March 10, 2008

Dear Mr. [Redacted],

You requested that I provide a legal opinion as to whether information posted on your website at "http://checkpointusa.org" could be in violation of A.R.S. § 13-2401, and could subject you to legal sanction. I have reviewed the website and the applicable law, and conclude that there is no legal basis for sanctioning you for your political speech.

A.R.S. § 13-2401 prohibits, among other things, the posting on the internet of "the personal information of a peace officer", IF posting "the personal information poses an imminent and serious threat to the peace officer's [...] safety or the safety of that person's immediate family", AND it "is reasonably apparent to the person posting that the threat is "serious and imminent". Thus, this statute applies to "personal information" of "peace officers" which is posted on the internet, where such poses an "imminent and serious threat", and such is readily apparent to the poster. As a preliminary matter, if any element is absent, the statute is not violated, and there is ample doubt as to whether ANY of these elements are even present here.

Even if these individuals were deemed peace officers under Arizona law, and even if your publication included personal information, under the general rule of First Amendment protection for political speech, only well-recognized narrow exceptions permit legal sanctions. Courts have held that force is an essential element. See Long v. United States, 199 F.2d 717 (4th Cir. 1952). A threat may be sufficient, if accompanied by the apparent present ability to execute such threat, and such caused the subject to anticipate bodily harm. See United States v. Walker, 835 F.2d 983, 987 (2d Cir. 1987), and Gornick v. United States, 320 F.2d 325 (10th Cir. 1963). Arizona law parallels federal law closely. See State v. Tages (App. 1969) 10 Ariz.App. 127, 457 P.2d 289.

Thus, only if your speech conveys an imminent, serious threat, and you have the present ability to execute such threat, can you be punished. Citizen Publishing Co. v. Miller (2005) 210 Ariz. 513, 115 P.3d 107, explains the difference between protected speech and punishable threats. In that case, publication of vague threats to murder innocent civilians, because of its political context, was held to be protected and could not be punished or enjoined, not even under the lesser standards applicable in the context of a civil suit. Here, publication of audio, video, or photos of officials present on a public road, along with their names, is certainly constitutionally protected political speech.

In conclusion, as there is no evidence of the use of force or a threat of force with the present ability to execute such threat, against anyone who could be a peace officer, there exists no reasonable basis to hold you accountable for a violation of law, and you may have legal recourse should you be punished for your political speech.

Best regards,

[Signature]

Michael Kielsky
Counselor & Attorney at Law

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