

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

MUR: No. 14-011 SCOTT SMITH

RECOMMENDATION OF NO FURTHER ACTION BY EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission (“Commission”), the Executive Director hereby provides the Statement of Reasons why no further action should be taken on this Complaint and the Complaint should be dismissed. Ariz. Admin. Code R2-20-205; 2-20-206.

I. Procedural Background

On August 1, 2014, State Representative Paul D. Boyer (Complainant), filed a sworn Complaint with the Commission. Exhibit 1. He alleges that in late July an independent expenditure committee, Better Leaders for Arizona, released an advertisement featuring Randy Redd, a former Cold Stone Creamery franchisee. The advertisement, according to the Complaint, featured Mr. Redd’s complaints about his experience as a Cold Stone franchisee and blamed Republican Gubernatorial Candidate Doug Ducey for the failure of the franchise. *See* <http://www.youtube.com/watch?v=JTG3FzW2F6s>. Mr. Ducey is the former Chief Executive Officer of Cold Stone Creamery. On August 1, the Scott Smith for Governor Campaign issued a press release that highlighted Mr. Redd, according to the Complaint. *See* Exhibit 2, Press Release, Former Cold Stone Franchisee Calls On Doug Ducey To Release Arbitration Records, available at <http://votescottsmith.com/article/former-cold-stone-franchisee-calls-on-doug-ducey-to-release-arbitration-records>. In that press release, according to the Complaint, Mr. Redd again complained about his experience as a franchisee. The press release “tracks the same talking points that Mr. Redd used in his advertisement with Better Leaders,” according to the Complaint.

II. Alleged Violations

Allegation: Better Leaders and Smith for Governor have “coordinated” under the definitions in Arizona law.

In order to enforce contribution limits that prevent corruption and the appearance of corruption and in order to provide information about expenditures in candidate campaigns to the public and to campaign finance officials, political committees and other persons who make independent expenditures must not “coordinate” with candidates, committees, and agents.

A.R.S. § 16-901(14). Specifically, the expenditure must be “made without cooperation or consultation with any candidate or committee or agent of the candidate and that [] not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.”¹ If an expenditure is coordinated under the statute, it is an in-kind contribution to the candidate and subject to reporting and to limitations on the contributions candidates are permitted to accept. *See, e.g.*, A.R.S. §§ 16-941(B); -942(B),(C), -956(A)(7).

As alleged by Complainant, A.R.S. § 16-911(A) provides that an expenditure is not independent if:

1. Any officer, member, employee or agent of the political committee making the expenditure is also an officer, member, employee or agent of the committee of the

¹ In 2014, the Legislature repealed and recodified part of the definition of independent expenditure at A.R.S. § 16-911. *See* Ariz. Sess. Law Ch. 225 §§ 1,3. This change was effective July 24. While A.R.S. § 16-901(14) previously provided that certain factual scenarios excluded an expenditure from independent expenditure status, new 16-911 section now provides that an “an election official shall use the [provisions formerly contained in 16-901(14))] as evidence of coordination and an expenditure is not an independent expenditure if any of the following applies.” Because the Clean Elections Act states that independent expenditure “[is] defined in section 16-901” it is not clear whether the repeal, which did not receive a 3/4ths vote of the legislature, or the new mandate on election officials, which also did not receive a 3/4ths vote of the legislature, can be imposed upon the Clean Elections Commission in determining whether or not an expenditure is independent. Nevertheless, because the net effect of the recodification leaves the definition in pre-2014 section 16-901(14) unchanged and because the Complaint and the Response assume its continued application, I recommend the Commission continue to rely upon that terminology in determining issues related to independent expenditures.

candidate whose election or whose opponent's defeat is being advocated by the expenditure or an agent of the candidate whose election or whose opponent's defeat is being advocated by the expenditure.

2. There is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person making the expenditure, including any officer, director, employee or agent of that person.

* * *

4. The expenditure is based on information about the candidate's plans, projects or needs, or those of the candidate's campaign committee, provided to the expending person by the candidate or by the candidate's agents or any officer, member or employee of the candidate's campaign committee with a view toward having the expenditure made.²

Complainant alleges that the advertisement was coordinated with the Respondent Smith For Governor in several ways. First, he alleges that the message of Mr. Redd's statements complaining about Coldstone and holding Mr. Ducey responsible for the franchise difficulties were the same and the two communications issued close in time to one another. Second, he alleges that Mr. Redd "may be acting as a member, employee, or agent" of the Better Leaders and Smith for Governor at the same time and may have provided information about the Smith For Governor campaign's needs. Additionally, Complainant alleges it "is reasonable to believe that the Smith campaign worked directly with Better Leaders to coordinate this 'double punch.'"

Respondent Smith for Governor states that, as a legal matter, that certain factual and legal relationships may make an expenditure "per se" coordinated. Exhibit 3. However, Respondent denies that any of those factual or legal circumstances as alleged by the Complainant exist here. Specifically, Respondent asserts that Mr. Redd was not an officer, member or agent of Smith for Governor or Better Leaders, that there was no "arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person making the expenditure," and that there was no information provided to Better Leaders by Smith for Governor. Additionally, Respondent points out that no contact was made with Mr. Redd by

² The Complaint does not allege that A.R.S. § 16-911(A)(3) is applicable.

Smith for Governor officials until after the Better Leaders video emerged, while Mr. Redd's public statements about Cold Stone and Mr. Ducey have been public matters since Mr. Ducey first ran for state office.

III. Analysis

There is no basis for taking further action on this Complaint as there is no basis for concluding that the Better Leaders' video was not an independent expenditure and instead was an in-kind contribution to Smith for Governor. There is no evidence that Mr. Redd is anything but a person who regularly speaks out about his experience with Cold Stone Creamery's business practices when he owned Cold Stone franchises and Mr. Ducey's role in Cold Stone's practices. There is no evidence that any communication occurred between the two campaign committees at all. Absent evidence Mr. Redd was a member, officer, agent, or employee of Smith for Governor, there is no basis for concluding that A.R.S. § 16-911(A)(1), (2) or (4) apply.

