State of Arizona
Citizens Clean Elections Commission

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July 25, 2024
Advisory Opinion 2024-06

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Re: Advisory Opinion Request of Forward Majority Action
Advisory Opinion Request of Solutions for Arizona PAC and Greater Phoenix Leadership, Inc.

Dear Mr. Berkon and Mr. Herrera:

We are responding to your advisory opinion requests ("AOR") on behalf of Forward Majority Action (FMA) and Solutions for Arizona PAC and Greater Phoenix Leadership, Inc, (SFA-GPL) respectively. The requests in effect ask the Commission how a covered person should identify the "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" that must be stated on public communications under A.R.S. § 16-974(C).[1]

[1] The organizations requested expedited opinions under Ariz. Admin. Code § R2-20-808(C).

Question Presented

How should a covered person identify 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" for purposes of the disclaimer required on public communications?

Summary answer

A covered person should include the names of the top three original donors of monies. The names should be those of the persons whose business income or, in the case of an individual, their personal monies, that make up "the three largest contributions of original monies during the election cycle to the covered person."

Background

The facts presented in this advisory opinion are based on your AORs received June 24, 2024 and July 3, 2024 and publicly available information.

Forward Majority Action is a federal political committee. FMA AOR at 1. The organization "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.'" *Id.* at 1; *see also* A.R.S. § 16-971(2)(defining campaign media spending). It identifies several scenarios where a disclaimer is necessary under A.R.S. § 16-974(C) and requests the Commission explain how that determination should be made. Those scenarios and a proposed analysis are outlined below.

Solutions for Arizona is a political action committee that intends to engage in public communications that require a disclaimer. SFA-GPL AOR a 2. It intends to use monies from the Committee for Arizona Leadership, which is an intermediary between Solutions and Greater Phoenix Leadership, "a nonprofit incorporated under the laws of Arizona . . . organized and operated as a 501(c)(6) membership organization, with local business owners who pay annual membership dues." *Id*. None of the sources of monies to GPL have given over $5,000. *Id*. Consequently, none of those names would be disclosed under the VRKA and related rules. *Id.* This scenario is also analyzed below.

Legal Background

Section 16-974 directs the Commission "to establish disclaimer requirements for public communications by covered persons." The statute states that "Public 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."

Contribution under the Act means "means money, donation, gift, loan or advance or other thing of value, including goods and services." A.R.S. § 16-971(6). "'Original monies' means business income or an individual's personal monies." A.R.S. § 16-971(12). Donor is not defined under the Act. Commonly "donor" means "one that gives, donates, or presents something." https://www.merriam-webster.com/dictionary/donor (last checked July 16, 2024). Consequently, A.R.S. § 16-974(C) provides that covered persons must include at a minimum the names of the person who gave the covered person directly or indirectly business income or personal monies.

The Commission's rule reflects this, reiterating 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" but applying that requirement to those contributions "in excess of $5,000 for the election cycle and who have not opted out pursuant to A.R.S. § 16-972 or a rule of the Commission during the election cycle to the covered person." Ariz. Admin. Code R2-20-805(B). The rule also provides that this determination shall be made "as calculated by the covered person at the time the advertisement was distributed for publication, display, delivery, or broadcast." *Id*.

The upshot of the question presented is whether or not the phrase directly or indirectly should be read to include only the contributions by a person who earned the business income or an individual's personal monies or to include both that person and an intermediary or pass-through organization.

The illustration below simplifies the problem by assuming the law only required identifying a single top donor:

Bob Ballpark has $20,000 he saved from his salary over the years. He gives $10,000 to the covered person Arizona Spending Committee and he gives $10,000 to Good Stuff Action. Good Stuff Action gives $10,000 to the Arizona Spending Committee.

Bob has given $10,000 to Arizona Spending Committee directly and has given $10,000 to Arizona Spending Committee indirectly. Therefore, Bob would be the identified source as the person who has given $20,000 directly or indirectly.

