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August 14, 2014

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TUCSON

VIA EMAIL AND U.S. MAIL

Thomas.Collins@azcleaselections.gov

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

Re: Ducey 2014 - MUR 14-007

Dear Mr. Collins:

This letter shall serve as a second supplemental response to MUR14-007 that clarifies our earlier submissions that no coordination has occurred between Legacy Foundation Action Fund (“LFAF”) and Ducey 2014 under A.R.S. § 16-901(14).¹

The predicate sentence of A.R.S. § 16-901(14) states that an expenditure is not independent if there is any “cooperation or consultation with any candidate or committee or agent of the candidate” or if the expenditure is “made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.” The predicate sentence informs how the various examples of coordination that are listed in subparts (a) through (d) should be interpreted, that there needs to be a showing of actual coordination in order to find a violation of § 16-901(14). That is the position taken by this Commission in previous matters, by the Arizona Secretary of State, the Maricopa County Recorder, and the federal courts.

We would like to specifically address the allegation that coordination exists simply because Larry McCarthy, an advertising vendor associated with Ducey 2014, worked on an advertisement for LFAF in a U.S. Senate race in Nebraska. In addition to the lack of actual coordination between Ducey 2014 and LFAF, a second reason exists to preclude Mr. McCarthy’s situation from A.R.S. § 16-901(14)(c)(ii). The Nebraska U.S. Senate race is not “the same election” as any election in Arizona. A.R.S. § 16-901(14)(c) states that an expenditure is not

¹ The independent expenditure statute was amended by the Legislature during the 2014 legislative session, and is now codified in both A.R.S. §§ 16-901(14) and 16-911. Because MUR14-007 alleges conduct prior to the amendments’ effective date, we focus on the statute prior to its amendment.

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independent if, “[i]n the *same election* the person making the expenditure, including any officer, director, employee or agent of that person is or has been . . . (ii) [r]eceiving any form of compensation or reimbursement from the candidate, the candidate’s committees or the candidate’s agent.” (Emphasis added.) The term “election” is defined in § 16-901(7) as “any election for any initiative, referendum or other measure or proposition or a primary, general, recall, special or runoff election for any office *in this state*” (Emphasis added.) The Nebraska U.S. Senate race is not an election “in this state,” and therefore cannot trigger the coordination factor under subpart (c)(ii) in the absence of actual coordination.

Moreover, Mr. McCarthy never had any authority whatsoever to act as an agent for Ducey 2014 outside of the narrow scope of his duties to produce advertisements for the Arizona Republican gubernatorial primary. For example, in Advisory Opinion 2003-10 (Reid), the Federal Election Commission held that “agency,” as that term is used in the Bipartisan Campaign Reform Act’s (“BCRA”) prohibition on a federal officeholder’s “agent” raising non-federal funds for state parties, should focus on whether the person is acting within the scope of his or her agency. In this particular Advisory Opinion, the FEC held that Rory Reid, son of Nevada Senator Harry Reid, would not violate the BCRA prohibition simply by raising federal funds as an “agent” of his father’s senate campaign while also raising non-federal funds as an “agent” of the Nevada State Democratic Party. Nevada’s contribution limits are significantly higher than the federal limits, and Nevada law allows contributions from sources prohibited by federal law, including corporations and labor organizations. According to the FEC, Rory Reid would not violate BCRA because his state-level fundraising activity was conducted as an agent of the State Party, not as an agent of his father’s senate campaign. The FEC recognized that a single individual can have agency relationships with multiple principles, but that alone does not violate the law.²

The facts are that (i) Mr. McCarthy had no discussions whatsoever with any person associated with LFAF about Ducey 2014 and (ii) no other person named or otherwise referred to in the complaint had any conversations with LFAF about Ducey 2014 whatsoever. We have obtained the supplemental declarations of Mr. McCarthy, Shauna Pekau, Gregg Pekau, Jack Padovano, and Jonathan Twist to underscore the fact that there was absolutely no communication between Ducey 2014 and LFAF whatsoever. See Exhibits A – E hereto.

For all of the reasons presented, we urge the Commission to dismiss the complaint against Ducey 2014 forthwith.

² See also FEC Advisory Opinion 2007-05 (Iverson) (holding that “Mr. Iverson may solicit, direct and spend non-Federal funds as Chairman of the [Montana] State Committee, while continuing to serve as Chief of Staff to Congressman Rehberg. He must, however, refrain from soliciting, directing, or spending non-Federal funds as an agent of the Congressman.” (Emphasis added.)).

