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4

5 **BEFORE THE OFFICE OF THE**  
6 **MARICOPA COUNTY ATTORNEY**

7 In The Matter Of,

8 TOM HORNE, Tom Horne for  
Attorney General Committee (SOS  
9 Filer ID 2010 00003); KATHLEEN  
WINN, Business Leaders for Arizona  
10 (SOS Filer ID 2010 00375)

NO. 13F-CF20120001-MCAO

**MARICOPA COUNTY ATTORNEY'S  
OFFICE FINAL DECISION AND  
ORDER REGARDING THE  
ADMINISTRATIVE LAW JUDGE'S  
RECOMMENDED ORDER OF  
MARCH 19, 2013**

11  
12 The Maricopa County Attorney's Office pursuant to A.R.S. § 41-1092.08(B)  
13 rejects the Administrative Law Judge's Recommended Order for the reasons set  
14 forth below, and issues its Final Decision and Order. The Administrative Law  
15 Judge's Recommended Order is attached as Exhibit A.

16 **BACKGROUND**

17 The political committee, Business Leaders for Arizona, filed a statement of  
18 organization with the Secretary of State as an independent expenditure  
19 committee in the 2010 election cycle. The Maricopa County Attorney alleged that  
20 Tom Horne, candidate for Arizona Attorney General in the 2010 election,  
21 coordinated with Kathleen Winn, a volunteer member of the Tom Horne for  
22 Attorney General campaign and the chairwoman of Business Leaders for

1 Arizona, to raise and spend money through the Business Leaders for Arizona  
2 political committee to advocate the defeat of Mr. Horne's opponent in violation of  
3 A.R.S. §§ 16-901, -903, -905, -913, -915, -917, and -924. See Maricopa  
4 County's Order Requiring Compliance filed October 11, 2012.

5 On November 5, 2012, Appellants Tom Horne and Kathleen Winn  
6 requested a hearing on the allegations set forth in the Order Requiring  
7 Compliance.

8 On December 21, 2012, Appellants Winn and Business Leaders for  
9 Arizona filed a motion to dismiss. Tom Horne filed a Joinder on that same date.  
10 Maricopa County Attorney's Office filed a response on January 11, 2013.  
11 Appellants filed an amended reply on January 27, 2013.

12 On March 19, 2013, the Administrative Law Judge filed a Recommended  
13 Order recommending that the case be dismissed because: 1) The Secretary of  
14 State was required to refer this matter to the Attorney General pursuant to A.R.S.  
15 § 16-924(A); 2) The Secretary of State's referral to the Maricopa County  
16 Attorney was not authorized; and 3) the Maricopa County Attorney lacked  
17 authority to issue the Order Requiring Compliance.

## 18 **FINDINGS OF FACT**

19 1. In December 2011, the Federal Bureau of Investigation (FBI) and  
20 the Maricopa County Attorney's Office began investigating alleged campaign  
21 violations by Tom Horne, the Tom Horne for Attorney General Campaign,  
22 Business Leaders for Arizona, and Kathleen Winn began. Shortly thereafter, the

1 Secretary began to receive public records requests “concerning Tom Horne’s  
2 campaign for the Office of Attorney General and other political committees  
3 allegedly involved in supporting the Horne campaign.” Exhibit B, April 16, 2012  
4 letter, from Deputy Attorney General Eric Bistrow to Stephen Tully.

5       2. The Attorney General very personally (and derivatively everyone  
6 who worked for and were beholden to him in his Office as at-will employees) had  
7 a self-evident conflict of interest that absolutely required their complete and  
8 immediate disqualification in *all matters* related to the investigation and  
9 enforcement of charges that he had personally violated campaign finance laws.  
10 See, E.R. 1.7 (a) (2), Rules of Professional Conduct, and A.R.S. § 38-503(B)  
11 (“Any public officer or employee ... shall refrain from participating in any manner  
12 as an officer or employee in such decision.”). “Any manner” means *any manner*.

