

735 Little Drive
Lake Havasu City, AZ 86406
November 29, 2013

Ms. Kelly Williams
Lake Havasu City Clerk
2330 McCulloch Blvd., N.
Lake Havasu City, AZ 86403

**RE: City letter of November 12, 2013 on; “STOP THE CORRUPTION” CAMPAIGN and
“STOP THE SEWER FEE INCREASE” CAMPAIGN**

Dear Ms. Williams:

I have carefully considered your letter of 11/12/13 and the response letter sent by my attorney on 11/19/13 (ATTACHMENT E). Attorney Jackson covered the essential legal technical details. My response herein will be more appropriate for a lay person (not a politician or attorney) and civic activist...one who fights for social and community issues. But, being apolitical does not exclude griping about politicians and the government. Moreover, I have tried to structure this response for the ease of review by my colleagues and volunteers.

I. November 12 letter:

I am certain that your letter of November 12 would not have been possible without the direct involvement of the mayor, city manager, and city attorney as no city clerk in any municipality would undertake such allegations without direction from the top elected and appointed officials.

Assuming this matter will end up in court, we will have the opportunity to discuss that involvement of city officials through disclosure and depositions.

This alleged involvement of the appointed and elected city officials is significant in that the only person in this matter to have publicly announced for a city political office was that of mayor Nexsen on September 16, 2013. This is in the time frame of the editorials I published that were so critical of city government, the city council, and the mayor. Nexsen is a two-time incumbent running for and campaigning for a third term. However, I have never run for or held a political office.

II. September 11 letter:

Your November 12, 2013 letter requiring me to form two political committees is patently contradictory to your letter of September 11, 2013 in which you stated; *“This office has no choice but to refuse to accept the initiative petitions for verifications of signatures if and when they are presented.”* With that, you stopped two voter initiatives as presented by the two political committees required to process the voter initiatives. I subsequently terminated the two committees as the work at hand was stopped by the city.

I then submitted two new voter initiatives with the two required new political committees. And again, the city stopped me in a letter dated October 23, 2013 which stated; “*By this letter I am informing the **political committees** mentioned above that the initiative matters described in the applications submitted for initiative petition serial numbers are considered to be legally invalid under the initiative power reserved to the qualified electors of the City. This office has no choice but to refuse to accept the applications submitted for initiative petition serial numbers. As mandated by state law and controlling court decisions on exercise of the initiative power, the City Clerk also cannot take steps to place the proposed measures on the ballot.*”

Your letter of October 23, 2013 (ATTACHMENT D) for a second time, prohibited my proposed issues from going to the taxpayers as voter initiatives. The two forms (political campaign committee form and voter initiative form) had to be submitted as a set. Thus in doing so, city officials specifically prevented the establishment of the two additional political committees I was required to submit to manage those two requested new voter initiatives. Those four political committees in the two separate city actions were similar to what you have demanded of me in your letter of November 12, 2013.

It is therefore bizarre in that on one hand city officials through your letters of September 11, 2013 (ATTACHMENT B) and October 23, 2013 refused to allow me to organize four political committees to take key issues directly to the taxpayers in the form of voter initiatives. Subsequently on the other hand, you threaten legal action in your letter of November 12, 2012 for my efforts to editorialize and organize citizens to protest those very same issues...including the issues of corruption, inappropriate tax incentives, misuse of public funds, the open meeting law violations cited by the state’s Attorney General, the frequency of no-competitive-bidding on big city contracts, sewer fees tied to water usage, the projected sewer fee increases, etc. This is most bizarre...

It is also bizarre that Nexsen in his official role as mayor, repeatedly on the talk-show *Speak-Out* and in interviews on *Havasu Video News* declared my editorials to be “*political advertisements.*” This is a matter of public record. Thus, your letter of November 12 is not a surprise as it includes exactly the same terminology of “*political advertisements*” publicly expressed by mayor Nexsen in the local media. I therefore can assume the complaints noted in your November 12 letter were from either city officials or supporters of mayor Nexsen’s re-election campaigns, past and/or present. Expecting litigation, those facts can be and will be exposed through disclosure and depositions.

