

1. Applicable Statute

The rules are set forth in the definition of "independent expenditure," in A.R.S. § 16-901(14). The definition of "election" is that it means any "primary, general,...or runoff election." (Emphasis added). Therefore the primary is a separate election from the general. A.R.S. § 16-901(7) also states "for purposes of § 16-903 and § 16-905, the general election includes the primary election." Neither of those Sections is applicable to the issue presented here. This reinforces the fact that, for our purposes, the primary election is a separate election from the general election.

2. Facts

Kathleen Winn was a victim of Andrew Thomas' unjust practices as County Attorney, and false charges against her were repeatedly dismissed by the court. Ultimately she prevailed. In December 2009, she filed an independent committee called Business Leaders for Arizona, to oppose Andrew Thomas. This was done on her own initiative, and was "without cooperation or consultation" with Tom Horne or anyone acting on his behalf, and without "any arrangement, coordination or direction" with Tom Horne or anyone acting on his behalf. She never received any compensation from Tom Horne or anyone acting on his behalf. She raised \$2,480, paid almost all of it (\$2,100) to a website/graphic design expert in January 2010. He took the fee, but did not do anything. The project fizzled, and she abandoned it.

Although Kathleen filed papers with the Secretary of State's office because she thought there would be an independent campaign, in fact there was no independent campaign during the primary. The above quoted statute defines "independent expenditure" as an expenditure "that expressly advocates the election or defeat of a clearly identified candidate..." There was no express advocacy, because there was no activity at all, other than a payment for which nothing was ever received.

Kathleen then volunteered in Tom Horne's campaign in the primary election in 2010. She was not an "officer, member, employee or agent of the committee" of that campaign, but solely a volunteer.

When the primary was over, Kathleen told Mr. Horne she was withdrawing from the campaign, in order to be able to conduct an independent campaign during the general election. This was on her own initiative, and was "without cooperation or consultation" with Tom Horne or anyone acting on his behalf, and without "any arrangement, coordination or direction" with Tom Horne or anyone acting on his behalf. Those who participated in the campaign can confirm that, after the primary, Kathleen stopped coming to meetings.

3. Motive for False Charges

When Don Dybus sent his letter, he knew he was about to be fired. He sent letter to the Attorney General's Office indicating that he could not be fired. Sharon Collins, the Manager of the Tucson Office, asked him why he sent a letter of charges, as referred to in his letter, and he responded that "I knew that Rick Bistrow [the Chief Deputy in the Attorney General's Office] was about to fire me, and I was afraid of losing the health insurance."

On February 9, shortly before the letter was written, Tom Horne was on the telephone with Sharon Collins, and with Rick Bistrow, the Chief Deputy Attorney General. Horne told Collins to tell Dybus that he had not been working to standard, and that if he did not start working to standard, he would have to be let go. Collins passed this message, in substance, to Dybus, shortly before he sent his letter.

4. Hiring of Kathleen Winn

There was never a promise made to hire Kathleen Winn. She was not among the new employees processed during the transition period following the election. Kathleen Winn was not the first choice for that job. The offer was first made to Kim Owens, who decided she wanted to pursue other avenues in the private sector. Only then was the offer made to Kathleen Winn, based on her qualifications, and the confidence Tom Horne had developed in her during the primary. A statement of her qualifications is attached as Exhibit A. It is common for public figures to hire people in whom they have developed confidence during the election. The point is that no promise was made, and this is obvious from the fact that she was not hired at first, and that when the job for which she was hired opened up, something else was the first choice. Winn's salary is the same as that of her predecessor.

5. Nathan Sproul

Tom Horne has had no contact with Nathan Sproul since the before the last election. Kathleen Winn chose his consulting company for the independent campaign. Tom Horne had no participation in that decision, nor did he know of it.

6. Contribution from Richard Newman

Tom Horne did not know that Kathleen Winn was approaching his sister for a contribution to the independent campaign. His sister and Kathleen Winn had met at the primary victory party, at which time his sister gave Kathleen Winn her phone number and asked her to call if there was anything she could do to help in the general election.

