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BEFORE THE OHIO ELECTIONS COMMISSION

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GREGORY SARBACH, :

Complainant, :

vs. : Case No. 2002E-027

KATHY MAGEL, et al., :

Respondents. :

- - -

HEARING

- - -

Ohio Elections Commission
21 West Broad Street, Suite 600
Columbus, Ohio 43215
October 10, 2002

- - -

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- - -

1 Thursday Afternoon Session,
2 October 10, 2002.

3 - - -

4 P R O C E E D I N G S

5 - - -

6 CHAIRMAN WEST: Now, then, is Mrs. Magel
7 here.

8 MS. MAGEL: (Raises hand.)

9 CHAIRMAN WEST: Mr. Sarbach, you may proceed.
10 Step up here, give us your name and you can make an opening
11 statement.

12 MR. SARBACH: Good afternoon. My first remark
13 will be I'm not an attorney, I'm a technician by trade, and my
14 remarks will be as precise as I can make them.

15 If you read my complaint, it's regarding a companion
16 complaint to Snyder versus Concerned Citizens for the Fair
17 Treatment of Stray Animals Committee. This commission heard
18 that complaint on 30 May of this year. And I believe your
19 records will show that you found that the flier in question was
20 incorrect, and in error with your -- was not in compliance with
21 the Ohio Elections Commission.

22 And there were some questions on the PAC secretary,
23 and people who were responsible for getting that mix up and not
24 fixing the mix up when they knew about it.

25 I don't know if you're all familiar with that, it's

1 my understanding from Mrs. Sheerer's comments, that I can
2 proceed with this complaint as with the same fact pattern that
3 was in the other complaint.

4 Basically my complaint is based on the testimony
5 from that hearing. And that sworn testimony implicated the
6 people named in my complaint. Up until that point it was an
7 animal rights or animal activist group that did a slanderish
8 flier.

9 In bringing that to light in front of you, it was --
10 it was revealed that the four people named in my complaint were
11 involved with this. My complaint merely brings them in on the
12 other complaint, which you found already.

13 CHAIRMAN WEST: Mr. Sarbach, refresh my
14 memory, was this with respect to two ladies who said they were
15 duped and went out and solicited funds and they named the four
16 respondents?

17 MR. SARBACH: That's correct. Mrs.
18 Cavanaugh's who's head of the animal rights group, they came up
19 with a similar name on my complaint.

20 CHAIRMAN WEST: I remember that case.

21 MR. SARBACH: And Mrs. Cavanaugh testified
22 under oath, Mrs. Farnsworth testified under oath, I testified to
23 reinforce what Mr. Snyder had said under oath, and Mr. Smith had
24 testified at that hearing under oath.

25 And Mr. Smith's testimony implicated the people

1 named here himself, plus the other people named here. So
2 basically my complaint is to bring these people in and make them
3 accountable.

4 CHAIRMAN WEST: Tell us exactly the false
5 statements or statement you're complaining of.

6 MR. SARBACH: That was attached to my
7 complaint. That was a flier that said, "Did you know that your
8 current ward councilman, Greg Sarbach -- and there were several
9 fliers and they had other names on it, in general it was the
10 same, actually authorized the spending of your tax dollars to
11 trap 13 cats. We endorse my opponent, a man of integrity and so
12 on and so forth. You have that attached to my complaint.

13 The commission ruled, though, in fact we voted --
14 two of us voted positive on a moral claim to reimburse a
15 constituent for her payment to a licensed trapper to remove the
16 nuisance animals that you might have contained cats, and
17 probably it did contain a fair number of cats.

18 It was not our intent, nor was it the City's policy
19 when I was a councilman to trap cats. If cats were
20 inadvertently trapped by a licensed authorized trapper they were
21 to release them immediately.

22 If you recall this was stated at several council
23 meetings and at several hearings, when these people were all
24 upset about this.

25 It's my contention that the four people in my

1 complaint orchestrated this, and duped the cat people into
2 believing that we were animal eaters, and that we did all of
3 this stuff.

4 And the irony of it is that my vet bill probably
5 doubles all four of the people involved here, but that's not an
6 issue in this case.

7 The issue was that we were falsely claimed. I lost
8 the election by 27 votes, and there were some 2000 to 5000, I
9 don't remember how many fliers were actually put out that was
10 contradicted by a couple of people under oath, and what they said
11 and what the records shows, is it's some very shaky thing going on
12 there.

13 CHAIRMAN WEST: All right, I recall. Any
14 questions or comments for Mr. Sarbach?

15 Thank you, sir.

16 MR. SARBACH: I just want to reiterate along
17 with that, I don't know if you resolved this or not, the flier
18 they were -- that they put out had Barbara Walters as treasurer.
19 And I don't know if you resolved that at that time, or if that
20 is still to be resolved, I don't have a complaint for that
21 particular issue.

22 But I don't know if that had been resolved yet.
23 That Barbara Walters was not treasurer, was not even informed
24 that her name was on that particular flier. It was part of this
25 orchestration that went on before.

