THE STATE OF ARIZONA

CITIZENS CLEAN ELECTIONS COMMISSION

# REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

August 30, 2006

10:00 a.m.

Reported By:

Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

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A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN ELECTIONS COMMISSION, convened at 10:00 a.m. on August 30, 2006, at the State of Arizona, Clean Elections Commission, 1616 W. Adams, Conference Room, Phoenix, Arizona, in the presence of the following Board members:

Ms. Marcia Busching, Phoenix, Chairperson
Mr. Gary Scaramazzo, Page
Ms. Ermila Jolley, Yuma, Teleconference
Mr. Carl Kunasek, Maricopa
Ms. Royann J. Parker, Pima

OTHERS PRESENT:

Mr. Todd Lang, Executive Director
Ms. Paula Ortiz, Executive Assistant
Ms. Colleen McGee, Deputy Director
Mr. Michael Becker, Voter Education Manager
Mr. Daniel Ruiz II, Campaign Finance Manager
Mr. Eric Peterson, Administrative Counsel
Ms. Christina Murphy, Fiscal Services Manager
Ms. Diana Varela, Assistant Attorney General
Mr. Michael Brewer, Citizen
Mr. Andy Gordon, Attorney for Janet Napolitano
Mr. Christian Palmer, Arizona Capitol Times
Mr. Garrick Taylor, AZ GOP
Mr. Glenn Hamer, AZ GOP
Mr. Paul Peterson, Off Madison Avenue
Ms. Lauren Lowe, Perkins Coie Brown & Bain
Mr. Lee Munsil, Len Munsil Campaign
Ms. Rhonda Barnes, Arizona Democratic Party
Mr. Jesus Tarango, Citizen
Ms. Lydia Guzman, Coalition for Latino Political Action
Mr. Chuck Coughlinm Highground, Inc.
Ms. Alice Levie, Citizen



P R O C E E D I N G

CHAIRPERSON BUSCHING: Good morning. I want to make note that this is a public meeting and possible executive session of the State of Arizona Citizens Clean Elections Commission. The location is 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Today is Wednesday, August 30th, 2006 at 10:00 a.m.

I'm Marcia Busching, Chairman. And we have the other Commissioners all present, with Commissioner Jolley appearing by teleconference.

Commissioner Jolley, you're still there, aren't you?

COMMISSIONER JOLLEY: Yes, I am.

CHAIRPERSON BUSCHING: Okay. Great.

The Commission may vote to go into executive session, which will not be open to the public, for any item listed on the agenda for obtaining legal advice. All matters on the agenda may be discussed, considered, and are subject to action by the Commission.

I've already called the meeting to order, so we'll move to Item II, approval of the August 24th, 2006 Commission meeting minutes. Are there any additions or corrections?



If not, I'll entertain a motion.

COMMISSIONER KUNASEK: I would move the minutes be approved as presented.

COMMISSIONER PARKER: Second.

CHAIRPERSON BUSCHING: It's been moved by Commissioner Kunasek and seconded by Commissioner Parker that the minutes be approved as written. All in favor say, "aye."

(Chorus of ayes.)

CHAIRPERSON BUSCHING: Opposed, nay?

Chair votes aye.

Item III, Executive Director's report.

MR. LANG: Thank you, Madame Chair. Good morning, Commissioners.

COMMISSIONER JOLLEY: Good morning.

COMMISSIONER KUNASEK: Good morning.

CHAIRPERSON BUSCHING: Good morning.

MR. LANG: You see there in my announcement, you see a reference to the matching funds issued to Ted Carpenter. Since that time if you look at the sheet that is in your folder, which is the updated matching funds, there's been five more issued -- five more checks issued for matching funds since that time. You can see by the dates who they are, but I'll point them out to you.



Matching funds were issued -- and these were all based by independent expenditures by the Realtors of Arizona PAC. It was similar to the one I showed you at the last meeting. Same type. Clear expressed advocacy. No complications and no doubts. And I certainly appreciate the Realtors of Arizona are proceeding in such an upright, forthright fashion.

The checks were issued to: Lucy Mason, Andy Tobin, Noel Campbell or No-el Campbell -- is it No-el Campbell? Noel Campbell, Karl Kohlhoff, and Betty Doss Ware.

Daniel Ruiz worked those up and it's a straightforward matter. If you have any questions, I'll be happy to answer. But, again, very similar to what happened last week.

I mentioned I was interviewed by the John C. Scott show down south. He does that about once every three months he wants to talk to us. So that happened this past week.

And today is Eric Peterson's birthday. So happy birthday to our administrative counsel.

On voter education you see the information there. Not a lot has changed. But Mike Becker has drafted a letter that was reviewed by staff regarding consultants, the issues that came up in the Napolitano

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matter. And that letter will be going out today, I believe. Is that right?

And that's in response to, you know, some of the concerns raised in that matter. We want to make sure that the other campaigns that are not in compliance get in compliance right away. And Eric Ehst also mentioned his concern about that as well of the Clean Elections Institute. So we've already addressed that.

On enforcement, the only thing I want to point out to you is there are two new enforcement matters that are not on the agenda today because we're waiting for responses. Those are: MUR 0014 regarding Jason Williams, and 0015 regarding Lisa Lovalla -- Lovallo.

So, unless you have questions, that concludes my report.

CHAIRPERSON BUSCHING: Mr. Lang, looking at -- when you mentioned Betty Doss Ware, I was intrigued by that, because she recently got matching funds from the Realtors, yet she's not qualified for Clean Elections funding. Do you go ahead and issue those?

MR. LANG: No. My understanding is once she's qualified, she would be eligible to receive that check.

CHAIRPERSON BUSCHING: Okay. So that just gets held in abeyance in the meanwhile?

MR. LANG: Right.



CHAIRPERSON BUSCHING: Okay. All right.

Any other questions of Mr. Lang.

If not, we'll move to Item IV on the agenda, consideration and decision whether there is reason to believe a violation occurred in the following enforcement matters -- and like our procedures in the past, we will limit comments from the audience -- initial comments to 10 minutes and follow-up comments to five minutes.

Mr. Lang?

MR. LANG: I'm turning on the machine, so I'd ask you to avert your ayes.

Is it ready to go?

CHAIRPERSON BUSCHING: And I don't think -- I didn't read the matter yet, did I?

COMMISSIONER PARKER: Uh-uh.

CHAIRPERSON BUSCHING: Item IV, consideration and decision whether there is reason to believe a violation occurred in the following enforcement matters: A) MUR 06-0012, complaint against Jan Brewer -- and are we taking both of them at the same time?

MR. LANG: We are, Madame Chair.

CHAIRPERSON BUSCHING: And then B) MUR 06-0013, complaint against Jan Brewer.

MR. LANG: Madame Chair, Commissioners, what



we're bringing up is a copy of the ad in question. We received a complaint from the chairman of Arizona -- we received a complaint from the Chair of the Arizona Democratic Party -- you can tell he was quite upset -- David Wade -- regarding an advertisement or a public service announcement that the Secretary of State's Office issued. And that has been airing as of late.

The complaint primary is that, you know, that this ad promptly, you know, it promptly features the Secretary of State, it is being issued right before the election, and the complainant asserts this is, in fact, you know, really expressed advocacy done to really get her name and ID up and that sort of thing.

This is similar to some of the issues we've heard in the past regarding other statewide officials. In fact, I'm aware of public education communications by most of the statewide office holders and this is the latest in that sort of series.

You have in your -- rather than read you what they said, we're going to go ahead and play the ad for you.

Is it ready to go?

(Whereupon the television ad is played.)

MR. LANG: Well, there you have it. It's a nice ad. But this is the only one that aired.



Is that right?

Yeah. This is the only one we're going to show. There is another ad but we're not going to show it because it never aired. It's worth seeing, but I don't want to take up your time right now.

COMMISSIONER KUNASEK: You don't want to entertain us anymore?

MR. LANG: Well, I could. But --

CHAIRPERSON BUSCHING: Can you turn that off?

MR. LANG: How do I turn off the light?

COMMISSIONER SCARAMAZZO: Gee. Thanks.

MR. LANG: Sorry. I thought I had it out of your way then you leaned back.

The light has to cool down I think.

COMMISSIONER SCARAMAZZO: Call me Stevie Wonder.

MR. LANG: On page three you see a -- has your eye recovered yet? I'm sorry.

COMMISSIONER SCARAMAZZO: That's okay.

