

Andrea Gyger

From: Matt Arnold <campaignintegritywatchdog@gmail.com>
Sent: Wednesday, June 08, 2016 4:21 PM
To: SoS Rulemaking
Subject: Campaign Integrity Watchdog comments on proposed rulemaking

Secretary Williams, Deputy Secretary Staiert, and the Office of Secretary of State:

Campaign Integrity Watchdog submits the following comments and questions for the Secretary's request for public comment on proposed rulemaking and changes to the Rules Concerning Campaign and Political Finance (8 CCR 1505-6).

Thank you in advance for your consideration of comments and questions.

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Matt Arnold
Director, Campaign Integrity Watchdog

Comment on SOS Proposed Changes to Campaign Finance Rules 20160608

Rule 1: Definitions

1.1 Redefining "Ballot Measure" –
how will this impact court rulings relating ballot questions to recall elections?

1.3 Redefining "Committee" -
removing "Federal PACs" from the listing of entities defined as a "Committee" under Colorado law is problematic; under current Colorado law and regulatory practice, a "Federal PAC" operating in the state in support of or opposition to state-level candidates is defined as a "committee."
Removing "Federal PACs" from the listing could conceivably remove them from Colorado's regulatory regime. Additionally, this proposed rule change could adversely impact and prejudice ongoing litigation. **STRONGLY OPPOSE.**

1.4 Redefining "Contribution" -

1.4.1: SERVICES

CIW opposes this proposed Rule Change, which attempts to overturn by regulatory fiat a recent ruling by the Colorado Court of Appeals.

1.4.2: “Contribution in support of the candidacy” – CIW has no objection to the proposed rule change, which simply clarifies existing language.

1.5: “Designated Filing Agent” - CIW has no objection to the proposed rule change, which simply clarifies existing language.

1.6: “Expenditures made, and obligations entered into” – CIW supports maintaining this language, which appears to be unchanged from previous rules changes.

1.7: Striking the “functional equivalent of express advocacy” language conforms to the existing jurisprudence on the subject; CIW has no objection to the proposed rule change, which simply recognizes the current Colorado precedent.

New Rules 1.7 and 1.8: CIW supports the new regulatory language, which simplifies and clarifies the filing schedules applying to entities subject to Colorado disclosure and reporting requirements.

CIW supports striking the existing Rule 1.10, which does not conform to current jurisprudence and governing case law on the subject.

CIW supports the striking of the existing Rule 1.12 and replacement with new Rule 1.9, which recognizes current jurisprudence and case law and simplifies & clarifies the regulatory language.

CIW supports the new Rule 1.10 defining the scope of “LLC” for disclosure/reporting purposes, as the new language conforms to recent precedent and current jurisprudence on the topic.

CIW has no objection to the new Rule 1.13 defining “person” for the purposes of the Article 7 requirement to disclose Occupation/Employer as a “natural person”

CIW does not object to striking the “major purpose” language from the old Rule 1.18, which has been effectively nullified by previous court rulings, and simplification of language in the new Rule 1.16 – but notes that the “major purpose” test continues as an evaluative tool for determining whether an entity may qualify as a “political committee” under Colorado law, per both state and Federal precedent.

Rule 2. Candidates and Candidate Committees

2.1 Standalone Candidates – CIW supports the simplification and clarification of the new language in proposed Rule 2.1; however, CIW would add language clarifying the fact that a “Standalone Candidate” by definition **MAY NOT ACCEPT CAMPAIGN CONTRIBUTIONS** (including “in-kind” compensated services)

2.2 Candidate Committees – CIW supports the simplification and clarification of the new language in proposed Rule 2.2, particularly as regards the definition of which persons are authorized to **FILE** the candidate committee reports.

2.2.5 (“Disposition of debt in anticipation of committee termination”) -
CIW recommends moving this Rule from a subsection of “Candidate Committee” rules to the section (Rule 12) generally applicable to all committees, since the requirement is in fact applicable to types of committee other than candidate committees.

Rule 3. Political Committees and Small Donor Committees

CIW supports striking Rule 3.3, which is inconsistent with current jurisprudence and case law precedent both at the state level in Colorado and at the federal level.

Rule 4. Issue Committees

CIW notes that although the Rule 4.1 threshold of \$5,000 to trigger “Issue Committee” status has been struck down in Colorado and Federal courts, the current legal “triggering” threshold of \$200 has been ruled unconstitutional as well. CIW recommends legislation or a referred measure to address the legal limbo created by court ruling on the Colorado threshold for qualifying as an “Issue Committee” under state law.

CIW supports the Rule 4.3 clarification of Issue Committee filing schedules.

CIW supports striking existing Rule 4.4 as inconsistent with current jurisprudence and case law.

