

Ethics Watch

February 5, 2010

Honorable Bernie Buescher
Secretary of State of Colorado
1700 Broadway, Suite 250
Denver, CO 80290

Re: Colorado Ethics Watch Comments on Draft of Proposed Revisions to the “Rules Regarding Campaign and Political Finance,” 8 C.C.R. 1505-6.

Dear Secretary Buescher:

Colorado Ethics Watch (“Ethics Watch”) is a nonpartisan, nonprofit watchdog group that holds public officials and organizations legally accountable for unethical activities that undermine the integrity of state and local government. Ethics Watch respectfully submits the following comments on the proposed revisions to the “Rules Regarding Campaign and Political Finance,” 8 C.C.R. 1505-6 (the “Rules”) that will be considered at the rulemaking hearing currently scheduled for February 9, 2010.

Rule 4.25. The new rule would require committees to report underlying expenditures that were paid for by a candidate or third person or through the use of a credit card, instead of merely reporting the reimbursement or credit card payment. The rule would codify the Secretary of State’s office’s long-standing advice to committees to report expenditures in as much detail as possible, and, in Ethics Watch’s view, would clarify existing law that already requires reporting of such expenditures. Ethics Watch supports the draft rule.

Ethics Watch has observed that in 2009, many candidate committees reported large reimbursements or credit card payments but provided no detail regarding the expenses that were being reimbursed or paid for through credit cards. In the fall of 2009, Ethics Watch called to the attention of Elections Division staff examples of such disclosures made by the candidate committees of Senators Boyd, Brophy, Gibbs and Groff, and Representatives Baumgardner, Priola and Sonnenberg. Copies of these disclosures are attached to this letter and submitted for consideration as part of the rulemaking record. It should be noted, however, that these are not the only candidate committees that reported reimbursements or credit card payments during 2009 with little or no description of the nature of the underlying expenditures. The problem of overly vague disclosures regarding reimbursements and credit card payments is widespread and bipartisan.

Vague reimbursement disclosures defeat the purpose of requiring transparency regarding spending by candidate committees, and in extreme cases could cover up unlawful activity. For example, a reimbursement might represent payment for an unlawful contribution by an issue

committee to a political party, political committee or candidate committee in violation of Campaign Finance Rule 2.6, or the use of unexpended campaign contributions for purposes barred by C.R.S. § 1-45-106. Because members of the public share with the Secretary of State responsibility for enforcing Colorado campaign finance laws through the complaint process, it is critical that committees be required to provide as much information as possible for public review in order to insure compliance with campaign finance laws.

The draft proposed Rule would helpfully clarify existing law regarding the reporting of expenditures. Ethics Watch's position is that Colorado law already requires committees to report expenditures at the time they are made, even if those expenditures are paid for by a candidate or third person or by credit card. This is because "Expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money *by any person* for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question. An expenditure is made *when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined.*" Colo. Const. art. XXVIII, § 2(8)(a) (emphasis added). Because the "expenditure" is complete when the "actual spending occurs" or when funds are obligated and when there is a "payment . . . by any person" – which would include a candidate, third person or credit card company -- a committee falls short of its obligation to report all expenditures if it only reports the reimbursement or credit card payment for spending that has already occurred. *See also* C.R.S. § 1-45-108(1)(e) (specifically requiring disclosure of expenditures paid for by candidates and reimbursed with committee funds).

Ethics Watch's interpretation of expenditure reporting requirements has not yet been established by judicial decision or administrative rule, however, even if other interpretations are possible, the proposed Rule falls comfortably within the Secretary's authority to issue rules to administer and enforce Article XXVII of the Colorado Constitution. Enactment of this rule will benefit the state by preventing costly and time-consuming litigation over whether it is proper to disclose only reimbursements and credit card payments and not the underlying expenditure paid for by a candidate, third party or by credit card. Committees and the general public will all benefit from codifying these requirements in the Campaign Finance Rules because the rule change will encourage committees to file correctly the first time instead of waiting until a complaint is filed challenging the sufficiency of the disclosures.

We appreciate this opportunity to comment on the draft proposed rules and strongly urge the adoption of Proposed Rule 4.25.

Very truly yours,

A handwritten signature in black ink, appearing to read "Luis Toro", with a long horizontal flourish extending to the right.

Luis Toro
Director

Enclosures



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527 Account Setup
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Committee Name: FRIENDS OF KEVIN PRIOLA
SOS ID: 20085602534
Type: CANDIDATE COMMITTEE

Found 3 matching record(s). Viewing page 1 of 1.