1 CHAIRMAN WEST: Okay. We'll take care of
2 that.

3 MR. SARBACH: Thank you, sir.

4 CHAIRMAN WEST: Who wants to go first?
5 Would you step up here to the microphone, tell us your name,
6 please.

7 MR. WARNET: Mr. Chairman, members of the
8 committee, my name is Greg Warnet, and I just want to make --
9 make a short statement here.

10 I want to commend all of the animal protection
11 people for their fine job of trying to help and protect the
12 animals, and I support the efforts to inform the residents of
13 North Canton. This is democracy in action.

14 I also want to thank the five members of North
15 Canton Council who supported the Ohio Revised Code that makes it
16 unlawful to trap and destroy cats.

17 The five to two vote of Council made it clear that
18 the members did not condone that action. That the five members
19 did not condone that action. Thank you, very much.

20 CHAIRMAN WEST: Wait a minute, Mr.
21 Warnet.

22 Are there questions of Mr. Warnet? I'll ask you a
23 question. We are concerned about this flier --

24 MR. WARNET: Yes, sir.

25 CHAIRMAN WEST: -- were you responsible

1 for putting that flier out?

2 MR. WARNET: No, I was not.

3 CHAIRMAN WEST: Who was?

4 MR. WARNET: I sent a letter to the
5 committee on the last -- before the last hearing, to reiterate I
6 said I had nothing to do with it, I knew nothing about it. And
7 I don't know who was responsible, except that the animals
8 protection group people distributed it --

9 CHAIRMAN WEST: What did Barbara
10 Walters --

11 MR. WARNET: -- some of it. I don't know,
12 Barbara Walters, I don't know any of the people.

13 CHAIRMAN WEST: And do you know Mr. Sarbach
14 actually voted to spend tax dollars?

15 MR. WARNET: Yes, I was at that meeting.

16 CHAIRMAN WEST: That was his vote?

17 MR. WARNET: His vote -- he was one of two
18 that voted to pay for that.

19 CHAIRMAN WEST: A professional trapper?

20 MR. WARNET: Yes, to reimburse, yes.

21 After they knew that it was illegal to do that, that was -- the
22 first vote went the other way, it was in favor to pay. But when
23 it was brought out that it was illegal according to the Ohio
24 Revised Code, at that point they reversed that vote, except for
25 those two votes against it.

1 CHAIRMAN WEST: All right. Anybody have any
2 questions for Mr. Warnet?

3 Thank you, that's all I have. Who's going to go
4 next?

5 MR. SMITH: Ladies and gentlemen, my name is
6 William Smith. In reference to this charge by Greg Sarbach that
7 I made false statements is total nonsense. Mr. Sarbach is using
8 semantics to claim these statements in the fliers are false.

9 The reason real reason he filed these charges, he's
10 esteemed by himself and councilman at large, Chuck Osborne, to
11 discredit the four of us to enhance their chances in next
12 November's election.

13 Mr. Sarbach did in fact authorize a moral claim,
14 whether it was a direct or indirect payment for an act by this
15 trapper that was illegal.

16 Mr. Osborne assisted him by coming to my home to
17 question me about who wrote this flier. Seems they have a
18 problem with who wrote this flier. I don't know who wrote this
19 flier, I told Mr. Osborne that.

20 He then told me that meeting took place the day
21 before in which Mrs. Magel, Mr. Warnet, and Mr. Lindauer all
22 met, decided to blame this cat flier on me.

23 I made phone calls immediately after he left and
24 found out this was false. He then offered me a deal in which I
25 quote, if I would come clean we would drop the election charges

1 against me.

2 Mr. Osborne has no involvement in this case
3 whatsoever, and one has to question what his motivation is.
4 There was no intent to knowingly and willingly to effect the
5 outcome of Mr. Sarbach's election.

6 I didn't run against Mr. Sarbach. In fact my
7 opponent was Mrs. Magel over here, who's been accused of the
8 same thing I have. I also ran against Mr. Osborne sitting back
9 here, mr. Wiley and Mrs. Casey.

10 I did not campaign against Mr. Sarbach, I had
11 nothing to do with his campaign. I simply photocopied fliers
12 that I deemed to be completely truthful in content, and donated
13 them to a group that I supported their cause. Thank you.

14 CHAIRMAN WEST: Is that this flier?

15 MR. SMITH: Yes.

16 CHAIRMAN WEST: Okay.

17 MS. MAGEL: No, no.

18 MR. SMITH: Which flier?

19 CHAIRMAN WEST: This one.

20 MR. SMITH: No. My flier has my name on it.

21 CHAIRMAN WEST: Do you know Mrs. Cavanaugh?

22 MR. SMITH: I met her at this trial, this
23 hearing.

24 CHAIRMAN WEST: Do you recall her testimony?

25 MR. SMITH: Yes.

1 CHAIRMAN WEST: You were one of the ones that
2 told Kathy Magel, and you were the ones that sought them out to
3 pass them around?

