



February 9, 2024

Lisa J. Stevenson
Acting General Counsel
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: Illegal In-Kind Contributions

Dear Ms. Stevenson:

The DNC Services Corp./Democratic National Committee (hereinafter the “DNC”) hereby files this Complaint against Robert F. Kennedy Jr., Team Kennedy, and American Values 2024 because American Values 2024 has begun making, and Team Kennedy accepting, in-kind contributions to assist Robert F. Kennedy Jr.’s candidacy in violation of federal law.¹

Robert F. Kennedy Jr. is seeking the office of the President of the United States and has designated Team Kennedy as his principal campaign committee.² American Values 2024, originally registered with the Federal Election Commission (FEC) in 2022 as “People’s Pharma Movement,”³ is a “Hybrid PAC,” which maintains segregated accounts for independent expenditures and for direct candidate contributions.⁴ People’s Pharma Movement amended its FEC registration in April of 2023 to reflect that it had changed its name to “American Values 2024.”⁵

As an independent candidate, Mr. Kennedy must satisfy certain conditions for his name to be included on the official ballot printed in each state. Mr. Kennedy has stated that his goal is to appear

¹ This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and 11 C.F.R. § 111.4.

² Statement of Candidacy (filed Apr. 5, 2023), <https://docquery.fec.gov/pdf/672/202304059579709672/202304059579709672.pdf>. Note: We are aware that Mr. Kennedy has announced that he intends to create two new political parties to assist his efforts to get on the ballot in four states. Maggie Astor, *Robert F. Kennedy Jr. Tries Creating Own Party to Get on Ballot in 6 States*, N.Y. TIMES (Jan. 17, 2024), <https://www.nytimes.com/2024/01/16/us/politics/rfk-jr-we-the-people-ballots.html>.

³ Statement of Organization (filed July 26, 2022), <https://docquery.fec.gov/pdf/467/202207269525065467/202207269525065467.pdf>.

⁴ FEC, *Registering as a Hybrid PAC* (last visited Feb. 8, 2024), <https://www.fec.gov/help-candidates-and-committees/filing-pac-reports/registering-hybrid-pac/>.

⁵ Amended Statement of Organization (filed Apr. 11, 2023), <https://docquery.fec.gov/pdf/903/202304129579869903/202304129579869903.pdf>.

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on the ballot “in all 50 states and DC.”⁶ Mr. Kennedy and his campaign have also stated that this process is challenging and expensive.⁷ Rather than solving this problem by raising the necessary funds consistent with federal law, Mr. Kennedy and his campaign are trying to take the short cut of having American Values 2024 perform this campaign function for him.⁸

American Values 2024 has stated it will spend approximately \$15 million to assist Mr. Kennedy’s efforts to earn a place on the ballot in the states in which it is most difficult for Mr. Kennedy to achieve that goal, including Arizona, California, Georgia, Illinois, Michigan, New York, Colorado, Nevada, Indiana, West Virginia, South Carolina, Maryland, Massachusetts, and Texas.⁹ American Values 2024 will do this by collecting signature petitions in each state to assist Mr. Kennedy’s efforts to qualify for a place on the ballot.¹⁰

In all the states in which American Values 2024 has announced it will assist Mr. Kennedy’s efforts to get on the ballot, state law presumes – and in most states requires – that the candidate or the campaign committee will take the steps necessary to qualify for the ballot. This includes requiring the candidate to submit a draft signature petition for state approval, requiring the candidate to turn in the completed forms, requiring the candidate to identify the individuals who collected the signatures, and requiring the candidate to obtain certification for circulators. Put simply, to qualify for the ballot under state law, American Values 2024 must coordinate its activity with Mr. Kennedy and his campaign in a way that violates federal campaign finance laws. The FEC should act expeditiously to

⁶ See, e.g., Ballot Access HQ, KENNEDY24, <https://perma.cc/CGL5-4Q75>.

