

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

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

July 16, 2014

Thomas M. Collins
Executive Director
Citizens Clean Elections Commission
1616 West Adams, Suite 110
Phoenix, AZ 85007

14 JUL 16 PM 4:05 CCEC

Re: Legacy Foundation Action Fund's Response to MUR 14-007

Dear Mr. Collins:

Holtzman Vogel Josefiak PLLC and Bergin, Frakes, Smalley & Oberholtzer represent the Legacy Foundation Action Fund ("LFAF") and hereby submits this letter and attached Affidavit in response to MUR 14-007, initiated by the letter from Scott Smith's campaign lawyer, Kory Langhofer. The Citizens Clean Elections Commission (the "Commission") should take no action regarding Mr. Langhofer's complaint for three reasons. First, the Commission does not have jurisdiction over the matter. Second, LFAF is not required to register as an independent expenditure committee because the advertisement complained of contains issue advocacy protected by the First Amendment and not express advocacy as defined the U.S. Supreme Court or Arizona law. Third, with respect to the complained of advertisement, LFAF and the Ducey 2014 campaign committee never engaged in conduct that even comes close to the Arizona statutory definition of "coordination."

We have had the opportunity to review Ducey 2014's response letter. In addition to the factual statements below, we adopt Ducey 2014's legal analysis by reference and apply it to the legal arguments included herein.

I. LFAF is a Social Welfare Organization

LFAF is a social welfare organization organized under Section 501(c)(4) of the Internal Revenue Code. The organization's primary purpose is to further the common good and general welfare of the citizens of the United States by educating the public on public policy issues, including state fiscal and tax policy, the creation of an entrepreneurial environment, education, labor-management relations, citizenship, civil rights, and government transparency issues. Rants Aff. ¶ 5. As a social welfare organization, LFAF is concerned with the policy initiatives that affect its mission. Rants Aff. ¶ 15.

Since LFAF's inception, Christopher Rants served as its President, overseeing the daily business operations of the organization. Rants Aff. ¶¶ 3, 4. Mr. Rants played an active role establishing and carrying out the issue advocacy advertisement with which Mr. Langhofer takes issue. Rants Aff. ¶ 6. In support of its purpose to facilitate public policy issue education, and effectuate policy change, LFAF bought airtime and ran advertisements critical of the U.S. Conference of Mayors' policy positions. Rants Aff. ¶ 14.

The policy-based advertisements targeted citizens in the districts of three mayors (Mesa, AZ, Baltimore, MD and Sacramento, CA) who held leadership roles with the U.S. Conference of Mayors. Rants Aff. ¶¶ 8,12. The advertisements aired for roughly two weeks and were aimed in the media markets in and around the cities represented by the three mayors. Rants Aff. ¶¶ 13, 15.

In his complaint, Mr. Langhofer takes issue with LFAF's television advertisement mentioning then U.S. Conference of Mayors President Mayor Scott Smith.¹ LFAF purchased airtime in the Phoenix, AZ media market critical of the policy positions², of the organization for which Mayor Smith served as President. Rants Aff. ¶¶ 9,14. At its conclusion, the advertisement makes a call to action asking viewers to tell Mayor Smith that "the U.S. Conference of Mayors should support policies that are good for Mesa." Rants Aff. ¶ 10.

The advertisement ran for a period of two weeks, from March 31 to April 14. Rants Aff. ¶¶ 12, 16. As a practical matter, LFAF ceased airing the advertisement before Mayor Smith's resignation due to the fact that once out of office, Mayor Smith would no longer function as President of the U.S. Conference of Mayors and therefore LFAF would no longer be able to address Mayor Smith as a focus of its campaign against the U.S. Conference of Mayor's policy positions.

As a social welfare organization, LFAF is very much aware of the fact that it cannot engage in political activity as a primary function of its organization. Rants Aff. ¶ 3. Therefore, LFAF carefully navigates state and federal laws to ensure that it does not

¹ Mr. Langhofer makes references to "television, radio, internet, and mail advertisements painting Mr. Smith in a misleading and negative light" but only provides evidence in the form of a YouTube hyperlink to the television advertisement. *See* 7/1/2014 Langhofer Letter at 2. Because Mr. Langhofer failed to include any evidence to support his claim for other communications or how such communications cast Mayor Smith in a misleading or negative light, it is wholly unfeasible for us to address the radio, internet and mail communications.

