Brian Edward Malnes
2157 West Alaska Avenue
Flagstaff, Arizona, 86001
928-774-4580

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Brian Edward Malnes,

Plaintiff *Pro se*,

vs.

State of Arizona, Michele Reagan

Defendants.

CV-16-08008-PCT-GMS

MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

Brian Edward Malnes (Plaintiff) comes before the Court to file a "Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction."

PRELIMINARY INJUNCTION

This action for Preliminary Injunction arises from the State of Arizona and Michele Reagan's (Defendant's) Un-Constitutional violation of the 15th Amendment in restricting franchise to ex-felons. Details of the argument can be found, in part (Oral Argument's Requested to further articulate each point of law) in the Plaintiff's filing (Doc. 16). The Plaintiff has also filed a Constitutional Challenge against the State statute pursuant to Fed. R. Civ. P. 5.1. It is clear that the continued violation of the Constitutional right to vote of millions of people in Arizona constitutes an immediate and clear threat to the U.S. Constitution. No other remedy can

be envisioned that will serve the public good against the irreparable damage to the balance of liberty and citizenship within the State of Arizona. As partially argued in (Doc. 16), the Plaintiff has demonstrated a substantial likelihood of success on the merits of the case. As such the Plaintiff moves that the Court have a hearing in order to determine if it is warranted to issue a Preliminary Injunction

TEMPORARY RESTRAINING ORDER

In addition to the requested Preliminary Injunction, the Plaintiff is seeking a Temporary Restraining Order (TRO) against the Defendants. It is important to first identify the fact that the Plaintiff is a Federal Election Commission (FEC) registered candidate (FEC# H6AZ01231) for Arizona's Congressional District #1 for the upcoming November, 2016, Federal Election, a fact I shared with both of the attorney's representing the Defendants, Kara Karlson (Karlson), and James Driscoll-MacEachron (Driscoll), in our first phone conference. In addition, the act of running for Congress is a Federally protected activity as described in 18 U.S.C. § 245(b)(1)(A): "Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with, any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election." Both Karlson and Driscoll are attorneys in the State of Arizona's Attorney General's office, registered under the Arizona State Bar, and are also a part of the "Defendants," by definition.

On February 16, 2016, an article was published by Arizona Public Media[1] in which Matt Roberts; spokesman for the secretary of state (Defendant) was quoted:

[1] https://news.azpm.org/p/arizona-news/2016/2/16/82127-independent-candidate-in-azs-first-congressional-district-might-not-qualify/

"According to state law, a person must be a 'qualified elector' to run for office, which means he must be eligible to register to vote, and must be registered to vote, said Matt Roberts, spokesman for the secretary of state." In the same article Roberts was quoted:

"The Arizona Secretary of State's office said it does not conduct investigations into candidate eligibility unless another person files a challenge. Such a challenge could not be filed until later this year, after Malnes submits his nominating petitions."

The article continues:

"But Malnes himself said he is not registered to vote. He filed a federal lawsuit against the state the same day he filed with the Federal Election Commission to run for Congress.

In the lawsuit, Malnes, 50, said he tried to register to vote on Jan. 19, but his registration was rejected because of his status as a convicted felon whose rights have not been restored.

In the suit, he seeks $10 million in damages and to restore the civil rights for all convicted felons in the state. The Arizona Secretary of State's office, which runs the state's elections, filed a motion to dismiss the lawsuit Tuesday."

It is clear from the article that Roberts is using his office, as the spokesman for the Defendants to retaliate against the Plaintiff for filing the lawsuit against the Defendants. The Courts have been consistent with upholding that there are three, and only three qualifications for the U.S. House of Representatives. In *Schaefer v. Townsend,* 215 F.3d 1031 (9th Cir. 2000): "The Court held that a state provision creating an absolute bar to candidates, who otherwise meet the requirements of the Qualifications Clause (Art. I, Sect.2, Clause 2, *U.S. Constitution*), is unconstitutional…Thus the Court also held that 'a state amendment is unconstitutional when it has the likely effect of handicapping a class of candidates and has the sole purpose of creating additional qualifications indirectly'." And so, Roberts, acting as spokesman for the Defendants is using the color of law to infringe upon the Plaintiff's Civil Rights as described in 18 U.S.C. § 245(b)(1)(A). By telling the public that the Plaintiff is not qualified Roberts, is in violation of 18 U.S.C. § 242 – Deprivation of rights under color of law. In addition, as Roberts is spokesman for

the Defendants it is clear that he and the Defendants have also violated 18 U.S.C. § 241 — Conspiracy against rights.

