

SUMMARY OF SHOOTER COMPLAINT

Don Shooter, as Appropriations Chairman in the Arizona Legislature, discovered serious corruption in the Governor's office and was about to make it public. Kirk Adams, the Governor's Chief of Staff, had to destroy Mr. Shooter's credibility in order to cover up the corruption. Adams' close aid, Brian Townsend, was also engaged to Ugenti-Rita. Ugenti-Rita became the agent to carry out Adams' plan to destroy Mr. Shooter's credibility, in order to cover up corruption.

The purpose of the illegitimate method of discipline created by Mesnard was for the sole purpose of expelling him in order to keep him from exposing corruption.

- Sues for violation of due process when expelled without first receiving constitutionally required due process;
 - DENIED ETHICS COMMITTEE HEARING- the opportunity to refute and respond to each charge and address factual inaccuracies described in report, the report should have been the first step - in a fair process - not the LAST step;
 - NEVER ADOPTED - Strict, "zero-tolerance" policy unilaterally applied without vote approving the new policy by the members as required under House rule;
 - ONLY APPLIED TO MR. SHOOTER - Strict policy was only applied to Mr. Shooter by the independent investigators though they were paid to investigate allegations at the same time of Representatives Ugenti-Rita and Rios;
 - RETROACTIVELY - applied policy to conduct alleged to have occurred years before was even created - and again policy was never approved.
- Report intentionally excluded credible, material evidence against Ugenti-Rita which includes victim testimony, additional two contemporaneous and corroborating testimony and photographic evidence. Mr. Shooter seeks the release of the information obtained by the state under the guise of an impartial investigation.

LEGAL FOUNDATION & PRECEDENTS

It is the Constitutional right of every state legislature and Congress to expel an elected member of its chamber. AND it is also clear that such a vote cannot and must not occur without the elected member afforded some due process. Those two principles are not in conflict and are, in fact, complementary.

"Procedural due process rules are meant to protect persons not from the deprivation but from the mistaken or unjustified deprivation of life, liberty or property" (*Carey v. Phiphus*), 435 U.S. 247, 259 (1978).

In US v. Ballin, 144 US 1,5 (1892) the Supreme Court held that while the House's rulemaking power was broad, in exercising that power, the House "may not by its rules ignore constitutional restraints or violate fundamental rights. It would seem that the same limit may be applicable to the expulsion power".

"To determine whether a branch of state government has exceeded the powers granted by the Arizona Constitution requires that we construe the language of the constitution and declare what the constitution requires. The interpretation of the laws is the proper and peculiar province of the courts and a constitution is and must be regarded by the judges as fundamental law. It is emphatically the province and duty of the judicial department to say what the law is." (229 Ariz. at 355, 275, P.3d at 1275).

Although the expulsion of Representative Shooter is not a judicial proceeding, the clear intent of the House vote to expel him was to deprive him of his seat in the Arizona House of Representatives. As the Supreme Court said *in Greene v. McElroy*, 360 U.S. 474, 496-497 (1959):

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment. This Court has been zealous to protect these rights from erosion."

KEY FACTS & POINTS

The investigative report contains multiple factual errors and amounts to an outline of allegations of facts, only the first step in a fair process.

If the existing, appropriate House and Senate policies at the time had been applied, which evaluated conduct using the employment law legal standard, Mr. Shooter would have been found to have made offensive attempts at humor, in instances one time in front of separate individuals but not to have created a hostile work environment.

Without due process, Mr. Shooter's peer legislators were denied the time, opportunity and information to objectively evaluate the facts, evidence and appropriate policies nor hear Mr. Shooter's responses and rebuttals.

These breaches of specific House Rules and parliamentary and procedural tradition and expectations violated the basic rights owed to Mr. Shooter as owed to him as a duly-elected member of the Arizona House of Representatives and owed to the people of his legislative district who elected him.

By contrast, the report contains only a page and a half directed to allegations against Representative Ugenti-Rita and concludes, without facts or analysis, that there is "no credible evidence" that she violated the Policy.

The Speaker has refused to release evidence, obtained and documented by the independent investigator, of wrong-doing by Ugenti-Rita despite the fact that the investigation and evidence was obtained on behalf of the House of Representatives with the use of Arizona tax dollars in an effort for alleged transparency and fairness to the public. To date, Mesnard has authorized payments totaling over \$250,000 to the investigators to meet with witnesses, document, make revisions and now recent efforts to stymie requests for the release of all relevant and materially related testimony.

The victim testimony as well as the testimony from two additional, contemporaneous witnesses and physical evidence, obtained by the independent investigator, that directly relates to the credibility of Ugenti-Rita. Exculpatory information known to the independent investigators was (and remains) hidden from the public intentionally so as to not impede the plan set in motion to destroy Mr. Shooter's reputation and immediately expel him.

Though, Mr. Shooter is aware that the independent investigators had/has access to photographs of a sexual nature, at no time has he sought to obtain such photographs nor make the photographic public.

Considerable information was not available to the general public or to the members of the House of Representatives at the time that the report was released. Material information was intentionally not made available to the House members at the time of Mesnard's motion and the House vote to remove Representative Shooter from elected office.

Mr. Shooter does not seek to require the victim of sexual harassment by Ugenti-Rita to again provide testimony when the victim already provided her detailed testimony to the independent investigators which was documented.

Mr. Shooter seeks to spare the victim and her corroborating, contemporaneous witnesses from the need to come forward and present testimony a second time. Mr. Shooter has demonstrated his priority to spare this victim from having to once again present testimony by requesting, repeatedly, the House and independent investigators to admit the existence of witnesses against Ugenti-Rita that were excluded from the report and to provide the witnesses statements as given to the independent investigators.

Furthermore, Mr. Shooter does not wish to make their identities public without their express permission.

Representative Shooter's due process rights were violated when Mesnard, unilaterally, retroactively and without authority applied a "zero-tolerance", subjective policy **solely** to Mr. Shooter. This is also a violation of House rules which necessitated members' first vote and adopt "zero-tolerance" policy. Mesnard intentionally violated the House rules when he submitted his specially constructed, never adopted policy to be applied retroactively.

After Mr. Shooter's expulsion, Mesnard failed to seek nor obtain the approval of members to adopt any Code of Conduct, let alone the subject "zero-tolerance" retroactive policy he created then claimed was violated which required that Mr. Shooter be expelled from office.