13       3. Thus, when he received a request from the Secretary of State that  
14 he appoint outside counsel in the matter, Attorney General Horne and his office,  
15 pursuant to A.R.S. § 41-192(E), should immediately have declined the request  
16 and referred the selection of outside counsel back to the Secretary of State.

17       4. The Secretary of State was fully justified in his understanding that  
18 the April 16, 2012 letter from Mr. Horne’s Chief Deputy Eric Bistrow to attorney  
19 Stephen Tully (Exhibit B hereto) was a tacit admission that both Mr. Horne and  
20 his office were in this conflict position. This tacit admission is confirmed by the  
21 internal e-mail exchange between Assistant Secretary of State Jim Drake and  
22

1 Assistant Attorney General Michele Forney for the period from April 6-9, 2012.  
2 Exhibit C.

3           5.       Once the Attorney General's Office appropriately acknowledged that  
4 it was ethically disqualified from advising the Secretary on all issues relating to  
5 public records requests arising out of his alleged campaign finance violations,  
6 due to a clear conflict given Mr. Horne's position as Attorney General and Ms.  
7 Winn's status as a current employee of the Attorney General's Office, it  
8 necessarily follows that it was also disqualified from evaluating or enforcing  
9 allegations of law breaking by the Attorney General and/or Ms. Winn concerning  
10 issues arising out of the same subject matter. This includes of course, the  
11 Attorney General's determinations of where to forward the case for further  
12 investigation and enforcement. Properly avoiding involvement in a matter with a  
13 clear and personal legal conflict necessarily encompasses any decision-making  
14 with respect to who handles the matter at the outset. This is particularly true  
15 where it is the Attorney General *himself* who is the subject of the investigation,  
16 and potential enforcement action. Not only is the fox precluded from guarding the  
17 hen house, he is precluded from selecting its guard.

18           6.       The Office of the Attorney General has a conflict of interest, and is  
19 disqualified in *all matters* concerning the investigation and enforcement of  
20 alleged violations of Arizona's campaign finance laws by candidate Tom Horne,  
21 the Tom Horne for Attorney General campaign, Business Leaders for Arizona,  
22 and Kathleen Winn, a current employee of the Attorney General's Office, during

1 the 2010 election campaign. Once the letter acknowledging the clear legal  
2 conflict on the instant issue of advising on public records requests was sent to  
3 the Secretary on April 16, 2012, the Secretary's sole legal obligation was to  
4 "make expenditures and incur indebtedness to employ attorneys to provide the  
5 representation or services." A.R.S. § 41-192(E).

6 7. This statutory duty and authority was further buttressed by a special  
7 session law authorizing the Secretary to hire independent counsel in place of the  
8 attorney general through December 31, 2014. (Laws 212, Chapter 361, § 25)  
9 The Secretary acted pursuant to these laws when he requested the Maricopa  
10 County Attorney to file an enforcement action on September 20, 2012.

11 8. The Secretary faced another practical dilemma not contemplated by  
12 A.R.S. § 41-192(E) or by the Administrative Law Judge. If the Secretary  
13 submitted a request for enforcement to the Attorney General – the subject of the  
14 enforcement action – he would be required to provide that subject, Tom Horne,  
15 with sensitive and secret investigation information before an independent  
16 assessment could be made. This would include information provided to  
17 investigators by numerous at-will employees under Mr. Horne's employ. This  
18 concern was not an academic one. Tom Horne contacted a number of witnesses  
19 during the FBI's nine month investigation, and interrogated those witnesses  
20 about what they told investigators.

21 9. The Maricopa County Attorney made an exhaustive review of the  
22 Notice of Reasonable Cause and more than 3,000 pages of supporting records

1 submitted by the Secretary. These records included the sworn affidavit  
2 (complaint) of Maricopa County Investigator, Mark Stribling; the Arizona Attorney  
3 General's Office's internal investigation conducted by Special Agent Meg  
4 Hinchey; FBI witness interview transcripts and Form 302 reports; telephone  
5 records of Tom Horne, Kathleen Winn, and other members of the Tom Horne for  
6 Attorney General Campaign; and email messages of Tom Horne, Kathleen Winn,  
7 and Lincoln Strategy Group, a consulting company hired by Business Leaders for  
8 Arizona.

