



BEFORE THE
COLORADO DEPUTY SECRETARY OF STATE
1700 Broadway, Suite 550
Denver, Colorado, 80290

**IN THE MATTER OF PETITION FOR ADVISORY OPINION
BY COLORADO UNION OF TAXPAYERS**

This matter comes before Christopher P. Beall, Colorado Deputy Secretary of State (“Deputy Secretary”), by designation from Secretary of State Jena Griswold, upon the request by Colorado Union of Taxpayers (“CUT”) for an advisory opinion (the “Request”) pursuant to C.R.S. § 1-45-111.7(8) concerning whether CUT is obliged to register as an issue committee (or a small-scale issue committee) under Colorado campaign finance law. Having reviewed and considered the Request and being fully advised in the matter, the Deputy Secretary hereby issues the following advisory opinion on that question.

AUTHORITY TO ISSUE ADVISORY OPINIONS

Campaign and political finance in Colorado are governed by Article XXVIII of the Colorado Constitution; Article 45, Title 1 of the Colorado Revised Statutes; the Secretary of State’s Campaign and Political Finance Rules, 8 Code Colo. Regs. 1505-6; and the judicial interpretations of these various constitutional, statutory, and regulatory laws.

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Pursuant to C.R.S. § 1-45-111.7(8)(a): “[a]ny person seeking guidance on the application of article XXVIII, this article 45, or the rules may request that the secretary issue an advisory opinion regarding that person’s specific activity.” The Secretary has discretion as to whether to issue an advisory opinion under subsection 8(a). *Id.*, at (8)(b). In so doing, the Secretary shall consider whether:

- (I) The advisory opinion will terminate a controversy or remove one or more uncertainties as to the application of the law to the requestor’s situation;
- (II) The request involves a subject, question, or issue that concerns a formal or informal matter or investigation currently pending before the secretary or a court; and
- (III) The request seeks a ruling on a moot or hypothetical question.

Id., at 8(b)(I)-(III).

After consideration of the foregoing factors and upon reviewing the request for advisory opinion submitted by CUT, the Secretary has determined that an advisory opinion is appropriate to terminate an ongoing controversy and remove uncertainty as to the application of the law as to CUT.

QUESTION PRESENTED

CUT has petitioned the Department to provide an advisory opinion on the following question: “Does CUT’s advocacy concerning ballot issues in its annual newsletter require it to register as an ‘issue committee’ pursuant to applicable Colorado law”?

APPLICABLE LAW

Under the Colorado Constitution, an “issue committee” is defined as any person or group that has “a major purpose of supporting or opposing any ballot issue or ballot

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question or accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot questions.” Colo. Const., Art. XXVIII, § 2(10)(a). Pursuant to Campaign and Political Finance Rule 1.20, organizations are only considered issue committees when they meet “both[] of the conditions in Colo. Const. Article XXVIII, Section 2(10)(a)(I) and 2(10)(a)(II).” See 8 CCR 1505-6, Rule 1.20.

A “major purpose” is defined as: “support of or opposition to a ballot issue or ballot question that is reflected by either: An organization’s specifically identified objectives in its organizational documents...” or “[t]he organization’s demonstrated pattern of conduct...” C.R.S. § 1-45-103(12)(b)(I)-(II).

When dealing with an organization that supports or opposes a statewide ballot measure (in contrast to a local ballot measure), the determination of the organization’s relevant “demonstrated pattern of conduct” under Colorado law requires an examination of its expenditures. A demonstrated pattern of conduct exists if at least 20% of the organization’s expenditures are spent in support of or in opposition to a single ballot issue or at least 30% of an organization’s expenditures are spent in support of or in opposition to multiple ballot issues. *Id.*, at (12)(b)(II)(C)-(D). In both instances, the expenditure analysis considers the “combined period of the current calendar year and the preceding two calendar years.” *Id.*

If an entity meets these legal criteria for being an “issue committee,” it must comply with various campaign finance obligations, among them being to register with the Department and report its major contributors.