4 MR. SMITH: Pardon?

5 CHAIRMAN WEST: That you asked them to
6 distribute the fliers?

7 MR. SMITH: I met them outside of a council
8 meeting, after a meeting. And no one sought -- actually sought
9 anybody out. They were out there together, there was a group of
10 them out there with the fliers.

11 CHAIRMAN WEST: All right. Any questions for
12 Mr. Smith?

13 COMMISSIONER TYLER: Mr. Smith, Mr. Chairman.

14 CHAIRMAN WEST: Yes.

15 COMMISSIONER TYLER: Mr. Smith, I'm a little
16 confused here, is it your testimony that you had nothing to do
17 with this flier?

18 MR. SMITH: I did not produce this flier. I
19 didn't create this flier. I didn't write the flier. I didn't
20 distribute this flier.

21 I did photocopy the flier, my flier that had my name
22 on it and donated it to this group, who then distributed them.

23 COMMISSIONER TYLER: I'm talking about this
24 flier that's been distributed in the complaint.

25 MR. SMITH: There was a number of fliers, one

1 had my name on it, one had Mr. Lindauer's name on it, one had
2 Mr. Warnet's name on it.

3 I photocopied the one with my name on it, because I
4 believe that the content was actually truthful. And then
5 donated my fliers with my name on it to this group.

6 COMMISSIONER TYLER: So the fliers are
7 identical with the exception of the name?

8 MR. SMITH: There are just different names on
9 them.

10 COMMISSIONER TYLER: And is it -- are you
11 saying that the first paragraph on the flier is accurate?

12 MR. SMITH: Yes, absolutely. Let me quote
13 Black's Law Dictionary under "authorize:" To empower, to give a
14 right or authority to act, to endow with authority or effective
15 legal power or right, to permit a thing to be done in the
16 future. It has mandatory effect or meaning to apply a direction
17 to act.

18 I believe that to be perfectly true. We actually
19 looked this up before we would do anything with those fliers, we
20 wanted to make sure it was accurate.

21 COMMISSIONER TYLER: Are you suggesting that
22 the council, when authorizing this payment, the payment was in
23 fact for the trapping of cats?

24 MR. SMITH: Yes.

25 COMMISSIONER TYLER: Is that your belief?

1 MR. SMITH: Yes.

2 COMMISSIONER TYLER: Thank you.

3 CHAIRMAN WEST: Who's next? Tell us your
4 name, please.

5 MS. MAGEL: My name is Kathy Magel. And I'd
6 like to address this panel of Case No. 2002E-07, accusing me of
7 violating 3517.21 (B)(10). Before the rest of my statement I'd
8 like to make something perfectly clear.

9 You're discussing different fliers with different
10 names. There is no flier that exists with the name Kathy Magel
11 on it, nothing.

12 CHAIRMAN WEST: Anything else to say, Mrs.
13 Magel?

14 MS. MAGEL: Oh, yes, yes, I do. Before I
15 start I just wanted to let you know there is no Kathy Magel cat
16 fliers.

17 On the complaint that Mr. Sarbach has, which he
18 calls Exhibit A, I was not quite sure exactly what I'm being
19 accused of, seems like we are all being accused of doing
20 everything, when actually none of us did anything.

21 There is a -- this letter suggests that there was a
22 sworn testimony in the former case that was Snyder versus the
23 animal rights group, implicating me as knowing and with intent
24 to affect the outcome of an election, to cause a flier to be
25 produced.

1 After reviewing the tape of the meeting, in fact it
2 was asked and answered negatively by both Ms. Cavanaugh and Mrs.
3 Farnsworth. I may be paraphrasing here, but John Snyder's
4 question is something like this: Did Kathy Magel ever mention
5 she wanted me voted out of office? Both answered no.

6 I wasn't part of any negative campaigning.

7 This charge further states the flier contained a
8 false statement. I do not believe this statement is false, and
9 I will produce the documents to show. It's odd, you struck me,
10 Mr. West, whenever you used the word "duped," because that seems
11 to be the word de'jour in North Canton.

12 Mr. Sarbach's thirdly states it is his understanding
13 that the PAC was duped. Now, that word showing up in the
14 newspaper that word's showing up on his complaint, that word is
15 showing up here.

16 But after you read your minutes to the meeting, it
17 is Mr. Sarbach's understanding that the PAC was duped by me into
18 believing that the statement is factual.

19 Most unfortunately if you recall -- if you read the
20 minutes of the last meeting Mr. Sarbach attested that his belief
21 that it was duped, he said it before she did. I wonder how he
22 knew she was going to say that.

23 He actually said, and it's in the paper and it's
24 everywhere else, I believe it was duped. He believed it was
25 duped before she even suggested that it was duped.

1 Now, you heard Mr. Smith's testimony, there is a
2 possible tampering of a witness here where somebody, Mr. Osborne
3 approached him and asked him if he would make certain statements
4 we would drop his name off the case. And so if he would say,
5 well, you know, I wrote this, then he gets off the case.