9 10. On October 11, 2012, the Maricopa County Attorney's Office issued  
10 the Order Requiring Compliance. On November 5, 2012, Tom Horne and  
11 Kathleen Winn requested a hearing pursuant to A.R.S. §§ 16-924(A) and 41-  
12 1092.03.

### 13 CONCLUSIONS OF LAW

#### 14 **I. The Attorney General Was Disqualified From Reviewing Or Enforcing** 15 **The Case Against Himself Or Referring It To An Outside Agency, And** 16 **Acknowledged This By Letter Dated April 16, 2012.**

17 1. By its letter dated April 16, 2012, the Arizona Attorney General's  
18 Office acknowledged the presence of a clear legal conflict and appropriately  
19 disqualified itself on all matters regarding the investigation and enforcement of  
20 alleged campaign finance law violations by Attorney General Tom Horne, the  
21 Tom Horne for Attorney General campaign, Kathleen Winn, and Business  
22 Leaders for Arizona.

1           2.     Such disqualification was not only mandated by E.R. 1.7 (a) (2),  
2 Rules of Professional Conduct<sup>1</sup>, but also by A.R.S. § 38-503 (B) which provides:

3                     Any public officer or employee who has ... a substantial interest  
4                     in **any decision** of a public agency shall make known such  
5                     interest in the official records of such public agency and shall  
6                     refrain from participating in **any manner** as an officer or  
7                     employee in such decision. (Emphasis added).

8           3.     A person who intentionally violates A.R.S. § 38-503 is guilty of a  
9 class six felony. A.R.S. § 38-510 (A)(1).

10           4.     The Attorney General's ethical and statutory obligation to disqualify  
11 himself included not only the duty to refrain from enforcing the campaign laws  
12 against himself, but it also disqualified him from selecting the lawyer who would  
13 bring the enforcement action against him<sup>2</sup>.

14           **II.     Once The Secretary Received Notice That The Attorney General Was  
15 Disqualified He Was Authorized To Refer The Case To The Maricopa  
16 County Attorney For Enforcement.**

17           5.     The Maricopa County Attorney's Office has subject matter  
18 jurisdiction in this case pursuant to A.R.S. § 41-192(E) and a special session law  
19 of the Arizona Legislature. A.R.S. § 41-192(E) provides in relevant part:

20                     If the attorney general determines that he is disqualified from  
21                     providing judicial or quasi-judicial legal representation **or** legal  
22                     services *on behalf of any state agency* in relation to any matter, the

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20           <sup>1</sup> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation  
21 involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

21                     (2) there is a significant risk that the representation of one or more clients will be materially limited  
22                     by...the personal interest of the lawyer.

22           <sup>2</sup> Virtually every lawyer on the Attorney General's staff is an at-will employee. This includes his Chief  
Deputy, Eric Bistrow, and former Solicitor General, Dave Cole, each of whom interacted with the  
Secretary in the early phase of the investigation.

1 attorney general shall give written notice to the state agency  
2 affected. If the agency has received [such] notification that the  
3 attorney general is disqualified from providing legal services in  
4 relation to any particular matter the state agency is authorized to  
5 make expenditures and employ attorneys to provide the  
6 representation or *services*. (Emphasis added)

7 6. Additionally, the Legislature authorized the Secretary to hire  
8 independent counsel for instances such as this:

9 Notwithstanding § 41-192, Arizona Revised Statutes, the  
10 secretary of state may hire independent counsel in place of  
11 the attorney general through December 31, 2014.

