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10 **ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS**

11 IN THE MATTER OF

No. 14F-001-AAG

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

**YAVAPAI COUNTY
ATTORNEY'S CLOSING
ARGUMENT BRIEF**

(The Honorable Tammy Eigenheer)

17 The Yavapai County Attorney's Office ("YCAO") hereby submits its
18 Closing Argument Brief. YCAO respectfully requests that this tribunal uphold
19 YCAO's Order Requiring Compliance against Tom Horne ("Horne"), the Tom
20 Horne for Attorney General Committee, Kathleen Winn ("Winn"), and Business
21 Leaders for Arizona ("BLA") (collectively "Appellants").
22
23

24 **I. Horne and Winn Coordinated During Two "Coordination Events"**

25 The evidence presented clearly shows two separate "coordination events"
26 between Horne and Winn. The first occurred on October 20, 2010. That day, Winn

1 and Brian Murray (“Murray”) of Lincoln Strategy Group (“LSG”) exchanged e-
2 mails about BLA’s political advertisement expressly advocating the defeat of
3 Horne’s opponent, Felicia Rotellini. Throughout the day, Horne and Winn also
4 exchanged phone calls. The timing of Winn’s calls with Tom Horne and the timing
5 and content of her e-mails with Murray are powerful circumstantial evidence that
6 she and Horne coordinated to produce BLA’s commercial’s message.
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8

9 The second “coordination event” occurred on October 27, 2010. That day,
10 Horne forwarded polling information regarding the Horne/Rotellini race in an e-
11 mail to Winn, along with strategic campaign advice and a request that Winn try to
12 raise another \$100,000 to implement the strategic advice contained in the e-mail.
13 Winn followed Horne’s instructions by forwarding that request to Murray, the same
14 person who had previously raised hundreds of thousands of dollars, and who had
15 produced BLA’s commercial. Their acts on that day unambiguously constitute
16 coordination, and corroborate the circumstantial evidence that they coordinated on
17 October 20, 2010.
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21 **A. The October 20, 2010 “Coordination Event”**

22 On October 20, 2010, Winn worked with LSG production consultant Brian
23 Murray to design, produce and distribute BLA’s television commercial. That
24 morning, Murray had e-mailed Winn the preliminary script for the commercial.
25 (YCA-6 at 000019). Around lunch time, Winn apparently met with George
26

1 Wilkinson, BLA’s treasurer. (Hearing Transcript 561:15–562:5; YCA-31 at
2 000462). Wilkinson’s phone records show that he left Mesa before 1:58 p.m., so
3 the meeting must have ended before then. (YCA-31 at 000462). The key
4 communications between Horne and Winn and Murray and Winn occurred after
5 2:00 p.m., so Wilkinson could not have contributed to them. Instead, the timing of
6 the calls and the timing and content of the e-mails constitute proof by a
7 preponderance of the evidence that Horne contributed to the commercial’s content.
8

9
10 *First Inference: “We” and Winn’s “several masters”*

11 At 2:19 p.m., Horne called Winn for eight minutes, until approximately 2:27
12 p.m. (YCA-7 at 000022). While they spoke, at 2:24 p.m., Murray e-mailed Winn
13 the unedited voice-over file of the BLA commercial. (YCA-8 at 000041-000042).
14 At 2:29 p.m., just two minutes after finishing her conversation with Horne, Winn e-
15 mailed Murray:
16
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
confusion except I have several masters.

23 (YCA-8 at 000041).

24 Winn testified that the “we” meant her and George Wilkinson or BLA
25 generally and that her “several masters” included Wilkinson and Greg Harris, who
26

1 represented some of BLA’s contributors. (Hearing Transcript 565:10–566:7).
2 However, as described above, Winn’s meeting with Wilkinson ended before 2:00
3 p.m. (YCA-31 at 000462). Winn had last spoken to Harris at 9:47 a.m. that
4 morning. (YCA-7 at 000022; YCA-35 at 000985). There is no way that Winn was
5 “doing a re-write currently” with either Wilkinson or Harris at around 2:29 p.m.
6

7
8 It is also implausible that Winn would have been communicating all of that
9 information based upon her prior discussions with Wilkinson and Harris. Her e-
10 mail to Murray was in response to Murray’s e-mail with the voice-over file, which
11 Winn received only minutes earlier. While she may have had the script at her
12 meeting with Wilkinson, she certainly did not have the voice-over file. Further,
13 she did not even have the script at 9:47 a.m. when she last spoke to Harris.
14