MR. LANG: You see the usual definition, the issues we discussed under 16-901.01 and under our rules. I also note there that under 16-901(A) there's a definition of expressly exempts non-partisan activity that does not encourage individuals to vote or register to vote. Now, this doesn't fall squarely under that

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because this is about voter ID. But given the definitions of independent expenditure, I don't think it is.

Then if you look to page four, we do the usual expressed advocacy analysis. And it meets a lot of that criteria: It's general public communication, it's sent to the electorate. Then the key issue, does it have no other reasonable meaning than to advocate for the election?

Now, given the lateness of the ad, normally that would lead me to believe that this is expressed advocacy because it's done right before the election. But of course here we have an ad that is only effective if it's done right before the election, because it's about bringing the ID to the polls which is a current issue.

Is it an unfair advantage for incumbents that they can do something like this? Of course it is.

Do I wish it didn't happen? Yeah, I do for the purpose of that the Clean Election Act serves.

But that's not the question before us, the Commission, today. The question before you today is, is it expressed advocacy? And given the reasonable alternative interpretation that this was done to legitimately promote or to educate voters on the voter



ID issue, which is a controversial issue, it's a new issue, I believe it is not expressed advocacy and should not trigger matching funds.

CHAIRPERSON BUSCHING: Thank you. Other questions of Mr. Lang?

COMMISSIONER KUNASEK: Mr. Lang, you made a comment in your explanation at the outset, and I don't recall any, but that other candidates -- statewide candidates -- that had expressed, I guess, an ad or message, and other -- other cases that were not expressed advocacy but for the general public and the general good.

Do you have any -- I don't know of any of those. Do you have any examples you would like to remind me of?

MR. LANG: Commissioner Kunasek, I don't have any examples with me, but earlier Governor Napolitano had billboards that were promoting tourism which featured her likeness and name. There were complaints about that.

That was an easier case though because it was done so much before the election. Done well before the primary. But same sort of circumstance where it was, you know, a public official promoting and engaging in a typical public education activity.



We've also heard of letters from the Superintendent of Public Instruction regarding education issues to constituents and the Attorney General regarding enforcement issues that the Attorney General is addressing.

And, again, those are simply education issues that don't trigger matching funds. This one is similar. It's just simply more prominent because it's a television ad campaign.

COMMISSIONER KUNASEK: Thank you.

COMMISSIONER JOLLEY: Chair Busching? Chairperson Busching, I would like to comment. This is Commissioner Jolley.

CHAIRPERSON BUSCHING: Yes?

COMMISSIONER JOLLEY: Well, let me state that Todd states that there were multiple stations that were used to inform the public of the new ruling for voter ID, but I don't understand why the Secretary of State Jan Brewer's office only contacted the Maricopa and Pima television broadcast stations. And I have a problem with this type of targeting specific voters in high-density legislative districts.

The dates on the contract for service was within the -- were dated June 7th and June 8th.

And I'm wondering why KYMA and KMWT television



station in Yuma weren't contacted for these services or for that matter Mojave County Broadcast Station. We do not receive any type of broadcast from these particular stations in the outlying areas.

And, again, I state that we live in rural areas, particularly in my case, Legislative District 24, Yuma and La Paz County. And we have many people that just became U.S. citizens, just within the past two years have become part of the political process. What I mean by that is a citizenship, registered to vote, and voting. So this information is crucial to a first-time voter.

And I feel in this situation the violation of the 1965 Voter Rights Act has occurred. But that doesn't necessarily mean that a violation of our Commission has occurred. Because not all legislative districts were given equal access to the information.

Thank you.

CHAIRPERSON BUSCHING: Thank you, Commissioner Jolley.

Any other questions by the Commissioners?

COMMISSIONER KUNASEK: Were there -- yes.

CHAIRPERSON BUSCHING: Commissioner Kunasek?

COMMISSIONER KUNASEK: Were there any other -- was there any other media other than television?

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1 Was there, for example, a newspaper media that
2 was contacted by the Secretary of State's Office for
3 promoting? And, shall we say, in a newspaper of general
4 circulation in the area or in the county which is
5 required for other legal advertisement?
6 This is not necessarily a legal advertisement,
7 but I would just like to know if the television ad was
8 exclusive or was it one of a package of advertising of
9 motions.
10 MR. LANG: Commissioner Kunasek, I don't know
11 the answer to the question. The issue before the
12 Commission was solely on whether these television ads
13 constitute expressed advocacy. I think a representative
14 of the Brewer Campaign is here and perhaps he will be
15 able to answer your question.
16 CHAIRPERSON BUSCHING: Okay. Let me turn to if
17 there's members of the public that would like to speak
18 to this matter or even answer the question.
19 MR. COUGHLIN: I will, Madame.
20 CHAIRPERSON BUSCHING: Sir, state your name,
21 please.
22 MR. COUGHLIN: Chuck Coughlin, Highground
23 Consulting, Inc., campaign consultant to Ms. Brewer --
24 Secretary Brewer.
25 Madame Commissioner, Mr. Kunasek, I can't speak



1 to that because we -- the campaign had no -- Hi, Gary --
2 they had no -- we had no knowledge or we had no
3 involvement with the creation of the ad campaign. It
4 was done by Riester Communications. It was an
5 RFP put out by the Secretary of State's Office I think
6 last year to promote voter ID at the polls after
7 Proposition 200 passed to make sure there wasn't a
8 problem on election day. And several firms responded to
9 that RFP. The State awarded the RFP -- Department of
10 Administration awarded the RFP, and it went to Riester
11 Communications here in Phoenix.
12 We had no involvement with -- the campaign had
13 no -- I think I saw the ad after it was produced. She
14 showed me it and said, "Did I do anything stupid?" I
15 said: No, it looks good and promoted the notion of
16 bringing your ID to the poll. Which, as you know, is
17 her job. So she's fulfilling the obligations.
18 And we concur with the finding of the
19 Commission. We appreciate your prompt response. But I
20 can't speak to why -- if it was on rural market TVs or
21 -- I have no knowledge of the buy or what took place.
22 COMMISSIONER KUNASEK: Thank you.
23 CHAIRPERSON BUSCHING: Thank you.
24 MR. COUGHLIN: Thank you.
25 CHAIRPERSON BUSCHING: Any other -- any



1 questions of Mr. Coughlin?
2 If not, thank you.
3 MR. COUGHLIN: Thank you, Madame Commissioner.
4 CHAIRPERSON BUSCHING: Is there anyone else
5 from the public that wishes to speak?
6 MS. BARNES: Madame Chair, yes.
7 MS. GUZMAN: Oh, well --
8 MS. BARNES: I'll defer.
9 CHAIRPERSON BUSCHING: Please step forward.
10 MS. GUZMAN: Thank you very much. I appreciate
11 that.
12 Madame Chair, Members of the Commission, my
13 name is Lydia Guzman and I'm with the Coalition for the
14 Latino Political Action. And I respectfully disagree
15 with the recommendation from Director Lang on no
16 violation.
17 I tend to think that there is a violation that
18 constitutes expressed advocacy for two reasons. One,
19 because of the target audience. I agree with
20 Commissioner Jolley in which the -- this was targeted to
21 go to certain areas. And again, also it was also
22 targeted to several markets.
23 One would think that the target should have
24 been the people that are affected the most by voter ID,
25 which is the Hispanic community. A lot of those that



1 are disenfranchised and have trouble understanding the
2 new rules of this new -- of the new voter ID law.
3 However, I -- I went around and did some research and I
4 found that only one Spanish television is airing this
5 and this is Univision.
6 Telemundo has two stations, one in Tucson and
7 one in Phoenix, and they have not been contacted to air
8 the public service announcements. Telefutura has not
9 been contacted. Azteca TV has not been contacted. And
10 others in the Spanish have not been contacted; and,
11 therefore, I believe that on the target audience I think
12 that she missed the target there.
13 Also on the timing, the timing that the public
14 service announcements were aired. It is suspicious that
15 they aired right before the, you know, this election.
16 But Arizona has already had several elections that have
17 taken place starting from March: Local elections,
18 municipal elections across the state where the new
19 provisions of Proposition 200 with the voter ID have
20 already been implemented. However, it wasn't until now,
21 this election, that the public service announcements
22 started airing.
23 So for those reasons, I'm stating that there is
24 a violation.
25 CHAIRPERSON BUSCHING: Thank you. Are there

