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May 15, 2018

**BY HAND DELIVERY**

Eric Spencer  
Elections Director  
Office of the Arizona Secretary of State  
1700 W. Washington Street, Floor 7  
Phoenix, Arizona 8500  
espencer@azsos.gov

Re: Clean Energy for a Healthy Arizona - Violation of A.R.S. § 19-118.01

Dear Mr. Spencer:

This office represents Arizonans for Affordable Electricity (“AFAE”). This letter is to inform the Secretary of State’s Office of alleged illegal activity conducted by Clean Energy for a Healthy Arizona (“Committee”), through its petition circulation contractor, Field Works, LLC (“Field Works”) in connection with statewide Initiative Petition No. C-04-2018 and respectfully request that your office investigate the Committee and its agents’ actions. Specifically, as discussed below and upon information discovered, Field Works petition circulators are held to a per-shift signature quota; failure to meet the quota results in termination of employment.<sup>1</sup> This practice violates A.R.S. § 19-118.01, thus invalidating any signatures gathered under this policy.

The Committee has engaged Field Works to gather signatures for Initiative No. C-04-2018. Field Works employs petition circulators to gather signatures. Although Field Works circulators are paid by the hour, they are also held to a “performance standard.”<sup>2</sup> According to the Field Works staff manual: “All staff are expected to meet basic performance standards. Performance standards are posted in the office and may be changed during the course of the campaign.”

Multiple former employees have reported that Field Works imposes a performance standard on circulators gathering signatures for Initiative No. C-04-2018 requiring between 65

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<sup>1</sup> See Declarations of former Field Works employees, attached as Exhibit A.

<sup>2</sup> *Id.* at ¶ 6.

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and 68 signatures per 8-hour shift.<sup>3</sup> Failure to meet this requirement results in termination of employment.<sup>4</sup> To date, AFAE is aware of at least five former Field Works employees who have been terminated for failure to meet their signature quota.<sup>5</sup>

Arizona law makes clear that

[a] person shall not pay or receive money or any other thing of value based on the number of signatures collected on a statewide initiative or referendum petition. Signatures that are obtained by a paid circulator who violates this section are void and shall not be counted in determining the legal sufficiency of the petition.<sup>6</sup>

Although this statute is commonly referred to as barring payment on a “per-signature” basis, the plain language is more broad. Indeed, a signature quota as required by the Committee makes future employment contingent upon circulators gathering a minimum number of signatures. Arizona courts have specifically held that employment and continued employment are adequate consideration to form a contract between employer and employee.<sup>7</sup> Thus, continued employment constitutes a “thing of value” that cannot be provided “based on the number of signatures collected.”<sup>8</sup>

This reading of the statute is supported by its underlying policy. As you know, one of the Legislature’s primary concerns in passing A.R.S. § 19-118.01 was fraud reduction.<sup>9</sup>

The Federal District Court in Colorado recently analyzed a similar question arising out of an anti-fraud statute that required petition circulators to receive a majority of their compensation in the form of hourly payment.<sup>10</sup> The court recognized that petition circulators are more likely to commit fraud under a quota system than under a pure payment per-signature arrangement.<sup>11</sup> As the court explained:

Under a pay-per-hour system, the marginal return of forging a signature can be, by meeting a quota, retaining one’s employment, whereas the marginal return of

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<sup>3</sup> Ex. A at ¶ 7.

<sup>4</sup> *Id.* at ¶ 8.

<sup>5</sup> See Ex. A.

<sup>6</sup> A.R.S. § 19-118.01(A).

<sup>7</sup> See *Mattison v. Johnson*, 152 Ariz. 109, 113 (App. 1986).

<sup>8</sup> See A.R.S. § 19-118.01(A).

<sup>9</sup> See *Initiatives; circulators; signature collection; contests: Hearing on H.B. 2404 Before the H. Gov’t Comm.*, 2017, 53d Leg., 1st Sess. (statements of Rep. Vince Leach).

<sup>10</sup> See *Indep. Inst. v. Gessler*, 936 F.Supp.2d 1256, 1259 (D. Colo. 2013).

<sup>11</sup> See *id.* at 1273.

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forging a signature under a pay-per-signature system is what is paid for a signature. Losing one's job is a greater incentive to commit fraud when compared to the prospect of earning an additional dollar.<sup>12</sup>

Likewise, the Fifth Circuit has recognized that "[t]he incentives for fraud in a quota system are obvious."<sup>13</sup>

As these courts point out, there is no doubt that the fear of being fired creates incentive for Field Works employees to engage in fraudulent signature collection. Thus, Field Works' quota enforcement violates not only the letter, but also the spirit of Arizona law.<sup>14</sup> Therefore, every signature collected by circulators subject to this quota system is invalid and should not be counted in determining the legal sufficiency of Petition No. C-04-2018.<sup>15</sup> AFAE respectfully requests that your office investigate this serious matter and refer the Committee's failure to comply with Arizona law to the Attorney General's Office for further relief.