² The policy positions presented in the advertisement were all federal policy positions including the federal Patient Affordable Care Act, federal energy policy, federal gun control and firearm restrictions, and support for President Obama's budget. *See* You Tube URL: http://www.youtube.com/watch?v=NycZZLOA_OQ.

unintentionally engage in an improper amount of political activity so it may retain its tax-exempt status. That is a critical reason why LFAF is focused on policy initiatives, specifically those of the U.S. Conference of Mayors. Rants Aff. ¶¶ 5, 8, 15.

II. The Commission Lacks Jurisdiction

LFAF adopts the legal arguments of Ducey 2014 with regard to the Commission's lack of jurisdiction of this matter. We also note that a court hearing is set for August 11, 2014 to consider a similar argument with respect to the Commission's jurisdiction in a case filed by Attorney General Tom Horne.³ To the extent the allegations against LFAF raise issues of law that are different from those also raised against Ducey 2014, LFAF addresses those issues below.

The Citizens Clean Elections Act, A.R.S. §§ 16-940 to 16-961 proscribes the duties and further limits the enforcement authority of the Commission to candidates that participate in the Citizens Clean Elections Act campaign finance regime. The Commission's enforcement authority is found in A.R.S. §§ 16-956(A)(7) and 16-957(A), which explicitly limit the reach of the Commission to enforcing "this article" (Title 16, Chapter 6, Article 2). Such an explicit limitation requires the Commission to enforce only the statutes in the Citizens Clean Elections Act. Mr. Langhofer's complaint referencing violations of A.R.S. §§ 16-901, 16-905, 16- 16-914.02 clearly reside in Title 16, Chapter 6, Article 1 which fall outside the Commission's jurisdiction.

Mr. Langhofer's complaint also alleges that LFAF's actions violated provisions in the Citizens Clean Elections Act, namely A.R.S. §§ 16-941(B), (C)(2), (D), 16-958(A), (B). The Commission cannot establish authority to draw LFAF under its jurisdiction through A.R.S. § 16-941(B) since the statute defers enforcement to A.R.S. §§ 16-905 (J)-(M), § 16-924. *See* A.R.S. § 16-941(B) ("[a]ny violation of this subsection [reducing non-participating contribution limits by 20%] **shall be subject to the penalties and procedures set forth in section 16-905, subsections J through M and section 16-924.**" (Emphasis added.)). The Commission has no enforcement authority under A.R.S. § 16-941(C)(2) because the statute provision is a general proscription provision and does not confer a substantive grant of authority. *See* A.R.S. § 16-941(C)(2) (a nonparticipating candidate "[s]hall continue to be bound by all other applicable election and campaign finance statutes and rules, with the exception of those provisions in express or clear conflict with this article.").

³ At the very least, if the Commission does not determine on its own that it has no jurisdiction over LFAF, the Commission should hold consideration of any further action in this matter pending the outcome of the August 11, 2014 hearing before the Superior Court of Maricopa County. If the court determines that this Commission has no jurisdiction over Attorney General Horne, then clearly this Commission has no jurisdiction over LFAF.

Furthermore, Mr. Langhofer erroneously suggests that the Commission has jurisdiction over LFAF under the independent reporting requirements of A.R.S. §§ 16-941(D) and 16-958(A), (B). Such reporting requirements are limited in that they exempt expenditures made by corporations for purposes listed in § 16-920(A). *See* A.R.S. § 16-941(D) (persons making qualifying independent expenditures are otherwise subject to reporting “with the exception of any expenditure listed in section 16-920...”). Exempted from the reporting requirements, and subsequently, the Commission’s enforcement authority, are expenditures in the form of “[c]ontributions for the use to support or oppose an initiative or referendum measure or amendment to the constitution. A.R.S. § 16-920(A)(5). LFAF’s advertisement opposed policy initiatives supported by the U.S. Conference of Mayors. Rants Aff. ¶ 14. Therefore, the Commission cannot subject LFAF to the reporting requirements of § 16-941(D) and 16-958(A), (B).

