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10 **OFFICE OF THE YAVAPAI COUNTY ATTORNEY**

11 **CAMPAIGN FINANCE PROCEEDING**

12 IN THE MATTER OF

Order Requiring Compliance

13 TOM HORNE, individually; Tom
14 Horne for Attorney General
15 Committee (SOS Filer 2010 00003);
16 KATHLEEN WINN, individually;
17 Business Leaders for Arizona (SOS
18 Filer 2010 00375).

19 On June 27, 2013, the Arizona Secretary of State issued a letter to the
20 Arizona Attorney General's Office stating that reasonable cause exists to believe
21 that Kathleen Winn ("Winn"), Business Leaders for Arizona ("BLA"), Tom Horne
22 ("Horne"), and Tom Horne for Attorney General ("the Horne Campaign") violated
23 campaign finance laws under A.R.S. § 16-924(A). Also on June 27, 2013, the
24 Arizona Attorney General's Office, through Solicitor General Robert Ellman,
25 appointed Yavapai County Attorney Sheila Polk as a Special Arizona Attorney
26

1 General to fulfill the Attorney General's role as described in A.R.S. § 16-924. This
2 Order Requiring Compliance ("Order") is issued pursuant to that authority.

3
4 Tom Horne ran for and was elected to the office of Arizona Attorney General
5 in 2010. BLA, through its chair Kathleen Winn, was formed as an independent
6 expenditure committee. However, as explained in this Order, BLA and Winn
7 coordinated their activities with Horne and the Horne Campaign in order to
8 advocate the defeat of Horne's opponent in the 2010 general election, Felicia
9 Rotellini. That coordination resulted in violations of Arizona campaign finance
10 law. A.R.S. § 16-901 et seq.

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13 **I. Arizona Campaign Finance Law**

14 A.R.S. § 16-901(14) defines the term "independent expenditure":

15
16 14. "Independent expenditure" means an expenditure by a person or
17 political committee, other than a candidate's campaign committee, that
18 expressly advocates the election or defeat of a clearly identified candidate,
19 that is made without cooperation or consultation with any candidate or
20 committee or agent of the candidate and that is not made in concert with or at
21 the request or suggestion of a candidate, or any committee or agent of the
22 candidate. Independent expenditure includes an expenditure that is subject to
23 the requirements of § 16-917, which requires a copy of campaign literature or
24 advertisement to be sent to a candidate named or otherwise referred to in the
25 literature or advertisement. An expenditure is not an independent expenditure
26 if any of the following applies:

(a) 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

1 being advocated by the expenditure.

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

6 (c) In the same election the person making the expenditure,
7 including any officer, director, employee or agent of that person, is or
8 has been:

9 (i) Authorized to raise or expend monies on behalf of the
10 candidate or the candidate's authorized committees.

11 (ii) Receiving any form of compensation or
12 reimbursement from the candidate, the candidate's committees
13 or the candidate's agent.

14 (d) The expenditure is based on information about the
15 candidate's plans, projects or needs, or those of his campaign
16 committee, provided to the expending person by the candidate or by
17 the candidate's agents or any officer, member or employee of the
18 candidate's campaign committee with a view toward having the
19 expenditure made.

20 Independent expenditures do not count as contributions to a candidate's
21 campaign. A.R.S. § 16-901(5)(b)(vi). However, "[a]n expenditure by a political
22 committee, corporation, limited liability company, labor organization or a person
23 that does not meet the definition of an independent expenditure *is an in-kind
24 contribution to the candidate and a corresponding expenditure by the candidate
25 unless otherwise exempted.*" A.R.S. § 16-917(C) (emphasis added).

26 Candidates and Candidate Committees are subject to contribution limits
which vary depending on the nature of the election and the type of donor. A.R.S. §

1 16-905; *see* Exhibit 1, 2009-2010 Contribution Limits Table. Candidates and their
2 campaigns cannot accept contributions from corporations or limited liability
3 companies. A.R.S. § 16-919(A). All political committees, both candidate
4 committees and independent committees, must periodically file reports listing all
5 contributions received. A.R.S. §§ 16-913, 16-915.
6

7
8 In sum, if there is any “arrangement, coordination or direction” between a
9 person or political committee making an expenditure that expressly advocates the
10 election or defeat of a clearly identified candidate and that candidate or the
11 candidate’s campaign, those expenditures are deemed in-kind contributions to the
12 candidate and expenditures of the candidate. Several consequences may follow as a
13 result of the deeming: (1) The deemed in-kind contributions may exceed the
14 candidate’s contribution limits; (2) The deemed in-kind contributions may violate
15 the law that prohibits the candidate from accepting any contributions from
16 corporate contributors; (3) If the deemed in-kind contributions are not reported by
17 the candidate committee, the reports filed by the candidate committee and the
18 expending “independent” committee would inaccurately state the nature and origins
19 of the contributions.
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23 **II. The 2010 Attorney General Election**

