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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
October 22, 2010
11:35 a.m.

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

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 ELECTIONS COMMISSION, convened at 11:35 a.m. on October
 2 22, 2010, at the State of Arizona, Clean Elections
 Commission, 1616 W. Adams, Conference Room, Phoenix,
 3 Arizona, in the presence of the following Board members:

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

7 OTHERS PRESENT:

8 Todd Lang, Executive Director
 Colleen McGee, Deputy Director
 9 Michael Becker, Voter Education Manager
 Daniel Ruiz, II, Campaign Finance Manager
 10 Jim Barton, Attorney General Office
 Kirstin Eidenbach, Perkins, Coie, Brown & Bain
 11 Jessica Burch, Perkins, Coie, Brown & Bain
 Rhonda Barnes, Perkins, Coie, Brown & Bain
 12 Steve Clawson, Moses Anshell
 Carl Seel, Seel in '10
 13 Doug Cole, Governor Jan Brewer
 Lisa Hauser, Gammage & Burnham
 14 Linda Gray, Linda Gray for Senate
 Angela Cotera, Cotera for Arizona
 15 Jose, Rivera, Haralson, Miller, Pitt, Feldman &
 McAnally, PLC
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P R O C E E D I N G

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 3 CHAIRPERSON PARKER: All right. I would like
 4 to call to order this meeting of the Citizens Clean
 5 Elections Commission.
 6 And pursuant to -- to A.R.S. Section
 7 38-431.03(B), there may be -- we may go into an
 8 executive session. If we do, the minutes of and
 9 discussions made at that executive session are
 10 confidential and shall not be released to anyone unless
 11 specifically authorized by law.
 12 And it is Friday, October 22nd, at 11:35 a.m.
 13 And the first item on the Agenda is the
 14 approval of the September 30, 2010, Commission meeting
 15 minutes.
 16 COMMISSIONER DANIELS: Madame Chairman, I move
 17 the approval of the September 30, 2010, Commission
 18 meeting minutes.
 19 COMMISSIONER SCARAMAZZO: Second. Go ahead,
 20 Jeff.
 21 COMMISSIONER FAIRMAN: Second.
 22 CHAIRPERSON PARKER: Motion is made by
 23 Commissioner Daniels, seconded by Commissioner Fairman,
 24 for approval of the Commission minutes. Any questions?
 25 Hearing none, call for a vote. All in favor

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1 say "aye."
 2 (Chorus of ayes.)
 3
 4 CHAIRPERSON PARKER: Opposed? Okay. Motion
 5 carries.
 6 Second item is the Executive Director's report.
 7 Todd?
 8 MR. LANG: Thank you, Madame Chair. Good
 9 morning, Commissioners. I will be attending the COGEL
 10 conference in early December. I would love to have some
 11 of you come with me. So far, the volunteer level is
 12 quite low on that front. Please let Paula or myself
 13 know as soon as possible if you would like to attend.
 14 It's great. There was recently a ABC Nightline report
 15 on legislators misbehaving at one of these sorts of
 16 events. And so it's like a "how to" on not to do it.
 17 So, no worries there. This is the ethics conference.
 18 So, of course, it's all reformers and ethical folks, so
 19 you won't to worry about that anyway. The reason I
 20 happened to notice the Nightline story is because they
 21 -- they did a little bit on campaign finance reform
 22 along with it.
 23 The debates are over and they're still
 24 available online. If you have any questions, let me
 25 know. Otherwise, the report speaks for itself.

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1 COMMISSIONER SCARAMAZZO: I might mention that
 2 the COGEL conference was here last year, and security
 3 was sent home early because of the boredom on the night
 4 life scene. So, I know what you're talking about.
 5 MR. LANG: Yeah, they don't party.
 6 CHAIRPERSON PARKER: Yeah. Because the one I
 7 went to in New Orleans a few years ago, I think
 8 everybody was back in their room by 10:30.
 9 COMMISSIONER SCARAMAZZO: Yeah, it was pretty
 10 quiet.
 11 CHAIRPERSON PARKER: It was pretty quiet.
 12 All righty. The next item on the agenda
 13 is MUR 10-0017, Carl Seel. We're moving that one up
 14 because he has an engagement to take care of across the
 15 street, I understand.
 16 MR. SEEL: Yes. Madame Chair, Commissioners,
 17 thank you for your time. And thank you for the
 18 consideration of moving it up.
 19 I've been honored that -- the very reason, I
 20 guess, that precipitated the challenge that I dealt with
 21 with the debate, although I -- I -- I appreciate the
 22 suggestion that staff has had in the resolution of it,
 23 and I wholeheartedly support that and thank you for
 24 suggesting that.
 25 My involvement with the Tea Party is they've

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1 been very, very supportive of my campaign, to the
 2 standpoint of which they have asked me to speak today at
 3 the Tea Party rally at the Capitol a block away. So, I
 4 sincerely appreciate you moving this up. And I, as I
 5 understand it, Sarah Palin is going to join us today.
 6 It wasn't confirmed until about 10 hours ago. That's
 7 our understanding. We'll wait and see as it unfolds if
 8 she actually comes off the bus and all. But, needless
 9 to say, they've asked me to speak, and I'm very honored
 10 to do so, and in -- in light of what the Commission is
 11 after in terms of authorizing or making it possible for
 12 citizen candidates like myself to have the best public
 13 exposure, that is most certainly one of them.
 14 But I clearly wanted to recognize the authority
 15 and -- of the Commission. And I told the speakers that
 16 asked me to speak there that I very much needed to be
 17 here at this Commission meeting today. They're still
 18 waiting for me to come out of it. So, thank you for
 19 moving it up and to speeding the -- the case along.
 20 I -- I do appreciate it and would sincerely appreciate
 21 it if you would adopt the resolution that the staff has
 22 presented.
 23 CHAIRPERSON PARKER: Okay. Todd, can you give
 24 us some background.
 25 MR. LANG: Sure.

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1 conciliation agreement.
 2 COMMISSIONER DANIELS: Second.
 3 CHAIRPERSON PARKER: Okay. There's a motion to
 4 approve this conciliation agreement and a second by
 5 Commissioner Daniels. Any questions?
 6 Okay. Call for a vote. All in favor of
 7 approving MUR 10-0017 on the motion, say "aye."
 8 (Chorus of ayes.)
 9
 10 CHAIRPERSON PARKER: Opposed? Okay. It
 11 carries. Motion carries.
 12 MR. SEEL: Thank you, Madame Chair,
 13 Commissioners.
 14 COMMISSIONER HOFFMAN: Thank you, Mr. Seel.
 15 CHAIRPERSON PARKER: Okay. The next item on
 16 the agenda is MUR 10-0018, Jan Brewer. Todd?
 17 MR. LANG: Thank you, Madame Chair.
 18 Commissioners, just for the record, you'll note that
 19 Jose Rivera is sitting in in the position of attorney
 20 for this matter, and he'll advise the Commission if you
 21 have any legal advice. Our regular attorney, Jim
 22 Barton, is recused from this matter.
 23 If you look at MUR 0018, you'll find you have a
 24 number of exhibits. You have a Complaint by Kirstin
 25 Eidenbach who is here today, filed against the Brewer

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1 CHAIRPERSON PARKER: I'm sorry. I jumped the
 2 gun on that.
 3 MR. LANG: Madame Chair, this is an enforcement
 4 matter, a recommendation that you find reason to believe
 5 a violation occurred. It's a rather simple metal --
 6 matter, and straightforward.
 7 Mr. Seel was scheduled to partici- -- as a
 8 participating candidate to participate in a debate;
 9 unfortunately, he failed to appear at that debate and
 10 attended another event at the same time, and had simply
 11 forgotten about our debate. When we contacted him, he
 12 apologized profusely, was quite candid and forthcoming
 13 about the mistake, and didn't try to give us any
 14 excuses. He then tried to schedule an alternative
 15 debate with his oppo- -- his Democratic opponent, and
 16 was very clearly sincere about wanting to have another
 17 debate. Due to the expense and other logistics, that
 18 didn't happen. But the point is, he was contrite,
 19 sincere; and I, frankly, believed his story.
 20 As a result, we find -- we recommended that you
 21 find reason to believe and then close the matter with
 22 this conciliation agreement in which Mr. Seel agrees to
 23 pay \$350.
 24 CHAIRPERSON PARKER: Any member have --
 25 COMMISSIONER HOFFMAN: I move we approve the

