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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
December 17, 2009
9:30 a.m.

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

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 ELECTIONS COMMISSION, convened at 9:30 a.m. on December
 2 17, 2009, at the State of Arizona, Clean Elections
 Commission, 1616 W. Adams, Conference Room, Phoenix,
 3 Arizona, in the presence of the following Board members:

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

7 OTHERS PRESENT:

8 Todd Lang, Executive Director
 Colleen McGee, Deputy Director
 9 Rita Azcona, Administrative Assistant III
 Michael Becker, Voter Education Manager
 10 Daniel Ruiz, II, Campaign Finance Manager
 Tanja Shipman, Attorney General's Office
 11 Montgomery Lee, Attorney General's Office
 Lee Miller, self
 12 Michael Brewer, self
 Nancy Read, Office of the Secretary of State
 13 Jim Barton, Perkins Coie Brown & Baine
 Katherine DeStefano, Perkins Coie Brown & Baine
 14 Michael Brewer, Brewer Campaign
 Jose Rivera, Haralson Miller Pitt Feldman &
 15 McAnally PLC
 Sara Larson, Haralson Miller Pitt Feldman &
 16 McAnally PLC
 Christian Palmer, AZ Capitol Times
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P R O C E E D I N G

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 3 CHAIRPERSON SCARAMAZZO: Good morning. I'd
 4 like to call to order this meeting of the Citizen's
 5 Clean Elections Commission.
 6 It's Thursday, December 17, 2009, at 9:30 a.m.
 7 Hope everyone is well and getting ready for the
 8 holidays.
 9 With that in mind, we'll start the agenda by
 10 moving on to Item II, seeking approval of the
 11 November 19th, 2009, Commission meeting minutes.
 12 COMMISSIONER PARKER: I move we approve the
 13 meeting minutes of November 19, 2009.
 14 COMMISSIONER FAIRMAN: I'll second.
 15 CHAIRPERSON SCARAMAZZO: It's been moved by
 16 Commissioner Parker, seconded by Commissioner Fairman,
 17 to approve the Commission meeting minutes of November
 18 19th, 2009. Any discussion on this item?
 19 All those in favor say "aye."
 20 (Chorus of ayes.)
 21 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 22 carries.
 23 Todd, Item No. III is the Executive Director
 24 report. We'll turn it over to you for now.
 25 MR. LANG: Thank you, Commissioners. As you

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1 know -- and thank you Mr. Chair and Commissioner Hoffman
 2 for attending the COGEL conference. I think you found
 3 it worthwhile and interesting. It was a huge success.
 4 Folks really enjoyed it. And our staff really did a
 5 great job of putting it together, and they received
 6 accolades all along, many thank you's. But I thought
 7 I'd pass around this letter, this is the most recent
 8 letter I received from the program committee chair.
 9 I'll just pass that around so you can see the usual
 10 praise that they received. They really did do a great
 11 job.
 12 The only other thing I will mention is, I'm
 13 doing an election law CLE and this is the brochure for
 14 it. I think it's a must attend for you. It's just
 15 fascinating stuff -- on March 19th. So I'll pass that
 16 around. And I'm teaching an election law class with Kim
 17 Demarchi of Louis & Roca at ASU this spring. So we'll
 18 be having lots of fun on that.
 19 And unless you have questions, that concludes
 20 my report.
 21 CHAIRPERSON SCARAMAZZO: Okay. Any questions
 22 for Todd?
 23 Hearing none, we appreciate that and thanks to
 24 the staff for making us all look good, okay? Thank you.
 25 We know it was a lot of work.

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1 Item No. IV, discussion and possible action
 2 regarding candidates' participation in issue advocacy
 3 organizations. Todd?
 4 MR. LANG: Commissioners, as you know, we
 5 regulate expressed advocacy. In other words, vote-for
 6 ads. And the question you always have when you're
 7 considering matching funds over the years is, is this
 8 expressed advocacy or is it issue advocacy? We don't
 9 regulate issue advocacy. In other words, talking about
 10 gun control or what have you.
 11 Recently, this issue has come up again in a
 12 different form. Rather than the issue of matching
 13 funds, it comes up in the candidate's participation in
 14 issue advocacy organizations. And I have up on the
 15 screen there, a little presentation to help you -- to
 16 help you think about it and talk through it.
 17 And so, the reason it's on the agenda today is
 18 more as an information item and a discussion item,
 19 rather than an action item. Obviously, if you have
 20 actions you would like us to take, we will certainly do
 21 that, but I thought we'd talk about issue advocacy.
 22 First, we look to our statute, 16-901.01. And
 23 when you have those magic words from Buckley versus
 24 Valeo, the 1976 case, at Footnote 52, it -- it -- that's
 25 easy: Elect, reelect, support, you see all the words

