

CLEAR THE BENCH



WWW.CLEARTHEBENCHCOLORADO.ORG

Matt Arnold

Director, Clear The Bench Colorado
director@clearthebenchcolorado.org

Clear The Bench Colorado

P.O. Box 372388
Denver, CO 80237

6 May 2011

The Honorable Scott Gessler
Secretary of State
1700 Broadway, Suite 200
Denver, CO 80290

Re: Rules Concerning Campaign and Political Finance, 8 CCR 1505-6

Mr. Secretary,

Clear The Bench Colorado is a non-partisan, non-profit organization established to provide an alternative source of substantive information on judicial performance in order to provide greater transparency and encourage accountability of sitting judges as part of the constitutional process.

In addition to providing substantive evaluations of judicial performance (based on analysis of appellate court opinions for constitutionality, instead of merely providing a “review” of survey returns provided by a selected subset of respondents), ***CTBC*** provides general background on the judicial selection and retention process, analysis and links to full text of Colorado Supreme Court and appellate court written opinions, links to constitutional and statutory language for reference, and links to other evaluations or reviews of judicial performance (including the “reviews” by the Colorado Office of Judicial Performance Evaluation), as well as general commentary and background on issues related to the judiciary.

Based on Advice from the Secretary of State, **CTBC** registered as an issue committee on its formation, and consistently made all required disclosures about its activities, including reports on contributions and expenditures.

We have reviewed the comment submitted on 6 May 2011 by “Colorado Ethics Watch” (CEW) and wish to correct the record. **CEW libelously misstates the findings of fact** reached by the ALJ in the case, and entered the following libelously false statement in their comment:

“CTBC falsely asserts that it registered as an issue committee “[b]ased on the advice from the Secretary of State. “ As you are aware, this matter was litigated before Administrative Law Judge Robert Spencer. Attached for the record is the Final Agency Decision in Office of Administrative Courts Case No. OS 2010-0009.”

The actual relevant finding of fact entered with regard to guidance issued by the Office of Secretary of State to CTBC follows:

“18. After holding an internal policy meeting to discuss the issue, the Elections Division **determined that CTBC should register as an issue committee**. As a result of that meeting, a representative of the Elections Division prepared a memo documenting that, "After much discussion our initial thought that they [CTBC] should register as an issue committee was agreed upon." Exhibit F. This memo was subsequently posted to the Secretary of State's website and was publicly available.6” (Final Agency Decision, **CEW v. CTBC**, at 5).

CEW further libelously misrepresents the actual content of the Final Agency Decision:

“Judge Spencer’s findings of fact demonstrate that CTBC elected to disregard the formal written advice of the Secretary of State to “refile CTBC’s registration as a political committee and identify the specific judges you will either be supporting or opposing the retention of.” Finding of Fact No. 13 (internal quotation omitted).” CTBC, presumably on advice of counsel, elected to disregard this advice and instead submit a draft registration as an issue committee. Findings of Fact Nos. 15 and 16.”

Judge Spencer’s findings of fact did **NOT** “demonstrate that CTBC elected to disregard the formal written advice of the Secretary of State”, as CEW libelously alleges in the May 6 comment submitted for record. In fact, Judge Spencer specifically notes

“CTBC's reasonable reliance upon the Election Division's acceptance of its registration as an issue committee, and the Elections Division's advice that such a registration was appropriate.” (**CEW v. CTBC** at 13).

Respectfully Submitted,

Matt Arnold
Director, Clear The Bench Colorado