Bob and Good Stuff Action have each given Bob's money to Arizona Spending Committee. Nominally, they have each given the same amount: $10,000, even if all of that money comes from Bob. Which should be identified as the top donor? The answer to this question is that Bob must be identified as the top donor who has directly or indirectly made contributions of original monies to ASC under the terms of A.R.S. § 16-974(C). Good Stuff Action is an intermediary.

Figure 1

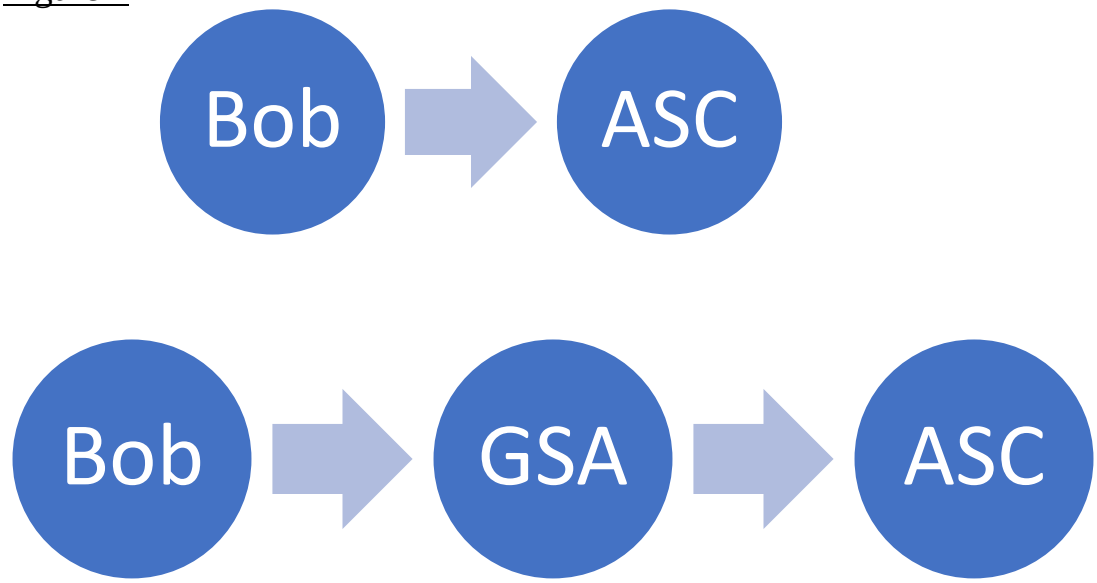
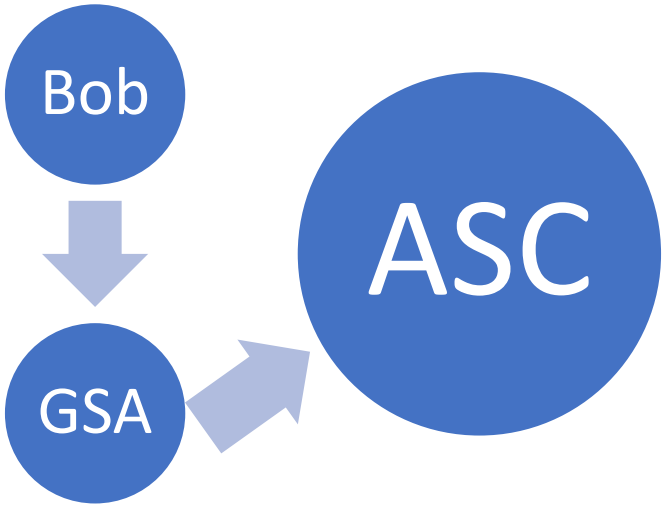


Figure 2



Legal analysis

The best reading A.R.S. § 16-974(C) is that the disclosure reaches the original source of donations over thresholds of the VRKA even if that leaves intermediaries undisclosed on public communications.

