

September 28, 2023

Arizona Citizens Clean Elections Commission  
1110 West Washington Street  
Phoenix, Arizona 85007  
Email: [ccec@azcleelections.gov](mailto:ccec@azcleelections.gov)

**Re: Request for Advisory Opinion**

Dear Commissioners:

On behalf of Service Employees International Union-United Healthcare Workers West (SEIU-UHW), and pursuant to Arizona Administrative Code, Rule R2-20-808, this letter requests an advisory opinion to confirm that contributions — whether cash or in-kind — made to an Arizona political action committee sponsoring a ballot measure in Arizona (a “ballot committee”), and in support of the ballot committee’s collection of signatures for ballot measure qualification (“qualification efforts”) do not support a covered person’s Campaign Media Spending as defined by the Voters’ Right to Know Act, A.R.S. § 16-971(2) (“the Act”).

SEIU-UHW has made significant in-kind contributions to ballot measure campaigns over the last two election cycles and will do so again in the current cycle, specifically making in-kind contributions in the form of paying for professional signature gathering and/or making cash contribution to support of the same.

**Factual Background**

In 2020 and 2022, SEIU-UHW made significant in-kind contributions to the ballot measure committee Arizonans Fed Up with Failing Healthcare (Healthcare Rising AZ) in form of paying the professional signature gathering firm Fieldworks, LLC to collect signatures in support of submitting the Stop Surprise Billing and Predatory Debt Collection Protection Acts on the 2020 and 2022 General Election ballots respectively. SEIU-UHW will make similar in-kind contributions as well as cash contributions to ballot measure committees in 2024—although they are not likely to make contributions to Arizonans Fed Up with Failing Healthcare (Healthcare Rising AZ) during the 2023-2024 cycle.

SEIU-UHW intends to make these contributions on the condition that they not be used for Campaign Media Spending as defined by A.R.S. § 16-971, thereby taking advantage of the opt-out provision provided by the Act.

The activities that SEIU-UHW will be supporting with their contributions are (a) administrative, fundraising or strategic support in support of petition circulation efforts; (b) printing petition signature sheets, (c) developing training and quality control systems;(d) recruiting petition circulators; (e) training petition circulators; (f) circulating petitions and

obtaining signatures from eligible voters; (g) compiling the signatures gathered by circulators; (h) performing quality control analysis on those signatures, (i) providing reports to the relevant ballot committee, and (j) coordinating the submission of circulated petitions with the relevant ballot committee.

These costs may include the ballot committee’s efforts to train canvassers how to interact with the public in soliciting signatures — such as how to approach members of the public respectfully, how to avoid trespass, how to respond to requests to relocate, etc. — and how to describe the measure — including directing potential signers to the 200-word summary and the text of the measure.

Excluded from the activities for which this letter seeks an advisory opinion, are any public communication by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium. Specifically excluded from this opinion request are contracts concerning phone banking, mass texting, mass emailing or any other communications directed *en masse* to hundreds of individuals.

### **Question Presented**

Does a contribution (monetary or in-kind) made to a ballot committee in support of its collection of signatures for ballot measure qualification (“qualification efforts”) support a covered person’s Campaign Media Spending as defined by the Act?

### **Legal Background**

On November 8, 2022, Arizona voters adopted the Voters’ Right to Know Act. The 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*. This right requires the prompt, accessible, comprehensible and public disclosure of the identity of all donors who give more than \$5,000 to fund campaign *media spending* in an election cycle and the source of those monies, regardless of whether the monies passed through one or more intermediaries.

[AZ LEGIS Prop. 211 \(2022\), 2022 Ariz. Legis. Serv. Prop. 211, §2](#). (emphasis added). The Act provides enhanced disclosure for traceable monies spent on campaign media spending in state and local races. A.R.S. § 16-973(A). Disclosure reporting is triggered by making campaign media spending. *Id.* (A)-(B). When determining whether a donor must be listed on the newly required disclosures, *id.*, or in newly required “paid-for-by” disclaimers under A.R.S. § 16-974(C), the recipient must ask whether the individual “contribute[d], 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.” A.R.S. § 16-973 (G). The Act also requires notification to a covered person’s donors before making campaign media spending. A.R.S. § 16-972.

