

BEFORE THE OHIO ELECTIONS COMMISSION

- - -

In re: :
:
Snyder :
:
Complainant, :
:
vs. : Case No. 2001E-076
:
Concerned Citizens for the :
Fair Treatment of Stray :
Animals, :
:
Respondent. :

- - -

PRELIMINARY HEARING

21 West Broad Street
Suite 600
Columbus, Ohio 43215
May 30, 2002

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APPEARANCES

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ON BEHALF OF THE COMPLAINANT:

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ON BEHALF OF THE RESPONDENT:

Kimberly Joy Kavanaugh, pro se
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of Stray Animals
North Canton, Ohio 44720

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1 Thursday Morning Session,

2 May 2, 2002.

3 - - -
4 PROCEEDINGS
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6

7 CHAIRMAN CINCIONE: Snyder vs. Concerned
8 Citizens for the Fair Treatment of Stray Animals. The way
9 we conduct hearings around here is we first have an
10 opening statement by each party. Opening statement is a
11 brief statement. Then you call witnesses. The
12 complainant goes first and the respondent goes second.

13 What I'd like to do now is -- are you an
14 attorney, Mr. Snyder?

15 MR. SNYDER: No, sir, I'm not.

16 CHAIRMAN CINCIONE: Okay. I'd like the
17 clerk -- the reporter to swear anybody that's going to
18 testify in the case of Snyder versus Concerned Citizens.
19 If you'd all stand, those that are going to testify, that
20 includes Mr. Snyder. Just stand and raise your right
21 hand, and the court reporter will issue the oath.

22 (Thereupon all witnesses were sworn in
23 by the court reporter.)

24 CHAIRMAN CINCIONE: A little unsolicited
25 advice, and that is to -- we used to have a TV show, it

1 was called Dragnet. And the guy used to say: "Just the
2 facts." So you can do your rhetoric in closing.

3 MR. SNYDER: Mr. Chairman, I appreciate
4 it. As the chair so noted, you have the copies of the
5 flyers that were circulated in the last election, November
6 of 2001.

7 It is my contention, and I think the testimony
8 as well as the evidence of the minutes of the council
9 meetings -- council meetings of the whole will show that
10 there was no money ever expended of the City of North
11 Canton.

12 The City of North Canton has a firm policy, it
13 does not trap or detain or maintain any domestic animals,
14 be it cat or dog.

15 The case in fact was simply a moral claim
16 presented by a constituent of mine to become whole for
17 what she expended to a professional trapper for nuisance
18 animals. However, in that flyer it does say that I
19 authorized, as the charter of the City of North Canton
20 will hold out, I do have a copy, that no council person by
21 himself or herself, is authorized to spend any money.

22 It takes four affirmative votes of the
23 council, to which it was not done. It was 5 to 2. There
24 was no money spent, but in that flyer I think you will
25 denote that it does say that Mr. Sarbach and myself

1 authorized the expenditures of funds, as well as the flyer
2 itself shows no committee, except the committee chairman,
3 who did not sign a designation of treasure, who did not
4 authorize her name to be placed upon that flyer. It was
5 fraudulently applied to that flyer.

6 So there's two violations. And I feel that
7 this particular time it was willfully disseminated and
8 passed out solely to defeat me in the election for -- my
9 re-election to council.

10 Thank you very much.

11 CHAIRMAN CINCIONE: Who's going to be the
12 spokesperson to do the opening statement for the
13 respondent? You don't have to. If you don't want to, you
14 don't have to do it. Okay. Just give us a brief
15 statement of your defense.

16 MS. KAVANAUGH: My name is Kimberly Joy
17 Kavanaugh, and I am with, supposedly, Concerned Citizens
18 for the Fair Treatment of Stray Animals. And I just
19 planned to show to you that our help was solicited by
20 Kathy Magle and Bill Smith.

21 All we did was a walk-about with the flyers.
22 We did not see the flyers until the day we started passing
23 them out. They printed the flyers. They also gave us the
24 name of Concerned Citizens because they wanted to have it
25 put under my group.

1 We were incorporated, which was, you know,
2 they couldn't put it under at that time. It's illegal to
3 do that. Bill Smith was the one that sent me down to the
4 Board of Elections because I have had no political
5 involvement at all up to that point.

6 And when they asked for a treasurer to sign,
7 we had discussed about my sister doing it, and they wanted
8 a signature at that time. So I put my signature down.

9 And I had told Bill Smith prior to the
10 distribution of the flyers that my sister was not on it,
11 it was me. And apparently he did not hear it or the
12 flyers were already put out, and a disclaimer was put down
13 as my sister, Barb Walter. That's all I have right now.

14 CHAIRMAN CINCIONE: My question to you is
15 you subpoenaed William Smith and you subpoenaed Kathlene
16 Magle. We got a letter from Kathlene Magle. She said she
17 can't make it because of her disability. Is William Smith
18 here on your behalf?

19 MS. KAVANAUGH: Yes, he is.

20 CHAIRMAN CINCIONE: Thank you. You may
21 sit down. Go ahead, Mr. Snyder, call your first witness.

22 MR. SNYDER: The only other witness I have
23 is Mr. Sarbach, who actually wanted to make a statement.
24 And if I may ask him to defer to the closing --

25 CHAIRMAN CINCIONE: We want evidence here.

1 MR. SNYDER: I beg your pardon, I'm sorry.

2 CHAIRMAN CINCIONE: You're going to
3 testify. You get over there and sit down and testify. I
4 know it's hard to ask yourself questions, but somehow --
5 turn the mike on and tell us why. Give us all the details
6 necessary. We're decision-makers here, we need
7 information to make decisions. We count on you to give us
8 that information.

9 MR. SNYDER: I trust I'll be able to do
10 that.

11 CHAIRMAN CINCIONE: Do you have exhibits
12 you want us to review?

13 MR. SNYDER: Yes, sir, I could probably.
14 The first meeting held by the council originally was a
15 council of the whole, which is a working meeting, which
16 was held on September the 3rd of 2001.

17 We do not take actual minutes. It's done on
18 tape. Unfortunately we have no other way to do that. But
19 the actual council meeting of September 10th, 7:00 p.m.,
20 reported verbatim statements, which I brought along.

21 CHAIRMAN CINCIONE: Mr. Richter, would you
22 get the evidence and pass it out.

23 MR. SNYDER: It actually is the testimony
24 given before the council, which in turn states in there
25 the whole action of the woman who was my constituent,

1 Mrs. Mohler, asking me to be reimbursed \$450 for the
2 animals that she paid a private trapper.

3 At that particular time the three members of
4 the committee that are here were in attendance at the
5 council meeting, Mr. Smith was in attendance at the
6 council meeting, Mrs. Magle is a councilwoman sitting on
7 the desk. They all realized there was no money spent,
8 that it was defeated 5 to 2, as the record so notes. So
9 at that particular time they were well aware of the fact
10 that there was no money spent.

11 CHAIRMAN CINCIONE: Sir, what's a working
12 council meeting?

13 MR. SNYDER: Working council meeting is a
14 committee meeting. We meet as a full council. Individual
15 committees operate three members at a time.

16 CHAIRMAN CINCIONE: Next question, when
17 does council take legal action; at a working committee
18 meeting or council meeting?

19 MR. SNYDER: Council meetings are twice a
20 month, two working sessions.

21 CHAIRMAN CINCIONE: Is your council
22 divided into districts?

23 MR. SNYDER: It is, sir, divided by four
24 wards and three council persons at large.

25 CHAIRMAN CINCIONE: You're in a ward, a

1 council person?

2 MR. SNYDER: I'm a fourth board council
3 person, I'm also the president.

4 CHAIRMAN CINCIONE: And the person seeking
5 reimbursement happens to live in your ward?

6 MR. SNYDER: Yes, sir, she does.

7 CHAIRMAN CINCIONE: Thank you.

8 MR. SNYDER: You're welcome. Pursuant to
9 that, it was defeated. There was no money spent. The
10 legislation died for the fact that there were not four
11 affirmative votes to spend it.

12 At that particular time Mrs. Magle, who is the
13 chairperson of the committee that would originally
14 generate the legislation, that being ordinances and rules,
15 took it upon herself to re-introduce the moral claim.

