

Katie Hobbs
Governor

Thomas M. Collins
Executive Director



Mark S. Kimble
Chair

Steve M. Titla
Amy B. Chan
Galen D. Paton
Christina Werther
Commissioners

State of Arizona
Citizens Clean Elections Commission

1110 W. Washington St. - Suite 250 - Phoenix, Arizona 85007 - Tel (602) 364-3477
Fax (602) 364-3487 - www.azcleanelections.gov

June 26, 2025
Advisory Opinion 2025-01

Jonathan S. Berkon
Emma R. Anspach
Elias Law Group
250 Massachusetts Ave. NW, Suite 400
Washington, D.C. 20001

Re: Advisory Opinion Request of Fair Democracy

Dear Mr. Berkon and Ms. Anspach:

We are responding to your advisory opinion request (“AOR”) on behalf of Fair Democracy (“FD”). The request asks the Commission to evaluate public communications that would be made during a particular window prior to the primary election to determine whether those communications would constitute “campaign media spending” under the Voters’ Right to Know Act (“the Act” or “VRKA”).

Question Presented

How should covered persons evaluate public communications to determine whether they constitute campaign media spending between 6 months and 90 days before a primary election?

Summary Answer

Spenders should consider several factors when evaluating whether a communication constitutes campaign media spending under A.R.S. § 16-971. For the “promotes, supports, attacks or opposes” (“PASO”) standard in § 16-971(2)(a)(ii), relevant considerations include whether the communication identifies a candidate within six months of an election; whether it includes language that

praises, criticizes, or otherwise addresses the candidate, the targeting of the communication, its overall presentation and tone; and whether it would reasonably be understood as seeking to influence the outcome of that candidate's election or whether, if issue advocacy, it identifies and advocates for a position on the issue. Under § 16-971(2)(a)(vi), communications that reference political parties are not campaign media spending unless they, in context, support or oppose the electoral success of that party's candidates. This may include partisan calls to action, voter mobilization efforts, or messaging that advocates for or against a party's role in an upcoming election. Context remains central to both analyses.

I. Background

FD is an organization that is registered with the Internal Revenue Service as a 501(c)(4) nonprofit organization. AOR at 1. It describes itself as nonpartisan and focused on advancing transparency and accountability in government. *Id.* It states that its core activities include public education and advocacy on policy issues. It is not formed for the purpose of supporting or opposing political candidates, and it does not engage in electoral campaigning.

FD proposes to disseminate several public communications related to public policy issues and seeks clarification on whether any such communications it sponsors, i.e., pays for or produces with in-kind contributions, would be campaign media spending.¹

II. Legal Analysis

Section 16-971(2)(a) defines “campaign media spending” to include, among other things:

A public communication that “promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.”

A. R. S. § 16-971(2)(a)(ii).

“An activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity.”

¹ The window the request identifies excludes the time period covered by A.R.S. § 16-971(2)(a)(iii)(referring to a clearly identified candidate beginning 90 days before a primary election).

A.R.S. § 16-971(2)(a)(vi).

In Advisory Opinion 2024-03, the Commission explained that the PASO verbs (“promote, support, attack, oppose”) relate to the candidacy of the elected official, not only their public office or policy positions. Ariz. Citizens Clean Elections Comm’n, Advisory Op. 2024-03, at 6 (Apr. 18, 2024), https://storage.googleapis.com/core.usgovcloudapi.net/public/docs/1009-1035AdvisoryOpinion24_03AOR24_01FinalapprovedApril18_2024.pdf.

Similarly, the Commission explained that:

“[M]ention[ing] [a] party as a means to another end, whether 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” does not “involve the electoral prospects of candidates of a particular party or the party itself.” *Id.* at 10.

As a general matter, communications that address pending issues or legislation without referencing candidacy or electoral consequences, or that mention a political party in connection with issue-based or civic engagement purposes, are likely not subject to the definition of campaign media spending under the Act.

III. Proposed Communications

FD has submitted several proposed public communications that it may disseminate in Arizona. Each communication addresses matters of public concern, ranging from education and taxation to reproductive rights and government transparency. The messages vary in tone and format, and some identify elected officials or candidates by name. The communications are as follows:

Public Communication 1

This communication addresses proposed restrictions on abortion medication by Republican lawmakers in Arizona. The message contrasts supporter and critic perspectives and references Proposition 139, a voter-approved constitutional amendment on abortion rights. The communication invites the audience to weigh in on the policy debate with a prompt—“What are your thoughts on this ongoing discussion?”—accompanied by hashtags such as #AZPolitics and #ReproductiveRights. The post links to a more detailed article on FD’s website.