Richard Newman formed Horne Consulting, L.L.C. on March 26, 2010, not in October 2010, which illustrates the falseness of the charges that have been made, by facts that can be confirmed by the public record. Richard Newman ceased to be an employee of a company called AACOM on April 1, 2010, but he remained as a non-executive chairman of the board, and a consultant. Horne Consulting was formed in connection with his becoming a consultant. It had nothing to do with this election. No money passed through Horne Consulting for political contributions. All contributions in the independent campaign were from personal funds. Tom Horne had not heard of Horne Consulting until the article published today.

7. Formal Findings Against Rotellini Independent Campaign

The democratic Attorney General' Association is the sole source of funding of a front group called the Committee for Justice and Fairness.¹ It spent \$600,000 attacking me on behalf of my opponent Felicia Rotellini. It made the willful decision not to comply with Arizona's requirements for filing disclosures with the Secretary of State, and oral disclosures in advertising. An Administrative Law Judge made that finding, and a copy of that decision is attached as Exhibit B. By contrast, Kathleen Winn diligently complied with all filing and disclosure requirements.

In addition, in September 2010, Felicia Rotellini attended a meeting of the Democratic Attorney General's Association, and their funding of an independent campaign on her behalf followed shortly after that.² I attended no meeting of the Republican Attorney General's Association or similar organization prior to the election. The irony of the present inquiry is that I went much further than many other candidates to stay far away from the line that separates campaigns from independent campaigns.

¹ <http://forms.iss.gov/politicalorgssearch/search/basicsearch.jsp>

² 9/14/10 Tim Nelson contribution in kind for "Daga conference."

<http://www.azsos.gov/efs/publicreports/2010/78E892B2-7282-4CC-PAC5-2F1313E7B899.pdf>

EXHIBIT A

KATHLEEN WINN
3803 E. Flossmoor Circle
Mesa, Arizona 85206
602-315-3141
Kathleen.Winn58@gmail.com

PROFESSIONAL EXPERIENCE

Community Outreach and Education Director

Office of the Attorney General, State of Arizona, Phoenix

January 2011-Present

- Organize and coordinate statewide outreach events to communicate with vulnerable populations statewide, regarding scams, dangerous substances, predatory behavior and how to protect oneself and families.
- Oversee staff and generate projects that produce measurable results to judge impact of our outreach and education in specific community areas.
 - Oversaw
 - 644 community presentations
 - 89,702 pieces of material distributed
 - Awarded of \$96,000 in grants
 - Outreach events in all 15 counties
- Manage budget, personnel and generate best results with resources provided.
- Initiative Director
 - Arizona Military Outreach Taskforce (launched in 2011)
 - Taskforce Against Senior Abuse (launched in 2011)
 - Arizona Identity Theft Coalition (launched in 2012)
- Grant program manager
 - 2012 SEARS Consumer Grant
 - 2011-2012 Department of Justice National Identity Theft Network
 - 2011 Arizona Parents Commission on Drug Education and Prevention Grant
 - 2012 September 11 Community Service Grant
 - 2011-2012 Internet Crimes Against Children Taskforce Grant

Senior Mortgage Consultant

Amerifirst Financial, Mesa Arizona

June 2010-December 31, 2010

- Origination mortgage loans and consulted with families regarding short sales and foreclosure options.
- Licensed through Department of Financial Institutions.

Senior Mortgage Consultant

On Q Financial, Scottsdale, Arizona

January 2009-June 2010

- Top producing loan officer, coordinated sales events and promotions for 5 offices.
- Created publicity and training materials for other loan officers.

Senior Loan Officer

Chase Manhattan/JP Morgan, Phoenix, Arizona

September 2007-December 2008

- Top producer - worked with consumers to mortgage real estate.

Senior Loan Officer

Great Southwest Mortgage

January 2002-August 2007

- Top 5% in producing loan origination for largest mortgage company in Arizona.

Owner/Designated Broker

Eclipse Development

July 1989-June 2010

- Generated over 32 million dollars in sales.
- Managed a staff and produced consistent results.

