

May 8, 2025

BY EMAIL

Arizona Citizens Clean Elections Commission
1110 W. Washington St., Suite 250
Phoenix, AZ 85007
Email: ccec@azcleelections.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 Fair Democracy (“**FD**”). FD seeks clarification on whether certain public communications qualify as “campaign media spending” under the Voters’ Right to Know Act (“**VRKA**”).

I. Background

FD is a 501(c)(4) social welfare organization that is registered with the Internal Revenue Service. FD “works to ensure that the roots of American Democracy are healthy with strong voting rights and access, an engaged and informed electorate, an open and accountable government and trusted messengers engaging Americans in civil discourse.”¹ One such project in furtherance of its social welfare mission is the “Policy Information Center,” a website where FD provides educational content about legislative issues and officeholders. FD also sponsors digital issue advertisements to inform the public about these legislative issues, which typically link to the Policy Information Center website.

FD wishes to sponsor public communications in Arizona that discuss policy issues. The communications may refer to Arizona elected officials and/or candidates, as well as Arizona political parties. FD seeks guidance whether the following public communications qualify as “campaign media spending” if sponsored between 6 months and 90 days before a primary election. Each communication would link to an article posted on FD’s “Policy Information Center” website.

¹ Internal Revenue Service, 2021 Form 990 (Fair Democracy), https://apps.irs.gov/pub/epostcard/cor/822747849_202206_990O_2023060821409792.pdf.

Public Communication 1:



The following text would accompany the graphic: “Arizona Republicans are considering new restrictions on abortion medication. Supporters say the measures provide additional regulations, while critics argue they conflict with Proposition 139, which was approved by voters to protect abortion rights in the state constitution.

What are your thoughts on this ongoing discussion? 💬 #AZPolitics #ReproductiveRights #Legislation

Story at: [hyperlink]”

Public Communication 2a:

Public Communications 2a, 2b, and 2c include the same graphic and text. However, each version contains a different call to action – Public Communication 2a asks viewers to share their thoughts; Public Communication 2b asks viewers to follow FD on Facebook; and Public Communication 2c asks viewers to join FD’s email list.



The following text would accompany the graphic: “🗣️ Arizona Democrats have pledged to curb waste, fraud and abuse in the state’s universal school voucher program! They’re pushing for stronger oversight to ensure funds are used properly and not at the expense of our public schools.

📖💰 Do you think the program needs more accountability? Share your thoughts! ⬇️
#AZPolitics #EducationMatters #SchoolFunding

Story at: [hyperlink]”

Public Communication 2b:



The following text would accompany the graphic: 🗣️ Arizona Democrats have pledged to curb waste, fraud and abuse in the state’s universal school voucher program! They’re pushing for stronger oversight to ensure funds are used properly and not at the expense of our public schools.

📖💰 Follow us on Facebook to learn more. ⬇️ #AZPolitics #EducationMatters #SchoolFunding”

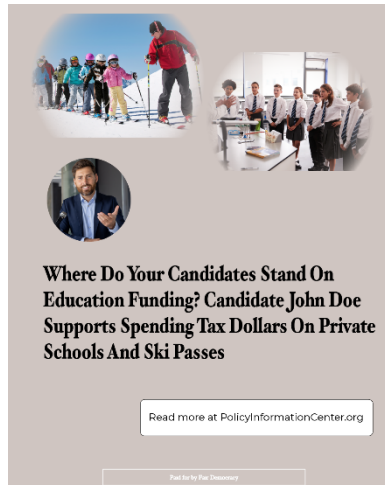
Public Communication 2c:



The following text would accompany the graphic: 🗣️ Arizona Democrats have pledged to curb waste, fraud and abuse in the state’s universal school voucher program! They’re pushing for stronger oversight to ensure funds are used properly and not at the expense of our public schools.

📧💰 Join our email list to learn more. ⬇️ #AZPolitics #EducationMatters #SchoolFunding”

Public Communication 3a:



The following text would accompany the graphic: “John Doe, a candidate for LD 31, supports Arizona’s universal school voucher program, which cost the state \$444 million in 2024. Doe opposes efforts to add oversight or prevent misuse of funds and describes himself as an ‘outspoken school choice advocate.’”

Public Communication 3b:



The following text would accompany the graphic: John Doe supports Arizona’s universal school voucher program, which cost the state \$444 million in 2024. Doe opposes efforts to add oversight or prevent misuse of funds and describes himself as an “outspoken school choice advocate.”

Public Communication 4



The following text would accompany the graphic: “🚨 Ethics Under Fire in State Politics 🚨

State Rep. Robert Jacobs is facing backlash after introducing a bill that would *slash taxes* for HighPrairie Energy — one of his biggest donors. While not illegal, critics say it’s a clear case of donor influence over public interest.

