

**Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE**

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Attorneys for Plaintiffs

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

ALAN KORWIN, et al.,

Plaintiffs,

vs.

DEBBIE COTTON, et al.,

Defendant.

Court of Appeals, Division One
Case No. 1 CA-CV 12-0878

Maricopa County Superior Court
Case No. CV2011-009838

APPENDIX IN SUPPORT OF APPELLANTS' OPENING BRIEF

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Appendix List

- 1.** TrainMeAZ original ad (rejected by City)
- 2.** TrainMeAZ alternative ad (approved by City)
- 3.** 2009 City of Phoenix Transit Advertising Standards
- 4.** 2011 City of Phoenix Transit Advertising Guidelines
- 5.** United States and Arizona State Constitutional Provisions
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APPENDIX 1



GUNS SAVE LIVES

In Arizona, marksmanship matters. "The Train-Me State" knows that a nation, trained to arms, is an American linchpin of freedom, and is respected in Arizona like nowhere else. The Arizona legislature has enacted vibrant protection of the Second Amendment right to keep and bear arms. We in Arizona seem destined to set models for the nation—in this case, a shining example of gun rights for all free peoples of the Earth.

The Grand Canyon State has Constitutional Carry. This frees any law-abiding adult here—not just residents—to discreetly enjoy the right to bear arms envisioned in the Constitution. We have a super-strong Castle Doctrine, coupled with robust burden of proof, a defensive-display statute, statewide preemption law restricting local fiefdoms from gun-rights abuse, and a specious-lawsuit ban—a true milestone—protecting honest people from false charges by criminals and their kin. We even have a High School Marksmanship law on the books for one credit towards a diploma; now if we can just move the obstructionists out of the way. Our Arizona Firearms Freedom Act joins a growing nationwide movement to repel federal incursion on states' rights, and end intolerable abuse of the interstate Commerce Clause. TrainMeAZ is a non-partisan, joint educational effort of the firearms community.

The TrainMeAZ Campaign is designed to teach and bring gun safety and knowledge to every Arizonan. In this state, we take it for granted that you know how to shoot, know how to handle guns safely, how to use guns for self defense and all legal purposes, and that you know and respect our laws. Criminals with guns receive harsh punishment, so be it. Citizens with guns earn respect, and help keep Arizona a safe and wonderful place to live. Robert Heinlein correctly noted that an armed society is a polite society, and in Arizona this is truth personified and exercised. Come to an "Open Carry Banquet," and see! Join the Arizona Buy-cott. See how we do it at azcdl.org and asrpa.com and for our sisters in arms, 2asisters.org. Go to TrainMeAZ.com, download this statement, learn how you can participate and improve your skills.

This is why the TrainMeAZ Campaign exists. Acting as one, the state rises up to encourage and enable gun-safety training, fun shoots, special training days at the range, a coordinating point for the state's thousand-plus certified trainers—with a web-interactive and printed maps for the people. Soak up family days where the shooting sports are honored and enjoyed, with that freedom smell of gunpowder and a good hot dog. Arizona is an American protectorate of the culture of marksmanship, where the decent, honorable and lawful pursuit of the shooting sports, and the precious right to keep and bear arms is honored and enjoyed. How do you think so many trainers and shooting schools thrive here? Should your state honor our rights this way?

Visit Arizona, and breath free air. Come experience "The Litmus Test of Freedom" the right you have as an honest adult to enjoy your right to arms.

Use the TrainMeAZ.com website to find training opportunities, shooting ranges, and classes for any level of skill—from your first-time shooting experience (a thrill you will always remember, just like the rest of us do), to the kind of tactical training the world's elite special forces get—an experience few of us get to experience. In Arizona, marksmanship matters. Learn to shoot straight. Teach your children well. Join us, as a nation trained to arms, confident in our exercise of the Second Amendment right of the people to keep and bear arms, which shall not be infringed. Exercising liberty's teeth has a positive impact on the political environment.