15
16 Instead, the evidence shows by a preponderance of the evidence that Horne
17 was part of the “we” and one of the “several masters.” Winn would have had no
18 time to speak to anyone else after receiving the voice-over file.
19

20 *Second Inference: “they feel” and “similar message”*

21 At 2:30 p.m., Murray e-mailed Winn that he would stop production in
22 response to Winn’s concerns. (YCA-9 at 00043). At 2:37 p.m., Winn e-mailed
23 Murray:
24

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

1 elephant.”
2 (YCA-9 at 000043). Also at 2:37 p.m., Winn called Horne from her office phone
3 line; the call lasted for eleven minutes until approximately 2:48 p.m. (YCA-10 at
4 000046). At 2:50 p.m., just after she finished talking to Horne, Winn e-mailed
5 Murray: “Okay it will be similar message just some changes.” (YCA-8 at 000041).
6

7
8 Winn promised to “have it worked out by 5:30.” Immediately thereafter, she
9 called Horne. At the conclusion of that call she apparently decided to assent to a
10 “similar message” with “just some changes.” Between her promise to “have it
11 worked out” at 2:37 p.m. and her resolution at 2:50 p.m., Winn did not speak to
12 Wilkinson or Harris. (YCA-7 at 000022-000023). She did speak to Horne, proving
13 by a preponderance of the evidence that he contributed to the decision.
14
15

16 *Third Inference: “two strong personalities debating”*

17 At 2:50 p.m., Murray e-mailed Winn that one of their points should be
18 “driving [Rotellini’s] negatives” and that they did not “want Tom’s name associated
19 with the negative messaging.” (YCA-9 at 000043). At 2:59 p.m., Winn responded
20 to Murray by e-mail:
21

22 The concern is you can get out her negatives without saying her name
23 4 times. I have two very strong personalities debating this moment she
24 lacks name recognition we don’t want to help her in that regard is the
25 argument.

26 (YCA-9 at 000043).

1 Winn testified that the “two strong personalities” were coworkers at her
2 office. (Hearing Transcript 590:25–591:3). That story strains credibility. Winn
3 had no reason to discuss her commercial with her office colleagues. She also made
4 no mention of discussing or debating the commercial’s contents with her office
5 colleagues in her affidavits, and instead claimed that she received no assistance
6 from anyone except Murray. (YCA-11 at 000063, ¶ 4). Winn’s testimony that she
7 was referring to her office colleagues as “two very strong personalities debating this
8 moment” is not credible. Instead, the preponderance of the evidence proves she
9 was referring to her prior conversation with Horne, which ended only a few minutes
10 before, at approximately 2:48 p.m.

14 *Fourth Inference: “I think I prevailed”*

15 At 3:00 p.m., Winn and Murray exchanged two e-mails about BLA’s
16 payment to LSG for the commercial. (YCA-8 at 000040-000041). At 3:01 p.m.,
17 Winn appears to have attempted to call Horne, but the call does not show up on
18 Horne’s records, suggesting he did not answer. (YCA-7 at 000023 and YCA-10 at
19 000046). At 3:11 p.m., Winn e-mailed Murray a revised script of the BLA
20 commercial with the statement: “I think I prevailed no mention of Tom thanks for
21 what you said. I believe this times out let me know.” (YCA-6 at 000018-000019).

22 Logically, Winn must have prevailed over someone else. The evidence
23 proves by a preponderance of the evidence that it was Horne over whom she
24
25
26

1 prevailed, who was one of the “strong personalities debating,” as described above.

2 *Fifth Inference: further changes*

3
4 At 3:13 p.m., Murray e-mailed Winn that the script was still too long. (YCA-
5 6 at 000018). At 3:14 p.m., Winn suggested removing one line. (YCA-6 at
6 000018). At 3:15 p.m., Winn received a call from Harris that lasted approximately
7 three minutes. (YCA-7 at 000023). At 3:16 p.m., Murray e-mailed Winn that the
8 script was still too long. (YCA-6 at 000018). At 3:21 p.m., Horne called Winn, and
9 they spoke for four minutes. (YCA-7 at 000023). As they were finishing that
10 conversation, at 3:25 p.m., Winn e-mailed Murray:
11
12

13 Change to: Arizona needs the RIGHT attorney general
14 taking money from labor unions and special interest groups

15 Exhibit 6, E-mail Chain A.

16 Once again, Winn spoke to Horne just before giving Murray modifications to
17 the commercial. The evidence shows that Horne contributed to the 3:25 p.m.
18 changes to the script.
19