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Respectfully submitted,

Snell & Wilmer

Michael T. Liburdi

Michael T. Liburdi

cc: Brian Bergin
Jason Torchinsky

ML/ct
19892088.1

EXHIBIT A

IN THE

ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

In re:
MUR14-007

SUPPLEMENTAL DECLARATION OF SHAUNA PEKAU

I, Shauna Pekau, declare as follows:

1. I provide this supplemental declaration in response to the July 1, 2014 letter submitted to the Arizona Clean Elections Commission by the Scott Smith campaign and its attorney, which I have reviewed. The contents herein are based on my personal knowledge.
2. I am the Owner and Chief Executive Officer of Copper State Research & Strategy, LLC ("Copper State"). I am the sole member of Copper State.
3. Copper State has never done business with Legacy Foundation Action Fund ("LFAF").
4. Neither I nor, to the best of my knowledge, any person associated with Copper State has provided any information to any person associated with LFAF, including any known agent of LFAF, relating to Ducey 2014 in any manner whatsoever.
5. Neither I nor, to the best of my knowledge, any person associated with Copper State has had any communication with any person from LFAF, including any known agent of LFAF, relating to the Advertisement in any manner whatsoever.

I declare under penalty of perjury that the foregoing is true and correct.

Dated August 12, 2014

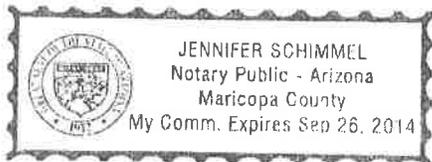
Shauna Pekau
Shauna Pekau

State of Arizona)

)

County of Maricopa)

Subscribed and sworn (or affirmed) before me this 12th day of August, 2014 by Shauna Pekau.



(seal)

Jennifer Schimmel
Notary Public

EXHIBIT B

IN THE

ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

In re:
MUR14-007

SUPPLEMENTAL DECLARATION OF GREGG PEKAU

I, Gregg Pekau, declare as follows:

1. I provide this supplemental declaration in response to the July 1, 2014 letter submitted to the Arizona Clean Elections Commission by the Scott Smith campaign and its attorney, which I have reviewed. The contents herein are based on my personal knowledge.
2. I have never done business with Legacy Foundation Action Fund ("LFAF").
3. I have never provided any information to any person associated with LFAF, including any known agent of LFAF, relating to Ducey 2014 in any manner whatsoever.
4. I have never had any communication with any person from LFAF, including any known agent of LFAF, relating to Ducey 2014 in any manner whatsoever.

I declare under penalty of perjury that the foregoing is true and correct.

Dated August 12, 2014

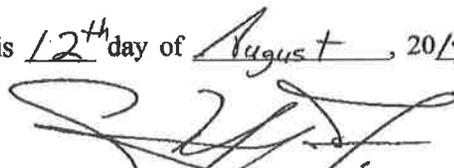


 Gregg Pekau

State of Arizona)

)
 Pima
County of Maricopa)

Subscribed and sworn (or affirmed) before me this 12th day of August, 2014 by
Gregg Pekau.



 Notary Public

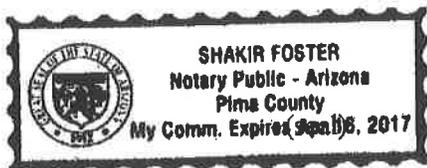


EXHIBIT C

IN THE
ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

In re:

MUR14-007

SUPPLEMENTAL DECLARATION OF LAWRENCE McCARTHY

I, Lawrence McCarthy, declare as follows:

1. I provide this supplemental declaration in response to the July 1, 2014 letter submitted to the Arizona Clean Elections Commission by the Scott Smith campaign and its attorney, which I have reviewed. The contents herein are based on my personal knowledge.

2. I am president of McCarthy Hennings Whalen, Inc. ("MHW").

3. Neither I nor, to the best of my knowledge, anyone associated with MHW have provided any information to any person associated with Legacy Foundation Action Fund ("LFAF"), including any known agents of LFAF, relating to the Ducey 2014 campaign in any manner whatsoever.

4. Neither I nor, to the best of my knowledge, anyone associated with MHW have ever had any communication with any person from LFAF, including any known agents of LFAF, relating to Ducey 2014 in any manner whatsoever.