TrainMeAZ is sponsored by:

Arizona Citizens Defense League • Arizona State Rifle and Pistol Association • Caswells Crossroads of the West Gun Shows • Front Sight • GalleryOfGuns.com • GunLaws.com • Gunsite Second Amendment Sisters • Wide World of Maps

ARIZONA SAYS: EDUCATE YOUR KIDS

TrainMeAZ.com

APPENDIX 2



**TO
EDUCATE
YOUR KIDS
ON HOW**



**go to
TrainMeAZ.com**

Transit Shelter		
	Mechanical (HxW)	Actual (HxW)
Safety:	13.2" x 9.0"	66.0" x 45.0"
Trim:	14.0" x 9.6"	70.0" x 48.0"
Bleed:	14.1" x 9.7"	70.5" x 48.5"
Scale:	5:1 - 500% Enlargement	

APPENDIX 3



City of Phoenix
Public Transit Department

TRANSIT ADVERTISING STANDARDS
12/08/2009

- A) The Public Transit Director, or his/her designee, shall reject advertising that does not comply with the standards set forth in subparagraph C).
- B) The subject matter of transit bus, shelter, and bench advertising shall be limited to speech which proposes a commercial transaction.
- C) The following standards for advertising have been adopted and advertising copy may not be displayed which:
 - 1) Is false, misleading or deceptive
 - 2) Relates to an illegal activity
 - 3) Is explicit sexual material, obscene material, or material harmful to minors as these terms are defined in Title 13, Chapter 35, A.R.S.
 - 4) Advertises tobacco products
 - 5) Advertises beer, wine and/or alcohol products: on the exterior or interior of Phoenix Neighborhood Circulator vehicles; on the interior of any transit vehicle; or in instances in which transit furniture is located less than 600 feet near a school or church
 - 6) Depicts violence and/or anti-social behavior
 - 7) Includes language which is obscene, vulgar, profane or scatological
 - 8) Relates to instruments, devices, items, products or paraphernalia which are designed for use in connection with "specified sexual activities" as defined in the City of Phoenix Zoning Ordinance

APPENDIX 4

Public Transit Department

TRANSIT ADVERTISING STANDARDS

March 7, 2011

A. It is the intent of the City that all transit advertising panels on city buses and on transit furniture are non-public forums and are to be set aside for commercial advertisements or for transit information as provided by the City. The City's primary purpose for the transit advertising panel is generating revenue.

B. It is a guideline of the City of Phoenix Public Transit Department that no advertising will be accepted for use on any city bus or transit furniture that does not comply with the following standards:

1. A commercial transaction must be proposed and must be adequately displayed on the transit advertising panel.
2. The advertising may not:
 - a. Be false, misleading, or deceptive.
 - b. Relate to an illegal activity.
 - c. Advertise or depict the use of tobacco or smoking products.
 - d. Advertise or depict the use of *spirituous liquor* as that term is defined in Section 4-101, Arizona Revised Statutes:
 - i. On the exterior or interior of Phoenix Neighborhood Circulator and Reserve-a-Ride vehicles.
 - ii. On the interior of any transit vehicle.
 - iii. On transit furniture that is located less than 600 feet from a church or similar structure of worship, or school building.
 - e. Represent, by language or graphics, violence or anti-social behavior.

- f. Advertise or depict language, gestures, conduct, or graphical representations that are obscene, pornographic, vulgar, profane, or scatological.
- g. Represent, by language or graphics, a *nude* or *seminude* person, as those terms are defined in Section 11-821, Arizona Revised Statutes, or the exposed buttocks of any person.
- h. Depict, relate to, or reference a website or other medium that relates to *specified sexual activities* or *specified anatomical areas* as those terms are defined in Section 11-821, Arizona Revised Statutes.

APPENDIX 5

United States Code Annotated
Constitution of the United States
Annotated

Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances
(Refs & Annos)

U.S.C.A. Const. Amend. I-Full Text

Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

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.C.A. Const. Amend. I-Full Text, USCA CONST Amend. I-Full Text

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United States Code Annotated
Constitution of the United States
Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection;
Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement (Refs &
Annos)

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL
PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC
DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text

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§ 4. Due process of law, AZ CONST Art. 2 § 4

Arizona Revised Statutes Annotated
Constitution of the State of Arizona (Refs & Annos)
Article II. Declaration of Rights

A.R.S. Const. Art. 2 § 4

§ 4. Due process of law

Section 4. No person shall be deprived of life, liberty, or property without due process of law.