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1 Campaign at Exhibit A. You also have the Brewer
 2 Campaign's response at Exhibit B. You have the response
 3 of the Arizona Republican Party filed by Lee Miller at
 4 Exhibit C. And you have the RGA, the Republican
 5 Governors Association, response at Exhibit D.
 6 And what this comes down to is a question of
 7 coordination and then in-kind contributions. As you
 8 know, if there's coordination, if so-called independent
 9 expenditure committees, if they engaged in expressed
 10 advocacy on behalf of the candidate, it would constitute
 11 an in-kind contribution. In the case of a Clean
 12 Elections' candidate with significant expenditures, that
 13 can create very serious fines and a real enforcement
 14 challenge. So when we saw this, we were concerned.
 15 Fortunately, it appears that our initial concerns have
 16 not yet been justified, which is a good thing.
 17 I have a PowerPoint for you and that will help
 18 us go over it. So, do I just --
 19 COMMISSIONER FAIRMAN: You've got to go to
 20 "Start" at the first.
 21 MR. LANG: How do I go to the next slide? Oh.
 22 Right there. Okay. All right.
 23 So -- and the Brewer Campaign is here today.
 24 I -- I know other folks were here today. But this comes
 25 down to two e-mails and a Facebook account, and this is

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1 the first e-mail. This was sent out by the Brewer
 2 Campaign. This is a campaign e-mail to supporters of
 3 the Brewer Campaign, in which the campaign tries to
 4 elicit support for the Brewer Campaign.
 5 Part of it is, there are a number of links and
 6 you can join different committees. But in particular,
 7 it suggests that you go to the Republican Governors
 8 Association Website, their "Stand with Jan" Website, and
 9 go there by contributing whatever you can, it says. But
 10 when you -- and you'll -- you'll see later that there
 11 are two -- that there's another e-mail and a Facebook
 12 account. I'm sure there's other communications as well,
 13 but these are good examples.
 14 This is the same e-mail, but with the
 15 hypertext. And so when you click on the various links,
 16 you'll see you go to different places. And this one
 17 says "Support the RGA." And when you click on it, you
 18 go to the RGA's Website, which raises some concerns.
 19 The initial version of the Website -- let me show you
 20 the initial version of the Website.
 21 That's the initial version of the Website.
 22 You'll notice one big difference. Instead of Governor
 23 Brewer's pic-- official picture, there's a campaign
 24 picture. We see these on billboards all over town.
 25 It's in a number of the communications the campaign

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1 appears to be a Brewer Campaign site.
 2 The next e-mail is similar. This one focuses
 3 on the Union's boycott, SEIU in this case, and other
 4 unions. And it says, "Support the Republican Governors
 5 Association in order to fight this boycott," and
 6 "Remember November," which sounds like to me a reference
 7 to the election. I think it would sound like that to
 8 any reasonable person. So, "I need your help to fight";
 9 "Stand with Jan"; the usual -- the same sort of stuff
 10 that was in the earlier e-mail.
 11 And then when you click on that, you get back
 12 to the -- and again, remember, it's the Rosie the
 13 Riveter, the image back then. Again, you get to the RGA
 14 site. So, what it appears is happening is the Brewer
 15 Campaign is working with the RGA to encourage people to
 16 give to the RGA to support Jan Brewer. That's why there
 17 appeared to be a problem.
 18 But upon closer inspection and upon reflection
 19 of the law -- analysis of the law, we reach a -- a
 20 different result.
 21 Is this the PowerPoint or am I on the Web page?
 22 CHAIRPERSON PARKER: The Web page busy.
 23 MR. LANG: So -- so, there's the second e-mail.
 24 The Facebook is similar. Same thing: Look, the SEIU is
 25 targeting Republicans, they're bad guys, go to "Stand

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1 does. This is clearly a campaign commun- -- campaign
 2 image. And so that raises red flags, and probably was
 3 part of the reason the complaint was filed.
 4 So that's what you see when you click on the
 5 link. It says go to RGA to support the RGA, but when
 6 you get to the RGA site, it looks like you're supporting
 7 Jan Brewer. It says, "Donate \$5," which I think any
 8 reasonable person would associate with the \$5 early
 9 contributions -- I mean, the \$5 seed money contri- -- I
 10 mean, the \$5 qualifying contributions, and then an odd
 11 number, \$112. I'm not sure where they came up with
 12 that. I think something got transposed; but arguably,
 13 it could relate to the seed money contributions.
 14 CHAIRPERSON PARKER: Todd, was this up during
 15 that \$5 contribution time period?
 16 MR. LANG: I believe it was, but I don't know
 17 that. No, the Brewer folks tell us they -- it was not.
 18 We didn't look into that.
 19 CHAIRPERSON PARKER: Yeah, because --
 20 MR. LANG: I'm just telling you of the
 21 appearance as I go through this.
 22 So, that's the -- that's the issue. That's the
 23 problem.
 24 So, you go -- you click on the Website,
 25 ostensibly to support the RGA, and you end up at what

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1 with Jan," which again is that same Website.
 2 So, what we have here is coordination between
 3 the Brewer Campaign and the RGA, by -- under the
 4 definitions set by Arizona statutes. They're, you know,
 5 referring things to each other, that sort of thing. I
 6 will -- it would -- I think folks would be hard-pressed
 7 to argue that that doesn't constitute coordination. But
 8 there's no real harm so long as the RGA doesn't do
 9 anything on behalf of Brewer. It's not imputed to her
 10 campaign as an in-kind contribution, so long as their
 11 expenditures are truly independent.
 12 In this case, that can't happen because of the
 13 coordination, so the -- the -- the real solution then is
 14 for them not to spend money -- on the Brewer Campaign. And
 15 what we have found is that has not happened. The RGA
 16 has not spent money on the Brewer Campaign. It's
 17 transferred money to the Arizona GOP; and the Arizona
 18 GOP, to our knowledge, has not spent money on the Brewer
 19 Campaign. And that's very important, because if they
 20 do, then we'd have a much more serious issue here.
 21 So, in our view, our analysis is that so long
 22 as no money is spent by these groups, even though
 23 they're linked to the Brewer Campaign, so long as they
 24 don't spend money on the Brewer -- behalf of the Brewer
 25 Campaign, there's no violation. And right now there's

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1 no evidence that they have spent money on behalf of the
 2 Brewer Campaign. So, we don't see a problem there.
 3 They're raising money for the -- to fight the Union
 4 issues. Clearly, these are all closely tied to the
 5 campaign; these are obviously issues in the campaign;
 6 but remember what 16-901.01 says, the definition of
 7 expressed advocacy.
 8 I use a Mac at home, and so this double clicker
 9 is killing me.
 10 There we go. Express ad- -- now, there's no
 11 magic words in these communications, but you have to
 12 look to "no other reasonable meaning." And where this
 13 becomes important, not so much in the e-mails, those are
 14 clearly expressed advocacy, but in the Website itself.
 15 The Stand with Jan Website appears to be an endorsement
 16 of Brewer. And arguably, then, would be an in-kind
 17 contribution for whatever a Website that solicits
 18 contributions and accepts money -- which is more than
 19 just a page, I mean, there's some functionality there --
 20 that would be a problem.
 21 But the key element of that under -- under
 22 Wisconsin Right to Life and other Supreme Court cases,
 23 is "no other reasonable meaning." And here there's two
 24 meanings based on the communications. We have one,
 25 which is to support Brewer's re- -- Campaign elect- --

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1 COMMISSIONER SCARAMAZZO: Excuse me. Not me.
 2 CHAIRPERSON PARKER: I guess I found this kind
 3 of personally dissatisfying, because I felt like we were
 4 presented with a baseless accusation to deal with.
 5 Because in this case the campaign was trying to help the
 6 RGA with -- with their fundraising and stuff, and when
 7 there's nothing coming back on the other side showing
 8 that they're contributing to the -- the campaign, I kind
 9 of feel like the Democratic party jumped the gun on
 10 filing this claim with us. And I don't appreciate us
 11 having to be used as a bully pulpit by either party or
 12 other special interest groups, you know, to try to
 13 further their own agenda.
 14 And so, you know, I personally feel that this
 15 has no basis. I don't know about the rest of you, but
 16 that's my opinion.
 17 COMMISSIONER DANIELS: Madame Chairman, Todd?
 18 CHAIRPERSON PARKER: Yes.
 19 COMMISSIONER DANIELS: So, if I just move that
 20 we find no reason to believe a violation occurred, do we
 21 need a motion on this or can it just drop? Do we --
 22 since it's on the...
 23 MR. LANG: You could drop it, but I would
 24 suggest you either find or don't find reason to believe.
 25 COMMISSIONER DANIELS: Okay.