By retaliating, and given incorrect, and misleading information to the press the Defendants are violating 18 U.S.C. § 1512(b)—Obstruction by Intimidation, Threats, Persuasion, or Deception. The Courts have looked at various forms of persuasion and have given a broad definition of the actions that constitute violations under this section. In particular, *United States v. LaShay*, 417 F. 3d 715, 718 (7th Cir. 2005), "corrupt persuasion occurs where a defendant tells potential witness a false story as if the story were true, intending that the witness believe the story and testify to it" (very much like other forms of persuasion found in subsection 1512(b) of "knowingly…engag[ing] in misconduct toward another person" with obstructive intent).[2]

Out of concern for these violations the Plaintiff contacted the Federal Election Commission who directed the Plaintiff to the Public Integrity Section of the U.S. Department of Justice (PIN). After consulting the *Federal Prosecution of Election Offenses*[3] the PIN instructed the Plaintiff to contact the Phoenix office of the Federal Bureau of Investigations (FBI). On recommendation by the FBI, the Plaintiff has also given a report to the Department of Justice Civil Rights Division, and the Arizona State Bar, regarding the violations outlined in this memorandum.

In evidence of the vigilant attempts at maintaining the Plaintiff's civil rights, the e-mail exchanges between Karlson, and the Plaintiff are presented as **Exhibit 1**. An examination of the exchange clearly demonstrates the multiple, and continuing violations of the Plaintiff's Civil Rights.

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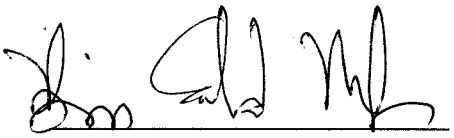
[2] Source is Congressional Research Service, https://www.fas.org/sgp/crs/misc/RL34303.pdf
[3] https://www.justice.gov/sites/default/files/criminal/legacy/2013/09/30/electbook-rvs0807.pdf

THEREFORE, the Plaintiff requests that the Plaintiff's "Motion for Temporary Restraining Order and Preliminary Injunction," be granted and the attached TRO be ordered by the Court.

Dated this 28th day of February 2016.



Brian Edward Malnes
2157 W. Alaska Ave.
Flagstaff, AZ 86001
928-774-4580
malnes@me.com
Plaintiff, *Pro se*

Exhibit 1

On Feb 16, 2016, at 5:21 PM, Riordan, Maureen wrote:

Mr. Malnes:

Attached is a copy of defendants' Motion to Dismiss (docket #15), which was filed today. A paper copy will be mailed to you.

Maureen Riordan
Legal Secretary
Civil Appeals Section

On Feb 16, 2016, at 8:09 PM, Malnes, Brian wrote:

Hello,

Thanks for the document. Please be aware that your client, in the guise of her direct subordinate, is lying about my right to run for U.S. Congress. Please inform your clients (State of Arizona, and Secretary of State Michele Reagan) to not lie about me, or my ability to run. https://www.azpm.org/p/crawler-stories/2016/2/16/82127-independent-candidate-in-azs-first-congressional-district-might-not-qualify/

I will bring this dishonesty, and the State of Arizona's inability to understand the U.S. Constitution to the Courts.

