IN THE ARIZONA SUPREME COURT

LEGACY FOUNDATION ACTION FUND, Plaintiff/Appellant, v. CITIZENS CLEAN ELECTIONS COMMISSION, Defendant/Appellee.	) Arizona Supreme Court) No. CV-16-0306-PR)) Court of Appeals, Division One) No. 1 CA-CV 15-0455)) Maricopa County Superior Court) No. LC2015-000172-001)

PLAINTIFF/APPELLANT LEGACY FOUNDATION ACTION FUND'S SUPPLEMENTAL BRIEF

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INTRODUCTION

The Citizens Clean Election Commission (hereafter the "Commission") lacked jurisdiction to penalize the Legacy Foundation Action Fund (hereafter "LFAF") for its speech. Rather than follow consistent precedent of the Court of Appeals permitting jurisdictional challenges at any time, and ignoring this Court's precedent that a tribunal cannot accrete jurisdiction through laches, the courts below dismissed LFAF's jurisdictional challenge as untimely. This Court should reinstate the uniformity in the Court of Appeals' precedent that jurisdiction may be challenged at any time. This Court should likewise reaffirm its precedent that the passage of time cannot vest a tribunal with jurisdiction.

Furthermore, the Commission wrongly asserted jurisdiction over a statute that is properly confined to the enforcement authority of the Secretary of State. Additionally, when LFAF aired its advertisement in 2014, the express advocacy portion of the independent expenditure statute was void because the Maricopa County Superior Court had declared it unconstitutional.[1]

Finally, the Commission's application of its express advocacy statute to

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[1] *Comm. for Justice & Fairness v. Ariz. Sec'y of State*, No. LC-2011-000734-001 (Nov. 28, 2012); *overruled and reversed by Comm. for Justice & Fairness (CJF) v. Ariz. Sec'y of State's Office,* 235 Ariz. 347 (App. Aug. 7, 2014); *rev. denied Comm. for Justice v. Ariz. Sec'y of State*, No. CV-14-0250-PR, 2015 Ariz. LEXIS 136 (Ariz. Apr. 21, 2015).

LFAF's advertisement violates the First Amendment because it creates impermissible unconstitutional ambiguity. *See generally, Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007) (hereinafter, *WRTL II*); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 334-35 (2010) (noting that after *WRTL II* and the Court's holding, any test to determine express advocacy must be objective. The FEC adopted an 11 factor test—effectively imposing a prior restraint requiring a speaker wishing to avoid liability to first seek an advisory opinion determining whether the speaker's proposed speech constituted express advocacy).

Under the First Amendment, the advertisement could not constitute express advocacy because it was aired 134 days before the primary election—before Mayor Smith filed his statement of candidacy paperwork—discussed only issues, educated listeners about issues espoused by the organization for which Mayor Smith served as president, and urged listeners to contact Mayor Smith to express their disapproval of those issues. The advertisement did not discuss Mayor Smith's qualification for governor or mention any other candidate's name. The advertisement, therefore, is unquestionably beyond the scope of regulation under Arizona's then existing laws the Commission is empowered to enforce.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

LFAF respectfully incorporates by reference the statement of the case and statement of facts contained in LFAF's Petition for Review. *See generally*, Petition for Review ("Pet. for Rev.").

STATEMENT OF THE ISSUES

LFAF respectfully incorporates by reference the statement of the issues contained in LFAF's Petition for Review. *See generally*, Pet. for Rev.

ARGUMENT

I. THE CLEAN ELECTIONS COMMISSION DOES NOT ACCRETE JURISDICTION THROUGH LACHES.

A. Both the Superior Court and the Court of Appeals Committed an Error of Law When They Permitted the Commission to Penalize LFAF for Its Speech.

LFAF respectfully incorporates by reference the arguments made in its Petition concerning how challenges to jurisdiction can be brought at any time. *See* Pet. for Rev. at 9-10. If the Commission lacked jurisdiction in the first place, the alleged four-day delay by LFAF in challenging the Commission's jurisdiction does not then somehow vest the Commission with jurisdiction. *See, e.g.*, *In re Milliman's Estate*, 101 Ariz. 54, 58 (1966) ("Laches of a party can not cure a judgment that is so defective as to be void; laches cannot infuse the judgment with life." (quoting 7 Moore's Federal Practice § 60.25[4] at 274 (2d ed. 1955))).