12 Laws 212, Chapter 361, § 25.

13 7. Under A.R.S. § 41-192(E) there are two instances where the  
14 Secretary is authorized to retain separate counsel. The first is where the  
15 attorney general is disqualified from representing the agency in a judicial  
16 proceeding. The second is when the Secretary receives written notice from the  
17 attorney general that he is disqualified from performing *a legal service on behalf*  
18 *of a state agency*. The enforcement of campaign finance laws is a legal service  
19 performed by the attorney general *on behalf of* the Secretary of State's Office. In  
20 fact, the attorney general and the county attorney are the only constitutional  
21 officers statutorily authorized to bring such actions on behalf of the Secretary in a  
22 judicial proceeding. The fact that the Secretary is not the Attorney General's  
"client" in such actions does not negate the fact that in bringing an enforcement  
action, the attorney general is performing a legal service *on behalf of* the  
Secretary. Indeed, in such cases the attorney general is assisting the Secretary  
in the administration and enforcement of the state's campaign finance laws.



1           8.     Once The Attorney General’s Office acknowledged that it was  
2 disqualified from enforcing alleged campaign violations against the Attorney  
3 General himself, let alone the additional issue of reviewing and enforcing  
4 campaign violations against Ms. Winn, a current employee who chaired Business  
5 Leaders for Arizona and served as a volunteer member of the Tom Horne for  
6 Attorney General campaign, the Secretary was authorized under A.R.S. § 41-  
7 192(E) and the session law to refer the case to the County Attorney to enforce  
8 these laws on his behalf. That is precisely what the Secretary did here.

9     **III.    The Maricopa County Attorney Had An Independent Basis To Bring  
10    An Enforcement Action.**

11           9.     Pursuant to A.R.S. § 16-905(K), the Maricopa County Attorney’s  
12 Office had authority to prosecute this enforcement action upon the receipt of a  
13 sworn complaint from a qualified elector indicating that a campaign finance law  
14 violation occurred in Maricopa County. Mark Stribling is a qualified elector.  
15 Exhibit D, Certification of Jasper Altaha, Voter Registration Manager, and  
16 Custodian of Records for the Maricopa County Elections Department.

17           10.    The Maricopa County Attorney’s Office was presented with more  
18 than 3,000 pages of investigative materials. These materials included a sworn  
19 affidavit of Mark Stribling, a qualified elector, summarizing the alleged violation,  
20 the reasonable cause notice from Secretary of State Ken Bennett, and numerous  
21 investigative reports from the FBI. All of these investigative materials were “filed”  
22 with the Maricopa County Attorney’s Office.



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**RESPECFULLY SUBMITTED** this 29th day of March, 2013.

WILLIAM G. MONTGOMERY  
MARICOPA COUNTY ATTORNEY

BY: /s/ William G. Montgomery  
WILLIAM G. MONTGOMERY  
Maricopa County Attorney

ORIGINAL of the foregoing electronically  
Submitted this 29<sup>th</sup> day of May 2013 to:

Honorable Tammy Eigenheer  
Administrative Law Judge  
ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS  
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/s/Jennifer Christiansen

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# Exhibit A

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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of TOM HORNE, Tom Horne  
for Attorney General Committee (SOS Filer  
ID 2010 00003); KATHLEEN WINN,  
Business Leaders for Arizona (SOS Filer ID  
2010 00375)

No. 13F-CF20120001-MCAO

**Minute Entry**

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The parties are advised that, as of this date, the Administrative Law Judge has issued a decision recommending that the appeal in this matter be dismissed. A copy of the decision is attached to this minute entry.

Done this day, March 19, 2013.

/s/ Tammy L. Eigenheer  
Administrative Law Judge

Copy e-mailed this 19<sup>th</sup> day of March, 2013 to all parties and interested persons on the approved mailing list.