III. Complaint:

From a public records request #5748 (ATTACHMENT H), included are the letters of complaint from Randy Erwin (owner of Paradise Homes) and Michael Mathers (Liberty Properties realtor and a published supporter of mayor Nexsen’s attempt to annex the Refuge). The dates are the same and the formats of the two letters are identical. The font and type-size of the print are also identical. These letters were written on the same computer.

Moreover, it is alleged that both gentlemen were/are clients of mayor Nexsen’s accounting firm. Apparently, Mr. Mathers as a realtor may also have/had a business connection to Mr. Erwin, a

new-home builder. Both are supporters of mayor Nexsen's re-election campaign and may have been supporters in the past. Those facts are being researched and will be presented in a future publication.

I believe mayor Nexsen colluded with Erwin and Mathers in the writing of the two complaints in ATTACHMENT H. Given the opportunity through litigation, we will subject such details to disclosure and depositions.

It is therefore appropriate that we press allegations of a dominant and powerful two-term mayor that is using his city government to suppress my First Amendment rights as a local civic activist and the rights of a number of like-minded volunteers.

Ergo this complaint of the unlawful use of state statutes on political and campaign finance restrictions for the personal and political gain of city officials (such as the re-election of a powerful incumbent two-term mayor and the job security of appointed city officials).

Therefore, please accept this letter as a formal complaint alleging that city officials have violated statutes A.R.S. § 38-503. Conflict of Interest and A.R.S. § 38-504. Prohibited Acts demonstrated by the actions the city has/is taking with your letter of November 12, 2013.

See Attachment G: A.R.S. §38-503. Conflict of interest; exemptions; employment prohibition
B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

See Attachment G: A.R.S. § 38-504. Prohibited acts
C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

Given violations of A.R.S. § 38-503 and A.R.S. § 38-504, the Arizona RICO statutes may also apply in that pursuant to A.R.S. §13-2311 that any person who pursuant to a scheme or artifice to defraud or deceive knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement, is guilty of fraudulent schemes and practices.

IV. History as a civic activist:

My nearly quarter century in Lake Havasu City as a civic activist is widely known. Moreover, my history of audits, investigations, litigation, and scathing editorial-type publications in local media directed at local government has clearly upset numerous appointed and elected local public officials.

For example, I formed Manager Review, Inc. in 2003 as an IRS approved 501(c)4 corporation. The mission was and still is, *“To expose Lake Havasu City government wrongdoing, investigate such wrongdoing, and inform and educate the public on such wrongdoing as revealed.”*

One of my early projects was that of investigating Lake Havasu City’s city manager Bruce Williams and the city finance director Mike Ashley. With over 120 volunteers, I also built a website *“Manager Review”* to post the various documents my volunteers gathered from public records requests. We did organize and expend resources to exercise our First Amendment rights to audit, investigate, publicize, criticize, and litigate Lake Havasu City’s government and its top officials. And just as important, to inform and educate the public on such wrongdoing.

Subsequently, as the Today’s News-Herald on 6-28-06 reported; *“Williams was indicted in Mohave County Superior Court April 27, 2006.”* Another media source *e-Press* on 12-11-06 reported; *“Ashley was also charged with theft in a criminal indictment involving his alleged misuse of a city credit card. Authorities said Ashley used public money to cover personal expenses, including a fine for a drunk driving conviction.”* Interestingly, supporters of the two city officials at that time accused me and my volunteers of being *“political”* in a news report also published by the Today’s News-Herald.

In such civic activity, the First Amendment rights of civic activists (such as me and my volunteers) to criticize and expose alleged corruption and wrongdoing have long been upheld by the courts of this nation. Moreover, such rights must not be subject to restrictions of inappropriately applied campaign finance regulations. From the conservative Illinois Review, *“Campaign finance restrictions are exactly what the First Amendment exists to prevent: laws that tilt the political playing field in government officials’ favor. And by reducing political outsiders’ ability to challenge entrenched officeholders, these laws actually tend to increase rather than decrease corruption.”* 09/13.

V. LHC-13-119-INT:

As you know, in October, I did make application for fifth voter initiative and was assigned serial number LHC-13-119-INT (ATTACHMENT C). As a part of that application, included was the required political committee statement of organization: *“Help Dr Bill stop big-box tax incentives.”* Clearly, it is a huge undertaking and will require about 6,000 signatures to meet the threshold required by the city. And, it will take a small army of like-minded volunteers to gather those signatures as there are no paid petition circulators. That group is working, gathering signatures on petitions, recruiting more volunteers, and functioning properly under the law.