PROFESSIONAL ORGANIZATIONS

- QUAD A – Army Aviation Association of America 15 Years
 - Coordinated veteran family events
 - Fundraised for Quad A college scholarship
- Precinct Committeeman/ 3rd Vice Chairman LD19
- Served on 4 different PTO School Organizations: 1996-2006

COMMISSIONS AND BOARDS

Arizona Governor's Commission for Substance Abuse

Arizona Centennial Commission

HONORS

Tucson Board of Realtors Humanitarian Award

Mrs. Arizona Directors Award

Skyline Band Parent Special Recognition Award

Army Aviation Outstanding Presentation and Appreciation Award

VOLUNTEER

Youth Women's Christian Association (YWCA)

Sojourner Center

Graduate Real Estate Institute

Wounded Warrior/Packages From Home

Founder Shalom House/New Beginnings Homeless Shelter

Central Christian Sunday School Teacher (1998-2009)

EDUCATION:

B.A. Communication/Radio-Television, University of Arizona, Tucson

1980

LICENSES:

Mortgage Broker
Real Estate Broker

2009
1984

EXHIBIT B

IN RE COMMITTEE FOR JUSTICE AND FAIRNESS

ADMINISTRATIVE LAW JUDGE DECISION

APPEARANCES: The Office of Maricopa County Attorney was represented by County Attorney Colleen Connor. The Committee for Justice and Fairness was represented by its attorney, Kelly J. Flood, Esq.

Based upon the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law, and Recommended Order:

1. The Committee for Justice and Fairness ("CJF") is a political organization as defined by the Internal Revenue Code at 26 U.S.C. § 527.
2. In its 2009 Form 990-EZ, "Short Form Return of Organization Exempt From Income Tax," filed with the Internal Revenue Service, CJF listed its "primary exempt purpose" as follows:

3. CJF's business address is P.O. Box 3526, Washington, DC.

- 1 4. CJF's primary financial contributor is the Democratic Attorneys General
2 Association located at 1580 Lincoln Street, Suite 1125, Denver, Colorado.
- 3 5. In the late summer of 2010, CJF produced and broadcasted an advertisement
4 that accused Tom Horne, then-State Superintendent of Public Instruction, of
5 "vot[ing] against tougher penalties for statutory rape" and allowing a "[p]orn-
6 viewing teacher" back in the classroom. The television advertisement was
7 entitled "Protect."¹
- 8 6. The advertisement provided information about the following two prior actions
9 taken by Mr. Horne: (1) his senatorial vote against HB 2587, a bill that would
10 have increased the penalty for having sexual conduct with a minor older than 14,
11 raising the offense from a Class 6 felony to a Class 4 felony or to a Class 2
12 felony if the perpetrator was at least five years older than the minor; and (2) his
13 alleged support as State Superintendent for reinstating the teaching license of a
14 teacher who was caught viewing adult and child pornography on his classroom
15 computer.
- 16 7. The advertisement concluded by urging viewers to "Tell Superintendent Horne to
17 protect children. Call 602.542.5393." The telephone number was Superintendent
18 Horne's office number.
- 19 8. At the time of the broadcasts, Mr. Horne was a Republican candidate for the
20 office of Attorney General of the State of Arizona. On November 2, 2010, Mr.
21 Horne was elected Attorney General.
- 22 9. Nowhere in the advertisement is there a reference to Mr. Horne as a candidate,
23 to any other candidate, to any election, or to any political party.
- 24 10. CJF did not register as a political committee before the 2010 elections in
25 Arizona, and it has not registered to date by filing the necessary paperwork with
26 the Arizona Secretary of State ("Secretary").
- 27 11. On October 22, 2010, the Secretary received a complaint from the Tom Horne
28 for Attorney General Committee alleging that CJF had engaged in express
29
30

1 advocacy within the meaning of A.R.S. § 16-901.01(A)(2) and had made
2 expenditures in connection with the same. The complaint also alleged that CJF
3 had not registered with the Secretary as a political committee, had not filed
4 campaign finance reports, and had not disclosed information in the television
5 commercial that was required by statute regarding contributions by political
6 committees.

7 12. By email dated October 22, 2010, the Secretary asked CJF for information
8 regarding the television commercial.

9 13. On October 25, 2010, the Secretary issued the following "Reasonable Cause
10 Notice":

11 The Arizona Secretary of State, having reviewed this matter
12 pursuant to A.R.S. § 16-924, finds that reasonable cause exists to
13 believe that the [CJF] has violated a provision of Title 16, Chapter
14 6, Article 1 of the Arizona Revised Statutes, specifically A.R.S. §§
15 16-902 and 16-912, and hereby notifies the Attorney General of
16 this finding.