Best,

Brian Malnes

On Feb 22, 2016, at 12:00 PM, Malnes, Brian wrote:

Hello,

As I mentioned I contacted the FEC, who sent me to the Department of Justice, Public Integrity Section, who after a long discussion directed me to the FBI to whom I have given a report regarding the illegal activities of you clients. According to the Federal Prosecution of Election Offenses, Seventh Edition,
http://www.justice.gov/sites/default/files/criminal/legacy/2013/09/30/electbook-rvs0807.pdf

Your clients are involved in the following Federal Election Fraud Crimes and Civil Right Violations:

- (18 U.S.C. §§ 241, 242).
- (42 U.S.C. §§ 1973i(c), 1973i(e), 1973gg-10(2))
- 18U.S.C.§245(b)(1)(A)
- 18 U.S.C. § 594
- 18 U.S. Code § 1513

It can be readily seen that your clients, under "the color of the law," in a reprisal for filing my lawsuit have violated my rights and have committed Elections Fraud by providing incorrect information that has hampered my ability to seek election to the U.S. House of Representatives. By acting in retaliation for this lawsuit your clients have violated the U.S Constitution, and my Civil Rights.

The purpose of this e-mail is to ask if I should amend the current Complaint in order to add these charges, along with several additional defendants, or should I file a separate lawsuit?

Also, you will have my reply to your Motion this week. As a public servant, and a sworn lawyer in the States Attorney General's Office I believe it is your duty to report crimes such as the ones I am outlining in this e-mail, isn't that correct?

Best Regards,

Brian Malnes

On Feb 22, 2016, at 3:01 PM, Karlson, Kara wrote:

Mr. Malnes:

I cannot respond to your question about additional claims without knowing what those claims are. My office will continue to respond to any filings you may make to the Court regarding this matter. However, because we represent the Defendants, we are unable to offer you legal advice about your claims.

Additionally, the Secretary of State's office, including employees of that office acting in their official capacities, are represented by this office. Please direct your litigation-related concerns to our office.

Regards,

Kara Karlson

On Feb 24, 2016, at 1:38 PM, Karlson, Kara wrote:

Mr. Malnes:

It has come to my attention that you contacted the Secretary of State's office again this afternoon. As I explained in the email below, please direct your comments to this office, as the Secretary and her employees are represented by counsel.

Thank you,
Kara Karlson

On Feb 24, 2016, at 1:39 PM, Malnes, Brian wrote:

Sorry, you do not have the authority to request that.

Brian Malnes

On Feb 24, 2016, at 1:52 PM, Malnes, Brian wrote:

Ms. Karlson,

You just requested that a registered candidate (FEC #H6AZ01231) for Federal office that he cannot contact the Secretary of State's Office who run all the campaigns for the State. The number of Federal laws you have just violated is massive. You are abusing power Ms. Karlson under the auspices of the State of Arizona, which can only be thought of as a crime under Federal law, those provided previously.

I am a pro se litigant that is representing myself in Court, against the State you represent. As I have said, I have alerted the FBI who I understand are investigating this matter.

Again, you are violating the law by denying me access to the election offices in the State.

Brian Malnes

On Feb 24, 2016, at 2:20 PM, Malnes, Brian wrote:

Ms. Karlson,

I just attempted to speak with Eric Spencer, Director of Elections, regarding my qualifications as a candidate according to the State, this was done on recommendation of the Department of Justice and the Federal Election Commission.

However, I was told that I could not speak with him and that I should call you. Are you now running the elections for the State? This is illegal and stands against all Fair Election Practices in this Country. I am in an election, representing potentially millions of Americas and you say I cannot contact the Department of Elections? Amazing the power you are abusing.

You are using the color of the law to violate my civil rights. 18 U.S. Code § 245 (b)(1)(A) - Federally protected activities, which of course leads to 18 U.S.C. § 242: Deprivation of rights under color of law - and 24[1] the conspiracy inherent in the activity.

But you know this because you are a lawyer.

Brian Malnes

On Feb 24, 2016, at 3:13 PM, Malnes, Brian wrote:

Ms. Karlson,

Could you outline all the State's qualifications to run for Federal Elected Office in the State? Does the State of Arizona understand that only three qualifications exist under the U.S. Constitution to qualify to run for the U.S. Congress? http://history.house.gov/Institution/Origins-Development/Constitutional-Qualifications/

In addition, it is important to understand the extensive research done by the Congressional Research Service that clearly states the case law, which precludes the State of Arizona from offering any other qualification than those found in the U.S. Constitution. https://www.fas.org/sgp/crs/misc/R41946.pdf

And so, as you mentioned, you are my contact with the State of Arizona, as I am in a Federal Congressional Election to which I am currently getting signatures for I request an answer ASAP. As previously discussed, your clients, The State of Arizona have misinformed the public regarding my ability to run.