It is our contention that the big corporate tax incentives have caused budgetary shortfalls resulting in monies being withheld from the wastewater stabilization fund. Such tax giveaways as charged in my critical editorials, are one of the reasons for the pending sewer fee increases as revealed by current city manager Cassens and Fitch Ratings.

The facts are clear. To quote city manager Cassens from the Tuesday, February 19, 2013, 6:00 P.M. regular city council meeting; *“He (Cassens) said in the future, to keep the fund healthy, the City will need to implement a sewer rate increase in the three percent range.”* However, Fitch Ratings in its Friday, Jul 19, 2013 1:34 PM EDT report (with data from city financial reports)

stated: "...user rates and charges are projected to increase beginning with a 6.2% rate hike effective for fiscal 2014." Subsequently, the allegation I pressed was that city officials lied to the taxpayers and hid the projected sewer rate increase of double that announced by city manager Cassens.

I wrote that, "*City manager Cassens never acts on behalf of the city or in a city council meeting without the explicit approval of mayor Nexsen.*" And, "*Nexsen rules city hall with an iron fist.*"

I also revealed from the Fitch Ratings report that; "*Customer debt levels rose to levels that are among the highest in the U.S.*" And, "*The city's wastewater utility rates are among the highest in the region at 1.8% of median household income, above Fitch's affordability level of 1%.*" I stated that with such abnormal debt load on citizens, any increase of sewer rates, particularly rates tied to water usage, would be difficult for people who struggle with household budgets.

I then revealed another finding from the Fitch Ratings report; "*The RSF was initially funded with \$5 million from the system's revenue fund and may be swept and used for system purposes, but must be replenished from city general fund contributions annually.*" Going back to the May 5, 2009 city council work session, "*Mayor Nexsen asked staff to put together a plan that does not transfer the \$3 million to the WWSE...*" The facts are clear and have been addressed in my editorials during September and October as fundamental issues of government malfeasance. The monies were swept at the direction of mayor Nexsen.

And, why were the monies swept? From a city finance report, the reason for the transfer was a shortfall of sales tax revenue caused specifically by the tax incentives granted to the mall developers. I charged that such shortfalls, misguided tax incentives, and other inappropriate city expenditures were directly the cause of the impending sewer fee increase and in part is a basis of my editorials on "*stop the corruption*" and "*stop the sewer fee increase.*"

VI. Patronage:

To reiterate, I did criticize in my editorials, city government, the mayor, and council for lying and not fully informing the public about the projected sewer fee increases. Moreover, I claimed this to be a pattern of secrecy not unlike that addressed by the Attorney General in the open meeting law citations of February 2013. The three open meeting law violations of this current administration were the first ever in the history of our city. Two of those A.G. open meeting law citations had to do specifically with "*secret ballots*" used by the mayor and council to appoint two persons to vacant city council seats. These factors were also a part the basis for my allegations of "*corruption.*"

The addition of a business partner of the mayor's wife and the appointment of two friends of the mayor's wife (from the time she held board offices on the Chamber of Commerce) to vacant city council seats (the subject of the AG's citation) have also been cited by as evidence of corruption through patronage (the power to make appointments to government for political advantage). To that point, I quoted from Wikipedia; "*Factors which encourage systemic corruption in government include: conflicting incentives, discretionary powers, monopolistic powers, and a culture of impunity.*" And yes, I also wrote; "*Gripping about the government is as American as apple pie.*" It is also a protected form of free speech.

VII. Campaign contributions:

I also exposed a campaign contribution of mayor Nexsen and councilman Callahan to a controversial Tucson area congressman of an opposing political party. Quoting from a volunteer associated with me: *“Surely everyone is aware of U.S. Rep. Raul Grijalva, from Tucson. He's a member of the House of Representatives Progressive Coalition and he is a died-in-the-wool, national level ultra-liberal Democrat. I think Nexsen is leading LHC towards an example best exemplified by big government in Washington with piling debt on the backs of future generations. His proposal to bury Havasu in 40-year sewer bonds is scandalous. Take a look at this and maybe you can understand his infatuation with big-government Democratic ideas. And this where you will find Mrs. Nexsen along with Don Callahan.”*