16 At that time, as the president of council, I
17 have the right to either elect or decide not to allow it
18 to appear upon the agenda. And I asked Chairman Magle at
19 the time: What is the reason that we would reconsider
20 this? It was defeated by a vote of five to two. For what
21 particular reason would you bring this up other than to
22 embarrass me?

23 I said this unofficially to her. She said
24 it's a matter of public safety. She -- at that time I
25 said to the clerk of the council, fine. I allowed the

1 chairperson to put it back on the agenda and see what
2 happens.

3 Again, it was put back on the agenda. It did
4 not come out of the committee that she chaired. It was
5 voted two to one not to reconsider it. During that
6 meeting, again, the three members here of the committee,
7 Mr. Smith, Mrs. Magle, were in attendance. They realized
8 it was reiterated, and the minutes will so state the city
9 does not pay or reimburse for trapping of tame domestic
10 animals.

11 It was simply a consideration of a constituent
12 who had spent money. It had nothing to do with the
13 trapping of animals. However, as you can see, that
14 particular statement was sent around to the members of my
15 ward and the members of Mr. Sarbach's ward, who was
16 seeking re-election in Ward 2, and consequently was
17 defeated, which he feels was based upon that, because it
18 was such a sharp margin.

19 CHAIRMAN CINCIONE: Take a look at your
20 flyer, the flyer attached to your complaint. Who are the
21 two members -- you said it was defeated 5 to 2?

22 MR. SNYDER: That's correct.

23 CHAIRMAN CINCIONE: Who are the two
24 members that voted for the measure?

25 MR. SNYDER: Mr. Sarbach and myself.

1 CHAIRMAN CINCIONE: Thank you. Do you
2 have anything else to say?

3 MR. SNYDER: Other than the fact that the
4 flyer, again, as I said in my opening remarks, the flyer
5 does not contain the right designation of treasurer. I do
6 have a copy of the original on file with the Stark County
7 Board of Elections.

8 It does not show the lady's name. It does
9 show, as well as the statement where Mr. Smith paid for
10 the flyers, Mrs. Magle typed and copied the flyers. Would
11 you like that introduced as evidence, sir?

12 CHAIRMAN CINCIONE: Mr. Richter, please
13 get that piece of evidence. Pass it around to the
14 Commission members.

15 MR. SNYDER: One thing -- the reason that
16 this was considered to be a moral claim, it was the
17 opinion of the Law Director of the City of North Canton,
18 whom I consulted. The property of the particular
19 constituent of mine seeking a moral claim, abuts a
20 property at 555 Church Street Southwest, City of North
21 Canton.

22 The property is presently in litigation by the
23 City to have the property raised. It has been abandoned
24 in excess of 18 months.

25 Its habitat is overgrown. There's many

1 animals that live in there, and consequently he felt, due
2 to the fact that the City, it was incumbent upon the City
3 to maintain the health and safety, that we would possibly
4 make this constituent whole. That's how this began.
5 Thank you.

6 CHAIRMAN CINCIONE: Any questions? You
7 want to ask him any questions?

8 MS. KAVANAUGH: No, because you already
9 answered it. When he said embarrassment --

10 CHAIRMAN CINCIONE: No speeches. If you
11 want to ask questions, that's it. If you don't want to
12 ask questions, don't bother.

13 She said, why are you embarrassed over there.

14 MR. SNYDER: Because it infers that I paid
15 City money, which I have no power to do, to trap those
16 animals, 13 cats as well as the stories that were told to
17 my constituents when the flyers were passed out.

18 CHAIRMAN CINCIONE: Any other questions?
19 Hearing none, does any member of the Commission have any
20 questions of this witness?

21 COMMISSIONER BOOTH: Mr. Chairman.

22 CHAIRMAN CINCIONE: Yes.

23 COMMISSIONER BOOTH: I have a question.
24 In your council minutes, and I didn't read the whole
25 thing, I went through your highlighted things. It

1 describes a situation where there were like eight skunks
2 and two possums, and a raccoon. How do we get from there
3 to the cats?

4 MR. SNYDER: It was conjecture, sir, that
5 there was 13 cats trapped. And the defense of the people
6 that represent that committee, they do a very good service
7 for the community to protect domestic animals. They were
8 brought in under the assumption that the City was
9 collecting cats.

10 As a City they trapped cats in the past, but
11 they released them. We do not authorize the trapping.
12 That's how somewhere along the line, through Mrs. Mohler's
13 direct testimony, I believe in the council, she said over
14 a period of a couple months there had been possibly 13
15 cats trapped.

16 She believed them to be ferrel in nature
17 because 555 Church, it's a natural habitat for -- I'm not
18 familiar with the workings of a ferrel cat, how they live.
19 They're just really not people-type cats.

20 CHAIRMAN CINCIONE: Any other questions by
21 any other members of the Commission?

22 COMMISSIONER BOOTH: Your five to two vote
23 was regarding the skunks and the possums, not the cats?

24 MR. SNYDER: Yes, sir. Our five to two
25 vote was to pay a constituent a moral claim. It had

1 nothing to do with the actual trap. The constituent had
2 advanced the money to pay for the trapping. She was there
3 to become whole.

4 Consequent to that, the City did -- we have a
5 nuisance trapping service, we sent the nuisance to
6 Mrs. Mohler's home on Harmon Street, and he did trap some
7 additional skunks, which the City paid for. But we were
8 only considering a moral claim. We were not considering
9 what was trapped previous to that.

10 CHAIRMAN CINCIONE: Any other questions by
11 any other members of the Commission? Do you have any
12 questions?

13 MS. KAVANAUGH: No, but I'd like to submit
14 this.

15 CHAIRMAN CINCIONE: You'll get your
16 chance. We take turns here. He talks, then you talk.
17 That's how we do it.

18 COMMISSIONER SULLIVAN: Mr. Chairman, I'm
19 still confused. The five to two vote, that five to two
20 vote authorized the payment of any money for any trapping?

21 MR. SNYDER: No, ma'am.

22 COMMISSIONER SULLIVAN: So that vote said
23 that you would not pay?

24 MR. SNYDER: That's correct.

25 COMMISSIONER SULLIVAN: So any time that

1 this matter came before your council, the council voted
2 not to pay these people for the trappings?

3 MR. SNYDER: That's correct.

4 COMMISSIONER SULLIVAN: Okay. There was
5 never a vote taken where you did authorize the payment for
6 a trapping?

7 MR. SNYDER: No. The vote was defeated
8 five to two not to pay.

9 COMMISSIONER SULLIVAN: I thought I
10 understood that. I just wanted to make sure.

11 MR. SNYDER: At no time was it authorized
12 to pay Mrs. Mohler for her moral claim for the trapping of
13 animals.

14 COMMISSIONER SULLIVAN: Thank you.

15 CHAIRMAN CINCIONE: Any other questions?
16 Thanks. You may step down. Call your next witness.

17 MR. SNYDER: Thank you, Mr. Chairman. I
18 appreciate your courtesy.

19 CHAIRMAN CINCIONE: Do you have any other
20 witnesses?

21 MR. SNYDER: No, sir. I do not at this
22 particular time.

23 CHAIRMAN CINCIONE: Don't expect the
24 person you brought with you to be able to stand up and
25 make a statement.

1 MR. SNYDER: I understand.

2 CHAIRMAN CINCIONE: Now it's your turn.
3 Are you finished?

4 MR. SNYDER: Sir, one question, if I may
5 ask. If I depose Mr. Sarbach a question, he will only
6 confirm what I said. Is that necessary?

7 CHAIRMAN CINCIONE: It's up to you, it's
8 your case.

9 MR. SNYDER: I would like to do that, if
10 it pleases the Commission.

11 CHAIRMAN CINCIONE: Tell the court
12 reporter who you are, what you do and speak loudly so
13 everybody, specifically the court reporter, can hear you.

14 THE WITNESS: My name is Greg Sarbach,
15 S-A-R-B-A-C-H, I live at 611 Northbury Circle in North
16 Canton, and I've been a City Councilman representing Ward
17 2 in that city for eight of the last 10 years.