To the extent that the Citizens Clean Elections Act grants the Commission enforcement authority, such grant is expressly limited in §§ 16-956 and 16-957 to “any provision of this article” and does not reach to allegations involving nonparticipating candidates. Instead of reading a broad grant of authority from §§ 16-956 and 16-957, the Commission must adhere to the specific statute granting enforcement authority. That specific grant, as noted above is found in § 16-941(B). Courts have held that when a specific statute coincides with a general statute, the specific statute must be the controlling statute. *See, e.g., Clouse v. State*, 199 Ariz. 196, 199, 16 P.3d 757, 760 (2001) (“It is an established axiom of constitutional law that where there are both general and specific constitutional provisions relating to the same subject, the specific provision will control.”).

III. LFAF’s Advertisement Does Not Expressly Advocate The Election Or Defeat Of A Clearly Identified Candidate.

LFAF adopts the legal argument of Ducey 2014 supporting the fact that the advertisement complained of is an issue advocacy advertisement, and does not constitute express advocacy. To the extent the allegations against LFAF raise issues of law that are different from those also raised against Ducey 2014, LFAF addresses those issues below.

The First Amendment “guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.” *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978). The U.S. Supreme Court has held that only express advocacy or its functional equivalent is subject to regulation through campaign finance laws. *See McConnell v. FEC*, 540 U.S. at 93, 105 (2003); *Buckley v. Valeo*, 424 U.S. 1, 43-44 (1976) (per curiam). Issue ads, because they “may reasonably be interpreted as something other than an appeal to vote for or against a specific candidate, [] are not the functional equivalent of express advocacy....” *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449, 476 (2007) (“WRTL”). Therefore, issue ads are not subject to campaign finance regulation. Just recently, the U.S. District Court for the

Eastern District of Wisconsin noted that “[i]ssue ads by a 501(c)(4) corporation ‘are by no means equivalent to contributions, and the *quid-pro-quo* corruption interest cannot justify regulating them.’” *O’Keefe v. Schmitz*, --- F.3d ---, 2014 LEXIS 63066 (E.D. Wis. May 6, 2014) (citing *WRTL* 449 at 478-79).

Where express advocacy is alleged not because of the so called “magic words test”⁴ but because of the narrowly drawn functional equivalent to express advocacy test,⁵ such speech must be scrutinized as being “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *WRTL* at 470. Where there may be a close determination, the Court has held “the tie is resolved in favor of protecting speech.” *Id.*

Arizona defines express advocacy to mean only those communications that explicitly urge the election or defeat of a particular candidate or that “in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents. A.R.S. § 16-901.01(A).⁶

Contextual considerations “should seldom play a significant role” in determining whether speech is express advocacy. *WRTL*, 551 U.S. at 474. In *WRTL* the Supreme Court recognized that while courts may consider “basic background information that may be necessary to put an ad in context,” courts should not allow such basic background information to “become an excuse for discovery. *Id.*

Counter to Supreme Court precedent, Mr. Langhofer relies solely on contextual factors to support his allegation that LFAF’s advertisement can have no reasonable meaning other than to advocate against Mayor Smith. Mr. Langhofer concedes in his complaint that the language used in LFAF’s advertisement does not make use of any of the phrases that would constitute “expressly advocating the election or defeat of a clearly identified candidate” in § 16-901.01(A), 7/1/2014 Langhofer Letter at 2. Instead, Mr. Langhofer concocts five unsubstantiated contextual theories centering around his perception of the organization’s intent as to why he believes the Commission should find

⁴ Speech, in express terms, that advocates the election or defeat of a clearly identified candidate. See *Buckley*, 424 at 44.

⁵ Speech that can be reasonably interpreted to be the “functional equivalent of express advocacy.” See *McConnell*, 540 at 206.

⁶ Mr. Langhofer relies on the definition of “express advocacy” found in Arizona statute § 16-901.01(A). This definition has been ruled unconstitutional by the Arizona Superior Court. See Final Judgment, *Committee for Justice & Fairness v. Arizona Secretary of State’s Office, et al.*, No. LC-2011-000734 (Ariz. Superior Court Maricopa County Nov. 28, 2012). The case is on appeal before the Arizona Court of Appeals. We agree with the court that § 16-901.01(A) is unconstitutional.

that the advertisements equate to express advocacy. Not only should the Commission reject Mr. Langhofer's theories for the mere fact that they unjustly attempt to mislead the Commission, but also because they are solely grounded in impermissible context and intent, a justification not recognized by the Supreme Court.