Because there is no basis for concluding that a violation of statutes or rules within the Commission's jurisdiction occurred, the Executive Director recommends that the Complaint be dismissed.

IV. Approval to Initiate an Inquiry

If the Commission approves an inquiry into this Complaint pursuant to R2-20-206(C), the Executive Director may proceed with a recommendation regarding whether the Commission should find that it has reason to believe a respondent has violated a statute or rule over which the Commission has jurisdiction.

Dated this 19th day of August, 2014.

By: 
Thomas M. Collins, Executive Director

EXHIBIT A

August 1, 2014

Ken Bennett
Arizona Secretary of State
1700 W. Washington St.
Phoenix, AZ 85007

Citizens Clean Elections Commission
1616 W. Adams St.
Phoenix, AZ 85007

I submit the following campaign finance violation complaint against the following individuals and committees:

1. **Scott Smith**
Smith for Governor
PO Box 5057
Mesa, AZ 85211
2. **Jim Simpson**
Virginia Simpson
Better Leaders for Arizona
6022 N. 51st Place
Paradise Valley, AZ 85253
3. **Randy Redd**
52 W. Red Fern Rd
San Tan Valley, AZ 85140

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In late July, 2014, Better Leaders for Arizona, an independent expenditure committee making expenditures in the Arizona governor's race, released on its website a video advertisement featuring Randy Redd: <http://www.betterleadersforarizona.com/franchisee-success/>. Mr. Redd is a failed Cold Stone Creamery franchisee. The advertisement included commentary from Mr. Redd complaining about his failed experience as a Cold Stone Creamery franchisee. Mr. Redd blames his business failure on gubernatorial candidate Doug Ducey.

On August 1, 2014, the Smith for Governor Campaign issued a press release featuring Mr. Redd. <http://votescottsmith.com/article/former-cold-stone-franchisee-calls-on-doug-ducey-to-release-arbitration-records>. The press release tracks the same talking points that Mr. Redd used in his advertisement with Better Leaders.

The definition of independent expenditure is found at ARS § 16-911. That statute provides that an expenditure is not "independent" if:

1. Any officer, member, employee or agent of the political committee making the expenditure is also an officer, member, employee or agent of the committee of the

candidate whose election or whose opponent's defeat is being advocated by the expenditure or an agent of the candidate whose election or whose opponent's defeat is being advocated by the expenditure.

2. There is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person making the expenditure, including any officer, director, employee or agent of that person.

Or

4. The expenditure is based on information about the candidate's plans, projects or needs, or those of the candidate's campaign committee, provided to the expending person by the candidate or by the candidate's agents or any officer, member or employee of the candidate's campaign committee with a view toward having the expenditure made.

The facts illustrate several reasons for your agency to open an investigation to see whether the Better Leaders video and Smith press release are not "independent" of one another. Both communications featured the same person, Mr. Redd, who complained about his failed Cold Stone franchise. In both communications, Mr. Redd follows the same basic script. In both communications, Mr. Redd blames Doug Ducey for his personal business failure. Both communications were released close together in time.

Applying the facts to the law also justifies an investigation. By providing services to both committees, Mr. Redd may be acting as a member, employee, or agent of both by supplying them with similar information about his experience. He may be directing information on what content about his failures that each committee should include in the ad, based on the "plans, projects or needs" of Smith's campaign. It is reasonable to believe that the Smith campaign helped direct the Better Leaders expenditure through Mr. Redd and a pass-through, by requesting that they post the video a few weeks prior to Smith issuing his press release. It is also reasonable to believe that the Smith campaign worked directly with Better Leaders to coordinate this "double punch," with Better Leaders' video followed by an aggressive press release and media campaign by Smith.

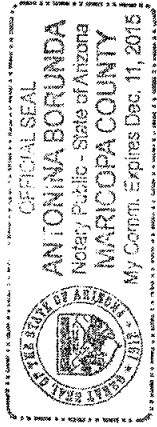
In conclusion, I ask that your agencies open an investigation into Better Leaders, Smith, and Mr. Redd based on the apparent lack of "independence" between the video and press release.

The contents of this letter are based on my personal knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Sincerely,


Paul Boyer

Subscribed and sworn before me this 1st day of August, 2014 by Paul Boyer.



Antonina Borunda
Notary Public

Paul Boyer
2244 W. Michigan Ave.
Phoenix, AZ 85023
480.577.0078
PaulBoyerAZ@gmail.com

EXHIBIT B

August 13, 2014

Kory A. Langhofer
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Maricopa County Elections Department
c/o Kristi Passarelli
111 South Third Avenue, Suite 102
Phoenix, Arizona 85003
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Arizona Citizens Clean Elections Commission
c/o Sara A. Larsen
1616 West Adams Street, Suite 110
Phoenix, Arizona 85007
sara.larsen@azcleanelections.gov

RE: Campaign Finance Complaint of Paul Boyer

Dear Ms. Passarelli and Ms. Larsen:

I am writing on behalf of Smith Governor 2014 (the "Smith Campaign") in response to the campaign finance complaint filed by Paul Boyer with your offices on August 1, 2014. The complaint alleges coordination between the Smith Campaign and Better Leaders for Arizona, an independent expenditure committee (the "IE Committee"), on the basis that statements by Randy Redd were featured in both an online video created by the IE Committee and a press release issued by the Smith Campaign pertaining to Doug Ducey's management of Cold Stone Creamery.