6 Finally Mr. Sarbach suspects I produced said
7 document. I will supply today a signed notarized statement from
8 John Snyder.

9 Now, that's the man who brought to you the original
10 case, John Snyder versus the animal rights group. And I will
11 supply a letter to you where he will state in writing notarized,
12 after his intense searching, and I believe he called it
13 investigating, and I welcomed that investigation.

14 He found no evidence that I had anything to do with
15 producing this flier. This is sheer harassment from Greg
16 Sarbach, working in conjunction with Chuck Osborne for political
17 gain for the next election.

18 I stand firmly by my notarized statement of June
19 24th, where I state to this panel, I wrote to you: I did not
20 post, publish, circulate, distribute, or otherwise disseminate
21 any flier, other than my own my personal council at large flier.

22 If anyone here claims that they have personal
23 knowledge of my producing a cat flier they are not telling you
24 the truth.

25 Remember there is no Kathy Magel cat flier. That's

1 all.

2 CHAIRMAN WEST: Thank you. Any questions for
3 Mrs. Magel? All right. Who's next?

4 MR. LINDAUER: Good afternoon, my name is
5 David Lindauer. I'm going to ask your indulgence for me if you
6 would, I have a daughter in labor that's due today, due to
7 deliver a baby any minute, so if my mind wanders that's why.

8 I'm here today because Mr. Sarbach has accused me of
9 knowingly with the intent to affect the outcome of an election,
10 by causing a flier with a false statement to be produced and/or
11 duplicated for distribution to the electorate prior to the
12 November 2001 election. That's taken from the complaint.

13 Mr. Sarbach further stated in his complaint that
14 this flier caused his defeat in the said election as a Ward 2
15 councilman, which is the position I was running for.

16 To clarify things a little better for you since we
17 have so many conversations about fliers and so forth, I have not
18 been involved with City Council until this year. I ran against
19 Mr. Sarbach, and this is the first term that I've been elected
20 in.

21 I won that election by 27 votes, and that was a
22 close election. Mr. Sarbach feels that this flier is what
23 contributed to that.

24 I will show that the mentioned flier, although it's
25 subject to interpretation, and we are talking again about the

1 word "authorize," I assume; contained no false information and
2 at no time did I intend to or knowingly make any false
3 statements, nor did I have any malice or intent against Mr.
4 Sarbach. I've known Mr. Sarbach for many years.

5 On September 4th, of 2001 the city council, the
6 whole, held a discussion in the matter of settling a moral claim
7 to a Mrs. Linda Moore, who apparently had hired a private animal
8 trapping organization or collection organization, whatever you
9 want to call it, and it had cost her the amount of \$450 to take
10 care of trapping animals.

11 In the trapping of those animals was also included
12 the 13 cats, as well as various other types of animals, I
13 assume. I have copies of the invoices to Mrs. Moore from the
14 trapping company.

15 And the name of the trapping company was, All
16 Creatures Big and Small, if that's of any significance.
17 The animals were trapped and disposed of by that business.

18 After the discussion of Council, the whole, on
19 September 10th, 2001 the City Council met and voted on the
20 matter of the mentioned moral claim.

21 The result of their vote was five votes against
22 paying the moral claim to Mrs. Moore, and two votes in favor of
23 paying the moral claim to Mrs. Moore.

24 The two votes in favor came from Mr. Gregory Sarbach
25 and Mr. John Snyder. I also have copies of those minutes of

1 that particular council meeting.

2 I also have a copy of Ordinance No. 11-01, which is
3 the ordinance that was drawn up and being voted on at that
4 particular time. And it clearly states that passage of the said
5 ordinance would authorize the director of finance of the city of
6 North Canton to make payment.

7 I'm certain all of the members here of the
8 Commission are aware of the fact that the City must grant the
9 authorization by a majority vote of guests from the council
10 members in order to do so. By voting no, obviously the
11 individuals voting no are not in favor.

12 It appears to me as though Mr. Sarbach is
13 exaggerating that term "authorize." I think that's probably the
14 stumbling block we are running into here.

15 Shortly after the election Mr. Sarbach stopped at my
16 residence, I can't recall the date that he stopped there. I do
17 know it was raining, because he and I stood under the roof of my
18 home and had a conversation.

19 I explained to him that there was no malice, intent,
20 I had no intentions of using this flier for the purpose of
21 defeating him in the election.

22 Now, why was my name on the flier? I'll also
23 clarify that for you again. I have that flier with me that has
24 my name on it, it's -- it's identical to the other fliers,
25 except the name is changed, I think you have heard that

1 already.

2 In a conversation with Mr. Sarbach I also indicated
3 that a flier -- this flier had been brought to me by Mr. Smith,
4 from this animal groups organization. Apparently he obtained
5 that flier after a council meeting as he stated, and of course
6 he distributed this back to me and said these folks are really
7 concerned about the trapping of the animals, including the cats,
8 they are looking for contributions to be able to distribute this
9 flier.

10 And obviously I looked at this, I couldn't see
11 anything wrong with it at the particular time. I looked at it
12 and it stated as Mr. Sarbach stated, and you folks have it in
13 front you that he actually authorized spending.