⁷ See, e.g., Ballot Access, KENNEDY24, <https://perma.cc/9LQH-69TP> (embedded video at 0:09–19); Robert F. Kennedy, Jr. (@TeamKennedy24), *RFK Jr.’s Battle for Ballot Access in All 50 States*, YOUTUBE (Nov. 6, 2023), <https://www.youtube.com/watch?v=tsvuyXAN9Lo&t=9s>.

⁸ Unlike the campaign, which must abide by contribution limits, American Values 2024 is overwhelmingly funded by only a handful of wealthy donors, two of whom have contributed more than \$25 million of the \$28 million total that the Super PAC raised in 2023. See American Values 2024, *Report of Receipts and Disbursements* (filed Jan. 31, 2024), <https://docquery.fec.gov/pdf/199/202401319607875199/202401319607875199.pdf>; American Values 2024, *Report of Receipts and Disbursements* (filed July 31, 2023), <https://docquery.fec.gov/pdf/036/202307319584255036/202307319584255036.pdf>.

⁹ American Values 2024 list of targeted states has varied over time. This list is compiled from press releases on the organization’s website. See Press Release, *PAC Supporting Robert F. Kennedy, Jr. to Spend Between \$10m - \$15m Pursuing Ballot Access*, AMERICAN VALUES 2024 (Dec. 5, 2023), <https://perma.cc/XPC8-QE44>; Press Release, *American Values 2024 to Fund Ballot Access for Robert F. Kennedy, Jr. in Five More States*, AMERICAN VALUES 2024 (Feb. 2, 2024), <https://perma.cc/LM7H-VCTT>.

¹⁰ See Vaughn Hillyard & 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>.

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ensure the anti-corruption principles that underlie the Federal Election Campaign Act of 1971, as amended, (“the Act”) are upheld.

Legal Analysis

The Act and the Commission’s regulations define a contribution to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹¹ The FEC has long held that the candidate’s costs associated with gaining access to the ballot are expenses for the purpose of influencing a federal election.¹² “Anything of value” includes in-kind contributions. “[T]he provision of any goods or services without charge or at a charge that is less than the usual and normal charge” is an “in-kind” contribution.¹³ The FEC’s own campaign guide for candidates notes: “A committee makes an in-kind contribution when it pays for consulting, polling or printing services provided to a candidate committee.”¹⁴

Previously, the FEC has found it to be an in-kind contribution when an entity provides a campaign with free campaign-strategy consulting services,¹⁵ or when a media company purchases potentially damaging information about a candidate in consultation with or at the suggestion of the candidate’s agent.¹⁶ “In determining whether there is an in-kind contribution, the Commission has considered

¹¹ 52 U.S.C. § 30101(8)(A)(i); *accord* 11 C.F.R. § 100.52(a).

¹² *See* FEC Advisory Op. 1994-05 (White) at n.1, https://saos.fec.gov/saos/searchao?AO_NUMBER=1994-05 (“[E]xpenditures to influence your election would include amounts you spend . . . to promote yourself for the general election ballot by seeking signatures on nomination petitions.”); *see also* FEC Advisory Op. 1984-11 (Serrette) at 4, <https://www.fec.gov/files/legal/aos/1984-11/1984-11.pdf> (citing 11 C.F.R. § 9032.9) (determining that expenses made to collect petition signatures for the general election ballot are expenditures, and therefore are, “qualified campaign expenses,” which are expenses made in connection with a candidate’s campaign for nomination).

¹³ 11 C.F.R. § 100.52(d)(1).

¹⁴ FEC, *Campaign Guide for Nonconnected Committees* at 25 (May 2008), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/nongui.pdf>. *See also* FEC Advisory Op. 2007-22 (Hurysz) at 6, <https://www.fec.gov/files/legal/aos/2007-22/2007-22.pdf> (“The provision of . . . materials without charge would relieve your campaign of the expense that it would otherwise incur to obtain such materials. Thus, the provision of such items without charge would constitute a contribution . . .”).