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1 re- -- campaign, but the other is to -- and you -- and
 2 you get this both from the e-mails and from the Website
 3 itself, is to support the RGA in their efforts to fight
 4 the unions, to fight the boycotts, and the other issues
 5 that they've raised.
 6 Do I think these are all related to campaign
 7 issues? Yes. But -- but does that mean that a court
 8 would find no other reason -- that the court would not
 9 find there's no other reasonable meaning? I don't think
 10 so.
 11 I think that there is another reasonable
 12 meaning here, and though the ambitious folks at the
 13 Brewer Campaign pushed the envelope, like many -- like
 14 any campaign -- many campaigns do, I think that this
 15 does not meet the test for expressed advocacy; and
 16 therefore, I recommend that -- that the Commission take
 17 no action in regard to the Website by the RGA.
 18 I know representatives of the Arizona GOP are
 19 here and the Brewer Campaign. I don't know if there's a
 20 representative of RGA here. I don't see one. So -- but
 21 they're available to talk to you and answer any
 22 questions you might have. And of course, I'm happy to
 23 answer your questions as well.
 24 CHAIRPERSON PARKER: Any members have questions
 25 of Todd?

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1 MR. LANG: But you could just table it, for
 2 lack of a --
 3 COMMISSIONER SCARAMAZZO: We don't want to
 4 table it, but if there's no action, it does the same
 5 thing, but --
 6 COMMISSIONER DANIELS: Yeah. Sure.
 7 COMMISSIONER SCARAMAZZO: -- if you want to
 8 formalize it, go for it.
 9 COMMISSIONER DANIELS: Madame Chairman, I would
 10 move that we --
 11 COMMISSIONER HOFFMAN: Did you -- I'm sorry.
 12 Go ahead. Make your motion.
 13 COMMISSIONER DANIELS: Madame Chairman, I would
 14 find that we -- find no reason to believe in the matter
 15 of MUR 10-0018, Jan Brewer.
 16 COMMISSIONER SCARAMAZZO: I'll second that.
 17 CHAIRPERSON PARKER: Okay. The motion's been
 18 made by Commissioner -- yes. Oh.
 19 MR. LANG: No, go ahead. I was just --
 20 CHAIRPERSON PARKER: -- by Commissioner Daniels
 21 and seconded by Commissioner Scaramazzo. Be okay if we
 22 take a vote or do you want to say something?
 23 MR. LANG: There -- I think the Complainant
 24 would like to speak just very briefly before you vote.
 25 CHAIRPERSON PARKER: Okay.

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1 COMMISSIONER SCARAMAZZO: Yeah. Good.
 2 CHAIRPERSON PARKER: That's fine.
 3 COMMISSIONER SCARAMAZZO: It's on the floor
 4 now. I think Louis had a --
 5 COMMISSIONER HOFFMAN: I was going to ask to
 6 hear from Ms. Eidenbach, so that's exactly what the...
 7 CHAIRPERSON PARKER: Fine. Come on up.
 8 MS. EIDENBACH: Good morning, Madame
 9 Chairwoman. I wanted to mostly address Madame
 10 Chairwoman's concerns about the basis of this complaint
 11 and to explain to the Commission why we decided to file
 12 when we did.
 13 We -- we felt that we had a good faith basis,
 14 based upon the coordination between the RGA and Jan
 15 Brewer's campaign, and I think that the -- our
 16 difference of opinion about the express advocacy is --
 17 is where we part ways with the Commission. And,
 18 obviously, I respect all of your opinions on that. But
 19 I think that's what provided us with the good faith
 20 basis that this was, in fact, a timely complaint. We
 21 respect this Commission and certainly are not advocating
 22 our clients use this for political grandstanding.
 23 We believe that as is cited in -901.01, we saw
 24 the word "support" on the RGA's Website, and that is
 25 listed as one of the terms in -901.01, as a term

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1 such as 'support' or 'endorse.'" And this specifically
 2 uses the word "support." So that's what we based our
 3 assertions of express advocacy upon.
 4 COMMISSIONER HOFFMAN: If this is express
 5 advocacy, then what? What are the implications?
 6 MS. EIDENBACH: Well, I think the implications
 7 are just as Mr. Lang described. So, we disagree with
 8 his final determination that there was no express
 9 advocacy, but we agree with his analysis up to that
 10 point, that any coordination followed by express
 11 advocacy constitutes an in-kind contribution. And we
 12 ask that the Commission investigate that because the
 13 upkeep of a Website, the staff time that goes into that
 14 Website, and then any donations made to this, have the
 15 potential to constitute an in-kind contribution.
 16 Unfortunately, we don't have access to the financial
 17 information that would have provided us with --
 18 COMMISSIONER HOFFMAN: Let me ask you this: If
 19 -- if someone were to donate to the RGA, you know, five
 20 -- let's say \$5, for example, on this Website, and that
 21 money is used by the RGA in Hawaii --
 22 MS. EIDENBACH: Right.
 23 COMMISSIONER HOFFMAN: -- or some non-Arizona
 24 state --
 25 MS. EIDENBACH: Yes.

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1 indicating express advocacy. And so the basis for our
 2 complaint was that this was express advocacy.
 3 So, I just wanted to briefly address that with
 4 the Commission. I'm happy to answer any questions you
 5 have.
 6 THE COURT REPORTER: Ma'am, can I get your
 7 name, please.
 8 MS. EIDENBACH: Kirstin Eidenbach.
 9 COMMISSIONER HOFFMAN: Excuse me, Madame Chair.
 10 CHAIRPERSON PARKER: Go ahead.
 11 COMMISSIONER HOFFMAN: Yeah. So, do you
 12 believe that Commission staff conclusion that this
 13 particular document is not express advocacy, or are you
 14 challenging that at -- as things stand today?
 15 MS. EIDENBACH: We would challenge the
 16 Commission staff's determination that there is no
 17 express advocacy, because in the subtext to the "donate
 18 \$5" -- sorry, I've got it in here but I didn't pull it
 19 out. In the -- the smaller text below the bolded
 20 "donate \$5 and stand with Arizona," it says, "Show your
 21 support for Governor Brewer by contributing just \$5."
 22 And our interpretation of that, based upon the
 23 language in 16-901.01, is that is express advocacy.
 24 Because in Section 1 -- or it's Subsection 1, (A)(1), it
 25 says: "Conveying a communication containing a phrase

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1 COMMISSIONER HOFFMAN: -- doesn't matter which
 2 one we pick, would that be an in-kind contribution to
 3 Governor Brewer?
 4 MS. EIDENBACH: No, it would not. But
 5 unfortunately, we didn't have access to whether or not
 6 the RGA was giving these \$5 donations to the Brewer
 7 Campaign, because the RGA part of -- another component
 8 of our complaint is that the national RGA did not
 9 register --
 10 COMMISSIONER HOFFMAN: Right.
 11 MS. EIDENBACH: -- with -- with the state, and
 12 so we didn't have any access to their financial records.
 13 COMMISSIONER HOFFMAN: Okay. So --
 14 MS. EIDENBACH: So, I would agree, though, that
 15 if it were given to a gubernatorial race in Hawaii, it
 16 would not constitute an in-kind contribution. We just
 17 had no way to tracking that, because the RGA is not
 18 registered here.
 19 COMMISSIONER HOFFMAN: Are you now satisfied
 20 that, you know, based on the information and responses,
 21 that the RGA has not given money to the Brewer Campaign
 22 or to -- or used it for, you know, trying to elect
 23 Governor Brewer?
 24 MS. EIDENBACH: At this point, yes --
 25 COMMISSIONER HOFFMAN: Okay.