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1 there. Those are easy. You know when it has those
 2 words, that it's expressed advocacy and that's something
 3 we would regulate.
 4 And that's always the first inquiry. It's not
 5 who paid for it; was it coordinated; did they work
 6 together; were they separate, it's: Is it expressed
 7 advocacy? That's the first step in the inquiry. Once
 8 it's expressed advocacy, then you ask all those other
 9 questions and you determine whether there's a violation
 10 or not.
 11 But the first issue is expressed advocacy. And
 12 if there's no magic words -- and as you know, most ads
 13 are a little slicker than that. They don't have the
 14 magic words. They say: Royann Parker, a woman for a
 15 new millennium. Well, that doesn't say "vote for," but
 16 we all know what it means. It means vote for.
 17 So, then you have to look to the second part of
 18 the statute, which is, it looks, basically, context and
 19 elements of the ad. And that's, obviously, a much
 20 tougher call. Is it a general public communication; in
 21 other words, is it out there in the public, is it
 22 targeted to the electorate? That's really important.
 23 Especially -- and that's -- that's really a helpful bit
 24 of analysis when you have a legislative race, because
 25 then you know it's going to that district, legislative

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1 Yeah, there was no other reasonable meaning. Sure, you
 2 told them to call, but really what this was about was
 3 voting. And one of the things they looked at was it was
 4 right before the election. And you can see that, that's
 5 some of the contextual information. I can send this
 6 presentation to you as well so you have that for your
 7 own records.
 8 The nice thing is, is that, you know, our
 9 statutes are our statutes, and they were written, I
 10 think, to closely be in line with a Ninth Circuit case
 11 called Furgatch, which came out many years ago, and
 12 we've talked about it before. And it -- it gives us
 13 more information on what advocacy is required, you know,
 14 it has to be election or defeat of a candidate.
 15 And what's nice is that the recent decision a
 16 couple of years ago of the U.S. Supreme Court considered
 17 this expressed advocacy issue again in Wisconsin Right
 18 to Life. And it went and looked at expressed advocacy;
 19 and it, basically, in my view used the Furgatch test,
 20 which, of course, is what our statute is based on. So,
 21 I guess the point I'm making for you, Commissioners, is
 22 that our statute is in good legal standing under the --
 23 even though it was written in '98, and this -- this
 24 Supreme Court decision was only a couple years ago, it
 25 basically lets us look at the same thing.

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1 district, we'll say 16. It's going just to that
 2 district and not elsewhere, then it's probably targeted
 3 to that district. Whereas if it's going elsewhere,
 4 that's an indication otherwise.
 5 And does it refer to clearly identified
 6 candidates. Do you know who it is, whether it says
 7 their name or not. You know, right now if they say:
 8 The Governor is doing a great job; or, the Governor is
 9 doing a bad job, we know who they're talking about, even
 10 though it never mentions a name. So those are elements
 11 of expressed advocacy.
 12 And then you look to context. No other
 13 reasonable meaning than to call for a vote for or
 14 against a particular candidate. And that's the real
 15 tricky part. That's where ads that are really -- it
 16 could be considered expressed advocacy are clearly
 17 designed to make someone look good or bad, that's where
 18 maybe they get away with it, because there could be more
 19 than one meaning. And so you really have to look
 20 carefully at the context. Like, you will see an ad --
 21 there was an ad in Louisiana this year which just
 22 eviscerated a particular candidate, but at the end it
 23 said: Make a call to, their equivalent of the Clean
 24 Elections Commission, and let them know your concern.
 25 Well, what the enforcement agency said was:

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1 "Only if the ad has no other reasonable
 2 interpretation than as an appeal to vote for or against
 3 a specific candidate." That sounds just like Furgatch,
 4 in that slide I showed you earlier. And then the Court
 5 went on in that particular case to say they were not
 6 expressed advocacy. And -- and this sort of gives us
 7 some criteria to look at. The ads were on a legislative
 8 issue, in that case it was abortion. They take a
 9 position on a legislative issue, exhort the public to
 10 adopt that position, and urge them to contact public
 11 officials. So, even though it may have had an impact on
 12 the race, it clearly was a legislative issue.
 13 And then this is important, and when we are
 14 instructing candidates, these are the kind of
 15 instructions we give them: The ads do not mention an
 16 election, they do not mention a candidacy, a political
 17 party, or challenger. And they do not take a position
 18 on a candidate's character, qualifications, or fitness
 19 for office. In other words, they don't criticize a
 20 candidate. And you notice, they don't mention a
 21 challenger. So, once you have a challenger in the race,
 22 that's an indicia that it is expressed advocacy.
 23 And the Court goes on to allow you to look at
 24 background information, timing and all that, you just
 25 can't focus on that, okay? But timing is important.

