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10 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

11 In the Matter Of,

No. 13F-CF20120001-MCAO

12 TOM HORNE, Tom Horne for Attorney  
13 General Committee (SOS Filer ID 2010  
14 00003); KATHLEEN WINN, Business  
15 leaders for Arizona (SOS Filer ID 2010  
16 00375)

**REPLY IN SUPPORT OF  
APPELLANT’S MOTION IN  
LIMINE**

Tammy L. Eigenheer  
Administrative Law Judge

17 **INTRODUCTION**

18 **I. The Analysis of the Arizona Statute in the Motion Is Not Responded to in the Response**

19 Appellants’ Motion in Limine begins with an analysis of the relevant statute, A.R.S § 16-901.  
20 A.R.S. Section 16-901(14)(b) provides that an *expenditure* is not an independent expenditure if there  
21 is any “arrangement, coordination or direction *with respect to the expenditure . . .*” *Id.* (emphasis  
22 added). There is no similar prohibition with respect to “contributions.” A.R.S § 16-901 has separate  
23 definitions for “expenditure” and “contribution.” *Id.* To be a violation, the coordination or direction  
24 must be with respect to *how the money is spent* or the *content of the ad*, not with respect to  
contributions. A.R.S. § 16-901(14)(b).

The Maricopa County Attorney’s Response does not address the statute or the arguments

1 made by the Appellants as to the interpretation of the State statute. As a result, the Appellants are left  
2 to assume that the County Attorney concedes the Appellants' interpretation and position on the  
3 statute.

4 **II. Federal Interpretations Are Relevant**

5 The Respondents take issue with the Appellants' citation to the federal laws related to the  
6 definition of coordination. See Response at 7. However, the Respondent fails to acknowledge that  
7 the federal laws were raised by the Secretary of State as to the interpretation – it is not a theory made  
8 up by the Appellants. Nonetheless, Respondents then argue themselves by using primarily federal  
9 laws and cases in order to support its position. It appears that both sides acknowledge that there is  
10 little to no State precedent that answers this question. As such, both the Respondents and the  
11 Appellants are reliant on federal laws and federal interpretation. The Respondent's Response states:

12 The Federal Election Campaign Act (2 U.S.C. § 431 et seq.) and  
13 the FEC's interpretation of Federal law have no bearing on  
14 Arizona's campaign finance law. Business Leaders for Arizona is  
15 not a federal political and Tom Horne was not a candidate for  
16 federal office. The relationship between a federal political  
committee and a federal candidate has no relevance on the status of  
a state committee and state candidate.  
Response at 7.

17 If federal law and interpretation was not relevant to the issue at hand, the Respondent's Response  
18 would have focused on Arizona statutes and interpretation rather than ignoring the Arizona statute  
19 completely by arguing exclusively from federal case law.

20 In Appellants' Motion, the Appellants quoted the Secretary of State's Office - the office that  
21 has original jurisdiction on all Arizona election issues. The Secretary of State's Office said that, as to  
22 "coordination," "the definition is vague" and the "SOS follows guidelines set forth by the federal  
23 government and the Federal Elections Committee (FEC)." (Motion at 3). The Response by the  
24

1 Maricopa County Attorney's Office does not address or respond to the Secretary of State's own  
2 interpretation of, or understanding of, Arizona law. Instead, the Maricopa County Attorney's Office  
3 seeks to override the Secretary of State's interpretation and completely ignore the interpretation by  
4 the proper agency to make that decision.

5 The Appellants have shown that under Federal guidelines, accepted by the Arizona Secretary  
6 of State, that only coordination with respect to expenditures and *not* contributions was prohibited.  
7 (Motion at 4-5). Respondents have also failed to address this portion of Appellants' Motion. Again,  
8 Respondents are left to assume this point has been conceded by Respondents.

