



Public Integrity Alliance
PO Box 30111
Mesa, AZ 85275

November 5, 2015

Hon. John Leonardo
United States Attorney
District of Arizona
40 N. Central, Suite 1200
Phoenix, Arizona 85004

Re: Susan Bitter Smith: CoxCom, LLC; Cox Communications Arizona, LLC

Dear Judge Leonardo:

The Public Integrity Alliance has a mission to promote governmental integrity by calling attention to unconstitutional, unethical, unfair and illegal behavior. Upon taking office as an Arizona Corporation Commissioner, Susan Bitter Smith took the following oath of office as required by the Arizona Constitution, Art. 6, Section 26 and ARS §38-231:

I, (name) do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of (name of office) _____ according to the best of my ability, so help me God.

The Corporation Commission has a constitutional duty to regulate utilities in Arizona, including the telecommunications industry. The attached complaint filed with the Arizona Attorney General's Office alleges with specificity that Commissioner Bitter Smith is at once and illegally a registered lobbyist for the telecommunication industry and an elected Corporation Commissioner. It appears that Ms. Bitter Smith performs lobbying acts on behalf of Cox Communications Arizona, LLC, Coxcom, Inc., the Southwest Cable Communications Association (SCCA) and Technical Solutions. It further appears that Ms. Bitter Smith actively lobbied the Federal Communications Commission (FCC) as recently as March 12, 2014 on behalf of Cox Communications.

Ms. Bitter Smith is the Executive Director of SCCA and has earned hundreds of thousands of dollars in that capacity. The Board of Directors for SCCA includes high ranking Cox Communications officials and persons representing other telecommunications companies. In the short time since Ms. Bitter Smith joined the Arizona Corporation Commission in 2013, she participated in no fewer than 10 votes affecting SCCA members. At least some of those votes resulted in a direct monetary benefit to SCCA members, including a 2013 tariff increase for Cox

Communications and a May 2015 vote to rescind a \$225,000 bond requirement for Mercury Voice & Data. Mercury Voice & Data is the dba for Suddenlink Communications, an SCCA member.

SCCA shares office space and a fax number with Ms. Bitter Smith's company, Technical Solutions. Technical Solutions advertises that it provides lobbying services to various government agencies, including the FCC and the Arizona Corporation Commission. The Technical Solutions website makes plain its work on behalf of various businesses in the telecommunications industry. According to the complaint filed seeking to remove her from office, Ms. Bitter Smith failed to disclose to the Arizona Secretary of State's Office that Technical Solutions worked on behalf of the telecommunications industry or lobbied the Corporation Commission.

There are two elements in mail or wire fraud: (1) performing specified fraudulent acts or intending to devise a scheme to defraud, and (2) use of the mail or wire facilities for the purpose of executing, or attempting to execute, the scheme (or specified fraudulent acts). *Schmuck v. United States*, 489 U.S. 705, 721 n. 10 (1989). Your office successfully prosecuted former Congressman Rick Renzi for his role in a conspiracy to engage in wire fraud and theft of honest services. The 2008 indictment accused Mr. Renzi of committing several crimes, including a conspiracy:

to defraud the United States of its intangible right to the honest services of RENZI, free from deceit, bias, self-dealing and concealment, and for the purpose of executing the scheme and artifice, to knowingly transmit and cause to be transmitted writings, signs, signals and sounds by communications in interstate commerce by means of wire, and to knowingly send and cause to be sent communications in the United States mails, in violation of Title 18, USC, §§1341, 1343 and 1346.

Congressman Renzi's crimes flowed out of his efforts to assist a debtor to sell properties without disclosing that the debtor would use the proceeds of that sale to repay Mr. Renzi. The self-dealing in the Bitter Smith case is even more readily apparent than in the Renzi matter. If the allegations are true, then Ms. Bitter Smith lobbied on behalf of clients appearing before the agency she chairs and voted on matters benefitting companies that paid her six-figure salary.

There exist other examples of prosecutions involving theft of honest services. In *United States v. Siegelman*, then-Alabama Governor Don Siegelman was convicted of federal funds bribery, honest services fraud and conspiracy. Siegelman's honest services mail fraud convictions were based on allegations that a person made and executed a corrupt agreement with Siegelman to be appointed to a board that would benefit his business interests.

Siegelman argued that counts six and seven of the honest services charges were not proper because there was no express quid pro quo for the appointment. The district court stated that an express agreement or words of promise are not needed for honest services fraud; "the government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." Nor is there any requirement that an agreement be memorialized in writing. "Since the agreement is for some

specific action or inaction, the agreement must be explicit, but there is no requirement that it be express.”

A more recent example of honest services fraud is found in the prosecution of former Virginia Governor Robert McDonnell and his wife. They were prosecuted after they sought and received loans, gifts and favors from a person hoping to receive governmental testing and approval of a new weight loss drug. The McDonnell case makes clear the continued viability of a theft of honest services cause of action.

Consistent with statute, her oath of office and the duties of the office she holds, Susan Bitter Smith owes the citizens of Arizona and the Arizona Corporation Commission a duty to perform the responsibilities of her office free from deceit, self-dealing, bias or concealment. There exists a public perception that Cox Communications, Inc. and CoxCom, LLC, a wholly owned subsidiary of Cox Communications, Inc., are engaged in a conspiracy with Susan Bitter Smith to violate the law. If such a conspiracy exists then it occurred in Arizona and your office has jurisdiction to prosecute those crimes committed. If such a conspiracy does not exist then the public deserves to know that a prosecutorial body with proper authority reviewed the facts and determined that no illegal acts occurred.

Yours very truly,

A handwritten signature in black ink that reads "Tyler Montague". The signature is written in a cursive style with a large, stylized "T" and "M".

TYLER MONTAGUE