B. Motions to Set Aside Judgments as Void are Available at Any Time.

LFAF respectfully incorporates by reference the arguments made in its Petition concerning the ability to challenge judgments as void at any time. *See* Pet. for Rev. at 10-12. The Court of Appeals consistently has ruled that Rule 60 motions that attack a judgment as void for lack of jurisdiction are permissible even when brought beyond the six-month deadline and even where the movant delayed unreasonably. *See, e.g., Nat'l Inv. Co. v. Estate of Bronner*, 146 Ariz. 138, 140 (App. 1985). Similarly, the Court of Appeals has ruled that, in challenges to an administrative agency's jurisdiction, an untimely challenge brought in a special action is permissible. *See, e.g., Arkules v. Bd. of Adjustment*, 151 Ariz. 438, 440 (App. 1986) (hereinafter, *Arkules*) ("Under the provisions of A.R.S. § 12-902(B), an appeal from an administrative agency may be heard even though untimely to question the agency's personal or subject matter jurisdiction in a particular case.").[2]

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[2] When the Board acts beyond the scope of its powers, "the effect of the void decision by the Board of Adjustment is the same as that of any void decision by a court: 'the mere lapse of time does not bar an attack on a void judgment.'" *Id.* at 151 Ariz. at 440 (citing *Wells v. Valley Nat'l Bank of Ariz.*, 109 Ariz. 345, 347 (1973)). "Statutes of limitation or rules of court are not applicable to void judgments." *Id.* at 151 Ariz. at 440 (citing *Preston v. Denkins*, 94 Ariz. 214 (1963)). The Court held that the plaintiff was not bound by a 30-day limit for appeal found within the agency's authorizing statute where the agency acted without jurisdiction. Further, Arizona Courts have repeatedly held that where jurisdiction is challenged, Ariz. Rev. Stat. Ann. § 12-902(B) allows such a jurisdictional challenge to be heard regardless of other administrative review

Here, LFAF asserts that the Commission had neither personal nor subject matter jurisdiction over LFAF nor its advertisement because LFAF's speech concerning the issues Smith supported did not constitute express advocacy. IR-69 ¶¶ 31-32. LFAF should have been permitted to make that jurisdictional challenge notwithstanding the status of the calendar.

C. Both the First and Second Divisions of the Arizona Court of Appeals Recognize That Challenges to an Agency's Jurisdiction are Available at Any Time.

LFAF respectfully incorporates by reference its arguments made in its Petition that challenges to an agency's jurisdiction are available at any time. *See* Pet. for Rev. at 12-15. Unlike the general rule barring untimely appeals that

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process requirements. *See Collins v. State*, 166 Ariz. 409, 411 (App. 1990) ("pursuant to A.R.S § 12-902(B), a jurisdictional challenge may be judicially reviewed without first seeking administrative review . . . ."); *Gilbert v. BOMEX*, 155 Ariz. 169, 176 (App. 1987) (acknowledging "there are other means by which an administrative judgment may be attacked collaterally. One means is where the jurisdiction of the administrative agency is questioned."); *Murphy v. BOMEX*, 190 Ariz. 441, 448 (App. 1997) ("The superior court has authority to review administrative agency proceedings only if (1) the challenged agency action constitutes a 'decision' appealable under the ARA and the challenging party has exhausted administrative avenues of appeal, or (2) *the agency's jurisdiction is being challenged*.") (emphasis added)). The court in *Arkules* noted that where a Board acts in a quasi-judicial capacity (as does the Commission insofar as it issues opinions and advisory notices interpreting the Clean Elections Act), a Superior Court may act pursuant to Ariz. Rev. Stat. Ann. § 12-902(B) in order to "control acts beyond the jurisdiction of another body . . . [and] to review . . .the judicial functions of a lower tribunal." 151 Ariz. at 440 (citing *Book Cellar, Inc. v. City of Phoenix*, 139 Ariz. 332, 335 (App. 1983)).

challenge the legal or factual content of an agency decision, both appellate divisions recognize that challenges to an agency's jurisdiction are permitted even after the time to appeal an agency order has expired. *See Dandoy v. Phoenix*, 133 Ariz. 334, 336-37 (App. 1982); *see also Guminski v. Ariz. State Veterinary Med. Examining Bd.*, 201 Ariz. 180, 184 (App. 2001).