By: autogenerated and posted to <https://portal.azoah.com/oedf/documents/13F-CF20120001-MCAO/index.html>

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 In the matter of TOM HORNE, Tom Horne  
4 for Attorney General Committee (SOS Filer  
5 ID 2010 00003); KATHLEEN WINN,  
6 Business Leaders for Arizona (SOS Filer ID  
7 2010 00375)

**No. 13F-CF20120001-MCAO**

**ADMINISTRATIVE LAW  
JUDGE DECISION**

8 **ISSUE**

9 This matter comes before the tribunal on Appellant Kathleen Winn's and  
10 Appellant Business Leaders for Arizona's Motion to Dismiss, which Appellant Tom  
11 Horne and Appellant Tom Horne for Attorney General joined.<sup>1</sup>

12 **RULING**

13 Because the Secretary of State was statutorily required to refer this matter to the  
14 Attorney General for civil enforcement under A.R.S. § 16-924(A), the Secretary of  
15 State's referral to the Maricopa County Attorney's Office was not authorized and the  
16 Maricopa County Attorney's Office lacked authority to issue the Order Requiring  
17 Compliance, the subject of the instant matter. Consequently, this appeal should be  
18 dismissed.

19 **FINDINGS OF FACT**

20 1. The Maricopa County Attorney's Office worked with the Federal Bureau of  
21 Investigations ("FBI") in conducting a criminal investigation of the alleged coordination  
22 between Tom Horne for Attorney General and Business Leaders for Arizona.

23 2. On September 18, 2012, the Maricopa County Attorney's Office referred  
24 the matter to the Arizona Secretary of State for further action related to civil  
25 enforcement based on its investigation with the FBI. In making the referral, the  
26 Maricopa County Attorney offered the services of the Maricopa County Attorney's Office  
27 with respect to a civil enforcement action in the matter if the Secretary of State's Office  
28 determined reasonable cause existed that a violation of Arizona campaign finance laws  
29 occurred.

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<sup>1</sup> The term "Appellants" as used in this order refers collectively to Appellant Tom Horne, Appellant Tom Horne for Attorney General, Appellant Kathleen Winn, and Appellant Business Leaders for Arizona.



1 (Emphasis added). Further, A.R.S. § 16-1021 provides:

2 In any election for state office, members of the legislature, justices of the  
3 supreme court, judges of the court of appeals or statewide initiative or  
4 referendum *the attorney general may enforce the provisions of this title  
through civil and criminal actions.*

5 (Emphasis added).

6 2. The parties acknowledge that in a typical case involving civil enforcement  
7 of campaign finance laws, the statutes would require the Secretary of State to notify the  
8 Attorney General of a violation. The parties disagree as to the effect of the obvious  
9 conflict in the instant matter.

10 3. The Maricopa County Attorney's Office argued that, because of the  
11 obvious conflict, the Attorney General's Office "could not advise the Secretary of State  
12 in any matter related to the Tom Horne for Attorney General campaign."<sup>3</sup> The Maricopa  
13 County Attorney's Office further argued that the Secretary of State was authorized  
14 under A.R.S. § 41-192(E) and a session law to refer the matter to counsel other than  
15 the Attorney General for civil enforcement.

16 4. A.R.S. § 41-192(E) provides:

17 If the attorney general determines that he is disqualified from providing  
18 judicial or quasi-judicial legal representation or legal services on behalf of  
19 any state agency in relation to any matter, the attorney general shall give  
20 written notification to the state agency affected. If the agency has received  
21 written notification from the attorney general that the attorney general is  
22 disqualified from providing judicial or quasi-judicial legal representation or  
23 legal services in relation to any particular matter, the state agency is  
authorized to make expenditures and incur indebtedness to employ  
attorneys to provide the representation or services.

24 5. The plain language of A.R.S. § 41-192(E) requires that the Attorney  
25 General make a determination of a conflict and notify the agency affected prior to the  
26 agency being authorized to hire independent counsel. The Maricopa County Attorney's  
27 Office argued, however, that the Attorney General was not required to make a finding of  
28

29  
30 <sup>3</sup> Respondent Maricopa County Attorney Office's Response to Appellants' Motion to Dismiss  
("Response") 2.



1 a conflict under A.R.S. § 41-192(E) before the Secretary of State could refer the matter  
2 to independent counsel for civil enforcement based on a session law that provides:

3         Notwithstanding section 41-192, Arizona Revised Statutes, the secretary  
4         of state may hire independent counsel in place of the attorney general  
5         through December 31, 2014.