18 CHAIRMAN CINCIONE: You want to ask him
19 questions?

20 MR. SNYDER: Please, sir. Thank you.

21

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22

GREG SARBACH

23 Having been previously sworn, as prescribed by law,
24 testifies as follows:

25

DIRECT EXAMINATION

1 BY MR. SNYDER:

2 Q Mr. Sarbach, on your independent recollection,
3 can you recall the meeting of September 4th, 2001,
4 involving the council?

5 A Yes, sir, I do.

6 Q And at that particular time the committee was
7 informed of ordinances and rules, comprised of myself and
8 Mrs. Magle and Mr. Wiley, correct?

9 A That is my recollection.

10 Q Was it the recommendation of that committee to
11 pass on to the full council to reimburse one constituent,
12 Mrs. Lynn Mohler at 532 Harmon Street, Southwest?

13 A I believe that was correct.

14 Q Again, that's your independent recollection on
15 September 11th -- excuse me, September 10th, 2001, City of
16 North Canton had a council meeting, a general council
17 meeting to consider legislation; is that correct?

18 A Yes, sir.

19 Q At that particular time, Ordinance -- I
20 believe 52-01 was considered to pay -- reimburse a
21 constituent \$450 for the trapping of a supposed 13 cats,
22 possums and skunks?

23 A I don't have a direct knowledge of the number,
24 but, yes, generally that is correct.

25 Q How did that legislation go down, sir?

1 A That went down by a vote of five to two. It
2 was defeated with yourself and myself voting in the
3 positive.

4 Q Was it your understanding as a member of the
5 full council body that that was only a consideration of a
6 moral claim, not the trapping of any animals?

7 A That is correct. Due to the policy of the
8 City, we would not do that, sir.

9 Q As well as it was reiterated by the chair and
10 three members of the council that the City does not permit
11 the trapping of domestic cats?

12 A That policy was reiterated at several meetings
13 and in several personal conversations with the individuals
14 involved. And I might add one thing, that this animal
15 group does a great service to our county and our
16 community, and I believe they were duped and a pawn in
17 this issue for political matter.

18 Q But again, to the best of your independent
19 recollection, sir, was any members of that committee or
20 Mr. Smith or Mrs. Magle in attendance at both of those
21 meetings?

22 A My recollection is they were all present at
23 this meeting in September.

24 Q Sir, do you have knowledge of the fact that in
25 the last Charter Review Commission Mrs. Magle was a member

1 of the Charter Review Commission?

2 A That is correct, because I was a council
3 representative to the Charter Review Commission, and I sat
4 in on a review that Mrs. Magle was a chair person -- or a
5 commissioner on.

6 Q So it would be, again, your opinion, sir, that
7 Mrs. Magle would be aware of the charter that requires
8 four affirmative votes of council to pay a bill, whether
9 it be for trapping or for reimbursement of moral claim,
10 and that's the only way any money could be spent?

11 A It's my opinion Ms. Magle was fully aware of
12 how the charter works, and she did a very good job of
13 reviewing that commission. As provided for by the
14 charter, that needs to be reviewed every 10 years. She
15 did a very good job. She was very knowledgeable of all
16 aspects of that charter at that time.

17 Q As well, to the best of your independent
18 recollection, over the last three and a half years,
19 Mr. William Smith has attended most council meetings of
20 the whole, and council meetings, sir?

21 A It's my recollection, I've seen him there
22 quite often at the beginning of meetings. I have never
23 seen him there at the end of meetings, or I can't recall
24 seeing him there at the end of meetings. I know he's
25 there at most commencements of meetings.

1 Q Again, sir, it would be your opinion attending
2 these several council meetings that Mr. Smith would be
3 aware of the fact that the charter requires four
4 affirmative votes to expend any money?

5 A I would think. I don't see how he couldn't
6 understand that if he was there at all at the meetings he
7 attended.

8 Q As well as Mr. Smith, I believe was a
9 candidate for office for the City of North Canton on two
10 different occasions?

11 A That's correct. The last two elections, 2001
12 and 1999 he was a candidate for, I believe in '99 he was
13 my opponent in Ward 2, and in 2001 he ran for council of
14 the whole, and he was defeated in both elections.

15 Q Again, relying on your independent
16 recollection, the people of the Committee for the Fair
17 Treatment of Cruelty to Animals, here in attendance today,
18 were all in attendance at those meetings and were fully
19 aware of the fact from the chair, myself and from yourself
20 and a couple other council people as well as the assistant
21 director, Mr. Treden, who was in attendance at the
22 meeting.

23 He said: This is simply a moral claim. The
24 City does not trap animals except through their own
25 licensed contract hire; is that correct?

1 A That is correct, and I believe Mr. Treden
2 interrupted the proceedings to explain that on at least
3 one occasion that that was the policy, that did not apply
4 to a moral claim. It was simply acting on a moral claim.

5 MR. SNYDER: Okay. Thank you for your
6 indulgence.

7 THE WITNESS: May I comment on one other
8 item that I believe is pertinent to this case,
9 Mr. Chairman?

10 CHAIRMAN CINCIONE: Go ahead.

11 THE WITNESS: There were two flyers. One
12 had Mr. Snyder's name, one had my name on it. And I was
13 not re-elected, I lost by 27 votes. And by the amounts of
14 flyers that were handed out, if I were to believe these
15 flyers, I would have voted for my opponent.

16 These flyers are false, and they do a
17 disservice to the animal group that they claim was doing
18 this. And I feel that's why I was not re-elected after
19 serving eight years on council. I think this was very
20 unfair, and I believe it's unfair to --

21 CHAIRMAN CINCIONE: I presume, sir, that
22 this flyer was designed to influence the outcome of the
23 election?

24 THE WITNESS: Without a doubt. And its
25 timing of distribution was paramount in the success of

1 that happening.

2 CHAIRMAN CINCIONE: Okay. Does any
3 member -- did you have any questions? You're their
4 spokesman. Any questions from any member of the
5 Commission of this witness?

6 Hearing none, you may stand down or be
7 excused. Excused means you can leave, stand down, you
8 know, you can leave if you want. I doubt that you want
9 to.

10 THE WITNESS: Thank you, Mr. Chairman.

11 CHAIRMAN CINCIONE: Are you finished?

12 MR. SNYDER: Yes.

13 CHAIRMAN CINCIONE: You want to admit your
14 evidence?

15 MR. SNYDER: Yes, sir.

16 CHAIRMAN CINCIONE: I just did.

17 MR. SNYDER: Thank you, I appreciate that.

18 CHAIRMAN CINCIONE: Now it's your turn.

19 Call the witness.

20 MS. KAVANAUGH: I'm not going to be as
21 eloquent as the other speakers.

22 CHAIRMAN CINCIONE: You don't need to do
23 that at all, ma'am. All you need do is sit on that chair
24 and tell us what you did. Just sit down and just tell us
25 your story. If we have to make decisions, we need

1 information.

2 MS. KAVANAUGH: My name is Kimberly Joy
3 Kavanaugh. I am with a rescue group. I've been a rescuer
4 for over 30 years. When we were told there was a chain of
5 events, Kathy Magle and Bill Smith were the ones that
6 sought us out when this came to be.

7 We had no recollection. We never saw the
8 flyers until the day we passed them out. I questioned
9 Bill Smith and Kathy Magle at the time of distribution. I
10 said: Can you say this? And quote and unquote, they said
11 it came word for word verbatim out of the minutes.

12 All right. When charges came down that there
13 was violation in the procedures, I contacted Bill Smith.
14 He provided me with the minutes of the meeting. I went
15 through it several times, and I could not find the
16 statement.

17 I looked it up in a Webster's Dictionary.
18 "Authorization" means giving your vote, which he did the
19 very first time. So I thought, well, we're still in the
20 clear, but at no time did we seek to hurt anybody.

21 We had heard through rumors, and I talked to
22 the mayor, who's here today, too, that there was possibly
23 a program that could be started in North Canton, which
24 would have been a very innovative program to help rescue
25 animals, that the City would help sponsor those animals,

1 get them spayed and neutered, and then give them to rescue
2 groups for the placement of.

3 And that was our motivating factor. That's
4 all I have to say right now.

5 CHAIRMAN CINCIONE: The question I have is
6 who's the treasurer of the Concerned Citizens for the
7 Treatment of Stray Animals Committee; who is the
8 treasurer?