Nonetheless LFAF identifies herein the inconsistencies and inaccuracies of Mr. Langhofer's contextual arguments.

A. LFAF's Advertisement Was Aptly Targeted To Be Effective For Its Issue Advocacy Purpose.

Mr. Langhofer suggests that LFAF targeted an audience greater than that of the City of Mesa and that such targeting therefore was meant to influence "the gubernatorial electorate." 7/1/2014 Langhofer Letter at 2. Mr. Langhofer's targeting allegation is improper for determining whether speech constitutes express advocacy and is solely without merit.

In striking down a state law because of its vague standard for determining express advocacy or the functional equivalent thereof, the Fourth Circuit reasoned that, much like Mr. Langhofer's alleged targeting theory, North Carolina's law runs counter to *WRTL* in that provides for ambiguous interpretations such as "how many voters should be considered 'significant'?" *North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274, 284 (4th Cir. 2008) ("*NCRTL*").

Christopher Rants, President of LFAF, states in his affidavit that the television advertisement was part of a larger project to oppose the policy measures supported by the U.S. Conference of Mayors. Rants Aff. ¶¶ 6, 14. LFAF ran advertisements targeting three mayors who constituted the leadership of the U.S. Conference of Mayors (i.e. mayors for Mesa, AZ, Baltimore, MD and Sacramento, CA). Rants. Aff. ¶¶ 8, 13. Each advertisement, including the advertisement mentioning Mayor Smith, was distributed based on the media market or markets that covered the mayors' respective cities. Rants Aff. ¶ 3.

Mr. Langhofer's Exhibit D supports the fact that LFAF bought television advertising in the Phoenix market, which, in the very same Exhibit, clearly shows is made up predominantly by the City of Mesa, AZ. See 7/1/2014 Langhofer Letter at 2, Exhibit D, NCC Cox Media CableTrack System Profile. Furthermore, LFAF sought to effectuate a grassroots issue advocacy campaign to oppose policy positions supported by Mayor Smith and the U.S. Conference of Mayors. Rants Aff. ¶ 14. To successfully run its campaign LFAF needed to appeal to Arizonians in and around the Mesa area that would be willing and able to call Mayor Smith to tell him "the U.S. Conference of Mayors should support policies that are good for Mesa." Rants Aff. ¶¶ 9, 10. Not only does the advertisement's call to action make it clear LFAF sought to oppose policies, but

Christopher Rants' affidavit also notes that the text of the advertisement educates the public as to policies supported by the U.S. Conference of Mayors. Rants Aff. ¶¶ 10, 15.

B. LFAF's Advertisement Was Run As Part Of A Broad Campaign Focused On Policies Supported By The U.S. Conference Of Mayors.

Mr. Langhofer in his second and third points claim that LFAF was motivated by Mayor Smith's gubernatorial ambitions rather than his policy positions when airing the advertisement. Specifically, Mr. Langhofer calls into question the timing of LFAF's advertisements, alleging that the advertisement was motivated by a public gubernatorial poll and meant to capitalize on Mayor Smith's last days as Mesa's mayor. Such allegations, however, are unfounded.

As stated in Christopher Rants' affidavit, LFAF opposes the policy positions of the U.S. Conference of Mayors. Rants Aff. ¶ 14. To effectuate a grassroots education initiative to counter such policies, LFAF ran advertisements targeting mayors who, by virtue of their position, constituted the U.S. Conference of Mayors' leadership. *Id.* It is undeniable that while serving as Mesa's Mayor, Mayor Smith held the position of President for the U.S. Conference of Mayors." Rants Aff. ¶ 15. In such role, Mayor Smith proved an appropriate and arguably, the best representative to use in highlighting the policy positions of the U.S. Conference of Mayors.