D. As in *Dandoy* and *Arkules*, Jurisdictional Challenges Attacking an Agency Determination as Void Can Be Brought at Any Time and the Court of Appeals Was Wrong in Not Considering First LFAF's Jurisdictional Argument.

LFAF respectfully incorporates by reference its arguments made in its Petition that LFAF's jurisdictional appeal is permitted. *See* Pet. for Rev. at 15-17. As in the challenges to agency jurisdiction in *Arkules* and *Dandoy*, LFAF similarly challenged the Commission's jurisdiction. After exhausting its administrative remedies, LFAF challenged the Commission's jurisdiction in Maricopa County Superior Court, four days after the statutory deadline to file challenges to the Commission's orders. Court of Appeals Memorandum Decision at ¶ 5. Under *Dandoy* and *Arkules*, the Maricopa County Superior Court should have considered the merits of LFAF's argument that the Commission lacked jurisdiction.

The protections found in Section 12-902(B) that void judgments can be attacked anytime are consistent with administrative law at the federal level and in jurisdictions throughout the country. *See* 735 Ill. Comp. Stat. 5/3-102 ("If under the terms of the Act governing the procedure before an administrative agency an

administrative decision has become final because of the failure to file any document in the nature of objections, protests, petition for hearing or application for administrative review within the time allowed by such Act, such decision shall not be subject to judicial review hereunder *excepting only for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter*.") (emphasis added); *Bd. of Educ. of City of Chi. v. Bd. of Trs. of Pub. Sch. Teachers' Pension & Ret. Fund of Chi.*, 917 N.E.2d 527, 531 (Ill. App. 2009) ("A decision rendered by an administrative agency which lacks jurisdiction over the parties or the subject matter, or which lacks the inherent power to make or enter the decision involved, is void and may be attacked at any time or in any court, either directly or collaterally."); *State v. Wilfong*, 2001 Ohio App. LEXIS 1195, *7, at *12 (Ohio Ct. App., Clark County Mar. 16, 2001) ("[S]ubject matter jurisdictional defects may be attacked at any time, as they render the judgment void *ab initio*."); and *see King County v. Rea*, 152 P. 2d 310, 212 (Wash. 1944) ("A decree void on its face for lack of jurisdiction over the subject matter, may be attacked directly or collaterally at any time. This is because of the court's inherent power to purge its records of judgments void on their face.") (internal citation omitted).

E. <u>The Commission's Reliance on *Smith* is Misplaced.</u>

The Commission urges this Court to follow *Smith* and not *Arkules* or

Dandoy. Response to Petition for Review ("Resp. to Pet.") at 15. The Commission further contends that *Arkules* and *Dandoy* are inapplicable here. *Id*. at 12-15. The Commission also contends that Ariz. Rev. Stat. Ann. § 12-902(B) only permits untimely challenges where a party suffered an administrative default. *Id*. at 13.

First, this Court's ruling in *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407 (2006) is inapplicable here because the appellant in that case brought an untimely appeal challenging only the merits of the Commission's determination that Smith violated public financing rules. Unlike LFAF here, appellant there did not challenge the Commission's jurisdiction.

Second, *Arkules* and *Dandoy* do apply here. *See* Pet. for Rev. at 13-16. The Commission contends that *Dandoy* does not apply because it was a separate lawsuit and not an appeal from an administrative decision. *See* Resp. to Pet. at 14. But the Commission does not explain why this factual distinction makes a legal difference. Like this case, the jurisdictional attack in *Dandoy* came after the time to appeal had passed and yet the argument was entertained and not dismissed as untimely. *State ex rel. Dandoy v. Phoenix*, 133 Ariz. 334, 336-37 (App. 1982).