24 *A. Background*

25 Kathleen Winn formed BLA on December 23, 2009. Exhibit 2, BLA
26

1 Statement of Organization. According to Winn, her original intent was to oppose
2 Andrew Thomas in the Attorney General primary election. Exhibit 3, Kathleen
3 Winn Affidavit dated March 30, 2012 at ¶ 1. According to Winn, BLA was mildly
4 active during the first two months of 2010, and then remained “dormant” until
5 activated again in October of 2010. Exhibit 3, Kathleen Winn Affidavit dated
6 March 30, 2012 at ¶ 1.
7
8

9 According to her affidavit, Winn was involved with the Horne campaign
10 from early in 2010 until a few weeks after the primary election. Exhibit 3, Kathleen
11 Winn Affidavit dated March 30, 2012 at ¶ 2. Her duties included coordinating the
12 Horne campaign in all counties other than Maricopa County. Exhibit 3, Kathleen
13 Winn Affidavit dated March 30, 2012 at ¶ 5. Winn states that she withdrew from
14 the Horne campaign on October 17, 2010, and that the first contribution to BLA
15 was made on October 20, 2010. Exhibit 4, Kathleen Winn Affidavit dated May 25,
16 2012 at ¶ 2.
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20 According to BLA’s Post-Election report filed by Winn with the Secretary of
21 State, beginning approximately two weeks before the 2010 general election, BLA
22 received five hundred thirteen thousand four hundred twenty dollars (\$513,420.00)
23 in contributions from seven individuals and three entities. Exhibit 5, BLA
24 Amended 2010 Post-General Election Report. BLA used the contributions to pay
25 Lincoln Strategy Group (“LSG”) for the production and airing of a television
26

1 advertisement to expressly advocate the defeat of Felicia Rotellini, Horne's
2 opponent in the 2010 Attorney General Election. Exhibit 3, Kathleen Winn
3 Affidavit dated March 30, 2012 at ¶ 6 and Exhibit 5, BLA Amended 2010 Post-
4 General Election Report. Winn's principal contact at LSG was Brian Murray
5 ("Murray"). Winn's affidavit asserts that the anti-Rotellini advertisement was her
6 idea alone, that the advertisement was produced by her alone, that she took no
7 instruction from Horne or his campaign staff or advisors, and that there was
8 absolutely no coordination between Horne/Horne's campaign, and Winn/BLA.
9 Exhibit 3, Kathleen Winn Affidavit dated March 30, 2012 at ¶ 6.

13 *B. Events of October 20, 2010*

14 On October 20, 2010, Murray and Winn engaged in several key e-mail
15 exchanges regarding the content and progress of the anti-Rotellini advertisement
16 that BLA had commissioned from LSG. Interspersed with the e-mail exchanges
17 between Murray and Winn are telephone calls between Winn and Horne. The
18 Murray/Winn e-mails and the Winn/Horne phone calls, and the relationships
19 between them, are critical because they document the development and refinement
20 of the core political message of BLA's anti-Rotellini advertisement. That
21 advertisement was BLA's entire contribution to the 2010 election's political
22 landscape.
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At 10:21 a.m., Murray sent Winn an e-mail suggesting that the advertisement

1 “be used to drive [Rotellini’s] negatives.” Exhibit 6, E-mail Chain A. Between
2 10:21 a.m. and the next e-mail at 1:42 p.m., the phone records show five calls
3 between Horne and Winn and five calls between Winn and Murray. Exhibit 7,
4 Winn Phone Records.
5

6 At 1:42 p.m., Winn e-mailed Murray and asked if sound was available for the
7 anti-Rotellini advertisement. Exhibit 6, E-mail Chain A. At 1:46 p.m., Murray
8 responded to Winn stating that the commercial’s sound would not be available for a
9 few hours. Exhibit 6, E-mail Chain A.
10

11 At 2:19 p.m., Horne called Winn and they spoke for 8 minutes,¹ until 2:27
12 p.m. Exhibit 7, Winn Phone Records. While Horne and Winn were speaking, at
13 2:24 p.m., Murray e-mailed Winn with the unedited voice-over file for the anti-
14 Rotellini advertisement. Exhibit 8, E-mail Chain B. At 2:29 p.m., shortly after she
15 had finished talking to Horne, Winn e-mailed Murray as follows:
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17

18 We do not like that her name is mentioned 4 times and no mention for
19 Horne. We are doing a re-write currently and will get back to you.
20 Too negative and takes away from the message we wanted which we
21 want to hire the next AG to protect and defend[sic] Arizona against the
22 federal government. I will get back to you shortly Brian sorry for the
23 confusion except I have several masters.

