

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
MUR: No. 14-003 TOM HORNE
STATE OF REASONS BY EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission (“Commission”), the Executive Director hereby provides the Statement of Reasons for taking no further action on this complaint.

I. Procedural Background

On April 2, 2014, Kory Langhofer and the Arizona Public Integrity Alliance (“Complainants”) filed a complaint (“Complaint”) against Tom Horne (“Respondent”), a candidate for the Arizona Attorney General, alleging the Respondent violated Arizona’s campaign finance laws. Complainants allege the Respondent either:

1. Failed to report expenditures it made to Slaton & Sannes, P.C. (the “Law Firm”),
2. Accepted legal services donated by the Law Firm that constitute an illegal corporate contribution, or
3. Accepted legal services provide by the Law Firm but paid for by a third party, constituting an unreported in-kind contribution. **(Exhibit A)**

On April 11, 2014, Respondent submitted his Response to the Complaint. **(Exhibit B)** He submitted supplemental materials on April 18, 2014. **(Exhibit K)**

II. Factual Background

On November 8, 2013, the Law Firm, organized as a professional corporation under Arizona law, sent a letter to Cox Media requesting cessation of advertisements paid for by Arizona Public Integrity Alliance (“AZPIA”). The Law Firm identified itself as representing “Tom Horne, Republican Attorney General who is up for reelection.” **(Exhibit C)** The same day

the Law Firm also filed a campaign finance complaint with Secretary of State's office and identified itself as representing "Tom Horne, Attorney General who is up for reelection." The Law Firm alleged AZPIA failed to register as a political committee with the Secretary of State's office and failed to disclose AZPIA's top three contributors in the advertisements. **(Exhibit D)** See A.R.S. §§ 16-902.01 and -912(B). On November 13, 2013, the Law Firm sent a follow up letter to Cox Media again requesting cessation of the advertisements paid for by AZPIA. **(Exhibit E)** Additionally, on November 13, 2013, the Law Firm sent letters to both the Secretary of State's Office and Cox Media stating it "represents Tom Horne only in his individual capacity..." and that "[a]ny references in prior correspondence to Tom Horne as the Republican Attorney General would have been made because this is the way Mr. Horne is identified in the ad." **(Exhibit L, M)**

On November 15, 2013, the Law Firm filed a defamation lawsuit in Superior Court on behalf of the Respondent and his wife, in their personal capacities, against AZPIA. **(Exhibit F)** The Respondent and his wife sought declaratory relief, compensatory damages, and punitive damages related to the advertisements paid for by AZPIA. The Complaint in Superior Court also alleged damages to Respondent's political interests. (*Id.* (alleging that defendants "made false statements intentionally to deceive the public as part of a strategy to illegitimately undermine Mr. Horne's public standing before the 2014 election where Mr. Horne will be campaigning to be re-elected as the Arizona Attorney General.")) The Law Firm was hired on a contingency fee basis by Respondent and his wife. **(Exhibit G)** The Law Firm filed a Notice of Settlement and Dismissal with the court on November 25, 2013 and the case was dismissed with prejudice. Subsequently, Respondent paid \$477.80 to the Law Firm for legal costs associated with the defamation lawsuit. **(Exhibit H)**

On December 9, 2013, Christina Estes-Werther, State Election Director at the Secretary of State's office, dismissed the campaign finance complaint filed by the Law Firm finding there was no evidence that AZPIA was a political committee and was not subject to registration and disclosure requirements. **(Exhibit I)**

On April 2, 2014, Complainants filed the Complaint with the Commission and Secretary of State's office against the Respondent alleging campaign finance violations. **(Exhibit A)** Subsequently, on April 9, 2014, the Secretary of State's office dismissed the Complaint finding no basis for a reasonable cause recommendation because AZPIA and Respondent were involved in a disagreement over issue advocacy communications. **(Exhibit J)** On April 11, 2014, Respondent submitted his Response to the Commission and supplemented his response on April 18, 2014. **(Exhibits B, K)**

III. Legal Background, Alleged Violations, and Responses

As an initial matter, Respondent makes a blanket argument that the Commission has no jurisdiction over him, that it is bad public policy to permit "forum shopping" and that the Commission should follow the reasoning of the Secretary of State's Election Director in dismissing the complaint.

A. Failure to Report Legal Services

Candidate under Arizona law "means an individual who receives or gives consent for receipt of a contribution for his nomination for or election to any office in this state other than a federal office." A.R.S. § 16-901(2). Section 16-913 requires every political committee, which includes candidates and candidate campaign committees (*see id.* § 16-901((2), (4) and (19))), to file campaign finance reports...setting forth the committee's receipts and disbursements." Each campaign finance report must contain "the total amount of all disbursements and an itemized list of all disbursements" as well as "the name and address of each recipient of an expenditure made

during the period covered by the report.” *Id.* § 16-915(A)(4) and (5). “The acquisition or use of campaign assets by a committee that are paid for with the candidate's personal monies, including campaign signs and other similar promotional materials, is a contribution and is reportable by the candidate's campaign committee as a contribution to the campaign.” A.R.S. § 16-901(5)(a)(iv). Under Arizona law, legal services provided to or on behalf of a political committee or candidate are not considered a contribution “if the only person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of compliance with this title.” *Id.* § 16-901(5)(b)(ix); *accord* Arizona Secretary of State, A Filing Guide For Arizona’s Campaign Finance Web-based Reporting System at 24 (July 2012) (“[P]rofessional services of a[] . . . lawyer that are donated to a political committee are exempt from reporting only if the services are paid for by the regular employer of the individual rendering the services . . . and the services are given solely for the purpose of compliance with Arizona election law.”), *available at* http://www.azsos.gov/cfs/publications/campaign_contributions.pdf; *see also* Ariz. Att’y Gen. Op. I11-006 (discussing legal framework for evaluating the donation of legal services and legal defense funds), *available at* <https://www.azag.gov/sgo-opinions/I11-006>.¹

Complainants argue the Law Firm’s services constitute campaign expenditures because the Law Firm acted on behalf of the Respondent in his capacity as a candidate seeking reelection. Complainants believe the Law Firm’s services should have been reported on the Respondent’s campaign committee’s 2014 January 31st Campaign Finance Report. In his response, Respondent states the Law Firm solely represent himself and his wife in their personal

¹ Contribution does not include “[t]he value of services provided without compensation by any individual who volunteers on behalf of a candidate, a candidate's campaign committee or any other political committee.” A.R.S. § 16-905(5)(b)(i).

capacities. The campaign was not involved and therefore, would not be reportable as campaign expenditures.

B. Accepted Illegal Campaign Contribution

Section 16-901(5) defines a contribution as “any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election.” Furthermore, “[u]nless specifically exempted, the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods and services” is a contribution. *Id.* § 16-901(5)(a)(iv). An in-kind contribution is a contribution of a good or service or anything of value and not a monetary contribution. *Id.* § 16-901(15). A corporation or limited liability company is prohibited from making “an expenditure or any contribution of money or anything of value for the purpose of influencing an election.” *Id.* § 16-919(A). It is also “unlawful for the designating individual who formed an exploratory committee, an exploratory committee, a candidate or a candidate's campaign committee to accept any contribution of money or anything of value from a corporation or a limited liability company for the purpose of influencing an election.” *Id.* Candidates are also restricted in the value of contributions they may take. *See, e.g.*, A.R.S. § 16-941(B).

Complainants argue the legal services provided by the Law Firm are “a thing of value” as defined by A.R.S. §16-901(5) and (15). If the Law Firm was not compensated for rendering legal services, those services are an in-kind contribution to the Respondent’s campaign committee. Complainants also argue the Law Firm is a professional corporation and the Law Firm’s in-kind contribution is prohibited under Sections 16-919 and -941(C)(2).

Respondent states the Law Firm was retained to represent him and his wife in their personal capacities in a libel action against AZPIA. Respondent states the Law Firm did not represent him in an official capacity or on behalf of his campaign committee. Respondent states

the letters sent to Cox Media and Secretary of State were part of the libel action against AZPIA and made reference to his official capacity solely for identification purposes. (**Exhibits L, M, N**) Respondent also argues that he personally paid for legal costs and did not seek reimbursement from the campaign. Respondent argues no legal fees were donated and the campaign was not involved in the libel action.

C. Failure to Report In-kind Contribution by a Third Party

A.R.S. § 16-913 requires every political committee, which includes candidate campaign committees (*see id.* § 16-901(4) and (19)), to file “campaign finance reports...setting forth the committee’s receipts and disbursements.” Each campaign finance report must contain “the total amount of all receipts and an itemized list of all receipts...for a candidate’s campaign committee, the candidate’s contribution or promise of personal monies...” *Id.* § 16-915(A)(2). A contribution is “any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election.” A.R.S. § 16-901(5). An in-kind contribution is a contribution of a good or service or anything of value and not a monetary contribution. *Id.* § 16-901(15). “The acquisition or use of campaign assets by a committee that are paid for with the candidate's personal monies, including campaign signs and other similar promotional materials, is a contribution and is reportable by the candidate's campaign committee as a contribution to the campaign.” A.R.S. § 16-901(5)(a)(iv). However, a candidate’s personal monies are not subject to contribution limits in accordance with A.R.S. § 16-905(N).

Complainants argue if the Law Firm was not compensated by the Respondent for services rendered to the candidate’s campaign committee, it would constitute a reportable campaign contribution. Complainants believe the purpose of the Law Firm’s activities was to influence the Respondent’s reelection and the Respondent’s campaign committee received the benefit of the Law Firm’s services even if the Law Firm was compensated by a third party.

Respondent argues that the Law Firm did not represent him in an official capacity or on behalf of his campaign committee. Respondent states the letters sent to Cox Media and the Secretary of State were part of the libel action against AZPIA and made reference to his official capacity solely for identification purposes. Respondent also argues that he personally paid for legal costs and there was no campaign involvement with the Law Firm's services.

IV. Analysis

A. Procedural Analysis

1. The Commission has jurisdiction and no forum shopping occurred.

Respondent asserts the Commission has no jurisdiction “because there are no Clean Elections candidates in either party for this office” and that the Complainants engaged in forum shopping. The Commission has jurisdiction as it enforces the Clean Elections Act, including (at a minimum) campaign contribution limits, *see* A.R.S. §§ 16-941(B), -956(A)(7); *accord Clean Elections Institute v. Brewer*, 209 Ariz. 241, 245 ¶ 13, 99 P.3d 570, 574 (2004) (“require[ing]” the Commission to enforce campaign finance limits in A.R.S. 16-941(B) and concluding that “[t]he Commission . . . would retain full enforcement authority and responsibility as to [16-941] even if the voters abolished public financing of political campaigns”), and reporting requirements under Chapter 6 of Title 16, *see* A.R.S. § 16-942(B) (creating penalties “for a violation by . . . *any* candidate of *any* reporting requirement imposed by *this chapter*” that are “[i]n addition to any other penalties imposed by law”) (emphasis added). To use § 16-942(B) as an example, that section applies across Chapter 6 of Title 16 but is indisputably part of Article 2 and thus is for the Commission to enforce. *Compare id. with* A.R.S. § 16-924 (excepting Article 2 of Chapter 6 of Title 16 from the Secretary’s purview).