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In addition, a small-scale issue committee is an issue committee that has “accepted or made contributions or expenditures in an amount that does not exceed five thousand dollars during an applicable election cycle for the major purpose of supporting or opposing any ballot issue or ballot question.” C.R.S. § 1-45-16.3(a). Small-scale issue committees still must register with the Secretary of State, but are not required to disclose their contributions or expenditures. C.R.S. § 1-45-108(1.5)(b)(II).

FACTUAL BACKGROUND

CUT is a 501(c)(4) Colorado non-profit corporation whose stated mission is to “educate the public about the dangers of excessive taxation, regulation, and government spending.” *CUT v. Griswold et al.*, Civil Case No. 1:20-cv-02766-CMA-SKC D. Colo. Third Am. Compl. (“Third Am. Compl.”), ¶ 11. In furtherance of its mission, CUT analyzes numerous pieces of prospective legislation considered by the Colorado legislature and issues a “support” or “oppose” rating for each reviewed bill. *Id.*, at ¶ 26. Based on those ratings, CUT scores each Colorado legislator based on how the legislator’s votes align with CUT’s position on the associated bills. *Id.*, at ¶ 27.

From time to time, CUT also takes positions on ballot issues that implicate CUT’s philosophy of fiscal responsibility. *Id.*, at ¶ 33.

CUT’s primary form of advocacy is to compile its positions on legislation, that is, its grades of Colorado legislators, and any positions on ballot issues into an annual newsletter to its membership and the public. Request, p. 1. The annual newsletter follows a consistent format. It typically consists of between ten and twelve pages with less than a page devoted to issue advocacy. *Id.* CUT disseminates its newsletter to

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CUT's membership and, to a lesser extent, members of the public. *Id.* Despite occasionally advocating on ballot issues, CUT's organizational documents do not specifically identify ballot issue advocacy as an organizational objective. Third Am. Compl. at ¶ 32.

CUT's expenses are funded largely through donor contributions and annual membership dues. Request, p. 2. Though CUT does incur certain costs associated with compiling, printing, and distributing its annual newsletter, CUT mostly relies on the efforts and time of volunteers. *Id.* Historically, CUT's annual expenses have been around \$4,000. Third Am. Compl. ¶ 31. CUT's typical expenditures include the newsletter, maintaining its website, and in-person membership meetings. *Id.*; Third Am. Compl. at ¶¶ 31, 41, 43.

In 2022, CUT's total revenue was \$2,599.50. Third Am. Compl. at ¶ 41. Of that, it spent \$1,876.19 on the newsletter. *Id.* In addition to its usual advocacy regarding legislators and proposed bills, the 2022 newsletter included a short section advocating against Colorado Ballot Proposal 2021-2002 #0. *Id.*

In 2023, CUT's total revenue was \$4,682.95. Request, at p. 2. Of that, it spent \$2,907.23 on its newsletter and another \$324 on its website. *Id.* Both CUT's newsletter and website contained advocacy opposing Proposition HH in addition to CUT's normal annual advocacy issues. *Id.*

To date in 2024, CUT's total revenue is \$185. *Id.* It has spent \$950 on its website and estimates at least \$2,293.70 on its newsletter. *Id.* The newsletter contains both CUT's usual annual advocacy and certain advocacy on ballot issues.

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CUT has never registered as an issue committee, nor has it been the subject of any campaign finance complaint or enforcement action by the Department. However, CUT has filed suit against the Secretary and the Department's election director alleging that it credibly fears being the target of an enforcement action based on its issue advocacy. CUT has issued the Request to seek formal guidance as to whether the ballot issue advocacy contained in its newsletter requires it to register as an issue committee.¹

ANALYSIS

Under the Colorado Constitution and applicable election rules, CUT is only an issue committee if it has: "a major purpose of supporting or opposing any ballot issue or ballot question" and "accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot questions." Colo. Const., Art. XXVIII, § 2(10)(a). See 8 CCR 1505-6, Rule 1.20.