24 Exhibit 8, E-mail Chain B. It would have taken Winn approximately 1-2 minutes to
25 create this e-mail, meaning that she must have started it either while she was talking
26 to Horne or immediately thereafter. In addition, Winn spoke to no one else on her

¹ The telephone records round call lengths to the nearest minute.

1 cell phone between the receipt of the 2:24 p.m. e-mail from Murray and her 2:29
2 p.m. response. Exhibit 7, Winn Phone Records.

3
4 At 2:30 p.m., Murray responded stating that he would stop production on the
5 anti-Rotellini advertisement. Exhibit 8, E-mail Chain B. Winn replied to Murray at
6 2:37 p.m.:

7
8 Yes I will have it worked it out by 5:30. They feel this leaves people
9 with her name 4X and with no mention of Tom [sic] It is like saying
10 don't think about a pink elephant ..so [sic] you think about the pink
elephant.

11 Exhibit 9, E-mail Chain C. Also at 2:37 p.m., Winn initiated a telephone call to
12 Horne, and they spoke for eleven minutes until approximately 2:48 p.m. Exhibit
13 10, Horne Phone Records.

14
15 At 2:50 p.m., just after she finished talking to Horne, Winn e-mailed Murray:
16 "Okay it will be similar message just some changes." Exhibit 8, E-mail Chain B. At
17 2:53 p.m., Murray responded to Winn's e-mail that mentioned the "pink elephant"
18 with the following e-mail:
19

20 It is kind of the point, driving her negatives. We don't want Tom's
21 name associated with the negative messaging. From a timing
22 standpoint in order to be on the air Monday we will have to produce
23 and make all edits tomorrow so I can traffic it on Friday.

24 Exhibit 9, E-mail Chain C.

25 At 2:59 p.m., Winn responded to Murray:

26 The concern is you can get out her negatives without saying her name

1 4 times. I have two very strong personalities debating this moment she
2 lacks name recognition we don't want to help her in that regard is the
3 argument.

4 Exhibit 9, E-mail Chain C.

5 At 3:00 p.m., Winn and Murray exchanged two e-mails regarding BLA's
6 payment to LSG for the anti-Rotellini advertisement. Exhibit 8, E-mail Chain B.

7
8 At 3:01 p.m., Winn called Horne and the call lasted for approximately one
9 minute. Exhibit 7, Winn Phone Records. At 3:11 p.m., Winn sent Murray an e-
10 mail with a revised script of the anti-Rotellini advertisement, and the statement: "I
11 think I prevailed no mention of Tom thanks for what you said. I believe this times
12 out let me know." Exhibit 6, E-mail Chain A. At 3:13 p.m., Murray told Winn that
13 the script was too long. Exhibit 6, E-mail Chain A.

14
15 At 3:14 p.m., Winn suggested removing one line, but at 3:16 p.m. Murray
16 told her that the commercial was still too long. Exhibit 6, E-mail Chain A. At 3:21
17 p.m., Horne called Winn, and they spoke for four minutes. Exhibit 7, Winn Phone
18 Records. As they were finishing that conversation, at 3:25 p.m., Winn e-mailed
19 Murray:
20

21
22 Change to Arizona needs the RIGHT attorney general
23 taking money from labor unions and special interest groups

24 Exhibit 6, E-mail Chain A.
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1 *C. Analysis of the October 20, 2010 Events*

2 On October 20, 2010, Winn and Murray worked for several hours by phone
3 and e-mail to finalize the “voice-over” script of the BLA advertisement that would
4 support Horne and oppose Rotellini. The main discussion between Winn and
5 Murray concerned the political message Winn/BLA wished to convey in the anti-
6 Rotellini advertisements. The records show that in the course of this work
7 whenever a decision was made to modify or approve the “voice-over” script, Winn
8 was almost always either on the phone with Horne, or spoke with Horne prior to
9 conveying final instructions to Murray. The *content* of the e-mails between Winn
10 and Murray, coupled with the *timing* of those e-mails and the phone calls between
11 Winn and Horne provide convincing proof that Horne and Winn coordinated on the
12 development of the political message to be conveyed by the BLA anti-Rotellini
13 advertisement.
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18 1. Content and timing of key phone calls and e-mails

