

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,)	CV-16-08008-PCT-GMS
)	
)	
Plaintiff <i>Pro se</i> ,)	REPLY TO DEFENDANTS' RESPONSE
)	TO PLAINTIFF'S MOTION FOR
vs.)	PRELIMINARY INJUNCTION
)	
)	
State of Arizona, Michele Reagan)	
)	
Defendants.)	
)	
)	<u>ORAL ARGUMENT REQUESTED</u>

Brian Edward Malnes (Plaintiff) comes before the Court to file a “Reply to Defendants’ Response to Plaintiff’s Motion for Preliminary Injunction.” The Defendants in their, “Defendants’ Response to Plaintiff’s Motion for Preliminary Injunction [Doc. #37],” argue that the Plaintiff failed to act in a timely manner in asking for an injunction. An examination of the timeline in this case demonstrates that this is completely false. In addition, the Defendants argue that the Plaintiff cannot ask for, nor does he deserve an injunction, however, the Defendants are violating the U.S. Constitution, which seems to have dominion over all court cases cited by the Defendants in their attempt to protest the relief sought by the Plaintiff.

Facts

On January 7, 2016, the Plaintiff filed his “Amended Complaint” (Doc. #7), which questions the constitutionality of one of the Defendant’s Election Laws (A.R.S. Title 16). In response, the Defendants through their spokesman declared to the media that the Plaintiff was not qualified to run for office in the state. Because of this retaliation from the Defendants, the Plaintiff filed for a TRO and injunctive relief on March 1, 2016. In the Plaintiff’s “Memorandum in Support...” (Doc. #19), the Plaintiff argues that Defendants are using the color of law to stop the Plaintiff from qualifying. And that the attorneys for the Defendants have acted in violation of Federal law in stopping the Plaintiff from qualifying for election 18 U.S.C. § 245(b)(1)(A). In the Defendant’s response (Doc. #24), filed March 17, 2016, the Defendants state: “Plaintiff has not alleged that there has been any challenge to his qualifications for office. Indeed, the first day that Plaintiff can file nomination papers with the Secretary’s office is May 2, 2016, and the last day is June 1, 2016. A.R.S. § 16-311(A) (requiring filing of a nomination paper ‘not less than ninety nor more than one hundred twenty days before the primary election.’). In other words, Defendants have not taken any steps to harm Plaintiff’s federal campaign, much less taken any steps that would irreparably harm his ability to run,” however, the Defendants point to “A.R.S. § 16-311(A),” which in itself poses an unconstitutional qualification against the Plaintiff. And so on March 25, 2016, the Plaintiff filed a “Notice of Constitutional Challenge to a Statute” (Doc. #33). According to Fed. R. Civ. P. 5.1 (c), “Intervention; Final Decision on the Merits. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.” And so the Plaintiff waited the 60 days required by rule for

the Defendant's attorney ("attorney general") to respond. And then on May 25, 2016, the Plaintiff filed his "Motion for Preliminary Injunction" (Doc. #35) seeking the relief not considered over the last two months by the Defendants. To now say that the Plaintiff did not act in a timely manner is not in accordance with reality. In fact, the Plaintiff has gone out of his way to give the Defendants time to consider the unconstitutionality of their election law. As a result, the Plaintiff filed in a timely manner.

Extraordinary Relief

The Plaintiff requests the extraordinary relief of being put on the ballot due to the fact the Defendants have, and continue to act unconstitutionally and in violation of the Plaintiff's civil rights. The Plaintiff has made every effort to abide by the election law of the Defendants, however, the law as written and maintained and enforced by the Defendants remains unconstitutional. Specifically, 16-311(A) states: "A candidate for public office shall be a qualified elector at the time of filing and shall reside in the county, district or precinct that the person proposes to represent." This is a direct violation of the Qualification Act of the U.S. Constitution. Further, 16-341(A) states: "Any qualified elector who is not a registered member of a political party that is recognized pursuant to this title may be nominated as a candidate for public office otherwise than by primary election or by party committee pursuant to this section," again a violation of the U.S. Constitution's qualification clause.