6 Laws 212, Chapter 361, Section 25.

7         6.         The Maricopa County Attorney’s Office concluded that in the face of the  
8         obvious conflict and the authority granted to the Secretary of State through the session  
9         law, the Secretary of State properly referred the matter to the Maricopa County  
10         Attorney’s Office for civil enforcement.

11         7.         Appellants argued that the authority cited above does not authorize the  
12         Secretary of State to refer the matter to the Maricopa County Attorney’s Office for civil  
13         enforcement because the Attorney General does not act as “counsel” for the Secretary  
14         of State in the civil enforcement of campaign finance laws and does not provide “judicial  
15         or quasi-judicial legal representation or legal services” for the Secretary of State. A.R.S.  
16         § 41-192(E). Appellants maintained that under the campaign finance laws, once the  
17         Secretary of State notifies the Attorney General of its reasonable cause determination,  
18         the Attorney General acts independently as to the civil enforcement.

19         8.         Appellants’ position is supported by the plain language of the statutes,  
20         which provide that after the Secretary of State notifies the Attorney General of a  
21         violation, the Attorney General “*may* serve on the person an order requiring compliance”  
22         and the Attorney General “*may* enforce the provisions of this title through civil and  
23         criminal actions.” A.R.S. § 16-924(A) (emphasis added) and A.R.S. § 16-1021  
24         (emphasis added).

25         9.         The Administrative Law Judge does not find any inference in A.R.S. § 16-  
26         924(A) or A.R.S. § 16-1021 that the Attorney General represents the Secretary of State  
27         in the classic attorney-client relationship. Rather, each entity is charged with separate  
28         duties in the enforcement process.

29         10.         The Administrative Law Judge concludes that the Attorney General does  
30         not provide any legal representation or legal services to the Secretary of State within the  
31         provisions of A.R.S. § 41-192(E) when discharging its duties under A.R.S. § 16-924(A)

1 or A.R.S. § 16-1021. Accordingly, the Administrative Law Judge determines that neither  
2 A.R.S. § 41-192(E) nor the session law grants the Secretary of State the authority to  
3 refer the matter to independent counsel, such as the Maricopa County Attorney's Office,  
4 for civil enforcement.

5 11. The Maricopa County Attorney's Office also argued the Attorney General's  
6 prior determination of a conflict regarding the subject matter involved in this matter  
7 granted the Secretary of State the authority to refer the matter to the Maricopa County  
8 Attorney's Office for civil enforcement. In making its argument, the Maricopa County  
9 Attorney's Office relied on an April 16, 2012 letter in which the Attorney General's Office  
10 appointed outside counsel "*for the purpose of advising and representing the [Secretary*  
11 *of State]* in matters concerning public records requests for documents concerning Tom  
12 Horne's campaign for the office of Arizona Attorney General and other political  
13 committees that may allegedly be involved in supporting Mr. Horne's campaign."<sup>4</sup> The  
14 referral also indicated that the representation would continue while the matter was  
15 "pending either in arbitration or before a court of law including any appeals."<sup>5</sup>

16 12. Although the Attorney General's Office determined a conflict existed and  
17 made a referral to outside counsel, that referral was for representation in the classic  
18 attorney-client relationship as the outside counsel would advise and represent the  
19 Secretary of State during the proceedings. As previously addressed, the role of the  
20 Attorney General in civil enforcement proceedings is not one of representation.  
21 Therefore, the acknowledgement of a conflict as to providing representation to the  
22 Secretary of State during the investigation phase did not grant the Secretary of State  
23 authority to refer the matter to the Maricopa County Attorney's Office for the civil  
24 enforcement phase.

25 13. The Maricopa County Attorney's Office also argued it had independent  
26 authority to bring an enforcement action against Appellants as outlined in A.R.S. § 16-  
27 905. In particular, the Maricopa County Attorney's Office referenced A.R.S. § 16-  
28 905(K), which provides:

29  
30 <sup>4</sup> Response Attachment 1 (emphasis added).

<sup>5</sup> Id.