If Mr. Langhofer is asserting that a public official cannot be the subject of an issue advocacy message in the last two weeks of office, then Mr. Langhofer is proposing such a strong restriction on First Amendment free speech that would make even the harshest free speech critics cringe. LFAF even recognized that it could not continue running the advertisement critical of the U.S. Conference of Mayors involving Mayor Smith after Mayor Smith left office, so it pulled the advertisement on April 14, two days before Mayor Smith resigned. Rants Aff. ¶ 16

Where Mr. Langhofer lacks any actual evidence to implicate LFAF's decision to air its advertisement, he rests on an argument that calls for the Commission to determine LFAF's intent. Unfortunately for Mr. Langhofer, the U.S. Supreme Court specifically rejected the intent-based standard for determining whether speech constitutes express advocacy rather than issue advocacy. *See WRTL* 551 U.S. at 467. (citing *Buckley* 424 U.S. at 43-44). The Court has deemed it difficult to distinguish "between discussions of issues on the one hand and advocacy of election or defeat of candidates on the other," but reasoned that "analyzing the question in terms of 'intent and of effect' would afford 'no security for free discussion.'" *Id.*, (citing *Buckley*, 424 U.S. at 43 (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945))).

C. LFAF Used Independently Sourced Public Information To Support The Content Of The Advertisement

Mr. Langhofer's fourth point suggests that LFAF used content that was obtained by Gregg Pekau. Again, without any basis or evidence to connect LFAF with Mr. Pekau's research, Mr. Langhofer is asking the Commission to draw conclusions that are untenable. This is especially the case here since the information sourced for LFAF's advertisement was conducted based on research from the U.S. Conference of Mayor's website. Rants Aff. ¶ 11. Furthermore, the information referenced by Mr. Langhofer regarding the types of public records requests made by Mr. Pekau has nothing to do with the content of the LFAF advertisement. See 7/1/2014 Langhofer Letter at 2, Exhibit A. This is a significant and obvious error that can be assessed solely from the material included in the complaint itself.

D. LFAF Has No Relationship With The Ducey Campaign That Would Trigger Arizona's Definition of Coordination

Mr. Langhofer's fifth point broadly references a relationship between LFAF and Ducey 2014, yet provides no evidence other than news reports and blogs that attempt to draw circumspect conclusions about the relationships of certain vendors, LFAF and Ducey 2014. See 7/1/2014 Langhofer Letter at 2. Such conjecture is unfounded and completely without merit.

Importantly, the information provided by Mr. Langhofer does not even suggest that LFAF used the referenced vendors in the production of the advertisement at issue in his complaint. Christopher Rants states in his affidavit that LFAF retained neither Direct Response Group nor Larry McCarthy in relation to the advertisement. Rants Aff. ¶¶ 18, 19 To the extent LFAF worked with either of these vendors it did so on federal issues, in Nebraska and wholly independently of Ducey 2014. *Id.*

IV. LFAF Did Not Coordinate With Ducey 2014.

LFAF adopts the legal argument of Ducey 2014 supporting the fact that LFAF and Ducey 2014 did not coordinate to produce LFAF's advertisement. To the extent the allegations against LFAF raise issues of law that are different from those also raised against Ducey 2014, LFAF addresses those issues below.

Mr. Langhofer alleges that LFAF and Ducey 2014 coordinated in the production of LFAF's advertisement, thereby resulting in an impermissible contribution from LFAF to Ducey 2014. In order for Mr. Langhofer to succeed with his allegation that LFAF made a contribution to the Ducey Campaign, he must show that there was actual coordination, arrangement, or direction between LFAF and the Ducey Campaign. See A.R.S. § 16-901(14).

Recently, Arizona Secretary of State Ken Bennett as well as the Commission had occasion to add clarity to the Arizona coordination statute. In dismissing an action alleging coordination between Secretary Bennett and an independent expenditure organization, the Commission agreed with Secretary Bennett's position that there must be some "cooperation or consultation with any candidate or candidate's agent, ...made in concert with a request or suggestion of the candidate." CCEC5/22/14 Transcript at 34:20-25.

Furthermore, the United States Supreme Court upholds the same principle of actual coordination. It takes more than mere allegation for a court to find actual coordination. See *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996) (explaining [a]n agency's simply calling an independent expenditure a "coordinated expenditure" cannot (for constitutional purposes) make it one). See, e.g., *NAACP v. Button*, 371 U.S. 415, 429 (1963)). The Court recognized that all party expenditures are not "coordinated" and that even political party committees, may engage in independent expenditure activity. *Id.* at 619.