19 At 2:19 p.m., Winn began an 8 minute phone conversation with Horne.
20 Exhibit 7, Winn Phone Records. At 2:24 p.m., while Winn was on the phone to
21 Horne, Murray e-mailed the unedited version of the voice-over script for the
22 advertisement to Winn. Exhibit 9, E-mail Chain C.
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25 At 2:29 p.m., shortly after ending her conversation with Horne, Winn e-
26 mailed Murray with a critique of the script, stating that, “We do not like that her

1 name is mentioned 4 times and no mention for Horne.” Exhibit 8, E-mail Chain B
2 (emphasis added). Indeed Winn used the plural pronoun “we” three additional
3 times in that e-mail – “We are doing a rewrite . . .”; “Too negative and takes away
4 from the message we wanted which we want . . .” Exhibit 8, E-mail Chain B. Winn
5 clearly knew the difference between “we” and “I” as she finished the e-mail with
6 the sentence: “I will get back to you shortly Brian sorry for the confusion except **I**
7 **have several masters.**” Exhibit 8, E-mail Chain B (emphasis added).
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10 This e-mail is telling, as it contradicts Winn’s assertion in her affidavits that
11 she “raised every dollar for this campaign [herself], produced the ad, and bought the
12 air time without the assistance of anyone other than Mr. Murray.” Exhibit 11,
13 Winn Affidavit dated May 30, 2012 at ¶ 4; *see also* Exhibit 3, Winn Affidavit dated
14 March 30, 2012 at ¶ 6. Winn was on the phone with Horne when she received the
15 draft script. She then told Murray that “we” have a problem with the script. Given
16 the content of the 2:29 p.m. e-mail, the fact that the e-mail was sent within a minute
17 or two of the end of the phone conversation between Winn and Horne and that
18 nothing shows that Winn spoke with any other person during the time between the
19 end of her phone call with Horne and the 2:29 p.m. e-mail, it is reasonable to
20 conclude that “we” meant Winn and Horne. In other words, Winn was telling
21 Murray that **Winn and Horne** had a problem with the script.
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Winn also made a point to declare to Murray she had “several masters,”

1 again refuting her assertion that she was acting independently. Because she was
2 finalizing advertisements advocating the defeat of Horne's opponent and was in
3 communication at that time with no persons who could have contributed to the
4 advertisement's content other than Horne and Murray, the reasonable conclusion is
5 that at least one of Winn's "masters" was Horne.
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7
8 The focus of the e-mails then shifted to a debate about how the anti-Rotellini
9 advertisement should be changed. In a 2:37 p.m. e-mail to Murray, Winn explained
10 the objection "they" have to the script: "I will have it worked out by 5:30. They feel
11 this leaves people with her name 4 X and with no mention of Tom. It is like saying
12 don't think about a pink elephant .. so you think about the pink elephant." Exhibit
13 9, E-mail Chain C. Again, the use of the plural pronoun "they" indicates that Winn
14 was not working alone on the script changes, contrary to her sworn assertion.
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17 At the same time she sent the e-mail, 2:37 p.m., Winn called Horne. Exhibit
18 7, Winn Phone Records and Exhibit 9, E-mail Chain C. This phone call with Horne
19 lasted 11 minutes, and ended at approximately 2:48 p.m. Very shortly after Winn's
20 phone call with Horne ended, at 2:50 p.m., Winn e-mailed Murray to tell him that
21 the revised script would have "a similar message" but incorporate some changes.
22 Exhibit 8, E-mail Chain B. Clearly, between 2:37 p.m. and 2:50 p.m., while Winn
23 and Horne spoke, changes to the script were being debated.
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Winn confirmed that changes were being debated in her 2:59 p.m. e-mail to

1 Murray where Winn states, "I have two very strong personalities debating this
2 moment she lacks name recognition we don't want to help her in that regard is the
3 argument." Exhibit 9, E-mail Chain C (emphasis added). Again, the statement that
4 "two very strong personalities" were discussing the content of the anti-Rotellini
5 advertisement refutes Winn's sworn assertions that she acted alone in developing it.
6 The records show that while Winn and Murray were working on the advertisement,
7 Winn was in contact with no person who could have contributed to the
8 advertisement's content other than Horne. Indeed, Winn called Horne at 3:01 p.m.,
9 shortly after the 2:59 e-mail was sent. It is reasonable to conclude that Winn and
10 Horne were debating the content of the anti-Rotellini advertisement.
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14 At 3:11 p.m., Winn e-mailed Murray with a modified script. Exhibit 6, E-
15 mail Chain A. Winn made a point of telling Murray that she "prevailed" – again
16 confirming Winn was engaged in a debate with someone else about the content of
17 the script, logically one of her "several masters," and that she prevailed in the
18 debate. This is also contrary to Winn's sworn assertions that she acted alone and
19 dispels the notion that Winn was in any way the only person in control of the
20 advertisement production process. And again, the only person Winn had contact
21 with either by e-mail or her cell phone during this time who could have contributed
22 to the advertisement was Horne. Exhibit 7, Winn Phone Records. The reasonable
23 conclusion is that the debate about the content of the anti-Rotellini advertisement
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1 that LSG was preparing for BLA was between Winn and Horne.