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1 MS. EIDENBACH: -- we are.
 2 COMMISSIONER HOFFMAN: So the -- so, what it
 3 comes down to on the express advocacy point, is that in
 4 effect we ignore the left side of the page that talks
 5 about donation, and we're talking about the right side
 6 of the page and that is kind of like an ad --
 7 MS. EIDENBACH: Well --
 8 COMMISSIONER HOFFMAN: -- and so there's like a
 9 display ad on the right side of the page. That, you
 10 know, that that says "show your support," and that's
 11 like if you placed an ad in the newspaper that said
 12 "show your support."
 13 MS. EIDENBACH: Right. I guess the answer is
 14 yes and no. Our complaint was based on this Website in
 15 it's entirety. And because --
 16 COMMISSIONER HOFFMAN: I understand.
 17 MS. EIDENBACH: Right. -- we didn't have any
 18 access to the national --
 19 COMMISSIONER HOFFMAN: But I'm saying that as
 20 we now --
 21 MS. EIDENBACH: -- as -- as we now know.
 22 COMMISSIONER HOFFMAN: -- as things have
 23 developed now.
 24 MS. EIDENBACH: Yes. Right. And we just -- we
 25 filed our complaint because we had no way of tracking
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1 coordination of helping the RGA out, not helping out the
 2 campaign? I think that's the difference here.
 3 MS. EIDENBACH: Right. I think that perhaps
 4 that might be the intent, but the plain meaning of the
 5 language indicates to visitors to the site, that when it
 6 says "show your support for Governor Brewer," that could
 7 easily be interpreted by a person as express advocacy;
 8 and, in fact, it uses one of the terms specifically
 9 noted in 16-901.01.
 10 COMMISSIONER HOFFMAN: Do you see --
 11 MS. EIDENBACH: So it would be our position
 12 still that it is express advocacy.
 13 COMMISSIONER HOFFMAN: Do you see a distinction
 14 between: "Show your support for Governor Brewer by
 15 donating to the RGA"; and "support Governor Brewer"?
 16 MS. EIDENBACH: I would. So, for example, if
 17 that said: "Show your support for Governor Brewer by
 18 contributing just \$5 to the RGA," I think that that
 19 would not constitute express advocacy. But it doesn't
 20 say that. It says: "Show your support for Governor
 21 Brewer by contributing just \$5," which leads to the
 22 conclusion that you're supporting her, not the RGA.
 23 COMMISSIONER SCARAMAZZO: You know, the rest of
 24 the statement there, though, as I read that, I would --
 25 I would tend to believe that that is somehow being
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1 whether or not the RGA was planning to or had already
 2 donated this money to Jan Brewer's campaign. But based
 3 upon the information they have filed, we still would
 4 argue that there was express advocacy, but because
 5 there's no money tied to that express advocacy, there's
 6 been no in-kind contribution. And we know that thanks
 7 to the investigations done by this Commission, and an
 8 investigation that's underway at the Secretary of
 9 State's office.
 10 COMMISSIONER HOFFMAN: Okay. Is the new
 11 version that doesn't have the campaign image but has the
 12 just basic head shot of Governor Brewer, does that say
 13 "show your support for Governor Brewer" still?
 14 MR. LANG: That's my recollection. We can take
 15 a look. Once I figure out how to do it.
 16 Yeah.
 17 COMMISSIONER HOFFMAN: Okay. So, is it your
 18 position, besides the fact that that, in effect, the
 19 right side of the page is an ad, is a -- is still
 20 impermissible despite the change in picture?
 21 MS. EIDENBACH: Yes. Because now we've got a
 22 pattern of clear coordination, and I would still argue
 23 that the language underneath her picture constitutes
 24 express advocacy.
 25 CHAIRPERSON PARKER: But is it not a
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1 funneled into that legal fund to fight, you know, the
 2 challenges of Senate Bill 1070. That's -- that's where
 3 I kind of look at that and say I think that's -- that's
 4 how I read it, anyways.
 5 CHAIRPERSON PARKER: It doesn't say anywhere on
 6 there about the campaign.
 7 COMMISSIONER FAIRMAN: Madame Chair?
 8 CHAIRPERSON PARKER: Jeff.
 9 COMMISSIONER HOFFMAN: Well, it does say on the
 10 very bottom fine print that it's a contributions to RGA,
 11 on the lower left --
 12 MS. EIDENBACH: Right.
 13 COMMISSIONER HOFFMAN: -- which is down --
 14 MS. EIDENBACH: Yes.
 15 COMMISSIONER HOFFMAN: -- later than there
 16 then. But it's in -- it's in even more microscopic
 17 print than the --
 18 MS. EIDENBACH: Right.
 19 COMMISSIONER HOFFMAN: -- than the microscopic
 20 print that we're talking about.
 21 CHAIRPERSON PARKER: Jeff. Go ahead.
 22 COMMISSIONER FAIRMAN: I think a couple things
 23 that come to mind for me are, one, when I read that, the
 24 way its written, it could be support for her stand on
 25 1070, it could be support for our State's activities
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1 towards illegal immigration, could be any number of
 2 things. And I think the other thing that makes it not
 3 as -- not as important for me is that, quite frankly,
 4 where it is. If this were an ad in the general
 5 circulation newspaper or if this were some place where
 6 basically everyone, including undecided individuals were
 7 going to be looking, I -- if I were trying to find votes
 8 for my candidate, it wouldn't be through these sites.
 9 COMMISSIONER HOFFMAN: People are already
 10 convinced.
 11 COMMISSIONER FAIRMAN: People are already
 12 convinced when they're there.
 13 And so, I kind of looked at all of the things
 14 that you-all have said and I kind of feel the same way
 15 that you do, it's -- it's -- it's their club, and this
 16 is something they're doing within their own site, so.
 17 COMMISSIONER HOFFMAN: I have to agree with
 18 that. I think that the -- the wording is not the best
 19 in terms of the clearest, but I respectfully disagree
 20 with the notion that there's no basis for questioning
 21 this. It was -- it certainly would be better had
 22 this -- had that sentence, you know, including that
 23 sent- -- that ambiguous sentence not been there, and
 24 it -- I -- I -- but I also agree that it's not in a
 25 place that -- where we can interpret this fairly as a --
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1 of some good folks involved with the Brewer Campaign.
 2 Maybe it was never intended to go there, but it
 3 certainly looked that way.
 4 This language does meet the first prong of
 5 express advocacy: Show your support for Governor Brewer
 6 by contributing money. They're asking for money to
 7 support Brewer. Arguably, that's enough to do an
 8 enforcement action. But when you take into context the
 9 language of the e-mails -- and remember, those e-mails
 10 aren't designed to solicit votes -- you're right, they
 11 are already supporters of her -- but they're designed to
 12 solicit money. And as a conduit to get money to go back
 13 into her campaign, this would have been very effective,
 14 and it also would have been illegal. But it didn't --
 15 it didn't work that way, and so that's why we recommend
 16 no reason to believe.
 17 But I would urge folks who are going to set up
 18 a Website like this one, to call us first and work with
 19 us.
 20 CHAIRPERSON PARKER: Jeff?
 21 COMMISSIONER FAIRMAN: The last thing I would
 22 like to add is that I -- I do think it was appropriate
 23 that it came before us, because it -- it really did give
 24 us some opportunities to look at something and see how
 25 far you can kind of push the envelope before it made
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1 as an ad that is an in-kind contribution to the -- to
 2 the campaign, because of its position and, you know,
 3 nature of the -- context in effect.
 4 But it runs pretty close to the line and --
 5 and -- and probably besides taking out the campaign ad,
 6 they might want to consider editing it. But, of course,
 7 I don't have any jurisdiction over the RGA, and they can
 8 decide to do what they want to do.
 9 But I also think that the -- that by making
 10 things clear as to the boundaries, we've been -- made
 11 things much better for the future to avoid any
 12 overstepping of the boundaries, which I think would be
 13 enormously unfortunate if the -- if the RGA were to do
 14 things differently than apparently they plan, or if --
 15 or if they had planned it, and based on the conclusions
 16 and clarifications, they now have decided to change
 17 their mind. I don't know which it is, but it does seem
 18 to -- that we've accomplished something by making the
 19 lines of distinction very clear here.
 20 CHAIRPERSON PARKER: Todd?
 21 MR. LANG: Madame Chair, I think the -- the
 22 good news out of this -- and this echos Commissioner
 23 Hoffman's point -- is that I think it's clear that this
 24 was coordination, and it could have led to a serious
 25 enforcement matter, but it didn't due to the leadership
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1 some sense. And so, in that respect, I think this was a
 2 good vetting for the process in the future. So, it made
 3 sense in the regard.
 4 COMMISSIONER SCARAMAZZO: I agree with you.
 5 CHAIRPERSON PARKER: Anybody else from the
 6 public wish to speak?
 7 Thank you so much for coming.
 8 MS. EIDENBACH: Thank you.
 9 CHAIRPERSON PARKER: We have a motion for
 10 10-0018 and it has been seconded. All in favor?
 11 (Chorus of ayes.)
 12
 13 CHAIRPERSON PARKER: Opposed? Hearing none,
 14 motion carries.
 15 Okay. The next item on the agenda is
 16 MUR 10-0011, Allen, Crandall, and Barton. Todd, do you
 17 have something for us on that?
 18 MR. LANG: Yeah. I'm sorry, Commissioner. I'm
 19 getting there.
 20 COMMISSIONER FAIRMAN: Madame Chair.
 21 MR. LANG: Yes. I apologize, Madame Chair.
 22 CHAIRPERSON PARKER: Thank you.
 23 MR. LANG: When I try to speak with only part
 24 of my brain, I don't always respect protocol.
 25 COMMISSIONER DANIELS: It's Friday afternoon
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1 and you're supposed to be, you know, relaxed.

