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Colorado Secretary of State

BEFORE THE SECRETARY OF STATE
STATE OF COLORADO

IN THE MATTER OF THE COLORADO REPUBLICAN PARTY'S REQUEST FOR A
DECLARATORY ORDER CONCERNING PARTY INDEPENDENT EXPENDITURE
COMMITTEES

PETITION FOR DECLARATORY ORDER

INTRODUCTION

The Colorado Republican Party ("the Party" or "Petitioner") requests confirmation that its independent expenditure committee may raise funds in any amounts from any source permissible under Colorado law. The Party seeks nothing more than to be treated in exactly the same way as any other person or organization (including corporations and labor unions) that is permitted under Colorado's existing legal framework to solicit unlimited funds for the purpose of independent expenditures. Not only does Colorado law require this, but United States Supreme Court precedent, especially *Colorado Republican Federal Campaign Comm. v. FEC*, 518 U.S. 604 (1996) and *Citizens United v. Federal Election Comm'n*, 130 S. Ct. 876 (2010), demands it as well.

The Colorado Republican Party's independent expenditure committee will be structured in such a way to avoid the coordination of expenditures with any candidates. Important safeguards, described in detail below, will be built into the structure and operations of the independent expenditure committee to ensure that the committee's expenditures are truly independent. As the United States Supreme Court explained in *Colorado Republican Federal Campaign Committee*, there is no danger of corruption (and thus no constitutional justification

for suppressing political speech) when a party's expenditures are, in fact, independent. *Id.* at 617-18.

ARGUMENT

I. THE SECRETARY HAS THE JURISDICTION TO ISSUE THE REQUESTED DECLARATORY ORDER

Colorado's Administrative Procedure Act instructs all departments of the State to issue rules providing for Declaratory Orders:

Every agency shall provide by rule for the entertaining, in its sound discretion, and prompt disposition of petitions for declaratory orders to terminate controversies or to remove uncertainties as to the applicability to the petitioners of any statutory provision or any rule or order of the agency. The order disposing of the petition shall constitute agency action subject to judicial review.

C.R.S. § 24-4-105(11).

In compliance with this statutory requirement, the Secretary has established rules governing Declaratory Orders issued by the Secretary concerning election related matters. Section 1503-3 of title 8 of the Colorado Code of Regulations contains the Secretary's rules controlling Declaratory Orders requested of the Secretary. Rule 1.1 mirrors the statutory provision quoted above regarding the availability of Declaratory Orders.

Rule 1.3 requires a petition for a Declaratory Order to contain three things: the name and address of the petitioner as well as the nature of the relationship between the petitioner and the Secretary; the statute, rule or order to which the petition relates; and a concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner. These three requirements will be addressed next in turn. The Party will then discuss why, under existing law,

the Party's IEC should be free to operate just as any other independent expenditure committee, unconstrained by source and contribution limits.

A. Name and Address of the Petitioner and Relationship to the Secretary

Petitioner is the Colorado Republican Party. Its current business address is 5950 South Willow Drive, Suite 301, Greenwood Village, Colorado, 80111. It is a Colorado unincorporated non-profit association that sponsors and maintains certain separate segregated funds and committees under applicable federal and state campaign finance laws. Petitioner is a membership organization, comprised principally of the officers and certain other representatives from each of the sixty-four affiliated Republican county political party committees and Republican elected officials at the state and district level in the State of Colorado. Petitioner has been in existence and has been involved in the nomination, support and election of Republican candidates for public office in Colorado and the United States since at least 1864, when the records of the Republican Party show that a duly-selected delegation of Republicans from the Territory of Colorado attended the National Convention held in Baltimore, Maryland on June 7-8, 1864, and cast six votes to nominate Republican Abraham Lincoln to a second term as President.

