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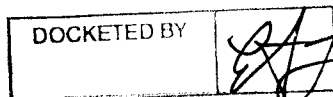


ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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AZ CORP COMMISSION
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RE: Docket No. AU-00000A-15-0309

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Dear Commissioners and Interested Parties:

In his statement at the Commission's September 8, 2015 Staff Meeting, Commissioner Burns expressed his desire to subpoena the financial records of Arizona Public Service to determine if they engaged in political spending in support of Corporation Commission candidates in the 2014 election.

It is not clear to me what purpose such a subpoena would serve.

There is nothing to indicate there was any violation of the law or Commission Rules. There is certainly nothing that would indicate such spending was included in rates. In fact, it would be impossible for any expenditure from that time frame to be included in rates because there has not been a rate case filed since that time.

Costs associated with political activities, including contributions to 501(c)(3)s are not recoverable in rates. During the course of a rate case an audit is performed that ensures (among other things) that no such expenditures are recovered through rates.

In my letter submitted to this docket on September 8, 2015, I explained why I believe the idea of a "voluntary" ban on campaign activities by entities that do business before the Commission is both unconstitutional and impractical. An attempt to subpoena such records will have similar constitutional and practical problems.

From a practical perspective, an examination of APS' activities during the campaign will not give us a complete picture. Many entities other than APS may have participated in the 2014 elections.

There are several entities that have substantial business interests in the decisions of this Commission that are not public service corporations and are not subject to the Commission's regulation.

To subpoena APS and leave all of these other entities unexamined would be inherently unfair and would lead to an incomplete picture of what actually was going on in the 2014 elections.

From a constitutional perspective, free speech and anonymous speech are intertwined. Anonymous speech has an important place in our political discourse. In fact, the Supreme Court has repeatedly ruled that the First Amendment protects the right to anonymous speech.

One of the most frequently quoted cases is *McIntyre v. Ohio Elections Commission* (1995). In that case, the decision, in relevant part reads: "Anonymity is a shield from the tyranny of the majority....It thus exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation...at the hand of an intolerant society."

A second frequently referenced case is *Buckley v. Valeo* (1976) where the Court ruled that mandatory disclosure rules invariably chill the freedom of association and by implication, freedom of speech.

Under most state and federal laws, the identity of donors making contributions directly to a candidate must be reported. That is the case in Arizona. However, in 48 states, including Arizona, non-profits and other "independent expenditure committees" are not required to disclose their donors.

If Arizonans want to change that, the proper venue is in the Arizona Legislature, not the Arizona Corporation Commission.

I believe the subpoena contemplated by Commissioner Burns would put the Commission on very thin legal and constitutional ice. But the practical benefit of the subpoena would be minimal. Assuming the subpoena was not successfully challenged, it would only reveal information about one of many entities that potentially participated in the 2014 elections.

Rather than skate out onto the thin ice of campaign finance investigations with inherent First Amendment issues, I believe this Commission should stick to its core missions: regulating utility rates, regulating securities dealers, and enabling efficient registration of corporations.

Over the next few years almost every large utility in the state will be before us with rate cases and the multiple small utilities we regulate will continue to require our attention as well. Our attention should be there, not on pursuing a questionable subpoena that would have little practical value.

Sincerely,



Doug Little
Commissioner
Arizona Corporation Commission

Docketed September 11, 2015

Mailed September 11, 2016 to the Service List in Docket No. AU-00000A-15-0309