Second, this Complaint was filed simultaneously with both agencies; no “forum shopping” occurred. This argument is further undermined by other aspects of Chapter 6 of Title

16 which provide multiple avenues for complaints and review. Section 16-905, for example, permits complaints to be filed with the more than one office, including the Secretary of State² and provides that “[i]f th[ose] . . . officer[s] . . . fail[] to institute an action . . . the individual filing the complaint may bring a civil action in the individual’s own name and at the individual’s own expense, with the same effect.” A.R.S. § 16-905(K), (L). Thus multiple “forums,” including the courts, are available.

The Commission, however, is unique among the executive officers who have roles in election administration and enforcement in that it is multi-partisan, not elected in partisan elections, meets in open session and requires a vote of its members to proceed, in addition to the other procedural rights persons under its jurisdiction have. The voters created a body that, among other things, would not be burdened by partisanship or the appearance of partisanship in election administration and enforcement. Thus Respondent’s argument is inconsistent with the Act’s plain terms, its structure, and purpose. *See, e.g.*, A.R.S. §§ 16-940, -941(B), (C)(2), -942(B),(C), -943, -956(A)(7); -957(A).

2. The Secretary of State Election Director’s reasoning is not persuasive in this case.

Respondent urges the Commission to find the Secretary of State’s reasoning in dismissing the complaint “persuasive.” Commission staff asked for the response to include information on specific areas relevant to the allegations in the complaint. Respondent provided information on the relevant questions. The State Elections Director’s reasoning is not relevant to those issues. That office’s letter does not address candidate financial activity as outlined in the statutes and guidance identified above, but instead turns on its assessment of the Complainants’

² “Any qualified elector may file a sworn complaint with the attorney general or the county attorney of the county in which a violation of this section is believed to have occurred, and the attorney general or the county attorney shall investigate the complaint for possible action.” A.R.S. § 16-905(K).

activities, which the candidate clearly does not control and is seeking to stop. This reasoning would produce anomalous results in campaign finance matters.³

B. Substantive Analysis and Recommendation of No Further Action

As noted above the principal issue is whether the Law Firm provided services in a manner that constituted a contribution to Respondent's campaign committee and/or an expenditure by it and the appropriate reporting of the value of those services. In the case of contributions, limits apply to the amount that may be received by a candidate and the nature of the entity from which they may be received.

The Arizona Attorney General's Office has issued a substantive opinion outlining when legal services and donations to defray the costs of legal services are contributions under Arizona's campaign finance laws. *See* Ariz. Att'y Gen. Op. I11-006, *available at* <https://www.azag.gov/sgo-opinions/I11-006>. The specific question before the Attorney General was whether donations for the purpose of defending challenges to a candidate's ballot status constituted contributions under the campaign finance code. The opinion concluded that the definition of contribution (like the definition of expenditure) includes those donations "made for the purposes of influencing an election." Opinion at 2 (quoting A.R.S. 16-901(5)). The term is "broad" the opinion noted, and encompasses donations for "campaigning and advocacy" but does not include "the defense of a person's appearance on the ballot." *Id.* at 2-3.

To reach this conclusion, the Attorney General evaluated two statutory provisions that demonstrated the legal defense of a person's appearance on the ballot were distinct from the otherwise applicable contribution definition. First, "legal services that otherwise meet the definition of contributions, such as the review of campaign finance materials for compliance with

³ Respondent's response also includes details about AZPIA's activities although it does not appear to formally complain about them to this body. Commission staff has no opinion and takes no position on those activities as a legal matter.

election law, are exempt” from the definition under certain circumstances. *Id.* (citing A.R.S. 16-901(5)(b)(ix)). Second, the Citizens Clean Elections Act specifically provides that publicly financed candidates may have legal defense funds, *see id.* fn.3 (citing A.R.S. § 16-948(D)). According to the opinion, given the limits that otherwise apply to participating candidates, if donations to a legal defense fund were deemed contributions, the legal defense fund would be meaningless, as participating candidates could never use them. *Id.* Neither of these provisions provides that uncompensated legal services may be provided to a candidate by a law firm organized as a professional corporation for a complaint against a perceived political opponent seeking to stop advertisements or to redress political harms to the candidate’s campaign. *See, e.g., id.* at 4 (concluding that donations to a legal defense fund are “not contributions within the meaning of [] 16-901(5) provided they are made to a separate fund that is not a political committee”); *compare* F.E.C. Advisory Opinion 1980-57 (candidate influences results of election when he challenges opponent to have him removed from ballot) *with* F.E.C. Advisory Opinion 1982-35 (determining that a “lawsuit brought by the candidate to overturn a party rule [was] a condition precedent to the candidate’s participation in the primary election” was not covered by campaign finance law).

In the opinion, the Attorney General explained that the provisions outlined above were exceptions. The opinion thus cautioned candidates that if they chose to create a legal defense fund, they should “take care to ‘avoid activity which would influence the candidate’s election’” through it. *Id.* at 4 fn. 3 (quoting F.E.C. Advisory Opinion 1996-39); *see also* A.R.S. § 16-905(5)(a)(iv) (defining contribution to include goods and services such that “[u]nless specifically exempted, the provision of [them] without charge or at a charge that is less than the usual and

normal charge” is a contribution) (emphasis added).⁴ Further, the Attorney General explained “[d]onations to a political committee are presumed to be for the purpose of influencing an election.” Ariz. Att’y Gen. Op. 11-006 at 4 fn.3; *see also* F.E.C. Advisory Opinion 2006-22 (concluding a law firm providing services free of charge for the filing of an amicus brief “in a court case addressing the ballot eligibility of the Republican nominee in [a candidate’s] congressional district” “would be a prohibited corporate contribution to the [candidate’s] Committee”).

The Attorney General noted that a candidate is a committee (by definition) and is involved in political activity under Chapter 6. *Id.* at 3; *see also* A.R.S. §§ 16-901(2), (19). Consequently, where legal services are provided without compensation to a candidate by a law firm that is organized as a professional corporation, the provision of those services is presumptively a contribution. And, because the term expenditure is defined to “include[] any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election in this state” if a candidate (who is a committee) made an expenditure for legal services, that expenditure is presumptively subject to applicable campaign finance laws. *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (noting that “[e]xpenditures of candidates . . . can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related.”). Accordingly, the Law Firm’s services were presumptively a contribution to the candidate or an expenditure by the

⁴ That opinion notes that in order “to avoid activity which would influence the candidate’s election,” steps should be take including that “solicitations [to a legal defense fund] should be made in person or by mail and be accompanied by a letter stating the purpose of the fund and noting that no donations to the fund would be used for the purpose of influencing any Federal election. Solicitations to the fund should be conducted completely separate from any solicitations on behalf of the principal campaign committee.” *See* F.E.C. Advisory Opinion 1996-39; *compare id. with* Exhibit C (explaining that letter was for “Tom Horne, Republican Attorney General who is up for reelection”).

candidate. This presumption is bolstered because, at least the initial letters and Complaint in Superior Court included language that made representation of the candidate as candidate a reasonable conclusion.⁵ Consequently the absence of in the January Report of a contribution to or an expenditure related to those services raised a legitimate question of whether any Chapter 6 reporting requirement or any applicable campaign finance contribution limit is implicated.⁶

Respondent was a candidate for attorney general at the time the legal services were provided and those services were provided to him. Those legal services included the submission of complaint letters to a cable company and the Secretary of State and the filing of a defamation action on behalf of Respondent and his spouse. In response to the complaint and staff questions, Respondent provides documentation to confirm his argument that that the letters and the defamation action were related, specifically an email from his attorney. He asserts the letters and the action were performed for him and his spouse personally. Respondent also attaches the retainer agreement asserting that he was financially responsible for the legal services and the campaign was not. He further argues that he was identified in his capacity as a candidate solely for identification purposes but it did not alter that the services were provided to him personally and provides documentation for that claim, specifically letters sent by his attorney to the company and the Secretary attempting to clarify the nature of the representation.

⁵ Respondent does not dispute that this information was not reported in the CFR. Because there is no dispute that Respondent was a candidate by definition, the Commission need not address whether obtaining legal services for the purpose of influencing an election triggers other registration and reporting requirements under Chapter 6.

⁶ Of course, all other things being equal, a personal injury claim for medical malpractice, for example, would not be a campaign finance issue even if the candidate were the plaintiff. Indeed, a number of F.E.C. Advisory Opinions deal with candidates seeking permission to use campaign funds to hire lawyers to avoid converting funds to personal use. Here, however, the face of the Complaint filed in Superior Court alleges, among other things, injury to the Respondent as candidate. *See* Exhibit F.

Given the legal analysis and facts above, several factors support the conclusion that no further action should be taken in this matter. The matter presents a mix of a candidate seeking compensation for personal injury in his personal capacity (albeit in part for political injury), a law office stating that it is performing work for a clearly identified candidate but later making efforts to clarify the nature of the representation, a Respondent who was forthcoming about the nature of the legal services in issue, and a settled legal dispute. These factors favor concluding the matter with no further action, provided that the Commission reserves the right to reexamine this complaint in the event new information comes forward.⁷

Further, I would note that campaign finance professionals, both public and private, have apparently taken different views on when any campaign-related legal services provided to a candidate constitute a contribution or expenditure. As noted above, the Attorney General's Office has provided guidance on this issue. Going forward, practitioners and candidates should familiarize themselves with Attorney General Opinion 11-006 and the definitions and guidance set forth there, including the guidance related to legal defense funds. The Attorney General's Opinion is clear: donations of money and goods and services to committees, including candidates, are presumptively for the purpose of influencing an election. A law firm that is organized as a professional corporation that represents that it, in fact, is acting for the candidate as candidate may trigger reporting and campaign finance limit issues, including (depending on the nature of the violation) severe sanctions. Here, however, because of the factors identified above, I recommend that no further action be taken on the matter.⁸

⁷ Under this proposed resolution and the circumstances, the Commission need not address whether a candidate may enter into a contingency fee agreement for legal services for the purpose of influencing an election with a law firm organized as a professional corporation and, if it may, how such should be reported.

⁸ Nothing requires a candidate to engage a law firm in order to file a complaint regarding a campaign finance violation. Commission rule prohibits the use of Clean Elections Funds to pay

V. Investigation After Reason to Believe Finding

If the Commission determines by an affirmative vote of at least three (3) of its members that it has reason to believe a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within fourteen (14) days. During that period, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission. A.R.S. § 16-957(A) & A.A.C. R2-20-208(A).

After the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall conduct an investigation. A.A.C. R2-20-209(A). The Commission may authorize the Executive Director to subpoena all of the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit.

Upon expiration of the fourteen (14) days, if the Commission finds that the alleged violator remains out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with A.R.S. § 16-942, unless the Commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. A.R.S. § 16-957(B).