As set forth below, there is no reasonable cause to believe the Smith Campaign has violated any provision of law. See Ariz. Rev. Stat. §§ 16-924(A), -957(A). The Smith Campaign independently learned of Mr. Redd and his prior relationship with Cold Stone Creamery, and all of the Smith Campaign's communications with Mr. Redd occurred after the IE Committee's online video had been posted to the Internet. Thus, it was factually and legally impossible for Mr. Redd to have served as a conduit for coordination between the Smith Campaign and the IE Committee in connection with the creation or distribution of the online video.

Similarly, Mr. Redd's interactions with the Smith Campaign in connection with the press release did not entail any direct or indirect communications regarding any prospective communications or expenditures by the IE Committee, or the Smith Campaign's plans, projects or needs. Thus, the press release likewise could not have been the product of coordination between the Smith Campaign and the IE Committee. Finally, even if the press release were a coordinated communication (which it is not), it is not an item of value, and thus could not constitute a direct or in-kind contribution to the Smith Campaign as a matter of law. Accordingly, Mr. Boyer's complaint should be dismissed without further action.

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

FACTUAL BACKGROUND¹

Mr. Redd previously owned and operated four Cold Stone Creamery franchise locations in Arizona. During Doug Ducey's campaign for State Treasurer in 2010, Mr. Redd joined other former Cold Stone Creamery franchisees in publicly criticizing various business practices at the company during Mr. Ducey's tenure as its Chief Executive Officer. Most notably, on October 7, 2010 Mr. Redd appeared at a press conference organized by Mr. Ducey's general election opponent, Andrei Cherny, in which Mr. Redd recounted what he alleged were improper and unfair corporate policies and practices that Cold Stone Creamery had adopted under Mr. Ducey's leadership. The press conference was covered by various Arizona media outlets, and prompted a response by Mr. Ducey's campaign manager that specifically addressed Mr. Redd's allegations and in fact mentioned him by name. An online blog post published by the *Phoenix New Times* on October 10, 2010, which documents Mr. Redd's statements at the press conference and the Ducey campaign's response, is attached hereto as Exhibit C. An October 7, 2010 article in the *Arizona Capitol Times*, which similarly reported Mr. Redd's public comments at the Cherny press conference, is attached hereto as Exhibit D.

The IE Committee contacted Mr. Redd on or about July 1, 2014 to request his participation in an online video that IE Committee was producing. See Redd Decl. ¶¶ 2. At no time did Mr. Redd directly or indirectly discuss Mr. Smith or his campaign with any individual affiliated with the IE Committee. See *id.* ¶¶ 6, 10. On or about July 17, 2014, the IE Committee released an online video featuring Mr. Redd, in which he criticized Mr. Ducey for his management of Cold Stone Creamery and for allegedly misleading the company's franchisees.

Max Fose, a consultant for the Smith Campaign, contacted Mr. Redd on or about July 31, 2014.² Mr. Fose asked Mr. Redd whether he would be willing to provide a statement for inclusion in a press release calling upon Mr. Ducey to release documents and information relating to an arbitration involving Cold Stone Creamery, and Mr. Redd agreed. The Smith Campaign issued the press release on August 1, 2014. The Smith Campaign's knowledge of Mr. Redd and his relationship with Cold Stone Creamery was derived from its independent research and Mr. Redd's prior public comments during the 2010 campaign, and was not acquired through any communications with, or any information received from, any individual affiliated with the IE Committee. See Fose Decl. ¶¶ 4-5. At no time did the Smith Campaign communicate with Mr. Redd regarding any prospective communications or expenditures by the IE Committee, or regarding the Smith Campaign's plans, projects or needs. See Fose Decl. ¶¶ 6-7; Redd Decl. ¶¶ 3, 7-10.

LEGAL ANALYSIS

I. The IE Committee's Video and the Smith Campaign's Press Release Were Not Coordinated Expenditures

The crux of the complaint is that the inclusion of comments by Mr. Redd in both the IE Committee's online video and the Smith Campaign's press release establishes that the two entities coordinated in the creation of the communications. For the reasons set forth below, this contention is both false as a matter of fact, and spurious as a matter of law.

¹ Declarations from Mr. Fose and Mr. Redd attesting to their communications and the circumstances of the press release's preparation are attached hereto as Exhibits A and B, respectively.

² Mr. Redd's contact information, including his phone number, is publicly available. A screenshot from the website containing Mr. Redd's name and phone number is attached hereto as Exhibit E.

Arizona law defines an “expenditure” as the provision of “anything of value made by a person for the purpose of influencing an election in this state.” Ariz. Rev. Stat. § 16-901(8). Although communications that are coordinated between a campaign and an outside political committee are deemed reportable contributions to the former, a political committee’s “independent expenditures” are not contributions. See *id.* § 16-901(5)(b)(vi). An “independent expenditure” is one “that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.” *Id.* § 16-901(14).

Section 16-911(A) of the Arizona Revised Statutes expressly denotes several specific contexts in which an expenditure is *per se* not “independent,” and thus constitutes a contribution to a candidate. The complaint invokes three of these circumstances, each of which is addressed below.³

A. Mr. Redd Is Not A “Member, Employee or Agent” of the IE Committee or the Smith Campaign

An expenditure is considered coordinated if:

“Any officer, member, employee or agent of the political committee making the expenditure is also an officer, member, employee or agent of the committee of the candidate whose election or whose opponent’s defeat is being advocated by the expenditure or an agent of the candidate whose election or whose opponent’s defeat is being advocated by the expenditure.”