14 I looked at that and thought he authorized the
15 spending in view of the fact he voted yes to pay back the moral
16 lady. So I can't figure out what the false statement is that
17 I'm accused of making at that point.

18 After I gave -- or Mr. Smith gave me this copy and I
19 discussed it with him, we decided, yes, we would try to help
20 these folks out, wouldn't do any harm. I didn't know where the
21 people lived, what ward they were in, whether they were even
22 city residents.

23 And I took that particular flier and took it to
24 Kinkos and had copies made of it. Brought the copies back home,
25 returned them back to Mr. Smith, it's the last I've seen of

1 them.

2 Mr. Smith says that he also gave those copies that I
3 returned to him back to this animal group organization. Up until
4 this exact minute, from the day that I gave those fliers back to
5 Mr. Smith, I haven't had one comment from one citizen of North
6 Canton, not only of my ward, but anywhere in the city in regard
7 to that flier. Nobody has even questioned me about what it's
8 all about, or that sort of thing.

9 So we seriously doubt that that flier had anything
10 to do at all with the way people voted. As a matter of fact,
11 thinking this thing over, I'm wondering if that flier was even
12 distributed -- I know I have my copy, because I kept a copy out
13 of the ones I returned to Mr. Smith.

14 So I have a little bit of a problem with the
15 seriousness of that event. In other words, did that really have
16 any influence on the election, I seriously doubt that.

17 When I received this subpoena to come down here
18 today and testify I felt like I was a little bit on the outside
19 of what's going on. In view of the fact this is the first time
20 I've appeared, and apparently there have been other commission
21 hearings in regard to this flier.

22 So with that I'm just going to leave that for you
23 folks to make the decision. If I can answer any further
24 questions I'd be happy to do so, and I'm sure that the
25 Commission will consider all of the facts on the issue and make

1 a fair and just decision.

2 CHAIRMAN WEST: Well, let me tell you how I
3 view it when I read it. When I read it it appears that Mr.
4 Sarbach was out to trap cats, not wild animals. And that
5 indicates to me it's going to make a lot of people unhappy,
6 because most of their cats are pets. Do you read it that way at
7 all?

8 MR. LINDAUER: I -- I -- that's what I meant
9 when I stated to you --

10 CHAIRMAN WEST: Does not say wild animals or
11 already happened, leaves an implication that he was paying money
12 for people to go out and trap cats.

13 MR. LINDAUER: That's why I indicated,
14 although it's subject to interpretation. Now, I had nothing to
15 do with the wording or printing this thing, obviously it was
16 handed to me. I looked at it, it looked okay to me.

17 CHAIRMAN WEST: So you're going to disavow the
18 language?

19 MR. LINDAUER: If you get real technical with
20 it it would probably have been better if it said actually "voted
21 to authorize."

22 CHAIRMAN WEST: What did the ordinance say?

23 MR. LINDAUER: I've got a copy of the
24 ordinance.

25 CHAIRMAN WEST: Does it say "cats" in the

1 ordinance?

2 MR. LINDAUER: No, sir, it does not.

3 CHAIRMAN WEST: Does not say "cats?"

4 MR. LINDAUER: Not specifically.

5 CHAIRMAN WEST: Why does this say "cats?"

6 MR. LINDAUER: I don't know. I don't know
7 what was in these people's minds that made the flier.

8 CHAIRMAN WEST: Well, it leaves the
9 implication he's trapping people's pets.

10 MR. LINDAUER: Sounds like maybe only cats.

11 CHAIRMAN WEST: Yes.

12 MR. LINDAUER: I obviously knew that wasn't
13 true, I attended that meeting when Mr. Sarbach did vote, it was
14 to trap animals. These people came back later on and said did
15 you know they actually killed 13 cats? No, I didn't know that.

16 CHAIRMAN WEST: People get upset about their
17 cats, don't they?

18 MR. LINDAUER: Yes, I'm an animal lover
19 myself, I don't even hunt.

20 CHAIRMAN WEST: This is not exactly true, is
21 it?

22 MR. LINDAUER: I think it's true, cats were
23 included, it's ambiguous. It should also include other animals
24 I think. If you look on that invoice there it shows it itemizes
25 the type of animals that were destroyed, raccoons and so forth.

1 CHAIRMAN WEST: Mr. Booth, I interrupted you
2 and I apologize.

3 COMMISSIONER BOOTH: No, I was just waiting my
4 turn. Mr. Lindauer, you say you did not produce this flier?

5 MR. LINDAUER: I did not have anything to do
6 with the wording of it, making it or anything else. I took the
7 flier that Mr. Smith gave me and had copied and returned the
8 copy to him.

9 COMMISSIONER BOOTH: With your name on it?

10 MR. LINDAUER: Yes.

11 COMMISSIONER BOOTH: So you did have some
12 involvement in at least the mass production of this flier?

13 MR. LINDAUER: The production of the one with
14 my name on it, yes, sir.

15 COMMISSIONER BOOTH: Okay. And you're saying
16 that you don't think that that would have had any affect on the
17 election in any way?