Whether CUT has a major purpose of ballot issue advocacy depends on the specific objectives contained within its organizational documents and CUT's demonstrated pattern of conduct. C.R.S. § 1-45-103(12)(b)(I)-(II). Because CUT's organizational documents do not contain any reference to ballot issue advocacy, CUT is only plausibly an issue committee by virtue of its demonstrated pattern of conduct. CUT's demonstrated pattern of conduct, in turn, depends on whether CUT has made 20% of its expenditures advocating for or against one ballot issue or whether CUT has

¹ In issuing this advisory opinion, the Deputy Secretary has considered information submitted by CUT in connection with the request for an advisory opinion as well as information obtained through litigation.

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made 30% of its expenditures advocating for or against multiple ballot issues between 2022 and 2024. C.R.S. § 1-45-103(12)(b)(II)(C)-(D).

During the relevant period, CUT has made or expects to make expenditures in the approximate total amount of at least \$12,057.71. See Request, at p. 2. Of that total amount, approximately \$1,876.19 was spent on CUT's 2022 newsletter, \$2,907.23 was spent on CUT's 2023 newsletter, and \$2,293.70 is expected to be spent on CUT's 2024 newsletter for a total of \$7,707.12. *Id.* Each newsletter included advocacy on limited ballot issues. *Id.*

If CUT's newsletter expenses are considered *entirely* ballot issue advocacy expenditures, there is little doubt that CUT would clear both the 20% and 30% thresholds set forth in 1-45-103(12)(b)(II) subparts (C) and (D). However, as a matter of law and logic, only a fraction of those expenses can be considered ballot issue advocacy expenditures.

Colorado law explicitly excludes from the definition of "expenditure" any spending "in the regular course and scope of their business...for any communication solely to members and their families." Colo. Const. Art. XXVII § 2(8)(b)(III); *see also Id.*, § 2(7)(b) (excluding the same from the definition of electioneering communications). While CUT does not limit its distribution solely to its members, the newsletter is primarily distributed to members. Request at 1.

Similarly, only a fraction of the annual newsletter pertains to ballot issue advocacy. *Id.* During the relevant period, CUT's newsletter has never exceeded two-thirds of a single page out of the ten-to-twelve-page letter. The primary topic covered by

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the newsletter has always been CUT's positions on potential legislation and grading Colorado legislators. *Id.* Given that only a fraction of the newsletter deals with ballot issue advocacy, it stands to reason that only a fraction of the newsletter costs can be considered ballot issue advocacy expenditures.

When allocating expenditures for a mixed-advocacy communication (i.e., communications which contain both ballot issue advocacy and other forms of communication), the expenditure ratio may not always be the same as the ratio of qualifying to non-qualifying content. Because CUT's minimal issue advocacy in its newsletter does not, on its face, meet or exceed the 20% or 30% thresholds, no exact calculation need be performed. And as a result, a more wholistic, qualitative approach is appropriate in assessing whether the "demonstrated pattern of conduct" of an annual newsletter that only minimally covers positions on ballot measures is sufficient to establish that CUT has a "major purpose" of ballot measure advocacy.

The Deputy Secretary concludes that under either a strict quantitative approach or a more appropriate wholistic approach, CUT's annual newsletter does not meet the threshold of qualifying CUT as an "issue committee" under Colorado campaign finance law.

CONCLUSION

Because CUT's newsletter contains minimal ballot issue advocacy and is predominantly distributed to CUT's membership, CUT's newsletter expenditures do not demonstrate a pattern of conduct which would require issue committee registration. As

such, the Deputy Secretary concludes that the answer to the question presented by CUT under the circumstances outlined in this Advisory Opinion is “No.”

DATED this 1st day of October 2024.



CHRISTOPHER P. BEALL
Deputy Secretary of State