After fourteen (14) days and upon completion of the investigation, the Executive Director will recommend whether the Commission should find probable cause to believe that a violation

the "[c]osts of legal defense in any campaign law enforcement proceeding or for any affirmative claim or litigation in court or before the Commission regarding a campaign." Ariz. Admin. Code R2-20-702(C)(1). "This prohibition does not bar use of campaign funds for payments to attorneys or certified accountants for proactive compliance advice and assistance." As noted above the Attorney General's 2011 Opinion construes the Clean Elections Act to permit legal defense funds outside of the contribution limitations of any part of Chapter 6.

of a statute or rule over which the Commission has jurisdiction has occurred. A.A.C. R2-20-214(A). Upon a finding of probable cause that the alleged violator remains out of compliance, by an affirmative vote of at least three (3) of its members, the Commission may issue of an order and assess civil penalties pursuant to A.R.S. § 16-957(B). A.A.C. R2-20-217.

Dated this 22^d day of April, 2014.

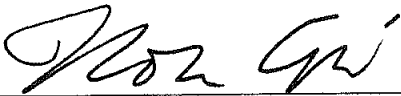
By: 
Thomas M. Collins, Executive Director

EXHIBIT A

April 2, 2014

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BY E-MAIL

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Clean Elections Commission
c/o Tom Collins, Executive Director
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RE: Campaign Finance Violations by Tom Horne's Reelection Campaign

Ms. Estes-Werther and Mr. Collins:

I am writing on behalf of the Arizona Public Integrity Alliance (the "AZPIA")¹ and myself, as legal counsel to the AZPIA, to report a violation of Arizona's campaign finance laws by Arizona Attorney General Tom Horne. Unless otherwise indicated, all statements made in this complaint are based upon my personal knowledge.

The most recent campaign finance reports of Horne's reelection campaign committees (together, the "Horne Campaign"), as filed on January 31, 2014, show that the Horne Campaign either:

1. failed to report expenditures it made to Slaton & Sannes, P.C. (the "Law Firm"),
2. accepted legal services donated by the Law Firm that constitute an illegal corporate contribution (likely in excess of contribution limits) to the Horne Campaign, or
3. accepted legal services provided by the Law Firm but paid for by a third party, constituting an unreported in-kind contribution (likely in excess of contribution limits) to the Horne Campaign.

I therefore respectfully request that the Secretary of State's office refer this matter to the Arizona Solicitor General (for referral to a conflict-free county attorney's office) pursuant to Section 16-924(A) and (E)(1) of the Arizona Revised Statutes, and that the Clean Elections Commission investigate the matter pursuant to Section 16-956(B) of the Arizona Revised Statutes and Sections 2-20-201 to -209 of the Arizona Administrative Code.

I. Factual Background

On November 8, 2013, the Law Firm sent a letter to Cox Media, demanding that it cease broadcasting certain AZPIA advertisements critical of Horne. In this correspondence, the Law Firm identified itself as counsel for Tom Horne, "Republican Attorney General who is up for reelection," and, although the advertisements in question did not urge electoral opposition to Horne, the Law Firm's correspondence

¹ Section 2-20-203 of the Arizona Administrative Code requires this complaint to state the address of the AZPIA: 3440 East Southern Avenue, No. 1100, Mesa, Arizona, 85204.

One East Washington Street, Suite 2400
Phoenix, AZ 85004
main 602.382.4040

made clear that its purpose was to defend Horne's bid for reelection. See Exhibit A. The Law Firm later sent a supplemental letter to Cox Media, again making clear that the letter was written to support Horne's reelection bid. See Exhibit B. The Law Firm also filed a campaign finance complaint with the Secretary of State, with nearly identical wording, alleging that the AZPIA constituted a "political committee" under Arizona law and had not complied with the registration and reporting requirements applicable to such organizations. See Exhibit C.² The Law Firm also filed a defamation lawsuit on behalf of Mr. Horne against the AZPIA and certain individuals affiliated with the AZPIA. The allegations in the lawsuit involved the advertisement at issue in the Law Firm's communications to Cox Media and the Secretary of State. See Exhibit E.

II. Legal Violations

Although the Secretary of State concluded that the activities of the AZPIA did not constitute electioneering, the value of the Law Firm's services nonetheless constitute campaign expenditures or contributions because the Law Firm acted to protect Horne in his capacity as a candidate and Horne's reelection campaign.

Federal law – which serves as highly persuasive authority in interpreting Arizona's campaign finance statutes – recognizes that in these circumstances legal services constitute in-kind contributions. On several occasions, the Federal Elections Commission ("FEC") has concluded that services of the type provided by the Law Firm were campaign "contributions." See, e.g., FEC Advisory Opinions 2006-22 (drafting an amicus brief on behalf of a campaign committee), 2000-08 ("personal" gift to a potential candidate), 1980-57 (legal action against an electoral opponent). Although other advisory opinions have acknowledged that expenditures for *defending* a lawsuit are not contributions in certain contexts, see, e.g., FEC Advisory Opinion 1997-37; Ariz. Attorney General Op. No. 111-006, the situation presented by this matter, in which the legal services were provided for *offensive* purposes, and would not have been provided but for Horne's reelection campaign, closely tracks the facts underlying the opinions finding a "contribution" of legal services.

Although Arizona law excepts from the statutory definition of "contribution" legal services provided to a candidate or campaign "solely for the purpose of complying with this title," see Ariz. Rev. Stat. § 16-901(5)(b)(ix), this narrow limitation is inapplicable here. In preparing and filing a campaign finance complaint with the Arizona Secretary of State, the Law Firm was not providing services "solely for the purpose of complying with this title" but was, instead, providing services for purposes of initiating an enforcement action against a third party; the purpose of such services was at least partially *enforcement* and *remediation*, and not solely *compliance*. Moreover, to the extent the Law Firm sent a letter urging Cox Media to stop broadcasting certain advertisements, threatened to report Cox Media to the FCC, and sued the AZPIA for defamation, the Law Firm's services were even further removed from the narrow exception in Section 901(5)(b)(ix). Thus, the Law Firm's provision of legal services without compensation at the "usual and normal charge" represents an illegal in-kind corporate contribution. See *id.* § 16-919(E).

Although the Law Firm provided extensive legal services to the Horne Campaign, the January 31, 2014 campaign finance report filed by the Horne Campaign failed to disclose any contributions or expenditures to or from the Law Firm. See Exhibits F-G. This admits of only three potential explanations, all of which entail a violation of Title 16.

² In December 2013, the Arizona Secretary of State rejected the allegations in Horne's campaign finance complaint, concluding that the AZPIA was not a political committee and that there was no reasonable cause to believe the AZPIA had violated any campaign finance laws. See Exhibit D.

A. Failure to Disclose Expenditures to the Law Firm

If the Horne campaign paid the Law Firm from campaign funds, then Arizona law unqualifiedly mandates disclosure of the expenditure. Every political committee must "file campaign finance reports . . . setting forth the committee's receipts and disbursements" during the period from November 27, 2012 through December 31, 2013. See Ariz. Rev. Stat. § 16-913(C). The report must contain "an itemized list of all disbursements," *id.* § 16-915(A)(4), and must identify the name and address of each recipient of an expenditure, *id.* § 16-915(5). Any payments by the Horne Campaign to the Law Firm plainly were reportable disbursements, and the failure to disclose them would be a violation of Sections 16-913, -915, -941(C)(2).

B. Uncompensated Services by the Law Firm

If the Law Firm furnished legal services without remuneration, then the Horne Campaign has accepted an illegal contribution from a corporation. Section 16-919(A) provides that "it is unlawful for a candidate or a candidate's campaign committee to accept any contribution of money or anything of value from a corporation or a limited liability company for the purpose of influencing an election." As an initial matter, legal services plainly constitute "a thing of value." Furthermore, the term "contribution" includes "the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods and services." *Id.* § 16-901(5)(a)(iv). Thus, as a professional corporation, the Law Firm was prohibited under Sections 16-919 and -941(C)(2) from making *any* contributions to the Horne Campaign, whether in the form of direct monetary donations or the rendering of services without compensation at the "usual and normal charge."

C. Payments to the Law Firm by a Third Party

To the extent the Law Firm was compensated by a third party for its services to the Horne Campaign, such payments constitute a reportable contribution and are likely subject to the applicable statutory limit. Arizona's expansive definition of "contribution" encompasses "any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election," including in-kind contributions. See *id.* § 16-901(5)(a)(iv). The Law Firm's activities were clearly aimed at influencing Horne's reelection; indeed, the demand letter to Cox Media expressly identified the Law Firm's client as the "Republican Attorney General who is up for reelection" and made clear that it was written in defense of Horne's reelection bid. In that same letter, the Law Firm also expressly stated that it considered the AZPIA's advertisement "political activity." For these reasons, to the extent the Horne Campaign obtained the benefit of the Law Firm's services while being relieved by a third party of the legal bills, it accepted a reportable contribution under Arizona law.

In addition, the fees generated by the Law Firm for its legal services to the Horne Campaign, at the "usual and normal charge," almost certainly exceeded the individual contribution limit of \$2,000. See Ariz. Rev. Stat. §§ 16-905(B)(1), -919(E), -941(B). Thus, a third party's payment for the Law Firm's services, or the donation of legal services by the Law Firm, would represent an illegal contribution subjecting the Horne Campaign to civil penalties. See *id.* §§ 16-905(J), -941(C)(2), -942.

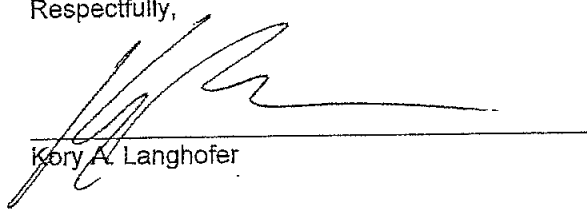
III. Conclusion

In sum, there is reasonable cause to believe the Horne Campaign has violated one or more provisions of Titles 16 of the Arizona Revised Statutes. Thus, referral of this matter to the Arizona Solicitor General's office, and investigation and enforcement by the Clean Elections Commission, are required pursuant to Sections 16-924(A), -941(C)(2), -942, -956(A)(7), -956(B), and -957 of the Arizona Revised Statutes.


If the AZPIA or its officers can provide any additional information regarding this matter, please do not hesitate to contact me.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully,


Kory A. Langhofer

SUBSCRIBED AND SWORN to before me on April 2, 2014 by Kory A. Langhofer.


Notary Public

11/19/2014
My commission expires



Sara Larsen

From: Thomas Collins
Sent: Wednesday, April 02, 2014 12:26 PM
To: Daniel Ruiz; Sara Larsen
Subject: FW: Campaign Finance Complaint
Attachments: Complaint re Contribution of Legal Services to Horne Campaign (11140988-1).PDF

From: Langhofer, Kory A. [<mailto:KLanghofer@BHFS.com>]
Sent: Wednesday, April 02, 2014 12:07 PM
To: 'Estes-Werther, Christina'; Thomas Collins
Cc: Basile, Thomas J.; Bales, Chase A.
Subject: Campaign Finance Complaint

Ms. Estes-Werther and Mr. Collins:

I have attached for your review a complaint alleging campaign finance violations by Tom Horne's reelection campaign. Please do not hesitate to call or write if I can answer any questions or provide additional information.