A. R. S. Const Art. 2 § 4, AZ CONST Art. 2 § 4

Current through the Second Regular Session of the
Fiftieth Legislature (2012), also includes election
results from the November 6, 2012 general
electionEnd of Document

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Arizona Revised Statutes Annotated
Constitution of the State of Arizona (Refs & Annos)
Article II. Declaration of Rights

A.R.S. Const. Art. 2 § 6

§ 6. Freedom of speech and press

Section 6. Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

A. R. S. Const Art. 2 § 6, AZ CONST Art. 2 § 6

Current through the Second Regular Session of the
Fiftieth Legislature (2012), also includes election
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§ 13. Equal privileges and immunities, AZ CONST Art. 2 § 13

Arizona Revised Statutes Annotated
Constitution of the State of Arizona (Refs & Annos)
Article II. Declaration of Rights

A.R.S. Const. Art. 2 § 13

§ 13. Equal privileges and immunities

Section 13. No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

A. R. S. Const Art. 2 § 13, AZ CONST Art. 2 § 13

Current through the Second Regular Session of the
Fiftieth Legislature (2012), also includes election
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electionEnd of Document

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APPENDIX 6

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ALAN KORWIN, ET AL,)	
)	
Plaintiff,)	
)	
vs.)	CV 2011-009838
)	
DEBBIE COTTON, ET AL,)	
)	
Defendant.)	
_____)	

Phoenix, Arizona

August 23, 2012

BEFORE THE HONORABLE MARK H. BRAIN
REPORTER'S TRANSCRIPT OF PROCEEDINGS

Lisa A. Bradley, RPR, CSR 9938
Certified Court Reporter
Certificate Number 50442

PREPARED FOR:

(COPY)

1 We just don't want controversial art. That's its sole
2 criteria, and it's in writing. It's in a letter from the
3 City to the arts council. It's in the proposal from the
4 arts council to the city. They say fine.

5 The Court says, what's controversial? That's
6 unclear. It's unfettered discretion. It's kind of like the
7 *Lewis versus Wilson* case dealing with the Aryan One Montana
8 license plate, contrary to public policy. What the heck is
9 that? That is not common parlance.

10 So they found that the criteria itself was
11 unconstitutionally vague and that invited discrimination.
12 That's not the case here. The sole challenge is adequately
13 displayed in a context of a commercial proposal.

14 It's not vague. It's understandable. So
15 that case doesn't apply. Next, even if it did apply, what
16 happened in that case is the Court said, you don't prescreen
17 at all. You don't look at any art.

18 The only time you ever banned anything, City
19 of Pasco, was this particular plaintiff. That's not the
20 case here. We have submitted to you, about 15 other ads
21 that were rejected by The City, were asked to be modified,
22 like this one was asked to be modified. This is not the
23 only time we have rejected ads for not being commercial.

24 Further, let's move on. The other thing is
25 that was important in *Hopper* that's not in this case, is

1 MR. SCHWARTZ: I will just be very brief.

2 THE COURT: Yeah. Can I ask you this one with all
3 the little handwriting, is that going to pass muster under
4 the March?

5 MR. SCHWARTZ: This one, is the original ad.

6 THE COURT: Yeah, under the March 7, 2011?

7 MR. SCHWARTZ: We don't believe it would.

8 THE COURT: And it is --

9 MR. SCHWARTZ: Even though it has not been
10 submitted to us, we don't believe it would, otherwise we
11 wouldn't be here.

12 THE COURT: Well, I understand and what is it
13 about that that doesn't get you there under the March 7,
14 2011 submitted --

15 MR. SCHWARTZ: It's the same problem as the
16 blending. The problem with, and I am --

17 THE COURT: -- commercial transaction.

18 MR. SCHWARTZ: I am going to get closer to the
19 microscope, so it can be picked up. It is the blending
20 problem, that it's true, the original ad does include some
21 aspects of a commercial transaction. That's why it's
22 included in the proposed alternative ad we were willing to
23 accept.

24 It is also true, as Mr. Bolick pointed out,
25 there is certain language in the smaller subscript, which

1 transaction being proposed without any website, without
2 phone numbers.