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any questions of Ms. Guzman?
If not, thank you.
MS. GUZMAN: Thank you.
CHAIRPERSON BUSCHING: Are there any -- is there anyone else that wishes to speak?
MS. BARNES: Yes, Madame Chair. My name is Rhonda Barnes and I represent the Arizona Democratic Party.
I'll try not unplug your device here.
There are a couple comments real quickly about this piece. I think it's important for the Commission to remember that the expressed advocacy statute has a Subsection B, that explicitly says, "Or within 16 weeks of the general election." And that period began in July and these ads began airing in August.
So it's our position under the Subsection B definition it clearly falls within the statutory definition of expressed advocacy toward the coordinated contribution definition.
The campaign itself as an entity may have not been involved but the candidate herself is. She's necessarily part of her community. She's necessarily part of the campaign. She is personally in the ad. So that is where the coordination comes in within the campaign. It's her participation as a candidate in that



ad.
I would also point out the expenditure provisions. The rules that this Commission adopted for office holder expenditure accounts, it seems like the reasons the Commission have established those accounts is for these kinds of communications. There's a reason why they're cut off on April 30th, it's because we don't want them right before the election.
It gives incumbents too much of an advantage. They can use their state budget and other money right up until the election, the day of the election. And the office holder expense accounts which is designed by this Commission to keep candidates -- incumbents who are also candidates from unduly influencing the electorate and using the power of incumbency to subvert the Clean Election system.
As we noted in the complaint, this is an unprecedented ad by the Secretary of State. Everybody we talked to has never seen ads like this. There's no reason for Ms. Brewer personally to be in the ad. This message certainly could have gone through very effectively. And certainly everybody thinks the commercial is very clever. There was no need for her personally to appear in it and speak to voters in identifying herself. That certainly is where it crosses



the line.
We know from public records obtained from the Secretary of State's Office that there were various scripts that their office considered and specifically chose a script that put her in the ad. They wanted her to speak to the people. They didn't need to do that. And by doing so, it become expressed advocacy and a coordinated contribution to her campaign, because she chose to do that.
I would also like to point out that there were newspaper ads that were done for the May election, the local elections. Which, you know, required the ID and Ms. Brewer was not in any of those ads. They were very nondescript and remember to bring the ID. It's something like the utility bill can get you in to vote. There was no need for her to be in them.
And I would like to point out that in that May election, she was not on the ballot and so she did not feel the need to be in those ads as well.
I'd also like to point out specifically it is our belief that this does not qualify as a PSA because it's paid placement. A PSA is put on the air as kind of at the benevolence of the television station. It was paid for. It was picked exactly when they were aired on this half-hour slot on this specific day. It was paid



to be there at that time. It does not qualify as a PSA.
And, Madame Chair, Commissioner Kunasek's question, you asked about what other parts of the advertisement. And there are radio ads and the radio ads I don't know if they've run yet, but they do have scripts. They do prominently feature Ms. Brewer as well, making the same statement. And newspaper ads. They are getting T-shirts printed and kind of have a traveling booth for county fairs. So it's broader than just the television ads.
CHAIRPERSON BUSCHING: Thank you.
MS. BARNES: Any questions?
COMMISSIONER KUNASEK: Yes. Ms. Barnes, with regard to your last comment there about the other ads, do you know if they're billed to be aired in places like Yuma, and Kingman, and Nogales, and other areas of the state?
MS. BARNES: Madame Chair, Commissioner Kunasek, I'm not sure which part of the state they were going to be aired. I know they were drafting Hispanic ads and I presume some of those would be in border communities. But off the top of my head, I'm sorry, I don't know.
COMMISSIONER KUNASEK: And when would it be proper to run those ads in your opinion?

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1 MS. BARNES: Well, it's --
2 CHAIRPERSON BUSCHING: You don't want to run
3 them after the election.
4 MS. BARNES: No.
5 CHAIRPERSON BUSCHING: You don't want to run
6 them too far before the election. So when would it be
7 logical to run an ad if you want to vote, when you get
8 to the voting place you have to have two forms of ID?
9 MS. BARNES: Certainly, Madame Chair,
10 Commissioner Kunasek, it wouldn't make any sense to have
11 it after the election.
12 COMMISSIONER KUNASEK: That's right.
13 MS. BARNES: It would be ineffective. The
14 problem with the early voting is nobody needs to take
15 their ID for mail-in ballots. They could have
16 provisions setup in the County Recorder Offices to make
17 sure people knew what they needed to bring ID. So
18 having it before the actual election day would be more
19 permissible. And certainly, no need for Ms. Brewer to
20 be in the ad, et cetera. The message for voters to
21 bring the ID did not require her presence.
22 And we believe this sets a frightening
23 precedent for subverting because you can imagine
24 declaring, for example, October is Mine Inspector Safety
25 Awareness Month. And if the mine inspector put out an



1 ad and said: I'm your mine inspector, I want to make
2 sure everybody is aware. So October is mining safety
3 month and that ad would follow.
4 Then the way this has been interpreted by the
5 executive director, that would be permissible. But
6 certainly that would be an attempt to subvert the Clean
7 Election simply a candidate who is an election official
8 to introduce the power of incumbrance and could be a
9 flood of these kinds of problems if not nipped in the
10 bud now.
11 COMMISSIONER KUNASEK: Thank you.
12 CHAIRPERSON BUSCHING: Ms. Barnes, you
13 indicated there were ads run in May also indicating that
14 an idea was required. Are you aware whether those ads
15 were paid for by the Secretary of State's office or not?
16 MS. BARNES: Madame Chair, my understanding is,
17 yes, they were. They were part of the general campaign
18 newspaper ads that were part of the same program they
19 did with Reecer.
20 CHAIRPERSON BUSCHING: And they did not feature
21 the Secretary of State at all?
22 MS. BARNES: Correct. Correct. It was just
23 the newspaper ads. We've seen a copy. It just said
24 bring your ID to the polls and something about bringing
25 your utility bill and you -- two copies of utility bills



1 without a picture ID, you would be able to vote. There
2 was no image of the Secretary of State. It has the
3 Secretary of State's logo on the ad and no picture of
4 her, no statement by her.
5 CHAIRPERSON BUSCHING: Okay. Any other
6 questions of Ms. Barnes?
7 If not, thank you.
8 MS. BARNES: Thank you.
9 COMMISSIONER SCARAMAZZO: Thank you.
10 CHAIRPERSON BUSCHING: Is there anyone else
11 from the public that wishes to speak?
12 MR. COUGHLIN: May I readdress the Commission?
13 CHAIRPERSON BUSCHING: Is there anyone else
14 first that wishes to speak?
15 Sir?
16 MR. HAMER: Yes. Glenn Hamer, the Executive
17 Director of the Arizona Republican Party. This Chair is
18 getting pretty comfortable.
19 Two years ago the Arizona voters passed
20 Proposition 200 requiring identification at the polls.
21 No statewide public official has done more to implement
22 what the voters passed than our Secretary of State, Jan
23 -- Jan Brewer. On the statewide level she has done a
24 fantastic job of making sure that the will of the -- the
25 people is carried out.



1 As the state chief election officer, it is
2 Secretary Brewer's job to make -- to certify the
3 election results, as well as to implement all the laws
4 relating to the election system. Essentially, Ms.
5 Brewer is being criticized for doing her job because of
6 those ads. And they are effective. But I would argue
7 they are far more effective -- those two guys doing all
8 sorts of shenanigans is pretty creative. But at the end
9 of the day you would want someone who is respected,
10 trusted who says bring your ID to the polls.
11 And Jan Brewer through her decades of public
12 service to people of Arizona to all parties is as
13 trusted and as respected public official as we have.
14 And I -- because -- I'll just boil this down. Because
15 of her efforts, there will be more Arizonans going to
16 the polls and more Arizonans whose votes will count.
17 And that -- that is -- there will be more Democrats
18 who -- who cast valid ballots, there will be more
19 Republicans who cast valid ballots.
20 She did the right thing. And if there's any
21 criticism, it sounds like it probably should have aired
22 more prominently throughout the state. And I hope that
23 we see that effective ad throughout the state and in a
24 variety of medium, because I believe that is -- it is a
25 very effective way to remind voters.

