



FEDERAL ELECTION COMMISSION

Washington, DC

**MEMORANDUM**

**TO:** The Commission

**FROM:** Office of the Commission Secretary <sup>VFV</sup>

**DATE:** November 2, 2023

**SUBJECT:** AO 2023-06 (Texas Majority PAC) Comment

**Attached is a comment received from Elias Law Group regarding AO 2023-06  
This matter is on November 2, 2023 Open Meeting Agenda.**

**Attachment**



November 1, 2023

Federal Election Commission  
Office of the General Counsel  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463  
[ao@fec.gov](mailto:ao@fec.gov)

**Re: Advisory Opinion Request 2023-6**

Dear Acting General Counsel Stevenson:

I write as counsel to the Montana Democratic Party (“**MDP**”) to provide comments on proposed Draft A in response to Advisory Opinion Request 2023-6. The MDP urges the Federal Election Commission (“**Commission**”) to adopt the portion of Draft A that holds that a paid canvass is not a “public communication” but to reject Draft A’s conclusion that expenses for “hiring vendor consultants, hiring and training paid canvassers, and creating and managing a canvass questionnaire” are non-communication expenditures under 11 C.F.R. § 109.20. **This conclusion is irreconcilable with the MDP’s decades of experience in administering paid canvasses, and if adopted, would drastically alter how political parties structure and fund their paid canvassing programs. At bottom, Draft A identifies a distinction between different mediums’ distribution costs that the regulated community does not understand or agree with, and its adoption will disrupt decades of established practice.**

The MDP is a state committee of the Democratic party under 52 § U.S.C. 30125(b). For decades, the MDP has relied on paid canvasses as a cornerstone method of communicating with Montana voters on a myriad of issues. As the Commission knows, a paid canvass entails compiling a list of voters and their addresses, then sending an individual to each voter’s address to knock on their door and attempt to communicate with that voter on a specific topic. If a voter does not answer the door, printed literature that synthesizes the desired communication is left, usually in the form of a door hanger or flyer. If the voter does answer the door, the canvasser engages in an oral conversation with the voter based off a pre-written script and may also leave printed literature summarizing the relevant issue or topic. **In either instance, a communication is made – either via printed literature, an oral communication or both.**

In MDP's extensive experience, the execution of a paid canvass necessarily entails two types of costs: (1) the cost of producing the printed literature distributed to voters; and (2) the cost of distributing the literature and training individuals on the accompanying oral communication.

The second cost – distribution of the literature and training on oral communication- comes in the form of a consulting fee paid to a canvassing vendor. When MDP decides to undertake a paid canvass, it selects a canvassing vendor. The MDP then typically provides that vendor with a list of voters and addresses, literature, and an oral script. The canvassing vendor hires and trains individual canvassers and executes the paid canvass according to the materials and instructions provided by MDP. The entire fee paid to the canvassing vendor is provided to compensate the vendor for the distribution of the communication (in both oral and printed form). The canvassing vendor serves no other purpose - and is not paid for any other purpose - apart from the services required to distribute the printed and oral communications.

Despite this practical reality, Draft A concludes that the expenses of “hiring vendor consultants, hiring and training paid canvassers, and creating and managing a canvass questionnaire” are “supportive expenses” that are “not for canvassing communications themselves.”<sup>1</sup> For every paid canvass sponsored by MDP in recent memory, distribution of the communications depended entirely on the fees paid to the canvassing vendor. The vendor fees served no purpose other than to compensate the vendor to hire individual canvassers, train them on how to deliver the specific communication and compensate the canvassers for time spent delivering said communications.

To MDP's knowledge, the Commission has never separated out the distribution costs of a communication and treated such costs as subject to 11 C.F.R. § 109.20 instead of 11 C.F.R. § 109.21. And it is difficult to identify a single form of communication that does not require payment for distribution costs. For example, MDP's direct mail program requires payments for postage to mail the communication to voters. When the MDP wishes to text voters, it does so by paying to use a software platform that works with wireless carriers' systems to disseminate the text messages. To distribute a television advertisement, MDP pays a professional media buyer to enter into contracts with television stations that dictate the rate, time slot and duration of the advertising spot. All of these costs—just like the costs of a canvassing vendor—are directly tied to the distribution of the communication at issue and serve no other purpose. The underpinnings of Draft A would not only undermine existing practices around paid canvasses, it would disrupt the entire communities' understanding of distribution costs for a wide range of communications.

MDP understands the Commission's goal of stopping attempts to treat costs that are tangential to a communication as communication costs under 11 C.F.R. § 109.21. Where Draft A errs is in determining that distribution costs for a paid canvass are not communication costs but are rather “supportive expenses.” **It is not possible to communicate with voters through a paid canvass without paying a canvassing firm for the exact expenses identified by the Commission as**

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<sup>1</sup> Draft A at 9.

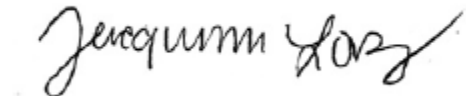
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**merely supportive. Such expenses are necessary for the distribution of the communication and are therefore properly categorized as communication costs under 11 C.F.R. § 109.21. A conclusion to the contrary would separate out from § 109.21 the exact kinds of distribution costs that are present in nearly every other type of voter communication. There is no legal or practical basis for this distinction.**

MDP urges the Commission to adjust Draft A such that (1) costs directly related to the production or distribution of a communication do fit within 11 C.F.R. § 109.21, but (2) the practically incorrect conclusion that “hiring vendor consultants, hiring and training paid canvassers, and creating and managing a canvass questionnaire” do not qualify as such is removed. Such reasoning is not necessary to protect against misuse of § 109.21 and would cause nothing short of chaos as the regulated community attempts to understand how such reasoning applies to other critical forms of voter contact and communication.

Yours truly,

A handwritten signature in black ink, appearing to read "Jacquelyn Lopez". The signature is written in a cursive, flowing style.

Jacquelyn Lopez  
Counsel for Montana Democratic Party