The Act recognizes that some expenditures made by a covered person will not be campaign media spending by requiring the covered person to “[i]nform donors that they can opt out of having their monies used or transferred for campaign media spending,” before the monies are used for that purpose. *Id.* (B)(2).

In other words, the Act is focused intensely but not exclusively on campaign media spending, that is, public communications supporting or opposing candidates or ballot measures in local or state elections. Although the Act itself does not address operating expenses of a committee, it does not eliminate previous reporting requirements. For example, all contributions made to support or oppose local or state candidates or committees (including ballot committees) — including contributions that are not in support of campaign media spending, but that instead support operating or administrative expenses, or other activities — will be reported by the benefitted recipient committee as a contribution. These committees will disclose the information required by A.R.S. § 16-926.

The Act provides that “Campaign media spending” means spending monies or accepting in-kind contributions to pay for any of the following:

- (i) A public communication that expressly advocates for or against the nomination, or election of a candidate.
- (ii) A public communication that promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.
- (iii) A public communication that refers to a clearly identified candidate within ninety days before a primary election until the time of the general election and that is disseminated in the jurisdiction where the candidate's election is taking place.
- (iv) ***A public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum.***
- (v) A public communication that promotes, supports, attacks or opposes the recall of a public officer.
- (vi) 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.
- (vii) ***Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.***

(Emphasis added). A.R.S. § 16-971(2).<sup>1</sup>

A public communication “[m]eans a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium.” *Id.* (17). Arizona’s definition of public communication closely mirrors the federal definition found at 52 U.S.C. § 30101(22) as implemented by 11 C.F.R. § 100.26.

Notably, when defining Campaign Media Spending, the Act specifically does not include election related activities such as nonpartisan activity encouraging voter turnout or encouraging citizens to register to vote. A.R.S. § 16-971(2)(b). Like general operating expenses, these expenditures, if made by a political action committee, will be disclosed in the report required by A.R.S. § 16-926.

### **Analysis**

Contributions — whether cash contributions or in-kind — made to a ballot committee in support of its qualification efforts do not support a covered person’s Campaign Media Spending under the Act. Stated simply, the act of collecting signatures for a ballot measure qualification is not a public communication, as such costs are more properly not categorized as general public political advertising or marketing.

While Subpart (iv) of the test applies to public communications related to ballot measures, the work around collecting signatures for ballot qualification is in fact not a public communication. The definition of “public communication” in A.R.S. § 16-971(17) requires conveying one message to many recipients via some type of mass media or broadcasting medium. Circulators collecting signatures from the public are not communicating to the public in any of the means identified in the definition of public communication. They are not broadcasting a message; they are not sending that message out via mass mailing or phone banking. They are, rather, engaged in the act of collecting signatures from the public through individual, one-on-one conversations.

In a matter assessing the application of the definition of “public communication”<sup>2</sup> to similar activities, a Commissioner from the Federal Election Commission (FEC) observed that most of the costs of a party committee’s field program did not rise to the level of a “public communication” because most of those costs are associated with “door-to-door canvassing, manning campaign offices and other traditional grass roots activities” and other “staff and overhead costs,” including “salaries and benefits of its employees, and for costs related to

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<sup>1</sup> This request for an advisory opinion is only with respect to contributions in support of ballot qualification efforts. Such efforts to support the collection of signatures for ballot measure qualification do not satisfy subparts (i) through (iii) or (v) through (vi) because these efforts have no relation to candidates and are therefore not relevant to this question presented.

<sup>2</sup> As noted above, Arizona’s definition of “public communication” largely mirrors the federal regulation promulgated by the FEC.

maintaining office space.” *See* MUR 5564, Statement of Reason of Chairman Robert Lenhard. This Commissioner specifically differentiates the costs of making phone calls, which SEIU-UHW’s contributions do not intend to support, from the other administrative costs listed as part of the committee’s field program, which SEIU-UHW’s contributions do intend to support. *See Id.* at FN4.