1 Any qualified elector may file a sworn complaint with the attorney general  
2 or the county attorney of the county in which a violation of this section is  
3 believed to have occurred, and the attorney general *or the county attorney*  
4 shall investigate the complaint for possible action.

5 (Emphasis added). The county attorney is then authorized under A.R.S. § 16-905(L) “to  
6 institute an action within forty-five working days after receiving a complaint under  
7 subsection K of this section . . . .”

8 14. The Maricopa County Attorney’s Office argued it had the authority to bring  
9 an enforcement action under A.R.S. § 16-905(K) based on a Search Warrant Affidavit  
10 signed by Mark Stribling, Commander of the Investigation Division of the Maricopa  
11 County Attorney’s Office, that was filed with the Maricopa County Superior Court. The  
12 Administrative Law Judge concludes that the Search Warrant Affidavit is not the  
13 equivalent of a sworn complaint filed by a qualified elector and the Maricopa County  
14 Attorney’s Office did not present any evidence that any qualified elector had filed a  
15 sworn complaint with the County Attorney.

16 15. Because the Secretary of State did not have the statutory authority to refer  
17 the matter to the Maricopa County Attorney’s Office for civil enforcement, the Maricopa  
18 County Attorney’s Office did not have legal authority to issue the Order Requiring  
19 Compliance. Thus, as a matter of law, the Order Requiring Compliance is void *ab initio*,  
20 which requires dismissal of this matter.

21 16. As a result of this finding, all pending motions before this tribunal are  
22 rendered moot.

23 **RECOMMENDED ORDER**

24 Based upon the foregoing, this matter is dismissed.

25 *In the event the Maricopa County Attorney’s Office fails to accept, reject, or*  
26 *modify the Administrative Law Judge Decision as provided in A.R.S. § 41-1092.08 and*  
27 *the Director of the Office of Administrative Hearings certifies the decision, the effective*  
28 *date of the Order will be five days from the date of that certification.*

29 Done this day, March 19, 2013.  
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/s/ Tammy L. Eigenheer  
Administrative Law Judge

Transmitted electronically to:

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

**Exhibit B**



**TOM HORNE**  
ATTORNEY GENERAL

**OFFICE OF THE ARIZONA ATTORNEY GENERAL**

**ERIC J. BISTROW**  
CHIEF DEPUTY

April 16, 2012

VIA U.S. MAIL AND E-MAIL TO:  
[stully@gordonrees.com](mailto:stully@gordonrees.com)

Stephen W. Tully  
Gordon & Rees  
111 W. Monroe Street, Suite 1600  
Phoenix, AZ 85003

Re: Appointment of Outside Counsel Representing the  
Arizona Secretary of State ("SOS")

Dear Mr. Tully:

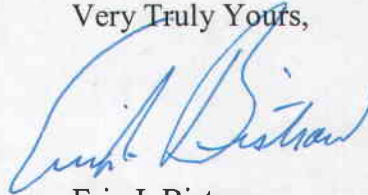
Pursuant to the Contract for Legal Services which you have entered into with the State of Arizona, and at the request of the Arizona Secretary of State we are referring the above-captioned matter to you. If there is any reason you cannot provide legal services to the State of Arizona, please notify Mr. Dave Cole at (602-542-8986) immediately so that proper alternate arrangements can be made.

This letter will confirm that you have been retained as outside counsel, effective as of April 16, 2012, for the purpose of advising and representing the SOS in matters concerning public records requests for documents concerning Tom Horne's campaign for the office of Arizona Attorney General and other political committees that may allegedly be involved in supporting Mr. Horne's campaign.

This approval is limited to those legal services necessary to the issues described above. The SOS shall be responsible for all costs and attorney fees associated with the representation to be provided pursuant to this authorization. Invoices should be forwarded to Jim Drake at 1700 W. Washington Street, Phoenix, Arizona 85007. This authorization is valid during the time the above-referenced matter is pending either in arbitration or before a court of law including any appeals. As counsel you shall abide by the requirements of the Attorney General Outside Counsel Contract, AG12-0010. We understand that, on certain issues, you might need to consult with other lawyers in your firm in the handling of this assignment. However, you are not to transfer this file to another attorney in the firm without prior approval. You should coordinate with Michele Forney, the Assistant Attorney General assigned to SOS at (602) 542-7826.

