

ARIZONA STATE DEMOCRATIC PARTY V. STATE: POLITICAL PARTIES NOT PROHIBITED FROM RECEIVING DONATIONS FOR GENERAL EXPENSES

Kathleen Brody

I. INTRODUCTION AND FACTUAL BACKGROUND

In a unanimous decision authored by Vice Chief Justice Rebecca White Berch, the Arizona Supreme Court held that the Arizona State Democratic Party (the “Party”) did not violate Arizona Revised Statutes (“A.R.S.”) section 16-919 by accepting approximately \$100,000 from corporations and labor unions.¹ The court construed the statutory language at issue narrowly and vacated the split decision of Division 1 of the Arizona Court of Appeals.² While the Supreme Court found no violation by the Party, the court’s opinion left open several important questions concerning the statute’s interpretation.

Prior to the 1998 general election, the Arizona State Democratic Party solicited and received about \$100,000 from corporations and labor unions.³ Those funds paid for administrative expenses, which included rent, payroll, utilities, insurance, supplies, and postage, for which the Party maintained a separate checking account.⁴ When Arizona Attorney General Grant Woods learned shortly before the election that the Party was using contributions from corporations and unions to pay its operating expenses, his office began an investigation.⁵ In 1999, his successor, Janet Napolitano, referred the matter to the Mohave County Attorney’s Office because of a conflict of interest.⁶

Thereafter, the Party and the State were unable to reach a settlement, and the State issued an administrative order directing the Party to return all funds it had

-
1. *Ariz. State Democratic Party v. State*, 115 P.3d 121 (Ariz. 2005).
 2. *Ariz. State Democratic Party v. State*, 98 P.3d 214 (Ariz. Ct. App. 2004).
 3. *Id.* at 216–17.
 4. *Id.* at 217.
 5. *Id.*
 6. *Ariz. State Democratic Party*, 115 P.3d at 123.

received from corporations and unions.⁷ The Party voluntarily agreed to stop soliciting funds and filed a complaint in Maricopa County Superior Court to appeal the order.⁸ The two sides stipulated to the above facts and filed cross motions for summary judgment.⁹ The trial court granted summary judgment to the State and ordered the Party to deposit the funds into the Citizens Clean Elections Fund.¹⁰ The trial court entered its judgment on May 2, 2002, three-and-a-half years after the commencement of the Attorney General's investigation.¹¹ The Party appealed, and a divided panel of the Court of Appeals affirmed the trial court's judgment.¹² The Arizona Supreme Court granted the Party's petition for review.¹³

II. CONSTITUTIONAL AND STATUTORY PROVISIONS

The Arizona Constitution states: "It shall be unlawful for any corporation, organized or doing business in this State, to make any contribution of money or anything of value for the purpose of influencing any election or official action."¹⁴ A.R.S. section 16-919, the enforcement counterpart to the constitutional provision, states: "It is unlawful for a *corporation or a limited liability company* to make any contribution of money or anything of value for the purpose of influencing an election, and it is unlawful for the *designating individual who formed an exploratory committee, an exploratory committee, a candidate or a candidate's campaign committee* to accept any contribution of money or anything of value from a corporation or a limited liability company for the purpose of influencing an election."¹⁵ Pursuant to the same statute, labor organizations also cannot make contributions for the purpose of influencing an election.¹⁶ The State argued that the Party's acceptance of funds from corporations and unions to pay for operating expenses was in direct contravention of these provisions.

III. THE OPINION OF THE ARIZONA COURT OF APPEALS

In a split decision, the court of appeals held that the donations indeed violated A.R.S. section 16-919.¹⁷ The majority concluded that the statute prohibited corporations and labor organizations from "influencing an election" by making contributions to the Party to pay operating expenses.¹⁸

7. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 217 (Ariz. Ct. App. 2004). The court of appeals noted that although the order referred only to "corporations" and "corporate sources," the parties had acted as if it included labor unions. *Id.* at 217 n.2.

8. *Id.* at 217.

9. *Id.*

10. *Id.*

11. *Id.* at 217 n.3.

12. *Id.* at 229–30.

13. *Ariz. State Democratic Party*, 115 P.3d at 123.

