



May 3, 2011

Honorable Scott E. Gessler
Secretary of State of Colorado
1700 Broadway, Suite 250
Denver, CO 80290

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

Dear Secretary Gessler:

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 supplemental comments on the proposed revisions to the Rules Regarding Campaign and Political Finance, 8 C.C.R. 1505-6 (the “Rules”) in anticipation of the rulemaking hearing currently scheduled for May 3, 2011. These comments supplement the comments filed by Ethics Watch on January 26, 2011 regarding the proposed changes to issue committee disclosure requirements.

The revised proposed rule continues to suffer from the same infirmity as the original proposed rule, that is, it purports to nullify disclosure requirements for issue committees until they reach a threshold different from the \$200 threshold established in the Colorado Constitution. Ethics Watch will not repeat the arguments already in the record against any effort to change that limit through rule; we merely note for the record that the language changes in the revised proposed Rule do not change the fact that the proposed Rule purports to relieve issue committees of constitutional and statutory reporting requirements and therefore must be rejected, and that the notice of second hearing’s Statement of Basis and Purpose only confirms that under the guise of rulemaking, you are actually engaged in legislative action that is beyond the authority of your office.

In addition, the revised proposed rule suffers from an additional infirmity: it gratuitously purports to make issue committees’ reporting obligations only “prospective,” so that committees could fail to report \$5000 or more of both contributions or expenditures. We say “or more” because the \$5000 of disclosure-free contributions could easily become \$10,000, \$20,000 or more and it would be extremely difficult for a plaintiff in a case alleging a violation of issue committee reporting requirements to show that an unreported contribution or expenditure was not part of the \$5000 a committee would purportedly be permitted to conceal from voters under the proposed Rule. In no way can this change be justified as “necessary for the proper administration and enforcement of the election laws,” which is the scope of your rulemaking authority under C.R.S. § 1-1-107(2)(a). Nor does the permitted concealment of contributions or expenditures help to “administer and enforce any provision” of Article XVIII or the Fair Campaign Practices Act. See Colo. Const. art. XXVIII, § 9(1)(b); C.R.S. § 1-45-111.5(1).

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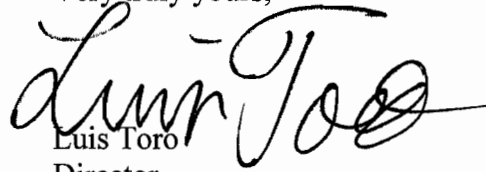
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Any doubts about the propriety of this proposed change are answered by C.R.S. § 1-45-108(1)(a)(I), which provides that all issue committees “shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee.” This language leaves no room for an interpretation that would permit a group meeting the definition of “issue committee” to conceal any of its contributions or expenditures. That being the case, the proposed rule permitting committees to conceal the first \$5000 of contributions or expenditures must be rejected.

We appreciate this opportunity to comment and strongly urge you to reject Proposed Rule 4.27 in its entirety.

Very truly yours,



Luis Toro
Director

Enclosure