Mark Nexsen Contribution List in 2010

Nexsen, Mark
S

LAKE

HAVASU

CITY, AZ

86406

Lake Havasu

City/Mayor

\$750 07/07/2009 P

A WHOLE LOT OF PEOPLE FOR
GRIJALVA CONGRESSIONAL
COMMITTEE - Democrat

<http://www.campaignmoney.com/political/contributions/mark-nexsen.asp?cycle=10>

Donald Callahan Contribution List in 2010

Callahan,
Donald J
Lake Havasu
City/Council
Member

\$250 11/09/2009 P

A WHOLE LOT OF PEOPLE FOR
GRIJALVA CONGRESSIONAL
COMMITTEE - Democrat

http://www.campaignmoney.com/political/contributions/arizona_lake_havasu_city_86406.asp?cycle=10

Understandably, one might expect the mayor Nexsen and his supporters to be irritated by a volunteer’s revelations in an editorial I published. But, we surely did not expect government directed political retaliation and free speech suppression of the sort represented in your letter of November 12, 2013.

VIII. Political advertisements:

In your November 12, 2013 letter, you specifically reference “*political advertisements*” by me from September 11, 2013 through October 31, 2013 as a basis of a complaint of unnamed persons.

It is my contention that the published materials were not “*political advertisements.*” These specific editorials are included in ATTACHMENT A and are from the September through October time period.

There are only facts included in these editorials such as those presented in this letter. There are no political statements common to political campaigns. No contributions were involved and I am

the only person writing and paying to publish such editorials. That is my pattern of the past nearly quarter century here in Havasu as a civic activist.

My use of a term “*campaign*” in my publications is also apolitical and simply an attempt to gather like-minded volunteers to help to audit, investigate, publicize, criticize, and litigate Lake Havasu City’s government and its top officials. And just as important, to inform and educate the public on such wrongdoing. I have neither a military nor a political campaign underway. In this sense, please reference the classic definition of “*campaign*.” Which is that of working in an organized and active way toward a particular social or civic goal (see Wikipedia).

My current “*campaigns*” follow closely that used in the investigations of city manager Williams and city finance director Ashley. The difference being that the current issues are significantly broader, more complex, and require far more volunteers to accomplish the work at hand.

IX. Conclusion:

In conclusion, your letter of October 23, 20-13 will be addressed through litigation presently being prepared by my attorney.

I find the complaints in your November 12, 2013 letter to be:

- 1) politically motivated in general;
- 2) an attempt to limit the voter initiatives being proposed by me and my volunteers;
- 3) presented for the specific political advantage of mayor Nexsen and certain council members;
- 4) an illegal suppression of the First Amendment rights of me and my colleagues;
- 5) an inappropriate and illegal application of A.R.S. § 16-901(19); A.R.S. § 16-902.01; A.R.S. § 16-924 for the political gain and advantage of current elected and appointed officials;
- 6) potentially a violation of A.R.S. § 38-503 Conflict of Interest and A.R.S. § 38-504 Prohibited Acts if the issues of your November 12, 2013 letter are inappropriately pursued.

Thus, the points presented in your letter of November 12, 2013 are rejected and it is my intent to litigate any action such as that threatened therein.

Please feel free to contact me for further clarification, additional information, documents that start the disclosure process, etc.

Respectfully,

Dr. Bill Ullery

Dr. Bill Ullery

Cc: Email groups

www.BillUllery.com

Harvey Jackson, Attorney

Randy Erwin (Paradise Homes) and Michael Mathers (Liberty Properties)

ATTACHMENTS:

- A.** Published editorials numbered 1 through 14, September and October 2013.
- B.** City letter of September 11, 2013 and two rejected voter initiatives.
- C.** Voter initiative LHC-13-119-INT, on prohibiting municipal tax incentives.
- D.** City letter of October 23, 2013, attorney Jackson reply, two additional rejected initiatives.
- E.** City letter of November 12, 2013 and attorney Jackson reply.
- F.** A.R.S. § 16-901(19); A.R.S. § 16-902.01; A.R.S. § 16-924.
- G.** A.R.S. § 38-503. Conflict of Interest and A.R.S. § 38-504. Prohibited Acts.
- H.** Complaints filed by Randy Erwin (Paradise Homes) and Michael Mathers (Liberty Properties)