¹⁵ *See, e.g.*, Factual & Legal Analysis (“F&LA”) at 32–33, MURs 4568, 4633 & 4634 (Triad Mgm’t Servs., Inc.), <https://www.fec.gov/files/legal/murs/4568/28044191758.pdf>.

¹⁶ *See* F&LA at 11, MURs 7324, 7332 & 7366 (A360 Media, LLC f/k/a Am. Media, Inc., et al.), https://www.fec.gov/files/legal/murs/7366/7366_21.pdf.

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whether the provision of an item would ‘relieve’ the campaign of an expense it ‘would otherwise incur’ to obtain a similar benefit.”¹⁷

The definition of a “contribution” to a candidate includes an expenditure “made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents.”¹⁸ Similarly, the statute defines an “independent expenditure” as one that is “not made in concert or cooperation with or at the request or suggestion of [the candidate mentioned in the communication], the candidate’s authorized political committee, or their agents, or a political party committee or its agents.”¹⁹

American Values 2024 will hire vendors to collect signatures on the campaign’s ballot petitions for the campaign,²⁰ services Team Kennedy would otherwise have to purchase itself. The FEC has previously rejected a Hybrid PAC’s similar request to provide a campaign with a contact list that was “the product of time-consuming, labor-intensive activities” by the Hybrid PAC.²¹ In that opinion, the FEC noted:

Providing the list to Governor DeSantis after he becomes a federal candidate (should he do so) would exceed the Act’s contribution limits, and providing the list to Governor DeSantis after he begins testing the waters for a federal candidacy (should he do so) would

¹⁷ F&LA at 8 n.33, MURs 7838, 7849, 7852 & 7856 (Expensify, Inc., et al.), https://www.fec.gov/files/legal/murs/7852/7852_07.pdf (quoting FEC Advisory Op. 2017-06 (Stein & Gottlieb) at 5, [https://www.fec.gov/files/legal/aos/2017-06/AO-2017-06-\(Stein-Gottlieb\)-Final-\(09.14.17\).pdf](https://www.fec.gov/files/legal/aos/2017-06/AO-2017-06-(Stein-Gottlieb)-Final-(09.14.17).pdf) (“The Commission also considers whether the provided services relieve the recipient committees of any financial burden or obligation they would otherwise incur, thereby providing something of value that would constitute a contribution from the entity that provides the service.”)). *See also* FEC Advisory Op. 2015-07 (Hillary for America) at 2, <https://www.fec.gov/files/legal/aos/2007-22/2007-22.pdf> (reasoning that “reliev[ing] the committee of an expense that it would otherwise incur” would constitute an in-kind donation); FEC Advisory Op. 2007-22 (Hurysz) at 6 (explaining that accepting campaign material such as flyers and advertisements from Canadian independent candidates would be an unlawful foreign contribution because “[t]he provision of these items without charge would relieve [the] campaign of the expense that it would otherwise incur to obtain such materials”); FEC Advisory Op. 1992-33 (DNC/RNC) at 3, <https://www.fec.gov/files/legal/aos/1992-33/1992-33.pdf> (“As a general rule, an in-kind donation for Federal elections is treated as if funds equal to the value of the donation were received by the committee and then the committee expended those funds to purchase the goods or services.”).

¹⁸ 52 U.S.C. § 30116(a)(7)(B)(i); *accord* 11 C.F.R. § 109.20.

¹⁹ 52 U.S.C. § 30101(17)(B); *accord* 11 C.F.R. § 100.16.

²⁰ Vaughn Hillard 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>.

²¹ FEC Advisory Op. 2022-12 (Ready for Ron) at 5–7, <https://www.fec.gov/files/legal/aos/2022-12/2022-12.pdf> (citation omitted).