20 Horne and Winn have argued that the evidence presented to prove the
21 October 20, 2010 “coordination event” is circumstantial, and indeed it is. However,
22 Arizona courts have long held that “the probative value of direct and circumstantial
23 evidence are intrinsically similar” and “therefore, there is no logically sound reason
24 for drawing a distinction as to the weight to be assigned each.” *State v. Harvill*, 106
25
26

1 Ariz. 386, 391, 476 P.2d 841, 846 (1970). Arizona courts continue to cite *Harvill*
2 for that proposition. *E.g. State v. Musgrove*, 223 Ariz. 164, 167, ¶ 7, 221 P.3d 43,
3 46 (App. 2009). The standard of proof in this case is proof by a preponderance of
4 the evidence under R2-19-119.¹ “Proof by a preponderance of the evidence means
5 ‘proof which leads the [trier of fact] to find that the existence of the contested fact
6 is more probable than its nonexistence.’” *In re William L.*, 211 Ariz. 236, 238, ¶ 6
7 119 P.3d 1039, 1041 (App. 2005) (citation omitted) (alteration in *In re William L.*).

10 Taken together, the five inferences detailed above show by a preponderance
11 of the evidence that Horne and Winn coordinated on October 20, 2010. Winn’s e-
12 mails to Murray used the terms “we,” “several masters,” “they,” “two strong
13 personalities,” and stated that she thought she “prevailed.” Those terms indicate
14 that she consulted with someone else about those decisions. The content and timing
15 of her e-mails to and from Murray together with the timing of her cell phone calls
16 with Horne are compelling circumstantial evidence that Horne was that other
17 person. Winn’s descriptions of why she used those terms strain credibility and
18 cannot overcome the evidence.

22 **B. October 27, 2010 “Coordination Event”**

24 On October 27, 2010, Horne passed polling information and strategic
25 campaign advice to Winn about the Horne/Rotellini race, along with a request that

26 _____
¹ Subsection II.A of this Brief addresses Appellants’ argument that a different standard of proof applies.

1 Winn try again to raise \$100,000. That communication constitutes coordination
2 between Horne’s campaign and Winn’s “independent” expenditure committee.

3
4 *1. The E-mail Chain*

5 The sequence began when Ryan Ducharme sent Horne the following e-mail:

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

10 (YCA-15 at 000121-000122). At 1:45 p.m., Ducharme sent another e-mail to Horne
11 and Kim Owens:

12
13 I would link attacks directly to Rotellini as someone behind in the
14 polls trying to hide from her record (SB1070, ties to unions calling for
15 AZ boycott, etc.) The truth, once known, will undermine Rotellini’s
16 credibility and call in to question her character—a very important
17 quality for Inds.

18 You are much stronger in rural AZ.

19 -Ryan

20 (YCA-15 at 000121).

21
22 After he received the e-mails from Ducharme, Horne forwarded them both to
23 Casey Phillips, a regional director for the Republican State Leadership Committee
24 (“RSLC”). (YCA-15 at 000121). Then, at 2:02 p.m., Horne attempted to forward
25 the entire chain to Winn, with the following message:
26

1 I forwarded this to casey.[sic] Maybe with this we can. Try again for
2 the hundred k.

3 (YCA-15 at 000121-000122). However, at 2:05 p.m., Horne received a notice that
4 the attempt to forward the e-mail to Winn had failed. (YCA-15 at 000121-000122).
5 At 2:10 p.m., Horne successfully re-forwarded the entire e-mail chain to Winn.
6 (YCA-15 at 000121-000122).
7

8 At 2:31 p.m., Winn forwarded the entire e-mail chain from Ducharme and
9 Horne, including the polling information and strategic suggestions, to Murray, with
10 the message: “This just came into [sic] me read below.” (YCA-15 at 000121).
11 After receiving the e-mail chain, Murray sent it to his attorney, with his concerns
12 about Winn’s contact with Horne. (YCA-15 at 000121).
13
14

15 2. *Conclusions and Inferences*

16 Ducharme’s e-mail was far more than mere polling data. It also included the
17 following specific pieces of *strategic advice*:
18

- 19 1. “Bleeding needs to be stopped.”
- 20 2. “They need to be addressed as desperate last minute attacks with no basis
21 in truth.”
- 22 3. “I would link attacks directly to Rottelini as someone behind in the polls
23 trying to hide from her record (SB1070, ties to unions, calling for AZ
24 boycott, etc.) The truth, once known, will undermine Rotellini’s
25 credibility and call in to question her character - a very important quality
26 for Inds.”

