The latter. And perhaps we could
 7 rephrase it. It's -- it's simply meant -- it's simply
 8 designed to stop the party from taking sides on the
 9 primary.
 10 COMMISSIONER HOFFMAN: Right.
 11 MR. LANG: And it's not a ban on that. It's
 12 simply saying we would match that if you did that.
 13 COMMISSIONER HOFFMAN: Right. Mr. Chairman,
 14 would it be possible to allow for public comment on any
 15 of these, on any subject --
 16 CHAIRPERSON SCARAMAZZO: Certainly.
 17 COMMISSIONER HOFFMAN: -- before we move.
 18 CHAIRPERSON SCARAMAZZO: By all means.
 19 Everything is open for public comment.
 20 COMMISSIONER HOFFMAN: So --
 21 CHAIRPERSON SCARAMAZZO: Anyone from --
 22 Mr. Barton?
 23 COMMISSIONER DANIELS: Guess who.
 24 MR. BARTON: Good morning, Commissioners.
 25 CHAIRPERSON SCARAMAZZO: Good morning.
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32

1 then the Commission have to -- have to work it out.
 2 I also think that number six is -- is -- is
 3 clear as it is. That if you violate six, that you no
 4 longer fall within the political exception. I think
 5 that you could leave that as it is and it's -- it's --
 6 it's pretty easy to understand. That just means that
 7 the party is going to back one candidate over another,
 8 then that -- that action will be matched.
 9 And I'm available for questions.
 10 COMMISSIONER DANIELS: Mr. Chairman, does the
 11 party do that very often? I've never -- I haven't seen
 12 that in my political career.
 13 MR. BARTON: If things are going well with the
 14 party, then I would think, no, you would not pick one
 15 candidate over another, but...
 16 COMMISSIONER HOFFMAN: It's probably happened.
 17 MR. BARTON: I'm sure it has happened and who
 18 knows.
 19 MR. LANG: Back in the days of the huge
 20 Democrats, I think it happened. That's before your
 21 time.
 22 CHAIRPERSON SCARAMAZZO: Louis, you have some
 23 questions for Mr. Barton?
 24 COMMISSIONER HOFFMAN: Thank you.
 25 MR. BARTON: All right.
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31

1 MR. BARTON: Jim Barton, Perkins, Coie, Brown &
 2 Bain on behalf of the Democratic party.
 3 I guess first to the question about the other
 4 activities -- election activities related to a specific
 5 candidate, I think, you know, this is language that
 6 comes out of the statute that provides an exception,
 7 okay? So, obviously, this is sort of a limitation on
 8 what kinds of speech can be regulated. That's the way I
 9 would view an exception found in the statute.
 10 So, although I can't think of another item, and
 11 when we were working we couldn't think of another item
 12 that would go into this list, I do think it's -- it's
 13 prudent to use the language "include," which would
 14 suggest that these items are safe, but it doesn't
 15 necessarily exclude other items. I mean -- so, what I'm
 16 saying is: I wish I could come right now and think and
 17 give you the fourth item that's going to come up right
 18 away in 2010 election, but -- but I can't. But I think
 19 that the reason -- I -- I think it's right to use the
 20 language "include" here, which to me indicates that it's
 21 not an exclusive -- it's not an exhaustive list.
 22 And because this is a language that comes out
 23 of a statutory exception, I think that's -- that's the
 24 right way to do it. And then if some fourth things come
 25 up, you know, someone will have to complain about it and
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33

1 CHAIRPERSON SCARAMAZZO: All right.
 2 MR. BARTON: Thank you.
 3 CHAIRPERSON SCARAMAZZO: Okay. Thank you.
 4 Thanks, Jim.
 5 COMMISSIONER HOFFMAN: I have several
 6 amendments, Mr. Chair, if those in order for this -- for
 7 this rule.
 8 CHAIRPERSON SCARAMAZZO: Let's take them one at
 9 a time and see what you have.
 10 COMMISSIONER DANIELS: Okay. Mr. Chairman, do
 11 you want me to make a motion so that then you can amend
 12 my motion?
 13 COMMISSIONER HOFFMAN: That's sounds like a
 14 great idea.
 15 CHAIRPERSON SCARAMAZZO: That's fine. You bet.
 16 You bet.
 17 COMMISSIONER DANIELS: Mr. Chairman, I move the
 18 adoption of R2-20-112, political party exception be
 19 adopted.
 20 CHAIRPERSON SCARAMAZZO: Okay.
 21 COMMISSIONER PARKER: I'll second.
 22 CHAIRPERSON SCARAMAZZO: Okay.
 23 COMMISSIONER HOFFMAN: Mr. Chairman, in --
 24 CHAIRPERSON SCARAMAZZO: Let me get this on the
 25 floor first, okay?
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34

1 COMMISSIONER HOFFMAN: Oh. Go ahead.

2 CHAIRPERSON SCARAMAZZO: Okay. It's moved by

3 Commissioner Daniels, seconded by Commissioner Parker,

4 to approve R2-20-112, political party exceptions.