2 It further appears that Horne participated in the final editing of the script to
3 make it short enough to air. At 3:13 p.m., Murray e-mailed Winn telling her the
4 script was too long. Exhibit 6, E-mail Chain A. At 3:14 p.m., Winn suggested
5 removing one line, but at 3:16 p.m. Murray told her that the script was still too
6 long. Exhibit 6, E-mail Chain A. This e-mail appears to have prompted a call from
7 Winn to Horne at 3:21 p.m. lasting for four minutes. Exhibit 7, Winn Phone
8 Records. Near the end of that conversation, at 3:25 p.m., Winn e-mailed Murray:

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10
11 Change to Arizona needs the RIGHT attorney general
12 taking money from labor unions and special interest groups

13 Exhibit 6, E-mail Chain A.

14
15 2. Conclusions and inferences from the events of October 20, 2010

16 Two related conclusions flow clearly from the above chain of events: (1)
17 Winn and Horne coordinated their efforts to produce the political message of the
18 anti-Rotellini advertisement, and (2) Winn's sworn statements that she alone was
19 responsible for the idea, design and production of the anti-Rotellini advertisement
20 are false.
21

22
23 Under A.R.S. § 16-901(14), an independent expenditure must be made
24 "without cooperation or consultation with any candidate or committee or agent of
25 the candidate," and must also not be made "in concert with or at the request or
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1 suggestion of a candidate, or any committee or agent of the candidate.” Further, an
2 expenditure is not independent if “[t]here is any arrangement, coordination or
3 direction with respect to the expenditure between the candidate or the candidate’s
4 agent and the person making the expenditure” or if “[t]he expenditure is made
5 on information about the candidate’s plans, projects or needs, or those of his
6 campaign committee, provided to the expending person by the candidate or by the
7 candidate’s agents or any officer, member or employee of the candidate’s campaign
8 committee with a view toward having the expenditure made.” *Id.*

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12 From 2:19 p.m. to 3:30 p.m. on October 20, 2010, the voice-over script for
13 the anti-Rotellini advertisement was vetted and approved. The content of that script
14 dictated BLA’s entire political message during the 2010 election cycle.

15
16 As noted above, during her e-mail exchanges with Murray, Winn admitted
17 that she had “several masters,” that “we” have problems, and that “they” don’t like
18 the script. Winn almost always consulted with Horne prior to instructing Murray.
19 When a decision was finally made, Winn stated she “prevailed.” The notion that she
20 “prevailed” means that she had to persuade someone to her point of view, which in
21 turn means someone else was making final decisions regarding the script.

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24 The only other person Winn spoke with during that time who could have
25 contributed to the advertisement was Horne. No other conclusion can be drawn
26 other than that Horne himself was the final authority approving the political content

1 of the anti-Rotellini advertisement purchased by BLA. Winn's primary
2 contribution was to convey Horne's decisions to Murray. The records reflect that
3
4 Winn and Horne coordinated their efforts on the anti-Rotellini advertisement
5 because Horne was in fact in control of the content of BLA's anti-Rotellini
6 advertisement. Thus, BLA's expenditures on the anti-Rotellini advertisement were
7
8 not independent expenditures under A.R.S. § 16-901(14), and are deemed an in-
9 kind contribution to Horne's campaign under A.R.S. § 16-917 (C).²

10 The same facts lead to the conclusion that Winn's sworn assertions that she
11 alone was responsible for the idea, design and production of the anti-Rotellini
12 advertisement are patently false.³ Winn's e-mails with Murray clearly state that
13
14 Winn was looking to others to make decisions when finalizing the core political
15 message of the anti-Rotellini advertisement. In fact, the October 20, 2010, e-mails
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17
18 ² The conduct also satisfies the "conduct prong" of the Federal Elections Commission's (FEC's)
19 guidelines to the extent that they might apply to Arizona campaign finance law. That test
20 classifies expenditures as coordinated 1) if the communications are made at the request or
21 suggestion of the candidate, 2) if the candidate is materially involved in decisions regarding the
22 content, audience, means of communication or other specific characteristics of the
23 communication, 3) if the communication is made after one or more substantial discussions
24 between the expender and the candidate, 4) if the expender and the candidate use a common
25 vendor, or 5) if a person who has previously been an employee or independent contractor of the
26 candidate's campaign committee or party committee within 120 days of the expenditure. *See*
27 Exhibit 14, Coordinated Communications and Independent Expenditures. The FEC test also
28 includes the "payment prong" and the "content prong," which are unambiguously satisfied in this
29 situation. Accordingly, the expenditures would be considered coordinated under the FEC
30 standard as well under the plain language of the Arizona statutes.