Best Regards,

Brian Malnes

On Feb 24, 2016, at 4:52 PM, Malnes, Brian wrote:

Ms. Karlson,

I asked for this information over an hour ago. This is time sensitive information for the running of my Federal campaign. I know that Matt Roberts provided information to AZPM much faster. Any idea when you will respond?

Best Regards,

Brian Malnes

On Feb 24, 2016, at 5:55 PM, Malnes, Brian wrote:

Ms. Karlson,

I am requesting your official resignation as someone sworn, not only by the Arizona Bar, but as an advocate of the State of Arizona, to uphold the U.S. Constitution. As you have broken Federal Law it is critical that you resign and allow the good name of the States Attorney's Office of the State of Arizona to not be tarnished by your illegal behavior as I have outlined. Bad way to end a 4 month employment, but maybe being a lawyer was not for you?

In addition, your mentor, James Driscoll-MacEachron, another attorney bound by the Arizona Bar, should also resign due to his conflict of interest as regards the lawful protection of my civil rights under the U.S. Constitution. And what surely is his involvement in the violation of 18 U.S.C. § 242, conspiracy in the deprivation of rights under the color of the law.

Best Regards,

Brian Malnes

On Feb 25, 2016, at 9:11 AM, Malnes, Brian wrote:

Ms. Karlson,

Please answer the following questions I asked yesterday.

Best Regards,

Brian Malnes

On Feb 25, 2016, at 3:32 PM, Karlson, Kara wrote:

Mr. Malnes:

Pursuant to A.R.S. § 41-191, this office cannot provide legal advice to members of the public. Therefore, we cannot provide you with any legal advice, including advice regarding qualifications for elected office.

This office does represent the Secretary of State and the State of Arizona. Because you are seeking legal sanctions against the Secretary regarding your qualifications, see, e.g., Email from Brian Edward Malnes to Kara Karlson (Feb. 22, 2016 at 12:00 p.m. Ariz. Time) (stating that you have reported the Secretary to the Federal Bureau of Investigation), these are now communications that the Secretary will engage in through legal counsel.

If you have questions regarding logistical issues unrelated to your pending lawsuit and other legal claims, you may contact Greg Karidas at the Secretary's Office at 602-542-8483. This office will continue to be your point of contact for litigation purposes. The Secretary's office will

continue to serve its role in election administration in regards to your asserted Congressional candidacy by, for example, processing any nomination petitions you may submit.

This office will continue to be responsive to appropriate litigation-related issues. However, the timelines that you are attempting to enforce are unreasonable, see, e.g., Email from Brian Edward Malnes to Kara Karlson (Feb. 24, 2016 at 4:52 p.m. Ariz. Time) ("I asked for this information over an hour ago"). This office will respond to your litigation-related inquiries, in writing, within a reasonable amount of time, as we do in all matters.

--

Kara Karlson

Assistant Attorney General

Office of the Arizona Attorney General

1275 W. Washington

Phoenix, AZ 85007

On Feb 25, 2016, at 3:44 PM, Malnes, Brian wrote:

Do you have Mr. Karidas' e-mail, the number you gave is seemingly not correct.

Brian Malnes

On Feb 25, 2016, at 3:57 PM, Karlson, Kara wrote:

Mr. Karidas' email is gkaridas@azsos.gov. And you are correct, the number for the Secretary's office is 602-542-8683.

On Feb 25, 2016, at 3:57 PM, Malnes, Brian wrote:

Ms. Karlson,

I am preparing a filing in our current case. I believe your client, Michele Reagan, is using her office to retaliate against me for filing my suit. Is this correct? This is of course a very serious Federal crime. As you have painstakingly observed, you represent the Secretary of State in this legal matter.