The Commission contends that *Arkules* is inapplicable because that case involved a special action by a non-party and 12-902(B) only applies to parties. Resp. to Pet. at 13-14. The Commission ignores, however, the fact that the plaintiff in *Arkules* was a non-party or that the procedural setting was a special action

played no role in the opinion. Nothing in the language of the *Arkules* opinion cabins its holding to non-parties in special actions. The opinion very clearly states, "an appeal from an administrative agency may be heard even though untimely to question the agency's personal or subject matter jurisdiction in a particular case." *Arkules*, 151 Ariz. at 440. This was not dicta but a necessary part of the analysis to determine whether the superior court's denial of defendant's motion to dismiss was proper.

Third, Ariz. Rev. Stat. Ann. §12-902(B) cannot be read so narrowly as to permit tribunals who acted without jurisdiction to then accrete such jurisdiction through laches. Such a holding would run counter to settled precedent. *See In re Milliman's Estate*, 101 Ariz. at 58. In any event, statutes of limitation and rules of court are not applicable when challenging a tribunal's jurisdiction. *See Arkules*, 151 Ariz. at 440.

II. APPLYING ARIZONA'S EXPRESS ADVOCACY STATUTE TO LFAF'S ADVERTISEMENT VIOLATES THE FIRST AMENDMENT.

The error of law in the ruling below infringed upon LFAF's rights guaranteed under the First Amendment, such error ultimately resulting in upholding the Commission's $95,460 penalty on LFAF for its speech.

A. The First Amendment Requires That Tests Used to Distinguish Between Campaign Speech and Issue Speech Must Be Clear and Not Ambiguous.

The First Amendment to the United States Constitution declares, "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The protections of the First Amendment—through the Fourteenth Amendment—prevent the States from violating their residents' free speech rights. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).

The central purpose of the First Amendment "was to protect the free discussion of governmental affairs." *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 776-77 (1978). This is so because speech about issues is "indispensable to decision making in a democracy." *See id*. at 777. Thus, the First Amendment not only guarantees a person's right to express their opinions, but also the "right [to] afford[] the public access to discussion, debate, and the dissemination of information and ideas." *See id*. at 783. Consequently, the First Amendment at least guarantees "the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment." *Id*. at 776. In fact, the First Amendment enshrines our nation's national commitment "to the principle that debate on public issues should be uninhibited, robust, and wide-open." *WRTL II*, 551 U.S. at 467 (citing *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)).

The Supreme Court therefore has ruled that tests to determine whether speech constitutes political advocacy that may be subject to regulation must be clear and not ambiguous. *See Citizens United*, 558 U.S. at 336 (rejecting the FEC's 11 factor test and stating that this has the effect of putting the speaker in the position of either refraining from speech or putting speech at the mercy of how the FEC applies its 11 factor test to the speech). Rather, a test to distinguish between express advocacy and issue advocacy must provide "security for free discussion" and therefore cannot put the speaker "wholly at the mercy of the varied understanding of his hearers." *WRTL II*, 551 U.S. at 468-69. The test must, therefore, be objective and it "must eschew the open-ended rough-and-tumble of factors, which invit[es] complex argument in a trial court and a virtually inevitable appeal." *Id*. at 469 (internal citation and quotation marks omitted) (alteration in original). Such a test that puts the speaker at the mercy of the hearers and does not provide clear rule that provides security for free discussion "will unquestionably chill a substantial amount of political speech." *Id*. To prevent this result, an express advocacy statute can only capture that speech that "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id*. at 470. Thus, an advertisement that focuses on an issue, exhorts the public to take a position on that issue, and urges the public to contact the official to also adopt that position on the issue, and further does not otherwise mention an

"election, candidacy, political party, or challenger; and . . . do[es] not take a position on a candidate's character, qualifications, or fitness for office" does not constitute express advocacy but is, in fact, an issue advertisement. *See id*. LFAF acknowledges that numerous states other than Arizona have enacted "electioneering communications" regulations that reach speech close in time to an election that mention or refer to candidates. Arizona, however, adopted no such statute, and the advertisement at issue was neither close in time to an election nor did it mention any person who was a candidate at the time the advertisement aired.