#	Payee Name	Purpose	Date	Amount	Before Adjustment
1.	CHASE CARD SERVICES	CREDIT CARD PAYMENT	05/07/2009	\$115.00	\$0.00
2.	CHASE CARD SERVICES	CREDIT CARD PAYMENT	05/19/2009	\$200.00	\$0.00
3.	CHASE CARD SERVICES	CREDIT CARD PAYMENT	06/22/2009	\$4,000.00	\$0.00

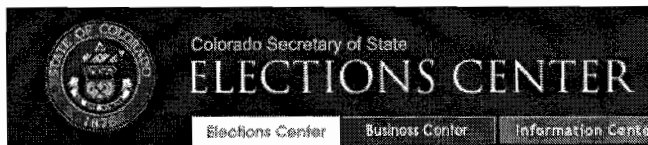
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[Back](#)

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- [527 Account Setup](#)
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Committee Name: PETER GROFF FOR COLORADO
SOS ID: 19990907002
Type: CANDIDATE COMMITTEE
Reporting Period: 12/01/2008 - 03/31/2009 **Due:** 04/15/2009

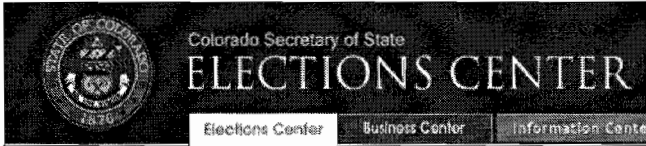
Found 8 matching record(s). Viewing page 1 of 1.

#	Payee Name	City, State	Amount	Date	Purpose	Report Date	Corrected?
1.	COLORADO CORRECTIONAL INDUSTRY	DENVER, CO	\$24.77	01/13/2009	FLAGS	04/16/2009	No
2.	COLORADO CORRECTIONAL INDUSTRY	DENVER, CO	\$151.85	02/24/2009	FLAGS	04/16/2009	No
3.	COLORADO CORRECTIONAL INDUSTRY	DENVER, CO	\$211.08	03/18/2009	FLAGS	04/16/2009	No
4.	PETER GROFF	DENVER, CO	\$1,888.00	01/13/2009	REIMBURSEMENT-EXPENSES	04/16/2009	No
5.	PETER GROFF	DENVER, CO	\$2,100.00	01/21/2009	REIMBURSEMENT-EXPENSES	04/16/2009	No
6.	PETER GROFF	DENVER, CO	\$3,500.00	03/26/2009	REIMBURSEMENT-EXPENSES	04/16/2009	No
7.	SENATE DEMOCRATIC CAUCUS FUND	DENVER, CO	\$200.00	01/13/2009	DUES	04/16/2009	No
8.	WIRED FOR CHANGE	WASHINGTON, DC	\$160.00	03/17/2009	WEBSITE	04/16/2009	No

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- [Campaign Finance Home](#)
- [Campaign Finance Database Search](#)
- [Search Reports](#)
- [Committee Registration](#)
- [527 Account Setup](#)
- [Login](#)

Committee Name: CITIZENS FOR BETTY BOYD
SOS ID: 20065621885
Type: CANDIDATE COMMITTEE
Reporting Period: 07/01/2009 - 09/30/2009 **Due:** 10/15/2009

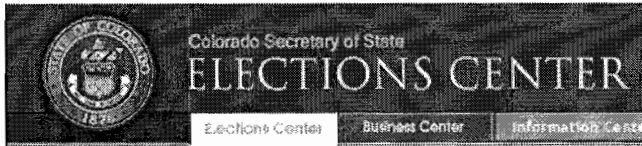

Found 4 matching record(s). Viewing page 1 of 1.

#	Payee Name	City, State	Amount	Date	Purpose	Report Date	Corrected?
1.	BETTY ANN BOYD	LAKEWOOD, CO	\$673.19	08/24/2009	TRAVEL REIMBURSEMENT	10/02/2009	No
2.	WEST ALAMEDA SELF STORAGE	LAKEWOOD, CO	\$43.00	07/02/2009	STORAGE UNIT	10/02/2009	No
3.	WEST ALAMEDA SELF STORAGE	LAKEWOOD, CO	\$43.00	08/02/2009	STORAGE UNIT	10/02/2009	No
4.	WEST ALAMEDA SELF STORAGE	LAKEWOOD, CO	\$43.00	09/02/2009	STORAGE UNIT	10/02/2009	No

[Back](#)

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Campaign Finance Home
Campaign Finance Database Search
Search Reports
Committee Registration
527 Account Setup
Login

Committee Name: CITIZENS FOR GREG BROPHY
SOS ID: 20025606585
Type: CANDIDATE COMMITTEE
Reporting Period: 04/01/2009 - 06/30/2009 **Due:** 07/15/2009