Petitioner is a major political party under C.R.S. § 1-1-104(22) and C.R.S. §§ 1-3-101 – 108. Petitioner is required to file a copy of its bylaws and governing rules, and a list of its officers, members and vacancy committees with the Secretary pursuant to C.R.S. § 1-3-103(7) and § 1-3-103(9)(a). Petitioner reports certain of its contributions and expenditures, and the contributions and expenditures of its sponsored and affiliated committees at the state level to the Secretary pursuant to Article XXVIII of the Colorado Constitution and C.R.S. § 1-45-

108(1)(a)(I).¹ Petitioner also sponsors and maintains a federal political committee (FEC political committee ID C00033134) and certain federal funds and accounts, and reports contributions and expenditures governed by federal law to the Federal Election Commission as required under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.*

In the summer of 2012, the Party contacted the Secretary's office to determine how to disclose certain independent expenditures in support of and in opposition to certain candidates for state and local elective office that the Party sought to make. The Secretary advised the Party that it should establish an independent expenditure committee. Pursuant to that advice, on August 20, 2012, the Party established and registered the Colorado Republican Party Independent Expenditure Committee (the "IEC"). As noted in the reports filed for the IEC, the IEC expended \$85,847.65 in independent expenditures to support Republican candidates and to oppose Democratic candidates for the state legislature in connection with the 2012 general election. All of this money was transferred to the sponsored IEC by the Party using "hard money," that is, state funds raised in compliance with the contribution limits and source provisions under the campaign finance limits applicable to a state political party committee. There is no outstanding balance in the IEC's account.

¹ The sponsored and affiliated committees include a state political party committee (SOS committee ID 19991500072), a state political committee (SOS committee ID 20035620586), a state small donor committee (SOS committee ID 20085623830), and a state independent expenditure committee (SOS committee ID 20125025085).

B. Applicable Statutes/Rules/Etc.

The applicable statutes are C.R.S. § 1-45-107.5 and C.R.S. § 1-45-108. The applicable rules are 8 CCR § 1505-6, Rule 5. Also implicated, potentially, are all provisions in statute and rule related to complaints for violations.

In addition, various provisions of Colo. Const. Art. XXVIII are either applicable or are implicated including § 2(9) (defining independent expenditure), § 2(13) (defining political party), § 3(3) (addressing contribution limits on political parties), § 3(4) (expressly dealing with restrictions on independent expenditures), § 5 (the section dealing with independent expenditures generally), § 9(1) (giving the Secretary enforcement power to effectuate Colo. Const. art. XXVIII), and § 9(2)(a) (setting forth procedures for complaints related to violations of, inter alia, §§ 3 and 5).

C. Nature of the Uncertainty at Issue

As noted above, the Party created its IEC in August of 2012 and used hard money to make the independent expenditures reported. There can be no legitimate question concerning the propriety of such expenditure. *See Colorado Republican Federal Campaign Comm. v. FEC*, 518 U.S. 604 (1996).

Now that the IEC is established, the Party intends to fund it and use it in a manner that is no different than any other independent expenditure committee sponsored by any other person, labor organization, corporation, or association – that is, with no contribution limitations on either amount or permissible contributor. Accordingly, funds raised for the IEC will not be subject to either Colo. Const. Art. XXVIII, § 3(3)'s contribution limits related to political party committees, or § 3(4)'s source limitations. *See, e.g.*, C.R.S. § 1-45-107.5 (2) (“notwithstanding

sections 3(4)(a) and 6(2) of the article XXVIII . . . corporations and labor organizations shall not be prohibited from making independent expenditures”).

On information and belief, the Party is concerned that one or more persons or organizations would file a complaint against the Party under Colo. Const. Art. XXVIII, § 9(2)(a), asserting violations of both § 3(3)’s contribution limits and § 3(4)’s source limitations (e.g., corporate contribution prohibition regarding political parties). For example, during at least one meeting of the Secretary’s advisory committee dealing with campaign finance, the issue of a political party-sponsored IEC came up and was significantly criticized by some in attendance. One or more organizations represented by those persons have previously made campaign finance complaints to the Secretary of the type potentially at issue in this case.