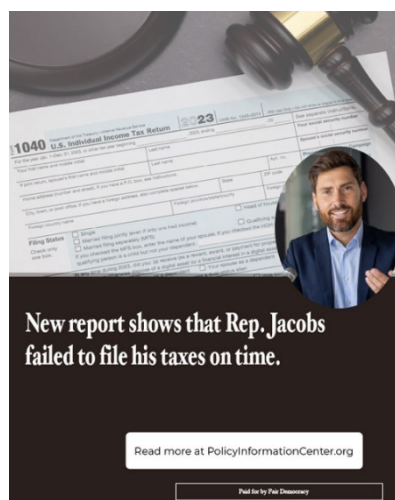
Jacobs claims the bill will boost jobs and help the energy sector, but watchdogs aren’t buying it. They say the timing and the direct benefit to his top donor raise serious red flags. ⚠️


Now, calls are growing for stronger ethics and transparency reforms. Voters and advocacy groups are watching closely. 👁️

Should lawmakers be allowed to push bills that benefit their biggest campaign donors? 💰😞

Share your thoughts! 📌 #EthicsMatter #FollowTheMoney #StatePolitics #TransparencyNow”

Public Communication 5



The following text would accompany the graphic: “NEW REPORT: Rep. Jacobs failed to file his taxes on time — again. If we’re expected to follow the rules, why can’t our elected officials? Arizonans deserve accountability, not excuses.  #HoldThemAccountable #RepJacobs”

II. Relevant Legal Provisions

Under the VRKA, campaign media spending includes “a public communication that promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.”²

Campaign media spending also includes a “public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party [...]” regardless of when the communication is disseminated.³

III. Discussion

None of FD’s proposed examples qualify as campaign media spending.

In Advisory Opinion 2024-03, the Commission determined that a public communication “that is focused on a particular policy view of an elected official but does not mention their candidacy” is not campaign media spending.⁴ In making its determination, the Commission examined how the terms “promote, support, oppose, or attack” (“*PASO*”) bear on the word “candidate.”⁵ The definition “uses verbs that speak to an action that involves not just the person who is a candidate, but the candidacy itself.”⁶

The Commission also concluded that communications that refer to a political party as “means to another end” were not campaign media spending.⁷ According to the Commission, an “end” can include “providing context for a call to action to contact a legislature, seeking to bring more people into association with the organization, or facilitating direct communication with a particular elected official.”⁸

Public Communication 1:

The advertisement refers to a current public official’s support of a specific policy – restricting the abortion pill. The advertisement does not express opposition to, or attack, the official’s candidacy. As such, the advertisement does not PASO a candidate under the VRKA.

² Ariz. Rev. Stat. § 16-971(2)(a)(ii).

³ *Id.* § 16-971(2)(a)(vi).

⁴ Ariz. Clean Elections Commission, Adv. Op. 2024-03 at 6, https://storage.googleapis.com.usgovcloudapi.net/public/docs/1009-1035AdvisoryOpinion24_03AOR24_01FinalapprovedApril18_2024.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 10.

⁸ *Id.*

Public Communications 2a, 2b, and 2c:

The advertisements refer to a political party's desire to cut waste and abuse in school voucher spending. The language accompanying the graphic asks viewers whether they think the voucher program needs more accountability. The advertisements do not support the electoral prospects of a party. Instead, the advertisements aim to facilitate discussion on a particular issue.

The conclusion should be the same with respect to Public Communication 2a, Public Communication 2b, and Public Communication 2c. All three advertisements are "means to an[] end" other than voting, with Public Communication 2a inviting viewers to share their thoughts, Public Communication 2b asking viewers to follow FD on Facebook to learn more, and Public Communication 2c asking viewers to join FD's mailing list.

As such, the advertisements do not support the electoral prospects of a political party under the VRKA.

Public Communications 3a and 3b:

The advertisements refer to an individual who supports spending Arizona tax dollars on private schools and ski passes. The individual referenced is not a current officeholder but is a candidate for office in Arizona.

Public Communication 3a identifies John Doe as a candidate for office, while Public Communication 3b does not identify John Doe as a candidate. Nonetheless, neither advertisement expresses opposition to or attacks the individual's candidacy but instead explains the individual's support of a particular policy. As such, the advertisements do not PASO a candidate under the VRKA.

Public Communication 4:

The advertisement refers to a current public official's support of a tax bill that would benefit the energy sector. The advertisement mentions that the legislation would benefit a major donor to the legislator's campaign, to build opposition to this tax bill. The advertisement is a "means to an[] end" other than voting by building opposition to the substantive policy *and* asking voters to share their opinions on ethics and policy. The advertisement does not express opposition to, or attack, the official's candidacy. As such, the advertisement does not PASO a candidate under the VRKA.

Public Communication 5:

The advertisement highlights a current public official's failure to timely file taxes and asks whether public officials are held to a different standard than other Arizonans. The advertisement does not reference or express opposition to, or attack, the official's candidacy. As such, the advertisement does not PASO a candidate under the VRKA.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon S. Berkon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jonathan S. Berkon
Emma R. Anspach
Counsel to Fair Democracy