



June 24, 2024

BY EMAIL

Arizona Citizens Clean Elections Commission
1110 W. Washington St., Suite 250
Phoenix, AZ 85007
Email: ccec@azcleaselections.gov

Re: Advisory Opinion Request

Dear Commissioners:

Pursuant to Ariz. Admin. Code R2-20-808 adopted by the Arizona Citizens Clean Elections Commission (“*Commission*”), we seek an advisory opinion on behalf of Forward Majority Action (“*FMA*”). FMA seeks clarification on the proper disclaimer requirements for public communications by covered persons under the Voters’ Right to Know Act (“*VRKA*”).

I. Background

FMA is an independent expenditure-only committee that is registered with the Federal Election Commission¹ and Internal Revenue Service.² FMA does not make contributions to any candidates or political party committees.

FMA anticipates that it will either sponsor paid communications that qualify as “campaign media spending” or that it will contribute to covered persons that finance “campaign media spending.” Regardless of which option it chooses, FMA must be able to tell its donors whether they will appear on the disclaimer for these paid communications.

Because we are within 60 days of the Arizona statewide primary election, which occurs on July 30, 2024, and because FMA may sponsor or fund communications that qualify as “campaign media spending” in advance of that election, it is seeking an answer within 20 calendar days.³

¹ FEC, Statement of Organization, Forward Majority Action (Jan. 9, 2024), <https://docquery.fec.gov/pdf/588/202401099599996588/202401099599996588.pdf>.

² IRS, Form 8872 – Forward Majority Action 527 (Apr. 10, 2024), <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=146364&formType=e8872>.

³ Ariz. Admin. Code R2-20-808(C)(2).

II. Relevant Legal Provisions

The VRKA directs that the Commission “establish disclaimer requirements for public communications by covered persons” and that “[p]ublic communications by covered persons shall state, at a minimum, the names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person.”⁴

Via rulemaking, the Commission prescribed that “[p]ublic communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies in excess of \$5,000 for the election cycle and who have not opted out....”⁵

III. Discussion

FMA provides several examples below and asks what the resulting disclaimer should be. At bottom, however, FMA is posing these legal questions:

- May the three names on the disclaimer include donors that “acted as an intermediary and that transferred ... traceable monies ... from original sources,”⁶ or must those three names only be the “original sources” of the “original monies”?
- If the three names *may* include intermediaries:
 - Are contributions from an intermediary to a covered person attributed solely to the intermediary (for aggregation purposes) or to both the intermediary and the original source?
 - Are secondary intermediaries (e.g. donors to covered persons who receive transfers from other intermediaries) treated differently than primary intermediaries (e.g. those who receive funds from original sources and transfer those funds to other intermediaries) for these purposes?
- For these purposes, are political action committees established by business entities or labor unions treated differently than political action committees established by other persons?

FMA posits the following scenario to better understand how it can properly comply with the VRKA’s disclaimer requirements. The relevant persons:

⁴ Ariz. Rev. Stat. Ann. § 16-974(C).

⁵ Ariz. Admin. Code R2-20-805(B).

⁶ Ariz. Rev. Stat. Ann. § 16-973(A)(7).

- A **Covered Person** that sponsors independent expenditures in connection with legislative races.
- Four individual donors who contribute their own “personal monies” – **Individual 1, Individual 2, Individual 3, and Individual 4.**
- Three PACs *not* established by a union or business entity – **PAC 1, PAC 2, and PAC 3.** None of these PACs are a covered person.
- One PAC established by a union – **Labor PAC.** Labor PAC is not a covered person and receives voluntary political contributions from the personal monies of individual union members. None of these contributions exceeds \$5,000 per election cycle per member.

FMA posits the following scenarios and asks which three names should be included on the Covered Person’s disclaimer under Ariz. Admin. Code R2-20-805(B). For these purposes, the Commission should assume that all contributions are “traceable monies,” and no donor has opted-out of having their funds used for campaign media spending.

Scenario #1

- Individual 1 contributes \$125,000 to Covered Person.
- Individual 2 contributes \$100,000 to Covered Person.
- Individual 3 contributes \$50,000 to PAC 1, \$25,000 to PAC 2, and \$75,000 to PAC 3
- Individual 4 contributes \$500,000 to PAC 1.
- PAC 1 transfers \$550,000 to Covered Person, and attributes \$50,000 to Individual 3 and \$500,000 to Individual 4 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- PAC 2 transfers \$25,000 to Covered Person, and attributes all \$25,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- PAC 3 transfers \$75,000 to Covered Person, and attributes all \$75,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.

Under Scenario #1, which three names should appear on the disclaimer prescribed by R2-20-805(B)?

Scenario #2

- Individual 1 contributes \$125,000 to Covered Person.
- Individual 2 contributes \$100,000 to Covered Person.
- Individual 3 contributes \$50,000 to PAC 1, \$25,000 to PAC 2, and \$75,000 to PAC 3
- Individual 4 contributes \$500,000 to PAC 1.
- PAC 1 transfers \$50,000 to Covered Person – and attributes it to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972; *and*
- PAC 1 transfers \$500,000 to PAC 2, which PAC 2 then transfers to Covered Person. PAC 2 attributes the \$500,000 to Individual 4 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972, and identifies PAC 1 as the intermediary that previously transferred the \$500,000.
- PAC 2 transfers \$25,000 to Covered Person, and attributes all \$25,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- PAC 3 transfers \$75,000 to Covered Person, and attributes all \$75,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.

Under Scenario #2, which three names should appear on the disclaimer prescribed by R2-20-805(B)?

Scenario #3

- Individual 1 contributes \$125,000 to Covered Person.
- Individual 2 contributes \$100,000 to Covered Person.
- Individual 3 contributes \$50,000 to PAC 1, \$25,000 to PAC 2, and \$75,000 to PAC 3
- Individual 4 contributes \$500,000 to PAC 1.
- PAC 1 transfers \$550,000 to Covered Person, and attributes \$50,000 to Individual 3 and \$500,000 to Individual 4 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- PAC 2 transfers \$25,000 to Covered Person, and attributes all \$25,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.

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- PAC 3 transfers \$75,000 to Covered Person, and attributes all \$75,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- Labor PAC contributes \$750,000 to Covered Person.

Under Scenario #3, which three names should appear on the disclaimer prescribed by R2-20-805(B)?

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon S. Berkon".

Jonathan S. Berkon
Elizabeth Poston
Emma R. Anspach
Counsel to Forward Majority Action