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1 And when the legislature is in session here in Arizona,
 2 and it's a legislative issue that they're debating,
 3 that's an indicia that it's an issue ad. If the
 4 legislature is not in session, or if it's a debate over
 5 an issue that is not being considered by the public in a
 6 referral or by the legislature, then it's a problem.
 7 This is Mainstream Arizona. This was a case
 8 where the folks at Mainstream Arizona felt it was not
 9 expressed advocacy, but the -- but the Courts agreed
 10 that it was expressed advocacy. And it says: "It's
 11 time for politics in Arizona to change." And the call
 12 to action isn't a vote, but it's: Urge our leaders to
 13 continue fighting for Arizona. And then it basically
 14 endorsed these representatives. You see the call to
 15 action there at the bottom left in bold print: "Urge
 16 her to continue to support a fiscally responsible
 17 budget."
 18 But when you consider the timing and you
 19 consider it in the positive light, all those issues, it
 20 was found to be expressed advocacy. You can see the
 21 timing, the mailers were sent out the day before
 22 absentee ballots. There was no legislative action going
 23 on, there wasn't a legislative debate at that time, and
 24 so it didn't use the magic words, but they found it to
 25 be expressed advocacy -- the Court found it to be

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1 before he started running. So, there he is again
 2 featured prominently. And this was permitted.
 3 Obviously, his opponent was not happy about the
 4 decision. He felt that this was expressed advocacy.
 5 But when you go back to those -- that analysis we looked
 6 at at the beginning, it simply didn't meet the criteria.
 7 There was another reasonable meaning. While it may have
 8 been to get him elected, the other reasonable meaning
 9 was to fight Prop 206 -- or, actually in this case, vote
 10 yes on 206. Oh, this was the industry smoking ban. So,
 11 there you go.
 12 And there he is again on the right there. This
 13 is another piece.
 14 This was my analysis. And, again, I'll send
 15 this to you. They don't make references to his
 16 candidacy, his district was 11; it went to District 11,
 17 but it went to all the other districts, no more to 11
 18 than any other, and there was a legislative purpose, the
 19 passage of 206. In the let- -- I have a letter that I
 20 sent to him that staff and I worked on, where we told
 21 him what we needed, and he participated in that.
 22 So, that's the slideshow. Obviously, the issue
 23 has come up because now we have a gubernatorial
 24 candidate who is doing a similar thing. And that
 25 gubernatorial candidate's campaign staff contacted us,

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1 expressed advocacy.
 2 COMMISSIONER HOFFMAN: Which court?
 3 MR. LANG: I don't remember. I think it was
 4 Superior Court.
 5 COMMISSIONER HOFFMAN: Got it.
 6 MR. LANG: And then they -- there's more
 7 information than we need here; but, again, it was not
 8 just about that person.
 9 And then this is an issue that the Commission
 10 dealt with four years ago. This is Mark Desimone's ad.
 11 He was a legislative candidate at the time, not an
 12 incumbent, who owns a bar. And as a part of his
 13 ownership of the bar, was very, very concerned about the
 14 smoking ban that was being proposed by initiative. And
 15 so these are the ads that he participated in. If you
 16 look on the left side middle, that's his picture. And
 17 you can see a quote by him, he's the chairman. It
 18 doesn't mention his candidacy. It doesn't mention the
 19 legislative race at all. And this is -- this was a,
 20 obviously, a major legislative issue. It was a referral
 21 that was on the ballot. And it was, in his view,
 22 essential to his business.
 23 The other thing is, he didn't start this
 24 committee, and it was something he was involved in
 25 before he, you know, it was a ban that he was opposed to

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1 talked with us. And we told them, yes, you can -- you
 2 can engage in issue advocacy, we don't regulate that.
 3 We told them we have concerns, of course, because there
 4 is a line. But we explained the outline. We did not
 5 discuss the particular issue that they're going to have
 6 as the issue advocacy, in other words the -- the tax
 7 issue, but we told them they could do it.
 8 Since then we've seen that it is about the tax
 9 issue, and when you do the analysis, it's obviously very
 10 close to one. Because there is no legislative district,
 11 it's statewide, it is the number one issue in the
 12 Governor's race, and so we, you know, we do have
 13 concerns, but that's -- that's where we are.
 14 And, you know, I hope to -- and they've been
 15 great. That campaign has been great. They've been very
 16 up front with staff and I, and the communication lines
 17 have been open. And -- and I think they understand our
 18 concerns, that they -- when they see this sort of
 19 criteria, that they not go over the line, that they
 20 not -- they can't advocate against a candidate, they
 21 can't criticize a candidate, they simply have to talk
 22 about the issue.
 23 And, you know, the constitutional law is very
 24 clear, we cannot regulate issue advocacy. And so, it's
 25 incumbent on them to stay on the issue advocacy side of

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1 the line. So, that's -- that's where we are.