Because the Commission applied Arizona's express advocacy statute to LFAF's ads—contrary to the conclusions and judgment of Arizona's Secretary of State and the ALJ—the Commission must prove that applications of its statute to LFAF's advertisement satisfies strict scrutiny. *WRTL II*, 551 U.S. at 464-65 ("Especially where, as here, a prohibition is directed at speech itself, and the speech is intimately related to the process of governing, . . . 'the burden is on the government to show the existence of [a compelling] interest.'" (citing *Bellotti*, 435 U.S. at 786) (alterations in *WRTL II*)).

B. The Commission's Application of Arizona's Express Advocacy Statute to LFAF's Speech Violates the First Amendment.

The Commission violated LFAF's First Amendment rights in three ways. *First*, the Commission overstepped its statutory authority by asserting jurisdiction over LFAF's advertisement. As the Secretary of State has noted in this litigation, it

is the Secretary of State who enforces the "exhaustive" requirements contained in Arizona's independent expenditure statute, including what constitutes express advocacy. Opening Brief of Arizona Secretary of State Michele Reagan; Exhibit A to IR-74 at 4.

The Secretary of State is ultimately charged with the interpretation of the terms "expressly advocates" and "independent expenditure." The Maricopa County Board of Elections, acting for the Secretary of State, summarily dismissed the underlying complaints regarding LFAF's failure to file reports because it found that LFAF is not a political committee and its advertisement did not constitute an independent expenditure.

Regardless of the fact the Secretary of State deemed the speech to not constitute "express advocacy" or "independent expenditures," the Commission took it upon itself to push ahead and directly contravene the State's chief election officer. No provision of the Clean Elections Act, however, extends the Commission's jurisdiction to regulate LFAF. The sole hook on which the Commission is asserting jurisdiction is Ariz. Rev. Stat. Ann. § 16-941(D). But that provision provides for filing with the Secretary of State's office. The Commission, however, contends that this provision confers upon the Commission jurisdiction over a filing statutorily required to be made with the Secretary of State. Not only unconstitutional, this premise is also contingent upon the meaning of "independent

expenditure" as defined in Ariz. Rev. Stat. Ann. § 16-901. Ultimate authority to determine what constitutes an "independent expenditure" is vested with the Secretary of State, as are other related reporting and registration rules and requirements that predate the Commission. It follows that, because the Clean Elections Act does not apply, enforcement of the deadlines found therein is wholly illogical.

Second, when LFAF acted, Arizona's express advocacy statute was not in effect. Several months before LFAF produced and aired its advertisement, the Maricopa County Superior Court declared Arizona's statutory definition of "expressly advocates" unconstitutional. *See* IR-28, ¶ 8; *see also Comm. for Justice & Fairness v. Ariz. Sec'y of State*, No. LC-2011-000734-001 (Nov. 28, 2012).[3] While the Secretary of State appealed the Superior Court's decision, a stay was not granted, nor was any other type of legal action imposed that stalled or reversed the Superior Court's ruling.

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[3] *Overruled and reversed by Comm. for Justice & Fairness (CJF) v. Ariz. Sec'y of State's Office*, 235 Ariz. 347 (App. Aug. 7, 2014); *rev. denied Comm. for Justice v. Ariz. Sec'y of State*, No. CV-14-0250-PR, 2015 Ariz. LEXIS 136 (Apr. 21, 2015). Again, LFAF's advertisements aired between March and April of 2014, four months *prior* to the Arizona Court of Appeals decision. IR-28 at ¶¶ 14, 20-23. Thus, Arizona's independent expenditure statute defining express advocacy was void when LFAF's advertisements aired.

In reviewing a complaint filed against LFAF's advertisement in place of the Secretary of State (who was recused because at the time of the complaint the then-Secretary was a candidate for governor), the Maricopa County Division of Elections declined to take any action on the complaint. *See* IR-28 at ¶ 28. While the reasoning was not detailed, the Secretary took no action here at all.

The Commission even acknowledged the effect of the Superior Court's ruling. During its public meeting held on November 20, 2014 the Commission admitted the Superior Court's ruling controlled at the time LFAF aired its advertisement. IR-61 at 39:5-40:8 and 57:22-58-22 (attempting to diminish the effect of the Superior Court's ruling by referring to it as a "minute entry"). Then, at the same meeting the Commission inexplicably found probable cause to believe LFAF violated the Clean Elections Act. IR-28 at ¶ 41; *see generally* IR-61.