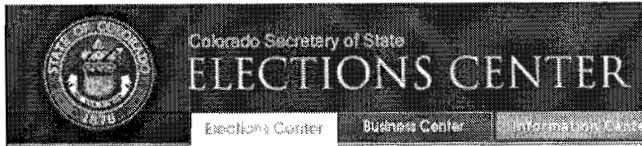
Date: 06/30/2009
Payee: GREG BROPHY
320 EAST 6TH ST
WRAY, CO 80758

Expenditure Type: Other
Original Amount Reported: \$0.00
Actual Amount: \$900.15
Purpose: MILEAGE

[Back](#)

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Expenditure/Spending Report

Campaign Finance Home
Campaign Finance Database Search
Search Reports
Committee Registration
527 Account Setup
Login

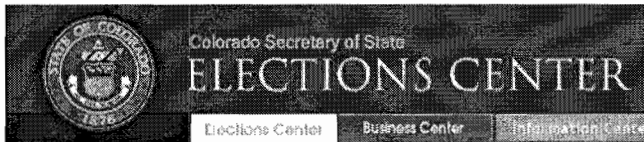
Committee Name: COMMITTEE TO ELECT RANDY L BAUMGARDNER
SOS ID: 20075629906
Type: CANDIDATE COMMITTEE
Reporting Period: 12/01/2008 - 03/31/2009 **Due:** 04/15/2009

Found 14 matching record(s). Viewing page 1 of 1.

#	Payee Name	City, State	Amount	Date Purpose	Report Date	Corrected?
1.	GARFIELD COUNTY REPUBLICANS	RIFLE, CO	\$90.00	03/14/2009 DINNER MEET AND GREET	04/12/2009	No
2.	GRAND COUNTY GOP	GRAND LAKE, CO	\$20.00	03/04/2009 DONTATION	04/12/2009	No
3.	GRAND FOUNDATION	WINTER PARK, CO	\$300.00	12/06/2008 DONATION, MEET AND GREET	04/12/2009	No
4.	HOUSE REPUBLICAN CAUCAS	MONUMENT, CO	\$50.00	12/01/2008 CAUCAS FEES	04/12/2009	No
5.	KANDICE COILLOUETTE	DENVER, CO	\$10.00	12/02/2008 POSTAGE	04/12/2009	No
6.	PREGNANCY RESOURCE CENTER	GRANBY, CO	\$60.00	02/09/2009 FUND RAISER DINNER	04/12/2009	No
7.	REPUBLICAN HOUSE CAUCAS	MONUMENT, CO	\$250.00	12/01/2008 CAUCAS FEES	04/12/2009	No
8.	VERIZON	BELLEVUE, WA	\$247.82	12/03/2008 WIRELESS TELEPHONE	04/12/2009	No
9.	VERIZON	BELLVUE, WA	\$342.62	01/01/2008 UPGRADE PHONE & AIR TIME	04/12/2009	No
10.	VERIZON	BELLEVUE, WA	\$179.98	02/02/2009 TELEPHONE	04/12/2009	No
11.	WA MU	DALLAS, TX	\$881.06	12/01/2008 FUEL, HOTEL	04/12/2009	No
12.	WA MU	DALLAS, TX	\$1,000.00	12/04/2008 FUEL, HOTEL	04/12/2009	No
13.	WA MU	DALLAS, TX	\$3,137.57	01/01/2009 OFFICE SUPPLIES, TRAVEL EXPENSES, HOTEL, FUEL	04/12/2009	No
14.	WA MU	DALLAS, TX	\$570.00	03/04/2009 HOTEL, FOOD, FUEL	04/12/2009	No

[Back](#)

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Campaign Finance Home
Campaign Finance Database Search
Search Reports
Committee Registration
527 Account Setup
Login

Committee Name: COMMITTEE TO ELECT JERRY SONNENBERG
SOS ID: 20055616316
Type: CANDIDATE COMMITTEE
Reporting Period: 12/01/2008 - 03/31/2009 **Due:** 04/15/2009

Date: 12/04/2008
Payee: JERRY SONNENBERG
4465 COUNTY ROAD 63
STERLING, CO 80751

Expenditure Type: Other
Original Amount Reported: \$0.00
Actual Amount: \$7,809.89
Purpose: TRAVEL & OFFICE

[Back](#)

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Campaign Finance Home
Campaign Finance Database Search
Search Reports
Committee Registration
527 Account Setup
Login

Committee Name: FRIENDS OF DAN GIBBS
SOS ID: 20085618096
Type: CANDIDATE COMMITTEE

Found 1 matching record(s). Viewing page 1 of 1.

#	Payee Name	Purpose	Date	Amount	Before Adjustment
1.	KEVIN BURNS	REIMBURSEMENT FOR CAMPAIGN SUPPLIES, GAS, VEHICLE MAINTENANCE	10/13/2008	\$5,000.00	\$0.00

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