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1 And this is the first time -- I believe this is
2 the first general election where voters will need to
3 bring ID to the poll. And we will have good people
4 without being reminded, and I'm sure the Arizona
5 Democratic Party and Arizona Republican Party will also
6 do their best to make sure voters know of the new
7 requirements.
8 But I don't believe that ad gives the Secretary
9 of any -- any -- any electoral benefit. It's a pretty
10 clear message: If you're going to vote, to go to the
11 polls, bring -- bring an ID. And who knows what the
12 results will be in terms of more Democrats or
13 Republicans. And I expect the bottom line is we will
14 have more valid votes cast and that's a good thing.
15 CHAIRPERSON BUSCHING: Thank you.
16 MR. HAMER: Thank you.
17 CHAIRPERSON BUSCHING: Are there questions of
18 Mr. Hamer?
19 If not, thank you. Is there anyone else from
20 the public that wishes to speak?
21 I will give five minutes for any rebuttal
22 comment then.
23 Ms. Guzman?
24 MR. COUGHLIN: Go ahead.
25 MS. GUZMAN: I used to work at the office of



1 the Secretary of State doing voter outreach. And during
2 a time when that administration when that Secretary of
3 State was running for office, I was -- I was also in
4 charge of promoting voter education. And even though we
5 didn't have the provisions of Proposition 200 to do
6 voter education on, I partnered with different
7 organizations to do pieces of voter organizations with
8 trusted members of community.
9 And I wanted to pass some of these out. These
10 are just a few samples of what came out right before the
11 primaries from -- partnership the Secretary of State and
12 other organizations, trusted organizations of the
13 community.
14 That throughout the whole brochure you will see
15 nowhere does it mention the name of the Secretary of
16 State, simply just the Secretary of State's Office and
17 also information on how to register to vote. It links
18 to the Secretary of State's site without mentioning ever
19 her name. And this was right before the primary.
20 So I just wanted to point that out.
21 Thank you.
22 CHAIRPERSON BUSCHING: Thank you. Any
23 questions of Ms. Guzman?
24 Thank you.
25 MS. GUZMAN: Thank you.



1 CHAIRPERSON BUSCHING: Mr. Coughlin?
2 MR. COUGHLIN: Yeah. This is the first general
3 election cycle with Proposition 200 as Glenn pointed
4 out. The municipal election cycles, of course, are
5 certified. Those are certified by individual city
6 clerk's office or county recorders.
7 In this instance, this is her election. This
8 is her job. This is what she does. If people don't
9 bring their IDs to the polls, then she gets criticized
10 for it. She's doing a job. And it's regrettable that
11 the party, the Democratic Party, is trying to make a
12 partisan issue out of bringing your ID to the polls.
13 I think Glenn mentioned they challenged the
14 validity of Proposition 200 all the way along the
15 election cycle. It passed by overwhelming. She's
16 implemented -- she carried out her job and carried out
17 the will of the voter and -- and political statement out
18 of what voters want. And it's her job. So, if it
19 doesn't happen, she gets criticized. So it's her job
20 and she's doing her job.
21 So, I agree with Mr. Lang's report. I agree
22 with his finding. I would agree with it on either party
23 level. It's -- the Governor has to do her job, the
24 Secretary has to do her job, the Attorney General has to
25 their job. This is her job.



1 So, I would hope you agree with your Executive
2 Director's findings and let her do her job. Thank you.
3 CHAIRPERSON BUSCHING: Thank you.
4 Mr. Lang, do you have any statements or
5 comments?
6 MR. LANG: Thank you, Madame Chair,
7 Commissioners. I suppose the only thing I would say is
8 that some of the concerns raised regarding the advantage
9 that it gives incumbents are legitimate and it does
10 undermine the Act. But I think ultimately when you look
11 at the definition of expressed advocacy, particularly
12 the requirement of that the communication have no other
13 reasonable meaning than the election or defeat of a
14 candidate, then I think the resolution of this matter is
15 clear.
16 Because though I'm sure the Brewer Political
17 Campaign benefits from this ad, it is also clear it is a
18 legitimate government purpose and educating the voters
19 regarding the voter ID requirement. Because there is
20 legitimate other meaning, I strongly recommend the
21 Commission find this is not expressed advocacy despite
22 the fact it does provide an advantage to incumbents.
23 CHAIRPERSON BUSCHING: Mr. Lang, it was
24 mentioned you focused on 16-901.01(A) and that one
25 should also look at 16901.01(B). Could you clarify for

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1 me what that argument is?
2 MR. LANG: Well, it's an interesting one. If
3 you read the statute 16-901.01 literally, it says
4 basically that if it mentions the person's name and is
5 directed to the electorate and occurring in the last 16
6 weeks, it's expressed advocacy.
7 In order to interpret that statute in a
8 constitutional fashion, I think it's -- what you must do
9 is just consider that among all the contractural
10 analysis that you do: Who is it being sent to; what
11 does it say; does it paint someone in a positive or
12 negative light; and when does it occur?
13 If it occurs in the last 16 weeks, that's a
14 strong indicator that, in fact, it is expressed
15 advocacy. But, ultimately, you still have to do the
16 rest of the analysis. So, if you have communication by
17 a candidate that occurred months before the 16-week
18 deadline -- I think the Napolitano example fits that --
19 it's much less likely to be considered expressed
20 advocacy because of the time.
21 In this case, it's much more. But, again, the
22 ultimate resolution is: Wait a minute, you can't really
23 educate people on voter ID unless it's right around the
24 election time. Even though that's a strong indicator,
25 the 16 weeks, ultimately I think you resolve it the



1 other way.
2 If you need specific legal advice on of this, I
3 suggest executive session, but that's my general way of
4 interpreting that requirement.
5 CHAIRPERSON BUSCHING: And what would you say
6 about the argument the ads could have been run right
7 before the election as opposed to before early voting?
8 MR. LANG: I think it's a legitimate point. I
9 think it would have been more effective had they been
10 run right before the primary, but ultimately it doesn't
11 change my analysis. I think you can legitimately tell
12 people about voter ID during early voting and I think
13 people keep it in mind when they go to the polls.
14 COMMISSIONER PARKER: Don't the early voters
15 have to prove who they are when they go to cast that
16 vote?
17 MR. LANG: As I understand it, they just sign
18 it and mail it.
19 COMMISSIONER KUNASEK: There's also a provision
20 to go to the County Recorder's Office and vote. And you
21 have to prove yourself there.
22 With regard to getting the absentee ballot,
23 anybody can get it but they have to be registered,
24 number one. And, number two, you have to be registered
25 at the address the ballot is going to. And with that



1 regard, there are some safeguards.
2 Now, is it two forms of ID? I don't know if
3 you could make an argument that it's two forms or one
4 form. But I would think the mailing address, the return
5 request is not -- you can't forward it and I think
6 that's the way it is.
7 CHAIRPERSON BUSCHING: I believe it also either
8 requires your driver license or voter ID number.
9 COMMISSIONER KUNASEK: Okay. I'm not used to
10 that. I hadn't done that. So --
11 COMMISSIONER JOLLEY: Chairperson Busching,
12 this is Commissioner Jolley.
13 CHAIRPERSON BUSCHING: Yes?
14 COMMISSIONER JOLLEY: I believe that if you are
15 voting for the first time, you have to present yourself
16 with two forms of ID. They will not mail the ballot to
17 you. You can come into the County Reorder's Office to
18 vote but you have to present the two forms of ID.
19 CHAIRPERSON BUSCHING: Okay. Thank you.
20 All right. I guess we've already started
21 some discussion. Other discussion among members of the
22 Commission?
23 If not, the Chair will entertain a motion.
24 I guess I will go ahead and say that --
25 COMMISSIONER SCARAMAZZO: She had a motion.