Public Communication 2a

This advertisement focuses on Arizona Democrats’ legislative efforts to advocate for more oversight and accountability in the state’s Empowerment Scholarship (“ESA”) program that provides students with money to obtain educational services outside of the public school system. The message highlights the Democratic members’ commitment to curbing what they see as waste, fraud, and abuse, and concludes with an open-ended call for viewers to “[s]hare your thoughts.” The communication includes hashtags that frame the content as part of a broader conversation on education policy and school funding, and links to an article with further information.

Public Communication 2b

Identical in content to 2a, this version of the advertisement includes a different call to action: “Follow us on Facebook to learn more.” The focus remains on Democratic lawmakers’ stance on ESA oversight, but the call to action is designed to build social media engagement with FD rather than solicit policy input directly.

Public Communication 2c

This version matches the narrative content of 2a and 2b, highlighting Democratic efforts to reform the ESA program with more oversight. The call to action here asks viewers to “Join our email list to learn more,” suggesting the communication’s purpose is to grow FD’s audience and newsletter subscriber base.

Public Communication 3a

This advertisement names John Doe as a candidate for Arizona Legislative District 31 and criticizes his support for the state’s ESA program, noting the program’s cost and Doe’s resistance to oversight reforms. It refers to him as an “outspoken school choice advocate” and implies a policy-based critique of his stance.

Public Communication 3b

Nearly identical in content to 3a, this version does not identify John Doe as a candidate. It focuses on the same policy positions and uses the same phrasing (“outspoken school choice advocate”) but without expressly referencing his electoral status.

Public Communication 4

This communication criticizes State Representative Robert Jacobs for introducing a tax bill that would benefit High Prairie Energy, a major donor to his campaign. While acknowledging the proposal is not illegal, the message suggests donor influence and raises concerns about legislative ethics. It ends by encouraging stronger transparency reforms and includes a question asking the public whether lawmakers should be permitted to advance bills that benefit their biggest donors.

Public Communication 5

This final communication reports that Representative Jacobs failed to file his taxes on time again, questioning whether elected officials are held to the same standards as ordinary citizens. It uses a critical tone and hashtags like #HoldThemAccountable, but does not reference Jacobs' status as a candidate.

IV. Analysis of Proposed Communications under A.R.S. § 16-971(2)(a)(ii) (PASO candidate)

The Commission begins by considering whether any of the proposed communications constitute campaign media spending under A.R.S. § 16-971(2)(a)(ii), which applies to a public communication that “promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.” In Advisory Opinion 2024-03, the Commission detailed that “a public communication that is focused on a particular policy view of an elected official but does not mention their candidacy is not contributing to the growth of or advertising the candidate, even if it might refer to the candidate” and therefore did not “promote” that candidate. Advisory Op. 2024-03 at 6. Consequently, whether a communication meets this definition depends in part on whether the individual is identified as a candidate, but also the language used to praise or criticize them and the targeting and presentation of the message. *Id.* at 6 and n.4.

Communications 1 and 4 do not identify any individual as a candidate or include content that promotes or opposes their election. These communications mention political parties or elected officials, they do so in the context of ongoing public policy debates. For example, Communication 1 discusses abortion medication access in connection with a particular Republican lawmaker as representative of the party position the communication describes, but does not reference any election. Communication 4 likewise highlights criticism of a current lawmaker's legislative activities.

Communication 3a and 3b differ and fall within the PASO standard because they attack the candidate. Communication 3a identifies an individual as a candidate for Legislative District 31 and criticizes his policy position by framing it negatively. The communication draws an inference that the candidate supports particular spending decisions by ESA users that have been held out for public scorn because the candidate “opposes effort to add oversight or prevent misuse of funds” and labels himself an “outspoken school choice advocate.” *See, e.g.,* Laurie Roberts, Poor rich kids. They (still) need our help to pay for piano lessons, *The Arizona Republic* (June 18, 2025), <https://www.azcentral.com/story/opinion/op-ed/laurieroberts/2025/06/18/esa-universal-school-voucher-reform-arizona/84261748007/> (noting that “12 News’ Craig Harris reports that taxpayers are shelling out \$20 million this year for such academic imperatives as dance, piano and private swimming lessons.”). Although the communication does not expressly call for the candidate’s defeat or use campaign slogans, the combination of candidate identification, negative framing within a period designated by the statute may reasonably be interpreted as opposing the candidate’s election. A.R.S. § 16-971(2)(a)(ii).