Requirements concerning settlement negotiations, out-of-state travel, investigation services, and appeals are set forth in Appendix B of the Attorney General Outside Counsel Contract. Please review the contract with your firm to help assure your representation conforms to its terms.

Very Truly Yours,



Eric J. Bistrow  
Chief Deputy

cc: Jim Drake, SOS  
Margaret Dugan  
Tom Chenal  
Dave Cole  
Michele Forney

## Exhibit C



**From:** Drake, Jim [<mailto:jdrake@azsos.gov>]  
**Sent:** Friday, April 06, 2012 12:40 PM  
**To:** Forney, Michele  
**Cc:** Chan, Amy; Bennett, Ken  
**Subject:** Public records request (Legal advice)

Hello Michele. I complied with a public records request yesterday, albeit with redacted information. The *Republic* is now asking to review the unredacted materials. Pretty darn sure we're going to need counsel as this progresses. Hoping I can get a formal conflict letter and appointment?

Jim

Jim Drake  
Deputy Secretary of State  
1700 W. Washington, 7th Floor  
Phoenix, AZ 85007  
(602) 542-4919 Tel  
(602) 542-1575 Fax

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**From:** Forney, Michele [<mailto:Michele.Forney@azag.gov>]  
**Sent:** Monday, April 09, 2012 11:01 AM  
**To:** Drake, Jim  
**Cc:** Chan, Amy; Bennett, Ken  
**Subject:** RE: Public records request (Legal advice)

EXO has approved the appointment of outside of counsel. We're moving forward. As soon as I have more information, I will be in touch.

Michele

Michele L. Forney  
Assistant Attorney General  
Office of the Attorney General  
1275 W. Washington Street  
Phoenix, AZ 85007

[Michele.Forney@azag.gov](mailto:Michele.Forney@azag.gov)  
Phone: (602) 542-7826  
Fax: (602) 542-8308

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**From:** Drake, Jim [<mailto:jdrake@azsos.gov>]  
**Sent:** Monday, April 09, 2012 11:04 AM  
**To:** Forney, Michele  
**Cc:** Chan, Amy; Bennett, Ken  
**Subject:** RE: Public records request (Legal advice)

Many thanks. I will stop asking you questions . . . soon. Does this process take a long time? Jim

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**From:** Forney, Michele [<mailto:Michele.Forney@azag.gov>]

**Sent:** Monday, April 09, 2012 4:39 PM

**To:** Drake, Jim

**Cc:** Chan, Amy; Bennett, Ken

**Subject:** RE: Public records request (Legal advice)

Our office recommends the following three attorneys from the approved contract attorneys list. If you'll please let me know your preference, we'll get it to the outside counsel committee.

1. Russell Kolsrud of Clark Hill, PLC
2. Michele lafrate, of lafrate and Associates
3. Jay Jacobson, of Sanders & Parks, PC

I'll continue to try to move this along as quickly as possible.

Michele

## Exhibit D



**Maricopa County**  
Office of the Recorder

**Helen Purcell - Recorder**

111 South 3rd Avenue  
Phoenix, Arizona 85003-2281  
Phone: (602) 506-3535  
Fax: (602) 506-3273

**CERTIFICATION**

I, Jasper Altaha, Voter Registration Manager, am the Custodian of Records for the Maricopa County Elections Department. I hereby certify under penalty of perjury that the following individuals were qualified electors during the calendar years 2011 and 2012, and they and continue to be qualified electors as of the date of signing this certification:

Ken Bennett

Mark E. Stribling

Brian Grehoski

A handwritten signature in black ink, appearing to read "Jasper A. Altaha".

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Jasper Altaha  
Custodian of Records

Executed on this 25<sup>th</sup> day of March 2013.