More specifically, FEC Commissioners have concluded that door-to-door canvassing, like the work that SEIU-UHW contemplates supporting in this election cycle, is not “general public political advertising” — and by extension, not a “public communication” for purposes of campaign finance regulation because canvassing does not involve paying “for access to an established audience using a forum controlled by another person”; rather, canvassing uses a forum the canvassing organization controls “to establish their own audience.” *See* MUR 5564, Statement of Reasons of Vice Chairman David M. Mason and Commissioner Hans A. von Spakovsky (citing *Internet Communications*, 71 FED. REG. 18589, 18594-95 (F.E.C. 2006)).

The language of the Act demands a similar interpretation: it expressly defines “public communications” around mass media mediums, scenarios where the entity making the communication is paying for access to a specific established audience, via a specific forum. A.R.S. § 16-971(17). Petition circulation, on the other hand, involves direct communications with individuals, an audience selected by the communicating entity, and using no medium or forum other than direct person-to-person contact.

To that end, it is instructive that each subpart of the definition of campaign media spending relies on public communication. *See* A.R.S. § 16-971(2)(a). This is consistent with the Act’s focus on specifically targeting *media spending* for additional regulation, and not all types of campaign or electoral spending, or all types of communications with the public. Black’s Law Dictionary’s definition of “media” is “[c]ollectively, the means of mass communication; specif., television, radio, newspapers, magazines, and the Internet regarded together.” 11<sup>th</sup> ed. at 1175.

Understanding the act of collecting signatures to be outside the definition of Campaign Media Spending is also consistent with the exceptions identified in the statute. Registering people to vote is related to elections, and surely encouraging people to vote is related to elections or even campaigns, but those are not Campaign Media Spending because they are not the kind of mass communication activity or even the type of activity the Act seeks to regulate. Similarly, gathering signatures to put a measure on the ballot — as opposed to encouraging a particular vote on that ballot measure — is not Campaign Media Spending.

Such an act in furtherance of qualification is more similar to the nonpartisan voter registration and nonpartisan get out the vote activity that is **not** regulated by the Act and, under federal tax law, can even be conducted by 501(c)(3) charities that are prohibited from intervening in candidate elections. In fact, ballot qualification activities share the common goal to support an American’s civic duty — the civic duty to exercise the right to vote without taking into account individual ideology or partisanship. A voter could sign a petition to support qualification of an initiative on the ballot, simply to exercise their right to ultimately vote against

the initiative once it was balloted. Like ensuring that individuals are registered to vote, the act of collecting petition signatures is simply an element of our civic mechanics.

Finally, the ballot qualification efforts that SEIU-UHW wishes to support do not satisfy subpart (vii) of the Campaign Media Spending definition. It is possible that some of a ballot committee's efforts associated with ballot qualification may include "research, design, production, polling, data analytics, mailing or social media list acquisition" in support of the specifically delineated categories of Campaign Media Spending in A.R.S. § 16-971(2)(a). For example, the development of literature or scripts advocating for the ballot measure that may be used by canvassers may have been intended by the drafters to be regulated under subpart (vii). However, as detailed above, the act of door-to-door or street canvassing to collect petitions is not itself a "public communication" that falls under subparts (i) - (vi) of the Campaign Media Spending definition, and therefore general support of signature collection cannot fall under subpart (vii) of the definition, which only encompasses activities "in preparation for or in conjunction with any activities described in items (i) through (vi)..."

### **Conclusion**

For the above reasons, SEIU-UHW asks that the Commission issue an advisory opinion clarifying that paid signature gathering is not campaign media spending under A.R.S. § 16-971, SEIU-UHW's contributions — both monetary and in-kind — in support of a ballot committee's collection of signatures for ballot measure qualification do not support a covered person's Campaign Media Spending as defined by the Act.

Yours,



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