2 CHAIRPERSON PARKER: So are you left-brained or

3 right-brained?

4 COMMISSIONER FAIRMAN: It is afternoon.

5 MR. LANG: I don't know which. But whatever it

6 was, I wasn't using it -- whatever it is, I wasn't using

7 it.

8 So we have a complaint filed by Tom Ryan --

9 Ryan against three candidates: Sylvia Allen, who is a

10 traditional candidate; Brenda Barton; and Chester

11 Crandell. That Complaint is at Exhibit A. You have a

12 number of exhibits to this one. A response is at

13 Exhibit C, by -- that's by Ms. Rep- -- Respondent Allen.

14 Respondent Crandell filed one, and that's at Exhibit E.

15 And then the Complainant filed -- supplemented the

16 Complaint at Exhibit F. And then the additional

17 information from the Secretary of State's office

18 provided by the Respondents is at Exhibit G. And then I

19 draw your attention to a summary by the consultant,

20 which is at Exhibit H.

21 I don't see any of those folks here today. So

22 I don't know if anyone wants to speak to you.

23 This -- this packet is quite large. And I know

24 you enjoyed reviewing it. But it raises an important

25 issue, which is that all participating candidates have

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1 we do see evidence that there is some sort of

2 supplementation going on, we will certainly present it

3 to you. But after reviewing the documents in this case,

4 we -- we did not find such a problem, and so we

5 recommend that at this time you find no reason to

6 believe.

7 COMMISSIONER HOFFMAN: Who's the consultant?

8 MR. LANG: On -- what's that?

9 COMMISSIONER HOFFMAN: Whose consultant was it?

10 MR. LANG: Constantine Querard was the

11 consultant for all three. There is --

12 COMMISSIONER HOFFMAN: No, I'm saying: Is this

13 record -- is this information from him?

14 MR. LANG: That's from him.

15 COMMISSIONER HOFFMAN: Okay. And he provided

16 that in -- in response to the --

17 MR. LANG: The various inquiries, yeah. We

18 asked for additional information.

19 COMMISSIONER HOFFMAN: -- to your -- to your

20 inquiry?

21 MR. LANG: Right.

22 COMMISSIONER HOFFMAN: Was he cooperative with

23 your inquiry?

24 MR. LANG: Yes. And he also provided it to the

25 Secretary of State's office, so some of it we got from

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1 to pay their full share for campaign expenditures and

2 signs, when they do it in coordination with other

3 candidates or when they're doing it on their own. And

4 our rules are quite specific about that. And the

5 allegation here was that the -- through the consultant,

6 traditional candidates were supplementing the

7 expenditures of participating candidates by paying less.

8 But I think what will be particularly helpful

9 to you is if you look at Exhibit H, which is the last

10 exhibit, and it's a breakdown of the various

11 expenditures, and this is provided by the consultant,

12 but the numbers match up. And what you'll see is that

13 each candidate did -- did, in fact, pay the proper share

14 for the various expenditures.

15 One of the problems we had is that Ms. Allen is

16 not req- -- she's a traditional candidate, so she's not

17 required to report subvendors and the like, and so her

18 reporting didn't have all the detail.

19 But based on the fact that it appears all of

20 them filed the -- filed the same for the Payson Round Up

21 ads you see in there, and the Beehive ads, we recommend

22 no reason to believe.

23 You know, we've heard issues regarding this

24 sort of thing over the years, and so we look at this

25 quite carefully and we take this quite seriously, and if

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1 them.

2 In Mr. Crandell's report, he failed to report

3 one expenditure, and so we recommend that you do find

4 reason to believe regarding that. My understanding is

5 that he will correct his campaign finance report.

6 Yes. He will correct his finan- -- campaign

7 finance report. But, again, there's no subterfuge here.

8 There's -- there's no -- there's no smoking gun.

9 COMMISSIONER HOFFMAN: We don't have anybody

10 from the Complainant?

11 COMMISSIONER DANIELS: Madame Chairman, do you

12 want a motion?

13 COMMISSIONER FAIRMAN: Would you be looking for

14 two motions?

15 CHAIRPERSON PARKER: It would be a motion for

16 the overall and a motion for the Crandell.

17 COMMISSIONER DANIELS: Well, Madame Chairman, I

18 would be, I think, more apt to do Crandell first because

19 we're going to find a reason to believe but it's going

20 to clarified, than to say I would find a reason not to

21 believe on any of it. Does that make sense?

22 CHAIRPERSON PARKER: Yes.

23 COMMISSIONER DANIELS: So, madame Chairman, I

24 would move that we do find reason to believe in

25 MUR 10-0011 only as to Mr. Crandell, and in that

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1 specific instance that would --

2 MR. LANG: 109.

3 COMMISSIONER DANIELS: 109.

4 COMMISSIONER FAIRMAN: I would second that.

5 CHAIRPERSON PARKER: Okay. There's a motion --

6 you said it's MUR 10-0009?

7 COMMISSIONER DANIELS: Nine.

8 CHAIRPERSON PARKER: We don't have that.

9 MR. LANG: No, no, no.

10 CHAIRPERSON PARKER: It's 11.

11 COMMISSIONER DANIELS: 11. Okay.

12 MR. LANG: I'm sorry. Mr. Crandell violated

13 109.

14 COMMISSIONER HOFFMAN: Rule 109.

15 COMMISSIONER DANIELS: Rule 109.

16 MR. LANG: R2-20-109.

17 COMMISSIONER DANIELS: It's okay. All right.

18 That's my motion.

19 MR. LANG: I wasn't clear. I apologize.

20 COMMISSIONER DANIELS: It's that brain thing

21 again.