9 MS. KAVANAUGH: Okay. At the time I did
10 not know any of the procedures on how to do this, and Bill
11 Smith -- I went down to the Election Board, and they said
12 that I had to have a signature now. So instead of putting
13 my sister's name down, which is Barbara Walter, I used my
14 own name. And I came back and told Bill Smith that I used
15 my own name as treasurer because he said that there had to
16 be a disclaimer on the bottom of the flyer.

17 Well, when the flyer came out, I saw Barb's
18 name was still on it.

19 CHAIRMAN CINCIONE: You've seen this
20 Exhibit B that says: Designation of Treasurer, Kimberly
21 Joy Kavanaugh? Is that you?

22 MS. KAVANAUGH: That's me.

23 CHAIRMAN CINCIONE: So you're the
24 treasurer?

25 MS. KAVANAUGH: Right. And I told him

1 when I came back that day.

2 CHAIRMAN CINCIONE: And then it says:
3 Barbara Walter, Treasurer. She's not the treasurer.

4 MS. KAVANAUGH: No.

5 CHAIRMAN CINCIONE: I'm trying to figure
6 out who sent this flyer. I see Barbara Walter there, and
7 I happen to know Barbara. And I think if she did it, it's
8 okay. Am I being misled; it's not Barbara Walter?

9 MS. KAVANAUGH: It's not Barbara Walter.

10 CHAIRMAN CINCIONE: When you found out
11 that your name was not on this flyer, what efforts did you
12 do -- did you make to correct it?

13 MS. KAVANAUGH: As I said before, I never
14 saw the flyer until that day we passed them out. And I
15 told -- I mentioned to Kathy and Bill, I said: You didn't
16 change this. Barb's name is on it. And he said: Well,
17 it's still okay. They won't come after private citizens.
18 And he said: It's just a disclaimer.

19 I had no reason to believe it not to be a
20 problem, and I had no reason to believe -- not to believe
21 that the statement on the flyer was not true when both of
22 them reiterated several times that this came word verbatim
23 out of the minutes of the town council meeting.

24 Kathy Magle and Bill Smith were there to help
25 us. They were there, they gave us maps to show us what

1 areas we were supposed to be there, you know, what areas
2 we were supposed to target.

3 They were there when we were doing the
4 walk-about to see if we needed anything, if we were okay.
5 And it really angers me that Kathy Magle is not here. If
6 she had won the lottery, I bet you she would have been
7 here to claim her prize.

8 CHAIRMAN CINCIONE: So the first time you
9 saw the flyer at the time that you're getting ready to
10 make the distribution, you relied on two people, Bill
11 Smith and Kathleen Magle --

12 MS. KAVANAUGH: That's right.

13 CHAIRMAN CINCIONE: -- for the words. You
14 didn't go check it out yourself. You found out later that
15 was not right, it was incorrect?

16 MS. KAVANAUGH: That is correct.

17 CHAIRMAN CINCIONE: And the other thing
18 we're concerned about was that you knew you were the
19 treasurer and yet you permitted someone else's name to be
20 there, and you passed it out.

21 MS. KAVANAUGH: At the time, like I said,
22 I told Bill, I thought he was going to have it corrected.
23 And then when I saw the flyer that day he said it doesn't
24 matter, it's just a disclaimer.

25 So with their, quote, years in public service,

1 I had no reason not to believe them.

2 CHAIRMAN CINCIONE: Why did you make
3 yourself treasurer?

4 MS. KAVANAUGH: Because when I was down at
5 the Board of Elections filling out the form, I said: Do
6 you need a signature right away? And she said: Yes,
7 they're calling it close. And that's when I signed my
8 name.

9 CHAIRMAN CINCIONE: Then when you became
10 treasurer did you notify the people that were concerned
11 about this issue that you were the treasurer; did you tell
12 Bill Smith?

13 MS. KAVANAUGH: Yes, that day. Like I
14 said, the day I saw the flyer.

15 CHAIRMAN CINCIONE: When you became
16 treasurer, did you tell people?

17 MS. KAVANAUGH: Yes.

18 CHAIRMAN CINCIONE: And did you tell them
19 to put your name on that disclaimer?

20 MS. KAVANAUGH: I told Bill there had to
21 be a change, that Barb was not treasurer. And he said
22 that's okay. And then when I saw, again, the actual
23 flyer, he said that's okay, they just needed a disclaimer,
24 that they won't do anything to a private citizen.

25 CHAIRMAN CINCIONE: Ms. Sheerer.

1 COMMISSIONER SHEERER: Ms. Kavanaugh,
2 when you talk about the day that you were given the
3 flyers, and it was at that time when you asked the
4 questions about the language on the flyer?

5 MS. KAVANAUGH: Right.

6 COMMISSIONER SHEERER: And you realized
7 that they had continued to use your sister's name instead
8 of you as the treasurer; is that right?

9 MS. KAVANAUGH: That's the first time that
10 I actually knew that he did not make a correction.

11 COMMISSIONER SHEERER: Okay. What day was
12 that in relationship to the actual election?

13 MS. KAVANAUGH: October 20th.

14 COMMISSIONER SHEERER: Okay. And when you
15 passed this out, why, in fact, were you willing to pass
16 this out?

17 MS. KAVANAUGH: Again, because there was a
18 promise that possibly with a new council, the City of
19 North Canton would be willing to start a new program with
20 all rescuers.

21 COMMISSIONER SHEERER: So that it was
22 clearly your intent to have this influence the outcome of
23 the election, because a new council would give you the
24 opportunity to do the kind of thing that had been
25 described to you and you described to us, with rescuing

1 animals?

2 MS. KAVANAUGH: It was my intent to
3 provide information to the public that he had known that
4 John and Greg Sarbach had voted for reimbursement of the
5 animals. The alleged cats that he says -- I got the bill
6 in front of me -- that they had at the council meeting,
7 that there were 13 cats that were, quite, destroyed. And
8 with the second vote it was overturned.

9 COMMISSIONER SHEERER: All right, thank
10 you.

11 CHAIRMAN CINCIONE: Mr. West, you had a
12 question.

13 COMMISSIONER WEST: Your motive for doing
14 this was to engage in political advertisement?

15 MS. KAVANAUGH: My motive was to help a
16 program get started in North Canton that would help,
17 instead of using euthanasia as a form of animal control,
18 using the rescuers as a form of animal control.

19 COMMISSIONER WEST: You could do that with
20 the present commission, so you wanted someone to be there?

21 MS. KAVANAUGH: I really don't know at the
22 time, okay, they were talking again.

23 COMMISSIONER WEST: Did you understand my
24 question?

25 MS. KAVANAUGH: Yes, I did. I don't know

1 if with a new council that we would have gotten it
2 through.

3 COMMISSIONER WEST: What was the motive
4 for Smith and Magle to have you do this?

5 MS. KAVANAUGH: They said they needed
6 assistance in passing out flyers.

7 COMMISSIONER WEST: What was their
8 involvement in the election?

9 MS. KAVANAUGH: Kathy Magle was an
10 incumbent that was going up for re-election, and Bill was
11 going, I think it was the first time or second time that
12 he was running for office, which I didn't know at the
13 time. I thought it was his first time.

14 COMMISSIONER WEST: And you didn't realize
15 this was political advertisement? You want us to believe
16 you're that naive?

17 MS. KAVANAUGH: No. It was providing
18 information for the public is what we were led to believe.

19 COMMISSIONER WEST: You said you were
20 duped. Is that your exact language?

21 MS. KAVANAUGH: Yes.

22 COMMISSIONER WEST: By "duped" you mean
23 you were asked to put out something that was not true?

24 MS. KAVANAUGH: I found that out later.

25 COMMISSIONER WEST: And you agreed this is

1 not true?

2 MS. KAVANAUGH: I have not been able to
3 find that statement in any of the minutes. And after the
4 election was over, Bill Smith and Kathy Magle, we didn't
5 even get so much as a thank you for helping. They totally
6 dropped us.

7 And basically, the only time we had contact
8 with them is when I started getting the letters from the
9 commission.

10 COMMISSIONER WEST: So you think Smith and
11 Magle ought to be here?

12 MS. KAVANAUGH: Oh, yeah.

13 CHAIRMAN CINCIONE: Any other questions by
14 any members of the Commission? Mr. Tyler.

15 COMMISSIONER TYLER: Mr. Cincione, just
16 one question. Ms. Kavanaugh, when you saw the flyer and
17 you saw the name on the bottom of the flyer was incorrect,
18 you still handed the flyers out?