14. ARIZ. CONST. art. XIV, § 18.

15. ARIZ. REV. STAT. ANN. § 16-919(A) (2005) (emphasis added).

16. *Id.* at § 16-919(B). This subsection reads: "It is unlawful for a labor organization to make any contribution of money or anything of value for the purpose of influencing an election."

17. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 226 (Ariz. Ct. App. 2004).

18. *Id.*

A. Court of Appeals Majority Opinion

The court first considered whether the donations to the Party violated Arizona Constitution, article 14, section 18. Specifically, the court construed what it means to “influence an election,” relying on Arizona¹⁹ and federal case law²⁰ that interpret similar phrases. The court first concluded that the plain meaning method of construction was insufficient for resolving the constitutional question at hand because the constitutional language lent itself to several possible interpretations.²¹

The court therefore reviewed the intention of the delegates responsible for drafting the constitutional provision. It concluded that the delegates were concerned primarily with contributions to candidates’ campaign funds, but that they crafted the provision with broad language to allow the legislature to implement specific prohibitions.²² Thus, contributions to the Party by corporations and labor organizations for operating expenses were “not necessarily prohibited by the constitutional provision.”²³ The court next turned to the statutory enforcement provision, A.R.S. section 16-919, in order to determine whether the Party had violated the statute’s specific prohibitions.

Section 16-919, however, fails to define the phrase “influencing an election.” The court noted that construction through plain meaning or legislative intent failed here, just as it had for the same language in the constitutional provision.²⁴ Instead, the court found that the legislature intended to prohibit corporations and labor unions from making any contributions to political parties from their general treasuries since A.R.S. section 16-920 specifically governs the political activities of such organizations.²⁵ Section 16-920 allows corporations and labor unions to solicit funds from its personnel or members and their families “for political purposes.”²⁶ These voluntary contributions must be kept separate from the general treasury of the organization.²⁷ The majority further noted that section 16-920 allows corporations and unions to make contributions for limited nonpartisan

19. In *Kromko v. City of Tucson*, 47 P.3d 1137 (Ariz. Ct. App. 2002), the Arizona Court of Appeals considered the meaning of “influencing the outcomes of elections,” as used in A.R.S. section 9-500.14. It concluded that a communication influenced an election only when it amounted to “express advocacy” for a candidate or position; that is, when “taken as a whole, [the communication] unambiguously urges a person to vote in a particular manner.” *Id.* at 1141 (internal quotations marks omitted).

20. Various provisions of the Federal Election Campaign Act (“FECA”) contain similar, legislatively undefined provisions. The Federal Elections Committee (“FEC”) construed FECA to expressly exclude contributions to a political party used to fund registration drives. FEC Advisory Op. 1978-10 (Aug. 29, 1978), available at <http://ao.nictusa.com/ao/no/780010.html>.

21. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 220 (Ariz. Ct. App. 2004).

22. *Id.* at 221.

23. *Id.*

24. *Id.* at 222.

25. *Id.* at 224.

26. ARIZ. REV. STAT. ANN. § 16-920(A)(3)–(4) (2005).

27. *Id.*

political activities.²⁸ Thus, by specifying these narrow instances in which corporations and unions may solicit and dispose of their funds, the court held that the legislature implicitly intended to prohibit other types of contributions like those at issue in this case.²⁹

The court also rejected the Party's interpretation of the meaning of "contribution."³⁰ The Party had argued that the term "contribution" within section 16-919 should be given the meaning accorded to the word by the general definition provision of the statutory scheme for campaign finance.³¹ The court said, however, that because the term "contribution" was defined in part by the phrase "for the purpose of influencing an election," such a reading would result in superfluous language.³² Furthermore, the court rejected the Party's argument that because payments *by* a political party for operating expenses are not "contributions," neither are payments *to* a political party for operating expenses.³³

The court of appeals then considered whether the prohibitions against contributions by corporations contained in section 16-919(A) infringed on the freedom of speech guarantees of either the First Amendment to the U.S. Constitution,³⁴ or article 2, section 6 of the Arizona Constitution.³⁵ The court concluded that the statute violated neither.³⁶ First, the court noted that the U.S.

28. See *id.* at § 16-920(A)(2) (allowing non-partisan registration and get-out-the-vote campaigns aimed at personnel and stockholders of corporations and members of labor unions and their families) and § 16-902(A)(5) (allowing contributions to support or oppose referendums, initiatives, and constitutional amendments). The court of appeals observed that the Arizona legislature intended section 16-902(A)(5) to comply with *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), which struck down a Massachusetts law that prohibited corporations from making political contributions in support or opposition of referenda. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 224 (Ariz. Ct. App. 2004).

29. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 224 (Ariz. Ct. App. 2004).

30. *Id.* at 224–25. Pursuant to A.R.S. section 16-901(5) "contribution" means "any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer"

31. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 224 (Ariz. Ct. App. 2004). A.R.S. section 16-901(5) provides that "unless the context otherwise requires: . . . '[c]ontribution' means any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election"

32. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 224 (Ariz. Ct. App. 2004); see *supra* note 33.

33. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 225 (Ariz. Ct. App. 2004); see ARIZ. REV. STAT. § 16-901(5)(b)(v).

34. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

35. "Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right." ARIZ. CONST. art. II, § 6.

36. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 227, 229 (Ariz. Ct. App. 2004).

Constitution allows states to limit political contributions to a greater extent than they may limit political expenditures.³⁷ As evidence for this fact, the court pointed out that the U.S. Supreme Court had previously upheld a Michigan law which banned corporate expenditures from general treasuries when expenditures from segregated funds were permitted.³⁸ Thus, the court of appeals found that the ban on corporate contributions is consistent with the U.S. Constitution, so long as the statutory scheme allowed expenditures from separate accounts.³⁹ As for the Arizona constitutional provision, the court observed that the adopting delegation understood that article 14, section 18 would at the very least limit labor unions and corporations from making contributions for the purposes of influencing an election.⁴⁰ The complete prohibition of such contributions by Arizona Revised Statutes section 16-919, therefore, fell squarely within the authority granted to the legislature by this constitutional provision.⁴¹ In conclusion, the majority affirmed the order of the trial court that the Party must return all contributions made by corporations and labor unions.⁴²

B. The Dissent

In her dissent, Judge Timmer concluded that the language of A.R.S. section 16-919 only prohibited corporations and labor organizations from making contributions toward the campaigns of particular candidates.⁴³ Unlike the majority, she found the phrase “for the purpose of influencing an election” to be unambiguous.⁴⁴ Further, Judge Timmer noted that section 16-919(A) lists the entities prohibited from receiving contributions.⁴⁵ That section does not prohibit individuals or organizations not associated with a candidate or his campaign from receiving such contributions.⁴⁶ Finally, the dissent disagreed with the majority’s

37. *Id.* at 226–227. Statutory limitations on political expenditures must be “narrowly tailored to serve a compelling governmental interest,” while limits on contributions require a “lesser demand to be closely drawn to match a sufficiently important interest.” *Fed. Election Comm’n v. Beaumont*, 539 U.S. 146, 162 (2003) (internal quotation marks omitted).

38. *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990).

39. *Ariz. State Democratic Party v. State*, 98 P.3d 214, 227 (Ariz. Ct. App. 2004).

40. *Id.* at 229.

41. *Id.*

42. *Id.*

43. *Id.* at 230 (Timmer, J., dissenting). The majority took issue with the dissent’s contention that the donations to the Party were not for the purpose of funding “elections of individuals to enumerated political positions,” saying “[t]he election of individuals for the enumerated positions, is exactly what these contributions are about.” *Id.* at 223 n.11 (majority opinion) (internal quotation marks omitted).

44. *Id.* at 230 (Timmer, J., dissenting).

45. *Id.*

46. *Id.* As a counterargument, the majority painted in a different light Judge Timmer’s observation concerning the enumeration of parties prohibited from receiving contributions in section 16-919(A). Specifically, since that subsection prohibits only corporations and limited liability companies from making contributions, Judge Timmer’s analysis would apply only to contributions made by those entities. On the other hand, section 16-919(B), which prohibits labor organizations from making contributions, but does

conclusion that section 16-920 provides an exhaustive list of political expenditures and contributions permitted to corporations and labor organizations.⁴⁷

IV. THE ARIZONA SUPREME COURT'S UNANIMOUS DECISION

The Arizona Supreme Court looked exclusively to the plain meaning of A.R.S. section 16-919 in holding that the Party did not violate the statute. Specifically, the court based its holding on the identification of the Party as a "political party" within the meaning of A.R.S. section 16-901. In so holding, the court did not reach other questions concerning interpretation of the statute's text. The court also did not decide whether the donations to the party violated article 16, section 18 of the Arizona Constitution.