22 CHAIRPERSON PARKER: The motion is to find

23 reason to believe only for Mr. Crandell's portion of

24 that MUR 10-0011 --

25 COMMISSIONER DANIELS: Re: Rule 109.
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1 failure to report a number of expenditures, or

2 underreporting a number of expenditures. But as you can

3 see by the response, in fact, it appears that there is

4 no violation. The response is useful, and that's at

5 Exhibit B, in that it provides clarification of exactly

6 how much she spent and when she spent it. My -- what I

7 gather is the Complainant didn't have the benefit of the

8 later campaign finance report when she filed the

9 complaint.

10 And so, it appears there is no irregularities

11 and, in fact, the campaign did everything properly.

12 This involved the same consultant. And again,

13 there's this issue of folks not paying enough for what

14 they're getting. But again, in this case we found no

15 evidence of that. And of course, if we did find

16 evidence of that, we could always bring it back before

17 you. But right now we recommend no reason to believe.

18 COMMISSIONER DANIELS: Madame Chairman, I would

19 move that we find no reason to believe in the matter of

20 MUR 10-0015, Michelle Ugenti.

21 COMMISSIONER SCARAMAZZO: I second that.

22 CHAIRPERSON PARKER: Okay. Motion by

23 Commissioner Daniels, second by Commissioner Scaramazzo

24 on MUR 10-0015. All in favor?

25 (Chorus of ayes.)
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1 CHAIRPERSON PARKER: In Rule 109. Okay. So,

2 there was a motion made. Do I have a second?

3 COMMISSIONER FAIRMAN: Yes. Second.

4 CHAIRPERSON PARKER: Seconded by Commissioner

5 Fairman. Okay. All in favor of the motion?

6 (Chorus of ayes.)

7

8 CHAIRPERSON PARKER: Opposed? Okay.

9 COMMISSIONER DANIELS: Madame Chairman, I would

10 move in the matter of MUR 10-0011, Allen, Crandell, and

11 Barton, other than the previous reason to believe, that

12 we would find no reason to believe in this matter.

13 COMMISSIONER HOFFMAN: Second.

14 CHAIRPERSON PARKER: Okay. Motion by

15 Commissioner Daniels, second by Commissioner Hoffman.

16 All in favor say "aye."

17 (Chorus of ayes.)

18

19 CHAIRPERSON PARKER: Opposed? Motion carries.

20 Next item on the agenda is MUR 10-0015,

21 Michelle Ugenti. Did I pronounce that right? Todd?

22 MR. LANG: Madame Chair, you have in front of

23 you a complaint by Ms. Coe. Is Ms. Coe here today? She

24 is not. And then you have a response by Ms. Ugenti.

25 The allegations are fairly serious regarding
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1

2 CHAIRPERSON PARKER: Opposed? Motion carries.

3 Next item is MUR 10-0016, Angela Cotera.

4 MR. LANG: Thank you, Madame Chair. Is

5 Ms. Cotera is here today? She is? Oh, good.

6 Ms. Cotera is here today.

7 This involves a number of allegations regarding

8 expenditures that the Complainant feared were not

9 properly reported or were used for the general election.

10 We contacted Ms. Cotera about that and she cooperated

11 with us and was quite helpful. And we learned that, in

12 fact, the expenditures were not as the Complainant

13 thought, but, in fact, they were proper expenditures

14 properly reported.

15 There is one exception. There were print cards

16 -- get-out-the-vote palm cards that were purchased

17 during the primary, right before the primary, and I

18 assume due to campaign pressures and otherwise, they

19 just weren't distributed during the primary. Only about

20 10 percent of them were distributed in the primary. And

21 as you know, purchases during the primary have to be

22 directed to the primary, and the vast majority of this

23 purchase was not. So, Ms. Cotera worked with us on that

24 and agreed to repay the 90 percent that was not directed

25 to the primary forfeited out of her general election
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1 funds.

2 And with that, she's here today, so if you have

3 any questions for her. But that's our recommended

4 resolution, that we close -- find reason to believe and

5 close the matter with that fund transfer.

6 COMMISSIONER DANIELS: Madame Chairman, I would

7 move that we find reason to believe in the matter of

8 MUR 10-0016, Angela Cotera, and -- but find that the

9 repayment is the solution to this issue.

10 COMMISSIONER FAIRMAN: Second.

11 CHAIRPERSON PARKER: Okay. There's a motion by

12 Commissioner Daniels, seconded by Commissioner Fairman.

13 All in favor --

14 COMMISSIONER SCARAMAZZO: Does Ms. Cotera want

15 to speak?

16 COMMISSIONER HOFFMAN: I'm sorry, I'm just -- I

17 have a --

18 CHAIRPERSON PARKER: I'm sorry. Yes.

19 COMMISSIONER HOFFMAN: I just want to make sure

20 I understand this, because I'm not sure I quite do. The

21 repayment is for the unused supply, and if she -- and

22 that's being repaid from the general --

23 MR. LANG: That's right.

24 COMMISSIONER HOFFMAN: -- fund because she won

25 the primary?

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1 COMMISSIONER HOFFMAN: Thank you.

2 CHAIRPERSON PARKER: Okay. There's a motion

3 and a second. All in favor?

4 (Chorus of ayes.)

5

6 CHAIRPERSON PARKER: Opposed? Motion carries.

7 Next item on the agenda is MUR 10-0019,

8 Linda Gray. Todd?

9 MR. LANG: Thank you, Madame Chair. Senator

10 Gray is here today. I don't know, is anyone from

11 Truth AZ here? That's a little disappointing.

12 This group, Truth in AZ, which is an

13 independent expenditure committee that reports itself to

14 be a bipartisan independent committee, filed a complaint

15 against Linda Gray, alleging coordination between her

16 and a group of chiropractors who had her speak at an

17 event, and then later were alleged to have sent out

18 fundraising letters in support of her.

19 So, you have the complaint -- rather lengthy

20 complaint -- that goes into a number of issues over

21 which we do not have jurisdiction regarding sham

22 candidates and the like. And then you see the

23 e-mails -- the attachments to the complaint that have

24 e-mails from this Chair of the Chiropractic Society, in

25 which he expresses his support for Senator Gray and

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1 MR. LANG: Right. Right.

2 COMMISSIONER HOFFMAN: Okay. Sounds right to

3 me.

4 CHAIRPERSON PARKER: Ms. Cotera, would you like

5 to address us?

6 MS. COTERA: Well, it's -- it was -- it

7 was simple. One gets overzealous, one thinks one had --

8 was -- one is going to have many more volunteers than

9 one actually gets. And when I -- when I -- when I got

10 about halfway through the week, realized I wasn't going

11 to, tried to reduce it, but they'd already printed half

12 of them. So, we did the best we could to get out as

13 many as we could, but you know, it was a very hot

14 weekend and a very hot election day, and the volunteers

15 said, you know, I have to be someplace else.

16 So, I'm happy -- I'm very -- we have used them

17 during the general. I'm very happy to pay for them out

18 of the general funds because that's where they were

19 used. That's the appropriate resolution. And just

20 trying to make sure we comply a hundred percent, as we

21 always have.

22 CHAIRPERSON PARKER: Thank you.

23 MS. COTERA: Thank you.

24 CHAIRPERSON PARKER: Appreciate that.

25 COMMISSIONER SCARAMAZZO: Thank you.

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1 solicits support for Senator Gray.

2 COMMISSIONER HOFFMAN: He does?

3 MR. LANG: He does not -- thank you. I was

4 just correcting myself. He does not solicit support for

5 Senator Gray in the -- in terms of financial support.

6 You also have Senator Gray's response at

7 Exhibit B, in which she makes it clear that she spoke at

8 this event simply as a state representative. It was a

9 bipartisan event with a Democratic candidate there as

10 well; and that she has not coordinated with them in any

11 fundraising efforts, and to her knowledge she's not

12 received any benefit. In other words, to her knowledge

13 they have not engaged in independent expenditures on her

14 a behalf.

15 Senator Gray is -- is here and I -- I think she

16 wants to clarify on that point.

17 CHAIRPERSON PARKER: Thanks for coming today.

18 SENATOR GRAY: Oh. You're welcome. And thank

19 you. I know your time is valuable, so I'll be glad to

20 answer any questions.

