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COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
TOM FORESE
DOUG LITTLE
BOB BURNS

Arizona Corporation Commission

DOCKETED

SEP 04 2015



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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Re: Docket No. AU-00000A-15-0309

Dear Commissioners and Interested Parties:

In response to Chairman Susan Bitter-Smith and Commissioner Bob Burns' letter docketed August 27, 2015, I summarize my concerns with requiring public service corporations to "refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates" and suggesting that the Commission will "consider whether and to what extent an audit of any public service corporation would be warranted" along with "request[s] for financial information."

Because of infrastructural challenges, public service corporations have been the only companies to provide service in specific areas, resulting in monopolies. The Arizona Constitution recognized the nature of the utility business and defined the scope of power the Arizona Corporation Commission would have over public service corporations as the power to assure "just and reasonable rates." This would provide a check in the absence of competition. Although this creates a powerful relationship between the two entities, we must understand the limits of this office and not buy into a false sense of omnipotence. Commissioners attempting to influence campaigns in their official capacity through this relationship would exceed the bounds of their constitutional mandate over public service corporations.

Adopting such a policy would also have severe implications to civil liberties. Public service corporations have a First Amendment right to support the candidates of their choice as a matter of free speech. Any attempt by this Commission to limit or restrain the rights of public service corporations to engage in political speech could well run afoul of the First Amendment of the U.S. Constitution pursuant to the Supreme Court's decisions in *Pacific Gas & Electric Co. v. Public Utilities Com.*, 475 U.S. 1, 14 (1986) ("Appellant does not, of course, have the right to be free from vigorous debate. But it does have the right to be free from government restrictions that abridge its own rights in order to 'enhance the relative voice' of its opponents.") and *Citizens United v. FEC*, 558 U.S. 310, 340 (2010) ("Speech restrictions based on the identity of the speaker are all too often simply a means to control content.").

Commissioners at the Corporation Commission took an oath to uphold the Constitution and should respect this right of autonomy and freedom of speech and debate. Upholding the foundational laws of the land should not be brushed aside or viewed as unfortunate and unsatisfactory technical compliance. The Constitution should be revered as the bedrock of our society, not a pebble in one's shoe. Any actions that we take to restrict or limit the ability of public service corporations to engage in speech, especially core political speech, are subject to immediate and likely successful attacks in federal court. Such an action would be costly for the State to defend, time consuming for the Commission, and would likely be unsuccessful given the U.S. Supreme Court's clear perspective on the question of the First Amendment's application to speech by corporate entities.

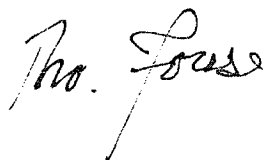
Further, *any* coordination between the source of an independent expenditure and the respective candidate is unlawful. A candidate impacted by an independent expenditure (whether it be beneficial or detrimental) should stay entirely away from any attempts to influence the expenditure regardless of their reasons. It is unquestioned that a sitting Commissioner is flatly prohibited from coordinating with those making independent expenditures to influence that Commissioner's election. Thus, directing those involved to do the inverse is equally as alarming.

In the spirit of transparency and defending public interest, the Commission may also want to consider the broader ramifications to the other interests and influences that come before it. Checks and Balances, a Florida based 501(c)(4) social welfare organization, advocates for rooftop solar through a combination of tactics supporting or opposing regulators and regulations around the country. Clearly, their interests extend beyond transparency and public interest. As the Commission considers supporting transparency, the public would also deserve to know the financial involvement of these actors as well. However, the Commission's authority would not extend to the communications of organizations who are not under the purview of the Commission. Opponents of the action would not be subject to similar disclosures because they are not public service corporations. This would leave the public with incomplete information as a result of a government mandate.

The Supreme Court has never permitted a campaign finance regulatory system that favors certain speakers over others and treats candidates for the same office differently. See *Davis v. FEC*, 554 U.S. 724 (2008) ("We have never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other, and [] this scheme impermissibly burdens [Davis's] First Amendment right. "). If the State of Arizona chooses to enact a statutory scheme that requires greater public disclosure of issue advocacy activities it may endeavor to do so but such an action is wholly within the jurisdiction of the legislature (subject to limits imposed by the State and Federal Constitutions). The Commission's enabling legislation simply does not empower or authorize the Commission to take such an action.

This issue, a significant moment to change the course of governance for the better, ends paradoxically. If independent spending from company x is shown for regulator y in support of an action, the informed public will look to how the regulator votes and perhaps assume the independent spending culminated in said vote. The reality is that issues handled at the Commission have a level of complexity that allow for many potential outcomes in each individual case. This complexity requires one who means to uphold the duty of their office and to carefully study the issues in order to find solutions that make sense. This should only be done in the interest of the people of Arizona.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Forese". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the left.

Tom Forese
Commissioner