(YCA-15 at 000121). Horne sent that information to Winn. By doing so, he

1 provided her with instructions for attacking Rottelini. Those instructions make
2 Horne's e-mail far more than a discussion of fundraising. The e-mail exchange
3 constitutes coordination.
4

5 During his testimony, Horne characterized the strategic advice in
6 Ducharme's e-mail as "meaningless," said that "nobody paid attention to" it and
7 that it "made no sense." (Hearing Transcript 721:24-722:8, 727:13-17). But
8 Horne's actions tell a different story. He forwarded Ducharme's e-mail to Casey
9 Phillips, his contact with RSLC, and Winn. Clearly, Horne thought Ducharme's
10 information and advice was "meaningful" and "sensible" enough to pass on to
11 RSLC and Winn. In addition, Horne's e-mail to Winn clearly suggests that Winn
12 use Ducharme's information and advice to justify Winn's request to the RSLC for
13 another \$100,000. Had the suggestions truly been "meaningless" comments that
14 "made no sense" and which "no one paid attention to," Horne would not have
15 included them to Winn with his request for the additional money.
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20 Winn in turn forwarded the Horne/Ducharme e-mail to Murray. She
21 testified she did not read the strategic information, and merely forwarded what she
22 thought was pure polling data to Murray. (Hearing Transcript 557:17-558:15,
23 646:23-647:11). She apparently did so even though Horne and Winn had met to
24 discuss and avoid coordination, and that Winn spoke to an attorney to ensure she
25 knew what she was not allowed to do. (Hearing Transcript 614:19-616:20).
26

1 Despite all of that knowledge, Horne still forwarded Durcharme’s e-mail to
2 Winn, who forwarded it to Murray. The e-mail *did* contain strategic advice. Horne
3 *did* pass it along to Winn. Winn *did* forward it to Murray, the same person who had
4 raised the previous \$350,000 from RSLC and produced BLA’s advertisement.
5

6 To attempt to justify forwarding the October 27, 2010 e-mail, Winn testified
7 that “there was nothing to buy,” that she “didn’t need anything,” and BLA’s
8 expenditure campaign “was done” by the time the October 27 e-mail occurred.
9 (Hearing Transcript 647:6–650:21). That is not true. BLA did not raise any
10 additional money from RSLC. But BLA had received an additional \$100,000 from
11 Horne’s brother in law Richard Newman on October 27², and then expended
12 \$110,000 on October 28. (YCA-17 at 000124). Horne’s act of passing strategic
13 suggestions to Winn on October 27 resulted in coordination, and further bolsters the
14 circumstantial evidence proving that they coordinated before that date.
15
16
17

18 **C. Alternative Theories and Credibility**

19
20 Horne and Winn both testified that their communications on October 20,
21 2010, were about Horne’s real estate transaction and possibly Winn’s mother’s
22 surgery. (Hearing Transcript 575:14–576:25, 583:13–585:21, 685:14–687:2,
23 694:12–699:24). Their specific story is that Winn helped Horne obtain a loan to
24
25

26 ² The money appears to have come in prior to the e-mail from Horne. (Hearing Transcript 649:23–650:1). But the corresponding *expenditure* happened after the e-mail. (YCA-17 at 000124).

1 make up for a shortfall in performing the 1031 exchange. (Hearing Transcript
2 575:14–576:25, 583:13–585:21, 685:14–687:2, 694:12–699:24). However, there is
3 no mention of Winn anywhere in the real estate documents provided by Appellants.
4 (Horne/Winn-6; Hearing Transcript 138:11–25). Further, Winn is not mentioned or
5 copied in any of Horne’s e-mails regarding the real estate transaction. (YCA-33;
6 Hearing Transcript 133:2–135:21).
7
8

9 Winn also testified that she worked with potential buyer Michael Hoggerty.
10 (Hearing Transcript 570:17–571:24). Her phone journal shows, however, that her
11 interactions with Hoggerty were in March, 2010, seven months before the October
12 20, 2010 phone calls in question. (YCA-32 at 000473, 000476). Winn had no
13 interactions with Mr. Hoggerty after that time period. (YCA-32; Hearing Transcript
14 571:5–7).
15
16

17 Winn’s credibility is very much at issue, as her explanations for her calls
18 with Horne and her e-mails to Murray make up the core of Appellants’ defense.
19 Her credibility is suspect and easily impeached.
20

21 In her affidavits, Winn stated: “Activity for the Independent campaign did
22 not begin until October 17th, and the first contribution was made on October 20th.”
23 (YCA-4 at 000008, ¶ 2). However, she admitted that her statement was inaccurate
24 and that she actually started BLA activities around October 12. (Hearing Transcript
25 623:2–14). She testified that she caught the error, but her affidavit was never
26

1 updated. (Hearing Transcript 623:11–14, 627:18–628:25).