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be contrary to the Commission’s regulation at 11 C.F.R. § 100.72(a). R4R’s proposal to provide the compiled contact information to Governor DeSantis in the event he becomes a federal candidate or begins testing the waters is also contrary to restrictions on the noncontribution accounts of hybrid PACs.²²

In upholding the FEC’s decision in that matter, the District Court opinion emphasized that the Hybrid PAC was offering a “thing of value” that was “a uniquely effective, tangible tool designed to assist him in pursuing the presidency.”²³

American Values 2024 may argue that the services it is providing Team Kennedy are not an in-kind contribution, but instead are an “independent expenditure” consistent with the Supreme Court’s decisions.²⁴ This argument fails here, for as noted below, Team Kennedy cannot comply with state ballot access laws in the states in which American Values 2024 intends to operate without American Values 2024 acting “in cooperation, consultation or concert with, or at the request or suggestion of” Team Kennedy.²⁵

Arizona

In Arizona, it is the candidate who must submit draft nominating papers – the papers that American Values 2024 will circulate and collect – to the Secretary of State’s office for review and approval. “Any person desiring to become a candidate at any election and to have the person’s name printed on the official ballot *shall file*, not less than one hundred twenty nor more than one hundred fifty days before the primary election . . . , a nomination petition in addition to the nomination paper required.”²⁶ The candidate must submit those two sets of documents himself or herself.²⁷

The required “nomination petition” is “the form or forms used for obtaining the required number of signatures of qualified electors, which is circulated *by or on behalf of* the person wishing to become a

²² *Id.* at 4.

²³ *Ready for Ron v. FEC*, No. CV 22-3282 (RDM), 2023 WL 3539633, at *8–9 (D.D.C. May 17, 2023).

²⁴ *See, e.g., Citizens United v. FEC*, 558 U.S. 310 (2010).

²⁵ 52 U.S.C. § 30116(a)(7)(B); *accord* 11 C.F.R. § 109.20(a).

²⁶ Ariz. Rev. Stat. § 16-314(A) (emphasis added).

²⁷ *Id.*; *see also* Ariz. Sec’y of State, *Running for U.S. President in Arizona—A Candidate Guide* at 5 (Nov. 2023), https://azsos.gov/sites/default/files/2023-11/2024_running_for_president_handbook_20231108a.pdf (“An *independent presidential candidate must* submit paperwork to the Secretary of State to qualify to appear on the ballot for the November 5, 2024 General Election.” (emphasis added)); *cf.* Ariz. Rev. Stat. § 16-341(K) (“A candidate who does not file a timely nomination petition that complies with this section is not eligible to have the candidate’s name printed on the official ballot . . .”).

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candidate for a political office.”²⁸ For independent presidential candidates, the required “nomination paper” includes several separate documents: (1) a letter designating the name of the candidate’s vice-presidential running mate and the names of eleven presidential electors who will represent the candidate, along with their signed consent to be designated as the vice-presidential candidate or presidential electors, (2) the nomination paper for the presidential candidate, (3) the nomination paper for the vice-presidential candidate, and (4) a nomination paper for each of the eleven presidential electors.²⁹ A candidate must designate in writing to the Secretary of State the names of the presidential electors who will “represent” the presidential candidate “before any signatures for the candidate can be accepted for filing.”³⁰

Thus, Arizona law requires the candidate, not the Super PAC, to: (1) initiate the signature collection process (by filing the designation and consent forms for the presidential elections), (2) circulate the nomination petition (which is circulated “*by or on behalf of* the person wishing to become a candidate for political office”),³¹ and (3) file the completed nomination petition with the Secretary of State. It is therefore not possible for American Values 2024 to perform this function without acting “in cooperation, consultation or concert with, or at the request or suggestion of” Team Kennedy and/or Mr. Kennedy himself and consequently is an improper in-kind contribution to the campaign.

