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Phoenix, Arizona 85004

July 3, 2024

*Via Email*

Arizona Citizens Clean Elections Commission  
c/o Thomas Collins, Executive Director  
1110 West Washington Street  
Phoenix, Arizona 85007

RE: Request for Advisory Opinion

Dear Commissioners:

Pursuant to A.A.C. R2-20-808, Solutions for Arizona PAC (“Solutions”) and Greater Phoenix Leadership, Inc. (“GPL”) seek an advisory opinion from the Arizona Citizens Clean Elections Commission regarding Solutions’ proposed activities. Solutions intends to engage in activity that it assumes for the purposes of this request will constitute campaign media spending under the Voters’ Right to Know Act (the “Act”) and seeks this advisory opinion in order to clarify the Act’s advertisement disclaimer requirements. *See* A.R.S. § 16-974(C); R2-20-805. GPL, in turn, seeks clarification as to whether it will appear on such a disclaimer.

Further, Solutions and GPL request an expedited advisory opinion from the Commission within 20 calendar days under R2-20-808(C)(2) because it submits this request within 60 calendar days of the Arizona primary on July 30, 2024. Solutions intends to place various advertisements, in the form of street signs and digital advertisements, in Maricopa County to influence multiple county and state legislative races. Accordingly, time is of the essence for Solutions to have clarity as to its activity.

## **I. Background**

### **A. Solutions for Arizona PAC and its donors**

Solutions for Arizona is an Arizona political action committee. Solutions accepts corporate contributions and engages in non-contribution activity, including but not limited to the independent production and distribution of advertisements in

support of state and local candidates. During the 2022–2024 election cycle, Solutions’ largest source of contributions is the Committee for Arizona Leadership (“CAL”). In turn, CAL’s largest source of contributions is GPL.<sup>1</sup> GPL is a nonprofit incorporated under the laws of Arizona. It is organized and operated as a 501(c)(6) membership organization, with local business owners who pay annual membership dues.<sup>2</sup>

**B. Solutions’ proposed campaign media spending**

Solutions intends to create and distribute street signs and digital advertisements in support of certain candidates seeking county or legislative office. For the purposes of this request, we assume that Solutions will spend more than \$25,000 on these efforts during the current election cycle, and that the ads will constitute “public communications” that satisfy the definition of “campaign media spending” under A.R.S. § 16-971(2)(i), (ii), or (iii).

To create and distribute these ads, Solutions intends to use funds contributed by CAL during the current election cycle. CAL has indicated that the funds it contributed to Solutions all came from GPL. GPL contributed more than \$5,000 to CAL and did not opt out of the use of its funds for campaign media spending. Of the money GPL contributed to CAL, no GPL subdonor (which for the purposes of this request should be assumed to be “original source” or “sources of original monies”) contributed more than \$5,000.

Because none of the contributions from original sources to GPL exceed \$5,000, none should appear on the disclaimer. *See* R2-20-805(C). Solutions has one other direct donor (“Third Donor”) who has contributed over \$5,000, but that donor does not have any subdonors or original sources who have given over \$5,000. Accordingly, Solutions intended to list CAL, GPL, and Third Donor in its ad disclaimer as its “top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle.”

**II. Questions Presented**

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<sup>1</sup> CAL is a nonconnected committee—that is, it has no corporate sponsor and is accordingly not registered as a separate segregated fund.

<sup>2</sup> For the purposes of this request, we assume that GPL members pay more than \$5,000 total annually in dues, thus preventing their funds from constituting GPL’s “business income” under A.R.S. §16-971(1)(b).

Does A.R.S. §16-974(C) or R2-20-805 require Solutions to list *only* sources of original monies on its ad disclaimer?

### III. Proposed Answers

No. The Act does not require Solutions to list *only* original sources of money—assuming an ultimate, intermediary donor to Solutions is among its top three contributors during an election cycle, an ultimate, intermediary donor should be listed.

### IV. Analysis

The Act requires public communications from covered persons to include a disclaimer that lists “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.” A.R.S. § 16-974(C). Only donors who have made contributions “in excess of \$5,000 for the election cycle” appear on the disclaimer. R2-20-805(C).

Accordingly, in this instance where no entity donor has any subdonors in excess of \$5,000, depending on the Commission’s interpretation of the disclaimer requirement, Solutions’ ads will either identify its top three entity donors (CAL, GPL, and Third Donor) or *no one*. Because the latter seems to create an absurd interpretation of the Act, Solutions seeks clarity in order to ensure its compliance.

Requiring “*donors* who directly or indirectly made . . . contributions of *original monies*” to appear on the disclaimer is not the same as requiring only *original sources*. A direct donor who received money from elsewhere and then contributed it to a covered person may still contribute original monies, despite not being the original source of such funds.

The Act itself makes clear that “donors,” “original sources,” and “original monies” are distinct concepts. The statutory disclaimer requirement directs covered persons to list the “top three donors” in the disclaimer. Using “donors” here is broader than “original source,” which is notably used elsewhere in the Act. *See* A.R.S. § 16-973(A)(7) (requiring covered persons to disclose “[t]he identity of each person that acted as an intermediary and that transferred, in whole or in part, traceable monies of more than \$5,000 from *original sources* to the covered person . . . .” (emphasis added)); A.R.S. § 16-973(G) (“This section does not require public disclosure of or a disclaimer regarding the identity of *an original source* that contributes, directly or through intermediaries, \$5,000 or less in monies or in-kind contributions during an election cycle to a covered person for campaign media spending.” (emphasis added)).

