

Legacy Foundation Action Fund v. Citizens Clean Elections Commission

Citation: 408 P.3d 828 (Ariz. 2018).

Date Filed: January 25, 2018

Author: Justice Bolick

Joined by: Chief Justice Bales, Vice Chief Justice Pelander, Justices Brutinel, Timmer, and Gould, and Judge Espinosa.*

Facts: Nonprofit organization Legacy Foundation Action Fund (“Legacy”) paid for a television advertisement, which ran in March and April of 2014. The advertisement criticized then-Mesa Mayor Scott Smith, who had announced his candidacy for governor. The Citizens Clean Elections Commission (“Commission”) received a complaint that the advertisement violated the Citizens Clean Elections Act (“CCEA”).¹ The complaint claimed the advertisement constituted “express advocacy” against Smith’s gubernatorial bid, and that Legacy had not filed certain disclosure reports required by the CCEA.²

Procedural History: The Commission found probable cause of Legacy’s CCEA violation and assessed a civil penalty. Legacy asked for an administrative hearing. At the hearing, the administrative law judge (“ALJ”) determined that the advertisement did not violate the CCEA and thus, the Commission had no standing to assess the civil penalty. The Commission declined to follow the ALJ’s determination and entered a final administrative decision against Legacy. Legacy filed an appeal in superior court eighteen days after the final decision, claiming the Commission did not have jurisdiction because the advertisement did not violate the CCEA. The court dismissed Legacy’s appeal, finding that Legacy failed to file an appeal of the Commission’s final penalty decision within the fourteen days permitted by the CCEA.³ The court of appeals affirmed the dismissal.⁴ The Arizona Supreme Court granted review.

Issue: Under the CCEA, a party may file a direct appeal to the superior court within fourteen days of a penalty decision by the Commission. In its administrative appeal filed eighteen days after the penalty decision, Legacy challenges the Commission’s jurisdiction to assess the civil penalty. Is a challenge to the Commission’s jurisdiction a proper exception to the CCEA’s time limit?

Holding: No, there is no exception to the CCEA time limit if a party challenges the Commission’s jurisdiction.

Disposition: The superior court’s dismissal of Legacy’s direct appeal is confirmed.

* Justice Lopez IV recused himself.

¹ ARIZ. REV. STAT. ANN. §§ 16-940 to -961 (2017).

² Legacy Found. Action Fund v. Citizens Clean Elections Comm’n, 408 P.3d 828, 829 (Ariz. 2018).

³ *Id.* (citing § 16-957(B)).

⁴ *Id.*

Rule: Failure to file a direct appeal under the CCEA within the fourteen-day time period specified in the CCEA preempts the appellate court’s jurisdiction to consider the appeal, even if the appeal challenges the Commission’s jurisdiction.

Reasoning:

- **Appellate Court Jurisdiction:** The court first discussed jurisdiction to hear an appeal of an agency decision.⁵ The court noted that “[f]ailure to file a timely appeal from an agency decision deprives the court of jurisdiction to hear the appeal, including issues of agency decision.”⁶ Because such a time limit is jurisdictional, the court noted that it could not create jurisdiction where the legislature did not provide for such jurisdiction.⁷
- **Exceptions Under Rule 60:** Legacy argued that an exception to the time limit in the CCEA applied, because Legacy’s appeal challenged the Commission’s jurisdiction to assess the penalty.⁸ Legacy claimed that Rule 60 of the Arizona Rules of Civil Procedure allows an exception to time limits when challenging allegedly void judgements.⁹ The court did not analyze this exception because Legacy filed a direct appeal, which did not invoke a Rule 60 challenge to the Commission’s jurisdiction.¹⁰
- **Exceptions Under A.R.S. § 12-902(B):** Legacy argued that § 12-902(B) created an exception claiming it permits otherwise untimely appeals of agency decisions “for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.”¹¹ Legacy cited two appeals court decisions to support this argument. In *State ex rel. Dandoy v. City of Phoenix*, the court found that § 12-902(B) permitted any untimely challenge of an agency order if the agency lacked jurisdiction to issue that order.¹² In *Arkules v. Board of Adjustment*, the court found a statute of limitations did not apply to a direct appeal of an agency decision “to question the agency’s personal or subject matter jurisdiction.”¹³

The court looked to the language of § 12-902(B) to find no such exception exists.¹⁴ The statute states it does not apply “where a statute creating an agency prescribes its

⁵ *Id.* at 830.

⁶ *Id.* (citing *Smith v. Ariz. Citizens Clean Elections Comm’n*, 132 P.3d 1187, 1193 (Ariz. 2006)).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* (citing ARIZ. R. CIV. P. 60).

¹⁰ *Id.* at 832.

¹¹ *Id.* at 830 (citing § 12-902(B)).

¹² *Legacy Found. Action Fund*, 408 P.3d at 831 (citing *State ex rel. Dandoy v. City of Phoenix*, 651 P.2d 862, 864 (Ariz. Ct. App. 1982)).

¹³ *Id.* at 831 (citing *Arkules v. Bd. of Adjustment*, 728 P.2d 657, 659 (Ariz. Ct. App. 1986)).

¹⁴ *Id.* at 830–31.

own time limits for appeals.”¹⁵ The court also noted that § 12-902(B) explicitly limited appeal rights when a party appealed a final administrative decision.¹⁶ The court then “disavow[ed]” the language in the *Arkules* and *Dandoy* decisions that suggested a party had unlimited rights to appeal an administrative agency’s jurisdiction through a direct appeal.¹⁷

- **Legacy’s Direct Appeal:** The court distinguished between a party seeking relief from a void judgment and a party pursuing a direct appeal under a statute with an explicit time frame.¹⁸ The court referred to *Arizona Department of Economic Security v. Holland*,¹⁹ in which a party claimed an agency determination was void, and sought review outside a time limit outlined in the relevant statute.²⁰ In *Holland*, the court described the statute’s time limit as a “jurisdictional prerequisite to judicial review of an agency decision” rather than a statute of limitations subject to exceptions.²¹ The court applied the *Holland* distinction, noting that Legacy’s decision to file a direct appeal under CCEA meant the time limit acted as a jurisdictional prerequisite.²² Thus, the court concluded that Legacy’s untimely appeal meant the superior court thus lacked the jurisdiction to consider Legacy’s challenge to the Commission’s jurisdiction.²³ The court did not comment on “alternative procedural means” available to Legacy.²⁴

¹⁵ *Id.* at 831 (citing § 12-902(A)(1)).

¹⁶ *Id.*

¹⁷ *Legacy Found. Action Fund*, 408 P.3d at 831.

¹⁸ *Id.* at 832.

¹⁹ 586 P.2d 216 (Ariz. Ct. App. 1978).

²⁰ *Legacy Found. Action Fund*, 408 P.3d at 832 (citing *Ariz. Dep’t of Econ. Sec.*, 586 P.2d at 216).

²¹ *Id.* (citing *Ariz. Dep’t of Econ. Sec.*, 586 P.2d at 216).

²² *Id.*

²³ *Id.*

²⁴ *Id.*