3 It's not our job to take away the creativity
4 of advertisers. What we want is advertisers commercial
5 products that do not get into ideological, political debates
6 as part of the proposed ad. That's the *Children of Rosary*
7 issue. It's the same issue with their ad.

8 Mr. Bolick started his remarks with he
9 disagrees that the 2009 standards, he thinks are somehow at
10 issue. But if you listen to what he said, he said there are
11 three issues, the factual challenge to the commercial
12 proposal being adequately displayed.

13 That language only appears on the 2011
14 standards, not the 2009. There's no reference to adequately
15 display. He said vague is applied because of the adequately
16 displayed, again, 2011.

17 Again, the third thing, inconsistent
18 application, same problem. The only thing we are here to
19 talk about today is the 2011 standards, so we can ignore,
20 frankly, everything that happened in 2009 and 2010, so some
21 of the ads he points to are, in fact, 2009, like the free
22 pregnancy test. I think it happens to be commercial and
23 Mr. Bolick, I agree with him. It is a commercial ad.

24 The difference between the Korwin, the
25 original ad here and every other ad, is the political

1 diatribe extolling the great virtues.

2 And I am not saying there aren't virtues for
3 guns. And the great virtues of constitutional carry, and
4 all of the good things that they point out, as what they
5 want to promote, that political ideology has no place in an
6 ad going on the City's buses or transit.

7 He can place it anywhere else he wants. It's
8 not like this is going to chill anybody. This is not going to
9 stop him from putting the ad if he wants, anywhere else.

10 The only question is why there is a much more
11 limited test when dealing with this and dealing with a
12 government acting as a proprietor of a business, a bus
13 system that has to compete with other means of
14 transportation is we shouldn't have to be tarnished by
15 allowing unfettered political advertisements in the guise
16 of, gee, it also includes a commercial transaction.

17 *Children of Rosary* bumper sticker included a
18 commercial transaction. But its intent, we knew that in
19 more explicitly in *Children of Rosary*. I grant you, what,
20 because in there they put the proposed ad. It was rejected
21 and then they said, oh, and now if you want a bumper
22 sticker.

23 But the Court made it very clear, that what
24 is impermissible was the blending of the proposed commercial
25 transaction, and the political -- in that case anti-abortion

APPENDIX 7



JESUS HEALS
AM 1360

Life. Perspective.
Answers.

FREE
Pregnancy Test
602-241-1717

602-841-4394
Belts Hoses Axles
Alternators
Timing Belts

BETHANY AUTO REPAIR



**FOR JUST \$3 A MONTH YOU CAN
HELP REFOREST ARIZONA.**

Learn more at srpnet.com/trees





FOR JUST \$3 A MONTH YOU CAN HELP REFOREST ARIZONA.

Forests filter fresh water, making them an important asset to our watersheds. As stewards of the Valley's water, SRP works with the U.S. Forest Service to help reforest land destroyed by fire.

To help, visit srpnet.com/trees



Korwin00027



If we each do a little, we can conserve a lot. SRP has been delivering and conserving the Valley's water through a system of rivers, lakes, dams and canals for more than 100 years. Together, we can ensure there's enough water for today and tomorrow.

Find water conservation tips at togetherweconserve.com.



Delivering water and power.™

Korwin00009



GARDEN HOSE. If we each do a little, we'll save a lot. Did you know that about 70% of total water use occurs outdoors? Here's a simple fix. An unrestricted garden hose can flow at a rate of 12 gallons of water per minute. Add a nozzle and save.

Find more water-saving tips at **togetherweconserve.com**.



Delivering water and power.™

Korwin00010

**It takes the courage
and strength of
a warrior to ask
for help...**

If you or someone you know
is in an emotional crisis call
1-800-273-TALK (182551)
Press 1 for Veterans



Department of
Veterans Affairs

1-800-273-TALK

(8255)

Press 1 for Veterans

**Not all wounds
are visible.**

www.suicidepreventionlifeline.org



Department of
Veterans Affairs



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
www.samhsa.gov

NATIONAL
**SUICIDE
PREVENTION
LIFELINE**
1-800-273-TALK