Colorado

In Colorado, the candidate must not only obtain approval of the form being used to collect signatures, the candidate must maintain a list of the individuals who are circulating petitions on the candidate’s behalf, and it is the candidate who submits those forms, once signed by voters, along with the candidate’s Acceptance of Nomination form.

To qualify for the ballot in Colorado, independent presidential candidates must complete several steps. First, Colorado requires that nomination petitions be submitted to, and approved by, the Secretary of State prior to circulation.³² Guidance from the Colorado Secretary of State indicates that the Secretary of State’s Office cannot create a petition template for an independent presidential candidate until the candidate provides Acceptance of Nomination forms for each of ten presidential

²⁸ Ariz. Rev. Stat. § 16-314(B) (emphasis added).

²⁹ *Id.* § 16-341(J); *see also* Ariz. Sec’y of State, *supra* note 27, at 5–6 (listing the documents that “[a] candidate seeking ‘independent’ nomination must file”); *Clayton v. West*, 489 P.3d 394, 387–98 (Ariz. 2021) (explaining the nomination paper requirements for independent presidential candidates).

³⁰ Ariz. Rev. Stat. § 16-341(G).

³¹ *Id.* § 16-314(B) (emphasis added).

³² Colo. Rev. Stat. § 1-4-903.

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electors that will represent the candidate and that will be printed on the petition.³³ Once the petition is approved for circulation, each “candidate or candidate committee shall maintain a list of the names and addresses of all circulators who circulated petition sections on behalf of the candidate, the notaries public who notarized petition sections on behalf of the candidate, and the petition section numbers that each circulator circulated and that each notary public notarized.”³⁴ Finally, once all signatures are collected, nomination petitions must be filed alongside a signed Acceptance of Nomination Form by the candidate.³⁵

Accordingly, Colorado law requires significant candidate involvement in the signature collection process from start to finish. And although Colorado law licenses “petition entities” to pay individuals to collect signatures,³⁶ there is no way for American Values 2024 to obtain a compliant petition, properly maintain records regarding circulators and notaries, or submit a compliant petition without acting “in cooperation, consultation or concert with, or at the request or suggestion of” Team Kennedy and/or Mr. Kennedy himself.

Nevada

Nevada also requires Mr. Kennedy to provide American Values 2024 with the petition it will use, and for Mr. Kennedy to file the petitions American Values 2024 collects, for those petitions to be valid.

Nevada law requires that “[a] person who desires to be an independent candidate for the office of President of the United States must . . . file with the Secretary of State a declaration of candidacy and a petition of candidacy, in which the person must also designate a nominee for Vice President.”³⁷ This petition of candidacy “must be signed by a number of registered voters equal to not less than 1 percent of the total number of votes cast at the last preceding general election for candidates for the offices of Representative in Congress”³⁸ Nevada law dictates that “[t]he candidate shall file a copy of the petition the person intends to circulate for signatures with the Secretary of State *before* the petition may be circulated for signatures.”³⁹

Thus, Nevada law requires the candidate, not the Super PAC, to both initiate (by filing a copy of the petition of candidacy with the Secretary of State prior to circulation) and complete (by filing the completed petition of candidacy after signatures are collected) the signature collection process. It is

³³ See Colo. Sec’y of State, *President & Vice President General Election: 2024 Candidate Qualification Guide* at 5 (July 27, 2023), <https://www.coloradosos.gov/pubs/elections/Candidates/packets/PresidentAndVicePresident.pdf>.

³⁴ Colo. Rev. Stat. § 1-4-905(5).

³⁵ *Id.* § 1-4-906.

³⁶ *Id.* § 1-4-905.5.

³⁷ Nev. Rev. Stat. § 298.109(1).

³⁸ *Id.*

³⁹ *Id.* (emphases added).

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not possible for American Values 2024 to perform this function without acting “in cooperation, consultation or concert with, or at the request or suggestion of” Team Kennedy and/or Mr. Kennedy himself, and consequently, this assistance will constitute an in-kind contribution.