Thank you for your attention to this matter. If you have any questions, please let us know.

Very truly yours,

Snell & Wilmer



Brett W. Johnson  
Andrew Sniegowski

AS

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<sup>12</sup> *Id.*

<sup>13</sup> *Voting for America, Inc. v. Andrade*, 488 F. App'x. 890, 900 (5th Cir. 2012).

<sup>14</sup> *See* A.R.S. § 19-118.01(A).

<sup>15</sup> *See* A.R.S. § 19-118.01(B).

# Exhibit A

DECLARATION

I, Breanna Mah, hereby declare the following information to be true and correct:

- 1. I am over the age of 18 and a resident of Gilbert, Arizona.
- 2. Except where indicated, I state the following of my own knowledge and if called upon to do so, could testify competently to the following.
- 3. I am a registered petition circulator associated with Petition Serial Number C-04-2018.
- 4. My Circulator Registration Number is A2971994.
- 5. From 3/8/18 to 4/17/18 <sup>30</sup>, I was employed as a petition circulator by FieldWorks, LLC to collect signatures in support of Petition Serial Number C-04-2018 in connection with FieldWorks' petition circulation efforts on behalf of Clean Energy for a Healthy Arizona.
- 6. Consistent with official FieldWorks' policy, I was subjected to "performance standards" for my petition signature collection efforts.
- 7. Specifically, I was required to collect at least 65 signatures per eight hour shift.
- 8. As part of FieldWorks' policy, any petition circulator who collected less than 65 signatures in an eight hour shift was terminated from employment with FieldWorks.
- 9. During my shift on 4/26/18 <sup>30</sup>, I was able to collect only 16 signatures.
- 10. As a result, on 4/26/18 <sup>30</sup> I was fired from my job as a FieldWorks' petition circulator.
- 11. To the best of my knowledge and belief there was no other reason for my termination, aside from my failure to meet the above referenced quota.

I declare under penalty of perjury that the facts in this statement are true and correct to the best of my knowledge and belief.

Executed: May 5, 2018

Signed: 

DECLARATION

I, Stephanie A. At, hereby declare the following information to be true and correct:

- 1. I am over the age of 18 and a resident of Phoenix, AZ, Arizona.
- 2. Except where indicated, I state the following of my own knowledge and if called upon to do so, could testify competently to the following:
- 3. I am a registered petition circulator associated with Petition Serial Number C-04-2018.
- 4. My Circulator Registration Number is AZ 28073.
- 5. From March 1 to April 3, I was employed as a petition circulator by FieldWorks, LLC to collect signatures in support of Petition Serial Number C-04-2018 in connection with FieldWorks' petition circulation efforts on behalf of Clean Energy for a Healthy Arizona.
- 6. Consistent with official FieldWorks' policy, I was subjected to "performance standards" for my petition signature collection efforts.
- 7. Specifically, I was required to collect at least 65 signatures per eight hour shift.
- 8. As part of FieldWorks' policy, any petition circulator who collected less than 65 signatures in an eight hour shift was terminated from employment with FieldWorks.
- 9. During my shift on April 3, I was able to collect only 40 signatures.
- 10. As a result, on April 3, I was fired from my job as a FieldWorks' petition circulator.
- 11. To the best of my knowledge and belief there was no other reason for my termination, aside from my failure to meet the above referenced quota.

I declare under penalty of perjury that the facts in this statement are true and correct to the best of my knowledge and belief.

Executed: May 3, 2018

Signed: Stephanie A. At

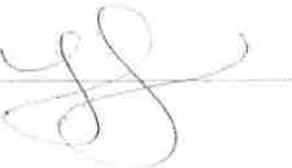
## DECLARATION

I, Leslie Joseph, hereby declare the following information to be true and correct:

1. I am over the age of 18 and a resident of Phoenix, Arizona.
2. Except where indicated, I state the following of my own knowledge and if called upon to do so, could testify competently to the following.
3. I am a registered petition circulator associated with Petition Serial Number C-04-2018.
4. My Circulator Registration Number is \_\_\_\_\_.
5. From 3/1/18 to 3/20/18, I was employed as a petition circulator by FieldWorks, LLC to collect signatures in support of Petition Serial Number C-04-2018 in connection with FieldWorks' petition circulation efforts on behalf of Clean Energy for a Healthy Arizona.
6. Consistent with official FieldWorks' policy, I was subjected to "performance standards" for my petition signature collection efforts.
7. Specifically, I was required to collect at least 60 signatures per eight hour shift.
8. As part of FieldWorks' policy, any petition circulator who collected less than 60 signatures in an eight hour shift was terminated from employment with FieldWorks.
9. During my shift on \_\_\_\_\_, I was able to collect only 40 signatures.
10. As a result, on \_\_\_\_\_, I was fired from my job as a FieldWorks' petition circulator.
11. To the best of my knowledge and belief there was no other reason for my termination, aside from my failure to meet the above referenced quota.