21 And, no, I have not -- I do not know of any

22 expenditure on my behalf by the Chiropractic

23 Association.

24 MR. LANG: May I?

25 SENATOR GRAY: Sure.

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1 MR. LANG: There you have it. Lee Miller is --

2 is here. He filed -- well, he sent us some responses

3 signed by the Executive Director of the Republican Party

4 regarding these complaints against Linda Gray, and there

5 are a number of allegations regarding coordination

6 between Truth AZ and Ms. Gray's general election

7 opponent, which are not before us today. Her general

8 election opponent is not a Clean Elections candidate and

9 there are no matching funds.

10 So, where normally if there was such

11 coordination, it may trigger matching funds, with no

12 matching funds, it's -- it's not a -- it's a -- not a

13 issue we have to address today.

14 But I would note that Truth AZ claims to --

15 well, calls itself Truth AZ to bring out allegations

16 regarding sham candidates. You know, these Green Party

17 candidates, which, you know, it's a shame that that

18 happens. But these allegations suggest that perhaps

19 that's not the only sham going on.

20 So, based on the information we've received and

21 based on the lack of any demonstrated coordination

22 between Senator Gray and Truth -- and the chiropractors,

23 we recommend no reason to believe.

24 COMMISSIONER DANIELS: Madame Chairman, I would

25 move that we find no reason to believe in the matter of

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1 off?

2 COMMISSIONER SCARAMAZZO: Turn it off.

3 MR. LANG: Do you mind doing that?

4 COMMISSIONER FAIRMAN: I knew you'd have to

5 find help.

6 COMMISSIONER DANIELS: Oh. That was rude.

7 Don't pick on him that much, come on.

8 CHAIRPERSON PARKER: That's why we pay him the

9 big bucks.

10 COMMISSIONER DANIELS: Yeah. I don't think we

11 pay him that much.

12 CHAIRPERSON PARKER: I don't think so either.

13 Okay. The next item on our agenda is

14 discussion and possible action on conciliation agreement

15 for MUR 10-0013, Shirley McAllister.

16 MR. LANG: Thank you, Madame Chair.

17 Commissioners, Kirstin Eidenbach is here. She

18 represented Ms. McAllister. I don't know if she needs

19 to speak.

20 But we've worked -- this was the matter that

21 was before you at the last meeting. We've reached an

22 agreement in which Ms. McAllister acknowledges the

23 violation and we acknowledge that she didn't intend to

24 violate the law. That, in fact, she felt that she was

25 proceeding in good faith in compliance with the law; and

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1 MUR 10-0019, Linda Gray.

2 COMMISSIONER HOFFMAN: Second.

3 CHAIRPERSON PARKER: Okay. Motion made by

4 Commissioner Daniels, seconded by Commissioner Hoffman,

5 for no reason to believe in MUR 10-0019. All in favor?

6 (Chorus of ayes.)

7

8 CHAIRPERSON PARKER: Opposed? Motion carries.

9 SENATOR GRAY: Thank you.

10 CHAIRPERSON PARKER: Thank you, Senator.

11 COMMISSIONER DANIELS: Thank you.

12 COMMISSIONER HOFFMAN: Thank you.

13 CHAIRPERSON PARKER: Next item --

14 COMMISSIONER SCARAMAZZO: Todd, can you turn

15 that off?

16 MR. LANG: Oh, I'm sorry. Sure. Once I figure

17 out --

18 COMMISSIONER SCARAMAZZO: I get a feeling I'm

19 being stared at.

20 COMMISSIONER DANIELS: You sure you can do it?

21 MR. LANG: The Governor is watching.

22 COMMISSIONER HOFFMAN: You don't stand with

23 Arizona?

24 COMMISSIONER SCARAMAZZO: Oh, don't go there.

25 MR. LANG: Is that enough or do you want the TV

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1 that her campaign strategy was, in fact, directed to the

2 primary; that she wanted to spend the money in the

3 fashion of attacking her general election opponent in

4 order to help her primary prospects by bringing in

5 independent voters.

6 That said, once you criticize your general

7 election opponent, under our rules that is no longer

8 directed to the primary. We've had no other compliance

9 problems, we think it's quite clear, and -- and we stand

10 by that rule. But we -- at the same time, we do

11 acknowledge Ms. McAllister's good faith.

12 Based on that, we went back and forth in our

13 negotiations, on the percentage of the ads that were

14 actually directed to her general election opponent, and

15 finally arrived at the settlement proposal you see

16 before you in the conciliation agreement. Which is --

17 CHAIRPERSON PARKER: \$2,000.

18 MR. LANG: -- \$2,000. So, what will happen is

19 \$2,000 of her general election money will go back to the

20 fund as a dedication to -- to make up for the fact that

21 part of those communications were directed to the

22 general. That's actually more than if you worked out

23 the percentages of the ads in their opinion, but we felt

24 it was an appropriate resolution.