Illinois

Illinois will similarly require Mr. Kennedy to file the petitions that American Values 2024 collects. To qualify for the ballot in Illinois, independent presidential candidates must file nomination petitions with the requisite number of signatures alongside that candidate’s statement of candidacy.⁴⁰ That statement of candidacy is constructed as a formal request from the candidate requesting his or her name be printed on the ballot.⁴¹ Guidance from the Illinois Secretary of State similarly describes the obligation for filing nomination petitions as running to the candidate.⁴²

Accordingly, it is not possible for American Values 2024 to assist Team Kennedy in the ballot access process in Illinois without acting “in cooperation, consultation or concert with, or at the request or suggestion of” Team Kennedy. The Super PAC would be undertaking the significant expense of collecting the signatures and then giving completed petitions to Team Kennedy for Team Kennedy to file alongside the candidate’s sworn statement of candidacy requesting his name be printed on the ballot. This improperly “relieve[s]” the campaign of an “expense that it would otherwise incur,” and constitutes an in-kind contribution to the campaign.⁴³

Michigan

In Michigan, independent presidential candidates must file a “qualifying petition” with the requisite number of valid signatures in order to gain access to the ballot.⁴⁴ Michigan law defines a “qualifying

⁴⁰ 10 Ill. Comp. Stat. 5/10-5 (“Such certificate of nomination or nomination papers in addition shall include as a part thereof, the oath required by Section 7-10.1 of this Act and must include a statement of candidacy for each of the candidates named therein . . .”).

⁴¹ *Id.* (“I hereby request that my name be printed upon the official ballot . . .”).

⁴² See Ill. State Bd. of Elections, *2024 Presidential Preference & Delegates Guide* at 2 (Sept. 2023), <https://www.elections.il.gov/RunningForOffice.aspx?MID=r0lNCTNZd9A%3D> (“Candidates *must* file the following papers (which should be in the following order): (a) Statement of Candidacy, . . . (d) Nominating petition sheets, containing sufficient number of *original* signatures.”).

⁴³ FEC Advisory Op. 2007-22 (Hurysz) at 6.

⁴⁴ Mich. Comp. Laws § 168.590; Mich. Bureau of Elections, *Election Officials’ Manual, Chapter 3*, at 2 (Nov. 2019), https://www.michigan.gov/sos/-/media/Project/Websites/sos/01mcalpine/III_Candidate_Filings_and_Financial_Disclosure_Req.pdf (“A candidate who is not affiliated with a political party who seeks a partisan office must file a qualifying petition which bears the requisite number of valid signatures.”).

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petition” as “a nominating petition *required of and filed by* a person to qualify to appear on an election ballot as a candidate for office without political party affiliation.”⁴⁵

Thus, according to the plain language of Michigan law, filing the qualifying petition is “required of” the candidate, not the Super PAC or anyone else. As such, American Values 2024 providing Team Kennedy with the petitions necessary for Mr. Kennedy to qualify for the ballot will constitute an illegal in-kind contribution under federal law.

Indiana

In Indiana, state law requires candidates to submit a candidate consent form along with the requisite number of valid signatures in order to gain access to the ballot.⁴⁶ That consent form requires the candidate to certify that he or she gives “written consent . . . to the circulation and filing of a petition . . . to place my name on the ballot for the general election.”⁴⁷ It is not possible, without the consent of the candidate, for American Values 2024 to circulate signature petitions in Indiana. Consequently, this assistance will constitute an in-kind contribution.

West Virginia

In West Virginia, the campaign must ask the county clerk in each county in which it intends to circulate a ballot petition for credentials that signature collectors must possess and display when collecting signatures.⁴⁸ The Kennedy campaign has obtained these credentials.⁴⁹ The PAC will be working under color of the campaign’s authorization and credentials as it collects signatures for Mr. Kennedy to qualify for the ballot.