Id. § 16-911(A)(1). The complaint posits that “[b]y providing services to both committees, Mr. Redd may be acting as a member, employee, or agent of both.” Simply put, this assertion is not supported by specific allegation and, more importantly, finds no foundation in fact. Mr. Redd’s involvement with the IE Committee was limited to his appearance in online videos, and his interactions with Mr. Fose did not extend beyond communications about the substance of Mr. Redd’s statement in the press release. See Redd Decl. ¶¶ 3, 7-10. Such isolated and discrete contacts cannot render Mr. Redd an “officer” or “member” of either the IE Committee or the Smith Campaign. Similarly, neither the Smith Campaign nor the IE Committee furnished Mr. Redd with any monetary remuneration or other compensation in consideration for his public comments, thus foreclosing the notion that Mr. Redd was an “employee” of either committee. See Fose Decl. ¶ 10. Finally, an “agent” in this context is a person “who has oral or written authority, either express or implied, to make or authorize the making of expenditures” on behalf of a candidate or political committee, or who is a political consultant for a candidate or political committee. See Ariz. Rev. Stat. § 16-901(1). Mr. Redd has not been authorized by any individual affiliated with the Smith Campaign to make expenditures on the campaign’s behalf, nor has he ever acted as a political consultant for the Smith Campaign. See Fose Decl. ¶¶ 11-12; Redd Decl. ¶¶ 7-10. Mr. Redd similarly does not qualify as an “agent” of the IE Committee.

B. There Was No “Arrangement, Coordination or Direction” Between the Smith Campaign, the IE Committee and Mr. Redd

An expenditure is not “independent” if “[t]here is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate’s agent and the person making the expenditure, including any officer, director, employee or agent of that person.” Ariz. Rev. Stat. § 16-

³ Prior to recent amendments, the circumstances delineated in the new Section 16-911 had been incorporated into the statutory definition of “independent expenditure” set forth in Section 16-901(14). See Laws 2014, Ch. 225, §§ 1, 3 (eff. July 24, 2014). The amendments to and reorganization of the statutory provisions are not material to the legal questions presented by the complaint.

911(A)(2). Not only was there no actual arrangement, coordination or direction between the Smith Campaign and the IE Committee regarding either the press release or the online video, but indeed there were no communications of *any* kind whatsoever between *any* agent of the Smith Campaign and *any* officer, director, employee or agent of the IE Committee concerning *any* communication or expenditure. See Fose Decl. ¶¶ 7-9.

The complaint is founded entirely in the conjectural notion that because the two communications were released during approximately the same time period and featured the same individual "follow[ing] the same basic script," then *ipso facto* they must be the product of coordination between the IE Committee and the Smith Campaign. The law is clear, however, that a finding of coordination cannot be extruded from a constellation of isolated facts bound together only by the speculative supposition of a causal relationship between them. Addressing substantially similar complaints, the Federal Election Commission ("FEC") has repeatedly insisted that a finding of coordination can be predicated only upon direct and particularized evidence of the requisite conduct.⁴ For example, the agency concluded that there was no reason to believe coordination had occurred when a candidate and independent expenditure committee made public communications within several days of each other criticizing another candidate in connection with the same policy issue. Although the complaint emphasized the "'choreographed timing' and 'virtually identical' negative message of the communications," the FEC reasoned that the information conveyed in the communications "was available on the public record and there is no information suggesting that the [candidate committee] asked [the independent expenditure committee] to air ads that referenced the material." The agency further noted that the independent expenditure committee had submitted sworn affidavits that directly rebutted the allegations of coordination. See MUR 5963 (*In re Club for Growth Political Action Committee, et al.*); see also MUR 6059 (*In re Sean Parnell for Congress, et al.*) (dismissing complaint after finding that it "does not contain specific allegations as to" coordination, but rather rested solely on the assumption that coordination occurred because candidate had met with the independent expenditure committee); MUR 5754 (*In re MoveOn.org Voter Fund*) (concluding that the independent expenditure committee's alleged meetings with Democratic Party officials and the candidate's attendance at events sponsored by the committee do "not provide a connection" between those contacts and actual coordination, particularly given the submission of affidavits specifically denying that coordination had occurred).

Mr. Boyer has not and cannot adduce evidence of any "arrangement, coordination or direction" between the Smith Campaign and the IE Committee. As discussed *supra*, at no time prior to the creation and posting of the online video did Mr. Redd communicate in any manner with any individual affiliated with the Smith Campaign. Indeed, the Smith Campaign's initial contact with Mr. Redd did not occur until some two weeks after the IE Committee's video already had been completed and posted to the Internet. Similarly, Mr. Redd did not communicate with any individual affiliated with the IE Committee concerning any aspect of the press release before its issuance. Accordingly, any contention that the IE Committee and the Smith Campaign mutually arranged, coordinated or directed the online video and press release by using Mr. Redd as an informational conduit is both factually and legally untenable.

C. The Smith Campaign Did Not Communicate Any Information Regarding Its Plans, Projects or Needs to the IE Committee

An expenditure is coordinated if it "is based on information about the candidate's plans, projects or needs, or those of the candidate's campaign committee; provided to the expending person by the

⁴ Arizona's definition of "independent expenditure" tracks the language of the corresponding federal regulations, and the FEC's pronouncements are highly persuasive authority in the interpretation of Arizona campaign finance law. See, e.g., Ariz. Att'y Gen. Adv. Op. I11-006 (R11-010) (Sept. 21, 2011).

candidate or by the candidate's agents or any officer, member or employee of the candidate's campaign committee with a view toward having the expenditure made." Ariz. Rev. Stat. § 16-911(A)(4).

As discussed above, the Smith Campaign did not contact Mr. Redd until after the release of the online video. It necessarily follows that the content, timing or any other attribute of the video could not have been influenced by information conveyed by the Smith Campaign through Mr. Redd regarding the campaign's plans, projects or needs. More fundamentally, at no time did any individual affiliated with the Smith Campaign ever communicate with Mr. Redd regarding the campaign's plans, projects or needs with a view toward expenditures by the IE Committee. See Fose Decl. ¶ 7. Similarly, the Smith Campaign's press release was not influenced in any respect by information communicated by the IE Committee through Mr. Redd. The Smith Campaign had discovered Mr. Redd's relationship with Cold Stone Creamery through its own independent research of publicly available information.