2 In her affidavits, Winn stated: “I chose from whom to raise money without
3 any input.” (YCA-4 at 000008, ¶ 3.b.1). However, Sharon Collins put Winn and
4 contributor Chuck Diaz in touch. (YCA-28 at 000383; Horne/Winn-16 at 006-
5 008).

6
7 In her affidavits, Winn stated: “It was my independent campaign, my ideas,
8 and the money I raised by my own efforts that created the ad.” (YCA-3 at 000005, ¶
9 6). She similarly stated: “I raised every dollar for this campaign myself, produced
10 the ad, and bought the air time without the assistance of anyone other than Mr.
11 Murray.” (YCA-11 at 000063, ¶ 4). However, throughout her e-mails with Murray,
12 she used the terms “we” and “they,” and stated that she had “several masters,” that
13 she had “two strong personalities debating,” and that she thought she “prevailed.”
14 (YCA-6 at 000019; YCA-8 at 000041; YCA-9 at 000043).

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17
18 Winn testified that her affidavits were meant to address the specific
19 allegations of illegal activity that she was aware of at the time. (Hearing Transcript
20 554:17–556:25). Even if that explanation is completely true, it is a remarkable
21 statement. Affidavits are supposed to be the truth, not a limited version of the truth
22 meant to address pending allegations. If Winn was willing to swear to the
23 statements in her affidavits without making sure they were *fully* true, her testimony
24 is likely similarly tainted.
25
26

1 Taken together, the inaccuracies in Winn’s affidavits cast serious doubt on
2 her credibility. That doubt in turn creates serious questions about the theory that
3 she and Horne only spoke about Horne’s real estate transaction or her mother’s
4 surgery on October 19, 2010. Winn’s lack of credibility means that her testimony
5 is outweighed by the preponderance of the evidence indicating that she and Horne
6 coordinated.
7
8

9 **II. Peripheral Issues**

10 Appellants submitted two trial memoranda and a trial brief on February 10,
11 2014, the day that the hearing began. The following subsections address issues
12 raised in those pleadings that have not already been resolved. They also address the
13 impact of Appellants motion to strike Special Agent Grehoski’s testimony, filed on
14 March 11, 2014.
15
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17 **A. Standard of Proof**

18 In their Trial Memorandum Re: Burden of Proof, Appellants take the position
19 that “the appropriate standard for the burden of proof in this case is clear and
20 convincing evidence.” Appellants’ argument is based on the possibility that YCAO
21 could seek to impose treble damages under A.R.S. § 16-924(B) and A.R.S. § 16-
22 905(J) if Appellants do not come into compliance. Their argument misinterprets
23 the nature of Arizona’s campaign finance enforcement system.
24
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The Order Requiring Compliance was issued pursuant to A.R.S. § 16-

1 924(A). (Order Requiring Compliance, Electronic Case File Document #6, page
2 23). Section 16-924(A) only provides for orders *requiring compliance*. It does not
3 provide for civil penalties, and the Order Requiring Compliance does not impose
4 any civil penalty or other form of punitive remedy. Accordingly, all of the cases
5 cited for the proposition that the imposition of treble damages or penalties requires
6 proof by clear and convincing evidence are inapplicable.
7
8

9 At this hearing, Appellants are contesting the Order Requiring Compliance.
10 Although non-compliance with that Order could lead to the imposition of civil
11 penalties, no such civil penalties are at issue at this time. If YCAO were to issue an
12 Order Assessing a Civil Penalty for failing to come into compliance, Appellants
13 would have the opportunity to contest that order at a new administrative hearing
14 under A.R.S. § 16-924(B).³ Any such penalty would only be assessed to penalize
15 *failure to come into compliance* with the underlying Order Requiring Compliance.
16 A.R.S. § 16-924(B). That issue is not and cannot be before this tribunal at this
17 time.
18
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21 This hearing is only about whether Appellants must come into compliance
22 pursuant to YCAO's Order Requiring Compliance. That order imposes no punitive
23 remedies, and the question of punitive remedies is not before the tribunal.
24 Accordingly, the standard of proof is by a preponderance of the evidence under R2-
25

26 ³ YCAO does not concede that a hearing contesting an Order Assessing a Civil Penalty under A.R.S. § 16-924(B) would be subject to proof by clear and convincing evidence.