A. The Court's Reasoning

The court held that the Party was not prohibited by A.R.S. section 16-919 from making or accepting contributions for the purposes of influencing elections.⁴⁸ The court noted that the statute's text should be strictly construed because violators are subject to criminal penalties.⁴⁹ The Democratic Party, a "political party" as defined in A.R.S. section 16-901,⁵⁰ is not a "corporation," a "limited liability company," or a "labor organization," that is, the Party is not one of the entities barred from making contributions.⁵¹ Further, political parties are not specifically named by the statute as prohibited from accepting contributions.⁵² Only exploratory committees, heads of exploratory committees, campaign committees, and candidates may not receive such donations.⁵³

not list the barred recipients of such funds, would not excuse the Party from criminal liability. *Id.* at 223 (majority opinion).

47. *Id.* at 231 (Timmer, J., dissenting).

48. *Ariz. State Democratic Party v. State*, 115 P.3d 121, 123–24 (Ariz. 2005).

49. A corporation or labor organization that violates the statute is guilty of a class 2 misdemeanor, ARIZ. REV. STAT. ANN. § 16-919(C) (2005), and the person through whom the violation is effected is guilty of a class 6 felony. *Id.* § 16-919(D).

50. ARIZ. REV. STAT. ANN. § 16-901(21) (2005) defines "political party" as "the state committee as prescribed by § 16-825 . . . of an organization that meets the requirements for recognition as a political party." ARIZ. REV. STAT. ANN. § 16-825 (2005) provides: "The state committee of each party shall consist, in addition to the chairman of several county committees, of one member of the county committee for every three members of the county committee elected pursuant to § 16-821. The state committeemen shall be chosen at the first meeting of the county committee from the committee's elected membership."

51. *Ariz. State Democratic Party*, 115 P.3d at 123.

52. The court did note, however, that pursuant to A.R.S. section 16-907(B) political parties may not accept "earmarked" contributions. *Id.* at 124. The record did not suggest, and the State did not argue, that the contributions were earmarked. *Id.*; see ARIZ. STAT. REV. ANN. § 16-901(6) (defining "earmarked" as designated for a particular candidate or campaign committee).

53. *Ariz. State Democratic Party*, 115 P.3d at 124.

Resting its decision on an observation in Judge Timmer's dissent,⁵⁴ the court concluded that "the State seems to have brought this action against the wrong party. . . . [N]othing in the statute prohibits a political party from accepting such contributions and using them to pay overhead expenses."⁵⁵ The Arizona Supreme Court vacated the opinion of the court of appeals, reversed the trial court's grant of summary judgment, and awarded attorney's fees and expenses to the Party pursuant to A.R.S. section 12-348.

B. Open Questions and Implications

By resting its decision on the fact that the statutory text did not name political parties as prohibited recipients, the court failed to reach other questions raised by the court of appeals. Specifically, the Arizona Supreme Court did not address the issue raised in the court of appeals whether the definition of "contribution" prescribed in A.R.S. section 16-901(5) applies to section 16-919. In addition, by not expounding on the meaning of the phrase "for the purposes of influencing an election," the court left open the possibility that corporations and labor unions might be subject to criminal penalties for making donations to the administrative funds of political parties. Finally, the constitutionality of section 16-919 remains undecided, as does the constitutionality of the Party's acceptance of the donations.

V. CONCLUSION

Pursuant to this unanimous decision, political parties may now receive donations for overhead expenses from corporations, limited liability companies, and labor organizations without threat of criminal penalties. Whether such organizations may *make* those donations with equal peace of mind remains an open question.

54. Judge Timmer wrote that the conclusion of the court of appeals majority would produce absurd results because "although the corporations which made the contributions committed crimes, the Party did not because they are not listed among the prohibited recipients of such funds. Conversely, if the corporations had contributed money for an individual's campaign operating expenses, both the corporation and the recipient would be subject to criminal prosecution." *Ariz. State Democratic Party v. State*, 98 P.3d 214, 231 (Ariz. Ct. App. 2004) (Timmer, J., dissenting) (internal citations omitted).

55. *Ariz. State Democratic Party*, 115 P.3d at 124.