1 CHAIRPERSON BUSCHING: I'm sorry. Go ahead.
2 COMMISSIONER PARKER: I move that we find no
3 reason to believe a violation occurred in this matter.
4 CHAIRPERSON BUSCHING: Is there a second?
5 COMMISSIONER KUNASEK: I will second that.
6 CHAIRPERSON BUSCHING: Okay. It's been moved
7 by Commissioner Parker and seconded by Commissioner
8 Kunasek that we find no reason to believe a violation
9 occurred in this -- in the matter of MUR 06-0012 and MUR
10 06-0013.
11 COMMISSIONER KUNASEK: Madame Chair, could I
12 modify the motion with permission of the maker?
13 I would make the motion that we accept the
14 Executive Director's recommendation.
15 COMMISSIONER PARKER: I agree.
16 CHAIRPERSON BUSCHING: Okay. I would like to
17 say before we vote, and if there's any other comments
18 before we vote, that given the statutes that we have, I
19 agree with the Executive Director's conclusion; however,
20 it bothers me that incumbents -- particularly incumbents
21 with access to a public relations budget -- have the
22 ability to use that budget to enhance their name
23 recognition during the pre-election period.
24 It seems to me that it gives those incumbents a
25 very unfair advantage, which is contrary to the Clean

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1 Elections' objective of leveling the playing field. And
2 I believe that the statute should be changed. Hopefully
3 this is a situation that can be distinguished in future
4 situations like this because of it's unique nature.
5 But, if not, the statute definitely needs to be changed.
6 And as a result, I will concur with the motion.
7 Are there any other comments before we
8 vote?
9 COMMISSIONER KUNASEK: Madame Chair, having --
10 I think some of the people in this room have run for
11 office and I must wholeheartedly agree with you:
12 Incumbency has advantages.
13 CHAIRPERSON BUSCHING: Okay. Any other
14 questions -- comments?
15 If not, the Chair will call for the question,
16 all in favor say, "aye."
17 COMMISSIONER PARKER: Aye.
18 COMMISSIONER KUNASEK: Aye.
19 COMMISSIONER SCARAMAZZO: Aye.
20 CHAIRPERSON BUSCHING: Opposed, nay?
21 COMMISSIONER JOLLEY: Nay. Commissioner
22 Jolley.
23 CHAIRPERSON BUSCHING: Chair votes aye. Motion
24 carries.
25 Item V, motion for reconsideration of approval



1 of conciliation agreement in MUR 06-0001, Janet
2 Napolitano.
3 Mr. Lang?
4 MR. LANG: Actually, Ms. Varela will be
5 presenting this -- this matter.
6 MS. VARELA: Thank you, Chair Busching and
7 Commissioners. What we are doing is, if you will
8 recall, at the end of the last meeting, Commissioner
9 Kunasek had made a motion for reconsideration on this
10 matter. And, frankly, I just didn't know what to do
11 with that motion. I had never seen that before. I
12 didn't know what to do with it.
13 What needed to happen is action needed to be
14 taken on that particular motion. So we advised the
15 Chair to put it on the agenda. So, what is on the
16 agenda now is for Commissioner Kunasek, if he so
17 chooses, to make his motion to reconsider the matter.
18 Then, in order to have a reconsideration, it needs to
19 get a second and a majority vote. Then if it doesn't do
20 that, the issue dies. If it does do that, then you just
21 take another vote on the conciliation agreement.
22 So, I apologize. That was due to my lack of
23 knowledge. I think there was just a whole lot of, you
24 know, confusion at the end. What should have happened
25 is there should have been action taken like any other



1 motion on his particular motion.
2 CHAIRPERSON BUSCHING: Thank you.
3 COMMISSIONER KUNASEK: Madame Chair, I would,
4 first of all, make the motion for reconsideration.
5 Secondly, I appreciate the candor and the
6 prudent judgment offered here this morning.
7 The issue is -- and I appreciate the fact that,
8 you know, it's a new commission functioning and
9 operational guidelines are being established, I guess,
10 as we go. But we had clearly two issues voted on with
11 one vote.
12 The two issues, in my opinion, constituted a
13 contradiction; and, therefore, they should have been
14 separated. And, hence, if you recall my question
15 pertaining to the use of the word "and" for both those
16 issues in the same motion.
17 So I appreciate the opportunity afforded. I
18 appreciate the fact that we all know now how a
19 reconsideration should occur in the Clean Elections
20 Commission, and I would ask that this -- this
21 reconsideration of that vote because of the two issues
22 contained in there be favorably looked on and then we
23 can vote again on the second issue.
24 Thank you.
25 CHAIRPERSON BUSCHING: Thank you.



1 COMMISSIONER SCARAMAZZO: Could you clarify
2 that second issue so I make sure?
3 COMMISSIONER KUNASEK: The second issue, which
4 is according to the agenda, would be the conciliation
5 agreement.
6 COMMISSIONER SCARAMAZZO: Okay.
7 CHAIRPERSON BUSCHING: It's been -- is there a
8 second?
9 COMMISSIONER PARKER: I'll second.
10 CHAIRPERSON BUSCHING: It's been moved by
11 Commissioner Kunasek and seconded by Commissioner Parker
12 that we reconsider the finding of probable cause in the
13 matter of MUR 06-0001, and we reconsider the --
14 reconsider the approval of the conciliation agreement --
15 or, am I restating your motion correctly?
16 COMMISSIONER KUNASEK: No.
17 CHAIRPERSON BUSCHING: Okay. Would you please
18 repeat your motion?
19 COMMISSIONER KUNASEK: Okay. Okay. My motion
20 is to call for motion for reconsideration of approval of
21 conciliation agreement.
22 CHAIRPERSON BUSCHING: Only the conciliation?
23 COMMISSIONER KUNASEK: Yeah because if we want
24 to reconsider them both, that's fine. But reconsider
25 them both separately.

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1 CHAIRPERSON BUSCHING: Okay.
2 MS. VARELA: Just to clarify. For purpose of
3 what's on the agenda, you can only reconsider the
4 conciliation agreement.
5 COMMISSIONER KUNASEK: Yes.
6 CHAIRPERSON BUSCHING: Okay. Thank you for the
7 clarification.
8 It's been moved and seconded we reconsider the
9 approval of the conciliation agreement in MUR 06-0001.
10 Any discussion -- I guess I should first ask Mr. Lang,
11 do you have any comments on this before I ask for public
12 comment?
13 MR. LANG: Thank you, Madame Chair,
14 Commissioners. I regret that there was confusion at the
15 last meeting regarding the nature of this. And just
16 want to remind the Commission, the initial finding was
17 the finding of violation with a penalty, and that was a
18 discrete finding by the Commission. And then the second
19 issue with the conciliation was a resolution of the
20 matter.
21 As the Commission knows, once the Commission
22 finds a violation, the -- the Respondent would have an
23 opportunity both to ask for an administrative hearing on
24 the issue and also to ask for a conciliation so a
25 possible settlement can be worked out. Rather than



1 going through the lengthy process of doing that, all
2 parties involved -- staff and the campaign -- wanted to
3 resolve this. So, we enter into a proposed settlement
4 agreement which was reflected in the conciliation
5 agreement.
6 So, although we -- I recommended the Commission
7 find a violation, I also recommended that we resolve
8 this case quickly through the conciliation agreement.
9 And, unfortunately, that wasn't clear to Commissioner
10 Kunasek. And in the future I will, of course, make it
11 very clear. And that's how this came about.
12 CHAIRPERSON BUSCHING: Thank you. Any
13 questions of Mr. Lang?
14 COMMISSIONER KUNASEK: Well, I don't have a
15 question, just a further comment.
16 Again, I appreciate your concern and
17 consideration to make sure that we're happy -- one big,
18 happy family. But, again, it was a case of two issues
19 being voted on with one vote.
20 Those questions are asked of the court
21 virtually every election cycle with all the proposals
22 that go to a ballot -- proposed to go to the ballot.
23 And the court is asked to review whether or not you can
24 have two issues or more than one issue contained on a
25 ballot issue. I feel that this is somewhat similar to



1 that and that when we voted on two issues with one vote,
2 that could be a legitimate question raised.
3 CHAIRPERSON BUSCHING: Thank you.
4 Is there any members of the public that
5 wish to speak to this matter? Sir?
6 MR. GORDON: Andy Gordon on behalf of the
7 Napolitano Campaign.
8 I'm here enough, that I'm tempted to ask for a
9 shirt.
10 COMMISSIONER SCARAMAZZO: You can have mine.
11 MR. GORDON: We obviously hope the Commission
12 does not approve the motion to reconsider. By way of
13 background very briefly, the conciliation agreement has
14 now been implemented. It has been signed by both
15 parties and we have filed our amended report as required
16 by the conciliation agreement. So, it is not at all
17 clear to me that there's anything that can be done to
18 alter that.
19 If Chairman -- excuse me, if Commissioner
20 Kunasek wants to have a record that reflects a different
21 vote on the conciliation agreement, I can understand
22 that. But in terms of undoing the agreement, I don't
23 believe that's possible at this point.
24 CHAIRPERSON BUSCHING: Thank you.
25 MR. GORDON: And I'll answer any questions.