Rule 5. Independent Expenditure Committee

5.1 Disclaimer Requirement

CIW notes that the current statutory and regulatory requirements for disclosure of IEC sponsorship of campaign communications are frequently evaded by IECs conducting “Electioneering Communications” that barely avoid qualifying as an “independent expenditure” as narrowly construed under state law.

5.1.1: CIW recommends addition of “or Electioneering Communications” following the term “independent expenditure” under this Rule.

5.2: CIW supports striking the existing Rule 5.2 as inconsistent with current jurisprudence and case law.

Rule 6. Political Parties

6.2: Transfers of money within a party

6.2.1: CIW has some concern that the new Rule 6.2.1 language may obscure the definition of what may constitute “WITHIN THE PARTY” for the purpose of transferring funds. Existing language specified the “levels” (i.e. county/state/national) of a party organization, as opposed to other entities which may be “affiliated” or “sponsored” in some way by the party, but are not properly part of the party structure. CIW recommends strengthening or clarifying the language to make clear that non-party “affiliated” or “sponsored” entities are not considered “WITHIN THE PARTY” for the purpose of this Rule.

Rule 7. Federal PACs and 527 Political Organizations

7.1 Federal PACs

7.1.1: CIW generally supports the simplification and clarification of language regulating Federal PACs operating to support or oppose state-level candidates (and thus qualifying as a “political committee” under Colorado law).

CIW has some concerns that the new language requiring a Federal PAC to form a “SEPARATE STATE POLITICAL COMMITTEE AND FOLLOW ALL REQUIREMENTS FOR STATE POLITICAL COMMITTEES” may create or exacerbate lack of clarity as regards use of the Federal PACs existing funds for campaign or electioneering activity.

Is it the position of the Secretary that a Federal PAC may ONLY use such funds as are first deposited into a separate account for a state political committee may be used in connection with any activity engaged in by the Federal PAC with regard to state-level candidates it may support or oppose?

If so, how will this impact the application of contribution limits to any “political committee” formed by the Federal PAC with existing funds?

Is a Federal PAC limited to transferring or “contributing” funds to its newly-formed “political committee” per current Colorado contribution limits?

7.2 Political Organizations

7.2.1: CIW is concerned that striking the current Rule 7.2.1 language without replacing definitional guidance may create a lack of clarity regarding how an entity qualifies as a “political organization” under Colorado law. Additionally, the inclusion of references to federal law (I.R.C.) is helpful and should not be removed or stricken from the definition (as a reference)

Rule 8. Registering a Committee

CIW opposes the removal of “Federal PAC” from the list of entities required to identify types of candidates supported or opposed.

8.2: What is the rationale for removing the Rule regarding notification of committee filing?

Rule 9. Registered Agents

Generally, CIW does not oppose clarification or simplification of language related to the duties and obligations of “Registered Agents” under the Secretary’s campaign finance regulatory regime.

Rule 10. Managing Contributions and Expenditures

10.1: CIW does not oppose clarification or simplification of language

10.2: Contributions

10.2.1: CIW supports clarification of the requirement to individually list contributions received, as consistent with current jurisprudence and governing case law.

10.3: CIW supports clarification of the requirement to list all disbursements and any “OBLIGATIONS ENTERED INTO” during a reporting period, including the requirement to individually list any such disbursements in amounts less than \$20 that aggregate to \$20 or more within a reporting period.

10.4: CIW supports clarification of the requirement to deposit contribution checks or return the check before the reporting period closes.

10.5: CIW supports clarification of the requirement to maintain committee financial records.

10.17: CIW supports clarification of the requirements for filing Major Contributor Reports

Rule 11. Electioneering Communications

CIW is concerned that striking existing Rule 11.2 may be inconsistent with constitutional requirements, statutory language, current jurisprudence and case law precedent for “electioneering communications” disclosure and reporting requirements.

11.1: CIW strongly urges maintaining the current requirement that electioneering communications be “listed individually on the electioneering report, including name, address, and method of communication” in order to avoid evasion of disclosure and reporting requirements by “burying” an electioneering communication otherwise subject to disclosure among other disbursements.

11.4: CIW strongly urges addition of “and method of communication” following “include name of the CANDIDATE(S) referred to in the electioneering communication” in order to distinguish communications from general spending which may not otherwise qualify as “electioneering” activity.

Rule 12. Changing or Closing a Committee

12.3 – does filing a “termination report” indicating no cash or assets on hand, or outstanding debts, PENALTIES, or obligations that is submitted knowingly constitute a perjurious affirmation?

Rule 18. Penalties, Violations, and Complaints

18.5: Append to the proposed new language: “DURING THE PENDENCY OF THE APPEAL, THE ENTRY OF JUDGMENT OF THE ADMINISTRATIVE LAW JUDGE DECISION IS CONSIDERED DELAYED OR SUSPENDED FOR THE PURPOSE OF TOLLING THE STATUTE OF LIMITATION FOR ENFORCEMENT OF THE RULING.”

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