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September 25, 2024

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Michael Kotlarczyk
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Re: 1:20-cv-07266-CMA-SKC, Colorado Union of Taxpayers v. Griswold Request for
Advisory Opinion

Dear Michael and Peter,

Per our agreement in the matter captioned above, I write on behalf of the Colorado Union of Taxpayers (“CUT”) to formally request the Colorado Secretary of State’s Office (the “Secretary”) issue an advisory opinion on whether CUT is obliged to register as an issue committee (or a small-scale issue committee) under Colorado campaign finance laws. In particular, we request an 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?

Respectfully, we request the Secretary answer this question “No.”

By way of background, CUT is a 501(c)(4) Colorado non-profit corporation whose stated mission is to educate the public on the dangers of excessive taxation, regulation, and government spending. 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. CUT then scores each Colorado legislator based on how the legislator’s votes align with CUT’s position on the associated bills.

Every year, CUT compiles its positions on legislation, its grades of Colorado legislators, and any positions it takes on ballot issues into an annual newsletter disseminated directly to its members and made available to the public via its website. The newsletter typically consists of ten to twelve pages, but less than a page is usually devoted to advocacy on ballot issues. In 2023, for example, CUT’s newsletter was 12 pages, but it only advocated on ballot issues in two of those pages, comprising less than one page total of the newsletter. *See Colorado Union of Taxpayers, 2023 CUT Ratings: CUT Rates the Colorado Legislature* at 2, 12 (2023), available at

<https://coloradotaxpayer.org/wp-content/uploads/2024/07/CUT-2023-Ratings-Booklet.pdf>. The same is true of CUT's newsletters going back to 2018: each was 12 pages, but no more than two pages per newsletter ever contained issue advocacy, and never more than one full page in total. CUT's organizational documents do not identify ballot issue advocacy as an organizational objective.

CUT pays for its expenditures largely through donor contributions and annual membership dues, though it relies on the efforts and time of volunteers to operate the organization and compile its newsletters. Its expenditures include compiling, printing, and distributing its annual newsletter, maintaining its website, and the cost of in-person membership meetings hosted twice a year. Relevant revenues, expenditures, and issue advocacy for the last three years are as follows:

In 2022, CUT's total revenue was \$2,599.50 and expenditures \$4,346.19. Of that, it spent \$1,876.19 on the newsletter. 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.

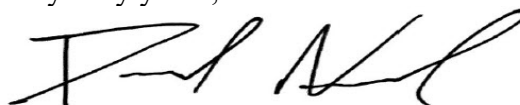
In 2023, CUT's total revenue was \$4,682.95 and expenditures \$5,232.82. Of that, it spent \$2,907.23 on the newsletter and \$324 on its website. Both the newsletter and website contained advocacy opposing Proposition HH in addition to CUT's normal advocacy issues.

Through August 31, 2024, CUT's total income has been \$185, though it expects more to come in as the year progresses, and its expenditures have been \$959.45. It has spent \$950 on its website. CUT has not yet incurred costs to compile, print, or distribute its newsletter, but the estimated newsletter costs are \$2,293.70. The draft newsletter contains CUT's usual annual advocacy and advocacy on a variety of ballot issues.

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. Even so, based in part on the issue advocacy contained in its newsletters, CUT fears it may be the target of a complaint or an enforcement action for failure to register as an issue committee.

Accordingly, CUT hereby requests an Advisory Opinion from the Secretary that its newsletter expenditures do not demonstrate a pattern of conduct that would require it to register as an issue committee.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. N. Nightingale", written in a cursive style.

Daniel N. Nightingale