18 MR. LINDAUER: No, sir, I don't think so. I
19 haven't had one comment from anyone in the entire city in regard
20 to this particular statement that's made about Mr. Sarbach.

21 COMMISSIONER BOOTH: Thank you. Then that
22 leads to my point, I guess, is then what was your purpose in
23 recreating this or mass producing this for distribution if it
24 was not to influence the election?

25 MR. LINDAUER: Well, actually, I looked at the

1 thing and figured can't hurt anything, if it gets me another
2 vote or two, great. At the same time I thought to myself this
3 is a silly looking flier as far as I was concerned.

4 I was busy like Mrs. Magel said, passing out my own
5 fliers. And I'm the only one who distributed these. So there
6 was no way I was involved with this.

7 My statement would be to Mr. Sarbach, since he made
8 a statement in the complaint that this caused him the election,
9 I want to see that proof. I understand psychologically what
10 you're saying to me Mr. Booth, I understand that possibly it
11 could have influenced somebody, and there is a possibility that
12 maybe I thought I could get extra votes out of this.

13 COMMISSIONER BOOTH: That's what you were
14 hoping it would do, right?

15 MR. LINDAUER: Obviously. I have no idea how
16 many fliers were even distributed in my ward, if any were
17 distributed anywhere.

18 COMMISSIONER BOOTH: Thank you.

19 MR. LINDAUER: I hate to claim ignorance on
20 that, but I am.

21 CHAIRMAN WEST: Let me tell you about cats, we
22 had a city commissioner once who presented an ordinance to put
23 cats on leashes, she lost the next election.

24 MR. LINDAUER: I can understand that.

25 CHAIRMAN WEST: Okay. Now, you have a picture

1 of a cat on here, and you didn't put the actual language of the
2 ordinance in here that Sarbach went out and spent tax dollars to
3 trap cats?

4 MR. LINDAUER: Yes, sir, that's correct. Like
5 I say, I had nothing to do with putting the wording on the
6 paper.

7 CHAIRMAN WEST: If you put your name at the
8 bottom of it and you distribute it you had a lot to do with it.

9 MR. LINDAUER: I didn't put my name on it, and
10 I didn't distribute it. I accepted it from the folks that gave
11 it to me. I understand what you're trying to tell me, but.

12 COMMISSIONER CINCIONE: How did this thing get
13 distributed? So far I haven't heard anybody say they
14 distributed it. How did it?

15 CHAIRMAN WEST: They hired ladies.

16 MR. LINDAUER: From what I understand after
17 all of the fliers were given back to the animal rights
18 individuals they took the fliers to whatever and distributed,
19 from what I understand. I don't know who the people are, if
20 they walked up to me today I wouldn't know who they were. Sorry
21 to tell you that, but that's the case.

22 CHAIRMAN WEST: Any other questions?

23 COMMISSIONER BOOTH: Mr. Lindauer, I'm just
24 kind of curious about this, you mass produced these, and I think
25 you have to acknowledge that in any campaign you wouldn't

1 necessarily have to know who your door to door person was.

2 I mean I worked on a lot of campaigns where the
3 person that I was working for probably had no idea who I was,
4 but I was going door to door for them, and putting it on door
5 knobs for them.

6 I don't think that that -- I don't think that that
7 releases them from the responsibility of what's in the article
8 or in the piece, the fact that you didn't know who distributed
9 it. You put them out where they could be distributed with your
10 consent, and with obviously your name on some of them.

11 MR. LINDAUER: Yes, sir, I did.

12 COMMISSIONER BOOTH: I think that kind of
13 leaves you with some responsibility there, don't you?

14 MR. LINDAUER: That's the decision I suppose
15 you folks will have to make, because I gave them back in good
16 faith to those people to distribute wherever they needed to.
17 This flier here that I actually printed myself, and had my
18 information on it, I knew who had them and I knew who they would
19 distribute these to. I understand what it is you're saying to
20 me.

21 Maybe it was a reckless disregard if you want to
22 call it that, but the point is it was never meant with the
23 intention to cause Mr. Sarbach problems.

24 It was meant with the intentions if it gets me one
25 or two more votes great. It's my first experience in any kind

1 of political endeavors. And I have to claim that I don't know
2 all of the rules and regulations of the election board, I try to
3 keep up with the ones that will keep me out of trouble,
4 obviously this one got by me. That's really all I can claim to
5 you there, it's not done with a malice intent.

6 CHAIRMAN WEST: Thank you very much.

7 MR. LINDAUER: Any other questions?

8 CHAIRMAN WEST: Thank you.

9 MR. SARBACH: Mr. West, may I reiterate
10 something?

11 CHAIRMAN WEST: Yes, you may.

12 MR. SARBACH: First off, one of the unintended
13 consequences of this complaint is my friendship with Mr.
14 Lindauer, and I thought about that before I did it. That's why
15 I went to talk to him and he said he copied -- he had the things
16 copied. That answered my question.