31 ³ Winn has also stated that she "raised every dollar for [the] campaign herself." Exhibit 11, Winn
32 Affidavit dated May 30, 2012 at ¶ 4. However, Brian Murray actually raised the \$350,000 from
33 RSLC. Exhibit 12, Brian Murray Interview dated April 2, 2012 at 16-18 and Exhibit 13, E-mail
34 Chain D.

1 make it clear that the origin of the political message to be conveyed by the anti-
2 Rotellini advertisement was not Winn, but was in fact Horne. Winn did not just
3 consult with Horne regarding the development and production of the advertisement;
4 she followed his direction for virtually its whole content.
5

6 Most of Winn's instructions to Murray occurred either while she was on the
7 phone with Horne or shortly after talking to him. Indeed, Winn admitted to Murray
8 that she had "several masters," that "two strong personalities were debating," and
9 that when a decision was made that she "prevailed." The e-mails show that Winn
10 not only acted in coordination with Horne, she was not even in charge of the
11 production decisions for BLA's anti-Rotellini advertisement; Horne was.
12
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14 *D. Events of October 27, 2010*

15 The coordination on October 27, 2010 is well-documented through a single
16 e-mail chain. See Exhibit 15, E-mail Chain E. At 1:36 p.m.,⁴ political pollster
17 Ryan Ducharme ("Ducharme") e-mailed Horne the following message:
18

19
20 Recent polls show you losing ground amongst independents to
21 Rotellini and her starting to pick up more Reps than you are picking up
22 Dems. Bleeding needs to be stopped. Allegations and smears against
23 you by the DC group starting to peel away votes. They need to be
24 addressed as desperate last minute attacks with no basis in truth.

25 Exhibit 15, E-mail Chain E. Ducharme then sent another e-mail to Horne and Kim
26 Owens, a Horne campaigner:

⁴ The initial e-mail carries a time stamp of "20:36:09," which appears to be the time in Greenwich Mean Time (GMT). All times are converted to Mountain Standard Time (MST) for consistency.

1 I would link attacks directly to Rotellini as someone behind in the
2 polls trying to hide from her record (SB1070, ties to unions calling for
3 AZ boycott, etc.) The truth, once known, will undermine Rotellini's
4 credibility and call in to question her character—a very important
5 quality for Inds.

6 You are much stronger in rural AZ.
7 -Ryan

8 Exhibit 15, E-mail Chain E.

9 After he received those two e-mails, Horne forwarded the entire chain to
10 Casey Phillips, a Republican State Leadership Committee ("RSLC") regional
11 director. Exhibit 15, E-mail Chain E. Then, at 2:02 p.m., Horne attempted to
12 forward the entire chain to Winn, with the following message: "I forwarded this to
13 casey.[sic] Maybe with this we can. Try again for the hundred k.⁵" Exhibit 15, E-
14 mail Chain E. However, at 2:05 p.m., Horne received a notice that the attempt to
15 forward the e-mail to Winn had failed. Exhibit 15, E-mail Chain E. At 2:10, Horne
16 successfully re-forwarded the entire e-mail chain to Winn. Exhibit 15, E-mail
17 Chain E.
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20 At 2:31 p.m., Winn forwarded the chain to Murray, with the note: "This just
21 came into me read below." Exhibit 15, E-mail Chain E. At 2:55 p.m., Murray sent
22 the e-mail chain to his attorney:
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25 ⁵ The "hundred k" likely refers to an attempt to request additional money from RSLC. That group
26 had originally indicated or suggested that it would provide BLA with \$450,000, but later revised
its contribution to \$350,000. See Exhibit 12, Brian Murray Interview dated April 2, 2012 at 17-
18 and Exhibit 16, E-mail Chain F.

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Steve,

I wanted to make you aware of an incident that occurred with one of our clients. Kathleen is running an IE committee called Business Leaders For Arizona which is in support of Tom Horne For AG. I was hire [sic] to do the TV component. I warned her on numerous occasions that she needed to cease contact with the candidate and any agents of the campaign. I then received the following e-mail. I then called her and informed her again that she should not have any contact. She assured me that this was unsolicited and had not in several days.

As our firm's attorney I wanted to make you aware of this situation should something arise at a later date.