In order for a complaint to properly assert coordination between a candidate and an independent expenditure, it must allege actual coordination. Under the guidance of both the CECC, Secretary Bennett and the U.S. Supreme Court, actual coordination must be something amounting to cooperation, consultation, or direction between the parties. A standard less than actual coordination cannot withstand scrutiny for being vague or ambiguous, allowing for frivolous claims of improper coordination into perpetuity.

Such is the case in Mr. Langhofer's complaint. There is not a single alleged act that would amount to LFAF coordinating with the Ducey Campaign. Mr. Langhofer conveniently chooses to ignore that § 16-901(14) requires a candidate and an independent expenditure work in "cooperation or consultation" or that the expenditure is made "in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate." Instead Mr. Langhofer suggests that merely a common officer, director, employee, or agent between the candidate and the independent expenditure suffices for coordination.

The fact that LFAF used certain vendors that may have provided work for Ducey 2014 is insufficient because there is simply no showing that any of the alleged vendors were connected with work specific to the advertisement at issue or that anyone connected with LFAF ever discussed the advertisement with these vendors. Mr. Langhofer's attempt to connect Copper State Research & Strategy and Mr. Pekau to LFAF falls short on the basis that Copper State's public records requests had nothing substantively to do with the advertisement. Further, production of the requested records occurred on April 9, 2014, more than a week into the running of the advertisement. To suggest that Copper State's research would be in the slightest bit useful to LFAF is completely unfounded.

Mr. Langhofer also attempts to connect LFAF and Ducey 2014 through Larry McCarthy and Direct Response Group. The news report provided as Exhibit G to Mr. Langhofer's complaint attempts to describe the relationships between Mr. McCarthy, Direct Response Group and LFAF but fails on account that the parties had *nothing* to do with the advertisement at issue in this matter. Having absolutely no correlation to the matter at hand, Direct Response Group and Mr. McCarthy were hired by LFAF to work on a wholly separate project involving a federal election in Nebraska. *See Rants Aff.* ¶¶ 18, 19.

V. Conclusion

We respectfully request the Commission take no action in the foregoing matter for three reasons: 1) The Commission lacks jurisdiction over the alleged violations; 2) LFAF's advertisement constituted pure issue advocacy rendering any independent expenditure statutory requirements for registration and reporting obsolete; and 3) LFAF and Ducey 2014 did not coordinate in the production of the advertisement and therefore no contribution was provided from LFAF to Ducey 2014.

Respectfully submitted,

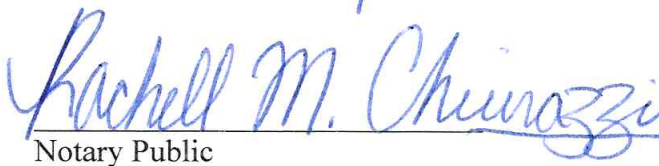


Brian Bergin
Bergin, Frakes, Smalley & Oberholtzer
4455 East Camelback Road, Suite A-205
Phoenix, AZ 85018

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

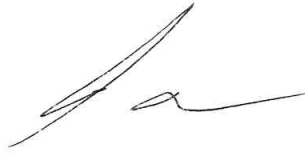
SUBSCRIBED AND SWORN to before me this 16th day of July, 2014
by Brian M. Bergin.




Notary Public

My Commission expires: December 8, 2016

Thomas M. Collins
July 16, 2014
Page 11 of 11

A handwritten signature in black ink, appearing to read 'Jason Torchinsky', with a stylized, sweeping flourish at the end.

