



smartmediagroup

1427 Leslie Avenue | Alexandria, VA 22301 | www.smartmediagroup.com

Paul Winn
Smart Media Group
1427 Leslie Avenue
Alexandria, VA 22301

July 15, 2014

Sara A. Larsen
Citizens Clean Elections Commission
State of Arizona
1616 W. Adams, Suite 110
Phoenix, Arizona 85007

RE: Notice of Complaint and Response Opportunity

Ms. Larsen,

We recently received your "Notice of Complaint and Response Opportunity," dated July 8, 2014, regarding Legacy Foundation Action Fund. While Legacy Foundation is a client of Smart Media Group, we do not have legal authority on their behalf and cannot accept this complaint.

Sincerely,

Paul Winn
Chief Operating Officer
Smart Media Group

14 JUL 17 09:11:45 CCEC

Janice K. Brewer
Governor

Thomas M. Collins
Executive Director



Timothy J. Reckart
Chair

Louis J. Hoffman
Thomas J. Koester
Mitchell C. Laird
Steve M. Titla
Commissioners

State of Arizona
Citizens Clean Elections Commission

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - www.azcleelections.gov

NOTICE OF COMPLAINT AND RESPONSE OPPORTUNITY
Via Federal Express

July 8, 2014

Smart Media Group Inc.
1427 Leslie Avenue
Alexandria, VA 22301

RE: CCEC MUR #14-007

To Whom It May Concern,

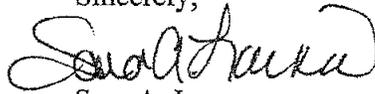
This letter is to notify you that on July 1, 2014, Kory Langhofer filed a complaint against Doug Ducey and Legacy Foundation Action Fund (copy enclosed) with the Arizona Citizens Clean Elections Commission. According to filings with the Federal Communications Commission, your agency serves as an agent for the purpose of placing advertisements to run in Arizona for the Legacy Foundation Action Fund (LFAF). Accordingly, we are providing this notice of complaint to LFAF through your agency.

Commission rules provide that upon the filing of a complaint that substantially complies with Arizona Administrative Code Section R2-20-203, notification must be given to each respondent. Ariz. Admin. Code R2-20-204(A). Additionally, the rule provides for an advisement of compliance procedures. Those procedures are set forth in Article 2 of the Commission's Rules (Arizona Administrative Code Sections R2-20-201 to R2-20-228) as well as the Clean Elections Act (specifically Arizona Revised Statutes Section 16-940 to 16-961).

The Commission's rules provide that a respondent "be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, *within five days from receipt of a written copy of the complaint*, a letter or memorandum setting forth reasons why the Commission should take no action." Ariz. Admin. Code R2-20-205(A). *Your response must be notarized, or the Commission will not consider it.* Ariz. Admin. Code R2-20-205(C). Failure to respond to this complaint within five days may be viewed as an admission to the allegations. *Id.*

This matter is in the initial stages of review. A finding will be made only after the Commission has fully reviewed this matter. Please contact me if you have any questions at (602) 364-3477 or by e-mail at sara.larsen@azcleelections.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara A. Larsen". The signature is written in a cursive, flowing style.

Sara A. Larsen

Campaign Finance Manager

Citizens Clean Elections Commission

Encl.

July 1, 2014

Kory A. Langhofer
Attorney at Law
602.382.4078 tel
602.382.4020 fax
klanghofer@bhfs.com

BY E-MAIL

Arizona Secretary of State
c/o Christina Estes-Werther, Elections Director
1700 West Washington Street, 7th Floor
Phoenix, Arizona 85007
cwerther@azsos.gov

Clean Elections Commission
c/o Tom Collins, Executive Director
1616 West Adams Street, Suite 110
Phoenix, Arizona 85007
thomas.collins@azcleelections.gov

RE: Illegal Coordination and Other Campaign Finance Violations by the Doug Ducey Campaign

Ms. Estes-Werther and Mr. Collins:

I am writing to report serious campaign finance violations by Ducey 2014 – Primary and Ducey 2014 – General (together, the "Ducey Campaign"); Copper State Research and Strategy, LLC ("Copper State"); the Legacy Foundation Action Fund (the "LFAF"); Larry McCarthy; and Gregg Pekau. There is substantial evidence showing that both McCarthy and Pekau are or very recently have been agents of both the Ducey Campaign and organizations making independent expenditures benefitting the Ducey Campaign, including Copper State and the LFAF. Additionally, the LFAF has failed to file the necessary registration and campaign finance disclosure forms and exemption application with the Arizona Secretary of State and the Clean Elections Commission. I therefore respectfully request that the Secretary of State's office refer this matter to the Arizona Solicitor General, and that the Clean Elections Commission investigate the matter.