19 MS. KAVANAUGH: Right.

20 COMMISSIONER TYLER: Is that correct?

21 MS. KAVANAUGH: That's correct.

22 COMMISSIONER TYLER: Thank you.

23 CHAIRMAN CINCIONE: Any other questions by
24 any members of the Commission? Mr. Snyder.

25

- - -

1 KIMBERLY JOY KAVANAUGH

2 Having been previously sworn, as prescribed by law,
3 testifies as follows:

4 CROSS EXAMINATION

5 BY MR. SNYDER:

6 Q Mr. Chairman, thank you. Ms. Kavanaugh, were
7 you in attendance at the meeting of October 15th, 2001,
8 the City of North Canton council meeting?

9 A I'm not sure.

10 Q Did you, in fact, on that evening, in a public
11 speech portion, which I permitted you to speak, speak to
12 the council of the City of North Canton, give an opening
13 statement; do you recall?

14 A I remember giving a statement, yes, but I
15 don't know if it was on that date.

16 Q Ma'am, do you recall, and I quote this, if I
17 may, sir, out of the minutes of the October 15th meeting
18 that: "I've no other comments except that I'm going to be
19 the first one that's really going to work hard to make
20 sure that many of you are not going to be in the governing
21 position again"; did you make that statement?

22 A I also made a statement that --

23 CHAIRMAN CINCIONE: Hold on. He asked you
24 a question.

25 A Yes, I did.

1 Q Did you also understand in that meeting where
2 I contacted, by phone, the trapper who was licensed by the
3 State of Ohio Department of Natural Resources that trapped
4 the animals at the said constituent's home, did you hear
5 me say that in the minutes, or did you hear me say that
6 from the floor?

7 A Say that again.

8 Q Did you hear me say that I contacted the
9 trapper licensed by the State of Ohio, employed by the
10 constituent, Mrs. Lynn Mohler, to trap those 13 cats,
11 skunks, possums and so forth? Did I not say that in an
12 open meeting?

13 A You made reference to that, but also you made
14 reference that you didn't know, that you thought there was
15 a discrepancy, that you didn't know how many animals were
16 trapped. And you said that the cats were let loose and
17 then they were drowned and they were rabid. This was all
18 brought out at the meeting.

19 Q But I didn't say they were drowned or rabid,
20 did I?

21 A There was jousting between you, Magle and all
22 the other Board members. I know that came out during that
23 meeting, and I said if they were rabid, were the heads
24 sent to Columbus, because that's a state law.

25 Q I recall that. One other thing,

1 Mr. Kavanaugh, who contacted you originally to come to the
2 council meeting to give testimony and a public speech?

3 A Jody Farnsworth.

4 Q Okay. And pursuant to that meeting of
5 October 15th when you were asked to form this PAC, who
6 gave you the name of the PAC?

7 A It was Bill Smith and Kathy Magle.

8 Q Mrs. Magle's intentions were to defeat myself
9 and Mr. Sarbach for re-election; is that correct? She did
10 not state to you her intention was to defeat me for
11 re-election?

12 A She did not use those words.

13 Q I apologize. One question I'd like to ask, if
14 I may, and please bear with me here, as Mrs. Magle's
15 attendance is sorely missed to defend herself, and she
16 gave a lame excuse that she was unable to travel due to
17 her disability. Who traveled with you on a couple of
18 Saturdays when the weather was very inclimate all over the
19 city of North Canton?

20 A Her husband drove her and she checked out the
21 different areas that we did the walk-about in.

22 Q I believe Mrs. Magle's under subpoena to
23 appear; is that not correct?

24 A I asked for her to be here.

25 MR. SNYDER: That's it, that's all I have.

1 Thank you.

2 CHAIRMAN CINCIONE: Are you all saying you
3 need Kathy Magle here? Do you want me to issue a bench
4 warrant and have this thing continued for another date?

5 MS. KAVANAUGH: I don't want this to
6 continue anymore.

7 CHAIRMAN CINCIONE: If you are, we can
8 continue this hearing and you can take depositions of
9 Kathlene Magle and bring them back. If you're not, we're
10 going forward. Okay, have a seat.

11 COMMISSIONER SULLIVAN: Mr. Chairman, can
12 I ask our Executive Director a question?

13 CHAIRMAN CINCIONE: Yes.

14 COMMISSIONER SULLIVAN: Do I understand
15 our rules properly that we can make a determination today
16 against the respondents listed, but then this complainant
17 or any other complainant could file additional complaints
18 against Kathlene Magle and Mr. Smith in the future on the
19 same fact pattern that we have before us?

20 EXECUTIVE DIRECTOR RICHTER: That is
21 correct.

22 COMMISSIONER SULLIVAN: So this does not
23 preclude the complainants from bringing these other
24 parties to us; is that right, Mr. Richter?

25 EXECUTIVE DIRECTOR RICHTER: Should they

1 choose to do so, that is correct.

2 COMMISSIONER SULLIVAN: Thank you.

3 CHAIRMAN CINCIONE: A long time ago when
4 you and I first got on this, the question came up, whether
5 or not we could investigate items that come before us, and
6 I think the answer was yes, that we could investigate.

7 Okay. Everybody have enough questioning of
8 this lady, Everybody on the Commission? You may be
9 excused, you may stand down. You have to hang around.

10 Do you have another witness or is that it?

11 MS. KAVANAUGH: I'd like Bill Smith to
12 come up.

13 CHAIRMAN CINCIONE: Is Mr. Smith here?
14 You've been sworn in. Have a seat. The first thing you
15 do is state your name, address, who you are.

16 THE WITNESS: My name is William Smith. I
17 live at 1057 Dogwood Avenue Northeast, North Canton, Ohio.

18 CHAIRMAN CINCIONE: One of the things we
19 try to do is -- Mr. Tyler is all the way down at the end.
20 He's decision-maker so speak. Go ahead.

21

- - -

22

WILLIAM SMITH

23 Having been previously sworn, as prescribed by law,
24 testifies as follows:

25

CROSS EXAMINATION

1 BY MS. KAVANAUGH:

2 Q My question is did you provide us with the
3 flyers?

4 A I provided my flyers. The other candidate,
5 Mr. Lindauer, provided their own flyers.

6 Q Okay. Did you and Kathy Magle write the
7 content of the flyers?

8 A No.

9 Q Who did?

10 A I have no knowledge of who wrote it.

11 CHAIRMAN CINCIONE: Here's a big rule we
12 have here. We really want to make a decision based upon
13 information, and the only way to get information is for
14 you all to speak up. We can't hear when you talk like
15 this.

16 COMMISSIONER SHEERER: Ms. Kavanaugh, come
17 up to the podium and ask your questions. That would help.

18 Q (By Mrs. Kavanaugh) Did you or did you not
19 deliver the flyers to us?

20 A Yes.

21 Q Where did those flyers come from?

22 A They were handed to me at a council meeting.

23 Q By whom?

24 A I don't know who it was, I do not know what
25 her name was.

1 Q And you did not say that when I questioned you
2 the day we passed those flyers out, you did not say that
3 this came, word for word, verbatim out of the minutes of
4 the town council meeting?

5 A I stated that the vote came out of the council
6 meeting. The vote to pay that bill was voted positively
7 by Mr. Sarbach and Mr. Snyder.

8 Q I didn't ask about the vote. The content of
9 the flyer, you told many of us that are here that it came
10 verbatim out of -- the wording came from the town council
11 meeting; isn't that right?

12 A The content of the flyer was basically the
13 vote to pay the bill by Mr. Sarbach and Mr. Snyder. In
14 the flyer it said they authorized to pay that bill, that
15 bill was to trap whatever animals it was.