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

cc: Korey Langhofer

AFFIDAVIT OF CHRISTOPHER RANTS

STATE OF Iowa)
COUNTY OF Woodbury)

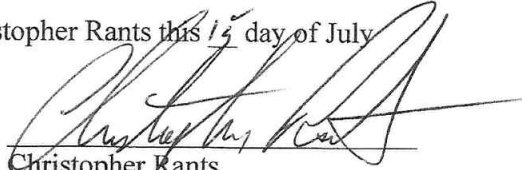
BEFORE ME, the undersigned appeared Christopher Rants, who, being first duly sworn, deposes and says:

1. My name is Christopher Rants. I am over the age of eighteen (18) years and I have personal knowledge of the matters set forth in this affidavit.
2. I reside in Sioux City, Iowa.
3. I am currently the President for Legacy Foundation Action Fund, a nonprofit corporation organized in Iowa and operating as a social welfare organization under Section 501(c)(4) of the Internal Revenue Code. In that role, I oversee LFAF's daily business operations.
4. I have been the President of Legacy Foundation Action Fund since its inception in 2011.
5. Legacy Foundation Action Fund was established to further the common good and general welfare of the citizens of the United States by educating the public on public policy issues, including state fiscal and tax policy, the creation of an entrepreneurial environment, education, labor-management relations, citizenship, civil rights, and government transparency issues.
6. One of Legacy Foundation Action Fund's projects involves motivating individuals through grassroots issue advocacy to oppose certain policy positions taken by the U.S. Conference of Mayors.
7. In furtherance its mission, Legacy Foundation Action Fund produced and aired television advertisements in March and April of 2014.
8. The advertisements highlighted the three mayors (all of whom held leadership roles with the U.S. Conference of Mayors) in Mesa, AZ, Baltimore, MD and Sacramento, CA and were run in each of the mayors' respective cities and surrounding viewing area. The purpose of the ads was to draw attention to the mayors' involvement/support of the agenda promulgated by the U.S. Conference of Mayors.

9. The Mesa, AZ advertisement focused on Mesa, AZ Mayor Scott Smith and referenced his position as the President of the U.S. Conference of Mayors. The advertisement noted that under Mayor Smith's leadership, the U.S. Conference of Mayors supported certain policy initiatives that run counter to the mission of Legacy Foundation Action Fund.
10. The advertisement made a call to action asking viewers to tell Mayor Smith "the U.S. Conference of Mayors should support policies that are good for Mesa." At the end of the advertisement, the screen showed text providing a phone number viewers could call to contact Mayor Smith.
11. To validate all content used in the advertisements, Legacy Foundation Action Fund conducted its own research which consisted of the information made publicly available on the U.S. Conference of Mayors website.
12. Legacy Foundation Action Fund purchased airtime in the Phoenix, Sacramento and Baltimore media markets and ran the advertisement from March 31 to April 14.
13. Legacy Foundation Action Fund's decision to air the advertisement in the markets referenced above was made based on the fact that those media markets covered the cities of the three mayors who constituted the Conferences' leadership.
14. The U.S. Conference of Mayors is a national organization, which often takes policy positions that are counter to the policy positions of Legacy Foundation Action Fund. In keeping with the mission and purpose of the organization, Legacy Foundation Action Fund determined that one of the ways to influence the policy positions taken by the U.S. Conference of Mayors was to educate the citizens of the cities represented by mayors holding leadership positions with the U.S. Conference of Mayors. When purchasing the time to run the advertisement in focusing on Mesa, AZ Mayor Smith, Legacy Foundation Action Fund had to purchase airtime for the entire Phoenix market, of which the City of Mesa is included.
15. After all, Legacy Foundation Action Fund opposes the policy positions taken and supported by Mayor Smith while he was serving as the President of the U.S. Conference of Mayors.
16. Additionally, I want to highlight for the Commission that Mayor Smith resigned from office on April 16th, and the advertisement ceased to run on April 14th.
17. At no time during the research, production or airing of the advertisement did I or any employee or any vendor of Legacy Foundation Action Fund discuss the advertisement, strategize about advertisement's publication or otherwise coordinate with Ducey 2014.

18. At no time did Legacy Foundation Action Fund hire or retain the services of Direct Response Group for this project. Direct Response Group worked on a project involving a federal election in Nebraska in early 2014 for Legacy Foundation Action Fund.
19. Legacy Foundation Action Fund did not involve Larry McCarthy in the production of advertisements noted herein. Mr. McCarthy did produce one other advertisement for Legacy Foundation Action Fund in 2014 involving a federal election in Nebraska.

Subscribed and sworn to before me by Christopher Rants this 15 day of July 2014.


Christopher Rants


Notary Public, State of Iowa



Commission Number: 779339
Commission Expires: 7/15/16

☐ Personally known, or
☒ Produced identification
Type: Drivers License