Respectfully,
Kory A. Langhofer

Kory A. Langhofer
Brownstein Hyatt Farber Schreck, LLP
One East Washington Street, Floor 24
Phoenix, Arizona 85004
Desk: (602) 382-4078
Cell: (602) 571-4275
Fax: (602) 382-4020
klanghofer@bhfs.com

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EXHIBIT B

April 11, 2014

Sarah A. Larson
Campaign Finance Manager
Citizens Clean Elections Commission
1616 W. Adams, #110
Phoenix, AZ 85007

Dear Ms. Larsen,

This is in response to your letter dated April 9, 2014.

Attached as Appendix 1 is a copy of a decision by the Secretary of State dismissing an identical action filed with the Secretary of State. It is our position that the Clean Elections Commission has no jurisdiction over this complaint, as there are no Clean Elections candidates in either party for this office. Independent of that, it is certainly good policy to discourage forum shopping in which a complainant is denied by one agency and then seeks legally inconsistent results from another agency. In addition, the reasoning in the Secretary of State's Opinion is persuasive, and the case should be disposed of on that basis.

The facts in this case are as follows:

The complainants in this case engaged in a \$100,000 "Dark Money" campaign against Tom Horne. Complainants refused to register as an independent campaign, and refused to disclose contributors as required by law. The campaign consisted of vicious personal attacks on Tom Horne on television and mailed to voters who (according to complainants themselves) "participated in at least 4 of 8 recent elections, at least 2 voters in household." Nevertheless, complainants alleged that they need not register or disclose because these were not intended to influence an election, but solely to educate the public, even though the mailing was limited to high efficacy voters. As an example of the evidence that this was not so, is the involvement of Kirk Adams, who was fined \$1million by the state of California, for "Dark Money" violations. Examples of evidence of his involvement with AZPIA are included in Appendix 2, which are complaints filed with the Secretary of State's Office against AZPIA for failure to register or disclose. As an example, two candidates, Tom Horne's opponent and Don Shooter's opponent, both hired Adams as their general consultant. Those are the only two candidates attacked by AZPIA. This cannot be a coincidence.

14 APR 11 PM 4 52 CCEC

Among the statements in the attacks launched by complainants, without disclosing their contributors, was that Tom Horne was "now" under investigation by the FBI. In September 12, 2012, more than a year before these ads ran, the FBI agent in charge made it clear in a press conference that the investigation was completed, and there were no criminal findings. After the ads began running, the FBI took the unusual step of announcing it had no current investigation against Tom Horne. In an eventual statement as part of a settlement, AZPIA admitted its charge was not accurate.

Tom Horne and his wife retained the Slaton Law Office to bring a libel action against AZPIA for personal damages. That action was filed, and is an Exhibit to the complaint. As is clear from reading the complaint, the action was brought purely on behalf of Thomas and Martha Horne, in their personal capacities and not in any official capacity, and not on behalf of any campaign.

Appendix 3 is a copy of a contingency fee agreement entered into between Thomas and Martha Horne and Slaton Law Office, with Thomas and Martha Horne (and no one else) to be liable for costs. Appendix 4 is a billing from the Slaton Office to Tom Horne for costs. Appendix 5 is a copy of a check for \$477.80 from Tom Horne to the Slaton Office to pay the billing. No money was paid by any campaign, and nor was reimbursement sought from the campaign to Tom Horne personally. The representation was of Thomas and Martha Horne personally, and not of any campaign or anyone else.

The letters to Cox and the Secretary of State were part of the libel action. The reference to Horne's position in the letters was for identification only, and the Slaton Office represented only Horne personally, not in his official capacity, and not on behalf of any campaign. They involved an insignificant amount of time as part of the overall litigation, and were part of the services anticipated under the contingency fee agreement.

There were no legal services donated, and there was no involvement by the campaign. Accordingly, the questions in your letter are moot. If you do feel there are any questions that are still relevant, please let me know and I will attempt to address them.

It is respectfully requested that the complaint be dismissed.

Tom Horne

Tom Horne

State of Arizona)
) ss:
County of Maricopa)

Signed before me on this 11th day of April, 2014, by Tom Horne.

My Commission Expires:

Patricia J. Carll
Notary Public

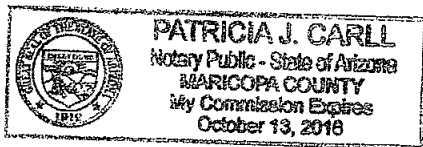


EXHIBIT C

Slaton & Sannes, P.C.

Ted E. Sannes
Jandra Slaton

Scottsdale Spectrum
6730 N. Scottsdale Road, Ste. 233
Scottsdale, Arizona 85253

Tel: 480/483-2178
Fax: 480/367-0691
www.sslawaz.com
slaton@sslawaz.com
sannes@sslawaz.com

FAX COVER SHEET

To: Ms. Fran Wallace
Cox Media Vice President
Attn: Audrey Mendez

From: Sandra Slaton, Esq.

Date: 11-08-2013

Fax: 623-328-1935

Re: Case/ Case No.: Tom Horne, Attorney General

No. of Pages: 3 (includes cover page)

Document(s): 11-08-2013 letter

Comments: Please contact us if you have any questions concerning the above matter.

Cc:

Note: The information contained in this fax is attorney privileged and confidential. If The reader of this message is not the intended recipient, any dissemination, Distribution, or copying of this communication is prohibited. If this Communication has been received in error, please immediately notify us by Telephone, and return the original message to us at the address listed above via The United States Mail. Thank you.

Paul E. Sannes
Sandra Slaton

Slaton & Sannes, P.C.

Scottsdale Spectrum
6730 N. Scottsdale Road, Ste. 233
Scottsdale, Arizona 85253

Tel. 480/483-2178
Fax. 480/367-0691
www.sslawaz.com
sannes@sslawaz.com
slaton@sslawaz.com

November 8, 2013

VIA FACSIMILE - 623-328-1935

Ms. Fran Mallace
Cox Media Vice President
Attn: Audrey Mendez
4600 E. Washington Street
Phoenix, AZ 85034

Dear Ms. Mallace:

This office represents Tom Horne, Republican Attorney General who is up for reelection. The purpose of this letter is to demand immediate cessation of ads against him that are blatant violations of at least two Arizona statutes pertaining to independent expenditures.

The ads are by the Arizona Public Integrity Alliance. Any reasonable interpretation of this ad is that its real purpose is to call for Tom Horne's defeat by accusing him falsely, of being currently under investigation by the FBI (there was an investigation that terminated over a year ago with no criminal charges) and of having been found to have violated campaign finance laws (he was accused of a civil violation but there has been no hearing and no judgment). They are "sham" issue ads that are intended to defeat his reelection. These ads are false and defamatory and any airing of such ads would constitute malicious conduct.

They are false, and in addition violate, at least, the following two statutes:

1. A.R.S. Section 16-902.01, requiring the filing of committees engaged in independent campaigns with the Secretary of State's Office. This organization has not filed anything.
2. A.R.S. Section 16-912B requiring the disclosure of the top three contributors. There is no such disclosure.

We demand that these ads be halted IMMEDIATELY as every single ad that appears in violation of law does substantial damage to my client.

In short, the Committee for Justice and Fairness ads are false and blatantly violate Arizona's registration and disclosure requirements. Your continuation of these ads makes your station complicit in this illegal advertising. You are hereby advised that the failure to immediately stop these ads will constitute "broadcasting in furtherance of illegal activity" and may subject you to an FCC complaint and other legal sanctions.

Slaton & Sannes, P.C.

November 8, 2013

Page 2

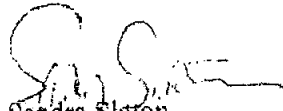
Ms. Fran Mallace

You are hereby advised that the failure to immediately stop these ads will constitute "broadcasting in furtherance of illegal activity" and may subject you to an FCC complaint and other legal sanctions.

Thank you very much.

Sincerely,

SLATON & SANNES, P.C.



Sandra Slaton

Joel E. Sannes

SS:bt

cc: Arizona Attorney General, Tom Horne
Arizona Secretary of State

EXHIBIT D

Slaton & Sannes, P.C.

Joel E. Sannes
Sandra Slaton

Scottsdale Spectrum
6730 N. Scottsdale Road, Suite 233
Scottsdale, Az. 85253

Tel. 480/483-2178
Fax. 480-/367-0691
www.slatonlawoffice.com
Sannes@sslawaz.com
slaton@sslawaz.com

November 8, 2013

The Honorable Ken Bennett
Arizona Secretary of State
Arizona Department of State
1700 W. Washington St., 7th Floor
Phoenix, AZ 85007

Re: Tom Horne's Complaint against Arizona Public Integrity Alliance

Dear Secretary of State Bennett:

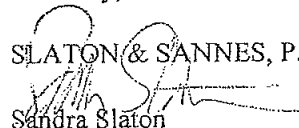
This office represents Tom Horne, Republican Attorney General who is up for reelection. Please find enclosed a copy of our letter on Mr. Horne's behalf to Ms. Fran Mallace, Cox Media Vice President concerning ads which ran on Cox by Arizona Public Integrity Alliance. The entirety of the enclosed letter is incorporated as if the same were set forth herein.

Please consider this letter, including the incorporation of the enclosed one, Tom Horne's complaint against Arizona Public Integrity Alliance for the same reasons expressed in the enclosure. So that you understand the Ad in question and are able to view it for yourself, for your convenience the link is:
<https://www.youtube.com/user/azpia2012>.

On behalf of Mr. Horne, please advise us of any further questions you may have in this regard.

Sincerely,

SLATON & SANNES, P.C.


Sandra Slaton
Joel E. Sannes

SS:bt

Enclosure

cc: Tom Horne

Arizona Secretary of State

RECEIVED
SECRETARY OF STATE
2013 NOV 12 PM 4:21

Joel E. Sannes
Sandra Slaton

Slaton & Sannes, P.C.
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Fax. 480/367-0691
www.sslawaz.com
sannes@sslawaz.com
slaton@sslawaz.com

November 8, 2013

VIA FACSIMILE - 623-328-1935

Ms. Fran Mallace
Cox Media Vice President
Attn: Audrey Mendez
4600 E. Washington Street
Phoenix, AZ 85034

Dear Ms. Mallace:

This office represents Tom Horne, Republican Attorney General who is up for reelection. The purpose of this letter is to demand immediate cessation of ads against him that are blatant violations of at least two Arizona statutes pertaining to independent expenditures.

The ads are by the Arizona Public Integrity Alliance. Any reasonable interpretation of this ad is that its real purpose is to call for Tom Horne's defeat by accusing him falsely, of being currently under investigation by the FBI (there was an investigation that terminated over a year ago with no criminal charges) and of having been found to have violated campaign finance laws (he was accused of a civil violation but there has been no hearing and no judgment). They are "sham" issue ads that are intended to defeat his reelection. These ads are false and defamatory and any airing of such ads would constitute malicious conduct.