The complaint's allegations appear to be animated by the notion that a campaign and independent committee's separate communications with a third party informational source constitute coordination. This theory would impute an absurdly expansive reach to the concept of coordination and is irreconcilable with existing campaign finance laws—and would, in fact, support the outlandish conclusion that candidates and independent expenditure groups reading the same newspaper are, by virtue of gathering information from the same source, engaging in illicit coordination. Cf. MUR 5774 (*In re Doug Lamborn for Congress, et al.*) (refusing to infer that political committee had received absentee voters' addresses from the candidate, given that this information was available through multiple sources). The mere fact that both the IE Committee and the Smith Campaign elicited information from the same source – who had publicly voiced similar sentiments several years earlier – cannot supply reasonable cause for a finding of coordination between the two committees.

II. Any Alleged "Coordination" Did Not Result in a Contribution to the Smith Campaign

Because the Smith Campaign did not communicate directly or indirectly with Mr. Redd until after the dissemination of the IE Committee's video, it follows that the video could not have been a coordinated expenditure, and thus an in-kind contribution to the Smith Campaign.

As discussed *supra*, the Smith Campaign's subsequent communications with Mr. Redd regarding the press release likewise did not give rise to coordination under Arizona law. Even if the press release were somehow deemed the product of coordination with the IE Committee, however, it still does not represent a reportable contribution to the Smith Campaign. Specifically, an item must carry a discernible "value" to qualify as either a direct or an in-kind contribution to a candidate. See Ariz. Rev. Stat. §§ 16-901(5), -901(15). The press release at issue here was prepared by the Smith Campaign's staffers (with Mr. Redd's input), posted on a website paid for and maintained by the Smith Campaign, and distributed through the Smith Campaign's email distribution system. Simply put, all costs associated with the press release were borne by the Smith Campaign, and no aspect of its creation or dissemination imparted anything of value from the IE Committee to the Smith Campaign.⁵ Thus, the IE Committee has not made

⁵ Indeed, even in situations where an outside entity assumed responsibility for the costs attendant to the preparation of a press release or similar communication, the FEC has usually deemed such disbursements as *de minimis* and not meriting regulatory action. Cf. MUR 5750 (*In re American Labor Services, Inc., et al.*) (finding that company president's letter endorsing candidate constituted impermissible corporate expenditure but that the cost "to produce and disseminate the letters were likely *de minimis*"); MUR 6173 (*In re Population Research Institute, et al.*) (same conclusion as to corporate email newsletter, noting that "there is virtually no cost associated with sending e-mail communications, even thousands of e-mails to thousands of recipients").

any direct or in-kind contribution to the Smith Campaign, much less a contribution in excess of the \$2,000 statutory maximum. See Ariz. Rev. Stat. §§ 16-905(B)(2), -941(B).

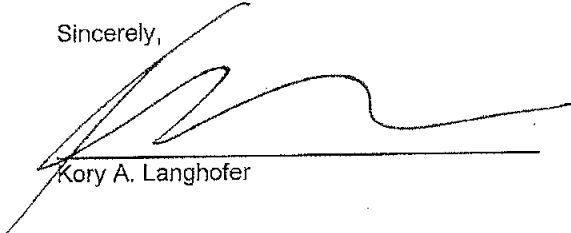
CONCLUSION

In sum, Mr. Redd did not serve as a conduit for coordination between the Smith Campaign and the IE Committee in connection with either the online video or the press release. Because the initial contact between the Smith Campaign and Mr. Redd did not occur until after the IE Committee already had posted the video, any finding of coordination with respect to the video is conclusively foreclosed. Similarly, Mr. Redd's participation in the creation of the press release did not entail any discussions with the Smith Campaign about any prospective communications or expenditures by the IE Committee. Even if the press release is deemed a coordinated communication, however, it is not an item of value and thus cannot constitute a "contribution" to the Smith Campaign under Arizona law. Accordingly, Mr. Boyer's complaint should be dismissed without further action.

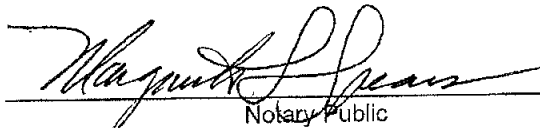
Finally, we note that, in reviewing campaign finance matters, Maricopa County Elections ordinarily relies on legal advice provided by the Maricopa County Attorney's Office. Because the Maricopa County Attorney has publicly endorsed and continues to publicly support an electoral opponent of the Smith Campaign, see Exhibit F, Maricopa County Elections may not be an impartial arbiter of the issues raised in this complaint. In fact, the ethical rules governing attorneys in Arizona likely prevent the Maricopa County Attorney's Office from providing legal advice to Maricopa County Elections in this context. See Ariz. Ethical R. 1.7(a)(2). I therefore respectfully request that Maricopa County Elections either refer this matter to an elections office that would not be impeded by a legal advisor with a conflict of interests, or retain outside counsel to ensure the neutrality of the legal advice provided in connection with Mr. Boyer's complaint.

If we can provide any additional information, please do not hesitate to contact us with any questions.

Sincerely,


Kory A. Langhofer

Subscribed and sworn to before me this 13th day of August, 2014.


