

**Burns ACC Usurper Case Taken to AZ Supreme Court**  
**Information & Perspective by Warren Woodward**  
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Yesterday I filed a "Petition for Special Action" at the Arizona Supreme Court. The Petition asks the Court to compel Arizona Attorney General Mark Brnovich to do his constitutionally mandated duty and proceed in *Quo Warranto* against Robert Burns for usurping the office of Arizona Corporation Commission (ACC) commissioner.

On January 29th, Brunn Roysden, one of Brnovich's employees, issued a statement that the AG would not be pursuing my complaint against Burns. The statement was basically a highly contrived rationalization for not prosecuting Burns for being a lobbyist for companies regulated by the ACC while Burns was both an ACC candidate and office holder, which is against the law.

Below, I have reproduced the section of the Petition in which I take apart Roysden's miserably inadequate argument.

I actually started working on the Petition several days before Roysden's statement was issued because I knew what was coming. Months ago I accurately predicted that former ACC commissioner/lobbyist Susan Smith, who resigned in disgrace rather than face usurper charges, would be the "fall gal" for everything rotten at the ACC and that all else would be swept under the rug.

One does not need to be a Sedona psychic or have a highly developed intuition to make such an accurate prediction. Observing the AG's shameful history of a limp and lazy approach when it comes to government corruption and crime is all it takes. The leopard does not change its spots (Jeremiah 13:23).

Some examples:

- ACC commissioner Bob Stump is *still* not charged with destruction of state property after he freely admitted to throwing away his state-issued phone (which many feel was done to hide evidence). I have brought this fact to the AG's attention many times but he does not seem to care. Dear Reader, *you* try destroying any state property, admitting it in the newspaper, and see what happens to you.
- No search warrants or subpoenas were issued in the [ACC whistleblower "investigation"](#) that's gone exactly nowhere in a year's time. The ACC and former commissioner Pierce's house should have been sealed off with yellow crime scene tape as computers and files (and yes, state-issued phones) were hauled out for examination. And again, why no charges brought against then Chairman Stump for sitting on the whistleblower's complaint for six months and not doing a thing about it? Surely that's got to be against some law(s), like at least facilitation of a crime. Oh wait, if there's no crime then there's no facilitation. Best not find a crime then. Another easy prediction: The "investigation" *ain't going nowhere* and everyone gets off. By the way, because Brnovich's election campaign got [\\$425K](#) from APS parent company Pinnacle West, Brnovich recused himself from the investigation and handed it over to his two top assistants, John Lopez and Don Conrad. But guess what? [Lopez gave \\$450](#) to Brnovich's campaign and [Conrad gave \\$200](#). It's the "Brno Brothers!" Does anyone doubt to whom they are loyal? Does anyone think

the Brno Brothers "investigation" would be any different than if Brnovich himself was running it?

- The AG found "no criminal wrongdoing" in my complaint that the ACC secreted public records from me despite the solid proof I provided. Regarding the emails that I caught the ACC withholding from me, one person I spoke with at the AG office actually had the gall to tell me there was no criminal pattern. Hello? Giving the ACC three chances to get it right and getting stonewalled each time isn't a pattern? Besides, there's nothing in the law about a pattern. The law only has to be violated once, not repeatedly. Thanks to Brnovich, there are people walking free at the ACC right now who should be in jail for committing felony public records law offenses. Nothing like friends in high places, "professional courtesy" and an AG asleep on the job.
- What's up with unpaid private citizens having to file the complaints to get rid of usurpers at the ACC anyway? Brnovich gets paid \$90K/yr. to supposedly work for us. He also has more lawyers working for him than any law firm in the state. Under the law, he doesn't have to wait for a citizen to file a complaint to get rid of an ACC usurper; he can do it himself. Unless Brnovich doesn't follow the news, he got the same information that unpaid private citizen Tom Ryan did. Yet it was Ryan who filed the complaint against ACC commissioner/lobbyist Susan Smith. Ryan handed Brnovich the entire case against Smith on a platter, and it still took Brnovich 3 months to finally get it together to petition the AZ Supreme Court for her removal. Brnovich never did file criminal charges against her.