Georgia

In Georgia, “[c]andidates may qualify for an election as follows: . . . (2) Filing a notice of candidacy and affidavit and paying a qualifying fee . . . in conjunction with: (A) Filing a nomination petition declared lawful pursuant to Code Section 21-2-171 either as an independent candidate or as a nominee of a political body.”⁵⁰ Independent presidential candidates must also file with the Secretary of State a

⁴⁵ Mich. Comp. Laws § 168.590 (emphasis added).

⁴⁶ Ind. Code § 3-8-6-12(b) (“The certified petition of nomination must be accompanied by the following: (1) The candidate’s written consent to become a candidate.”).

⁴⁷ See Ind. Sec’y of State, State Form 46419.

⁴⁸ See W. Va. Code § 3-5-23; W. Va. Sec’y of State, *2024 Running for Office Guide* at 9 (Jan. 18, 2024), <https://sos.wv.gov/FormSearch/Elections/Informational/Running%20for%20Office.pdf>.

⁴⁹ See Kennedy24, *supra note 6*, at State Petitions and Instructions.

⁵⁰ Ga. Code Ann. § 21-2-130.

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slate of candidates for the office of presidential elector, who in turn must qualify pursuant to Ga. Code Ann. § 21-2-132.⁵¹

Because Georgia law provides that the candidate, not the Super PAC, shall file the nomination petition, it is not possible for American Values 2024 to assist in Mr. Kennedy’s attempt to qualify for the ballot without acting “in cooperation, consultation or concert with, or at the request or suggestion of” Team Kennedy, and consequently, the petition signatures it provides the campaign will constitute an in-kind contribution.

Conclusion

When a third party pays a campaign’s expenses, federal law treats that as an in-kind contribution. While American Values 2024 is organized as a Hybrid PAC that makes independent expenditures, to comply with state law, Team Kennedy and American Values 2024 must act together. From drafting the petitions, to having them certified, to recording the names of the circulators, to filing the petitions with the state, state law will require American Values 2024 and Team Kennedy to collaborate in this effort. This is not surprising, for state law presumes that the candidate and the campaign will be the entities obtaining valid qualifying petitions.

This use of a Super PAC by a candidate is a far cry from what the United States Supreme Court envisioned when concluding that the First Amendment required there to be an exception to the general restrictions on the source and amount of contributions to a candidate, to allow for expenditures made “totally independently” or “wholly independent[ly]” of a candidate.⁵² In *Buckley v. Valeo*, the court explained that “expenditures for express advocacy of candidates made totally independently of the candidate and his campaign . . . may well provide little assistance to the candidate’s campaign and indeed may prove counterproductive.”⁵³ The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.”⁵⁴ What American Values 2024 and the Kennedy campaign propose to do violates both the letter and the spirit of the statute this agency enforces.

⁵¹ *Id.* § 21-2-132.1.

⁵² *McConnell v. FEC*, 540 U.S. 93, 221–22 (2003) (“Independent expenditures are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate’s point of view. By contrast, expenditures made after a ‘wink or nod’ often will be as useful to the candidate as cash. For that reason, Congress has always treated expenditures made ‘at the request or suggestion of’ a candidate as coordinated.” (cleaned up)), *overruled in part by Citizens United v. FEC*, 558 U.S. 310 (2010).

⁵³ 424 U.S. 1, 47 (1976).

⁵⁴ *Id.* at 47–48

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For the reasons stated above, the Federal Election Commission should conclude that there is reason to believe that Robert Kennedy Jr., Team Kennedy, and American Values 2024 have violated the Federal Campaign Act of 1971, as amended, and seek such monetary, declaratory or injunctive relief as necessary to remedy these violations.

Sincerely,

Monica Guardiola
Chief Operations Officer
Democratic National Committee
430 South Capitol Street SE
Washington, DC 20003

Signed and sworn to before me, under penalty of perjury.

Notary Public

February 9, 2024

DANIYAR ISMAILOV
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 30, 2027



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