2 COMMISSIONER HOFFMAN: Have they given you any

3 indication -- Mr. Chair?

4 CHAIRPERSON SCARAMAZZO: Sure.

5 COMMISSIONER HOFFMAN: Mr. Lang, have they

6 given you any -- any indication, Mr. Lang, as to whether

7 the candidate for Governor is going to be prominently

8 featured on the advertisement pieces? Because if it is

9 an issue ad and not a disguised campaign ad, it doesn't

10 need to show him or mention him.

11 MR. LANG: Well, first of all, I was remiss,

12 Commissioners, I should have introduced you to Jose

13 Rivera, he's our attorney on this matter. We brought in

14 outside counsel on this matter because it involves the

15 Governor's race.

16 To answer your question, what I understand is

17 that Mr. -- that Mayor Parker is very concerned about

18 the tax issue and -- and it's a personal priority for

19 him. And so, he wants to participate in the issue

20 campaign. I don't think any final decisions have been

21 made on the level of his participation in the actual

22 ads.

23 COMMISSIONER HOFFMAN: I mean, I think that

24 providing some guidance indicating that his face

25 plastered all over the front of -- of flyers, tends to

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1 They haven't engaged in any communications yet.

2 COMMISSIONER HOFFMAN: Right.

3 MR. LANG: So, so far there's no problems. And

4 while I haven't sent them this slideshow, we've had

5 discussions and I probably will just send them the

6 slideshow so they can see what I'm thinking in you know,

7 in written detail. And we'll -- we'll certainly have

8 more conversations.

9 Daniel, is there anything you want to add to

10 that?

11 MR. RUIZ: No, they haven't -- they're actually

12 looking to us for guidance on how he can appear in an

13 ad, if he can appear in the ad. Maybe this slideshow

14 will help them move along with their campaign.

15 COMMISSIONER HOFFMAN: Yeah, I think and the

16 transcript of this very meeting, of course, should

17 explain the slideshow quite good.

18 CHAIRPERSON SCARAMAZZO: Jeff.

19 COMMISSIONER FAIRMAN: Mr. Chair, I think I

20 would have a tendency to disagree a little bit. I think

21 as long as it's an -- an issue-only ad, and regardless

22 of whose face is on it, I think they're taking a

23 tremendous gamble by associating themselves with an

24 issue one way or the other, so I think that's a gamble

25 from the start. And I think being a -- an involved,

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1 move the -- the appearance much closer to, you know, a

2 campaign -- a disguised campaign piece, and away from an

3 issue ad, under the standards that you quite rightly

4 have provided to them.

5 I don't -- I'm not saying that's the only issue

6 or that he would -- that there is some flat-out ban on

7 him speaking or saying his piece, clearly not. But, the

8 degree in which his personal image and -- and

9 presentation are -- are out front and center would be, I

10 think, a significant factor tending to move it in one

11 direction or the other.

12 Conversely, as you mentioned also, I believe

13 you did say that -- that you advised the campaign that

14 criticism of the -- his opponent would be -- would

15 strongly tend to move it towards -- towards the other --

16 the wrong side of the light, from their perspective.

17 MR. LANG: Yeah, I think that those --

18 Mr. Chair?

19 CHAIRPERSON SCARAMAZZO: No. Jeff's got a

20 question also.

21 COMMISSIONER FAIRMAN: I'll wait for your

22 answer.

23 MR. LANG: I -- we certainly had several

24 discussions with them. And remember, of course, that

25 the issue campaign really hasn't done anything yet.

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1 engaged citizen, whether you might have plans for the

2 future or not, is -- is certainly something that I think

3 everyone has a right to do. I think it has far more to

4 do with the words and the intent than it does on the

5 image. And -- and I think if someone is trying to

6 develop an image for themselves in one particular way or

7 another, that it may be for -- for future purposes, a --

8 a run at an office, it may be because they feel

9 passionately about that -- about that issue so.

10 I probably wouldn't look as -- as negatively on

11 -- on any -- on any image. I would certainly have to

12 weigh it against the text and against the context and --

13 and what it -- what it appeared to really do.