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Slaton & Sannes, P.C.

November 8, 2013

Page 2

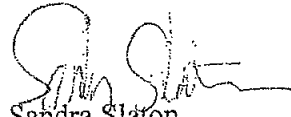
Ms. Fran Mallace

You are hereby advised that the failure to immediately stop these ads will constitute "broadcasting in furtherance of illegal activity" and may subject you to an FCC complaint and other legal sanctions.

Thank you very much.

Sincerely,

SLATON & SANNES, P.C.

A handwritten signature in dark ink, appearing to read "Sandra Slaton", with a stylized flourish extending to the right.

Sandra Slaton
Joel E. Sannes

SS:bt

cc: Arizona Attorney General, Tom Horne
Arizona Secretary of State

EXHIBIT E

Slaton & Sannes, P.C.

Paul E. Sannes
Sandra Slaton

Scottsdale Spectrum
6730 N. Scottsdale Road, Ste. 233
Scottsdale, Arizona 85253

Tel: 480/483-2178
Fax: 480/367-0691
www.sslawaz.com
sslaton@sslawaz.com
sannes@sslawaz.com

FAX COVER SHEET

To: Fran Mallace
Cox Media Vice President

From: Sandra L. Slaton, Esq.

Date: 11-13-13

Fax: 623-328-1935

Re: Case/ Case No.: Tom Horne

No. of Pages: 4 (includes cover page)

Document(s): 11-13-13 letter in response to letter of
Kory A. Langhofer, Esq.

Comments: Please contact us if you have any questions concerning the above
matter.

Cc:

Note: The information contained in this fax is attorney privileged and confidential. If The reader of this message is not the intended recipient, any dissemination, Distribution, or copying of this communication is prohibited. If this Communication has been received in error, please immediately notify us by Telephone, and return the original message to us at the address listed above via The United States Mail. Thank you.

Joel E. Sannes
Sandra Slaton

Slaton & Sannes, P.C.

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Fax. 480/367-0691
www.sslawaz.com
sannes@sslawaz.com
slaton@sslawaz.com

November 13, 2013

VIA FACSIMILE – 623-328-1935 & U. S. MAIL

Fran Mallace
Cox Media Vice President
Attn: Audrey Mendez
4600 E. Washington Street
Phoenix, AZ 85034

Dear Ms. Mallace:

This is in response to the letter that you received from Kory A. Langhofer.

1. Illegal Activity

Mr. Langhofer's contention that his ad "in no way advocates for Horne's reelection or defeat" is disingenuous. The timing itself of this ad belies the legitimacy of such a position. By any objective observation, the election cycle for the office of the Arizona Attorney General¹ has clearly begun. Moreover, the ad falls under the legal category of a "sham" issue ad. A New Times Article dated November 9, 2013, quotes "ASPIA Insider" stating that:

"This same source indicated that, according to polling he'd seen, Horne's support drops significantly once people are informed of his negatives."

Running this political ad without proper disclosure is illegal. The failure to immediately stop these ads would be "broadcasting in furtherance of illegal activity" and may subject Cox Cable to an FCC complaint and other legal sanctions.

2. Defamation

Here are the facts:

In September 2012, Maricopa County Montgomery and the agent in charge of the Phoenix office of the FBI held a joint press conference. The agent in charge of the Phoenix office of the FBI made it clear at that press conference that his investigation was completed, and

¹ As already clarified in a prior letter to your office, this firm represents Tom Horne in his individual capacity only and not in his capacity as Arizona Attorney General.

Fran Mallace
Page 2 of 3
November 13, 2013

it was up to the County Attorney, having presented with all the facts "from A to Z", to make the determination of whether or not to prosecute. Here is what the agent in charge stated:

"The FBI is an investigative agency, so we take the allegation, we investigate it from A to Z, all the facts, all the information, we present that to the prosecuting authority and then they make the decision as far as prosecution...Every single case that we investigate, when it has reached its conclusion and we have exhausted all issues and all levels; we coordinate with the prosecuting authority as the investigation goes along. When it is completed, it is presented to the prosecuting authority for their opinion as to whether or not they are going to go forward. That happens in every case" (Emphasis added).

Having been presented with the completed FBI investigation, Montgomery announced that there would be no criminal charges made. Only a civil action would proceed.

The entire record of the FBI investigation was then made public, including transcripts of all interviews, and copies of the FBI's internal memorandum. The FBI does not make all of its records public if it is going to continue with an investigation.

The ad says that "now" Horne is under investigation by the FBI. There is a universe of difference between an investigation that concluded over a year ago, that resulted in no criminal actions, and the unknown possibilities that could result in the future if a public official is currently under FBI investigation. People are highly unlikely to vote for an official who is currently under FBI investigation, with the surrounding mystery that criminal charges might be made in the future.

Langhofer's letter states that Horne was "recently" under FBI investigation. It was not "recently". It was over a year earlier, and there was a stated conclusion that there would not be any criminal charges made. The difference is "material".

Someone making an extremely serious charge that a public official is "now" under FBI investigation should have some basis for making that charge. Langhofer had no basis. The FBI's "no comment" is universal and is not evidence of anything. He seems to be saying that he has the freedom to make it up out of whole cloth, and the burden is on the target to prove a negative. That is incorrect. Reckless disregard of whether the facts are true or not constitutes "New York Times Malice" under the New York Times case. In addition, based on the facts set forth above, everyone who followed these events knew that (1) the FBI investigation had concluded at the time that the FBI announced that it has investigated the facts "from A to Z"; (2) that at that point they were presented to "the prosecuting authority and then they make the decision as far as prosecution"; (3) that when the investigation "has reached its conclusion" it is presented to the prosecuting authority to determine what to do; (4) that "when it is completed" it is presented to the prosecuting authority for decision; (5), Montgomery's decision to bring no criminal action; (6) that all of the FBI records of transcripts of interviews and internal memoranda were made public. In other words, everyone who followed these events knew that the investigation had concluded. The people who presented this ad fabricated an allegation that they knew to be false, which is an alternative way to prove malice.

Fran Mallace
Page 3 of 3
November 13, 2013

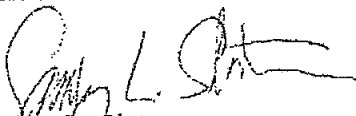
If you continue to run ads that you have reason to believe are defamatory, you can be liable for the defamation.

It is therefore respectfully requested that the ad not proceed further, in order that Cox Cable not experience any consequences of this defamation.

Thank you very much.

Sincerely,

SLATON & SANNES, P.C.



Sandra L. Slaton

SS:daa

cc: Tom Horne

EXHIBIT F

COPY

COPY

NOV 15 2013



MICHAEL K. JEANES, CLERK
V. VASQUEZ
DEPUTY CLERK

Sandra L. Slaton, 006454
Joel E. Sannes, 015999
SLATON & SANNES, P.C.
6730 North Scottsdale Road, Suite 233
Scottsdale, AZ 85253
Tel: (480) 483-2178
Fax: (480) 367-0691
slaton@sslawaz.com
sannes@sslawaz.com

Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THOMAS C. HORNE and MARTHA
HORNE, Arizona residents, husband and
wife,

Plaintiffs,

Vs.

ARIZONA PUBLIC INTEGRITY
ALLIANCE, INC., an Arizona corporation;
ARIZONA PUBLIC INTEGRITY
ALLIANCE MANAGEMENT COMPANY,
INC., an Arizona corporation; STEVE COX
and SPOUSE, PACE ELLSWORTH and
SPOUSE, TREVOR DENTON and SPOUSE,
Arizona residents; John/Jane Does 1-10, XYZ
CORPORATIONS 1-10,

Defendants.

CV 2013 CV 2013-055021

COMPLAINT

Tort, Non-Motor Vehicle -- Defamation

Plaintiffs Thomas C. Horne and Martha Horne, for their complaint against
Defendants, hereby alleges as follows:

PARTIES

1. Plaintiffs are husband and wife and are residents of Maricopa, County, Arizona. This action is brought in Plaintiff Horne's personal capacity only and not in any official capacity.

2. Defendant Arizona Public Integrity Alliance, Inc. is an Arizona Corporation that is in good standing and that identifies itself as a non-profit corporation eligible for tax exempt status pursuant to section 501(c)(4) of the Internal Revenue Code of 1986.

3. Defendant Arizona Public Integrity Alliance Management Company, Inc. was an Arizona corporation, but its status is "not in good standing" for failure to file an annual report.

4. Defendants Arizona Public Integrity Alliance, Inc. and Arizona Public Integrity Alliance Management Company, Inc. may do business under trade names such as ARIZONA PUBLIC INTEGRITY ALLIANCE TRUST COMPANY, INC or ARIZONA PUBLIC INTEGRITY ALLIANCE CHARITABLE TRUST. Plaintiffs will move to substitute or to amend the complaint in the event it is discovered that any entity or individual should be substituted or added as a proper party defendant. With respect to Arizona Public Integrity Alliance, Inc., the federal election commission sent a notice dated June 10 2013, that the Alliance report was not in compliance for failure to disclose contributors.

6. Additional defendants may be liable to plaintiff. These defendants are referred to as John/Jane Does 1-10 and XYZ Corporations 1-10 in the above caption. Without limiting the generality of the foregoing, on information and belief, one or more individuals may actually be the decision-makers and sources of funding for the publication of the intentionally false, defamatory statements alleged herein, and they will be named as defendants as discovery reveals their identity and their activities.

7. This court has subject matter jurisdiction over this action pursuant to Article 6, Section 14, of the Arizona Constitution.

8. Venue in this county is proper pursuant to A.R.S. Section 12-401 because the defendants reside in Maricopa County, and the acts complained of occurred in Maricopa County.

9. From November 7, 2013 forward, on multiple occasions and dates, Defendants intentionally published or caused to be published a defamatory statement that “now Tom Horne is under an FBI Investigation.” These publications included

1 occurrences on television through Cox Communications, on a website and on the Arizona
2 Public Integrity Alliance Facebook page.

3 10. Following Plaintiffs' written communication notifying them of the falsity
4 of the statement, Defendants changed the publication on the website and, on information
5 and belief, the television publications, to say that Mr. Horne "was under an FBI
6 Investigation." The false publication on the Arizona Public Integrity Alliance Facebook
7 page continues as of this date (November 15, 2013) to say that Mr. Horne "is" presently
8 under an FBI investigation.

9
10 11. Mr. Horne is the Attorney General for the State of Arizona. Prior to
11 September, 2012, there was an FBI investigation of Horne which terminated at that time
12 with a decision that there were no criminal charges to pursue.