16 Q All right. Did you provide the name for the
17 group?

18 A I suggested the name, yes, I did.

19 Q And how did you come up with that name?

20 A I just thought about it.

21 Q Did Kathy help you?

22 A No.

23 Q Didn't you ask to have my group first be used
24 as the name for the organization?

25 A I don't recall that.

1 MS. KAVANAUGH: I don't have any more
2 questions.

3 CHAIRMAN CINCIONE: Mr. Snyder.

4 MR. SNYDER: Thank you, Mr. Chairman.

5 CROSS EXAMINATION

6 BY MR. SNYDER:

7 Q Mr. Smith, did I understand you correctly,
8 sir, that you had no knowledge of who printed those
9 flyers?

10 A I have no knowledge of who printed those
11 flyers.

12 Q Did you not, in fact, reimburse that committee
13 \$150 for the printing of those flyers, sir?

14 A No, sir.

15 Q Obviously the declaration filed with the Board
16 of Elections states that you paid \$150 for the payment of
17 those flyers. Is that another falsification?

18 A Mr. Wornet paid for his flyers. To my
19 knowledge, Mr. Lindauer took care of his flyers. I paid
20 for my flyers.

21 MR. SNYDER: Mr. Richter, does that say
22 that they paid \$150 in kind for the printing of those
23 flyers, if my memory serves me right?

24 EXECUTIVE DIRECTOR RICHTER: The Campaign
25 Finance Report for the Concerned Citizens for the Fair

1 Treatment of Stray Animals reflects \$150 in kind
2 contribution on the cover page of the report. And then on
3 the in kind contribution page it indicates that the
4 contributor was a W. E. Smith, 1057 Dogwood Avenue, who
5 paid \$150 the for campaign flyers.

6 Q One would think, sir, if you paid \$150 you
7 would know who printed them for you; would you not?

8 A I think Mr. Wornet and Mr. Lindauer cleared
9 that up.

10 MR. SNYDER: My apologies to the
11 Commission. We must need to see North Canton here to --

12 CHAIRMAN CINCIONE: No speeches.

13 Q (By Snyder) Mr. Smith, do you attend council
14 meetings on a regular basis, sir?

15 A As much as I can.

16 Q Which is probably 95 plus percentage; is that
17 correct?

18 A Could be.

19 Q You're well aware that in the charter it
20 requires four affirmative votes to authorize a payment of
21 any money in the City of North Canton?

22 A Yes.

23 Q And you, sir, said to Mr. Sarbach and myself
24 it was authorized, when fully aware and knowing that we're
25 not permitted by charter to authorize the expenditure of

1 any money?

2 A Mr. Sarbach and yourself voted in the positive
3 to pay that moral claim, which was to pay that lady to
4 trap or pay the trapper to take those animals out.

5 Q Sir, were you also in attendance that evening;
6 of both September 4th and September 10th, October 12th and
7 15th when it was said from the chair, myself, and it's in
8 the minutes, that this is a moral claim only? This has
9 nothing to do with trapping of animals.

10 Was that not perfectly explained to the
11 council and the people in attendance at the council
12 meeting that, in fact, that was a moral claim, not a
13 reimbursement?

14 A I don't recall.

15 MR. SNYDER: That's all, thank you.

16 CHAIRMAN CINCIONE: Any questions?

17 COMMISSIONER WEST: I have a question.

18 CHAIRMAN CINCIONE: Please.

19 COMMISSIONER WEST: Mr. Smith, I didn't
20 quite understand your answer. Did you or did you not
21 acknowledge that this finance report filed was correct?

22 THE WITNESS: I don't know what the other
23 candidates paid.

24 COMMISSIONER WEST: We're talking about
25 you.

1 THE WITNESS: I paid for my flyers, I paid
2 for 2,000 flyers and two sets of these.

3 COMMISSIONER WEST: Who did you pay it to?

4 THE WITNESS: I donated it.

5 COMMISSIONER WEST: You prepared the
6 flyers yourself?

7 THE WITNESS: I had a printer.

8 COMMISSIONER WEST: Who printed it?

9 THE WITNESS: I don't know, sir.

10 COMMISSIONER WEST: Is it the same
11 language as this flyer here?

12 THE WITNESS: I haven't seen the flyers, I
13 can't recall. I haven't seen that flyer, so I don't know.

14 COMMISSIONER WEST: What language did you
15 put on your flyers?

16 THE WITNESS: Pardon?

17 COMMISSIONER WEST: What language did you
18 have on your flyers?

19 THE WITNESS: Pretty much the same as any
20 of the other candidates.

21 COMMISSIONER WEST: That's all.

22 CHAIRMAN CINCIONE: Anybody else have any
23 questions?

24 COMMISSIONER TYLER: Yes.

25 CHAIRMAN CINCIONE: Mr. Tyler.

1 COMMISSIONER TYLER: Sir, you were a
2 candidate for public office?

3 THE WITNESS: Council at large.

4 COMMISSIONER TYLER: What was the outcome
5 of the election?

6 THE WITNESS: I lost.

7 COMMISSIONER TYLER: You lost?

8 THE WITNESS: Right.

9 COMMISSIONER TYLER: Is it your testimony
10 that you do not know who printed the flyer?

11 THE WITNESS: I have no knowledge of who
12 printed the flyer. I printed the flyers up for myself.

13 COMMISSIONER TYLER: You printed them for
14 yourself, but you don't know who wrote it, but you printed
15 them on your own behalf; is that correct?

16 THE WITNESS: Yes.

17 COMMISSIONER TYLER: But you don't know
18 who wrote it?

19 THE WITNESS: I have no knowledge of who
20 wrote it.

21 COMMISSIONER TYLER: Thank you.

22 CHAIRMAN CINCIONE: Have you seen the
23 flyer?

24 THE WITNESS: Not the one you have here.

25 CHAIRMAN CINCIONE: Somebody show him the

1 flyer, please. It starts with Concerned Citizens, and the
2 first paragraph says: "Did you know that your current
3 ward council members, John Snyder and Greg Sarbach,
4 actually authorized the spending of your tax dollars to
5 trap 13 cats?" Is that what you said on this flyer?

6 THE WITNESS: Yes.

7 CHAIRMAN CINCIONE: Tell me what
8 investigation you did to assure the public, you know, the
9 people that are going to vote, that this is a true
10 statement; what did you do?

11 THE WITNESS: In the minutes of the
12 council meeting Mr. Sarbach and Mr. Snyder voted
13 positively to pay that.

14 CHAIRMAN CINCIONE: Will you show me in
15 your flyer where that's stated?

16 THE WITNESS: It doesn't state it.

17 CHAIRMAN CINCIONE: So it's not stated.
18 And is the fact true that the City decided not to spend
19 the money?

20 THE WITNESS: Yes, in the end.

21 CHAIRMAN CINCIONE: Is there anything in
22 there that says that?

23 THE WITNESS: No.

24 CHAIRMAN CINCIONE: Thanks. And I presume
25 this was done to influence the election. I mean, you

1 wanted to win?

2 THE WITNESS: Yes.

3 CHAIRMAN CINCIONE: Thanks. Any other
4 questions by any other members of the Commission? Hearing
5 none, any other questions out there? You may stand down.
6 Do you have any other witnesses?

7 MS. KAVANAUGH: I don't think we're going
8 to take up any more of your time. I had Mayor Rice here
9 to confirm that there was possibly a program that would be
10 implemented with the new council coming up, but I don't
11 think that's needed.

12 CHAIRMAN CINCIONE: We already know that
13 the flyer was designed to influence the election.

14 MS. KAVANAUGH: So I don't have anybody
15 else.

16 CHAIRMAN CINCIONE: We will admit your
17 bill. That doesn't reflect that the City paid it. All it
18 is is a reflection that this lady, Mrs. Mohler, is
19 requesting reimbursement, right? That's all you wanted to
20 show, that there was a bill and that City Council did act
21 on it, but they acted negatively on it. That was the
22 purpose for which you provided?

23 MS. KAVANAUGH: Correct.

24 CHAIRMAN CINCIONE: Anything else? Take
25 your time.

1 MS. KAVANAUGH: It's my first time.

2 CHAIRMAN CINCIONE: I understand.

3 MS. KAVANAUGH: I'm not a lawyer, I'm a
4 nurse.

5 CHAIRMAN CINCIONE: I know, and you're
6 doing a good job. Do you have someone else that wants to
7 testify? Tell them to go up and testify. It's called due
8 process, and it's protected under the Constitution of the
9 United States.