First, this reading is consistent with the reporting requirements provided for under the Act. Section 16-973(A) provides that covered persons must identify "each donor of original monies who contributed, directly or indirectly, more than $5,000 of traceable monies or in-kind contributions for campaign media spending during the election cycle to the covered person and the date and amount of each of the donor's contributions." A.R.S. 16-973(A)(6). The covered person must separately provide the "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 and the date, amount and source, both original and intermediate, of the transferred monies." A.R.S. § 16-973(A)(7). Here, the terms donor and original monies should be read consistently between the reports required by the act and the disclaimers required by the act. *Wyatt v. Wehmueller*, 167 Ariz. 281, 284 (1991) ("A court also should interpret two sections of the same statute consistently, especially when they use identical language.").

Second, "[w]ords and phrases shall be construed according to the common and approved use of the language," while "[t]echnical words and phrases and those which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning. A.R.S. § 1-213. Arizona statutes are replete with use of the phrase "directly or indirectly." In Arizona statute these terms are not separately defined, typically. *See, e.g.*, A.R.S. 42-5001(1) ("'Business' includes all activities or acts, personal or corporate, that are engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly. . . .").

The phrase "directly or indirectly" is often used to prevent evasion of some legal requirement, such as preventing the use of intermediaries to subvert the requirement. *E.g.*, A.R.S. § 38-505(A)("No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee."), *see also* Ariz. Att'y Gen. Op. I24-004 at 6, *available at* www.azag.gov/sites/default/files/2024-02/I24-004.pdf. ("[B]oard members are not prohibited from gathering information independently outside of a public meeting, nor are they prohibited from discussing matters with another board member so long as the discussion does not directly or indirectly involve a quorum

of board members."). Here, the alternative reading would allow covered persons to obscure the donors of original sources by identifying intermediaries. Applying "directly or indirectly" to limit identification of the person who provided the original monies would be contrary to the "appropriate meaning" of the phrase.

Third, an alternative reading would lead to absurd results. *State v. Medrano-Barraza*, 190 Ariz. 472,474 (App. 1997). ("We presume the framers of the statute did not intend an absurd result and our construction must avoid such a consequence."). Under this reading, the covered person would be left to choose among original sources and intermediaries in calculating the top three donors identified in the disclaimer. A covered person could identify an intermediary and its original donor as top three donors thus double counting the original source's donation in determining the top three donors identified.

Finally, this reading of the statute does not itself lead to absurd results in view of the express purpose of the law. *Calik v. Kongable*, 195 Ariz. 496, 501, 990 P.2d 1055, 1061 ¶ 20 (1999) ("Courts should avoid hypertechnical constructions that frustrate legislative intent."). The purpose and intent clause the voters approved states: "This act establishes that the People of Arizona have the right to know the original source of all major contributions used to pay, in whole or part, for campaign media spending." Proposition 211, § 2(A) (Ariz. Sec. of State, Arizona 2022 General Election Publicity Pamphlet 227 (2022), *available at* https://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_englis h_web_version.pdf. Thus, this analysis properly results in a disclaimer that highlights the original source of monies.[2]

[2] "Public communications by covered persons shall state, *at a minimum*, the names of the top three donors . . . ." A.R.S. § 16-974(C)(emphasis added).

Application

Having established how a covered person should determine the minimum statutory requirements for a VRKA disclaimer, this Advisory Opinion turns to the examples proposed by the requestors.

Scenario #1

Donations and transfers

• 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,

$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. § 16972.

• 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

Original monies

Individual 1:	$125,000
Individual 2:	$100,000
Individual 3:	PAC 1: $50,000
	PAC 2: $25,000
	PAC 3: $75,000
	Total: $150,000

Individual 4: $500,000

Only the individuals have given more than $5,000 of original monies directly or indirectly to the covered person. Consequently “at a minimum” the covered person must include the names of Individuals 1, 3 and 4 on its disclaimer.

Scenario #2

Donations and transfers

• 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,

$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.

Original monies

Individual 1: $125,000

Individual 2: $100,000

Individual 3: PAC 1: $50,000

PAC 2: $25,000

PAC 3: $75,000

Total: $150,000

Individual 4: PAC 1: PAC 2: $500,000

Again, only the individuals have given more than $5,000 of original monies directly or indirectly to the covered person. Consequently, “at a minimum” the covered person must include the names of Individuals 1, 3 and 4 on its disclaimer.

Scenario #3

Donations and transfers

• 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.