5 Discussion on this item?

6 COMMISSIONER HOFFMAN: Mr. Chairman, I have an

7 amendment.

8 CHAIRPERSON SCARAMAZZO: Okay.

9 COMMISSIONER HOFFMAN: In R2-20-12(A)(3) [sic],

10 I would like to move that we amend the final two lines

11 to read: Does not feature, comma, mention, comma, or

12 depict any candidate of another party.

13 CHAIRPERSON SCARAMAZZO: Okay. Say that one

14 more time. Does not feature --

15 COMMISSIONER HOFFMAN: Amend to move to modify

16 the last two lines of (A)(3) to read: Does not feature,

17 comma, mention, comma, or depict any candidate of

18 another party.

19 COMMISSIONER DANIELS: Mr. Chairman,

20 discussion? Can we --

21 CHAIRPERSON SCARAMAZZO: Yes, please.

22 COMMISSIONER DANIELS: All I was wondering is

23 if you wanted to -- the only thing to put in your motion

24 would maybe be "candidate" with the "S" in parenthesis,

25 so candidate or candidates. So that it could be either

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36

1 COMMISSIONER PARKER: Aye.

2 CHAIRPERSON SCARAMAZZO: Motion -- okay. We

3 got you, Royann. Thank you. Motion carries.

4 Okay. So, paragraph three stands as amended.

5 COMMISSIONER HOFFMAN: Mr. Chairman, I'd like

6 to move to amend paragraph (A)(4), to change "are

7 defined to include," to change those words to simply

8 "includes."

9 CHAIRPERSON SCARAMAZZO: Okay. So, you want to

10 lose the "are defined to," and replace with "includes"?

11 COMMISSIONER HOFFMAN: And add an "S" at the

12 end of it.

13 CHAIRPERSON SCARAMAZZO: Right. Okay.

14 COMMISSIONER DANIELS: Second.

15 CHAIRPERSON SCARAMAZZO: It's been moved by

16 Commissioner Hoffman, seconded by Commissioner Daniels,

17 to modify R2-20-112, paragraph four, to delete the words

18 "are defined to," and to change "include" to "includes."

19 Any discussion on this item?

20 All those in favor say "aye."

21 (Chorus of ayes.)

22 CHAIRPERSON SCARAMAZZO: Opposed? Motion

23 carries. Paragraph four stands as amended.

24 COMMISSIONER HOFFMAN: Mr. Chairman, I'd also

25 like to amend subparagraph six to begin: "The exception

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35

1 one or more on both of the words "candidates" there.

2 COMMISSIONER HOFFMAN: Okay. Thank you. I

3 would. Let's make that: Does not feature, comma,

4 mention, comma, or depict any candidate or candidates of

5 another party.

6 Thank you.

7 COMMISSIONER DANIELS: You need a second for

8 the amendment, don't you?

9 CHAIRPERSON SCARAMAZZO: Yes, I do.

10 COMMISSIONER DANIELS: I will second it. Thank

11 you.

12 CHAIRPERSON SCARAMAZZO: Okay. Been moved by

13 Commissioner Hoffman, seconded by Commissioner Daniels,

14 to amend R2-20-112, paragraph three, to include -- and

15 I'm going to let you read it one more time, so you have

16 it perfectly correct there.

17 COMMISSIONER HOFFMAN: To change the last two

18 lines of (A)(3) to: "Does not feature, comma, mention,

19 comma, or depict any candidate or candidates of another

20 party."

21 CHAIRPERSON SCARAMAZZO: Okay. Good. Any

22 discussion on this amendment?

23 All those in favor say "aye."

24 (Chorus of ayes.)

25 CHAIRPERSON SCARAMAZZO: Opposed?

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37

1 set forth in this subsection (A), shall not apply to,"

2 and then continue with "materials defined in one through

3 three above, distributed or displayed" and so forth.

4 COMMISSIONER DANIELS: Mr. Chairman, could you

5 read that again a little slower so we can get it?

6 CHAIRPERSON SCARAMAZZO: Yes. Please.

7 COMMISSIONER HOFFMAN: Mr. Chairman, my

8 amendment is to -- and by the way, this is repeating the

9 language in the next subparagraph.

10 COMMISSIONER DANIELS: Okay.

11 COMMISSIONER HOFFMAN: "The exception set forth

12 in this Subsection (A), shall not apply to materials

13 defined in one to three above, distributed or displayed

14 prior to the general election period, unless such

15 candidate featured is unopposed in the primary

16 election."