10 MS. KAVANAUGH: I'd like to call Jody
11 Farnsworth.

12 CHAIRMAN CINCIONE: Jody Farnsworth, take
13 the stand.

14 THE WITNESS: My name is Jody Farnsworth,
15 and I live at 1342 Farrow Street Southeast in North
16 Canton.

17 - - -

18 JODY FARNSWORTH

19 Having been previously sworn, as prescribed by law,
20 testifies as follows:

21 DIRECT EXAMINATION

22 BY MS. KAVANAUGH:

23 Q Okay. In very brief words, can you give us a
24 summation on how our involvement in this thing got
25 started.

1 A It's all my fault. A friend of mine, who also
2 works in Animal Rescue with me, Trish Long, her sister is
3 best friends with Kathy Magle, the councilwoman. And
4 Kathy Magle knew this was coming up, so she told Trish's
5 sister, who told Trish, who called me.

6 I called Kim, a whole bunch of other animal
7 rescuers, because there was question of how the animals
8 were killed, and it was inhumane, so that got us all
9 involved, and that's how Kim got involved, because I
10 called her.

11 CHAIRMAN CINCIONE: Did you pass out the
12 literature?

13 THE WITNESS: Yes.

14 CHAIRMAN CINCIONE: Did you -- were you at
15 the meetings that they were talking about it?

16 THE WITNESS: Uh-huh.

17 CHAIRMAN CINCIONE: Did you look at the
18 language, or just pass it out?

19 THE WITNESS: Well, I saw -- to me, when
20 you authorize something, it's a vote. That's how I
21 undertook it. He said to pay for it, so that's
22 authorizing. But I was there when Kim questioned it, and
23 I don't know anything about the bottom stuff, because I
24 wasn't a part of that.

25 CHAIRMAN CINCIONE: I don't see the word

1 "vote" in here at all.

2 THE WITNESS: Right, I agree with you.

3 CHAIRMAN CINCIONE: Any other questions?
4 You want to question?

5 MR. SNYDER: Thank you, Mr. Chairman.

6 CROSS EXAMINATION

7 BY MR. SNYDER:

8 Q Ms. Farnsworth, you again were at the meetings
9 and were apprised of everything we talked about today. To
10 the best of your recollection, do you know who paid for
11 and printed those flyers, who actually typed up the
12 original copy that he took to Kinko's or Office Max?

13 A Bill Smith brought them to me, and he brought
14 them to me before they were done up. I don't remember who
15 he said. I don't know who it was, but he brought it to me
16 and showed me before they were all printed up. And then
17 he brought me a huge stack.

18 Q And that flyer that we did pass around, I
19 believe also it has a flyer for Ms. Magle in it also; did
20 it not?

21 A Yes.

22 Q They asked that they be inserted with the
23 flyers?

24 A Yes.

25 Q So Mrs. Magle did have knowledge of --

1 A Oh, Mrs. Magle called me all the time to do
2 stuff.

3 Q Mrs. Magle's intent was to unseat myself and
4 Mr. Sarbach from the council, did she tell you that? It
5 was her direct intent to remove me from leadership of the
6 council and --

7 A It's my assumption. I don't know that she
8 verbally said it.

9 MR. SNYDER: All right, thank you.

10 CHAIRMAN CINCIONE: Any questions of any
11 member of the Commission? Thanks. Anyone else that wants
12 to testify?

13 Okay. I'll admit the record that you gave us.
14 I admit Defendant's Exhibit 1 and 2. That's the invoice
15 which perpetrated this entire thing.

16 Now is our chance for closing argument.
17 That's when you can go up and give your speech. You're
18 first, Mr. Snyder.

19 MR. SNYDER: Mr. Chairman, members of the
20 Commission, first of all, thank you for hearing my case.
21 It's very important to me. I am a believer and not a
22 pillar in the community. I trust that my own word is
23 good.

24 I've had a business in that city for many
25 years. People know me. This does actually reflect on my

1 integrity as it's so alluded to in the flyer. For people
2 to seek public office, I mean, the candidate should rise
3 to a little higher level than name calling and so forth.
4 Fortunately there's a body such as yours that can hear a
5 complaint from people such as myself.

6 I have no particular axe to grind with
7 Mrs. Kavanaugh or her sister, Mrs. Farnsworth. They serve
8 a very valuable purpose in the makeup and the protection
9 of wild animals that do not have homes. However, they
10 were duped, but unfortunately, I'll be 56 years old in a
11 couple weeks, so I do check before I do things.

12 Sir, you're a lawyer. You know that you don't
13 ever sign or associate with anything without talking to
14 your counsel or somebody that knows.

15 Mr. Smith's intention, Mrs. Magle's intention
16 was to willfully unseat me. The law is very clear. It
17 states that anyone, and I can't quote verbatim, but
18 anybody who willfully disseminates, passes or circulates
19 information to be a falsehood should be fined and punished
20 or imprisoned or both or some type of sanction greater
21 than a slap on the arm.

22 If people are to continue to run for office
23 and public office, they should not have a fear of being
24 maligned or talked about when it's a flagrant lie.
25 Mr. Sarbach feels he lost the election predicated on that.

1 I don't know, maybe, maybe not. However, I want my name
2 redeemed.

3 I want some type of satisfaction. It should
4 be a public apology or something. It should be something
5 that the people of North Canton understand, that the
6 council operates in a fashion and governed in a fashion
7 directed by the charter.

8 Ms. Magle was a member of that Review
9 Commission. She full well knows it. Mr. Smith should not
10 be able to seek re-election. He's tried twice and used
11 deceitful and deceptive devices. It is my intention when
12 I leave here to file complaints against Mr. Smith and
13 Ms. Magle, because after this, I will use the testimony
14 that they proffered to you today, because it does prove my
15 point.

16 I do again thank you. At this particular
17 point I'm getting a little angry about it, so I'll stop.
18 Thank you for hearing me. Mr. Chairman, thank you for
19 your indulgence.

20 I know to some people this might seem funny,
21 but it is my name, something that I guard and protect. I
22 thank you very much for your kindness that you expressed
23 to me today. Thank you.

24 CHAIRMAN CINCIONE: Ms. Kavanaugh.

25 MS. KAVANAUGH: Well, like I was going to

1 say, we were duped. Our only concern was that there was a
2 possibility that there would be a program implemented in
3 the city of North Canton that would stop euthanasia as a
4 form of animal control. That's what we were looking at,
5 and looking at only.

6 Unfortunately the council that we got and the
7 people that were whispering in our ears to do this and do
8 this were of the wrong type. And to this I apologize to
9 Mr. Snyder and Mr. Sarbach. Like I said, we did this with
10 pure hearts, but the intention just turned up nasty.

11 CHAIRMAN CINCIONE: Okay. What's the
12 pleasure of the Commission? I think, you know, the
13 Executive Director has given you the three choices.

14 COMMISSIONER WEST: Mr. Chairman, I'll
15 move that we find a violation by clear and convincing
16 evidence based upon the testimony we heard today.

17 COMMISSIONER SULLIVAN: Second.

18 CHAIRMAN CINCIONE: Moved and seconded we
19 find a violation by clear and convincing evidence. Any
20 discussion? Hearing none, all in favor, signify my saying
21 aye. Opposed, like sign. It passes unanimously.

22 (Thereupon all members voted
23 affirmatively.)

24 CHAIRMAN CINCIONE: Now comes the penalty
25 phase.

1 COMMISSIONER SULLIVAN: To get something
2 on the table, Mr. Chairman, I move that we issue a public
3 reprimand against this group. If I could just make a
4 statement as to why.

5 I understand that these people say they have
6 been duped, but people have to understand when they're in
7 the political arena that it's important to do your due
8 diligence and look carefully at the statements that are
9 being used to support your issue.

10 And many times we found here that ignorance is
11 not a defense, particularly when the outcome of an
12 election is at stake. And I'm afraid that too many
13 groups, like animal activists and animal rights groups,
14 get very bad names because of situations like that.

15 They don't operate on fact. They operate on
16 rumors and wild statements without doing any research.
17 And I don't think that's fair to the voters. And at the
18 same time I don't think it's fair to the candidates, and
19 they're not doing them any service by not doing their
20 homework.

21 Just because they were animal people doesn't
22 mean their standard is any less in doing their homework
23 and doing their due diligence. I do feel very badly for
24 them. They're not politicians, but they entered the
25 political arena. And once you enter the political arena

1 you have to operate by the rules of the system.