I assume that you will say it is not the case to which I pose you this question:

Is this quote accurate? "According to state law, a person must be a 'qualified elector' to run for office, which means he must be eligible to register to vote, and must be registered to vote, said Matt Roberts, spokesman for the secretary of state."

https://news.azpm.org/p/arizona-news/2016/2/16/82127-independent-candidate-in-azs-first-congressional-district-might-not-qualify/

In other words, so there is no confusion, did Matt Roberts make that statement as a representative of Secretary of State?

Simply yes or no.

Best Regards,

Brian Malnes

On Feb 25, 2016, at 4:03 PM, Malnes, Brian wrote:

Mr. Karidas,

I was given your information via the Attorney General's Office. I am running for Federal office in Arizona CD-#1 and I am very concerned about my qualifications as understood by your office. Matt Roberts of your office was quoted as saying the following: "According to state law, a person must be a "qualified elector" to run for office, which means he must be eligible to register to vote, and must be registered to vote, said Matt Roberts, spokesman for the secretary of state."

https://news.azpm.org/p/arizona-news/2016/2/16/82127-independent-candidate-in-azs-first-congressional-district-might-not-qualify/

As such, could you outline all the State's qualifications to run for Federal Elected Office in the State? Does the State of Arizona understand that only three qualifications exist under the U.S. Constitution to qualify to run for the U.S. Congress? http://history.house.gov/Institution/Origins-Development/Constitutional-Qualifications/

In addition, it is important to understand the extensive research done by the Congressional Research Service that clearly states the case law, which precludes the State of Arizona from offering any other qualification than those found in the U.S. Constitution. https://www.fas.org/sgp/crs/misc/R41946.pdf

As I am in a Federal Congressional Election to which I am currently getting signatures, I request an answer ASAP.

Best Regards,

Brian Malnes

On Feb 25, 2016, at 4:35 PM, Malnes, Brian wrote:

Ms. Karlson,

Yesterday you wrote this:

"Mr. Malnes:

It has come to my attention that you contacted the Secretary of State's office again this afternoon. As I explained in the email below, please direct your comments to this office, as the Secretary and her employees are represented by counsel.

Thank you,
Kara Karlson"

This can only be thought of as a threat correct? After all, you do represent the Law Enforcement arm of the State of Arizona. Was it your intension to scare me away from my civil right to run for Federal office?

Again, this concerns a filing of tampering in the current case, Malnes v Arizona, as well as an abuse of power on your part. I would also like to apologize for my comment about time. Naturally, I was upset by your interference in my attempt to qualify for election, 18 U.S. Code § 245 (b)(1)(A), "voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election

official, in any primary, special, or general election," https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap13-sec245.pdf

Thus, by attempting to threaten me into compliance you actually were violating Federal law which states: "Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—"

By interfering with my attempt to qualify as a candidate for elective office you have violated my civil rights. The question Ms. Karlson is, are you willfully participating in a conspiracy to violate my civil rights? Or, are you woefully ignorant of the crimes you are committing?

Again, this is for a filling in Malnes v Arizona of tampering, and the restraining orders that accompany it.

Best Regards,

Brian Malnes

On Feb 25, 2016, at 4:51 PM, Malnes, Brian wrote:

Ms. Karlson,

I am again requesting your official resignation as someone sworn, not only by the Arizona Bar, but as an advocate of the State of Arizona, to uphold the U.S. Constitution. As you have broken Federal Law it is critical that you resign and allow the good name of the States Attorney's Office of the State of Arizona to not be tarnished by your illegal behavior as I have outlined in the multiple e-mails we have exchanged.

In addition, your mentor, James Driscoll-MacEachron, another attorney bound by the Arizona Bar, should also resign due to his conflict of interest as regards the lawful protection of my civil rights under the U.S. Constitution. And what surely is his involvement in the violation of 18 U.S.C. § 241, conspiracy in the deprivation of rights under the color of the law.

Best Regards,

Brian Malnes

On Feb 26, 2016, at 10:07 AM, Malnes, Brian wrote:

Ms. Karlson,

In yesterday's e-mail you wrote:

This office does represent the Secretary of State and the State of Arizona. Because you are seeking legal sanctions against the Secretary regarding your qualifications, see, e.g., Email from Brian Edward Malnes to Kara Karlson (Feb. 22, 2016 at 12:00 p.m. Ariz. Time) (stating that you have reported the Secretary to the Federal Bureau of Investigation), these are now communications that the Secretary will engage in through legal counsel.