I. Factual Background

A. Engagement of Gregg Pekau

On information and belief, in February 2013 Gregg Pekau (or a company he controls, Copper State) was hired by a nonprofit organization or a private company to conduct "opposition research" against Scott Smith, who was then the Mayor of the City of Mesa and is now a candidate for Governor of the State of Arizona. Based on the nature of the research conducted, it is apparent that Pekau's research was conducted in anticipation of running attack ads against Mr. Smith during the 2014 gubernatorial election; Pekau submitted numerous public records requests seeking information that could be used to paint Mr. Smith in a negative light with voters in a Republican primary election in Arizona. See, e.g., Exhibit A. The public records requests were in some cases submitted in the name of Copper State, which is owned by Pekau's wife. See Exhibits A-B. Pekau's research was not funded by the Ducey Campaign. See Exhibit C. On information and belief, the Ducey Campaign has recently retained Pekau as the Director of Research, effectively internalizing the benefit of all the opposition research that Pekau conducted on the payroll of the nonprofit organization or private company—without paying for the research from Ducey Campaign accounts.

One East Washington Street, Suite 2400
Phoenix, AZ 85004
main 602.382.4040

B. Advertisements Paid for by Legacy Foundation Action Fund

On April 4, 2014, the out-of-state LFAF purchased television, radio, internet, and mail advertisements painting Mr. Smith in a misleading and negative light.¹ Although the advertisements ostensibly urge voters to call Mr. Smith and ask him to "run [the U.S. Conference of Mayors] more like Mesa," for five reasons the advertisements in context can have no reasonable meaning other than to advocate the defeat of Mr. Smith:

1. The advertisements were targeted at the gubernatorial primary electorate (*i.e.*, through broadcast channels accessible around the state, and to IP addresses and physical mailing addresses outside the City of Mesa), and not Mr. Smith's constituents at the time of the advertisements (*i.e.*, just Mesa voters) or the constituents of the U.S. Conference of Mayors (*i.e.*, voters nationally). See, *e.g.*, Exhibit D. Although approximately 2% of the total advertising buy (\$5,000 of \$280,000) was spent on advertisements outside Arizona, see *id.*, the extreme disparity between advertising dollars reaching Arizona voters and out-of-state voters, plus the LFAF's decision to purchase cable television advertising space on channels watched disproportionately by Republican primary voters, and to target non-Mesa voters for broadcast, internet, and mailed advertisements, show that the LFAF advertisements were targeting the Arizona primary electorate in the gubernatorial campaign and not Mr. Smith's current constituents.
2. Although the information underlying the advertisement (*i.e.*, the U.S. Conference of Mayors's support for certain policies and its effect on the City of Mesa) has been publicly available for a long time, the advertisements only began shortly after Mr. Smith announced his gubernatorial candidacy and just as polling showed Mr. Smith significantly outperforming Doug Ducey among the Republican primary electorate. See Exhibit E.
3. The advertisements began just days before Mr. Smith's last day in office as Mayor of the City of Mesa (*i.e.*, April 15, 2014). See Exhibit F. No rational actor would spend more than \$275,000 to influence the last two weeks of Mr. Smith's term as mayor, when no major issues were expected to be decided in that time. See Exhibit D. This demonstrates that the true purpose of the advertisements is not to influence Mr. Smith's governance of the City of Mesa.
4. The content of the advertisements tracks the content of the public records requests submitted by Pekau when he is believed to have been engaged by a nonprofit organization or private company to conduct "opposition research" against Mr. Smith as a potential gubernatorial candidate. See Exhibit A.
5. The LFAF, which is sponsoring the advertisements, has been reported to have very close ties to the Ducey Campaign. See Exhibit G; infra Section I(C)-(D).

In this context, the advertisements can have no reasonable meaning other than to advocate the defeat of Mr. Smith and, therefore, constitute express advocacy under Arizona law. See Ariz. Rev. Stat. § 16-901.01.

C. Engagement of Larry McCarthy

Larry McCarthy, a negative advertising consultant for Republican candidates, is working for both the Ducey Campaign and the LFAF. See Exhibits H-J.

¹ The television advertisement can be accessed at http://www.youtube.com/watch?v=NycZZLOA_OQ.

D. Engagement of Direct Response Group

Direct Response Group, a political consulting firm serving primary Republican candidates, is working for or has recently worked for both the Ducey Campaign and the LFAF. See Exhibits C, G.

II. Legal Violations

The facts as set forth above give rise to very serious violations of Arizona campaign finance laws.