But the Commission could not enforce an unconstitutional statute defining "expressly advocates" against LFAF. LFAF's advertisements aired at least four months *prior* to the Court of Appeals decision. IR-28 at ¶¶ 14, 20-23. Thus, when LFAF aired its advertisements, Arizona's express advocacy definition in its independent expenditure statute was void and ineffective. *Norton v. Shelby County*, 118 U.S. 425, 442 (1886) ("An unconstitutional statute is not law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.").

Undaunted by the fact that the operative statute was ineffective at the time of the advertisement, the Commission proceeded to enforce the void statute anyway.

Third, the Commission's analysis applied to LFAF's advertisement was ambiguous and therefore unconstitutional. The advertisement described Smith as "Obama's Mayor" because, while Smith was serving as the President of the U.S. Conference of Mayors, the Conference supported profligate spending, limits on Second Amendment rights, Obamacare, and the regulation of carbon emissions. The advertisement says these policies are wrong for Mesa. The advertisement closes with an exhortation for the listeners to call Mayor Smith to tell him to support policies that are good for Mesa. *See* IR-28 at ¶ 13; *see also* IR-41. The advertisement discusses issues: government spending, second amendment rights, and the regulation of carbon emissions. The advertisement then informs the listeners that these policies are wrong for Mesa. The advertisement closes with an exhortation to the public to call Mayor Smith and tell him to support policies that are good for Mesa. Furthermore, the advertisement never mentions Mayor Smith as a gubernatorial candidate, as a Republican, that a primary election is approaching, or that Mayor Smith possessed bad character or was otherwise unqualified for office. *Compare* IR-28 at ¶ 13 and IR-41, *with WRTL II*, 551 U.S. at 470 (advertisement was not express advocacy where it discussed an issue, took a position on an issue, exhorted the public to adopt that position, and exhorted the

public to call their official without discussing an election, campaign, candidate, or saying that the official had a bad character or was otherwise unfit to serve office). Both the Administrative Law Judge and the Secretary of State concluded that LFAF's advertisement did not constitute express advocacy. IR-69 at Conclusions of Law Section ¶¶ 16, 21; IR-28 at ¶ 28.

Then, however, the Commission found that the advertisement constituted express advocacy because the advertisement was aired after Smith announced his candidacy for governor, portrayed Smith in what it determined was a "negative light," and discussed generic national issues and not local issues. IR-70 at 4-5.

This is precisely the type of analysis that *WRTL II* sought to avoid. If the Commission's ruling stands, it will require a case-by-case determination and mini-trials on all advertisements to determine if they constitute express advocacy. *See Citizens United*, 558 U.S. at 329. The First Amendment eschews "the open-ended rough-and-tumble of factors," *e.g.*, using the fact that an advertisement discusses national issues rather than local issues "invit[es] complex argument in a trial court and a virtually inevitable appeal." *Id*. at 336 (quoting *WRTL II*, 551 U.S. at 469) (alteration in original).

The Commission—like the FEC—applied an ambiguous test against LFAF's advertisement, aired in 2014, to determine whether LFAF's advertisement was issue advocacy or express advocacy, subject to a nearly $100,000 fine. The First

Amendment needs breathing room to survive and it cannot tolerate case-by-case determinations. *See id*. at 329.

REQUEST FOR ATTORNEYS' FEES AND COSTS

Pursuant to Arizona Rules of Civil Appellate Procedure, Rule 23(d)(4), and Rule 21(a), LFAF hereby gives notice that under Ariz. Rev. Stat. Ann. § 12-348, LFAF respectfully requests that this Court award to it its reasonable attorneys' fees and expenses incurred herein.

CONCLUSION

For the foregoing reasons, this Court should reverse and vacate the Court of Appeals ruling that LFAF's appeal was untimely. This Court should also find that the Commission has no jurisdiction over independent expenditures. If the court finds that the Commission had jurisdiction, the Court should conclude that LFAF's advertisement did not constitute express advocacy under the First Amendment to the U.S. Constitution.

RESPECTFULLY SUBMITTED this 12th day of May, 2017.

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