

Andrea Gyger

From: Ari Armstrong [REDACTED]
Sent: Thursday, December 15, 2011 8:36 PM
To: Andrea Gyger
Subject: addendum re. Dec. 15 meeting

Dear Secretary of State Gessler,

Please consider these brief comments an addendum to my previously submitted comments regarding the proposed campaign finance rules.

In the course of the December 15 meeting, and in my reflections afterward, a couple of possible changes to the rules occurred to me.

Regarding proposed Rule 1.12.3(A), which states that an "issue committee" has "a major purpose" if its "annual expenditures in support of or opposition to ballot issues or ballot questions... exceed 30% of the organization's total spending...", a concern was raised that an organization that spends a large amount of money could spend a great deal of money on a particular issue without that becoming "a major purpose."

As I suggested during my oral testimony, one possibility would be to define "a major purpose" as either a percent OR a dollar amount, whichever represents the lower dollar figure. (I wonder whether the dollar figure might reasonably be tied to the reporting threshold.)

The same approach might be applied regarding proposed Rule 1.18.2(B).

Regarding rule 18.5, which states, "Penalties for late or incomplete reports shall not accrue more than 180 days after the date of the violation," a concern raised was that groups that spend a large amount of money might simply decide to pay that amount of fines as a way of not reporting.

One possibility is to cap fines at 180 day accrual, OR an amount equal to the total expenditures of the group for the relevant period, whichever is higher. That way, small groups that spend only a few thousand dollars would not be hit with fines of tens of thousands of dollars. (I do not know how this suggestion would mesh with other proposed rules regarding waivers and fine limits.)

Unfortunately, I do not have the legal expertise to comment on whether the alternative rules I suggest find adequate support in the relevant court cases, constitutional provisions, and statutes.

I think my proposed changes may offer greater protection to citizen activists while perhaps finding approval among supporters of the reporting requirements.

I wish to emphasize that, while the Secretary of State's proposed rules (with or without my suggestions) somewhat mitigate the harm of Colorado's campaign finance laws, and while I believe the Secretary of State's office is making a great effort to make the rules as objective and fair as possible within the given constraints, still those laws (and their surrounding statutes and rules) constitute a major violation of the free speech rights of Colorado citizens. But that is a much larger problem than the Secretary of State has the legal authority to address.

Sincerely,
Ari Armstrong