Thanks,
B

Exhibit 15, E-mail Chain E. Later on October 27, 2010, Winn spoke three times to Horne, with each call either immediately preceding or immediately following a discussion between Winn and Murray. Exhibit 7, Winn Phone Records.

E. Analysis of October 27, 2010 events.

On October 27, 2010, Horne received information polling data from a Republican pollster telling him that he was losing support because of pro-Rotellini advertisements being financed by an out-of-state independent committee. The pollster recommended to Horne that he needed to address the pro-Rotellini advertisements to "stop the bleeding," and suggested a strategy to do so to Horne. Horne forwarded the polling information and strategic advice to Winn with a suggestion that Winn and BLA seek an additional one hundred thousand dollars

1 (\$100,000), presumably from RSLC. Winn forwarded that information to Murray,
2 who was Winn's financial contact with RSLC. Murray correctly recognized that the
3 e-mail was a violation of Arizona campaign finance law, and warned his attorney
4 about the e-mail.
5

6 The October 27, 2010, e-mail from Horne to Winn to Murray was a
7 communication from a candidate to a supposedly independent political committee.
8 In that communication, Horne shared information about the need of his campaign to
9 rebut pro-Rotellini advertisements. He also asked the supposedly independent
10 political committee to fulfill that need by doing what he could not himself do: raise
11 \$100,000 from a single unrelated donor and spend it on anti-Rotellini
12 advertisements targeting Rotellini's ties to unions and her record on Arizona
13 immigration policy.
14
15

16 When Horne sent strategic information to a supposedly independent
17 campaign, he intentionally and blatantly broke the barrier that was supposed to exist
18 between his campaign and BLA. The breach is so clear that Horne must have
19 recognized it to be improper. Even though the subsequent money raised by BLA
20 was not from RSLC, it is clear that BLA's expenditures were based on the needs of
21 the Horne campaign.
22
23
24

25 It is also notable that Winn made false statements in her sworn affidavits
26 concerning these events as well. In her second amended affidavit, Winn states, "I

1 did not take Mr. Horne's email as anything more than a suggestion, a suggestion I
2 rejected and did not act upon." Exhibit 11, Kathleen Winn Affidavit dated May 30,
3 2012 at ¶ 4. This is a false statement.

4
5 The e-mail string sent by Winn to Murray contained information regarding
6 Horne's slipping poll numbers and thus his need to counterattack, a statement of
7 strategy describing the content of such a counterattack, and a request from Horne
8 that Winn raise another \$100,000 for the counterattack. By forwarding this
9 information to Murray, the man who had raised \$350,000 for BLA from RSLC just
10 a week previously, Winn was obviously asking Murray to try to raise another
11 \$100,000 from RSLC so BLA could carry out Horne's request. "Not acting" by
12 Winn would have been not forwarding the e-mail to Murray. Clearly Winn did try
13 to carry out Horne's request, and her sworn statement that she did not act on his
14 request is false.

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18 *F. Findings and Conclusions*

19
20 As explained throughout Section II, Winn coordinated with Horne and his
21 campaign. Horne was substantially involved with the creation of the BLA
22 television commercial, which expressly advocated Rotellini's defeat. Accordingly,
23 it was made "in concert with" him. A.R.S. § 16-901(14). There was also
24 "arrangement, coordination or direction with respect to the expenditure between the
25 candidate or the candidate's agent and the person making the expenditure"
26

1 A.R.S. § 16-901(14)(b). The expenditure on the commercial was “made on
2 information about the candidate’s plans, projects or needs, or those of his campaign
3 committee” and that information was “provided to the expended person by the
4 candidate” or his campaign personnel. A.R.S. § 16-901(d).

6 As a result of that coordination, all of BLA’s expenditures must be deemed
7 in-kind contributions to the Horne Campaign. A.R.S. § 16-917(C). That
8 coordination resulted in Horne’s violations of campaign finance laws.

10 Any contributions to BLA which exceed the contribution limits for the Horne
11 campaign are unlawful. A.R.S. § 16-905. In 2010, the contribution limit for both
12 individuals and political committees was \$840. A.R.S. §§ 16-905(B), 16-905(C),
13 16-905(H), 16-941(B); *see* Exhibit 1, 2009-2010 Contribution Limits Table. Table
14 1, below, summarizes the amount by which each individual contribution and the
15 RSLC contribution exceeded the relevant limits:
16
17

19 **Table 1: Contributions in Excess of Contribution Limits**

<i>Contributing Person or Entity</i>	<i>Date of BLA Contribution</i>	<i>Amount Contributed to BLA</i>	<i>Amount Contributed to Horne</i>	<i>Amount over Contribution Limit</i>
Charles Diaz	10/20/2010	\$5,000	\$808	\$4,968
Richard Newman ⁶	10/21/2010 & 10/28/2010	\$15,000 & \$100,000	\$808 & \$332	\$0
Ronald Lebowitz	10/22/2010	\$840	\$750	\$750
Fife Symington	10/27/2010	\$500	\$840	\$500

26 ⁶ Richard Newman is married to Horne’s sister. Accordingly, his contributions are “family contributions” under A.R.S. § 16-901(10) and thus count as “personal monies” under A.R.S. § 16-901(18)(d).