5. I have never acted as an agent on behalf of Ducey 2014 in any manner with respect to LFAF.

I declare under penalty of perjury that the foregoing is true and correct.

Dated August 14, 2014

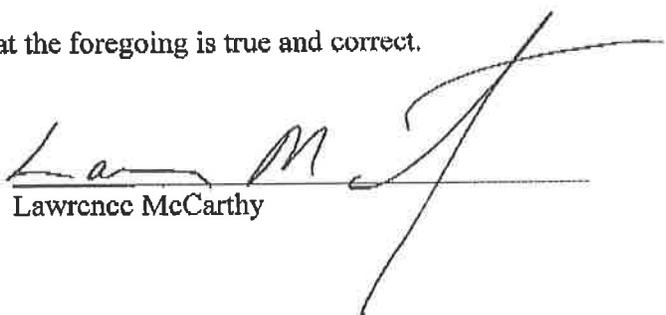

Lawrence McCarthy

EXHIBIT D

IN THE
ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

In re:

MUR14-007

SUPPLEMENTAL DECLARATION OF JACK PADOVANO

I, Jack Padovano, declare as follows:

1. I provide this supplemental declaration in response to the July 1, 2014 letter submitted to the Arizona Clean Elections Commission by the Scott Smith campaign and its attorney, which I have reviewed. The contents herein are based on my personal knowledge.

2. I am President of Direct Response, LLC ("DR"). The letter refers to my company as "Direct Response Group, LLC." The company changed its name to DR in January 1, 2009.

3. Neither I nor, to the best of my knowledge, anyone associated with DR have provided any information to or had any communication with any person associated with Legacy Foundation Action Fund ("LFAF"), or any of its known agents, relating to the Ducey 2014 campaign in any manner whatsoever.

4. Neither I nor, to the best of my knowledge, anyone associated with DR has had any communication with any person from LFAF, including any known agents of LFAF, relating to the Ducey 2014 campaign in any manner whatsoever.

5. I have never acted as an agent on behalf of Ducey 2014 in any manner with respect to LFAF.

I declare under penalty of perjury that the foregoing is true and correct.

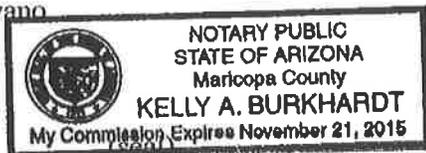
Dated August 12, 2014

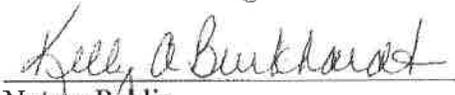


Jack Padovano

State of Arizona)
)
County of Maricopa)

Subscribed and sworn (or affirmed) before me this 12th day of August, 2014 by Jack Padovano





Notary Public

EXHIBIT E

IN THE
ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

In re:

MUR14-007

SUPPLEMENTAL DECLARATION OF JONATHAN P. TWIST

I, Jonathan P. Twist, declare as follows:

1. I provide this declaration in response to the July 1, 2014 letter submitted to the Arizona Clean Elections Commission by the Scott Smith campaign and its attorney, which I have reviewed. The contents herein are based on my personal knowledge.

2. I am the campaign manager for Ducey 2014.

3. To the best of my knowledge, nobody associated with Ducey 2014 has provided any information to any person associated with LFAF, or any known agents of LFAF, relating the Ducey 2014 campaign in any manner whatsoever.

4. To the best of my knowledge, nobody associated with Ducey 2014 has had any communication with any person from LFAF, including any known agents of LFAF, relating to the Ducey 2014 campaign in any manner whatsoever.

I declare under penalty of perjury that the foregoing is true and correct.

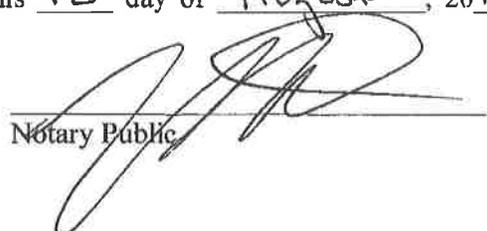
Dated August 12, 2014


Jonathan P. Twist

State of Arizona)

County of Maricopa)

Subscribed and sworn (or affirmed) before me this 12th day of August, 2014 by
Jonathan P. Twist.


Notary Public