13 12. In September 2012, the Maricopa County Attorney and the FBI agent in
14 charge of the Phoenix office of the FBI held a joint press conference. The agent in
15 charge of the Phoenix office of the FBI made it clear at that press conference that his
16 investigation was completed, and it was up to the County Attorney, having presented
17 with all the facts "from A to Z", to make the determination of whether or not to prosecute.
18 Here is what the agent in charge stated:

19 The FBI is an investigative agency, so we take the allegation, we investigate it
20 from A to Z, all the facts, all the information, we present that to the prosecuting
21 authority and then they make the decision as far as prosecution...Every single case
22 that we investigate, when it has reached its conclusion and we have exhausted all
23 issues and all levels; we coordinate with the prosecuting authority as the
24 investigation goes along. When it is completed, it is presented to the prosecuting
authority for their opinion as to whether or not they are going to go forward. That
happens in every case.

1 13. Having been presented with the completed FBI investigation, the Maricopa
2 County Attorney announced that there would be no criminal charges made. Only a civil
3 action would proceed.

4 14. The record of the FBI investigation was made public, including transcripts
5 of all interviews, and copies of the FBI's internal memorandum. The FBI does not make
6 all of its records public if it is going to continue with an investigation.

7 15. As of September 2012, the FBI investigation was completed. No violation
8 of federal law was alleged against Horne, nor were there any allegations of violation of
9 any law that would subject Mr. Horne to criminal sanctions. Mr. Horne is contesting the
10 civil penalties through appropriate channels as he has a right to do under Arizona law and
11 according to due process.

12 16. Published on November 7, 2013, and for some period thereafter, the
13 statement that "now Tom Horne is under an FBI investigation" was and is false.

14 17. In interviews published in writing, Defendants repeated the false statement.

15 18. When they published the statement that "now Tom Horne is under an FBI
16 investigation," defendants knew that any FBI investigation (whatever its merit was, if any)
17 had ended more than a year earlier with no criminal conduct alleged. Defendants knew
18 the statement was false when they published it. At the very least, Defendants acted with
19 reckless disregard of whether the statement was true or false when published.

20 19. Defendants intended that the false statement would be accepted as true by
21 recipients of the publication. They made the false statements intentionally to deceive the
22 public as part of a strategy to illegitimately undermine Mr. Horne's public standing
23
24

1 before the 2014 election where Mr. Horne will be campaigning to be re-elected as the
2 Arizona Attorney General.

3 20. Defendants' actions of intentionally publishing statements known to be
4 false about a public official whose re-election depends on public standing are outside the
5 boundaries of acceptable conduct in a civilized society. Defendants had an evil intention
6 to do harm to Mr. Horne so as to justify an award of punitive damages.

7 21. Mr. Horne has suffered damage to his reputation as a result of Defendants'
8 intentionally false, defamatory publications. To the extent of economic damage, this has
9 also damaged the marital community. The damages are in an amount that should be
10 determined by a jury at trial.

11 22. Plaintiffs are entitled to recover costs in this matter pursuant to A.R.S. 12-
12 341.

13 23. Plaintiffs request a jury trial.

14 **THEREFORE**, having pleaded their claims, Plaintiffs request a judgment as
15 follows:
16

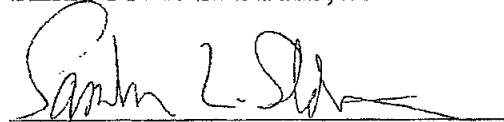
- 17 a. For declaratory relief that at the time of the publications alleged herein, the
18 statement "now, Tom Horne is under an FBI investigation" was and is false;
19 b. For compensatory damages for Mr. Horne and the Horne marital community
20 against each named defendant and each defendant who may later be named, as
21 determined by a jury;
22 c. For punitive damages for Mr. Horne and the Horne marital community against
23 each named defendant and each defendant who may later be named, in an
24

1 amount sufficient to discourage similar conduct by defendants and others
2 similarly situated in the future and as determined by a jury.

3 d. For plaintiffs' taxable costs, and for such other and further relief as this Court
4 deems just and proper.

5 **RESPECTFULLY SUBMITTED** this 15th day of November, 2013.

6
7 **SLATON & SANNES, P.C.**

8 

9 Sandra L. Slaton

10 Joel E. Sannes

11 Attorneys for Plaintiffs
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EXHIBIT G

Joel E. Sannes
Sandra Slaton

Slaton & Sannes, P.C.

Scottsdale Spectrum
6730 N. Scottsdale Road, Ste. 233
Scottsdale, Arizona 85253

Tel. 480/483-2178
Fax. 480/367-0691
www.sslawaz.com
sannes@sslawaz.com
slaton@sslawaz.com

November 15, 2013

Mr. & Mrs. Thomas C. Horne
2824 E. Mission Lane
Phoenix, AZ 85028

Re: Legal Representation Agreement
Thomas C. Horne and Martha Horne vs. Arizona Public Integrity Alliance, Inc., an Arizona Corporation; Arizona Public Integrity Alliance Management Company, Inc., an Arizona Corporation; Steve Cox and Spouse; Pace Ellsworth and Spouse; Trevor Denton and Spouse, Arizona Residents; John/Jane Does 1-10, XYZ Corporations 1-10

Dear Tom and Marty:

Thank you for choosing Slaton & Sannes, P.C. for your legal services. It is our pleasure to represent you in this matter. The purpose of this letter is to outline the scope of our representation of you as well as other terms of our relationship. You (hereinafter referred to as "Client") have retained Slaton & Sannes, P.C. to investigate, advise regarding, file, and litigate plaintiff's claims for defamation. The possible defendants are the Arizona Public Integrity Alliance, Inc., the Arizona Public Integrity Alliance Charitable Trust (a trade name), and the Arizona Public Integrity Alliance Management Company, Inc. Personal defendants may include Steve Cox, Pace Ellsworth and Trevor Denton. We may also include attorney Kory A. Langhofer and the law firm Brownstein, Hyatt Farber Schreck. Additional discovery may reveal others who may be named as defendants.

The focus of the lawsuit is a video publication on the Youtube internet video channel, Cox cable, Facebook and a website, unethicalhorne.com. We have determined that the APIA and/or its attorney and officers caused to be published a video indicating you as the Attorney General of the State of Arizona are "now . . . under FBI investigation."

If we file a civil lawsuit based on this statement, we will need to prove its falsity. This is a requirement of federal constitutional defamation law, as interpreted by the

Appendix 3

Arizona Supreme Court. We will also need to prove that any person accused of causing or contributing to publication of the statement knew it was false or acted with reckless disregard for whether the statement was true or false.

Discovery in this case may be wide-ranging on both sides. You understand that we cannot predict with certainty the scope of discovery, although we will attempt to limit our discovery and the defendants' discovery to relevant evidence or to discovery that is reasonably calculated to lead to the discovery of admissible, relevant evidence.

Represented Parties. Slaton & Sannes, P.C. has agreed to represent Client in this matter. For purposes of this representation, Client has the authority to engage Slaton & Sannes, P.C. and to perform the Matter, and we can rely on Client's instructions to us.

Staffing. Sandra Slaton will have primary responsibility for the Matter for Slaton & Sannes, PLC. Sandra also will make staffing decisions, with the objective of rendering services on an efficient and cost-effective basis.

Commencement. Our representation is effective as of the date we first begin providing services to Client. We will undertake your representation and will work with you to achieve the desired objectives by using our best judgment and skill in representing Client. Nevertheless, you understand that we cannot and have not made any guarantee regarding the outcome of the Matter.

This firm's representation of Client will terminate upon the conclusion of the Matter and our sending our final joint statement for services rendered. It is understood that changes may occur in laws or regulations that are applicable to Client and that could have an impact upon its future rights and liabilities. Unless Client continues to engage us to provide additional advice, Slaton & Sannes will have no continuing obligation to advise Client with respect to future legal developments. Specifically, upon settlement or at judgment, our representation will cease unless further agreement is reached for post-judgment motions, appeals and/or collection.

Fees. Client has retained Slaton & Sannes, P.C. on a contingent-fee basis and agreed to pay and assign to Slaton & Sannes, P.C. thirty-three percent (33%) of the gross amount recovered by settlement or judgment in this matter. As with any fee charged by an attorney, the contingency fee is subject to a requirement of reasonableness under the Arizona Supreme Court's rules.

Except as provided in the next paragraph, attorneys' fees will be payable only out of amounts recovered on the Client's behalf. If no recovery is obtained, no fees will be payable to Slaton & Sannes, P.C. Client will, however, remain liable for all costs outlined below, regardless of any recovery.

Costs. In addition to our contingency fees, Client will be responsible for all out-of-pocket disbursements that are incurred on Client's behalf. Typical of such costs are filing fees, court reporter and transcript fees, travel expenses, long-distance telephone

calls, Federal Express, courier services, delivery charges, photocopying at \$0.10 per page, and online database retrieval charges that fall outside Slaton & Sannes, P.C.'s annual subscription agreement (Lexis, Westlaw, etc.). We anticipate making advances to cover out-of-pocket costs incurred but reserve the right to forward to Client unsubstantial expenses with the request that Client pay them directly to the service providers.

It may also become necessary to hire third parties to assist Slaton & Sannes, P.C. in this Matter. Client authorizes Slaton & Sannes, P.C. to retain and agrees to pay the fees or charges of these individuals or entities hired to perform necessary services related to this Matter. Such other persons and entities may include, but are not limited to court reporters, investigators, expert witnesses, expert consultants, and other attorneys hired. Client authorizes Slaton & Sannes in its discretion, to direct these individuals or entities to render statements for services either directly to Client or to Slaton & Sannes, PLC, in which latter event Client agrees to promptly pay to Slaton & Sannes, PLC, as the case may be, the full amount of such statements. Slaton & Sannes may elect to advance the payment of costs in its discretion, in which case Slaton & Sannes may reimburse itself for costs advanced from the recovery of any settlement or judgment amount.

Settlement. Any settlement offers that we receive from opposing parties will be conveyed to you. While we will advise you on the settlement offer, it will be Client's decision whether or not to accept the settlement. Slaton & Sannes, P.C. will not enter into any settlement without Client's consent.

Retainer. No retainer is required at this time.

Fee Shifting. The Matter for which Client has retained Slaton & Sannes is not likely one in which attorneys' fees may be recovered by the prevailing party from the losing party. Although if you prevail, we may press a claim asking the Court to award you your fees incurred in this matter, please also understand that, if you lose, the other party may attempt to shift their fees and costs to you. Moreover, the provisions under which a Court may shift fees generally leave that decision to the discretion of the Court to decide whether, and in what amount, to award fees.

Client's Responsibilities. Recognizing that Slaton & Sannes, P.C. cannot effectively represent Client without its cooperation and assistance, Client agrees to cooperate fully with Slaton & Sannes, P.C. and to provide promptly all information known or available to Client relevant to Slaton & Sannes's representation, including providing information and documents requested in a timely fashion; assisting in discovery, disclosure and trial preparation; cooperating in scheduling and related matters; responding to telephone calls and correspondence in a timely manner; and informing Slaton & Sannes, P.C. of changes in Client's address and telephone numbers.

Termination. Slaton & Sannes, P.C. may waive their rights to fees and withdraw as counsel for Client at any time upon giving reasonable notice. In the event this agreement is terminated by Slaton & Sannes before settlement or ultimate recovery, no fees shall be payable, but Client shall remain responsible for payment of all costs advanced on her behalf.