14 CHAIRPERSON SCARAMAZZO: Thank you. Royann.

15 COMMISSIONER PARKER: My question is, too, is

16 how we track the expenditures in a sense; because we

17 don't regulate them, and how will we know if -- where

18 the monies necessarily are coming from in that respect.

19 Because the one newspaper article said that he spent

20 seed money from his Governor's race to start up this

21 group. And I had questions about that and concerns

22 about that. I think that's something we should look

23 into, because to me, that would clearly be a violation

24 if -- if the statement as it was presented in the

25 newspaper is accurate.

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1 MR. LANG: Well, we can certainly look into
 2 that and will discuss that with them. It's my
 3 understanding that no laws have been broken yet, but
 4 we'll look into that particular issue for you.
 5 I think I addressed everything you raised. Did
 6 I?
 7 COMMISSIONER PARKER: Well, just, I guess so.
 8 MR. LANG: Okay.
 9 COMMISSIONER HOFFMAN: Mr. Chair.
 10 CHAIRPERSON SCARAMAZZO: Daniel, go ahead, and
 11 then Louis.
 12 MR. RUIZ: Commissioner Parker, I would also
 13 like to remind you that the issue campaign would also
 14 have to file campaign reports --
 15 COMMISSIONER PARKER: Mr. Chairman, I can't
 16 hear anything Daniel is saying. Sorry.
 17 CHAIRPERSON SCARAMAZZO: Oh, okay. Daniel,
 18 come up here so that Lori can hear, okay. Thank you.
 19 MR. RUIZ: I just wanted to say that the issue
 20 campaign would also have to file campaign finance
 21 reports and disclose any contribution and expenditures
 22 with the Secretary of State's office. So that would be
 23 not regulated by us, but it would be public disclosure.
 24 MR. LANG: I would add to that, that these
 25 issue groups run by officeholders and candidates are a
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1 Beyond that, I think that -- I'd like this
 2 issue, I'm glad to hear that the committee has been
 3 active in consulting Mr. Lang and his staff in trying to
 4 get guidance on this. I would sure hate to see this
 5 issue come up as an enforcement issue, as opposed to a,
 6 you know, some sort of advance request for clearance.
 7 And I know we've -- there was -- one of the
 8 things I learned at the COGEL conference, and that I
 9 intend to discuss with staff, is that there are states
 10 that have forms for -- or processes for obtaining
 11 advanced clearance, so that the committees and
 12 candidates don't have to take their chances and end up
 13 having us come down on them after the fact in an
 14 unpredictable way. And I'd like to -- whether it's done
 15 informally like Mr. Lang and the committee has so far
 16 done, or formally, like to, you know, see the
 17 possibility of this, you know, being done the right way
 18 and make sure that the system works, and that it's not
 19 something that we have to say, oops, now you stepped
 20 over the line and we're going to bring down the big
 21 hammers that we have at our disposal.
 22 So, I would like to -- I will look further into
 23 my notes of, you know, the information at the
 24 conference, to see whether, you know, there might be
 25 recommendations for particular processes. But I wanted
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1 nationwide phenomenon. We saw that at the COGEL
 2 conference. We just mentioned other states talking
 3 about how they deal with it. It's -- it's a challenge
 4 in California, among other states. And different states
 5 regulate it in different ways.
 6 But I wanted you to be on top of the legal
 7 analysis regarding issue advocacy. But the bottom line
 8 is, every state has some sort, you know, has campaign
 9 finance laws that regulate expressed advocacy. And then
 10 when they form these issue advocacy groups, that's an
 11 extra amount of money that comes in, and -- and that
 12 just happens -- that happens everywhere.
 13 CHAIRPERSON SCARAMAZZO: Okay. Louis?
 14 COMMISSIONER HOFFMAN: Mr. Chair, thank you. I
 15 wanted to acknowledge Mr. Fairman's comment. I
 16 particularly want to say that I did not intend my
 17 comments to in any way suggest that I'm prejudging this
 18 matter. My -- I -- I totally agree that we need to
 19 consider all factors, and -- you know, if presented with
 20 a case like this and weigh them. In that I was speaking
 21 at first about a particular factor, which seemed by way
 22 of an observation. And, you know, I totally agree that
 23 that factor, even if it turned out was a negative
 24 towards the analysis, could be outweighed by others that
 25 made it more clear in context.