It will be interesting to see if the Arizona Supreme Court is any different than the AG office. Carved into the wall at the AZ Supreme Court building are the words, WHERE THE LAW ENDS, TYRANNY BEGINS. With that as a benchmark, how the Court responds to the case I just brought against Brnovich will let us all know precisely where we're at as a society.

From my Petition filed at the Arizona Supreme Court:

### **Respondent's preposterous letter to Petitioner**

On January 29, 2016, Respondent's employee, Brunn (Beau) Roysden ("Roysden"), sent Petitioner a letter (Exhibit 6) rationalizing why Respondent would not be taking action in *Quo Warranto* against Burns. Roysden wrote:

Our investigation did not find evidence that Commissioner Burns had a relationship with ATIC that would disqualify him under § 40-101. Merely being listed as an authorized lobbyist with the Secretary of State is insufficient to establish a violation of § 40-101. Under § 41- 1231(1), an authorized lobbyist must actually be "employed by, retained by or representing" the principal.

Here is the complete wording of A.R.S. § 41-1231(1). Roysden has it exactly wrong because A.R.S. § 41-1231(1) describes Burns to a "T."

#### § 41-1231. Definitions

In this article, unless the context otherwise requires:

1. "Authorized lobbyist" means any person, other than a designated lobbyist or lobbyist for compensation, who is employed by, retained by or representing a principal, with or without compensation, for the purpose of lobbying and who is listed as an authorized lobbyist by the principal in its registration pursuant to section 41-1232.

In actual fact, as has been demonstrated previously in detail, the record shows that Burns 'represented a principal, without compensation, for the purpose of lobbying and was listed as an authorized lobbyist.'

Additionally, Roysden played a word game with A.R.S. § 40-101. It is true that "Merely being listed as an authorized lobbyist with the Secretary of State is insufficient to establish a violation of § 40-101." However, per § 40-101, being an authorized lobbyist for "a corporation or person subject to regulation by the commission" – which is what Burns was – *is totally sufficient* to establish a violation of A.R.S. § 40-101.

Roysden wrote:

Although Commissioner Burns was listed as an authorized lobbyist for ATIC until September 15, 2015, no evidence contradicted his claim that this registration was simply an administrative oversight.

Roysden has it exactly backwards. No evidence *proved* Burns's claim of administrative oversight. Instead, Burns and his compatriots provided nothing but ever-changing and conflicting stories. In view of their unconvincing alibis, it is best to default to the actual and official record, and that record clearly shows that Burns was in fact a registered lobbyist on behalf of companies that are regulated by the ACC. Additionally, "administrative oversight" implies a mistake on the part of the Arizona Secretary of State for listing Burns as a lobbyist. Yet the Arizona Secretary of State made no such mistake. Burns' lobbyist registration form (Exhibit 4, Attachment D) is the proof. The "oversight" that actually occurred was entirely Burns' for not knowing the statutory eligibility requirements of the office he sought. Burns's ignorance of the law does not excuse him from its application. Regarding another, previous usurper of office at the ACC, the Arizona Supreme Court said precisely that in *Jennings*.

[Tony] West's ignorance of the law or mistaken interpretation of it does not excuse him from its application.  
(*Jennings* at ¶ 60)

Roysden wrote:

In addition, we found no evidence that Commissioner Burns was ever employed by or paid by ATIC, or ever lobbied as ATIC's representative. At most, the evidence showed that while lobbying on his own behalf, Commissioner Burns coordinated with ATIC during the 2012 legislative session.

Once again, compensation is *not* the legal issue. The legal issue is 'Do you have an official relationship?' regardless of compensation. The record shows Burns did.