Client may also terminate this agreement at any time before settlement or ultimate recovery upon giving reasonable written notice for any reason whatsoever. In the event of such termination, you will remain responsible for all costs incurred in the course of the firms' representation and in the winding up of such representation, which may include the expenses of preparing a letter or memorandum confirming the termination and the status of the matter and photocopying of the file for purposes of transfer. Arrangements for the payment of all such expenses must be made prior to any file transfer. In the event this agreement is terminated by Client before settlement or ultimate recovery, Client agrees to pay Slaton & Sannes, P.C. its fees at the hourly rates customarily charged by it for all time reasonably spent on Client's behalf, plus any costs advanced. Also, if you terminate our engagement for reasons other than our actual material breach of this agreement or of our published ethical duties as determined by the State Bar of Arizona, we will still be entitled to our full share of any recovery.

Document Retention. During the course of our representation, Client may have occasion to provide us with documents and other materials from your files. At the end of our engagement, we will return the documents and materials to you in care of your personal residence, or retain them as you direct. If we receive no such direction from you, and the documents and materials are not returned to Client, we would like your agreement that the documents may be destroyed at such time as the file itself is destroyed in accordance with our document retention policy. Currently, it is our policy to destroy files after they have been closed for seven (7) years. We will deem Client's acknowledgement of our engagement as your express consent to the handling of Client's documents in this respect.


Dispute Resolution. If a dispute arises between Slaton & Sannes, P.C. and Client regarding attorneys' fees or the services provided in this engagement, the parties agree to resolve that dispute through mediation followed by arbitration (if necessary) under the Commercial Arbitration Rules of the Phoenix, Arizona office of the American Arbitration Association ("AAA") or any comparable organization agreed upon by the parties ("Arbitration Entity"). Any disputes subject to mediation and/or arbitration will be heard and decided by a single independent arbitrator appointed by the Arbitration Entity who has experience and qualifications appropriate to resolve the matter in dispute. The decision of the arbitrator will be final and binding on both parties, subject to appeal in a U.S. District Court or state court having jurisdiction only on the grounds specified in the Federal Arbitration Act, 9 U.S.C. §1 et seq. If the parties cannot agree upon an Arbitration Entity within ten (10) business days of written notice by either party invoking formal dispute resolution, the arbitration shall be done by AAA.

Page 5

No Advice Regarding This Fee Agreement. Slaton & Sannes, P.C. is not acting as Client's counsel in advising her with respect to this letter, as we would have a conflict of interest in doing so. If Client wishes to be advised by independent counsel on the question of whether it should be so represented, we recommend that you consult with independent counsel of your choice. In addition, if you have any questions or would like additional information, we would be happy to discuss this matter with you.

If the letter correctly states our understanding, please sign one original in the space provided and return it to me at your earliest convenience.

Best Regards,


Sandra Slaton
For the firm

THE TERMS OF THE ENGAGEMENT OF
SLATON & SANNES, P.C. AS STATED ABOVE
ARE ACCEPTED AND APPROVED BY:

Tom Horne
Thomas C. Horne

Date: 11/15/13

Marty Horne gh
Marty Horne

Date: 11/15/13

EXHIBIT H

Slaton & Sannes, P.C.

Sandra Slaton
Joel E. Sannes

Scottsdale Spectrum
6730 N Scottsdale Rd #233
Scottsdale, AZ 85253

Tel: 480/483-2178
Fax: 480/367-0691

www.sslawaz.com

Invoice submitted to:

Horne, Thomas & Martha
2824 E. Mission Lane
Phoenix, AZ 85028

December 06, 2013

Invoice No.: 1847

In Reference To: Arizona Center for Public Integrity, et al

REIMBURSABLE EXPENSES:

	<u>Amount</u>
<u>Costs Advanced</u>	
11/15/2013 Adm Filing Fee CK# 4302	319.00
Adm Liddy Legal Services - File Summons, Complaint and Certificate of Arbitration, advance fee	132.50
11/25/2013 Adm E-File & E-Serve Fee	12.00
Adm E-File & E-Serve Fee	12.00
11/30/2013 Adm Postage for November 2013	2.30
SUBTOTAL:	[477.80]
Total Reimbursable Expenses	<u>\$477.80</u>
 Balance due	 <u><u>\$477.80</u></u>

Thank you for allowing our firm to be of service!
Your prompt payment is appreciated.

Appendix 4

WELLS FARGO BANK

DEPOSIT TICKET

91-527/1221 2047
3310719681SLATON LAW OFFICE, P. C.
6730 N SCOTTSDALE ROAD STE 233
SCOTTSDALE, ARIZONA 85253
PH. 480-483-2178DATE DEC 24/13DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL
INCLUDE ADDING MACHINE TAPE LISTING.

	DOLLARS	CENTS
TOTAL CURRENCY		
TOTAL COIN		
TOTAL FOOD STAMPS		
LIST EACH CHECK		
<u>HORNE</u>	<u>477</u>	<u>80</u>
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TOTAL FROM OTHER SIDE OR ATTACHED LIST		
PLEASE RE-ENTER TOTAL HERE		<u>477.80</u>

WELLS
FARGOWells Fargo Bank, N.A.
Arizona
wellsfargo.com

FOR ACQUITTANCE DEPOSIT ONLY. USE A VOIDED CHECK

\$

TOTAL DEPOSIT

477.80

⑆503810399⑆ 3310719681⑆

TOM AND MARTHA HORNE 2824 E. MISSION LANE PHOENIX, AZ 85028		4287 91-8744/1221 8006
Pay to the Order of	<u>Clefon Law Office</u>	Date <u>12/23/13</u>
<u>four hundred seventy seven and 80/100</u>		\$ <u>477.80</u>
DOLLARS		
For	<u>Tony Leone</u>	MP
⑆122187445⑆ 287 ⑆8061004707⑆		

EXHIBIT I



KEN BENNETT
SECRETARY OF STATE
STATE OF ARIZONA



December 9, 2013

DEC 11 2013
DR

Sandra Slaton
Joel E. Sannes
Slaton & Sannes, P.C.
6730 N. Scottsdale Road, Suite 233
Scottsdale, Arizona 85253

RE: Campaign Finance Complaint Against Arizona Public Integrity Alliance

Dear Ms. Slaton and Mr. Sannes:

The Secretary of State's office has reviewed your campaign finance complaint against Arizona Public Integrity Alliance (AZPIA) alleging violations of A.R.S. § 16-902.01 (failure to register as a political committee) and A.R.S. § 16-912(B) (failure to disclose the top three contributors in its advertisements).

On November 21, 2013, we requested AZPIA's response, which was received on December 5, 2013, from Kory A. Langhofer. The response refuted the allegation that AZPIA is a political committee and provided a detailed explanation of the advertisements in question and included AZPIA's articles of incorporation as further evidence to support their response. There is no evidence that AZPIA is a political committee. Therefore, after careful review of the complaint and response, we find that AZPIA is not subject to registration and disclosure requirements pursuant to A.R.S. §§ 902.01, 16-912(B) and there is insufficient basis to find reasonable cause that AZPIA violated campaign finance laws.

If you have any questions, please contact Nancy Read, Campaign Finance Supervisor at (602) 364-1562 or by e-mail at nread@azsos.gov.

Sincerely,

Christina Estes-Werther

Christina Estes-Werther
State Election Director

Enclosure

✓cc: Kory A. Langhofer

1700 W. Washington Street, 7th Floor
Phoenix, Arizona 85007-2888
Telephone (602) 542-8683 Fax (602) 542-6172
www.azsos.gov

December 3, 2013

Kory A. Langhofer
Attorney at Law
602.382.4078 tel
602.382.4020 fax
klanghofer@bhfs.com

The Honorable Ken Bennett
Arizona Secretary of State
c/o Nancy Read
1700 West Washington Street, 7th Floor
Phoenix, Arizona 85007
nread@azsos.gov

RE: Tom Horne Campaign Finance Complaint

Dear Secretary Bennett:

I am writing on behalf of my client, the Arizona Public Integrity Alliance, Inc. (the "AZPIA"), to address the campaign finance complaint (the "Complaint") sent to you by counsel for Tom Horne ("Horne") on November 8, 2013.

The Complaint argues that in sponsoring certain advertisements critical of Horne (the "Advertisements"), the AZPIA committed two violations of Arizona's campaign finance laws. Because the arguments in the Complaint do not withstand scrutiny, we respectfully ask that you take no action on the Complaint.

The AZPIA Has Not Violated Section 16-902.01

In the Complaint, Horne claims that the AZPIA violated Section 16-902.01 of the Arizona Revised Statutes. Section 16-902.01 requires a "political committee" to register as such after making "expenditures" of more than \$500. Horne's argument can be distilled to the assertion that because the AZPIA has made significant expenditures concerning his conduct, the AZPIA was required to register as a political committee.

There are two essential flaws in Horne's position. First, the advertisement is not an expenditure within the meaning of Arizona's campaign finance laws. An "expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election in this state." See Ariz. Rev. Stat. § 16-901(8). Specifically excluded from the definition of expenditure is a "news story, commentary or editorial distributed through the facilities of any telecommunications system." *Id.* § 16-901(8)(a). Fairly viewed, the Advertisements are commentary on Horne's past conduct and the importance of Horne returning \$400,000 in campaign contributions, and in no way advocate for Horne's reelection or defeat. The Advertisements do not even mention Horne's candidacy or the election; instead, the Advertisements straightforwardly present information and encourage Arizona citizens to call Horne and request that he return \$400,000 in campaign contributions.

Moreover, the timing of the Advertisements confirms that they are not intended to influence the election. First, the Advertisements are being aired nearly a full year before the 2014 general election, which by any

One East Washington Street, Suite 2400
Phoenix, AZ 85004
main 602.382.4040

objective standard is far outside the bounds of the "election season" during which campaign finance regulations apply. *Cf.* 11 C.F.R. § 100.29(a) (imposing campaign finance regulations on publicly disseminated statements concerning candidates only if the statements are made immediately before an election); Ariz. Rev. Stat. § 16-901.01(A)(2)(b) (2010) (regulating statements concerning candidates if made immediately before an election), *repealed by* Ariz. Sess. Laws 2012, 50th Leg., 2d Reg. Sess., ch. 257, § 1. Second, the advertisement could not have aired any earlier. The most critical information in the advertisement was not revealed until October 17, 2013, when Yavapai County Attorney Sheila Polk issued her finding that Horne had committed campaign finance violations, and the advertisement was not broadcasted until twenty days after the county attorney's report was issued (*i.e.*, after the deadline for Horne's voluntarily compliance with the order). Third, Horne's dismissive attitude towards the county attorney's determination, which is precisely the type of conduct that the AZPIA endeavors to identify and confront, was not revealed until shortly before the Advertisements began airing. It was Horne's refusal to comply with the campaign finance order, as recently reported in the press, which ultimately compelled the AZPIA to create and run the advertisement—not some disguised electoral purpose. In fact, Horne's own complaint makes no attempt to point to specific content in the message that constitutes such advocacy, but relies instead on a naked assertion that the "real purpose" of the AZPIA's message must be to defeat his reelection. It cannot be true that every public statement calling into question the propriety of an elected official's conduct constitutes an "expenditure" that is made "for the purpose of influencing an election," but Horne's argument, if accepted, would have the effect of bringing all or virtually all criticisms of elected officials under the umbrella of campaign finance regulations. Notwithstanding Horne's languorous argument, under the law the advertisement is fair comment on Horne's behavior and not an "expenditure" or electoral advocacy.