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1 to encourage staff to continue to encourage the
 2 committee to look into this stuff in advance, so we can,
 3 you know, make these decisions in a case where it is as
 4 Mr. Lang said, very close to the line in ways that they
 5 don't accidentally step over the line, and then we're
 6 forced to inject ourselves into the midst of a
 7 Governor's race and do an enforcement action. That's
 8 not something that I think I would like to see happen,
 9 if at all possible.
 10 CHAIRPERSON SCARAMAZZO: Todd?
 11 MR. LANG: Mr. Chair, just to be clear, the
 12 Parker campaign has sent us a letter asking for guidance
 13 and -- in regard to this. And, obviously, it's a --
 14 it's a tough issue. But what we intend to do is tell
 15 them, you know, basically give them an outline of -- of
 16 what Wisconsin Right to Life allows and the factors that
 17 would come up in any ad that we had to examine. And I
 18 agree with Commissioner Hoffman, the number one goal
 19 here is to avoid enforcement, to make sure they don't
 20 cross that line, because the penalties are severe.
 21 And -- and so, we will -- we will tell them the
 22 criteria that we will look at under Wisconsin Right to
 23 Life and our statutes and go from there.
 24 COMMISSIONER HOFFMAN: Okay.
 25 CHAIRPERSON SCARAMAZZO: Thank you. Anyone in
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1 the audience have anything they want to weigh in on
 2 concerning this issue?
 3 Okay. Good deal. Lori, are you hearing okay?
 4 COMMISSIONER DANIELS: I am. Thank you.
 5 CHAIRPERSON SCARAMAZZO: Okay. Thank you. All
 6 right, hearing no other discussion on this, then we'll
 7 move on.
 8 Item No. V, discussion and possible action on
 9 proposed Commission meeting dates for January through
 10 June of 2010.
 11 COMMISSIONER PARKER: Mr. Chairman, I've got a
 12 couple of preferable dates on February and March. I
 13 prefer the 25th and the 18th of those two months, if
 14 it's amenable to the rest of the Commission.
 15 CHAIRPERSON SCARAMAZZO: Okay.
 16 COMMISSIONER HOFFMAN: 25th of February and --
 17 COMMISSIONER PARKER: 18th of March, yes.
 18 CHAIRPERSON SCARAMAZZO: Yes.
 19 COMMISSIONER PARKER: I had conflicts on the
 20 other dates.
 21 COMMISSIONER HOFFMAN: Boy, that -- that that
 22 fits my conflicts precisely.
 23 CHAIRPERSON SCARAMAZZO: Oh, good. Let's do a
 24 kumbaya here, okay? Good deal.
 25 How about January, what looks good for
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1 then June 17th or 24th?
 2 COMMISSIONER DANIELS: Probably --
 3 COMMISSIONER FAIRMAN: 17th. Oh. I'm sorry.
 4 COMMISSIONER DANIELS: That's okay.
 5 CHAIRPERSON SCARAMAZZO: 17th, okay. And, of
 6 course, if anything comes up on an emergency basis,
 7 certainly with enough prior notice, everybody seems to
 8 be pretty readily available to make some adjustments to
 9 this.
 10 So if you want to put that in the form of a
 11 motion for those dates and we'll ratify that.
 12 COMMISSIONER FAIRMAN: Mr. Chairman, I make a
 13 motion that the dates that we've just mentioned, which
 14 would be January 28th, February 18th -- no, I'm sorry --
 15 CHAIRPERSON SCARAMAZZO: No, the 25th.
 16 COMMISSIONER FAIRMAN: February 25th,
 17 March 18th, April 29th, May 20th, and June 17th be our
 18 schedule for meetings for the upcoming six months.
 19 CHAIRPERSON SCARAMAZZO: Okay.
 20 COMMISSIONER HOFFMAN: Second.
 21 CHAIRPERSON SCARAMAZZO: It's been moved by
 22 Commissioner Fairman, seconded by Commissioner Hoffman,
 23 to approve the dates as just mentioned in the motion.
 24 Any discussion? All those in favor say "aye."
 25 (Chorus of ayes.)
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1 everybody?
 2 COMMISSIONER FAIRMAN: Mr. Chairman, I'm much
 3 better on the 28th --
 4 CHAIRPERSON SCARAMAZZO: 28th.
 5 COMMISSIONER FAIRMAN: -- of January.
 6 CHAIRPERSON SCARAMAZZO: Does that work?
 7 COMMISSIONER PARKER: Works for me.
 8 CHAIRPERSON SCARAMAZZO: Lori?
 9 COMMISSIONER DANIELS: That's fine.
 10 CHAIRPERSON SCARAMAZZO: Okay. 25th of
 11 February, 18th of March. April?
 12 COMMISSIONER FAIRMAN: April 29th.
 13 CHAIRPERSON SCARAMAZZO: Okay. May 20th or
 14 27th?
 15 COMMISSIONER FAIRMAN: 20th.
 16 CHAIRPERSON SCARAMAZZO: Okay. Good. All
 17 right.
 18 COMMISSIONER FAIRMAN: Might as well.
 19 CHAIRPERSON SCARAMAZZO: Roll the dice. In
 20 June --
 21 COMMISSIONER DANIELS: Mr. Chairman, I'm sorry.
 22 I didn't hear April, which day did we pick?
 23 CHAIRPERSON SCARAMAZZO: April 29th.
 24 COMMISSIONER DANIELS: Thank you.
 25 CHAIRPERSON SCARAMAZZO: Okay. May 20th. And
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25