Notary Public

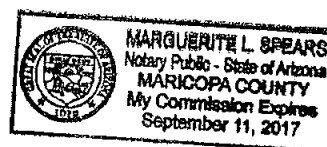


Exhibit A

Declaration of Max Fose

I, Max Fose, do upon oath declare as follows:

1. I am over 18 years of age, and am competent to testify in this matter.
2. I make this declaration based upon my own personal knowledge.
3. I am the President and CEO of IWS, a firm serving as the general consultant for Smith Governor 2014 (the "Smith Campaign").
4. On or about July 31, 2014 I contacted Randy Redd to elicit a statement for inclusion in a press release by the Smith Campaign concerning wrongdoing related to Cold Stone Creamery. Months earlier, the Smith Campaign had discovered through its own research that Mr. Redd previously had owned and operated several Cold Stone Creamery franchise locations in Arizona and that, during the 2010 campaign for State Treasurer, Mr. Redd had publicly criticized Doug Ducey's management of Cold Stone Creamery.
5. I did not acquire any knowledge or information regarding Mr. Redd's relationship with Cold Stone Creamery or his views concerning Mr. Ducey from Better Leaders for Arizona (the "IE Committee") or from any officer, director, member, employee, or agent of the IE Committee.
6. I never communicated directly or indirectly with Mr. Redd at any time prior to July 31, 2014. The substance of my communications with Mr. Redd were limited solely to the subject of the press release. Mr. Redd and I did not communicate directly or indirectly about any prospective communications or expenditures by the IE Committee, or any plans, projects or needs of the Smith Campaign.
7. To the best of my knowledge, neither Scott Smith nor any other director, officer, member, employee, or agent of the Smith Campaign has ever communicated directly or indirectly with Mr. Redd regarding (a) any plans, projects or needs of the Smith Campaign or (b) any prospective communications or expenditures by the IE Committee. Because of my senior role in the Smith campaign, I would almost certainly know of any such communications had they occurred.

8. I never communicated directly or indirectly with any officer, director, member, employee, or agent of the IE Committee regarding (a) any plans, projects or needs of the Smith Campaign or (b) any communications or expenditures by the IE Committee, including its video featuring Mr. Redd.


9. To the best of my knowledge, neither Scott Smith nor any officer, director, member, employee, or agent of the Smith Campaign has ever communicated directly or indirectly with any officer, director, member, employee, or agent of the IE Committee regarding (a) any plans, projects or needs of the Smith Campaign or (b) any communications or expenditures by the IE Committee, including its online video featuring Mr. Redd. Because of my senior role in the Smith campaign, I would almost certainly know of any such communications had they occurred.

10. At no time has Mr. Redd ever served as an officer, director, member, employee, or agent of the Smith Campaign.

11. At no time was Mr. Redd ever expressly or impliedly authorized by the Smith Campaign to make expenditures on behalf of Mr. Smith or the Smith Campaign.

12. At no time was Mr. Redd ever employed or retained by the Smith Campaign as a political consultant.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 12th day of August, 2014.



Max Fose

Exhibit B

STATE OF ARIZONA)

)

COUNTY OF PINAL)

BEFORE ME, the undersigned Notary, Randy Redd, who is a resident of Pinal County, Arizona, personally came before me and makes this their statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of their knowledge:

1. I have read and reviewed the complaint filed by Paul Boyer with the Secretary of State on August 1, 2014.
2. On or about July 1, 2014, I was contacted by Better Leaders for Arizona ("BLA") regarding my experience as a franchisee of Cold Stone Creamery. I did not have any contact or discussions with the Scott Smith for Governor campaign or anyone affiliated with any campaign for Governor.
3. At BLA's request, on or about July 7, 2014, I participated in a videotaped discussion of my experience as a Cold Stone Creamery franchisee at the offices of Martz Parsons in Scottsdale. BLA informed me that this discussion would be edited into a television and web video commercial. I did not have any contact or discussions with the Smith campaign or anyone affiliated with any campaign for Governor.
4. I have seen the edited commercial and it accurately represents my views as expressed in the original videotaped discussion.
5. BLA informed me that the edited commercial is available for viewing via the internet.
6. At no time during my discussions with BLA did any representative of BLA ask, direct or request me to have contact with any other organization concerning my Cold Stone views.
7. Subsequent to my interactions with BLA and in or around the end of July 2014, I was

8. I spoke with Mr. Fose about my experience as a Cold Stone franchisee. For Governor campaign, I had never had any prior contact with Mr. Fose, the Scott Smith contacted by Max Fose, who identified himself as working on behalf of the Scott Smith for Governor campaign. I had never had any prior contact with Mr. Fose, the Scott Smith direct or request me to contact any other organization concerning my Cold Stone views.

10. I have no information that suggests that anyone from either BLA or the Scott Smith for Governor campaign have interacted with one another concerning this matter. I believe the allegations made by Mr. Boyer are false.

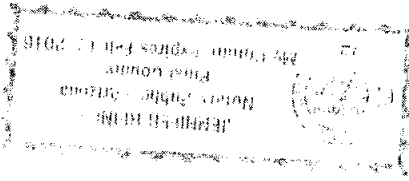
Further, affiant sayeth naught.

DATED this the 22 day of August, 2014.

Randy Redd, Affiant

SWORN to and subscribed before me, this 22 day of August, 2014.

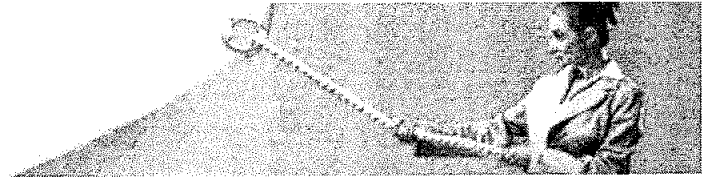
NOTARY PUBLIC



My Commission Expires:

Exhibit C

BRAND YOUR OWN ALTERNATIVE MEDICINE BUSINESS



Doug Ducey's Record at Cold Stone Could End Up His Albatross

By Stephen Lemons

Published Wed., Oct. 13 2010 at 6:56 PM



Andrei Cherny's ad attacking Doug Ducey has the ex-Cold Stone CEO playing defense

My head's been so buried in statistics for an upcoming feature that I missed a news conference last week for former Clinton advisor and Democratic contender for Arizona State Treasurer Andrei Cherny.

In it, the Cherny camp offered up several ex-Cold Stone Creamery franchisees whose tales of bankruptcy and woe belied former Cold Stone CEO Doug Ducey's claims of being some sort of uber-businessman.