17 14. By letter dated January 26, 2011, the Attorney General's Office requested that
18 the Office of Maricopa County Attorney ("MCAO") handle further enforcement
19 and any litigation in the matter.

20 15. On May 23, 2011, the MCAO issued an "Order Requiring Compliance" that
21 ordered CJF to register as a political committee with the Secretary, pursuant to
22 A.R.S. § 16-902.01, to provide the Secretary with CJF's financial institution,
23 pursuant to A.R.S. § 16-902(C), to file all statutorily required campaign finance
24 reports, pursuant to A.R.S. §§ 16-913 and 16-915, to provide the financial
25 records that reflect the cost for the production of the television advertisement;
26 pursuant to A.R.S. § 16-904(J), and pursuant to A.R.S. § 16-924, to comply with
27

28 ¹ CJF spent approximately \$1,500,000.00 to produce and broadcast the advertisement, as shown in
29 Exhibit D and as stated in MCAO's opening statement found at 8/31/11 Hearing Record at 8:26-8:42 that
30 was not disputed by CJF.

1 Arizona's campaign finance laws A.R.S. §§ 16-902, 16-902.01, 16-912,² 16-913,
2 16-915, 16-916,³ 16-916.01,⁴ and 16-918 .

- 3 16. CJF appealed the "Order Requiring Compliance."
4 17. MCAO forwarded CJF's appeal to the Office of Administrative Hearings, an
5 independent agency, for formal hearing.
6 18. The television advertisement contains inaccurate information. The reference to
7 the schoolteacher who had been discovered viewing child pornography on his
8 classroom computer is false. An EnCase forensic review of the computer by the
9 Maricopa County Sheriff's Office found adult pornography on the teacher's
10 computer but not child pornography.

11 CONCLUSIONS OF LAW

- 12 1. Pursuant to A.A.C. R2-19-119(B), MCAO has the burden of proof in this matter.
13 The standard of proof is by a preponderance of the evidence. A.A.C. R2-19-
14 119(A).
15 2. Pursuant to A.R.S. § 16-901.01, the term "expressly advocates" is defined as
16 follows:

17 A. For purposes of this chapter, "expressly advocates" means:

18 1. Conveying a communication containing a phrase such as "vote
19 for," "elect," "re-elect," "support," "endorse," "cast your ballot for,"
20 "(name of candidate) in (year)," "(name of candidate) for (office),"
21 "vote against," "defeat," "reject," or a campaign slogan or words
22 that in context can have no reasonable meaning other than to
23 advocate the election or defeat of one or more clearly identified
24 candidates, or

25 2. Making a general public communication, such as in a broadcast
26 medium, newspaper, magazine, billboard, or direct mailer referring
27 to one or more clearly identified candidates and targeted to the
28 electorate of that candidate(s):

29 (A) That in context can have no reasonable meaning other than to
30 advocate the election or defeat of the candidate(s), as evidenced
by factors such as the presentation of the candidate(s) in a

² This statute sets forth the requirements for candidates and independent expenditures, campaign literature and advertisement sponsors, identification, and civil penalty.

³ This statute sets forth the requirements for filing statements of contributions and expenditures and public inspection of those filings.

⁴ This statute sets forth the requirements for electronic filing and statements of contributions and expenditures.

1 favorable or unfavorable light, the targeting, placement, or timing of
2 the communication, or the inclusion of statements of the
3 candidate(s) or opponents, or

4 (B) In the sixteen-week period immediately preceding a general
5 election.

6 B. A communication within the scope of subsection A, paragraph 2
7 shall not be considered as one that "expressly advocates" merely
8 because it presents information about the voting record or position
9 on a campaign issue of three or more candidates, so long as it is
10 not made in coordination with a candidate, political party, agent of
11 the candidate or party, or a person who is coordinating with a
12 candidate or candidate's agent.