1 CHAIRPERSON BUSCHING: Commissioner Kunasek?
2 COMMISSIONER KUNASEK: Well, I -- I'm concerned
3 that if a court is asked to straighten it out, there
4 might be an order to undo that election -- that vote.
5 MR. GORDON: Madame Chairman, Commissioner
6 Kunasek, you know, I could be wrong, I've been wrong
7 before, I've been at this a long time, I don't see that
8 as a realistic possibility. The parties have
9 implemented it.
10 COMMISSIONER KUNASEK: Thank you.
11 CHAIRPERSON BUSCHING: Thank you.
12 Is there anyone else from the public that
13 wishes to speak? Mr. Hamer?
14 MR. HAMER: Yes. Glenn Hamer, the Arizona
15 Republican Party. Just so I completely understand
16 what's being considered, what is not being considered,
17 that the Commission voted five to zero to find a
18 violation?
19 There were two issues, the conciliation -- the
20 Executive Director's report and the conciliation
21 agreement? Am I correct that those are two -- I'm just
22 trying to figure out if exactly the issue before us is
23 the conciliation agreement.
24 Maybe I should ask -- it may be inappropriate
25 to ask Commissioner Kunasek, I just want to make sure my

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1 remarks are on target because there were two issues
2 raised in your mind. In terms of separating this out, I
3 just want to understand what's settled. What -- what I
4 want to make sure I don't relitigate that issue and what
5 is on the table is simply the conciliation agreement.
6 COMMISSIONER KUNASEK: My understanding, the
7 way the motion is presented in the agenda is it is only
8 the conciliation agreement.
9 After the meeting, Mr. Hamer, I was somewhat
10 disappointed, of course. And upon departure, I spoke
11 with Mr. Gordon and told him I was going to ask for
12 reconsideration and I'm here doing that on the
13 reconsideration -- on the conciliation agreement.
14 Conciliatory agreement I guess.
15 COMMISSIONER SCARAMAZZO: Conciliation
16 agreement.
17 MR. HAMER: Thank you, Commissioner.
18 All I would have to say on that is,
19 again, to reiterate the comments that I made a week or
20 so ago. That the Commission is correct in finding that
21 Governor Napolitano violated the Clean Elections Act
22 with her expenditure of that state-of-the-art Website.
23 But I will -- I will say once again that for
24 her to get -- for her campaign to get out of this
25 without a penalty is -- is -- the penalty clearly does



1 not fit the action that she took in jumping the gun.
2 And I believe that -- again, that -- that the fine
3 should have been pegged on the -- at least on the
4 $18,000 or so value of the termination clause, which
5 would have made this one of the most serious violations
6 in Clean Elections history.
7 And I'll just point the Commission to the
8 editorial in today's tribune: "Clean Elections coddling
9 the cronies." And why this is important is there just
10 cannot be the perception that the Commission -- again, I
11 believe that the Executive Director Todd Lang and every
12 Commissioner here is serving with the upmost integrity.
13 I mean that. I know that you have spent hours and hours
14 on these. I know you have hundred of cases, so I know
15 you see a far greater range of cases than we ever do. I
16 wanted to just make that clear.
17 But when you look at how this affected -- a
18 similar situation affected the governor's race four
19 years ago -- as the editorial points out -- and the big
20 hoopla surrounding that, and the potential of hundreds
21 of thousands of dollars of fines, for the Governor to
22 escape this without a penny of -- of penalty, I -- we
23 respectfully believe is wrong.
24 And thank you. And, again, the last thing I
25 will say is I do appreciate the effort of every



1 Commissioner and Todd Lang and the staff to fairly
2 resolve this, but we do strongly disagree with letting
3 the Governor off without -- without any sort of monetary
4 penalty.
5 Thank you.
6 CHAIRPERSON BUSCHING: Thank you.
7 Are there any questions of Mr. Hamer?
8 If not, thank you.
9 Is there anyone else from the public that
10 wishes to speak to this matter?
11 If not, we'll turn to discussion among members
12 of the Commission.
13 I would like to say that it certainly is the
14 goal of every agency to resolve things and move on with
15 their job. I think that Mr. Lang did a great job of
16 entering into and trying to resolve this matter so that
17 both sides could sign an agreement resolving it. And as
18 a result, I certainly would like to see the agreement
19 stay in place and go forward. And so I am not in favor
20 of the motion and will vote accordingly.
21 COMMISSIONER SCARAMAZZO: Just so I understand
22 this though, it's a procedural issue on the part of
23 Commissioner Kunasek to ask for his vote to be
24 reconsidered on this. If we vote for this, all we're
25 going to do is go back and vote again on conciliation



1 agreement, correct?
2 MS. VARELA: Right. Assuming there's enough
3 votes to pass his motion to reconsider, yes, that's
4 correct.
5 COMMISSIONER SCARAMAZZO: Okay.
6 COMMISSIONER KUNASEK: And then that ultimately
7 separates the two from any further challenge.
8 COMMISSIONER SCARAMAZZO: Okay.
9 CHAIRPERSON BUSCHING: Okay. Any other
10 discussion?
11 If not, the Chair will call for the question,
12 all in favor of reconsidering the approval of the
13 conciliation agreement in MUR 06-0001, Janet Napolitano
14 say, "aye."
15 COMMISSIONER PARKER: Aye.
16 COMMISSIONER KUNASEK: Aye.
17 COMMISSIONER SCARAMAZZO: Aye.
18 CHAIRPERSON BUSCHING: Opposed, nay?
19 COMMISSIONER JOLLEY: Nay. Commissioner Jolley
20 votes no.
21 CHAIRPERSON BUSCHING: Chair votes nay. The
22 motion passes.
23 So we are now at a point of reconsidering the
24 conciliation agreement.
25 COMMISSIONER SCARAMAZZO: And I'll move to

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1 approve the conciliation agreement.
2 CHAIRPERSON BUSCHING: Is there a second?
3 COMMISSIONER JOLLEY: I will second that.
4 Commissioner Jolley.
5 CHAIRPERSON BUSCHING: It's been moved by
6 Commissioner Scaramazzo and seconded by Commissioner
7 Jolley that we approve the conciliation agreement. Any
8 discussion?
9 If not, the Chair will call for the question,
10 all in favor of approving the conciliation agreement in
11 MUR 06-0001, Janet Napolitano say, "aye."
12 COMMISSIONER SCARAMAZZO: Aye.
13 COMMISSIONER JOLLEY: Aye.
14 CHAIRPERSON BUSCHING: Opposed, nay?
15 COMMISSIONER KUNASEK: No.
16 COMMISSIONER PARKER: No.
17 CHAIRPERSON BUSCHING: Chair votes aye. The
18 motion carries.
19 We'll move to Item VI on the agenda,
20 consideration and decision whether push poll telephone
21 survey against Ted Downing constituted expressed
22 advocacy and estimated cost for matching funds.
23 Mr. Lang?
24 MR. LANG: Thank you, Madame Chair,
25 Commissioners. While Daniel is getting the recording of



1 the call ready, I'll go over the memorandum.
2 Make sure, please, that you have the revised
3 memorandum. There's a stamp on the top. It says
4 "revised."
5 Does everyone have that?
6 COMMISSIONER SCARAMAZZO: Yes.
7 MR. LANG: The old memorandum has the same
8 analysis, you will be fine. It just has different
9 numbers.
10 You ready to go?
11 MR. RUIZ: Uh-huh.
12 MR. LANG: We're all set but I think we're
13 going to talk about it first so you have some content
14 first before you hear the ad.
15 We received a complaint from Ted Downing. Not
16 a formal complaint, but an expression of concern that he
17 had been the target of what is called a push poll. And
18 you see the definition there that Daniel found for us in
19 Footnote 1.
20 It's basically a telemarketing technique, where
21 you pretend you're doing a poll, "We just want to find
22 out what you have to say." But you do it in a manner
23 that pushes the answer: Are you in favor of evil? If
24 you knew that Candidate Jones was evil, would that
25 change your vote? That sort of thing. Obviously, the



1 result is pre-determined by the way the question is
2 phrased.
3 And so we have here a poll -- and we don't know
4 the source of the poll, which obviously makes it a
5 challenge -- that was sent out to what appears to be
6 high efficacy voters in Legislative District 28. And in
7 it you see the three questions that are asked:
8 Basically, "Do you think that husbands should be
9 penalized equally for raping their wives?" Of course
10 the average person is going to say yes. "Who would you
11 vote for?" And then if they say Downing, they ask,
12 "Would you change your vote if you knew he was against
13 that?"
14 Mr. Downing, extremely disagrees with the
15 characterization. But the point is, it's an effective
16 way to get people to be predisposed for him to change
17 their vote. We've received -- I don't think we've
18 received the actual statement, have we?
19 MR. RUIZ: We have not received it.
20 MR. LANG: We have not received from the Aboud
21 Campaign, the sworn statement that they promised us,
22 which is they have no roll in the independent
23 expenditure; however, I take them at their word that it
24 was not an independent expenditure. I mean, there was
25 not an expenditure by the Aboud Campaign. Because, of



