



A PROFESSIONAL ASSOCIATION
OF ATTORNEYS AT LAW

1 Mary R. O’Grady, 011434
Joseph N. Roth, 025725
2 Yaser Ali, 029877
OSBORN MALEDON, P.A.
3 2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012-2793
4 (602) 640-9000
mogrady@omlaw.com
5 jroth@omlaw.com
yali@omlaw.com

6 Attorneys for Citizens Clean Elections Commission

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

10 LEGACY FOUNDATION ACTION
FUND, an Iowa non-profit corporation,

11 Plaintiff,

12 vs.

13 CITIZENS CLEAN ELECTIONS
14 COMMISSION,

15 Defendant.

Case No. LC2015-00172-001

**DEFENDANT CITIZENS CLEAN
ELECTIONS COMMISSION’S
MOTION TO DISMISS**

(Assigned to the
Honorable Crane McClennen)

16
17 This judicial review action should be dismissed because it is untimely. The
18 Clean Elections Act includes a specific 14-day deadline for appealing decisions of the
19 Arizona Clean Elections Commission (“CCEC” or “Commission”). A.R.S. § 16-
20 957(B). The 14-day deadline is a mandatory, jurisdictional deadline. *Smith v. Arizona*
21 *Citizens Clean Elections Comm’n*, 212 Ariz. 407, 413, ¶ 25, 132 P.3d 1187, 1193
22 (2006). Because this judicial review action was not filed within 14 days of the issuance
23 of the Commission’s final decision as required by A.R.S. § 16-957(D), it should be
24 dismissed.

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. Introduction and Background Facts**

27 This campaign finance enforcement matter concerns whether Plaintiff Legacy
28 Foundation Action Fund (“LFAF”) violated the Clean Elections Act by failing to file an

1 independent expenditure report regarding a television advertisement LFAF ran in early
2 2014. Compl., ¶ 3. After proceedings before the Commission and an administrative
3 hearing before the Office of Administrative Hearings (OAH), the Commission’s final
4 administrative decision was issued March 27, 2015. *Id.* at ¶ 27. This action was filed
5 on April 14, 2015, eighteen days after the final decision was issued.

6 **II. LFAF’s Judicial Review Action Should Be Dismissed as Untimely.**

7 The Clean Elections Act affords aggrieved parties an opportunity to seek judicial
8 review of a CCEC final decision. As with other kinds of appeals, the Act also sets out a
9 firm deadline by which appeals must be brought: “[t]he violator has fourteen days from
10 the date of issuance of the order assessing the penalty to appeal to the superior court.”
11 A.R.S. § 16-957(B). Applying § 16-957(B), LFAF was required to file its appeal
12 before this Court by April 10, 2015, fourteen days after March 27. But LFAF did not
13 file its appeal until April 14, several days too late.

14 As the Arizona Supreme Court has explained in connection with this same
15 deadline, “[i]t is well settled that the time for filing an appeal, whether by appeal or by
16 complaint for judicial review following the conclusion of the administrative process, is
17 jurisdictional.” *Smith*, 212 Ariz. at 413, ¶ 25, 132 P.3d at 1193. That is, “the failure to
18 timely appeal deprives the court of jurisdiction to review the administrative decision.”
19 *Id.* (internal quotation marks, alterations, and citation omitted). Accordingly, because
20 LFAF did not timely file its appeal “within the stated period,” LFAF’s appeal “is
21 barred.” *Id.* ¶ 29.

22 The Complaint asserts that this Court has jurisdiction pursuant to the Judicial
23 Review of Administrative Decisions Act, A.R.S. §§ 12-901 *et. seq.*, which allows a
24 party thirty-five days to file an appeal to the superior court. Compl., ¶ 21. The
25 Complaint, however, disregards that these general statutes do not apply “if the act
26 creating or conferring power on an agency or a separate act” prescribes other
27 procedures. A.R.S. § 12-902(A)(1).

28

1 Here, the specific provision in the Clean Elections Act requiring any appeal to be
2 filed within fourteen days controls. A.R.S. § 16-957(B). *See Smith*, 212 Ariz. at 413, ¶
3 29, 132 P.3d at 1193 (“If more definite provisions exist, those more specific provisions
4 control.”); *Ariz. State Tax Comm'n v. Phelps Dodge Corp.*, 116 Ariz. 175, 177, 568
5 P.2d 1073, 1075 (1977) (observing that specific statutes displace general statutes).

6 The Supreme Court’s decision in *Smith* confirms this analysis. In that case,
7 *Smith* sought review of a CCEC decision *after* the fourteen-day time limit of A.R.S. §
8 16-957(B) had passed. In rejecting *Smith*’s appeal as untimely, the Court applied the
9 specific Clean Elections Act deadline:

10 In this case, the Clean Elections Act itself contains a definite term for
11 appeals: A.R.S. § 16-957(B) requires that appeals be taken no later than
12 “fourteen days from the date of issuance of the order assessing the
13 penalty.” The time to appeal is jurisdictional; any appeal not filed within
14 the stated period is barred. A.R.S. § 12-902(B).

15 *Smith*, 212 Ariz. at 413, ¶ 29, 132 P.3d at 1193. As was true in *Smith*, the appeal in this
16 case fails to comply with the jurisdictional requirements of the Clean Elections Act and
17 should be barred.

18 CONCLUSION

19 Because this action was filed after the 14-day deadline in A.R.S. § 16-957(B), it
20 is untimely and must be dismissed.

21 DATED this 4th day of May, 2015.

22 OSBORN MALEDON, P.A.

23 By 
24 Mary R. Grady

25 Joseph N. Roth
26 2929 N. Central Avenue, Suite 2100
27 Phoenix, Arizona 85012-2793

28 **Attorneys for Citizens Clean Elections
Commission**

1 ORIGINAL filed this 4th day
2 of May, 2015 with:

3 Clerk of the Court
4 Maricopa County Superior Court
5 201 West Jefferson Street
6 Phoenix, Arizona 85003-2205

7 COPY Hand-Delivered this 4th
8 day of May, 2015, to:

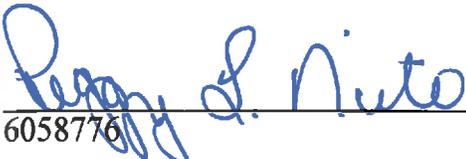
9 The Honorable Crane McClennen
10 Maricopa County Superior Court
11 201 W. Jefferson Street, CCB-4B
12 Phoenix, AZ 85003

13 A COPY of the foregoing was emailed and
14 mailed this 4th day of May, 2015, to:

15 Brian M. Bergin
16 Bergin, Frakes, Smalley & Oberholtzer, PLLC
17 4455 E. Camelback Road, Suite A-205
18 Phoenix, AZ 85018
19 bbergin@bfsolaw.com

20 Jason Torchinsky (*pro hac vice*)
21 Holtzman Vogel Josefiak PLLC
22 45 N. Hill Drive, Suite 100
23 Warrenton, VA 20186
24 jtorchinsky@hvjlaw.com

25 **Attorneys for Legacy Foundation Action Fund**

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27 _____
28 6058776