Roysden said no evidence was found that Burns ever lobbied as ATIC's representative. 1) Burns has a history of taking telecom political donations (Exhibit 24). 2) Burns admitted to multiple

conversations with ATIC about legislation (Exhibit 4). 3) Burns admitted on TV he was asked to help move the legislation (Exhibit 20). 4) Burns was a registered ATIC lobbyist (Exhibit 7). 5) At the legislature, six other ATIC members signed in to speak as “representing self” (Exhibit 4, Attachment C). 6) Burns signed in as “representing self” (Exhibit 4, Attachment C). 7) Burns has a history of telling conflicting stories. In light of points 1 through 7 above, Petitioner states with confidence that a reasonable person would think Burns was lobbying for ATIC. The inconsistent stories told by Burns and his compatriots are not “evidence” that Burns never lobbied as ATIC's representative. Additionally, and most importantly, whether Burns actually lobbied or not is irrelevant to the “official relationship” that the official record shows he held. Again, it is that relationship that places Burns in violation of A.R.S. § 40-101, not what Burns actually did during that relationship. By focusing on Burns' activity while he was a registered lobbyist, Roysden has created a meaningless distraction; he has invented a standard to judge Burns for which there is no basis in A.R.S. § 40-101. As such, Burn's activity while a lobbyist is irrelevant to his usurpation of office.

Incredibly, Roysden wrote:

Even if [the lobbying was] true, any such activity ended with the close of the legislative session in May 2012, long before the primary election in August 2012 and the general election in November 2012. Therefore, there was no ATIC-related lobbying activity or relationship that overlapped with Commissioner Burns's election or holding office as a Commissioner.

Evidently Roysden is in complete denial as to the time frame of Burns' tenure as a registered lobbyist. The time frame was from February 1, 2012 to February 15, 2013 if we use Burns' own ATIC resignation letter (Exhibit 4, Attachment E) as an ending point, February 1, 2012 to September 15, 2015 if we use the Arizona Secretary of State records (Exhibit 7). In light of either one of those time frames, it is absurd for Roysden to claim there was no “relationship that overlapped with Commissioner Burns's election or holding office as a Commissioner.” Of course there was. The record proves it. The record shows that Burns filed as a Clean Elections candidate in May of 2011, became a registered lobbyist in February of 2012, was elected in November of 2012, usurped office in January of 2013, and did not resign his lobbyist position until well after that.

Additionally, not only is Roysden's time line completely wrong but his theory that Burns' lobbying activity or relationship would be legal if completed before the primary or general elections reflects a spectacular lack of understanding of the simple, uncomplicated language of A.R.S. § 40-101. A candidate running for ACC commissioner cannot be conflicted. Period. The law's wording again: “A person ... holding an official relation to a corporation or person subject to regulation by the commission ... **shall not be elected.**” That means an ACC candidate must be free of conflict even while running for office because if he/she is conflicted, then he/she “**shall not be elected.**”

Lastly, Roysden should know good and well that whether there was actual “ATIC-related lobbying activity” is irrelevant. Under the law, Burns was conflicted by his official relationship and for however long that relationship lasted, not by his activity during that relationship. Again, Roysden's diversionary tactic of focusing on Burns' activity while he was a registered lobbyist is a straw man, signifying nothing.

## **Conclusion**

Petitioner wrote this previously in his Complaint (Exhibit 3), and it's worth repeating because it's

the law, the law which the Respondent spent over four months actively and willfully ignoring despite it being pointed out to him several times.

The Arizona Supreme Court has stated: “They must be free of conflict ... **at the point of election**....” – *not* after the election. Additionally, according to A.R.S. 40-101, “A person ... holding an official relation to a corporation or person subject to regulation by the commission ... **shall not be elected**, appointed to, or hold the office of commissioner ....” So Burns was ineligible even as a candidate, and as such, his subsequent election was void *ab initio*.

Respondent received practically all of the forgoing information but refused to take action against Burns. Instead, Respondent wasted time by inventing specious arguments to rationalize not taking action. Petitioner asks the Court to compel Respondent to do his constitutionally mandated duty pursuant to A.R.S. § 12-2041 and proceed in *Quo Warranto* against Robert Burns for usurping the office of ACC commissioner. Additionally, Petitioner asks the Court to instruct Respondent to be quick about it, and not waste another four months. Such instruction should not burden Respondent since, with this Petition, Petitioner has already written Respondent's case for him, free of charge as a public service.

Dated this 8<sup>th</sup> day of February, 2016.

Warren Woodward