1 CHAIRPERSON SCARAMAZZO: Opposed? Motion
 2 carries. Thank you.
 3 Item No. VI, nomination and election of
 4 Commission chairperson for the 2010 year.
 5 COMMISSIONER FAIRMAN: Mr. Chair?
 6 CHAIRPERSON SCARAMAZZO: Mr. Fairman?
 7 COMMISSIONER FAIRMAN: Mr. Chairman, I would --
 8 would like to nominate Royann Parker for that position.
 9 I've been with her now for the last couple of years in
 10 these meetings, and I appreciate her -- her perspective,
 11 and -- and how she handles herself in meetings, and I
 12 think will do very well, going into what could be a
 13 difficult year, so I nominate Royann Parker.
 14 COMMISSIONER HOFFMAN: Second.
 15 COMMISSIONER DANIELS: Mr. Chairman, I would
 16 second the motion.
 17 CHAIRPERSON SCARAMAZZO: Okay. Super. It's
 18 been moved by Commissioner Fairman and seconded by
 19 Commissioner Daniels, to approve the nomination of
 20 Commissioner Parker for chairperson for 2010.
 21 All those in favor say "aye."
 22 (Chorus of ayes.)
 23 CHAIRPERSON SCARAMAZZO: Okay. Opposed?
 24 Motion carries. Thank you. Congratulations.
 25 COMMISSIONER PARKER: Thank you very much. I
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1 appreciate your support.

2 CHAIRPERSON SCARAMAZZO: You bet. All right.

3 Item No. VII, legislative -- legislation update. Todd?

4 MR. LANG: Commissioners, I've sent around this

5 current resolution that -- this is just a draft --

6 that's being considered, that would allow the

7 legislature to -- actually, it would be a referral to

8 the voters for them to consider a temporary repeal of

9 the Prop 105, protections of -- of voter-initiated laws.

10 Largely driven -- this legislation is largely driven by

11 the extreme financial crisis the state is facing, but it

12 raises a number of concerns. Any time you see the term

13 "Proposition 200 (1998)," that's the Clean Elections

14 Act. And in it, it allows the -- the language is not

15 entirely clear to me, but it allows them to effectively

16 take half of the funds. And then, of greatest concern,

17 it would allow them then at the end of the fiscal year

18 to again take half of the funds.

19 And a couple of concerns. One is: That makes

20 a lot of sense for most agencies, because, of course, at

21 the end of the fiscal year, there's at least some

22 indication that the financial hit, while significant,

23 won't adversely affect their operations since most

24 agencies run on a fiscal year basis and spend the money

25 accordingly. In our case, of course, we do not run on a

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1 fiscal year, we run on a calendar year. And we

2 intentionally build up a fund balance for the election

3 year, so that we can fund our elections. In fact, our

4 statute is written to allow that to take place,

5 precisely because of that challenge, because of the need

6 to fund elections.

7 And so, the concern is they'll take half of the

8 money that we have built up for the election, which

9 would completely undermine what we're trying to do and

10 what our function is. So, I think fiscally -- I think

11 -- I don't think there's any sort of intention to harm

12 Clean Elections more or less than the other agencies,

13 but I think the way the law is written, there's an

14 unintended consequence that it would particularly harm

15 Clean Elections functions.

16 The other interesting thing is the -- that it

17 talks about monies coming from the General Fund. And,

18 of course, we are not appropriated, our -- our monies do

19 not come from the General Fund. And so, there would be

20 a few questions about the impact of those provisions.

21 I'm not going to go into further detail,

22 because my understanding right now is -- and this seems

23 to change as I read the newspaper -- but, right now

24 there's not enough folks to refer Prop 105 to the

25 ballot.

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1 But I wanted to assure you that we're aware of

2 this issue and we're certainly allowing -- we're

3 certainly letting the legislature know of our concern.

4 And, of course, the other factor is we already transfer

5 all excess money to the General Fund. And, so, in a

6 sense, you know, we're -- the purpose of this law is

7 already being met by what we do, which is we give that

8 kind of money to the General Fund.