• Labor PAC (no donors of greater than 5,000) contributes $750,000 to Covered Person.

Original monies

Individual 1:	$125,000
Individual 2:	$100,000
Individual 3:	PAC 1: $50,000
	PAC 2: $25,000
	PAC 3: $75,000
	Total: $150,000
Individual 4:	PAC 1: PAC 2: $500,000
Labor PAC:	No donors of greater than $5,000

The individuals have given more than $5,000 of original monies directly or indirectly to the covered person. Labor PAC does not have any donors greater than $5,000, so its donors of original monies will not be included.

Consequently, “at a minimum” the covered person must include the names of Individuals 1, 3 and 4 on its disclaimer.

Scenario #4:

Donations and transfers

- GPL (no donors over $5,000 to disclose) donors to CAL
- CAL donates to SFA
- Third Group (no donors over $5,000) donates to SFA directly.

Original monies

GPL:	No donors of greater than $5,000
CAL:	Intermediary
Third Group:	No donors of greater $5,000

None of the organizations have donors of greater than $5,000. Consequently, the minimum threshold for A.R.S. § 16-974(C) is not met.

Conclusion

A Commission advisory opinion "may be relied upon by any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered, and any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered." Ariz. Admin. Code R2-20-808(C)(3). A "person who relies upon an advisory opinion and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act, be subject to any sanction provided in Chapter 6.1 of Title 16." *Id*. at (C)(4). Advisory opinions may be affected by later events, including changes in law.

Sincerely,

Mark Kimble
Chair

250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

ELIAS LAW GROUP

June 24, 2024

BY EMAIL

Arizona Citizens Clean Elections Commission
1110 W. Washington St., Suite 250
Phoenix, AZ 85007
Email: ccec@azcleanelections.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 Commission[1] 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]

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[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:

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[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.

- 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,

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

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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.[1] 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.[2]

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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[1] CAL is a nonconnected committee—that is, it has no corporate sponsor and is accordingly not registered as a separate segregated fund.

[2] 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.[3] 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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[3] 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,

Roy Herrera
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July 3, 2024

Via Email

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

RE: Comment on Request for Advisory Opinion from Forward Majority Action

Dear Commissioners:

Opportunity Arizona submits this public comment pursuant to A.A.C. R2-20-808(B) and in response to the request for an advisory opinion submitted by Forward Majority Action ("FMA") on June 24, 2024 (the "Request"). The Request seeks clarification as to the disclaimer the Voters' Right to Know Act ("the Act") requires on public communications.

In the Request, FMA advanced several hypothetical scenarios and asked the Commission what should appear on the disclaimer for each. Opportunity Arizona requests that, for any of the scenarios FMA advances, the Commission construe A.R.S. § 16-974(C) and R2-20-805 to mean that the Act's disclaimer does not require covered persons to list *only* original sources.

Requiring *only* original sources on the disclaimer would undermine the Act's purpose and intent. If the Act required *only* original sources to the exclusion of intermediary donors, then covered persons could evade putting key information on disclaimers as there is a chance no sources would be listed. For example, if an entity exclusively collected small-dollar contributions of $5,000 or less, and then gave those funds to a covered person, the covered person would have no one to list. The intermediary aggregating entity that seeks to influence Arizona elections would never be associated to the public on the disclaimer.

Interpreting the Act's disclaimer requirement to instead mandate the listing of the top three donors, regardless of 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.

Similarly, interpreting the disclaimer to require only original sources would help to shield the conduct of intermediary groups. If a wealthy but unrecognizable individual donor named Bob Smith gave to a well-known but politically controversial nonprofit ("Nonprofit Group 1"), who then gave to another politically controversial nonprofit ("Nonprofit Group 2"), who then gave to a covered person who ultimately spent the funds, voters would have no idea the spending really came from these politically controversial groups because the disclaimer would *only* list Bob Smith. The alternative 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 Bob Smith." This disclaimer is far more informative to voters than just "funding provided by Bob Smith."