I declare under penalty of perjury that the facts in this statement are true and correct to the best of my knowledge and belief.

Executed: May 5, 2018

Signed: 

**DECLARATION**

I, DAN RAKECA, hereby declare the following information to be true and correct:

1. I am over the age of 18 and a resident of YES, Arizona.
2. Except where indicated, I state the following of my own knowledge and if called upon to do so, could testify competently to the following.
3. I am a registered petition circulator associated with Petition Serial Number C-04-2018.
4. My Circulator Registration Number is \_\_\_\_\_.
5. From 2-28-18 to 3-28-18, I was employed as a petition circulator by FieldWorks, LLC to collect signatures in support of Petition Serial Number C-04-2018 in connection with FieldWorks' petition circulation efforts on behalf of Clean Energy for a Healthy Arizona.
6. Consistent with official FieldWorks' policy, I was subjected to "performance standards" for my petition signature collection efforts.
7. Specifically, I was required to collect at least 68 signatures per eight hour shift.
8. As part of FieldWorks' policy, any petition circulator who collected less than 68 signatures in an eight hour shift was terminated from employment with FieldWorks.
9. During my shift on MARCH, I was able to collect only 46 signatures.
10. As a result, on 3/28, I was fired from my job as a FieldWorks' petition circulator.
11. To the best of my knowledge and belief there was no other reason for my termination, aside from my failure to meet the above referenced quota.

I declare under penalty of perjury that the facts in this statement are true and correct to the best of my knowledge and belief.

Executed: May 6, 2018

Signed: Dan L. Rakela

## DECLARATION

I, Nicholas White, hereby declare the following information to be true and correct:

1. I am over the age of 18 and a resident of Mesa, Arizona.
2. Except where indicated, I state the following of my own knowledge and if called upon to do so, could testify competently to the following.
3. I am a registered petition circulator associated with Petition Serial Number C-04-2018.
4. My Circulator Registration Number is AZ85006.
5. From 3/12/18 to 3/20/18, I was employed as a petition circulator by FieldWorks, LLC to collect signatures in support of Petition Serial Number C-04-2018 in connection with FieldWorks' petition circulation efforts on behalf of Clean Energy for a Healthy Arizona.
6. Consistent with official FieldWorks' policy, I was subjected to "performance standards" for my petition signature collection efforts.
7. Specifically, I was required to collect at least 65 signatures per eight hour shift.
8. As part of FieldWorks' policy, any petition circulator who collected less than 65 signatures in an eight hour shift was terminated from employment with FieldWorks.
9. During my shift on 3/19/18, I was able to collect only 32 signatures.
10. As a result, on 3/20/18, I was fired from my job as a FieldWorks' petition circulator.
11. To the best of my knowledge and belief there was no other reason for my termination, aside from my failure to meet the above referenced quota.

I declare under penalty of perjury that the facts in this statement are true and correct to the best of my knowledge and belief.

Executed: May 9, 2018

Signed: Nicholas White

DECLARATION

I, Wendy White, hereby declare the following information to be true and correct:

- 1. I am over the age of 18 and a resident of MCSA, Arizona.
- 2. Except where indicated, I state the following of my own knowledge and it called upon to do so, could testify competently to the following.

3. I am a registered petition circulator associated with Petition Serial Number C-04-2018.

4. My Circulator Registration Number is AZ 85006.

5. From 3/12/18 to 3/20/18, I was employed as a petition circulator by FieldWorks, LLC to collect signatures in support of Petition Serial Number C-04-2018 in connection with FieldWorks' petition circulation efforts on behalf of Clean Energy for a Healthy Arizona.

6. Consistent with official FieldWorks' policy, I was subjected to "performance standards" for my petition signature collection efforts.

7. Specifically, I was required to collect at least 65 signatures per eight hour shift. As part of FieldWorks' policy, any petition circulator who collected less than 65 signatures in an eight hour shift was terminated from employment with FieldWorks.

8. During my shift on 3/17/18, I was able to collect only 32 signatures. As a result, on 3/20/18 I was fired from my job as a FieldWorks' petition circulator.

9. To the best of my knowledge and belief there was no other reason for my termination, aside from my failure to meet the above referenced quota.

10. I declare under penalty of perjury that the facts in this statement are true and correct to the best of my knowledge and belief.

Executed: May 9, 2018

Signed: Wendy White