13 3. CJF's advertisement constituted express advocacy pursuant to A.R.S. § 16-
14 901.01(A)(2). The advertisement referred by name to Tom Horne, who was by
15 that time clearly identified as the Republican candidate for Attorney General. It
16 was aired on Channel 12, which broadcasts in the greater Phoenix metropolitan
17 area and beyond, and thus may be presumed to have targeted the electorate for
18 such a statewide office. Although the advertisement only referred to Tom Horne
19 in his then position of Superintendent of Public Instruction and called upon
20 viewers to contact him at his office in the Department of Education, the only
21 reasonable purpose for running an advertisement, during an election campaign,
22 which cost approximately \$1.5 million to produce and broadcast, to critique Tom
23 Horne's past actions as a former member of the legislature and as an occupant
24 of a post he would soon vacate, was to advocate his defeat as candidate for
25 Attorney General. This meets the test of A.R.S. § 16-901.01(A)(2)(A). However,
26 even if it were assumed *arguendo* that reasonable minds could differ, and that
27 the advertisement was merely to encourage viewers to contact Superintendent
28 Horne to support protecting children, the advertisement was broadcast in the
29 sixteen-week period immediately preceding the general election held on
30 November 2, 2010, and thus met the alternative test of A.R.S. § 16-
901.01(A)(2)(B).

4. CJF is a political committee, as defined by A.R.S. § 16-901(19), because of its
stated purpose "of accepting donations in order to make disbursements...to

indirectly influence the selection, nomination, election, or appointment of individuals to state or local public office.”⁵ CJF disclosed that fact in its “Statement of Program Service Accomplishments” contained in its Form 990-EZ “Short Form Return of Organization Exempt From Income Tax” for 2009.

5. CJF violated the provisions of A.R.S. § 16-902.01(A)⁶ by failing to register as a political committee in the State of Arizona.
6. CJF violated the provisions of A.R.S. § 16-902(C)⁷ by failing to designate a financial institution as its campaign depository or to notify the Secretary of such designation.
7. As a political committee, CJF was required to file campaign finance reports setting forth its receipts and disbursements pursuant to A.R.S. §§ 16-913⁸ and 16-915,⁹ and 16-918(D).¹⁰
8. CJF violated the provisions of A.R.S. § 16-913 by failing to file campaign finance reports as a political committee.
9. CJF violated the provisions of A.R.S. § 16-904(J) by failing to respond to MCAO’s request for financial records that reflect the cost for the production of the television advertisement.

RECOMMENDED ORDER

IT IS ORDERED that MCAO’s Order Requiring Compliance dated May 23, 2011, issued to CJF be affirmed and upheld. Therefore:

CJF is ordered to register as a political committee with the Secretary, pursuant to A.R.S. § 16-902.01 within 20 days of the effective date of the Order entered in this matter.

⁵ See Finding of Fact No. 2.

⁶ This statute sets forth the requirements for the registration of political committees.

⁷ This statute requires a political committee to inform the Secretary, who is the filing officer, of its financial institution(s) before accepting contributions or making expenditures.

⁸ This statute sets forth the requirements for the filing of campaign finance reports and reporting receipts and disbursements by a political committee.

⁹ This statute sets forth the requirements for campaign finance reports filed by a political committee.

¹⁰ This statute defines a failure to timely file a campaign finance report by a political committee.

1 CJF is further ordered to provide notification to the Secretary of its financial
2 institution in accordance with A.R.S. § 16-902(C) within 20 days of the effective date of
3 the Order entered in this matter.

4 CJF is further ordered to file all campaign finance reports in accordance with
5 A.R.S. §§ 13-913 and 13-915 within 20 days of the effective date of the Order entered
6 in this matter.

7 Pursuant to A.R.S. § 16-924, CJF is further ordered to comply with the
8 provisions of A.R.S. §§ 16-902, 16-902.01, 16-912, 16-913, 16-915, 16-916, 16-916.01,
9 and 16-918 within 20 days of the effective date of the Order entered in this matter.

10 CJF is further ordered to comply with the provisions of A.R.S. § 16-904(J) by
11 furnishing the financial records requested by MCAO within 20 days of the effective date
12 of the Order entered in this matter.

13 *In the event of certification of the Administrative Law Judge Decision by the*
14 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
15 *five days from the date of that certification.*

16
17 Done this day, September 23, 2011.

18 /s/ Brian Brendan Tully
19 Administrative Law Judge
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21
22 Transmitted electronically to:

23 Bill Montgomery, Maricopa County Attorney
24 Maricopa County Attorney's Office
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