1 course, it was -- if it was, it would trigger matching
2 funds. So they have every incentive to tell us that
3 they did do this. Because they told us they didn't do
4 it, that raises the possibility of matching funds going
5 to Mr. Downing.
6 But, of course, if the Commission -- if it
7 turns out down the road that it was not that case and,
8 in fact, it was an expenditure of the Campaign, the
9 Commission has the ability to reconsider this matter.
10 So, I recommend that we proceed despite not
11 having the sworn statement and I do anticipate that
12 we'll get it.
13 You see again the definition of expressed
14 advocacy. This is not your traditional expressed
15 advocacy.
16 I'm going to go ahead and play it now since
17 we've sort of set the stage. Here we go.
18
19 (Whereupon the audio recording was played as
20 follows:)
21 "MR. DOWNING: Okay. Go ahead. What was
22 this thing now?
23 WOMAN CALLER: Until recently it was less
24 of a crime in Arizona for a husband to rape
25 his wife than it was for a stranger to rape a

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1 women" --
2 MR. LANG: I'm going to start it over. I
3 forgot to tell you who these are. This the -- the woman
4 is just the person conducting the poll on behalf of
5 whoever hired here. The gentleman is actually Mr.
6 Downing. He actually got called with this push poll. I
7 don't think he is going to change his vote.
8 Here we go.
9
10 (Whereupon the audio recording was played as
11 follows:)
12 "MR. DOWNING: Okay. Go ahead. What was
13 this thing now?
14 WOMAN CALLER: Until recently it was less
15 of a crime in Arizona for a husband to rape
16 his wife than it was for a stranger to rape a
17 woman. While any other kind of rape could
18 lead to at least five years in prison, most
19 men who rape their wives do not spend even a
20 single night in jail. Do you agree that
21 husbands who rapes his wife should be punished
22 just like any other rapist?
23 MR. DOWNING: Yeah.
24 WOMAN CALLER: Okay. In the upcoming
25 primary election there are two choices for



1 state senate. State Senator Paula Aboud and
2 State Representative Ted Downing. If the
3 election were held today, who would you
4 vote for?
5 MR. DOWNING: Downing probably.
6 WOMAN CALLER: Is that strongly or not so
7 strongly?
8 MR. DOWNING: Pretty strongly.
9 WOMAN CALLER: Okay.
10 MR. DOWNING: Or somewhere in that area,
11 you know. Not so -- go ahead.
12 WOMAN CALLER: Finally, would your choice
13 change, would you change your choice, if you
14 knew that Ted Downing opposed increasing a
15 penalty for husbands who raped their wives and
16 Paula Aboud supported increasing the penalty.
17 MR. DOWNING: Oh, I don't know. Who --
18 who is doing the survey?
19 WOMAN CALLER: I don't know. They don't
20 tell us who the client is because they don't
21 want to bias the survey.
22 MR. DOWNING: Okay. It is too
23 complicated. If would I change m mind if --
24 WOMAN CALLER: Would your choice change
25 if you knew that Ted Downing opposed



1 increasing the penalty for a husband who raped
2 their wives and Paula Aboud supported
3 increasing the penalty?
4 MR. DOWNING: Well, I can't belive that,
5 but that's okay. Anymore questions?
6 WOMAN CALLER: No. How are you answering
7 that one? Are you changing your choice?
8 MR. DOWNING: Well I don't believe it. I
9 don't believe it. Okay."
10 (Whereupon the audio recording concludes.)
11
12 MR. LANG: The fact that it was ineffective
13 against Mr. Downing I don't think changes the nature of
14 this.
15 When you look at the factors under the
16 definition of expressed advocacy, some of the factors I
17 have listed there which are that they call the
18 candidates by name, it's obviously done during early
19 voting, it includes their references to the status as
20 elected officials, the fact that they voted on the
21 issue, it cast the Aboud in a positive light and it cast
22 Downing in a negative light. Although it never says
23 "vote for" or anything and disguised as a poll.
24 For that reason, I recommend the Commission
25 find this is an independent expenditure containing



1 expressed advocacy and Mr. Downing is entitled to
2 matching funds.
3 Assuming you do that, then the issue is how to
4 determine the amount of matching funds. Unlike the
5 other examples here, we have a much tougher situation
6 because we don't have the cooperation of the polling
7 firm, we don't know who did the poll. But for matching
8 funds to be meaningful, they need to be done during the
9 primary since this was an attack during the primary.
10 And, by the way, I take -- I take Ms. Aboud at
11 her word that she had no role in this. I believe her
12 completely.
13 Staff contacted several folks to determine how
14 many folks were contacted and how much were the calls
15 worth. Mr. Downing estimated there were about 19,000
16 voters who were called. That's a very high number
17 compared to the number of folks who vote. And we were
18 unable to confirm that number with the Democratic Party.
19 They refused to give us the information according to
20 their usual policy, they just don't give that
21 information out.
22 Because we couldn't confirm that, we contacted
23 other folks. And you see there I contacted a Republican
24 consultant and a Democrat consultant and they came up
25 with about the same number about 72 cents and 80 cents a

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1 call. We initially contacted the Behavior Research
2 Center since they're completely non-partisan. The
3 problem is they don't do push polls. They estimated the
4 call to be about 45 cents.
5 What I found when I contacted the consultants
6 is 45 cents is usual for a regular just get-out-the-vote
7 call, please go vote. If you have efficacy in that
8 call, it goes up to about 60, 65 cents. And if you do a
9 poll with more than two or three questions like this
10 one, then it goes up to 70 to 80 cents. So we -- we
11 picked that sort of middle number, the 72 cents for the
12 value of the calls.
13 To determine the number, Daniel went back and
14 looked at the number of voters in that district for the
15 last two election cycles. And in -- in 2002 that number
16 of voters was a little over 11,000, and in 2004 it went
17 down to 9,700. We think that that's a more accurate
18 number of the people called.
19 But, again, this is just an estimation and the
20 Commission is free to use the 19,000. But we think that
21 the 11,000 is a fair number. So, ultimately, we think
22 that the Commission should award matching funds based on
23 this for 11,000 calls at 72 cents per call. And you see
24 the total number there it's almost $8,000. $7,974, and
25 the same thing in the amount of money which gives him



1 the opportunity to rebut this issue.
2 Mr. Downing also, you have a letter from him
3 and he would like me to read it into the record. So
4 with your permission, Madame Chair, I'll read it to you.
5 Although you have a copy.
6 CHAIRPERSON BUSCHING: Please.
7 MR. LANG: Okay. It's from Mr. Downing and
8 it's dated August 30th.
9 He says: "Thank you for considering my request
10 for matching funds. I have a long-scheduled meeting at
11 the Capitol that I am chairing and regret that I cannot
12 be here in person.
13 "I am proud of being Southern Arizona's first
14 Clean Election candidate in 2000. This is my fourth
15 primary as a participating candidate. I know it is very
16 difficult to reach over 35,000 registered Democrats in
17 my district on the limited funds allocated to a
18 participating candidate. Over what appears a two-week
19 period, I have been the object of a push poll that not
20 only advocates the election of my opponent, but spreads
21 lies about my voting record -- suggesting that I did not
22 favor increasing the penalty on spousal rape. In less
23 than 12 days, I will discover whether or not my
24 participating campaign overcame [sic] such an
25 advantage" --



1 COMMISSIONER SCARAMAZZO: Disadvantage.
2 MR. LANG: Disadvantage. Thank you.
3 "Traditional ways to respond to such negativity
4 -- radio, TV, mailing -- and reach the" -- let me try
5 again.
6 "Traditional ways to respond such negativity --
7 radio, TV, mailings -- and reach the highly likely to
8 vote are limited and, with only 12 to 13 days remaining
9 in this winner-take-all primary, highly expensive or
10 unavailable. Direct phone calls using live operators
11 who collect data on who is and is not likely to vote for
12 me -- which is what this push pole [sic] is doing, cost
13 around $2 each. If this information reaches the
14 opposing camp, the information is valuable for targeting
15 voters and significantly reducing campaign costs on the
16 opposing side. A push pull has the potential to totally
17 undermine the opponent's campaign tactics. It is
18 unethical, cowardly, and illegal.
19 "I request that the Commission level the
20 playing field against the gross violation of law that is
21 intended to influence who occupies one of Arizona's 30
22 state senate seats. I ask your message be loud and
23 clear that push polling to influence an election against
24 a participating candidate by a cowardly unidentified
25 source is wrong.