2 And I think this is an important case where we
3 tell people that if you enter the political arena and you
4 don't do your homework and you don't operate under the
5 rules of due diligence, you are subject to a public
6 reprimand at the least for making false statements in a
7 situation like this.

8 And that's the reason that I'm making the
9 motion that I am.

10 CHAIRMAN CINCIONE: We shouldn't have
11 discussion until we have a second.

12 COMMISSIONER SULLIVAN: Sorry.

13 CHAIRMAN CINCIONE: Do we have a second?

14 COMMISSIONER TYLER: Second.

15 CHAIRMAN CINCIONE: Any discussion? I do
16 have a question. Take a look at the respondent, it says:
17 "Response of Concerned Citizens for Fair Treatment of
18 Stray Animals, Barbara Walter, Treasurer." If this
19 passes, who do you want the public reprimand issued to?

20 COMMISSIONER SULLIVAN: Well, the
21 committee. I don't think that we're making a
22 determination against Barbara Walter, Treasurer,
23 personally. And maybe Mr. Richter needs to help us on
24 this issue, but I think it goes to the committee. We have
25 not found a determination against Ms. Walter personally

1 here.

2 CHAIRMAN CINCIONE: I just wanted to clear
3 that up.

4 COMMISSIONER SULLIVAN: Actually I guess
5 we need a clarification on this because she's really not
6 the treasurer. The treasurer is Kavanaugh. So we need to
7 make sure that the public reprimand is going to the proper
8 treasurer on behalf of that group, which would be
9 Kavanaugh. Is that right?

10 EXECUTIVE DIRECTOR RICHTER: Yeah. I
11 think, I would assume that the -- obviously the reason why
12 Barbara Walter was listed as the treasurer for the
13 committee is that that was what was on the literature.

14 If that person is not acting as the treasurer,
15 I think it would be appropriate for this Commission to
16 disseminate whatever materials it has to the proper
17 treasurer for the committee.

18 That being the case as established here by the
19 evidence, that is who it would be sent to.

20 CHAIRMAN CINCIONE: Mr. West.

21 COMMISSIONER WEST: The reason I would
22 refer it to the prosecutor is that he can sort some of
23 these issues out as well as conduct an investigation of
24 Magle and Smith, who seem to be the real culprits here,
25 and let the prosecutor do that.

1 COMMISSIONER SHEERER: Mr. Chairman, I
2 certainly would not support any effort to send this to a
3 prosecutor. And I'm having some trouble with the idea of
4 even offering a public reprimand, but I don't disagree
5 one iota about a group that participates in an effort that
6 will affect the outcome of an election has a stronger duty
7 than what we saw evidenced today.

8 But I think the outcome of that won't be
9 enhanced by a public reprimand back in the community, but
10 will be enhanced by these people going back to their
11 community and talking about the fact that: Hey, next time
12 we get involved in anything like this, and it is very
13 legitimate to want to be involved in political activity,
14 and I encourage involvement in political activity, but
15 when you do it, because what you do is being represented
16 to the public as a piece of information about the
17 election, you got to be darn sure of what it is you're
18 turning out or handing out or lending your name to.

19 That's a tough lesson, but I think the lesson
20 has been learned, and I would believe that amongst your
21 community members, your group members, that the word will
22 be passed around, what is the appropriate way for us to be
23 involved?

24 I have a little trouble with a public
25 reprimand. I'd be interested in having good cause, for

1 good cause, and not go any further with it.

2 CHAIRMAN CINCIONE: Any other comments?

3 COMMISSIONER TYLER: Yes, Mr. Chairman.

4 CHAIRMAN CINCIONE: Mr. Tyler.

5 COMMISSIONER TYLER: I think Ms. Kavanaugh
6 and her group supported an activity based upon their
7 expectation that their cause would receive public support.
8 And that was the motivation in addition to perhaps some
9 other good works, but nonetheless, they were manipulating
10 the election process as others do for vested interest,
11 which is the reason I seconded the motion.

12 CHAIRMAN CINCIONE: Any other comments by
13 any members of the Commission?

14 COMMISSIONER MARSH: Mr. Chairman, I was
15 almost persuaded to agree with Mr. West's position of
16 referring to the prosecutor. I'm certainly not of the
17 opinion that this should be dismissed for any reason.
18 This is a serious matter for everybody concerned, so I
19 will support Ms. Sullivan's motion.

20 CHAIRMAN CINCIONE: Any other comments by
21 any other members?

22 COMMISSIONER WEST: Yes, Mr. Chairman. I
23 would be opposed to good cause only because now days,
24 particularly in criminal law, we have to think about
25 victims' rights. And I think that the complainant here

1 has some rights, and his word does need to be vindicated
2 and probably the best way to do that if we're not going to
3 refer for prosecution, would be a public reprimand so it
4 would be sent to the newspapers in his county to show that
5 he has done the correct thing and not be attributed to
6 false statements.

7 CHAIRMAN CINCIONE: Any other comments by
8 any members of the Commission?

9 COMMISSIONER SULLIVAN: Mr. Chairman, I
10 just always remember what one of our former members of the
11 Commission said when somebody wanted to refer a matter for
12 prosecution. And that was: Please remember the standard
13 that the prosecutor will take upon prosecuting a case, and
14 that's a standard of proof requiring no reasonable
15 doubt -- proof beyond a reasonable doubt.

16 And I don't think this case is going to have
17 proof beyond a reasonable doubt, and that's why I don't
18 think if we refer it to the prosecutor it's going to go
19 anywhere. I would rather us issue a public reprimand and
20 then deal with the other parties later if we do see
21 complaints filed before us.

22 CHAIRMAN CINCIONE: Any other comments by
23 any other members? Commissioner Sheerer.

24 COMMISSIONER SHEERER: Mr. Chairman, I,
25 upon reflection, I'm persuaded by the argument Mr. West

1 said that Mr. Snyder, in fact, is entitled to have the
2 community know that he was violated. So I'll change my
3 opinion about that.

4 I'm very sorry about the group having been
5 involved, but they should have known better. And I think
6 he is entitled.

7 COMMISSIONER TYLER: One last comment,
8 Mr. Chairman.

9 CHAIRMAN CINCIONE: Yes, sir.

10 COMMISSIONER TYLER: I would look forward
11 to seeing a complaint filed regarding the other
12 candidates.

13 CHAIRMAN CINCIONE: I have a feeling that
14 that's going to happen.

15 COMMISSIONER TYLER: Call for the
16 question.

17 CHAIRMAN CINCIONE: It's been moved and
18 seconded that we issue a public reprimand as the penalty
19 phase. Will the clerk call the roll, please.

20 SECRETARY SPRINGER: Mr. West.

21 COMMISSIONER WEST: Yes.

22 SECRETARY SPRINGER: Mr. Tyler.

23 COMMISSIONER TYLER: Yes.

24 SECRETARY SPRINGER: Mr. Booth.

25 COMMISSIONER BOOTH: Yes.

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SECRETARY SPRINGER: Ms. Sheerer.

COMMISSIONER SHEERER: Yes.

SECRETARY SPRINGER: Mr. Cincione.

CHAIRMAN CINCIONE: Yes.

SECRETARY SPRINGER: Ms. Sullivan.

COMMISSIONER SULLIVAN: Yes.

SECRETARY SPRINGER: Motion carries.

CHAIRMAN CINCIONE: How about Mr. Marsh?

COMMISSIONER MARSH: May I vote?

SECRETARY SPRINGER: Mr. Marsh, I'm so

sorry.

COMMISSIONER MARSH: Yes.

CHAIRMAN CINCIONE: Passes unanimously.

Thank you all for your attendance, thank you for coming down here. And I want to applaud each of you, even though you're not attorneys, that you did a great job. Thank you.

(Thereupon the hearing was adjourned).

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CERTIFICATE

I, Sally M. Schmidt, Notary Public in and for the State of Ohio, do certify that the foregoing is a true and correct transcript of the deliberations taken by me in this matter before the Ohio Elections Commission on May 30, 2002, and carefully compared with my original stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio this 15th day of July, 2002.

Sally M. Schmidt
Sally M. Schmidt
Notary Public in and for
the State of Ohio
My commission expires 1/10/06