The Secretary should issue the requested Declaratory Order. As Justice Thomas noted in his concurring opinion in *Colorado Republican Campaign Committee v. Federal Election Comm’n*, 518 U.S. 604 (1996), the question related to the Party’s right to engage in independent expenditures raises “concerns for the chilling of First Amendment expression.” *Id.* at 631 (Thomas, J., concurring).

II. UNITED STATES SUPREME COURT PRECEDENT CONFIRMS THE CONSTITUTIONAL RIGHT OF POLITICAL PARTIES TO MAKE INDEPENDENT EXPENDITURES IN GENERAL ELECTIONS SO LONG AS THOSE EXPENDITURES ARE INDEPENDENT OF AND NOT COORDINATED WITH ANY CANDIDATE

Throughout its cases addressing the constitutionality of various aspects of campaign finance laws, the United States Supreme Court has consistently applied the First Amendment principle that the *only* constitutionally acceptable reason for imposing contribution limits or source prohibitions is to avoid corruption or the appearance of corruption. *See Buckley v. Valeo*,

424 U.S. 1, 26-27 (1976) (finding corruption and the appearance of corruption sufficient constitutional justification for contribution limitations).

More recently, the Court applied this principle to find that corporations have a First Amendment right to make independent expenditures. In *Citizens United v. Federal Election Comm'n*, 130 S. Ct. 876, 909 (2010), the Supreme Court addressed whether political speech may be suppressed on the basis of the speaker's corporate identity. The government's purported compelling interest in prohibiting independent corporate expenditures was, among other things, avoiding corruption or the appearance of corruption. *Id.* at 348-49, 356. The Court, however, rejected the government's argument: "[W]e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." *Id.* at 357. In the absence of corruption or the appearance of corruption, the Court held that there is no sound constitutional basis for suppressing the First Amendment rights of corporations.

The Court has also applied this principle in a case that involves precisely the question posed by the instant Petition for Declaratory Order. In *Colorado Republican Federal Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604 (1996) (hereafter "*Colorado Republican Committee*"), the Supreme Court examined whether a limitation on independent expenditures by a political party violates the First Amendment. The Colorado Republican Federal Campaign Committee challenged a provision of the Federal Election Campaign Act which limited the amount a political party could spend in a general election campaign for congressional office – even when those expenditures were independently made and not coordinated with any candidate.

The Committee argued that such a limitation on a party's independent expenditures violates the First Amendment.

The Supreme Court agreed. The Court's principal opinion, authored by Justice Breyer, noted that "[t]he independent expression of a political party's views is 'core' First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees."² *Id.* at 616 (Breyer, J.). The Court therefore rejected the notion that there was any compelling reason to treat political parties differently:

We do not see how a Constitution that grants to individuals, candidates and ordinary political committees the right to make unlimited expenditures could deny the same right to political parties.

Id. at 618. Thus, the United States Supreme Court held that political parties have a core First Amendment right to express its views in the form of independent expenditures.³

The *Colorado Republican Committee* Court stressed that its holding was supported by the "constitutionally significant fact" that there was "a lack of coordination between the candidate and the source of the expenditure." *Id.* at 617. There is no danger of corruption or the

² Of course, Colorado's freedom of speech guarantees are even more robust than the First Amendment guarantees applied in *Colorado Republican Committee*. *E.g.*, *People v. Seven Thirty-five E. Colfax, Inc.*, 697 P.2d 348, 356 (Colo. 1985) (noting that Art. II, § 10 of the Colorado Constitution "provides broader protection for freedom of speech than does the first amendment to the U.S. Constitution").

³ Justice Breyer's plurality opinion was joined by Justices O'Connor and Souter. Although four other justices agreed with the holding that the Colorado Republican Federal Campaign Committee's First Amendment rights had been violated, they dissented in part, arguing that the Court should have reached the broader question of whether the First Amendment forbids efforts to limit coordinated expenditures as well as independent expenditures. *See id.* at 631 (agreeing that petitioners' First Amendment rights had been violated, but arguing for a broader holding) (Thomas, J., concurring in the judgment and dissenting in part). Only Justices Stevens and Ginsburg would have held that the Colorado Republican Committee's First Amendment rights had not been violated. *Id.* at 648-50 (Stevens, J., dissenting).

appearance of corruption, the Court explained, when the party's expenditures are, in fact, independent – that is, not coordinated with candidates. *Id.* at 617-18. As further discussed below, that is precisely the case with respect to the Colorado Republican Party's independent expenditure committee.

