



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

February 16, 2024

VIA ELECTRONIC MAIL

Arizona Secretary of State Adrian Fontes
Elections Division
1700 W. Washington St. Fl 7
Phoenix AZ 85007

Re: Submission of Independent Candidate Nomination Petitions by Political Action Committee

Dear Secretary Fontes,

We write on behalf of Third Way, a national non-profit think tank. Public press reports indicate that American Values 2024, a federal super PAC supporting Robert F. Kennedy, Jr., intends to collect and submit nomination petitions in support of Mr. Kennedy's candidacy for President of the United States in Arizona. Arizona law prohibits you from accepting nomination petitions for a candidate for President that are submitted by a third-party organization operating independently of that candidate. We write to urge adherence to the law; it is critical to protect the integrity of one of the most fundamental aspects of our democratic system – access to the ballot.

Robert F. Kennedy Jr. became a candidate for U.S. President for federal campaign finance purposes no later than October 17, 2023.¹ According to recent public reporting, a federal super political action committee ("PAC") named American Values 2024 has hired signature-gathering vendors to collect and submit nomination petitions to obtain ballot access for Mr. Kennedy in several states, including Arizona.²

¹ 52 U.S.C. 30101(2) (defining a "candidate" as an individual who has received contributions aggregating in excess of \$5,000 or made expenditures in excess of \$5,000 in support of their election to federal office); 11 C.F.R. § 101.1(a) (requiring an individual to designate a principal campaign committee within 15 days of becoming a candidate); Robert F. Kennedy, Statement of Candidacy (October 17, 2023), *available at* <https://docquery.fec.gov/pdf/800/202310179598479800/202310179598479800.pdf>.

² Vaughn Hillyard and Katherine Koretski, *RFK Jr.'s Super PAC Hires Signature-Gathering Vendors as Ballot Effort Ramps Up*, NBC News (Jan. 12, 2024) <https://www.nbcnews.com/politics/2024-election/rfk-jr-super-pac-ballot-access-rcna133734>. American Values 2024 is set up as a hybrid PAC. *See* American Values 2024 FEC Statement of Organization, <https://docquery.fec.gov/pdf/985/202401189600114985/202401189600114985.pdf>. A hybrid PAC is an entity that maintains two accounts - a super PAC account and a regular, hard money PAC account. *See Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011); FEC Statement on *Carey v. FEC* (Oct. 6, 2011), *available at* <https://www.fec.gov/updates/fec-statement-on-carey-v-fec/>. American Values 2024 has made clear to the press the petition effort is being conducted by the super PAC account. *See* Hillyard and Koretski, *supra* note 2; Brittany

Federal campaign finance law requires American Values 2024 to undertake this effort independently of Mr. Kennedy.³ We therefore assume for purposes of this letter that American Values 2024 efforts in Arizona will be conducted entirely independently of Mr. Kennedy or his campaign. **However, Arizona law does not permit a third party organization to collect and submit nomination petition signatures independently of the qualifying candidate.**

Arizona law requires an independent presidential candidate to designate in writing to the Secretary of State the names of the candidates for presidential elector who will represent the presidential candidate “*before any signatures for the candidate can be accepted for filing.*”⁴ Therefore, the candidate himself must first take action to designate his or her presidential electors before any petition filing will be accepted by the Secretary of State. The Secretary of State may not accept any nomination petition signatures prior to the candidate’s submission of the elector designations. If American Values 2024 is truly operating independently of the campaign, it will not be aware of when the campaign plans to designate its presidential electors.

Moreover, the Secretary of State’s guidance for independent presidential candidates states that the candidate (or their representative) must submit nominating petitions:

- “A candidate seeking ‘independent’ nomination must file” the nomination petition with enough valid signatures.⁵
- “Candidates are responsible for verifying the correct number of signatures are obtained based on January 2, 2024 voter registration totals.”⁶
- “It is incumbent upon the candidate and his or her legal counsel to ensure all of the forms required by Arizona law are completed and provided to the Secretary prior to the filing deadline in order to qualify for the general election ballot.”⁷

Further, in an advisory opinion issued in 2020, the Attorney General took the same position: “to qualify to have their names on the ballot, candidates must submit a statutorily prescribed number of qualified signatures.”⁸ It would be inconsistent with this guidance for the Secretary of State to accept petitions submitted by an independent PAC, and not the candidate or candidate’s representative. We urge you to adhere to Arizona law and refuse to accept any nomination petitions submitted by American Values 2024 absent proof that the organization is expressly operating under the direction of Mr. Kennedy, as his agent.

Gibson, *RFK Super PAC Rolls Out Ballot Access Priorities*, Politico (Dec. 22, 2023)

<https://www.politico.com/news/2023/12/22/rfk-jr-super-pac-rolls-out-ballot-access-priorities-00133142>.

³ Super PACs are prohibited from coordinating their spending with federal candidates. *See* Citizens United v. Fed. Election Comm’n, 558 U.S. 310 (2010); SpeechNow.org v. Fed. Election Comm’n, 599 F.3d 686(D.C. Cir. 2010).

⁴ Ariz. Rev. Stat. § 16-341(G).

⁵ Ariz. Sec’y of State, Running for U.S. President in Arizona – A Candidate Guide (Nov. 8, 2023) at 5-6, *accessible at*: https://azsos.gov/sites/default/files/2023-11/2024_running_for_president_handbook_20231108a.pdf (emphasis added).

⁶ *Id.* at 6 (emphasis added).

⁷ *Id.* (emphasis added).

⁸ Ariz. Att’y Gen. Adv. Op. (No. I20-004) (Mar. 24, 2020) (emphasis added) (citing Ariz. Rev. Stat. §§ 16-314(B); 16-322).

Sincerely,

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