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Advisory Opinion 2023-01

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We are responding to your advisory opinion request on behalf of Service Employees International Union-United Healthcare Workers West (“SEIU-UHW” or the “organization”) concerning the application of Voters’ Right to Know Act (the “Act” or the “VRKA”), A.R.S §§ 16-971 to 16-979, to SEIU-UHW’s proposal to continue its practice of making in-kind donations to ballot measure campaigns or make cash donations for professional signature gathering of petition signatures for ballot measures in Arizona.

Question Presented

Does a donation (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?

Commission Response

Professional signature gathering for ballot measures does not fall within the definition of campaign media spending set forth in the Act, and, therefore is not included in the calculation of whether an entity is a covered person subject to the Act’s disclosure requirements.

Background

The facts presented in this advisory opinion are based on your letter received September 28, 2023 (Advisory Opinion Request or “AOR”) and publicly available information.

SEIU-UHW is a “healthcare justice union of more than 100,000 healthcare workers, patients, and healthcare consumers” and an affiliate of the Service Employees International Union. *SEIU-UHW: Leading for Healthcare in California and Beyond*, (last checked November 11, 2023), www.seiu-uhw.org/about-seiu-uhw/. Based in California, SEIU-UHW’s operations include organizing dialysis center workers and negotiating contracts on their behalf, electing members as delegates to the California Democratic Party, and other similar activities. *Our work*, (last checked November 11, 2023), <https://www.seiu-uhw.org/campaigns/>.

In Arizona, SEIU-UHW’s activities have included paying for professional signature gathering by a company specializing in that service for two proposed measures in 2020 and 2022. The organization will make in-kind and cash donations to ballot measure committees in 2024. For the 2024 election, SEIU-UHW intends to “opt out” of having its funds used for campaign media spending. *See* A.R.S. § 16-972((B) (providing for a person who makes a donation to opt out of having their donation used for campaign media spending, i.e. restrict the use of their donation). AOR at 1.

The organization intends that its donations be used for “administrative, fundraising, or strategic support in support of petition circulation efforts, printing petitions, developing training and quality control for petition collection, recruiting petition circulators, training petition circulators, circulating petitions and obtaining signatures from eligible voters, compiling signatures gathered by circulators, performing quality control analysis on the signatures, providing reports to the relevant ballot committee, coordinating the submission of circulated petitions with the relevant ballot committee.” *Id.* at 1-2. These activities could include training canvassers on how to interact with the public while soliciting signatures and how to describe the measure, including directing voters to the 200-word summary included on the petition and the text of a measure. *Id.* at 2.

The organization intends that certain activities be excluded from its donations. *Id.* at 1. The activities SEIU-UHW intends to exclude are any public communication by means of broadcast, cable, satellite, internet or other digital method, newspaper, 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.* at 2. It also states that it has

specifically excluded contracts concerning phone banking, mass texting, mass emailing or any other communications directed en masse to hundreds of individuals from its request for an advisory opinion. *Id.*

Legal analysis

Voters passed the VRKA as Proposition 211 at the 2022 General Election and it was certified by Governor Doug Ducey in December 2022. The Act provides for reports by covered persons, that is, “any person whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than \$50,000 in statewide campaigns or more than \$25,000 in any other type of campaigns.” A.R.S. § 16-971(7)(a). “For the purposes of [the VRKA], the amount of a person's campaign media spending includes campaign media spending made by entities established, financed, maintained or controlled by that person.” *Id.*

When those spending thresholds are reached, covered persons must file reports that include, among other items, the identity of 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, 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, and the identity of each person that received from the covered person disbursements totaling \$10,000 or more of traceable monies during the election cycle and the date and purpose of each disbursement. A.R.S. § 16-973(A)(6), (7), (8).

Covered persons must give donors “an opportunity to opt out of having the donation used or transferred for campaign media spending.” A.R.S. § 16-972(B). Cash donations where a donor has opted out are not traceable. A.R.S. § 16-971(18)(A). Consequently, where a donor has opted out of the use of its cash donation for campaign media spending, whether or not those funds can be used for the purpose of paying for the collection of ballot initiative petition signatures turns on whether or not that activity is campaign media spending.

As noted above, disclosure reports are triggered by campaign media spending, a defined term in the Act that “[m]eans 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.

A.R.S. § 16-971(2).

As is apparent from the language in this definition, most campaign media spending involves “public communication.” 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.” A.R.S. § 16-971(17)(a).

Some campaign media spending does necessarily turn on a public communication. Specifically, “activit[ies] . . . that support[] 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” are “campaign media spending.” A.R.S. § 16-971(2)(a)(vi). “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 the definition]” is also campaign media spending. A.R.S. § 16-971(2)(a)(vii); *see also* A.A.C. R2-20-801(B) (addressing requirement that expenses under 16-972(a)(7)(vii) are not campaign media spending unless conducted “in preparation for or in conjunction with” other activities listed in the definition of campaign media spending)

Notably, one kind of campaign media spending arises from ballot measures. Section 16-971(2)(a)(iv) provides that a “public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum” is campaign media spending.

Nothing in § 16-971(2)(a)(iv) applies to the payment for initiative petition signatures alone. Rather, the definition requires a public communication of some kind or, under 16-971(2)(a)(vii), activities in conjunction with the public communication.

Expenses related only to the collection of ballot measure petition signatures, but not in conjunction with campaign media spending, do not become campaign media spending solely because they are campaign related. Consequently, training, quality control and other activities identified in the AOR would not constitute campaign media spending, provided they are not performed in conjunction with campaign media spending. This does not mean that all such payments will necessarily go unreported. For example, in-kind and cash contributions to political action committees are reportable by those entities, as are the expenditures of these committees.

It could be argued that petitions themselves are public communications, given that ballot measure sponsors print petitions and seek signatures from members of the public. However, the Act’s definition of public communications and the specific language governing ballot measures in the definition of campaign media spending are not that broad. In addition, given that ballot measure qualifications are among the most heavily regulated speech activities in Arizona, voters who approved the VRKA would likely not expect such activity, without more, to be included. *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 470 ¶ 10 (2009) (“Our primary objective in construing statutes adopted by initiative is to give effect to the intent of the electorate.”) (quoting *State v. Gomez*, 212 Ariz. 55, 57 ¶ 11 (2006)).

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.” A.A.C. 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