Ducey is the GOP trotter in the treasurer's race, but the main qualification he touts as making him deserving of office -- his supposed success in expanding Cold Stone's franchise base -- is now becoming a liability for him.

That's because, as I detailed in an August Bird column, there's an army of former franchisees from coast to coast that'd love to tar and feather Ducey for the business practices alleged of Cold Stone while he was the top canine there.

Cherny's been running a TV ad featuring former franchisees Ken and Jennifer Gornall, who blast Ducey for having "cheated people out of their life's investments." Jennifer Gornall labels Ducey a "crook." The spot's drawn blood, and Ducey's been forced to counter it with his own ad calling Cherny "desperate."

But Ducey never answers the claims of the Gornalls, who were forced to declare bankruptcy and lost a home after their Cold Stone franchise went south. And the Gornalls are hardly the only ones who are speaking out, as I noted in my August column, where I quote others sour on the Cold Stone experience.

The Gornalls were part of last week's Cherny presser, as were ex-Cold Stone franchisees Hal Hickman, Randy Redd, and Ed Normand. [YouTube videos of the press conference can be accessed through Cherny's Web site.](#)

The ex-Cold Stone hawkers ran through a litany of common complaints regarding Cold Stone's alleged business practices: promises of profits that rarely materialized; "cannibalizing" sales by placing franchises too close together; forcing franchisees to purchase high-priced goods from favored vendors who provided "remunerations" to Cold Stone; two-for-one coupons that the franchisees had to eat the cost of; and on and on.

One allegation in particular was an eyebrow-raiser. Redd, who operated four stores in Arizona, said on camera that the franchisees were supposed to pay sales tax on the freebie ice cream offered by the infamous two-for-one coupons. He said he was forced to pay this when he was audited by the state. Moreover, Redd claimed he informed Ducey and Cold Stone about the situation.

"We told Cold Stone about it," Redd explained at the press conference. "They told us to just not pay the sales tax, to just, you know, throw the coupons away."

Redd suggested that Cold Stone may not have paid state sales tax on "hundreds of millions of dollars of ice cream" distributed through the promotion.

I called the Kahala Corporation for a response to Redd's accusation. The company's PR manager Veronica Graves e-mailed the following statement to me:

"Cold Stone Creamery locations are individually owned and operated by franchisees. As part of the Cold Stone franchisee agreement, store owners are responsible for complying with all federal, state and local laws."

I asked Ducey's campaign about the Redd allegation as well. Ducey's campaign manager Sara Mueller e-mailed me this reply from Ducey:

"Mr. Redd's statement has no merit. Through the litigation process, he had all of his allegations heard and ruled on by a neutral arbitrator. They were found lacking, and he was made to pay the attorney fees. Mr. Redd is using this campaign as another means to continue his vendetta, and what he says is not true."

I suspect Mr. Redd will have a reply to this. I've called him and will update the post when I hear from him.

Hickman, who owned stores in Las Vegas and in Utah, charged that if a franchisee wanted to sell, Cold Stone reps would discourage potential buyers. Ultimately, he complained, Cold Stone wanted the sites for themselves, so they could reopen the store and resell the franchise.

"Cold Stone didn't make a lot of money selling ice cream," Hickman stated. "That was really not their business. Their business was selling franchises."

In 2008, the *Wall Street Journal* published a devastating piece on the plight of former Cold Stone franchisees and cited problems with Cold Stone's business model. Ducey left the company in 2007, following Cold Stone's acquisition by Kahala.

In April, CNNMoney.com noted that according to Small Business Administration statistics, Cold Stone franchisees have a 31 percent failure rate on SBA-backed loans.

The state treasurer's contest is one of the few places where Dems have a chance of scoring a statewide office. Ducey may be getting loads of bad press, but the race is still expected to be tight.

Considering the allegations swirling around Ducey's business record, Arizonans should have some serious reservations about handing him the state's \$10 billion investment portfolio to play with as treasurer. But hey, look who's governor of this great state -- and who likely will remain so after election day. Maybe Ducey is just what the people of Arizona deserve.

Note: I briefly published a version of this post that attributed the Cold Stone quote to Ducey. I unpublished almost immediately once I realized the mistake and fixed it. Sorry for any confusion caused by my hasty trigger finger.

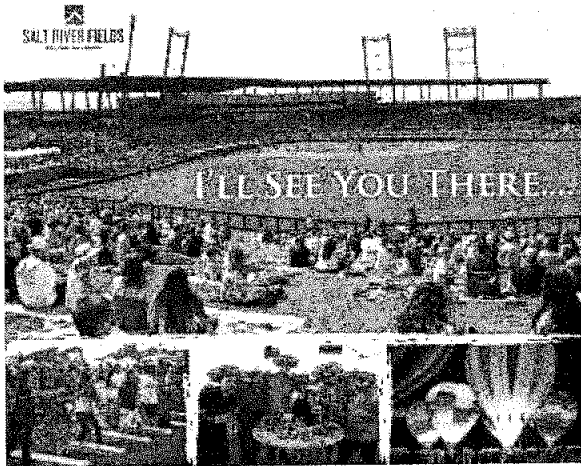


Exhibit D

ARIZONA CAPITOL TIMES

non-daily **AP** newspaper of the year

Former Cold Stone franchisees, Cherny campaign slam Ducey

By: Jeremy Duda October 7, 2010 , 7:02 pm



Doug Ducey

A group of former Cold Stone Creamery franchise owners accused Republican state treasurer candidate Doug Ducey, the company's former CEO, of using a raft of dishonest business practices to perpetuate a revolving-door system that lured in franchisees, bankrupted them and then pushed them aside to make way for new ones.

At an Oct. 7 press conference, hosted by Andrei Cherny, Ducey's Democratic opponent, four former Cold Stone franchise owners blasted the former CEO. They accused him of attracting franchisees with inflated profit projections, intentionally undermining owners and using Cold Stone's store evaluation system to bully franchisees who challenged the company's actions.

