



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**THOMAS HORNE, KATHLEEN WINN et al. v.
SHEILA SULLIVAN POLK
CV-16-0052-PR**

PARTIES:

Petitioners: Tom Horne, individually, Tom Horne for Attorney General Committee (collectively, Horne), and Kathleen Winn, individually, and Business Leaders for Arizona (collectively, Winn)

Respondent: Sheila Sullivan Polk, Yavapai County Attorney

FACTS:

In 2010 Horne ran for Arizona Attorney General and Winn volunteered for his campaign during the primary election. After he won the primary, Winn stopped volunteering for his campaign and began soliciting contributions for Business Leaders of America (BLA), her independent expenditure committee. BLA raised and expended more than \$500,000 to buy a commercial directed at attacking Horne's opponent in the election. Arizona voters elected him as Attorney General.

In 2013, the Secretary of State sent a letter to the Arizona Attorney General's Office stating that he had reasonable cause to believe Horne and Winn violated campaign finance laws during the 2010 election. The Solicitor General appointed Polk as Special Attorney General to act in Attorney General Horne's stead.

In October 2013 Polk issued an order in which she concluded that Horne and Winn violated campaign finance laws by coordinating their activities to defeat his opponent. She ordered compliance, requiring Horne to amend the post-general election report to record BLA's contributions as in-kind contributions. She also ordered Winn to amend the post-general election reports. Finally, she required Horne to refund \$397,378, the sum of in-kind contributions that exceeded legal limits.

Horne and Winn filed a Notice of Appeal and Request for Hearing. Polk set the matter for an administrative hearing.

The administrative law judge (ALJ) issued an ALJ Decision in April 2014. The ALJ found that Polk failed to prove by a preponderance of evidence that Horne and Winn illegally coordinated and recommended that Polk vacate the order of compliance.

Polk issued her Final Decision and Order in May 2014. In the decision, Polk accepted the ALJ's findings of fact and accepted in part and rejected in part her conclusions of law. Polk again found that evidence showed Winn and Horne coordinated to create the commercial and that Horne

instructed Winn to raise an extra \$100,000 for the campaign.

Horne and Winn sought judicial review of Polk's final administrative decision but did not ask for an evidentiary hearing. The superior court affirmed Polk's decision.

Horne and Winn timely appealed, contending that they did not participate in illegal coordination and that Polk's decision to overrule the ALJ was an abuse of discretion that deprived them of due process. They argued Polk erroneously applied a preponderance of evidence standard rather than clear and convincing evidence, the correct standard in cases involving punitive remedies. They further asserted that Arizona's campaign contribution limits are unconstitutionally low. In her response, Polk argued the evidence shows that it is "more probable than not" that Horne and Winn coordinated, that her review of the ALJ's decision was consistent with Horne and Winn's due process rights, and that the campaign finance laws are constitutional.

The court of appeals affirmed the superior court. The court held that the superior court applied the correct standard of review under A.R.S. § 12-910(E) by deferring to Polk's factual findings and affirming them if supported by substantial evidence. The court also held that

- Polk did not violate Horne and Winn's due process rights by serving as both an advocate and judge.
- Evidence supported Polk's conclusion that Horne and Winn illegally coordinated campaign activities and that therefore Polk's decision was not arbitrary or an abuse of discretion.
- Polk did not apply an incorrect standard of proof by applying a preponderance of evidence standard rather than a clear and convincing evidence standard.
- Arizona's campaign finance contribution limits were constitutional.

ISSUE (as stated in the petition for review):

Can a County Attorney, who was personally "involved with the prosecution of the case, by assisting with the preparation and strategy," personally overrule a decision of an Administrative Law Judge against her, so that by her own decision she wins the case that she had lost before the Administrative Law Judge?

STATUTES:

A.R.S. § 41-1092.08(A) and (B)

A. The administrative law judge . . . shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. . . .

B. Within thirty days . . . the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. . . . If the head of the agency, executive director, board or commission rejects or modifies the decision the agency head, executive director, board or commission must file . . . and serve on all parties a

copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification.

A.R.S. § 12-910(E):

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

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