9 **III. All of the Federal Cases in the Response are Either Irrelevant or Actually Support**  
10 **the Position Taken In the Response**

11 The Respondents have listed and cited to many federal cases in its Response. However, most  
12 of these cases deal with the constitutionality of campaign contribution limits and have nothing to do  
13 with the issue at hand – what constitutes coordination. *See Fed. Election Comm'n v. Beaumont*, 539  
14 U.S. 146 (2003) (challenging the constitutionality of Federal Election Campaign Act (FECA) and  
15 related regulations with respect to prohibitions on corporate expenditures and contributions in  
16 connection with federal elections); *Fed. Election Comm'n v. Colo. Republican Fed. Campaign*  
17 *Comm. (Colorado Republican II)*, 533 U.S. 431 (2001) (Supreme Court finding, among other things,  
18 that coordinated expenditure limits are subject to same scrutiny as Act's limits on individuals' and  
19 nonparty groups' cash contributions and coordinated expenditure limits comport with First  
20 Amendment's free speech and associational guarantees); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S.  
21 377 (2000) (Supreme Court precedent making *Buckley v. Valeo*, 96 S. Ct. 612 (1976), applicable to  
22 state limits on campaign contribution spending); *McConnell v. FEC*, 540 U.S. 93 (2003)  
23 (constitutionality of regulations of "soft money" contributions and expenditures); *Cal. Med. Ass'n v.*

1 *Fed. Election Comm'n (Cal-Med)*, 453 U.S. 182 (1981) (challenging constitutionality of limits on  
2 contributions to political action committees under the Federal Election Campaign Act).

3 Further, *Wisconsin Right to Life State Political Action Committee v. Barland*, 664 F.3d 139  
4 (7th Cir. 2011), supports the Appellants' position that the Supreme Court has consistently held that  
5 the *expenditures* made by an independent expenditure committee must be totally and truly  
6 independent. *Id.* at 151-55 (emphasis added). The arguments by the Maricopa County Attorney's  
7 Office continue to show support for the Appellants' position through the use of certain cases.  
8 However, the County Attorney's Office attempts to paraphrase these cases as a means to support its  
9 position. In particular, the Respondents state: "to be effective, any limitations on campaign  
10 contributions must apply to *expenditures* made in *coordination* with a candidate. . ." *Buckley v.*  
11 *Valeo*, 424 U.S. 1, 47 (1976) (emphasis added). This is directly in support of Appellants' position –  
12 that the concern is the coordination with regard to *expenditures* and not with *contributions*.  
13 Likewise, *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996)  
14 (*Colorado I*), looked at an ad that was developed *before* a nomination and it was created  
15 independently and not "pursuant to any general or particular understanding with a candidate. . ." *Id.*  
16 at 614 (emphasis added). In this case, the Respondents are arguing that there was coordination as to  
17 the ad created – however, that would be coordination as to an *expenditure*.

18 Additional cases cited by Respondents relate to regulation of independent campaigns and  
19 corruption, but the cases say nothing about what constitutes "coordination" as that is defined by  
20 statute. *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011);  
21 *SpeechNow.org v. FEC*, 599 F.3d 686 (2010); *Thalheimer v. City of San Diego*, 645 F.3d 1109 (9th  
22 Cir. 2011); *Wis. Right to Life State PAC v. Barland*, 664 F.3d 139 (7th Cir. 2011).

23 There is nothing in the Respondent's Response that addresses the issue in the Motion in  
24

1 Limine that the statutes prohibit or relate to coordination of contributions *and* expenditures.

2 **CONCLUSION**

3 Appellants respectfully request that this Court exclude the evidence sought to be introduced  
4 on the coordination of contributions as both State law and Federal law (which the State looks to as to  
5 issues pertaining to coordination) only prohibit coordination as to expenditures and none of  
6 Respondents cases say otherwise.

7 DATED this 25th day of January, 2013.

8 /s/ Michael D. Kimerer  
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18 ORIGINAL OF THE FOREGOING e-filed  
19 this 25th day of January, 2013, to:

20 Honorable Tammy Eigenheer  
21 Administrative Law Judge  
22 ARIZONA OFFICE OF ADMINISTRATIVE  
23 HEARINGS  
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