1 "Thank you, Ted Downing."
2 And you see there he asks for $2 a call times
3 19,000 voters, which would be about $40,000. Just under
4 that. And what we've recommended is a much lower
5 number, 7 thousand -- $7,974.
6 COMMISSIONER PARKER: Where did he come up with
7 his figure?
8 Did he say anything to you about that?
9 MR. LANG: No, I don't know that he did. No.
10 That's just his estimation of what that kind of call
11 would cost.
12 COMMISSIONER KUNASEK: How many calls, 35,000
13 calls? And what was the voter turnout the last two
14 elections?
15 MR. LANG: No, he said that the list of high
16 efficacy democratic voters in that district and I think
17 it includes some independents although I'm not certain
18 is 19,690 that's what he's asking for. There are 35,000
19 democratic voters. He's only asked for 19,000 because
20 he thinks that is how many that was called. At $2 that
21 would be almost $40,000.
22 But we used the numbers based on -- and, again,
23 we would like to have more information for you, but this
24 is what we were able to glean in the last couple days.
25 We think the better number is 11,000 who voted in 2002

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because these are the folks actually voting and folks most likely to be called. At 72 cents a call based on my talks with the Republican and Democrat consultants I spoke with.

COMMISSIONER KUNASEK: And this is the primary battle, not a general election?

MR. LANG: That's correct, Commissioner Kunasek.

COMMISSIONER KUNASEK: I have a question pertaining to if these funds, matching funds are awarded and you're able to get further information as a general statement from the Aboud people, how do you get the money back, you know?

How do you un-ring that bell?

MR. LANG: We haven't -- Madame Chair, Commissioner Kunasek, Diana may want to weigh in on this. We have enforcement power and based on a misrepresentation to the Commission, I think we would have that ability. But Diana may disagree.

MS. VARELA: I agree.

COMMISSIONER KUNASEK: Okay. Thank you.

CHAIRPERSON BUSCHING: Commissioner Parker?

COMMISSIONER PARKER: Are we going to pursue the matter of trying to find out where the push poll came from in case we need to do an enforcement action

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regarding that, if it's --

MR. LANG: Madame Chair, Commissioner Parker, the enforcement on the requirements to register were largely done by the Secretary of State. But we're going to continue to look into this and see if we can find out who did it and recommend to the Secretary of State to take action if we discover who did it.

We are going to continue to look into it. And I assume, Mr. Downing is going to be motivated to do the same. So we hope to have more information to you.

COMMISSIONER PARKER: Okay. Thank you.

CHAIRPERSON BUSCHING: Other questions of Mr. Lang?

COMMISSIONER JOLLEY: Yes, Madame Chair. This is Commissioner Jolley.

CHAIRPERSON BUSCHING: Yes?

COMMISSIONER JOLLEY: Okay. Todd, I was going to ask you, this election -- this seat will be decided in the primaries; is that correct, because there isn't opposition for the general election?

MR. LANG: My recollection is that there's -- there's no opposition. So, yeah, this decides it. But it's also a one-party dominant district, so --

COMMISSIONER JOLLEY: Okay. The other question I have is that, I guess that maybe Senator Aboud -- is

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that how you pronounce her name? "Abood"?

MR. LANG: Commissioner Jolley, I think it's "Aboud".

COMMISSIONER JOLLEY: She might not have had anything to do with the push poll contact to the high efficacy voters, but maybe someone other -- someone in favor of her, so this would still constitute independent expenditure; is that correct?

MR. LANG: Madame Chair, Commissioners, Commissioner Jolley, yes. Even though she had nothing to do with this, it's still an independent expenditure. Just the same as when the Realtors of Arizona send out the very clear high efficacy ads that we've been matching, the candidate that receives the benefit and coordinating, they have nothing to do with that. But under the theory of the law, the candidates targeted should have an opportunity to respond and that's the same here.

COMMISSIONER JOLLEY: Okay. Thank you.

CHAIRPERSON BUSCHING: Other questions of Mr. Lang?

If not, I'll entertain discussion or a motion.

COMMISSIONER SCARAMAZZO: I recommend the Commission issue matching funds because of the push poll

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and that those be awarded to Representative Downing in the sum total of $7,974.

MR. LANG: Madame Chair, I just noted that Andy Gordon --

COMMISSIONER SCARAMAZZO: Excuse me. I'm sorry.

MR. GORDON: Really just on behalf of the public I stayed to listen to this. And I have one comment. I think what the Commission is doing, Todd's recommendation is correct absolutely across the board here.

I want to say something about how polling works. Legitimate polling involves very negative questions about candidates when you're polling on yourself or on someone else, because you're testing to see how messages work. So I think it would be dangerous just to look at the content of the message to determine it's a push poll.

The real difference between a push poll and legitimate poll is, is it a poll? That is how many people are called? If it's a small district like this, if it's a legitimate poll then you're going to call 350 or 400 people because you're not going to spend money. That's how real polls work.

And I guess I just want to say, if this comes

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1 up to this Commission -- I'm not likely to be -- but if
2 I'm in Todd's position, probably the best single factor
3 in determining this is push poll is if you can verify
4 the number of people called. If there's a high quantity
5 like this, there's virtually no poll there.
6 COMMISSIONER KUNASEK: I appreciate that
7 because that's why I asked the question.
8 MR. GORDON: Right. Right.
9 COMMISSIONER KUNASEK: If you can get some
10 information back from the other camp or whoever was
11 sponsoring it, how do we get that money back?
12 MR. GORDON: Madame Chair, Commissioner
13 Kunasek, it's great if you can figure out who the IE is
14 here. I don't envy Todd or the Secretary of State's
15 Office on this. I just make an observation of the
16 situation.
17 Thank you very much.
18 CHAIRPERSON BUSCHING: Thank you. And thank
19 you for bringing to my attention that you wanted to
20 speak.
21 MR. LANG: Madame Chair, Commissioners.
22 COMMISSIONER KUNASEK: Excuse me. The motion
23 was made. The motion is on the table.
24 COMMISSIONER SCARAMAZZO: The motion was on the
25 floor.



1 I will second it.
2 CHAIRPERSON BUSCHING: Thank you. Thank you.
3 Mr. Lang?
4 MR. LANG: Madame Chair, Commissioners, I want
5 to thank Mr. Gordon for the clarification. I agree
6 that's helpful.
7 One issue I point out that his comments
8 illustrated, I think if this was given a legitimate
9 poll, given the publicity its received, given the fact
10 it will trigger matching funds for the person they're
11 endeavoring to support, I think they would have
12 contacted us and let us know it was a legitimate poll.
13 The fact that they're hiding indicates to me that my
14 analysis is correct, that staff's analysis is correct,
15 and this, in fact, is a push poll.
16 CHAIRPERSON BUSCHING: Thank you.
17 COMMISSIONER KUNASEK: Call for the question.
18 CHAIRPERSON BUSCHING: It's been -- the
19 question has been called. It's been moved that the
20 recommendation of the Executive Director be approved and
21 that $7,974 be awarded to Mr. Downing as matching funds.
22 All in favor say, "aye."
23 (Chorus of ayes.)
24 CHAIRPERSON BUSCHING: Opposed, nay?
25 Chairman votes aye. The motion carries.



1 Item VII, call for public comment. This is the
2 time for consideration and discussion of comments and
3 complaints from the public. Action taken as a result of
4 public comment will be limited to directing staff to
5 study the matter or rescheduling the matter for further
6 consideration and decision at a later date or responding
7 to criticism.
8 Is there anyone from the public that wishes to
9 speak?
10 If not, we'll move to Item VIII, which is
11 adjournment. Is there a motion?
12 COMMISSIONER JOLLEY: So moved.
13 COMMISSIONER KUNASEK: Second.
14 CHAIRPERSON BUSCHING: It's been moved by
15 Commissioner Jolley and seconded by Commissioner Kunasek
16 that we adjourn.
17 All in favor say, "aye."
18 (Chorus of ayes.)
19 CHAIRPERSON BUSCHING: Opposed, nay?
20 Chair votes aye. Motion carries.
21 (Whereupon the proceeding concludes at 11:20
22 a.m.)
23
24
25



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 64, 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 5th day of September,
10 2006.
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Angela Furniss Miller, RPR
14 Certified Reporter (AZ50127)
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