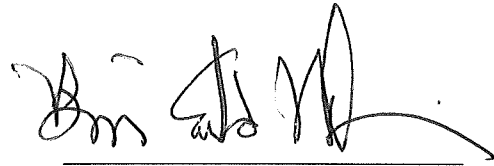
In the Defendant's "Response..." (Doc. #37) a "Declaration of Eric Spencer" (Doc. #37-1) Eric Spencer (Spencer) does not tell the truth. In his declaration Spencer states: "3. I have reviewed the documents filed by Arizona congressional candidates, and as of June 10, 2016, the Secretary's office has not received any documents required by A.R.S. §§ 16-311 and -341 from

1 Plaintiff Brian Edward Malnes. 4. The Secretary's office has no record that Plaintiff attempted to
2 file any of the documents required by A.R.S. §§ 16-311 and -341," however, this does not agree
3 with the Secretary of State's own Website,¹ which clearly shows that the Plaintiff filed his
4 nomination papers on May 2, 2016 @ 3:24 P.M. (ATTACHMENT 1). This clear fabrication
5 from Spencer is compounded by the fact the nomination paper requires a statement that cannot
6 be signed by the Plaintiff, "You are hereby notified that I, the undersigned, a qualified elector,"
7 (ATTACHMENT 2). Clearly, the Defendants are continuing to violate the Plaintiff's civil
8 rights, thus making the Plaintiff's request to appear on the November 8, 2016, ballot is justified
9 and is likely to win on its merits. It is also critical for this Court to rule on the Constitutionality
10 of A.R.S. § 16-311(A) as challenged by the Plaintiff (Doc. #33), which will bring into question
11 the entirety of the Defendant's Title 16 election law.
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20 THEREFORE the Plaintiff requests the injunctive relief sought in his "Motion for
21 Preliminary Injunction" (Doc. #35).
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28 ¹ <https://apps.azsos.gov/apps/election/candidateportal/Candidate/Elections>

Dated this 20th of June 2016.

A handwritten signature in black ink, appearing to read 'Brian Malnes', written over a horizontal line.

Brian Edward Malnes

2157 W. Alaska Ave.

Flagstaff, AZ 86001

928-774-4580

malnes@me.com

Plaintiff, *Pro se*

ATTACHMENT 1

2016 General Election

Election Profile



Brian Malnes

The People of Arizona deserve a representative in Washington, D.C. that will work for them, not a political party, or a special interest group, as an Independent candidate I will not pick sides, only the best solutions for the People of Arizona. In addition, I am only running for one term. Currently, congresspersons in Washington, D.C. spend the majority of their time working for their own interests, re-election. I will not be running for re-election, instead I will spend my time working for the People of Arizona. I am a Disabled American Veteran who believes in the power of the People. As Abraham Lincoln spoke at the hallowed ground of Gettysburg, our government must be "for the people and by the people." Let's bring Government for the People back to Arizona.

Campaign Type: Nomination

✉ brian@malnesforcongress.org (Business)

Election: 2016 General Election

✉ brian@malnesforcongress.org (Business)

Election Date: 11/08/2016

📞 9286068456 (Business)

Office: U.S. Representative in Congress - District No. 1

Mailing Address:

2157 W Alaska Ave
Flagstaff, AZ 86001
Coconino County

Political Party: Other Independent

Residential Address:

2157 W Alaska Ave
Flagstaff, AZ 86001
Coconino County

🌐 <http://malnesforcongress.org>
(<http://malnesforcongress.org>)

📘 <https://www.facebook.com/malnesforcongress/>
(<https://www.facebook.com/malnesforcongress/>)

Financial Disclosure Statements

Upload New Statement

(</apps/election/candidateportal/Candidate/UploadFDS/1530>)

Nomination Papers

Create/Upload New Paper

(</apps/election/candidateportal/Nomination/NominationPaper/1530>)

Nomination Petition Forms

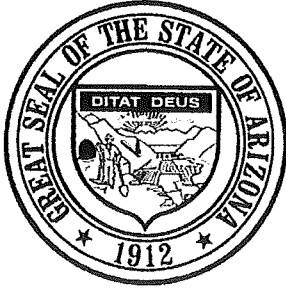
Create/Download Form

(</apps/election/candidateportal/N>)

May 02, 2016 @ 03:24 PM

(</apps/election/candidateportal/CandidateDocuments/08/NominationPapers/1208.pdf>) (Inactive)

ATTACHMENT 2



STATE OF ARIZONA

**"INDEPENDENT" FEDERAL CANDIDATE
NOMINATION PAPER
(A.R.S. §§ 16-311, 16-341)**

You are hereby notified that I, the undersigned, a qualified elector, am a candidate for the office of **U.S. Representative in Congress - District No. 1** subject to the **2016 General Election** to be held on **Tuesday, November 8, 2016**.

I will have met the citizenship and age requirements next preceding my election for the office that I seek, and when elected, be an inhabitant of the state from which I am chosen.

I do solemnly swear (or affirm) to the above qualifications and to having fulfilled the constitutional and statutory requirements for holding said office.

Residential Address:

2157 W Alaska Ave Flagstaff AZ 86001

Post Office Address:

2157 W Alaska Ave Flagstaff 86001

Name in the exact manner you wish it to appear on the ballot:

Malnes, Brian

Ballot Designation:

Independent