9 So, I'll keep you apprised of any developments.

10 But I -- I put it on the agenda because of my concern

11 about the legislation. And I'll keep you up to date. I

12 know the Governor is very interested in -- in this

13 legislation, so we'll see what happens.

14 CHAIRPERSON SCARAMAZZO: What was the total

15 amount we transferred into the General Fund this year?

16 MR. LANG: Well, in the -- in 2008, it was --

17 well, since 2005, is it -- 2005, \$32 million?

18 MS. MCGEE: \$32 million total.

19 MR. LANG: Since when?

20 MS. MCGEE: Since we started transferring in

21 2003.

22 MR. LANG: 2003 we transferred \$32 million and

23 last year was --

24 MS. MCGEE: \$17 million.

25 MR. LANG: \$17 million.

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1 COMMISSIONER HOFFMAN: Mr. Chairman, Mr. Lang,

2 what is the timing of the transfers?

3 MR. LANG: That's up to the Commission,

4 Commissioner, but, generally, we do it right after an

5 election cycle and then again in the next year.

6 Obviously, we wait until after the election cycle,

7 because that allows us to be much more precise in what

8 we give, rather than doing an estimate before the

9 election cycle.

10 COMMISSIONER HOFFMAN: Doesn't our statute

11 require us to look at the balance and make a projection

12 at some specific time? What is that time?

13 MR. LANG: It -- it does. We do a four-year

14 projection.

15 COMMISSIONER HOFFMAN: Right.

16 MR. LANG: And that's required as well. But

17 that's -- that serves a couple of functions. That also

18 serves our -- our budgeting functions and allows us to

19 figure out how much we're going to need to hold in our

20 surplus for the four-year cycle. For instance, this

21 2010 election has been a huge mark on our radar for five

22 years.

23 COMMISSIONER HOFFMAN: Right.

24 MR. LANG: And -- and so we do that. We -- we

25 look at the projections every year.

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1 COMMISSIONER HOFFMAN: At what time of year?
 2 MR. LANG: When do we usually do it?
 3 MS. MCGEE: January when we do our budget.
 4 I'll present the budget to you in January and we'll have
 5 our four-year projection at that time.
 6 COMMISSIONER HOFFMAN: Okay. So it's like a
 7 rolling four-year projection every January?
 8 MS. MCGEE: Yes, that's correct.
 9 COMMISSIONER HOFFMAN: And at that time, we
 10 also usually look at the question of whether there's
 11 surplus funds?
 12 MS. MCGEE: Yes, yes. And when you make the
 13 decision, if you want us to give the money to the
 14 General Fund at that time.
 15 COMMISSIONER HOFFMAN: So, one thing that the
 16 legislature might be alerted to is whether we have
 17 surplus funds depends on whether this passes?
 18 MR. LANG: Yes, yes.
 19 COMMISSIONER HOFFMAN: Thank you, Mr. Chair.
 20 CHAIRPERSON SCARAMAZZO: Okay. Any other
 21 questions? Okay. Thanks, Todd.
 22 MR. LANG: All right. Thank you.
 23 CHAIRPERSON SCARAMAZZO: Keep us informed on
 24 this, if you would.
 25 MR. LANG: Okay. Thank you.

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1 CHAIRPERSON SCARAMAZZO: The next item on the
 2 agenda is call for public comment. Anyone in the
 3 audience having any issues they'd like to address?
 4 Anything? So cooperative. Everybody wants to go, huh?
 5 All right. Fair enough. Then we'll come to
 6 Item No. IX, seeking adjournment today.
 7 COMMISSIONER FAIRMAN: Mr. Chair, I'd make a
 8 motion that we adjourn the meeting.
 9 COMMISSIONER PARKER: Second.
 10 CHAIRPERSON SCARAMAZZO: It's been moved by
 11 Commissioner Fairman, seconded by Commissioner Parker,
 12 to adjourn today's meeting of Thursday, December 17th,
 13 2009. All those in favor say "aye."
 14 (Chorus of ayes.)
 15 CHAIRPERSON SCARAMAZZO: Thank you. And thanks
 16 for the opportunity to be Chair for the last couple of
 17 years. Do appreciate it, folks.
 18 COMMISSIONER PARKER: You've done a great job.
 19 CHAIRPERSON SCARAMAZZO: Thanks. Appreciate
 20 it. Thank you. Take care.
 21 (Whereupon the proceeding concludes at 10:05
 22 a.m.)
 23
 24
 25

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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 31, 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 21st day of December,
 10 2009.
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