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9 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

10 In the Matter Of,

No. 13F-CF20120001-MCAO

11 TOM HORNE, Tom Horne for Attorney
12 General Committee (SOS Filer ID 2010
13 00003); KATHLEEN WINN, Business
14 leaders for Arizona (SOS Filer ID 2010
15 00375)

**PRE-HEARING STATEMENT OF
TOM HORNE AND TOM HORNE
FOR ATTORNEY GENERAL
COMMITTEE**

Tammy L. Eigenheer
Administrative Law Judge

16 Respondent Horne submits this Pre-Hearing Statement in compliance with the Order Setting a
17 Pre-Hearing Conference dated November 20, 2012.

18 **LIST OF WITNESSES AND EXPECTED TESTIMONY**

- 19 1. Tom Horne – Mr. Horne will testify about his role in the primary and general campaign; his
20 contacts with Kathleen Winn; that there was no improper coordination between Tom Horne for
21 Attorney General campaign and the independent campaign identified as Business Leaders for
22 Arizona started by Kathleen Winn; and rebuttal of erroneous assumptions essential by
23 investigators.
- 24 2. Kathleen Winn – Ms. Winn will testify as to various aspects of her actions on behalf of
Business Leaders for Arizona and to the lack of coordination between Business Leaders for
Arizona and Tom Horne for Attorney General, and the fact that there was not coordination
between the two campaigns.
3. Richard Bistrow - Mr. Bistrow will testify to personnel discussions in the Attorney General's
Office; interactions he had with relevant witnesses.
4. Joan Walther – Ms. Walther will testify regarding Kathleen Winn ending her involvement in the
Tom Horne Campaign.

1 5. All other witnesses listed by the Maricopa County Attorney's Office and Business Leaders for
2 Arizona in their respective Pre-Hearing Statements.

3 All witnesses listed above are, in addition, expected to testify to their knowledge of the
4 independent expenditure committee.

5 **IMPEACHMENT WITNESSES**

- 6 1. Records, summaries or transcripts of all interviews conducted by the FBI or the Maricopa
7 County Attorney's Office
- 8 2. Merv Mason – Agent Mason may testify for impeachment purposes, and as to the interrogation
9 tactics used by the Federal Bureau of Investigation in interviewing various individuals with
10 relevant knowledge.
- 11 3. Brian Grehoski – Agent Grehoski may testify for impeachment purposes, and as to the
12 interrogation tactics used by the Federal Bureau of Investigation in interviewing various
13 individuals with relevant knowledge.

14 Depending on the testimony of Hinchey, the following witnesses may be able to impeach
15 aspects of that testimony:

- 16 1. Lucia De Vernai
- 17 2. Michael Flynn
- 18 3. Andrew Rubalcava
- 19 4. Andrew Pacheco
- 20 5. Larry Cutler
- 21 6. Charlie Loftus
- 22 7. Margaret Dugan
- 23 8. Deborah Jackson
- 24 9. Todd Lawson

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1 **LIST OF EXHIBITS**

- 2 1. Chart correcting the Federal Bureau of Investigation chart which is attached to the Response to
3 Order.
4 2. Exhibit documents pertaining to the duty of a determinator of fact to be walled off from
5 investigation and prosecution.
6 3. Tom Horne for Attorney General incorporates the same Exhibits as in the Pre-Hearing
7 Statements of the Maricopa County Attorney and the Business Leaders for Arizona Pre-Hearing
8 Statement.

9 **IMPEACHMENT EXHIBITS**

- 10 1. Notice of Claim letter pursuant to A.R.S. § 12-821.01.
11 2. Complaint filed by Police Officers Against Hinchey.
12 3. Superior Court Order Granting 12.9 Motion.

13 **PROCEDURAL ISSUES**

- 14 1. **Scope of A.R.S. § 16-901(14)(6)** – Does the term coordination in A.R.S. § 16-901(14)(6)
15 include contributions, expenditures, or both. A pre-hearing determination needs to be made.
16 See Respondent Horne’s concurrently filed Motion in Limine.
17 2. **Jurisdiction of Maricopa County Attorney’s Office** – Is there statutory authority that grants
18 the Maricopa County Attorney’s office jurisdiction to be involved in this case. There are state
19 statutes, included below, that govern how to appoint a person in an investigation where the
20 Attorney General is conflicted. The proper procedures would have the Attorney General’s
21 Office, not the Attorney General himself, appointing a neutral party to do the investigation and
22 prosecution. That statutory procedure was not followed in this case.
23 3. **Conflict of Maricopa County Attorney as Prosecutor and Determinator of Fact** – The
24 Maricopa County Attorney’s Office has a conflict in this case by acting both as the investigator
and the determinator of fact. In addition to other things, the issue was prejudged in the press
conference held by Maricopa County Attorney Bill Montgomery.
4. **Burden of Proof** – The burden of proof on the Maricopa County Attorney’s Office is clear and
convincing evidence because the Maricopa County Attorney had indicated that he will
ultimately seek a fine of three times the expenditure.
5. **Court Hearing Conflict** - Tom Horne has a conflict on the afternoon of January 24, 2012, and
requests that there be no hearing in the afternoon of that day.

LAWS SUPPORTING RESPONDENT HORNE'S POSITION

1. U.S. Const. amend I.
2. U.S. Const. amend VIII.
3. Ariz. Const. art. II, § 6.
4. 11 C.F.R. 100.29
5. 11 C.F.R. 109.21, et seq.
6. A.R.S. § 16-901, et seq.
7. A.R.S. § 16-901(14)(b).
8. A.R.S. § 16-901(7).
9. A.R.S. § 16-924.
10. A.R.S. §16-1021.
11. A.R.S. § 16-905(j).
12. *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 896, 175 L. Ed. 753 (2010).
13. *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 392 (2000).
14. *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
15. *Fed. Election Comm'n v. Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C. 1999).
16. *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 647 F. Supp. 987 (S.D.N.Y. 1986).
17. *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 332, 723 P.2d 675, 681 (1986) (holding that award of punitive damages only permissible where proof is by clear and convincing evidence.).
18. *Gaveck v. Arizona St. Bd. Of Podiatry Exam.*, 222 Ariz. 433, 215 P.3d 1114, ¶ 11 (Ct. App. 2009).
19. *Stuart v. Stuart*, 112 Conn. App. 160 (2009) – (“clear and convincing proof of the actions alleged is required in order to assess treble damages pursuant to statute. . .”).
20. Arizona Administrative Code Section R2-19-119(B)(1) – Maricopa County Attorney’s Office bears the burden of proof as it relates to the administrative hearing.
21. Coordinated Communications and Independent Expenditures, Federal Election Commission, <http://www.fec.gov/pages/brochures/indexp.shtml>.
22. Respondent Horne incorporates by reference all authorities listed the Response to the Order.

DATED this 5th day of December, 2012.

/s/ Michael D. Kimerer

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1 ORIGINAL OF THE FOREGOING
electronically filed this 5th day of December, 2012,
2 and submitted to:

3 Honorable Tammy Eigenheer
Administrative Law Judge
4 ARIZONA OFFICE OF ADMINISTRATIVE
HEARINGS
5 1400 West Washington Street, Suite 101
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7 COPIES of the foregoing served via OAH
electronic filing this 5th day of December, 2012, to:

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