17 I can't just say these -- this person, this person,
18 this person, and not Dave, because I know Dave, Dave is my
19 neighbor so I don't do him, but I'll get these three people. I
20 can't do that.

21 I didn't come up with the language, the language is
22 in the Ohio elections petition or the booklet. And the
23 complaint referenced here in my complaint of statement, you
24 people wrote that. What I saw happen fell into that category, I
25 didn't make the wording.

1 When it comes to duped -- let me get back to Mr.
2 Lindauer when he said he made the copies. From the meeting of
3 30 May, from the original hearing with the Snyder versus the
4 animal people, I claimed from you people and your interpretation
5 and your ruling that if you made it, if you passed it out or if
6 you reproduced it that was all one in the same thing.

7 That's why I went to ask Mr. Lindauer. I know he
8 didn't write it, author it, I knew that. I didn't know if he
9 copied it, and he told me he did. I had no choice but to
10 include him in here when he told me that.

11 And he admitted that, and I don't think he was
12 maliciously trying to hurt me, in that case. And I will agree
13 with Mr. Lindauer on that point.

14 Getting back to Mrs. Magel "duped," that word was
15 used on 30 May by Kimberly Joy Cavanaugh in her sworn testimony
16 to you from that chair. It was used by me in my complaint dated
17 some time after that.

18 I don't have the exact date of the complaint, but
19 you do, it's 12 June, on my calendar 12 June comes after 30
20 May. So evidently Mrs. Magel has a different calendar.

21 Mr. Warnet said that he had nothing to do with these
22 fliers, nothing to do whatsoever with these fliers. Yet
23 Kimberly Joy Cavanaugh testified to you under oath that the
24 fliers were picked up at Greg Warnet's shop. Maybe Mr. Warnet
25 was not at his shop, maybe he just left the door open for them

1 to get the fliers, I don't know. She testified under oath
2 that's why he was included in this.

3 And as I believe Mr. Smith testified that the
4 payment was for the cats, if you read the ordinance it was a
5 moral claim. We didn't -- council -- and I don't think any of
6 the people here today knew that these animals -- nuisance
7 animals ferrow cats, domestic cats, never knew this happened until
8 a licensed trapper was hired by a constituent to do it to get rid
9 of a problem she had in her neighborhood from an abandoned home.
10 This was all brought out in the first hearing. She
11 came to her councilman, which was Mr. Snyder and he said put it on
12 a moral claim, we'll hear it and reimburse you.

13 Because we have people that do this, we have
14 authorized trappers the City pays to take care of nuisance
15 animals. They don't trap cats, they are instructed if they get
16 a cat to release it.

17 So this was not an ordinance to trap anything. This
18 was an ordinance to make whole a constituent who spent money to
19 clean up a problem in her neighborhood that the City was
20 partially responsible for, because the City hadn't taken legal
21 action against the abandoned home, which allowed the animals to
22 congregate and become a problem.

23 So the ordinance was never to pay a trapper for
24 trapping cats. It was to reimburse a constituent who had paid a
25 trapper to take care of a nuisance problem.

1 She never told the trapper to trap cats. Testimony
2 says she hired a trapper to get rid of the nuisance problem.
3 The trapper licensed by the state of Ohio did what he was paid
4 to do.

5 People or persons may be here today, got wind of
6 this and said how can we make some hay out of this, and here we
7 are.

8 I don't plan on running for office. I've served
9 eight years on City Council. I'm a technician, active in my
10 Lions club, active in my church, I'm active in the Air Force
11 Auxiliary as a civil air control mission pilot. I really don't
12 have time to run for council again. I served six years, I was
13 defeated, I didn't come crying to you because I was defeated. I
14 sat out two years and did other things.

15 I came back two years later, ran again, and was
16 re-elected. I served two more years. And then I was defeated
17 by Mr. Lindauer, that's how the system works. But you play by
18 the rules.

19 My weak point is I don't play dirty. I'll talk my
20 strong points, I will not talk down my opponent.

21 I don't think anybody, Mr. Lindauer included, can
22 say that I ever said a discouraging word about Mr. Lindauer. In
23 his remarks to you regarding this, he said I've had a personal
24 grudge against him, that really upset me.

25 In 1991 I was elected to City Council for the first

1 time. One of my first official duties was to be one of seven
2 votes to confirm the new police chief, the new police chief
3 would have been Denny Myers, a friend of mine, or Dave Lindauer.

4 Dave Lindauer's credentials were better than my
5 friend's. So I approved and voted to approve David Lindauer as
6 the chief of our city.

7 Now, if I had a grudge against him, then I think I
8 would have started back then and at least voted for my friend,
9 but I didn't.