17 CHAIRPERSON SCARAMAZZO: Okay. Okay. Got

18 that.

19 COMMISSIONER DANIELS: Mr. Chairman, I'd just

20 like to ask Todd what his opinion is, and staff, and he

21 and the parties wrote this together, are.

22 MR. LANG: I like these changes. They add to

23 clarity.

24 COMMISSIONER DANIELS: I just wanted to get a

25 -- second.

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38

1 CHAIRPERSON SCARAMAZZO: Okay.

2 COMMISSIONER HOFFMAN: The purpose,

3 Mr. Chairman, if I may explain.

4 CHAIRPERSON SCARAMAZZO: You bet.

5 COMMISSIONER HOFFMAN: The purpose of the

6 change is to clarify that this is not an absolute ban

7 that would subject people to violation of the rule

8 merely by doing so. Simply, that if -- if it were done,

9 it would be not within the political party exception.

10 And I just simply thought that it was parallel to the

11 exception in -- to the language in number seven, which I

12 thought made that clear. I thought we could just copy

13 the language.

14 CHAIRPERSON SCARAMAZZO: Okay. So, it's been

15 moved by Commissioner Hoffman, seconded by Commissioner

16 Daniels, to move to amend R2-20-112, paragraph (6).

17 COMMISSIONER HOFFMAN: (A)(6).

18 CHAIRPERSON SCARAMAZZO: (A)(6). Thank you.

19 To read: "The exception set forth in this

20 Subsection (A) shall not apply" -- go ahead and finish

21 it off. Just make sure you got it right.

22 COMMISSIONER HOFFMAN: "Shall not apply to the

23 materials defined in one to three above, distributed or

24 displayed prior to the general election period unless

25 such candidate featured is unopposed in the primary

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40

1 is for the 60-day notice and comment period. It's not a

2 final adoption.

3 CHAIRPERSON SCARAMAZZO: Right. Okay.

4 COMMISSIONER HOFFMAN: Commissioner Daniels,

5 your motion also would include the concept that this

6 would substitute for (A) and (B) and renumber (C) and

7 (D); is that correct?

8 COMMISSIONER DANIELS: That was my

9 understanding. Yes.

10 CHAIRPERSON SCARAMAZZO: Yep.

11 COMMISSIONER HOFFMAN: Okay.

12 CHAIRPERSON SCARAMAZZO: Okay. Hearing nothing

13 else then, all in favor say "aye."

14 (Chorus of ayes.)

15 CHAIRPERSON SCARAMAZZO: Opposed? Motion

16 carries. Thank you.

17 Brings us on to Item No. VII, public comment.

18 Anyone in the audience wish to address anything today?

19 Got a lunch you got to go to? What's the deal

20 here? Come on.

21 COMMISSIONER DANIELS: It's too early.

22 CHAIRPERSON SCARAMAZZO: Yeah, I guess. All

23 right then, that leaves us Item No. VIII, adjournment.

24 COMMISSIONER HOFFMAN: Move to adjourn.

25 COMMISSIONER DANIELS: Second.

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39

1 election."

2 CHAIRPERSON SCARAMAZZO: Got it. Okay.

3 Discussion on this item?

4 All those in favor say "aye."

5 (Chorus of ayes.)

6 CHAIRPERSON SCARAMAZZO: Opposed? Motion

7 carries.

8 Okay. So, we've got the amendments, and so we

9 still need to go back then and adopt the changes.

10 COMMISSIONER DANIELS: Mr. Chairman, I would

11 move that we adopt the change to --

12 COMMISSIONER HOFFMAN: I already did.

13 COMMISSIONER DANIELS: -- as amended? Did you

14 already --

15 COMMISSIONER HOFFMAN: Well, I --

16 COMMISSIONER DANIELS: I was going to say:

17 R2-20-112 as amended be adopted.

18 COMMISSIONER HOFFMAN: Second.

19 CHAIRPERSON SCARAMAZZO: Yeah. You better not

20 vote against that.

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

22 seconded by Commissioner Hoffman, to approve R2-20-112,

23 political party exception as amended. Any discussion on

24 this item?

25 MR. LANG: Mr. Chair, just for the record, this

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41

1 CHAIRPERSON SCARAMAZZO: Moved and seconded,

2 all those in favor say, "aye."

3 (Chorus of ayes.)

4 CHAIRPERSON SCARAMAZZO: Motion carries. Thank

5 you.

6 (Whereupon the proceeding concludes at 10:14

7 a.m.)

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1 C E R T I F I C A T E.

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3 I, Angela Furniss Miller, Certified Reporter,
4 do hereby certify that the foregoing pages numbered 1
5 through 41, 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 4th day of August,
10 2009.

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12

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14 _____
Angela Furniss Miller, RPR
Certified Reporter (AZ50127)

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