



October 2, 2017

Honorable Wayne Williams  
Secretary of State of Colorado  
1700 Broadway, Suite 250  
Denver, CO 80290

Via email to [sos.rulemaking@sos.state.co.us](mailto:sos.rulemaking@sos.state.co.us)

**Re: Notice of Proposed Rulemaking; Campaign and Political Finance, 8 C.C.R. 1505-6.**

Dear Secretary Williams:

Colorado Ethics Watch (“Ethics Watch”) is a nonpartisan, nonprofit watchdog group dedicated to ethics, transparency, and clean elections at the state and local level in Colorado. Ethics Watch respectfully submits these comments in anticipation of the October 3, 2017 hearing on proposed revisions to the Campaign and Political Finance Rules.

New Rules 1.7, 1.21, and 3.3

Ethics Watch supports the effort in the proposed Rules to clarify the distinction between political committees and independent expenditure committees. We suggest adding additional clarity by expressly stating that independent expenditure committees may not make contributions to candidates, candidate committees, or political committees.

It is certainly correct, as the proposed new Rules state, that an independent expenditure committee may not make an expenditure in coordination with a candidate, candidate committee, or political party. But that is not the only difference between political committees and independent expenditure committees. Political committees may make direct contributions to candidate committees or political parties, *see* Colo. Const. art. XXVIII, § 3, but an independent expenditure committee cannot. *See also* the Campaign Finance Manual at p. 30 (“Independent expenditure committees may accept unlimited donations, but may not make contributions to candidate committees or coordinate expenditures with candidates.”)

“Independent expenditure committees” were created by statute in direct response to *Citizens United v. F.E.C.*, 558 U.S. 310 (2010) and *In re Interrogatories Propounded By Governor Bill Ritter, Jr.*, 227 P.3d 892 (Colo. 2010), which nullified the state’s constitutional prohibitions on independent expenditures by corporations and labor unions. C.R.S. § 1-45-107.5 (2). The purpose of the statute was to respond to these decisions and require public reporting of these new expenditures that previously had been banned. *See* C.R.S. § 1-45-107.5(3) – (12). The Colorado Constitution’s prohibition on contributions to candidates by corporations and labor unions, however, remains intact. Colo. Const. art. XXVIII, § 4(a); *see also* *Citizens United*, 558

U.S. at 358-359; *Interrogatories*, 227 P.3d at 892-93. Under the Colorado Constitution, the only way a corporation or labor union may send funds to candidates, as opposed to making an independent expenditure, is by contributing to a political committee that in turn contributes to a candidate. Colo. Const. art. XXVIII, § 4(a).

Thus, another distinction between political committees and independent expenditure committees is that the latter may not make contributions, and the Rule should so state.

Ethics Watch recommends adding the words “OR MAKE A CONTRIBUTION TO A CANDIDATE OR POLITICAL PARTY” at the end of both proposed new Rules 1.7 and 1.21. We also suggest striking the words “CONTRIBUTION OR” in both places it appears in proposed new Rule 3.3 because the concept of independence or coordination does not apply to contributions. The rule is simply that political committees are allowed to make contributions or coordinate expenditures and independent expenditure committees are not.

#### New Rule 18.2.2

The proposed Rules would eliminate the option of filing complaints by fax or email and apparently require all complaints to be filed in person at the Secretary of State’s office. There is no reason to make it harder for citizens to file complaints, and the burden of this rule change will fall most heavily on prospective filers outside of the Denver metro area.

To be clear, the proposed new Rule would not affect Ethics Watch. We are located in downtown Denver and have routinely filed complaints by hand-delivery to the Secretary of State’s office. The Rules, however, should not make it so that only organizations like Ethics Watch or individuals or groups represented by downtown Denver law firms can file complaints with the Secretary of State. Ethics Watch recognizes that fax filing is obsolete; however, we urge that the option of filing complaints by email be restored.

At a minimum, the new Rule should make it clear that the Secretary will accept complaints filed by mail or delivered by a private delivery service and set forth a date such complaints are deemed to be filed. We would recommend a “mailbox rule” stating that complaints are deemed filed when placed in the United States mail or turned over to a private delivery service. Alternatively, such complaints could be deemed filed when received by the Secretary. What matters is that the rule state specifically how complaints that are mailed or delivered by private service will be treated.

Thank you for your consideration of these comments.

Respectfully submitted,



Luis Toro  
Executive Director