Communication 3b differs effectively only in that it does not use the term “candidate.” That distinction alone does not meaningfully differentiate Communication 3a. The candidate is not, apparently, an office holder, nor is there any suggestion that a viewer or reader of the communication take any steps relevant to a current policy discussion.

Communication 5 similarly constitutes campaign media spending. It identifies a representative by name, but does not indicate candidacy. It highlights his repeated failure to file his taxes on time, placing him in a negative light. The tagline is “#HoldThemAccountable,” and elections are a way of holding elected officials accountable. This falls within the definition by attacking a candidate. A.R.S. § 16-971(2)(a)(ii).²

V. Analysis of A.R.S. § 16-971(2)(a)(vi) (party support)

The Commission next considers whether any of the proposed communications support or oppose the electoral prospects of an identified political party under A.R.S. § 16-971(2)(a)(vi). This provision applies to communications that, in context,

² Because we reach this conclusion, we do not analyze whether these communications otherwise constitute express advocacy. *See* A.R.S. § 16-971(2)(a)(i); *see also Comm. for Just. & Fairness v. Ariz. Sec’y of State’s Off.*, 235 Ariz. 347 (App. 2014), A.R.S. § 16-901.01.

promote the electoral success or failure of a political party or its candidates—such. *Id.*

In Advisory Opinion 2024-03, the Commission explained that mere references to political parties are insufficient. Advisory Op. at 10. The communication must connect the party to an electoral outcome. *Id.* For example, identifying a party in the course of legislative criticism or policy debate does not, on its own, meet this standard. *Id.*

Here, communications 1 and 2a, 2b and 2c mention political parties in connection with specific legislative issues. Communication 1 references Republican lawmakers in the context of restrictions on abortion medication, while communications 2a, 2b and 2c refer to Democrats when discussing ESA oversight. None of these messages include calls to vote, endorse partisan outcomes, or link the policy positions to electoral success. The references are incidental to issue advocacy and do not serve to advance or oppose the *electoral* prospects of either party.³

Accordingly, the Commission finds that these proposed communications would not constitute campaign media spending under A.R.S. § 16-971(2)(a)(vi).⁴

V. Conclusion

This advisory opinion is issued pursuant to Ariz. Admin. Code R2-20-808 and is based on the facts presented in the request. 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

³ The distinction among calls to action in Communications 2a, 2b, and 2c similarly do not convert these communications to campaign media spending. For example, the statute states that social media and mailing list “acquisition” in preparation for other campaign media spending can constitute campaign media spending. But generally building a list is not acquisition of, i.e., “to get as one’s own” the list. <https://www.merriam-webster.com/dictionary/acquire>.

To the extent that the taglines here are intended to develop campaign media spending, a covered person or other party contemplating the statute should consider whether the activity falls within Ariz. Admin. Code § R2-20-801(B).

⁴ Communications 3a, 3b, 4 and 5 do not mention political parties so this section is not relevant to the analysis of those communications.

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.* § R2-20-808(C)(4). Advisory opinions may be affected by later events, including judicial opinions and changes in law.

Sincerely,

Mark Kimble
Chair

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”

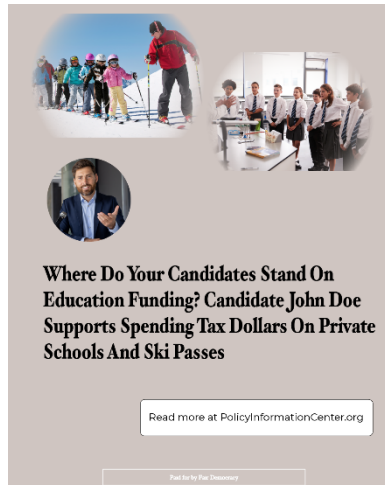
Public Communication 2c:



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.

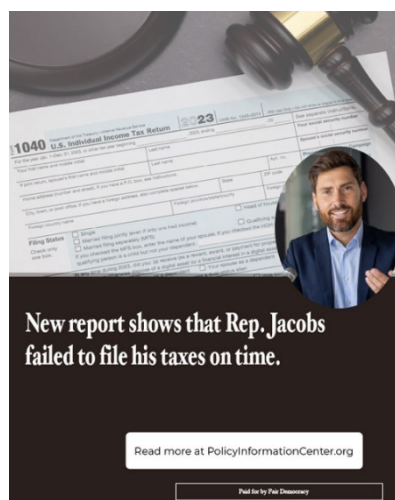
Jacobs claims the bill will boost jobs and help the energy sector, but watchdogs aren’t buying it. They say the timing and the direct benefit to his top donor raise serious red flags. ⚠️


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