25 COMMISSIONER HOFFMAN: So the idea is that she

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1 got the benefit of \$2,000 worth of money out of her
 2 primary allocation; and therefore, it's being removed
 3 from the general allocation to compensate?
 4 MR. LANG: That's right. Because \$2,000 worth
 5 was directed at her general election opponent so it
 6 should be dir- -- it should be put in the general
 7 election fund.
 8 COMMISSIONER SCARAMAZZO: I'll move to accept
 9 the conciliation agreement in MUR 10-0013,
 10 Ms. McAllister.
 11 COMMISSIONER FAIRMAN: Second.
 12 CHAIRPERSON PARKER: Okay. A motion has been
 13 made by Commissioner Scaramazzo, seconded by
 14 Commissioner Hoffman --
 15 COMMISSIONER DANIELS: May I make a point
 16 before we vote, Madame Chairman?
 17 CHAIRPERSON PARKER: Yes.
 18 COMMISSIONER DANIELS: Are we looking to
 19 clarify our rules at all on this so that it doesn't
 20 happen again? Or is this something we think -- I mean,
 21 you talked about last time how it was a good campaign
 22 strategy. And so, I'm just thinking maybe we need to be
 23 very -- we need to be looking at some rulemaking changes
 24 very specifically.
 25 Because, I mean, I think that's the whole job
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1 CHAIRPERSON PARKER: Okay. Very good. I just
 2 wanted to be sure.
 3 MS. EIDENBACH: Thank you.
 4 CHAIRPERSON PARKER: So, we have a motion and a
 5 second, so all in favor?
 6 (Chorus of ayes.)
 7
 8 CHAIRPERSON PARKER: Opposed? Motion carries.
 9 Litigation update.
 10 MR. BARTON: Madame Chairman, the status of the
 11 litigation is that we have filed our brief in opposition
 12 to the Petitions for Writ of Certiorari, which means
 13 that we've asked the Supreme Court not to take this
 14 case; and if they decide not to take this case, then the
 15 Ninth Circuit's order will go into effect and matching
 16 funds will be back -- the matching funds will be back in
 17 effect.
 18 Todd giggled because it would be extraordinary
 19 for the Court to have overturned our law in the middle
 20 of an election season, and then to decide after all not
 21 to review the case.
 22 COMMISSIONER HOFFMAN: But you're a persuasive
 23 guy, and...
 24 MR. BARTON: But we argued why if they take a
 25 careful look at this statute, it's very, very different
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1 of us as Commissioners is to make sure that people --
 2 nothing is ambiguous -- there's no ambiguity, there's no
 3 issues for them to get caught in. So that's -- I'd like
 4 to see if we could work on that.
 5 MR. LANG: We can be more clear. I do feel
 6 that "directed to the primary" is quite clear. And I
 7 think that's reflected by the lack of enforcement
 8 matters.
 9 That said, they've raised an issue, and this
 10 person in good faith felt she was complying with our
 11 rules, so that's I think reason enough to change -- to
 12 make the rule even more specific.
 13 CHAIRPERSON PARKER: And maybe in training you
 14 could use this as an example.
 15 MR. LANG: Yeah. We could put it in our
 16 training books. The alternative is to allow this, which
 17 I said, because it is a legitimate campaign strategy,
 18 but I think that is a slippery slope that you would want
 19 to address with care. So, the first step will be to
 20 simply make it even more clear: You can't hit your
 21 general election opponent. In, you know, fancier words.
 22 CHAIRPERSON PARKER: Ms. Eidenbach, did you
 23 want to say anything to us on this?
 24 MS. EIDENBACH: Not unless the Commission has
 25 questions. I think we spoke at length last time, so.
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1 from Davis, and maybe they will, you know, clearer minds
 2 will prevail, and they will decide not to take it.
 3 The way the calendar works now is on the 30th,
 4 the clerk will distribute all this information to the
 5 members of the Supreme Court. If the Plaintiffs have a
 6 reply brief by then, they can get it out and the Court
 7 will --
 8 MR. LANG: They will.
 9 MR. BARTON: -- review the reply brief also.
 10 And they will -- they will likely have one.
 11 After that there are two conferences that this
 12 could go to, the first is on the 5th of November, and
 13 the next one is on the 12th of November, so I would
 14 expect by the 12th of November the Court will have
 15 reviewed and decided whether or not to take the case.
 16 Assuming they do take the case, the Plaintiffs will have
 17 40 days to file an opening brief, and then after that
 18 we'll have 30 days to file a response brief from our
 19 office. So I kind of know what I'm going to be doing
 20 over Christmas break, is the -- is the moral of that
 21 story.
 22 That's really all I have. You have a copy of
 23 the brief. I -- I can answer any questions if you'd
 24 like or any other questions about the calendar?
 25 CHAIRPERSON PARKER: I think Lori did.
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1 COMMISSIONER DANIELS: Just curious, have you
 2 ever done anything before the Supreme Court before?
 3 MR. BARTON: Most of the work that I've done
 4 before the Supreme Court is -- been in this office.
 5 That's where I -- the -- I did work on some amicus
 6 briefs and things like that when I was in private
 7 practice and actually a little bit in law school.
 8 COMMISSIONER DANIELS: Thank you. Just
 9 curious.
 10 MR. BARTON: But, yes, this is the most Supreme
 11 Court practice that I've had.
 12 COMMISSIONER DANIELS: Okay.
 13 COMMISSIONER HOFFMAN: Could you please
 14 circulate the Petition for Certiorari and the reply and,
 15 of course, the opening brief as soon as they come in,
 16 because I don't believe we've seen those.
 17 MR. LANG: I didn't send that one out
 18 because --
 19 COMMISSIONER SCARAMAZZO: You can delete my
 20 e-mail on that one.
 21 MR. LANG: All right.
 22 COMMISSIONER SCARAMAZZO: If you have read
 23 that.
 24 MR. LANG: The odds of them denying Cert. are
 25 slim and none and slim just left town. Now, on the
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1 MR. BARTON: That's all I have as far as this.
 2 COMMISSIONER HOFFMAN: The other question I was
 3 going to ask is regarding amicus briefs on -- on appeal,
 4 and have there been any -- and I know it's not as usual
 5 on the Cert. stage, but I would like to have some
 6 understanding of what's going on in that front; it need
 7 not be at the moment, but whenever -- whenever is
 8 appropriate to the requests.
 9 MR. BARTON: Madame Chair, Commissioner
 10 Hoffman, you are right, that we have not solicited
 11 amicus briefs for the petition stage, because it's
 12 counterproductive, because our point is that there is
 13 nothing to review here. We do expect there to be amici
 14 for -- on behalf of the petitioners. Those briefs
 15 haven't come in, but we expect there will be some.
 16 COMMISSIONER HOFFMAN: When are they due?
 17 MR. BARTON: Well, they have to be in before
 18 this 30-day -- you know, before the October 30th, when
 19 they start to pass out the materials. So it should be
 20 coming soon. It's -- it's a little bit unusual to
 21 receive those, but they -- but they can happen.
 22 And then as far as amici brief goes, during the
 23 merits phase we will be soliciting some. We have been
 24 contacted by some other states and some organizations
 25 and we'll keep you apprised of how that proceeds.
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1 merits --
 2 MR. BARTON: Also, just to be clear, I'm not
 3 the only one on this case. As you're aware, the
 4 Solicitor General is working on it, and -- and we'll
 5 have other people with a -- a little bit more practice
 6 experience.
 7 COMMISSIONER DANIELS: Well, I -- I was not
 8 questioning your ability at all. I was just curious
 9 about your background or not. So, please don't take
 10 offense to that.
 11 MR. LANG: We could get Justice O'Connor to
 12 write the brief and I don't know that it would help.
 13 COMMISSIONER DANIELS: Yeah. Well, I was
 14 just -- I was just --
 15 MR. BARTON: In the petition, you mean.
 16 MR. LANG: On the petition.
 17 MR. BARTON: Yes.
 18 MR. LANG: On the merits -- on -- on --
 19 COMMISSIONER HOFFMAN: Do we have a chance?
 20 For the merits can we get Justice O'Connor to write the
 21 brief?
 22 COMMISSIONER DANIELS: I don't think so.
 23 MR. BARTON: I don't think we'll get Justice
 24 O'Connor to write any briefs for us.
 25 COMMISSIONER HOFFMAN: In any event --
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1 COMMISSIONER HOFFMAN: Thank you.
 2 CHAIRPERSON PARKER: Anybody else have
 3 questions?
 4 COMMISSIONER SCARAMAZZO: I just have one. I
 5 was trying to figure out who the nameless bureaucrat is
 6 in the Arizona Republic editorial today about Clean
 7 Elections. I just wondered whether you happened to see
 8 that editorial or not.
 9 CHAIRPERSON PARKER: I didn't get to see that.
 10 What did it have to say?
 11 COMMISSIONER SCARAMAZZO: It had to do with the
 12 Supreme Court and Southwest Ambulance and \$50,000 going
 13 to candidates in Scottsdale, and they took a pop at some
 14 nameless bureaucrat, and so I was just wondering if we
 15 knew who that was.
 16 CHAIRPERSON PARKER: I didn't see that story.
 17 COMMISSIONER SCARAMAZZO: I don't know if we're
 18 considered bureaucrats or not.
 19 COMMISSIONER DANIELS: I'm not.
 20 MR. LANG: What does that have to do with --
 21 they were hitting Clean Elections over what's happening
 22 in Scottsdale?
 23 COMMISSIONER DANIELS: Scottsdale? There's no
 24 correlation.
 25 COMMISSIONER SCARAMAZZO: There's a little glib
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1 in there at the end. You might want to read it.
 2 MR. LANG: Yeah, I missed that one.
 3 COMMISSIONER FAIRMAN: You have too much time
 4 on your hands.
 5 COMMISSIONER SCARAMAZZO: I know. I know.
 6 CHAIRPERSON PARKER: We'll have to ask Mike
 7 Becker why we didn't get that one.
 8 COMMISSIONER FAIRMAN: Maybe you can help us
 9 out.
 10 CHAIRPERSON PARKER: Mike, get on that.
 11 COMMISSIONER DANIELS: That's funny.
 12 COMMISSIONER HOFFMAN: Maybe we should have a,
 13 you know, random hit at the Arizona Republic at our
 14 meeting, whether it's relevant or not, just as a matter
 15 of course every month.
 16 CHAIRPERSON PARKER: Okay. Well, then at this
 17 time I'll open it up for public comment if anybody else
 18 from the audience would like to address us?
 19 Okay. Do I have a motion to adjourn?
 20 COMMISSIONER FAIRMAN: I'll make a motion to
 21 adjourn.
 22 COMMISSIONER DANIELS: Second.
 23 CHAIRPERSON PARKER: Okay. There's a motion by
 24 Commissioner Fairman, seconded by Commissioner Daniels,
 25 for adjournment. All in favor?

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1 (Chorus of ayes.)
 2
 3 CHAIRPERSON PARKER: All opposed? Motion
 4 carries.
 5 (Whereupon the proceeding concludes at 12:33
 6 p.m.)
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1 C E R T I F I C A T E
 2
 3 I, Angela Furniss Miller, Certified Reporter,
 4 do hereby certify that the foregoing pages numbered 1
 5 through 55, 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 26th day of October,
 10 2010.
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 Angela Furniss Miller, RPR
 Certified Reporter (AZ50127)

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