Section 16-974(C) requiring “donors” on the disclaimer as opposed to “original source” indicates the broader reading applies here. *See Egan v. Fridlund-Horne*, 221 Ariz. 229, 239 ¶ 37 (App. 2009) (courts “presume that when the legislature uses different wording within a statutory scheme, it intends to give a different meaning and consequence to that language.” (citation omitted)). Indeed, the Act refers to “sources” and “intermediaries” as distinct, *see* A.R.S. § 16-973(D), but -974(C) does not discriminate between the two and requires “donors,” whether they be original sources or intermediaries between an original source and the covered person. An intermediary donor, therefore, is a “donor” subject to the Act’s disclaimer requirement.

The Act’s text and structure further supports this interpretation. To start, the Act makes clear that original monies do not lose their nature as original monies simply because they have left the hands of the original source. Accordingly, an intermediary donor can be a “top . . . donor[] who directly or indirectly made the three largest contributions of original monies” under A.R.S. § 16-974(C).

Under A.R.S. § 16-971(19) a “transfer record” is “a written record of the identity of each person that directly or indirectly contributed or *transferred more than \$2,500 of original monies* used for campaign media spending, the amount of each contribution or transfer and the person to whom those monies were transferred.” (Emphasis Added.) Because original monies can be *transferred* from person to person, they do not lose their nature of being “original monies” simply because they have left the possession of the original source.<sup>3</sup> Otherwise, the moment the original source donated the original monies to some other entity, they would cease to be “original monies” and *no* monies would appear on the transfer record. Instead, the transfer record requirement contemplates “original monies” changing hands, meaning a top donor that was the last in the transfer chain to the covered person may still make a contribution of “original monies” and thus be a “top . . . donor” listed in the disclaimer.

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<sup>3</sup> Based on the definitions of “original monies” and “traceable monies,” funds remain “original” until such time when they are contributed to the covered person and then become “traceable monies.” Section 16-971(18) defines “traceable monies” as those that “that have been given, loaned or promised to be given to a covered person and for which no donor has opted out of their use or transfer for campaign media spending . . . .” These can only be funds at the end stage of their 211 journey—those that have already been given to a covered person for opt out or use in campaign media spending. Before that, funds aren’t yet traceable monies, and must remain “original monies” even as they pass through the hands of intermediaries.

Further, the disclaimer rule speaks only to “contributions.” which are defined broadly to include any “money, donation, gift, loan or advance or other thing of value” A.R.S. § 16-971(6). The use of the term “contributions” indicates that money at any stage may qualify as a top contribution for purposes of the disclaimer, even if an “intermediary” makes a contribution to a covered person.

Beyond the Act’s text, requiring *only* original sources on the disclaimer would undermine the Act’s purpose and intent. If the Act required only original sources, then Solutions’ disclaimer for its planned public communications would list no sources because no original source exceeds \$5,000. Interpreting the Act’s disclaimer requirement to mandate the top three donors, whether they be direct donors, intermediary subdonors, or original sources, ensures *some* donors are always publicly listed rather than create the potential no one is listed.

Solutions has considered that interpreting “top three donors” in § 16-974(C) to include intermediary donors result in accounting twice (or even three times) for the same funds in the disclaimer because the donors listed on the disclaimer could have at separate times, possessed the same dollars as they eventually made their way to the covered person. But even in that scenario, the disclaimer promotes transparency because it would capture the full line of who touched the money and provide more disclosure, rather than less, for the voters.

In another telling example, interpreting the disclaimer to require only original sources would help to shield the conduct of intermediary groups. If a wealthy but unrecognizable individual donor gave to a well-known but politically controversial nonprofit, who then gave to another politically controversial nonprofit, who then gave to a covered person who ultimately spends the funds, voters would have no idea the spending really came from these politically controversial groups because the disclaimer would *only* list the unknown wealthy donor. Voters seeing the public communication would not know to associate the communication with the more salient identity of the intermediary. Solutions’ proposed construction of A.R.S. § 16-974(C) and R2-20-805, on the other hand, would require, in this example, to state “funding provided by Nonprofit Group 1, Nonprofit Group 2, and Unrecognizable Wealthy Donor.” This disclaimer is far more informative to voters than just “funding provided by Unrecognizable Wealthy Donor.”

## **V. Conclusion**

In an effort to comply with the Act’s disclaimer requirements and avoid an interpretation that may create absurd results, Solutions and GPL seek guidance as to whether A.R.S. § 16-974(C) and R2-20-805 contemplate not just *original sources* in

the Act's disclaimer requirements but any donor (original or intermediary) among the "top three donors who directly or indirectly made the three largest contributions of original monies" to the covered person.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roy Herrera", with a stylized flourish at the end.

Roy Herrera  
Jillian L. Andrews  
Austin T. Marshall