They said projected profits used to attract franchisees were inflated with numbers from successful, non-franchised locations that were operated by the company, such as a store at Times Square in New York, and owners were pushed out of business to make way for new ones after their profits never materialized.

"Cold Stone didn't make a lot of money selling ice cream. They made money selling franchises," said Harold 'Hal' Hickman, who owned Cold Stone stores in Las Vegas and St. George, Utah.

Hickman, Ken and Jennifer Gornall, Ed Normand and Randy Redd owned Cold Stone franchises during Ducey's tenure as CEO, from 1995 to 2007, and all blamed the company and Ducey for financial hardships resulting from their investments in the ice cream company. Cold Stone Creamery declared bankruptcy in 2008.

Ducey accused Cherny of "grasping at straws" in his bid for the Treasurer's Office, and said the former assistant attorney general and ex-White House aide was unfairly maligning Ducey's former company. He would not, however, address the specific allegations made by the former franchise owners.

"(Cherny) won't talk about his authorship of President Obama's 'Change We Can Believe In,' so instead he spends his time tearing down Cold Stone Creamery," Ducey said in a statement, referring to President Obama's campaign policy book, which Cherny wrote. "Arizonans know what Cold Stone is: a well-run local business, which provides a product that consumers love. No amount of distortion by Andrei can change that, and Arizonans will see through his desperate efforts to smear a successful local company."

According to the U.S. Small Business Administration, Cold Stone was second in the country in defaults on SBA loans in 2008 among franchises with 50 or more SBA-backed loans. Of 763 SBA-backed loans given to Cold Stone franchisees from 2001 to 2008, 75 defaulted in 2008.

Normand, who bought a store at 75th Avenue and Lower Buckeye Road in 2007, said he was forced to declare bankruptcy when his store closed. The Gornalls, who owned a store at 53rd Avenue and Bell Road from 2005 to 2007, said they lost their home and their retirement savings after their franchise went under.

"They know they were selling a failed business model to franchisees, yet they continued to do it year after year to the profit of the creamery. Most of us, a number of us here, were just ruined financially,"

Ken Gornall said at the press conference, which was held at Arizona Democratic Party headquarters. "He was the CEO. He was responsible for whatever actions took place."

Hickman alleged that when he attempted to sell his Cold Stone store in Utah, company representatives contacted the prospective buyer and urged him to wait until the store went out of business so he could buy it cheaper. He said after he closed his Las Vegas store, the company called the owners of the strip mall where it was located in an attempt to get the keys and security codes so they could reappropriate the store and the equipment inside. Hickman said he sued the company over the alleged interference, and as part of a settlement, Hickman parted ways with Cold Stone.

Redd, who owned four Cold Stone stores in Arizona, said the company tried to renege on a contractual agreement that allowed franchisees to pay reduced annual franchise fees after they had owned their stores for more than 10 years.

Redd said Cold Stone tried to prevent him from opening a new store at the discounted rate available to existing franchisees by opening another store less than three miles from the one he owned.

"They didn't want to sell it to an existing franchisee. They wanted to get the \$60,000. So they opened one that was within three miles of our existing store. And according to our contract, they weren't allowed to do that," Redd said.

The company marketed itself with two-for-one coupons that cut deeply into the stores' profits, the former owners alleged. The coupons, often printed on movie tickets or given out at high schools, brought customers into the store but didn't bring in much money for the owners because of the free ice cream they were forced to give away, Hickman said.

"We were giving away ice cream and they were getting branded," Hickman said.

Redd and the other franchisees also said Cold Stone used its store evaluation system to punish recalcitrant owners who questioned Ducey or the company. He said the poor evaluations often consisted of arbitrary infractions, such as not having enough ice cream cakes on display in the store freezer. Redd's store, he said, was cited for violating the company's prohibition on having non-company food in its refrigerator because an employee had stored his lunch there.

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ARIZONA CAPITOL TIMES
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Exhibit E

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11 Elk Hunt in Southwest Corner of Colorado (Unguided)

Currency: USD Category: Collectibles Start Price: 100.00 USD Estimated At: 0.00 - 0.00 USD

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500.00 USD to floor
• premiums, taxes, fees & shipping

This item SOLD at 2014 May 17 @ 18:54 UTC-8 : PST

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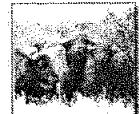
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Item Description	Location & Preview	BP, Taxes & Fees	Shipping & Payment	Terms
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Donor: Randy Redd Number of Hunter: One (1) Hunter. Location of Trip: Near Cortez (30 miles north of), Colorado Date of Trip: October - November 2014. Description of Trip: This is a five (5) day hunt on the famous and historic Redd Ranch in beautiful southwestern Colorado. Included: Accommodations, meals, assistance with game animal harvested and trespass rights on the Redd Ranch, right to harvest one (1) Rocky Mountain Elk any size Not Included in Trip: Colorado hunting license, Elk Tag or guide. The ranch is easy to hunt and you will be given orientation before the hunt begins. Upgrade Options: None. Contact Info: Randy Redd, email: randy@gljinsurance.com, Phone: 480-225-9614.



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Exhibit F

Doug Ducey

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SUPPORTERS

SENATOR JON KYL

Doug Ducey's leadership style is to first ground himself in the substance of the critical issues facing our state. I respect that. His skills, his knowledge of business management, his conservative credentials, and his proven record as State Treasurer are precisely what are needed for Arizona.

JIM CLICK

Doug's private sector experience and limited government approach is exactly what's needed to get Arizona moving in the right direction again. We haven't had someone this good and well-qualified to lead our state and lead our party in a long time. I firmly believe that Doug can be the best Governor Arizona has seen in decades.

BILL MONTGOMERY

Doug stands with me in the fight against crime and the fight for the rights of crime victims. I am proud to support him.

LEA MARQUEZ-PETERSON