Second, Horne has presented no evidence—because none exists—that the AZPIA is a "political committee" subject to the registration requirement of Section 16-902.01. As defined under Section 16-901(19) of the Arizona Revised Statutes, a political committee is "an association of persons or combination of persons that is organized, conducted or combined for the purpose of influencing the result of any election . . . that engages in political activity on behalf of or against a candidate for election." Even if the AZPIA advertisement constituted "political activity . . . against a candidate for election" (which it does not, for the reasons discussed above), Horne has failed to show that the AZPIA's primary purpose is to influence elections. In fact, the AZPIA's articles of incorporation demonstrate that the opposite is true. Specifically, Article VI(B) of the AZPIA articles of incorporation states that "the [AZPIA's] primary activities shall not consist of participating or intervening in any political campaign on behalf of any candidate for public office." See *Exhibit 1*. Since its inception, the AZPIA has allocated a significant majority of its energy and resources to activities that further its primary purpose and do not involve intervention in political campaigns. For example, the organization filed suit to prevent executives of Maricopa County Integrated Health Systems from diverting Maricopa County tax dollars outside the county, see *Exhibit 2*, and sponsored public advertisements to educate the public on the misuse of public dollars, see *Exhibit 3*. And in the matter immediately before you, the Advertisement focuses solely on Horne's alleged unethical conduct and urges him to return \$400,000 in campaign contributions, without addressing electoral issues. Therefore, contrary to Horne's argument, the AZPIA does not meet the statutory definition of a political committee and is not required to register pursuant to Section 16-902.01.

Horne's position is further undermined by the decisions of the United States Supreme Court. In *Buckley v. Valeo*, 424 U.S. 1, 13-14 (1976), the Supreme Court considered whether the expenditure limitations contained in 18 U.S.C. § 608(e)(1) (1970) were so broad as to violate the First Amendment. In distinguishing between types of speech pertaining to candidates, the court emphasized the unique nature of "explicit words of advocacy of election or defeat of a candidate." *Id.* at 43. Indeed, the Court distinguished such express advocacy from other language pertaining to the "discussion of issues and candidates." *Id.* at 42. As *Buckley* recognized, "[c]andidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign

on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest." *Id.* To avoid any undue burden on First Amendment speech, the Buckley Court therefore concluded that campaign finance regulations burdening political speech (such as the language defining and requiring the registration of a political committee in part based on its "political activity . . . against a candidate for election") "must be construed to apply only to expenditures for communications that, in express terms[,] advocate the election or defeat of a clearly identified candidate for federal office." *Id.* at 44. Thus, although Horne presupposes that any negative statements concerning his conduct must be intended to undermine his reelection and therefore are subject to campaign finance regulations, the reality is that he is presently the highest ranking law enforcement officer in Arizona and his actions are issues of public importance bearing on more significant matters than his personal political successes or failures—and therefore that advertisements discussing his conduct but not expressly advocating for his reelection or defeat do not fall under the campaign finance laws in question.

For these reasons, the AZPIA was not subject to and did not violate the registration requirements of Section 16-902.01.

The AZPIA Has Not Violated Section 16-912(B)

Horne next claims that under Section 16-912(B) of the Arizona Revised Statutes, the AZPIA was required to disclose its top three contributors.

Once again, Horne's argument is premised on the mistaken belief that the AZPIA is a political committee, as Section 16-912(B) applies exclusively to political committees. As already explained, the AZPIA is not a political committee.

Moreover, the reporting requirement in Section 16-912(B) is triggered only when a political committee makes an "independent expenditure"—which by definition requires "express[] advoca[cy] [for] the election or defeat of a clearly identified candidate." See Ariz. Rev. Stat. § 16-901(14). The AZPIA's advertisement is not an independent expenditure, however, because it does not expressly advocate for Horne's reelection or defeat but, instead, addresses Horne's past conduct and the importance of Horne returning \$400,000 in campaign contributions.

Finally, the reporting requirement in Section 16-912(B) requires disclosure of "the three political committees making the largest contributions" to the entity making the expenditure, not the "top three contributors" as the Complaint argues. Even if the AZPIA were subject to Section 16-912(B), no violation would have occurred because no political committees have contributed to the AZPIA.

For those reasons, the AZPIA was not subject to and did not violate the disclosure requirements of Section 16-912(B).

Conclusion

Because the Complaint's allegations of campaign finance violations have no merit, the AZPIA respectfully requests that you take no action on the Complaint.

The Honorable Ken Bennett
December 3, 2013
Page 4

If we can be of any further assistance in your review of this matter or provide any additional materials, please do not hesitate to contact me.

Sincerely,

/s/ Kory A. Langhofer
Kory A. Langhofer

EXHIBIT J



KEN BENNETT
SECRETARY OF STATE
STATE OF ARIZONA



April 9, 2014

File

RECEIVED

APR 09 2014

Kory A. Langhofer
One East Washington Street, Suite 2400
Phoenix, AZ 85004
klanghofer@bhfs.com

ATTORNEY GENERAL
EXECUTIVE OFFICE

RE: Campaign Finance Complaint Against Tom Horne's Reelection Campaign

Dear Mr. Langhofer:

The Secretary of State's Office has reviewed your complaint on behalf of Arizona Public Integrity Alliance (AZPIA) dated April 2, 2014 alleging a campaign finance violation by Mr. Horne. Specifically, you allege that Mr. Horne failed to report expenditures he made to Slaton & Sannes, P.C. or in the alternative, that he accepted illegal contributions.

As the proper jurisdiction to review this complaint, we find no basis for reasonable cause against Mr. Horne. In your response to the complaints against AZPIA¹, you have consistently stated that AZPIA is involved in issue advocacy and therefore does not have to register as a political committee. Accepting your assertions as true in those complaints against AZPIA, we do not find that Mr. Horne's use of legal counsel to respond to your client's issue advocacy communications is a campaign finance violation.

If you have any questions, please contact Nancy Read, Campaign Finance Supervisor at (602) 364-1562 or by e-mail at nread@azsos.gov.

Sincerely,

Christina Estes-Werther

Christina Estes-Werther
State Election Director

✓ cc: Tom Horne

¹ Complaints dated November 8, 2013 and February 11, 2014, and responses dated December 3, 2013 and March 18, 2014

EXHIBIT K

April 18, 2014

Sarah A. Larsen
Campaign Finance Manager
Citizens Clean Elections Commission
1616 W. Adams, #110
Phoenix, AZ 85007

Dear Ms. Larsen:

This letter supplements my response of April 11, 2014.

Attached are three letters from the Slaton Law Office in support of my April 11th response to your letter of April 9th. The first is an e-mail to me, confirming that the letters they wrote to the Secretary of State and to Cox were part of the service for which the contingency fee would be compensation. The other two are letters written November 13, 2013, to the Secretary of State and to Cox confirming that the Slaton office represented me personally, and not in any official capacity.

Sincerely,

A handwritten signature in black ink that reads "Tom Horne". The signature is written in a cursive, slightly stylized font.

Tom Horne

You are using a version of Internet Explorer which Gmail no longer supports. Some features may not work correctly. Upgrade to a modern browser, such as Google Chrome. D



+ Tom

5

Gmail

More

2 of 7,543

COMPOSE

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Clean Elections Inquiry

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Sandra Slaton
to me

4:49 PM (6 minutes ago)

Dear Tom:

We had a contingency agreement with you in connection with the libel action against AZPIA. I want to confirm that the letters we wrote to the Secretary of State and to Cox were part of the service for which the contingency fee would be compensation. You are authorized to use this email in your response to the Clean Elections inquiry.

Sandra Slaton, Esq.
Slaton & Sannes, P.C.
6720 North Scottsdale Road
Suite 285
Scottsdale, AZ 85253
[480-483-2178](tel:480-483-2178) (office)
[480-518-2154](tel:480-518-2154) (cell)

Sandra Slaton
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Joel E. Sannes
Sandra Slaton

Slaton & Sannes, P.C.

Scottsdale Spectrum
6730 N. Scottsdale Road, Ste. 233
Scottsdale, Arizona 85253

Tel. 480/483-2178
Fax. 480/367-0691
www.sslawaz.com
sannes@sslawaz.com
slaton@sslawaz.com

November 13, 2013

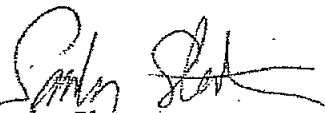
The Honorable Ken Bennett
Arizona Secretary of State
Arizona Department of State
1700 W. Washington St., 7th Floor
Phoenix, Arizona 85007

Dear Secretary of State Bennett:

This letter is to clarify that our office represents Tom Horne only in his individual capacity and the Arizona Attorney General's Office is not involved in any way with these matters at hand. Any references in prior correspondence to Tom Horne as the Republican Attorney General would have been made because this is the way Mr. Horne is identified in the ad. If there are any questions, please do not hesitate to contact our office.

Sincerely,

SLATON & SANNES, P.C.


Sandra Slaton
Joel E. Sannes

SS:daa

cc: Tom Horne

Joel E. Sannes
Sandra Slaton

Slaton & Sannes, P.C.

Scottsdale Spectrum
6730 N. Scottsdale Road, Ste. 233
Scottsdale, Arizona 85253

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sannes@sslawaz.com
slaton@sslawaz.com

November 13, 2013

VIA FACSIMILE – 623-328-1935


Fran Mallace
Cox Media Vice President
Attn: Audrey Mendez
4600 E. Washington Street
Phoenix, AZ 85034

Dear Ms. Mallace:

This letter is to clarify that the correspondence in this case was written to you on behalf of Tom Horne as an individual, and the Arizona Attorney General's Office is not involved in any way with these matters. Any reference to Tom Horne as the Republican Attorney General in any correspondence would have been made because that is the way Mr. Horne is identified in the ad in question. If you have any questions, please do not hesitate to contact me.

Sincerely,

SLATON & SANNES, P.C.


Sandra Slaton
Joel E. Sannes

SS:daa

cc: Tom Horne

EXHIBIT L

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Campaign general

LASOTA

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Clean Elections Inquiry

Inbox x

Sandra Slaton

to me

4:49 PM (5 minutes ago)

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Sandy Slaton

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Joel E. Sannes
Sandra Slaton

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November 13, 2013

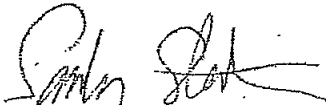
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Arizona Secretary of State
Arizona Department of State
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Sandra Slaton
Joel E. Sannes

SS:daa

cc: Tom Horne

EXHIBIT N

Joel E. Sannes
Sandra Slaton

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November 13, 2013

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