However the Commission chooses to analyze the Request's hypothetical scenarios, it should not construe A.R.S. § 16-974(C) and R2-20-805 to require *only* original sources in the public communications disclaimer. Intermediary donors, if they are among a covered person's top three donors of the three largest contributions or original monies to the covered person, can and should be required to be listed on the disclaimer.

Sincerely,

Roy Herrera
Jillian L. Andrews
Austin T. Marshall

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VIA EMAIL

TIME SENSITIVE

July 24, 2024

Arizona Citizens Clean Elections Commission
c/o Thomas M. Collins, Executive Director
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Phoenix, Arizona 85007
Thomas.collins@azcleanelections.gov

Re: Public Comment on Draft Advisory Opinion 2024-06

Dear Commissioners:

Pursuant to A.A.C. § R2-20-808(4), Arizona Senate Victory Fund ("ASVF"), an Arizona political action committee opposes adoption of the Draft Advisory Opinion 2024-06 ("DAO 2024-06") as contrary to the plain language of the statute, unworkable, and simply absurd. Submission past the ten-day window is appropriate given the developments disclosed in the DAO 2024-06, circulated to the public on July 22, 2024.

To begin, ASVF has serious concerns regarding the constitutionality of Prop 211 and the Commission's implementing rules, as articulated in various pending lawsuits including *Americans for Prosperity et al. v. Meyer, et al.*, *Center for Arizona Policy et al. v. Arizona Secretary of State,* and *Toma et al. v. Fontes et al.* This public comment is, in no way, a concession regarding the legality of Prop 211 or the Commission's rules validity, including the ability of the Commission to issue advisory opinions, and ASVF preserves all rights related to the same.

Notwithstanding this reservation, the Commission's DAO 2024-06 presents grave concerns regarding the interpretation of the law and notions of fair notice.

On the merits, DAO 2024-06 is simply wrong. Prop 211 requires covered persons to list "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) (emphasis added). The plain and natural reading of this provision requires a covered person to disclose both direct *and indirect* contributions of original monies. By definition, individuals and organizations can contribute original monies directly. A.R.S. § 16-971(1) (defining business income); (12) (defining original monies); (14) (defining personal monies). If original monies are given to a PAC or other organization, those entities can contribute original monies indirectly.

Had Prop 211 wanted to require covered persons to list only original sources (an undefined term) of original monies, it could have said so directly. For example, it could have required the disclosure of the "top three sources of original monies, directly or indirectly contributed to the covered person." But, it did not. Rather, Prop 211 attributes the direct or indirect modifiers to the full phrase "contributions of original monies" which in context, means the contributions received by the covered person. For these reasons, and for those articulated in Greater Phoenix Leadership, Inc. and Solutions for Arizona PAC's request for advisory opinion, DAO 2024-06 is not supported by Prop 211's text.

In addition, DAO 2024-06's interpretation conflicts with the purposes of Prop 211 and notions of fair notice. For instance, the proposed interpretation will result in less disclosure than pre-Prop 211 requirements. Before Prop 211, a PAC would be required to list its top three PAC donors over $20,000 on all advertisements or fundraising solicitations. *See* A.R.S. § 16-925(A)(B)(1). However, under DAO 2024-06, the same PAC, if it is a covered person, could be listing zero donors. This is illustrated by DAO 2024-06's "Scenario #4" with a few facts changed. Imagine GPL, CAL, and the "Third Group" are all PACs and contribute more than $20,000 to SFA, and each contributing PAC has no donors greater than $5,000. If SFA is not a covered person, it is required to list GPL, CAL, and the Third Group as its top three donors. If SFA is a covered person, then it is not required to list ***any*** donors in its top three. This is non-sensical.

Moreover, because AO 2024-02 advises that donors that are not covered persons have no obligation to "provide the opt out to their own donors before a covered person may use or transfer a donor's money for campaign media spending," DAO 2024-06's interpretation may require covered persons to list an individual or organization as a "top donor" who has no idea that his money is used for this purpose. As a result, a donor could find out that he is a "top donor" of a PAC he has never heard about for the first time when watching an ad on television in his living room.