However, On Feb. 22, you wrote:

I cannot respond to your question about additional claims without knowing what those claims are. My office will continue to respond to any filings you may make to the Court regarding this

matter. However, because we represent the Defendants, we are unable to offer you legal advice about your claims.

Additionally, the Secretary of State's office, including employees of that office acting in their official capacities, are represented by this office. Please direct your litigation-related concerns to our office.

These two statements of course are contradictory as yesterday's e-mail clearly states you knew what my claims were on Feb 22. By misleading me, you have actually misled a candidate for Federal office as I have numerously explained. You are obfuscating facts, and claiming you did not understand my claims, when clearly you did. This is a form of tampering, not just in the election, but in Malnes V Arizona.

When I called the SoS in regard my campaign qualifications, you obstructed that activity.

Mr. Malnes:

It has come to my attention that you contacted the Secretary of State's office again this afternoon. As I explained in the email below, please direct your comments to this office, as the Secretary and her employees are represented by counsel.

Thank you,
Kara Karlson

Why did you attempt to obstruct my Federal campaign? It is clear that the reason I called the SoS was due to my campaign, not Malnes v Arizona.

Best Regards,

Brian Malnes

On Feb 26, 2016, at 10:33 AM, Karlson, Kara wrote:

Mr. Malnes:

In regards to your recent email to Mr. Karidas, Email from Brian Edward Malnes to Greg Karidas (Feb. 25, 2016 at 4:03 p.m. Ariz. time), neither the Secretary nor this office is able to provide you with legal advice regarding your candidacy. This includes, among other things, the legal qualifications to run for office. Neither this office nor the Secretary's office will respond to any further requests for legal advice.

In regards to the additional questions you have raised, these are inquiries related to your claims in the litigation that are best conducted through the discovery process provided for by the Federal Rules of Civil Procedure. This office will respond to your properly-posed discovery requests as required by law.

Furthermore, no one at this office or the Secretary's office has threatened you in any way. To the contrary, both offices have upheld their customary highest standards of professionalism and courtesy in all interactions with you. We request that you refrain from employing aggressive and harassing tactics against this office and the Secretary's office, including leveling unfounded allegations of misconduct.

This office will respond to appropriate litigation matters in compliance with applicable law, and the Secretary's office will continue to perform its legal duties regarding your candidacy. However, we will no longer respond to communications outside these boundaries, nor will we respond to any harassing communications.

--

Kara Karlson

Assistant Attorney General

Office of the Arizona Attorney General

1275 W. Washington

Phoenix, AZ 85007

On Feb 26, 2016, at 10:38 AM, Malnes, Brian wrote:

Interesting observation.

And again, a threat, what will you do? Have me arrested for attempting to communicate?

Are you saying the SoS will not give me the qualifications?

Brian Malnes

On Feb 26, 2016, at 10:44 AM, Malnes, Brian wrote:

Mr. Karidas,

What are the qualifications to run for Federal elective office in Arizona? This is not a legal question, simply one the FEC and the Department of Justice say you MUST answer. What are the qualifications to run for U.S. Congress, AZ-CD#1?

Brian Malnes

On Feb 26, 2016, at 1:33 PM, Malnes, Brian wrote:

Mr. Karidas,

What are the qualifications to run for Federal elective office in Arizona? This is not a legal question, simply one the FEC and the Department of Justice say the Secretary of State's Office who runs the State's campaigns MUST answer. What are the qualifications to run for U.S. Congress, AZ-CD#1? Your office has given an answer from Matt Roberts, could you simply right down the answer for me, my campaign, and the millions I represent. As a FEC registered (FEC #H6AZ01231) candidate in the upcoming race I need to know what I have to do to get on the ballot? What are the qualifications to run for the seat I am a register candidate for? Who is my official contact if it is not you as Ms. Karlson point out. I must inform you that my campaign has diligently sought the information contained in the e-mail for 10 days. That is 10 days the people of the State have not received their answer.

Best Regards,

Brian Malnes