1 19-119.

2 **B. Validity of Records**

3
4 Appellants suggested in both their Trial Brief and through Horne’s opening
5 statement that the telephone and e-mail records in this case are unreliable.
6 (Appellants’ Trial Brief pages 5-9; hearing transcript 41:17–42:5). However, they
7 did not call their expert witness, John Minor. Trial briefs and opening statements
8 are not evidence. Accordingly, there is no basis of any kind to strike or discredit
9 the telephone and e-mail records.
10

11
12 Appellants’ trial brief identifies a number of alleged “errors” in the cellular
13 billing records. (Appellants’ Trial Brief page 6). Those alleged errors appear to be
14 based upon Minor’s report. However, there is no citation to the report and it is not
15 in evidence.⁴ Without any such specific expert analysis, the tribunal should not
16 consider the alleged errors.
17

18
19 Absent expert testimony or other evidence to question the records, they must
20 be treated as what they are. The cell phone billing records show calls between
21 various numbers, at specific times, and at general locations. They are certainly
22 evidence that those calls occurred at those times and places. The e-mail copies
23

24 _____
25 ⁴ Some of Minor’s report’s conclusions are blatantly wrong, as can be seen by a simple review of
26 exhibits YCA-7 and YCA-10. Special Agent Grehoski testified as to those factual defects in the
report. (Hearing Transcript 141:13–150:25). Fundamentally, however, because the report was
not admitted and Mr. Minor did not testify, the tribunal should not even consider the alleged
issues with the records.

1 show that certain e-mails were sent and received by specific e-mail addresses at
2 specific times. The fact that more detailed records of both the cell phone calls and
3 e-mails might have been available does not change the fact that the records are
4 evidence and no alternate or contrary evidence has been produced. There is no
5 basis to strike or discredit the cell phone and e-mail records.
6

7 8 **C. Special Agent Grehoski's Testimony**

9 On March 11, 2014, Appellants filed a motion to strike the testimony of
10 Special Agent Brian Grehoski. Appellants claim that Special Agent Grehoski
11 committed perjury. YCAO will respond to that motion and explain why there is
12 insufficient evidence to conclude that he did, and that in any case the remedy of
13 striking his testimony is inappropriate. Regardless, Special Agent Grehoski's
14 testimony is not crucial to a finding that Horne and Winn coordinated on October
15 20, 2010 and October 27, 2010.
16

17 The primary pieces of evidence proving the October 20, 2010 "coordination
18 event" are the phone records and e-mails. Those documents show the timing and
19 content of Winn's e-mails to Brian Murray combined with the timing of her calls to
20 Horne. The October 27, 2010 "coordination event" is documented entirely through
21 a single e-mail chain.
22

23 None of the coordination proven by those documents depends on Special
24 Agent Grehoski's testimony. There is no evidence or allegation that these
25
26

1 documents themselves are somehow tainted. Accordingly, even if the tribunal is
2 inclined discount or strike portions of his testimony, the preponderance of the
3 evidence still proves that Horne and Winn coordinated.
4

5 **III. Conclusion**

6 On October 20, 2010, Kathleen Winn spoke to Tom Horne by phone several
7 times. The timing of those phone calls, combined with the timing and content of
8 Winn’s e-mails to Brian Murray, constitute proof by a preponderance of the
9 evidence that Horne contributed to BLA’s commercial’s content via Winn. That
10 evidence, while circumstantial, outweighs Horne and Winn’s testimony that they
11 did not coordinate.
12
13

14 On October 27, 2010, Horne sent strategic information to Winn, and
15 requested that she attempt to raise \$100,000 for BLA. Winn then sent that request,
16 with the strategic information, to Murray, the same person who had previously
17 raised hundreds of thousands of dollars and who had produced BLA’s commercial.
18 Horne and Winn unambiguously coordinated on that day, and their acts also
19 corroborate the circumstantial evidence that they coordinated on October 20, 2010.
20

21 YCAO respectfully requests that this tribunal uphold YCAO’s Order Requiring
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Compliance.

RESPECTFULLY SUBMITTED this 13th day of March, 2014.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

By: /s/ Benjamin Kreutzberg
Jack Fields
Benjamin Kreutzberg
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