A. Failure to Register as an Independent Expenditure Committee

Arizona law requires any corporation spending more than \$5,000 on express advocacy in a statewide election to register with the Arizona Secretary of State, apply to the Clean Elections Commission for a registration exemption, and to file campaign finance reports within 24 hours after each expenditure. See Ariz. Rev. Stat. §§ 16-914.02, -941(D), -958(A)-(B). The LFAF is a corporation, see Exhibit K, and because its advertisements constitute express advocacy, see Ariz. Rev. Stat. § 16-901.01; *supra* Section I(B), it was subject to the registration, application, and reporting requirements of Sections 16-914.02, -941(D), and 958(A)-(B). Its failure to do so constitutes a violation of Arizona law.

This is not the first time that the LFAF has failed to comply with campaign finance reporting requirements. The LFAF failed to timely file a year-end campaign finance report with the Federal Election Commission for 2013. See Exhibit L.

B. Illegal Coordination by the Ducey Campaign

Arizona law provides that an expenditure is not an "independent expenditure," and is instead a campaign contribution, if there is any "cooperation or consultation [by the party paying for the expenditure] with any candidate or committee or agent of the candidate" benefitting from the expenditure. See Ariz. Rev. Stat. § 16-901(14). Such cooperation or consultation arises, without limitation, whenever "[i]n the same election the person making the expenditure, including any officer, director, employee or agent of that person, is or has been: (i) Authorized to raise or expend monies on behalf of the candidate or the candidate's authorized committees[; or] (ii) Receiving any form of compensation or reimbursement from the candidate, the candidate's committees or the candidate's agent." *Id.* § 16-901(14)(c).

In this case, coordination between the Ducey Campaign and third parties is evidenced by:

1. the engagement of Pekau by both the Ducey Campaign and the nonprofit organization or private company that funded Pekau's opposition research,
2. the engagement of McCarthy by both the Ducey Campaign and the LFAF, and
3. the engagement of Direct Response Group by both the Ducey Campaign and, at least recently, the LFAF.

Because these facts establish coordination between the Ducey Campaign and third parties, all the third parties' expenditures constitute contributions to the Ducey Campaign. See *id.* § 16-901(5), (14). Such contributions appear to violate the following provisions:

1. the ban on contributions in excess of \$2,000 per election, see *id.* §§ 16-905, -941(B);
2. the ban on contributions from corporations, see *id.* §§ 16-919(A), -941(C)(2); and

3. the requirement that all contributions be timely reported in campaign finance reports, *see id.* §§ 16-913(C), -915(A)(4), and -941(C)(2).

III. Conflict of Interests at Maricopa County Elections

I am aware that the Arizona Secretary of State's Office previously referred a campaign finance complaint against the Ducey Campaign to Maricopa County Elections for processing. If the Arizona Secretary of State's Office wishes to refer this complaint to a third party, a referral to Maricopa County Elections would not be appropriate. It is my understanding that, in reviewing campaign finance matters, Maricopa County Elections relies on legal advice provided by the Maricopa County Attorney's Office. Because the Maricopa County Attorney has publicly endorsed and continues to publicly support the Ducey Campaign, *see Exhibit N*, Maricopa County Elections would not be an impartial arbiter of the issues raised in this complaint. In fact, the ethical rules governing attorneys in Arizona likely prevent the Maricopa County Attorney's Office from providing legal advice to Maricopa County Elections in this context. *See Ariz. Ethical R. 1.7(a)(2)*. I therefore respectfully request that, if the Arizona Secretary of State's Office must refer this matter to a third party for review, the matter be referred to an elections office that would not be impeded by a legal advisor with a conflict of interests.

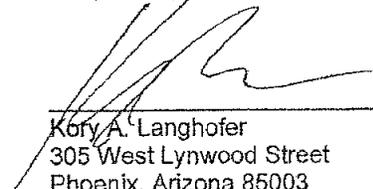
IV. Conclusion

In sum, there is reasonable cause to believe the Ducey Campaign has coordinated with outside organizations including Copper State and the LFAF in connection with the 2014 gubernatorial election, and that the LFAF has failed to register and file campaign finance reports as required by Arizona law. Thus, referral of this matter to the Arizona Solicitor General's office, and investigation and enforcement by the Clean Elections Commission, are required pursuant to Sections 16-924(A), -941(B), and -941(C)(2) of the Arizona Revised Statutes.

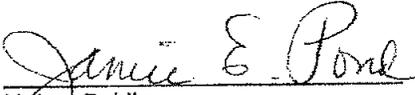
If I can provide any additional information regarding this matter, please do not hesitate to contact me.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully,


Kory A. Langhofer
305 West Lynwood Street
Phoenix, Arizona 85003

Subscribed and sworn to before me on July 1, 2014 by Kory A. Langhofer.


Notary Public

11-19-2014
My commission expires