10 CHAIRMAN WEST: All right, we are getting off
11 the subject.

12 MR. SARBACH: I'm sorry, I was responding to
13 his response to the letter. So I think I've covered -- oh, one
14 other thing. Mr. Smith testified under oath to you, and I think
15 you all have it in your minutes, he made 2000 copies at two
16 cents apiece. There is a work order copy from Copy Maxx with
17 Mr. Smith's name on it and his credit card where there were
18 5,050 copies made, I don't know if they were this, I don't know
19 if they were something else, but it just does not all mesh out
20 here. I'm not an investigator, I can't figure that out.

21 I did what a gentleman can do legally and that's
22 file a complaint. I didn't talk to the press, I didn't try to
23 slander anybody. Thank you very much for your time.

24 CHAIRMAN WEST: You're welcome. Mr. Richter.
25 Do you have a recommendation.

1 MR. SMITH: May I respond to that last
2 comment?

3 CHAIRMAN WEST: No, sir. Do you have a
4 recommendation?

5 EXECUTIVE DIRECTOR RICHTER: I don't know that
6 it's clear exactly who participated in what from the testimony
7 today. We have conflicting testimony from the prior hearing,
8 wherein Ms. Cavanaugh and Ms. Farnsworth both indicated that
9 they received materials from Ms. Magel and Mr. Smith, and they
10 circulated those materials.

11 Those two persons aren't before the Commission at
12 this time. So far today we have Ms. Magel and Mr. Smith saying
13 they didn't have anything to do with any of this. And we don't
14 have any opposing testimony specifically identifying them, aside
15 from the transcript of the prior hearing.

16 COMMISSIONER TYLER: Mr. Richter, did I not
17 hear Mr. Smith confirm that he reproduced the fliers, did I hear
18 that?

19 EXECUTIVE DIRECTOR RICHTER: He indicated that
20 he did produce what he referred to as his own, which is
21 different from this one and these. And the one before us would
22 have been the one that had his name on it.

23 COMMISSIONER TYLER: The conflict is really
24 with Ms. Magel, that's the only conflict?

25 EXECUTIVE DIRECTOR RICHTER: In terms of the

1 actual statements included in there, yes. Because in reviewing
2 the transcript it would appear that the evidence is that there
3 was never any payment made out to trap cats as is stated in the
4 specific statement included in the materials at issue.

5 CHAIRMAN WEST: Anybody else? Mr. Cincione,
6 you were chairman when we had this the last time?

7 COMMISSIONER CINCIONE: I was, that's
8 accurate. There is no question that this statement is false. And
9 there is no question that both Farnsworth and -- what's the other
10 ladies name -- Cavanaugh, testified that Magel and Smith gave him
11 the stuff to distribute.

12 Now we are getting into who shot John, and I'm not
13 willing to accept that defense of who shot John. My problem
14 here is that we had these folks here, and I think one of these
15 folks was subpoenaed and didn't show up, and put us in a
16 situation where we accepted the testimony.

17 And as a matter of fact the testimony was such that
18 they ended up getting a public reprimand out of it. So my
19 opinion is that all four of these folks here had something to do
20 with this thing.

21 And as far as I'm concerned they should be -- they
22 too should have the same consequences as the other two people.
23 This thing didn't get created in mid air, and testimony is that
24 these folks gave it to be distributed, so.

25 So I'm -- when you get the false statement and that's

1 what -- I mean that is a blatant false statement. So I'll make a
2 motion if you want me to.

3 I make a motion that we find a violation by clear
4 and convincing evidence of the four respondents. Penalty phase
5 will come later.

6 COMMISSIONER TYLER: Second.

7 CHAIRMAN WEST: Any further discussion? All
8 in favor signify by saying aye.

9 (Thereupon all members voted affirmatively.)

10 CHAIRMAN WEST: Opposed? That motion carries,
11 we find a violation. Penalty, please.

12 COMMISSIONER CINCIONE: I recommend public
13 reprimand, same thing we did in the prior case.

14 COMMISSIONER TYLER: Second.

15 CHAIRMAN WEST: Discussion? All in favor
16 signify by saying aye.

17 (Thereupon all members voted affirmatively.)

18 CHAIRMAN WEST: Opposed? That motion
19 carries. Thank you all.

20 MR. SARBACH: Mr. Chairman, in regard to the
21 treasurer, designation of treasurer, is that a separate issue?
22 I don't plan on continuing with that, I wondered as a matter of
23 record, is it your responsibility to take care of that
24 responsibility? Is it the county election board's, whose
25 responsibility is it?

1 CHAIRMAN WEST: You should start with the
2 county election board.

3 MR. SARBACH: I don't plan on filing anymore
4 complaints. Should I just ask them?

5 CHAIRMAN WEST: Yes.

6 MR. SARBACH: Thank you.

7 (Thereupon the hearing was concluded.)

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CERTIFICATE

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I, Cheryl D. Edwards, Certified Professional Reporter, and Notary Public in and for the State of Ohio, do certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on October 10, 2002, and carefully compared with my original stenographic notes.

That I am not an attorney for or relative of either party and have no interest whatsoever in the outcome of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 14th day of April 2003.



Cheryl D. Edwards,
Notary Public in and for
the State of Ohio
My commission expires 11/03/03

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