

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.azcleanelections.gov

November 28, 2014

Via E-mail and Overnight Mail

Legacy Foundation Acton Fund

Brian Bergin
Bergin, Frakes, Smalley & Oberholzer
4455 East Camelback Road, Suite A-205
Phoenix, AZ 85018

Jason Torchinsky
Holtzman Vogel Josefiak PLLC
45 North Hill Drive, Suite 100
Warrenton, VA 20186

Re: Order And Notice of Appealable Agency Action

Dear Messrs. Bergin and Torchinsky:

Please find the attached Order and Notice of Appealable Agency Action. Let me know if you have any questions.

Sincerely,

Thomas M. Collins
Executive Director

c: Mary O'Grady (e-mail)
Enclosure

1 STATE OF ARIZONA

2 CITIZENS CLEAN ELECTIONS COMMISSION

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4 In the Matter of:

Case No.: 14-007

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6 LEGACY FOUNDATION ACTION FUND,
7 RESPONDENT

ORDER AND NOTICE OF APPEALABLE
AGENCY ACTION

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10 The Citizens Clean Elections Commission ("Commission") shall enforce the provisions of the
11 Citizens Clean Elections Act ("Act"). Pursuant to those duties, the Commission hereby issues this Order
12 and Notice of Appealable Agency Action.

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 Legacy Action Foundation Fund ("LFAF" or "Respondent") is a 501(c)(4) social welfare
15 organization. Respondent is not registered with the Secretary of State's Office as a political committee or
16 independent expenditure committee.

17 On January 9, 2014, Scott Smith, then Mayor of the City of Mesa, established his candidate
18 campaign committee, Smith for Governor 2014, with the Secretary of State's office. At this time, Smith
19 was also the President for the U.S. Conference of Mayors. Before Smith resigned as mayor and thus
20 ended his term as president of the Conference, LFAF aired over \$260,000 in television advertisements in
21 the Phoenix market. This advertisement coincided with Smith's last two weeks in these positions. The
ad is express advocacy under A.R.S. § 16-901.01

22 On July 31, 2014, the Commission found it had jurisdiction to determine whether Respondent had
23 complied with the Clean Elections Act and Rules in regards to the advertisement.

24 On September 11, 2014, the Commission found reason to believe that Respondent had violated
25 A.R.S. §§ 16-941(D) and -958(A) and (B) of the Act. On September 26, 2014, the Commission served an

1 order of compliance on Respondent stating with reasonable particularity the nature of the violations and
2 requiring compliance within fourteen days. A.R.S. § 16-957(A).

3 On November 20, 2014, the Commission found probable cause to believe Respondent violated
4 the Clean Elections Act.

5 Any person who makes independent expenditures exceeding \$500 in an election cycle is required
6 to file campaign finance reports with the Secretary of State's Office in accordance with A.R.S. § 16-958.
7 A.R.S. § 16-941(D).

8 Any person who has filed an original report pursuant to A.R.S. § 16-941(D) must file
9 supplemental reports to declare previously unreported independent expenditures exceeding \$1,000.
10 A.R.S. § 16-958(A). Before the beginning of the primary election period, June 24, 2014, the person shall
11 file an original report on the first of each month after the expenditures exceed \$700, and supplemental
12 reports on the first of each month after the previously unreported expenditures exceed \$1,000. A.R.S. §
13 16-958(B)(1).

14 **Count I. Original Report.**

15 Respondent's expenditures exceeded \$260,000 during March 2014, and Respondent was
16 required to file the original report by April 1, 2014. As of November 20, 2014, Respondent was 234 days
17 late filing the original report for expenditures.

18 **FAILURE TO COMPLY**

19 After the Commission's September 11, 2014 finding that there was reason to believe Respondent
20 had violated requirements of the Act, the expiration of fourteen days, and service of an order requiring
21 compliance, Respondent failed to comply with A.R.S. §§ 16-941(D and 16-958(A) by filing campaign
22 finance reports. To this date, Respondent has never filed the campaign finance reports required by
23 A.R.S. §§ 16-941(D and 16-958(A). In *United States v. Locke*, 471 U.S. 84 (1985), the United States
24 Supreme Court rejected the notion of compliance with a filing deadline sometime after the deadline falls
25 due. "Filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect
to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any
content, the deadline must be enforced." *Id.* at 101. Therefore, Respondent failed to comply with the

1 reporting deadlines, and could not subsequently comply with those deadlines by filing the reports at a
2 later date.

3 Accordingly, the Commission hereby makes a public finding that the Respondent violated the Act,
4 failed to comply with the reporting deadlines, and issues this Order assessing a civil penalty in
5 accordance with A.R.S. § 16-942 and R2-20-109(F)(3).

6 **PENALTIES**

7 The civil penalty for a violation by or on behalf of any candidate of any reporting requirement
8 imposed by the Act is \$430 per day for statewide office. The Commission has determined the daily
9 penalty shall be calculated from the day following the date the Commission asserted jurisdiction in this
10 matter, August 1, 2014, through November 20, 2014, the date of the Commission's probable cause
11 determination and assessment of penalties--111 days.

12 The penalty imposed shall be doubled if the amount not reported for a particular election cycle
13 exceeds ten percent of the adjusted primary or general election spending limit. The amount of the
14 expenditure (\$260,000) exceeds ten percent of the adjusted primary spending limit for the governor's race
15 (\$75,362). The penalty shall be \$860 per day for 111 days, which results in the assessment of a penalty
16 of \$95,460.

17 **ORDER**

18 WHEREFORE, the Citizens Clean Elections Commission hereby imposes a civil penalty of
19 \$95,460. This civil penalty will be satisfied upon receipt of payment to the Citizens Clean Elections
20 Commission, 1616 W. Adams, Ste. 110, Phoenix, Arizona 85007.

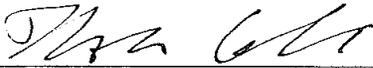
21 You may request an administrative hearing to contest this Order by submitting a written request
22 for a hearing within 30 days of receipt of this Order. The written request for a hearing shall be sent to the
23 Citizens Clean Elections Commission, 1616 W. Adams, Ste. 110, Phoenix, Arizona 85007.

24 If you request a hearing, you may request an informal settlement conference pursuant to A.R.S. §
25 41-1092.06.

Individuals with a disability may request reasonable accommodation by contacting the Citizens
Clean Elections Commission, 1616 W. Adams, Ste. 110, Phoenix, Arizona 85007, Telephone: (602) 364-

1 3477; and during a hearing by contacting the Office of Administrative Hearings, 1400 West Washington,
2 Suite 101, Phoenix, Arizona 85007, Telephone: (602) 542-9826. Requests should be made as early as
3 possible to allow time to arrange the accommodation.

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5 Dated this 28 day of November, 2014.

6 By: 
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8 Thomas M. Collins, Executive Director
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