Finally, and perhaps most importantly, the Commission is considering DAO 2024-06 at its July 25, 2024, meeting—a mere five days before Arizona's primary election. This is when campaign media spending is arguably at its highest and disclosures are *already* printed on mailers and included in media spots. Even if the Commission believes it is "clarifying" Prop 211, most, if not all, covered persons did not previously read Prop 211's top three donor requirement in the same manner. At the very least, ASVF, Greater Phoenix Leadership, Solutions for Arizona, Forward Majority Action and Opportunity Arizona's correspondance to the Commission is evidence that the provision is subject to reasonable dispute. Under such circumstances, the Commission should resist the urge to change the rules on the eve of an election. *Cf. Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 434 (2020) ("This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the elections rules on the eve of an election.").

Adoption of DAO 2024-06 now—five days before the election—will cause substantial public confusion and disruption to covered persons' operations. Accordingly, ASVF respectfully requests that the Commission allow public comment *prior* to any consideration or vote on DAO 2024-06 and delay an implementation until *after* the 2024 election cycle.

Very truly yours,

Snell & Wilmer

Brett W. Johnson PC
Tracy A. Olson

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July 24, 2024

Citizens Clean Election Commission
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ccec@azcleanelections.gov
VIA EMAIL ONLY

Re: Comments on Draft Advisory Opinion 2024-06

Dear Director Collins:

On behalf of House Victory Fund, an Arizona political action committee, I respectfully submit the following comment in connection with the draft of Advisory Opinion 2024-6 that was circulated in advance of the Commission's July 25, 2024 meeting.

The draft opinion concludes that A.R.S. § 16-974(C), which generally requires covered persons to identify in the disclaimer affixed to their public communications their top three donors, "reaches the original source of donations over thresholds of the [Voters Right to Know Act] even if that leaves intermediaries undisclosed on public communications." For the reasons set forth in the request of Greater Phoenix Leadership and in the comment submitted by the Senate Victory Fund, we respectfully disagree with that conclusion.

But we also believe that the analysis errs in another crucial respect: it presupposes that every immediate donor to a covered person other than an "original source" is necessarily an "intermediary." That reasoning, however, is dissonant with the plain meaning of the word "intermediary," as well its connotation in the campaign finance realm. The primary definition of the term "intermediary" is "mediator, go-between." MERRIAM-WEBSTER ONLINE DICTIONARY. Thus, an "intermediary" between an original source donor and a covered person is an entity that facilitates a *coordinated* transfer of funds from the original source to the covered person. Consistent with this commonsense construction, the Federal Election Commission's regulations likewise define a "conduit or intermediary" as "any person who receives and forwards an earmarked contribution" from an original source to its ultimate recipient. *See* 11 C.F.R. § 110.6(b)(1). By contrast, if an immediate donor to a covered person makes a contribution to a covered person that consists of funds over which the immediate donor has complete legal custody and control, and the contribution is made without an earmark, designation or instruction from an original source, the immediate donor is not—as a matter of law or logic—an "intermediary" for anyone.

The distinction is highly consequential. Certain of House Victory Fund's major contributors are out-of-state political action committees that solicit and accept funds from individuals and businesses without any understanding or agreement with those underlying sources concerning how the PAC will use the money. Any subsequent contribution made by the PAC to House Victory Fund is the product of the PAC's own

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independent judgment, made without any consultation with, or even the knowledge of, the PAC's own donors. The logic of the draft advisory opinion, however, would compel House Victory Fund to disregard the PAC as merely an "intermediary," a legal and factual fiction that undermines the VRKA's professed aspirations of transparency. As the Senate Victory Fund noted, application of the opinion's logic could easily result in a covered person identifying as a "top three" donor an original source has never even heard of the covered person, let alone knew that the funds she donated to an unrelated PAC would end up in the covered person's account. Any mandated disclaimer that so publicly and prominently suggests a knowing association between that original source and the covered person would affirmatively mislead the audience, and derogate the First Amendment rights of both the covered person and the original source.

We accordingly urge the Commission not to adopt the draft advisory opinion in its current form.

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Thank you for your consideration of the foregoing comment.

Respectfully,

/s/ Thomas Basile
Thomas Basile