1	Steven Ellman	10/28/2010	\$5,000	\$840	\$5,000
2	Mark Goldman	10/28/2010	\$5,000	\$840	\$5,000
3	RSLC	10/22/2010	\$350,000	\$0	\$349,160

4 Sources: Exhibit 5, BLA Amended 2010 Post-General Election Report; Exhibit 17,
5 BLA Contributions; Exhibit 18, Horne Exploratory Committee Amended 2010
6 January 31st Report; Exhibit 19, Tom Horne for Attorney General Amended 2010
7 June 30th Report; Exhibit 20, Tom Horne for Attorney General Amended 2010 Pre-
8 Primary Election Report; Exhibit 21, Tom Horne for Attorney General Amended
9 2010 Post-Primary Election Report; and Exhibit 22, Tom Horne for Attorney
10 General Amended 2010 Post-General Election Report.

11 In addition, BLA received three contributions from corporations: NCP
12 Finance Limited and Texas Loan Corporation each gave \$15,000 and E.D.
13 Marshall, Inc. gave \$2,000. Exhibit 5, BLA Amended 2010 Post-General Election
14 Report and Exhibit 17, BLA Contributions. Those contributions are also deemed to
15 be contributions to the Horne campaign. However, a candidate may not accept any
16 contributions from corporations. A.R.S. § 16-919(A). Therefore, as to Horne, the
17 corporate contributions were entirely unlawful.

18 Finally, both BLA and the Horne Campaign filed inaccurate Post-General
19 Election Reports because they did not correctly reflect that BLA's expenditures
20 were in-kind contributions and corresponding expenditures by the Horne
21 Campaign.

22 **III. Order**

23 This Order is issued pursuant to A.R.S. § 16-924(A). Horne, Winn, the
24 Horne Campaign, and BLA have twenty days from the date of issuance to come
25
26

1 into compliance. *Id.*

2 Horne and the Horne Campaign are ordered to amend their 2010 Post-
3 General election report to include the expenditures made by BLA. These
4 expenditures are deemed in-kind contributions and corresponding expenditures by
5 A.R.S. § 16-917(C). Winn and BLA are similarly ordered to amend their 2010
6 Post-General Election Report to reflect the coordinated nature of BLA's
7 expenditures.
8

9
10 Horne and the Horne Campaign are ordered to refund the amount of the
11 deemed in-kind contributions in excess of the appropriate limits to the person or
12 organization that made the contribution. Table 1, above, details the specific
13 amounts that exceed those limits. In addition, Horne and the Horne Campaign are
14 ordered to fully refund the in-kind contributions from corporations, because they
15 were unlawful in their entirety.
16

17
18 If Horne, Winn, the Horne Campaign, and/or BLA fail to take the ordered
19 corrective action within twenty days, this Office will issue an Order Assessing a
20 Civil Penalty pursuant to A.R.S. § 16-924(B). The violation of the contribution
21 limits carries a civil penalty of three times the amount of money of the violation.
22
23 A.R.S. § 16-905(J).
24

25 **NOTICE**

26 You may request a hearing to contest this order pursuant to A.R.S. § 16-924

Office of the Yavapai County Attorney
255 E. Gurley Street, Suite 300
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 by submitting a written request for a hearing by 5:00 p.m. no later than twenty days
2 from the date of this Order to:

3
4 Sheila Sullivan Polk
5 Yavapai County Attorney
6 255 East Gurley Street
7 Prescott, Arizona 86301

8 You may request an informal settlement conference pursuant to A.R.S. § 41-
9 1092.06. Individuals with disabilities may request accommodation during an
10 informal settlement conference by contacting Maggie Robertson, (928) 771-3344.
11 Requests should be made as early as possible to allow time to arrange the
12 accommodation.

13
14 RESPECTFULLY SUBMITTED this 17th day of October, 2013.

15
16
17
18 By: Sheila S Polk
19 SHEILA SULLIVAN POLK
20 YAVAPAI COUNTY ATTORNEY

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24
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26

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1 COPIES of the foregoing MAILED this
2 17th day of October, 2012 to:

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18 By: Maggie Robertson
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20
21
22
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24
25
26