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8 *Attorney for Business Leaders for Arizona and Kathleen Winn*

9 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

10 In the Matter Of,

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)

No. 13F-CF20120001-MCAO

**MOTION TO VACATE HEARING**

Tammy L. Eigenheer  
Administrative Law Judge

16 Appellant Winn respectfully moves this Court to vacate the hearing set for May 7, 2013.

17 Appellant does not believe that this court should hold a hearing on a matter in which it has ruled the  
18 agency itself does not have jurisdiction. As we stated in our original motion to dismiss, it would  
19 seem to make sense that if the agency does not have jurisdiction to bring the action, then this court  
20 would not have jurisdiction to hear the action that they have brought.

21 It is true that under ARS section 41 –1092.08 that an agency generally has the power to  
22 modify or reject an order of an administrative law judge. However a fair reading of that statute is that  
23 it applies only after an administrative law judge has made a determination on the merits of the case.

24 The statutes do not seem to provide for, nor would it make sense for them to provide for, an  
25 agency to simply ignore this court's ruling that it did not have jurisdiction to bring the case before the  
26 administrative law judge in the first instance.

27 If the county attorney's office wants this court to hear this matter, they should take a special  
action in Superior Court asking that Superior Court rule in favor of the county attorney's office that

1 they do have jurisdiction. And order this court to hold a hearing. Absent that, it is our position that  
2 because of the lack of jurisdiction on the part of the county attorney, this court should not hold a  
3 hearing on the compliance order unless it is ordered by a higher court to do so.  
4

5 Respectfully submitted on this 29<sup>th</sup> day of March, 2013.  
6

7 /s/ Timothy A. La Sota  
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11 ORIGINAL OF THE FOREGOING  
12 electronically filed this 29<sup>th</sup> day of March, 2013,  
13 and submitted to:

14 Honorable Tammy Eigenheer  
15 Administrative Law Judge  
16 ARIZONA OFFICE OF ADMINISTRATIVE  
17 HEARINGS  
18 1400 West Washington Street, Suite 101  
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21 COPIES of the foregoing served via OAH  
22 electronic filing this 29<sup>th</sup> day of March, 2013, to:

23 Bill Montgomery, Maricopa County Attorney  
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1 COPIES of the foregoing served via OAH  
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By: /s/Melissa M. Wallingsford