III. COLORADO'S STATE CONSTITUTIONAL AND STATUTORY FRAMEWORK IS CONSISTENT WITH UNITED STATES SUPREME COURT PRECEDENT REGARDING PARTY INDEPENDENT EXPENDITURE COMMITTEES

Colorado's campaign finance regime mirrors the United States Supreme Court's holding in *Colorado Republican Committee*. As described below, the Colorado Constitution and related statutes provide for political party-sponsored independent expenditure committees, and there is no applicable limit or source prohibition on contributions to such independent expenditure committees.

A. Independent Expenditures Are Allowed So Long as There Is No Coordination

The Colorado Constitution takes care to implement one of the core principles of *Colorado Republican Committee* by defining "independent expenditure" as "an expenditure that *is not controlled by or coordinated with any candidate* or agent of such candidate." Colo. Const., Art. XXVIII, § 2(9) (emphasis added). Notably absent from the Colorado Constitution is any reference to any restrictions on independent expenditures by a political party. Thus, under Colorado law no independent expenditure committee, whether or not sponsored or related to a political party, may make any expenditure in coordination with a candidate without being "deemed to be both contributions by the maker of the expenditures, and expenditures by the candidate committee." Colo. Const., Art. XXVIII, § 2(9). Any expenditure that is coordinated with a candidate is deemed a contribution to, and an expenditure by, a candidate committee,

subject to all of the requirements and restrictions of Article XXVIII and the Fair Campaign Finances Act applicable to candidate committees.

B. “Any Person” May Make Independent Expenditures, and Political Parties Are “Persons” Under the Statute

Political parties may make independent expenditures, and must disclose information related to such independent expenditures pursuant to the independent expenditures statute.

Section 3(a) of the statute, which is part of the Fair Campaign Practices Act, states:

Any person that accepts a donation that is given for the purpose of making an independent expenditure in excess of one thousand dollars or that makes an independent expenditure in excess of one thousand dollars shall register with the appropriate officer within two business days of the date on which an aggregate amount of donations accepted or expenditures made reaches or exceeds one thousand dollars.

C.R.S. § 1-45-107.5(3)(a) (emphasis added). As used in the Fair Campaign Practices Act, the word “person” has the same meaning as set forth in Art. XXVIII, § 2(11) of the Colorado Constitution. Art. XXVIII, § 2(11) specifically defines “person” to include “any natural person, partnership, committee, association, corporation, labor organization, *political party*, or other organization or group of persons.” (Emphasis added); *see* C.R.S. § 1-45-103(13) (defining “person” by reference to the Colorado Constitution). Thus, consistent with *Colorado Republican Committee*, political parties are among the “persons” who may make independent expenditures, subject only to the disclosure and reporting requirements mandated by the independent expenditure statute. *See* C.R.S. § 1-45-107.5(4), (5), (8)-(12).

C. Independent Expenditure Committees Are Not Subject to Contribution Limits or Source Prohibitions

Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act establish that there are no limits on contributions to independent expenditure committees, and

that such contributions may be accepted from individuals, labor organizations, corporations, and other contributors.

1. There Are No Contribution Limits for Independent Expenditure Committees

a. Section 3 of Article XXVIII, which establishes contribution limits, makes no mention of independent expenditure committees

Section 3 of Article XXVIII limits the amounts that political party committees, political committees and candidate committees may accept from donors. As adjusted by the change in the consumer price index provided for in Art. XXVIII, § 3(13), political party committees may accept no more than \$3,400 annually at the state, county, district, and local level combined, of which no more than \$2,825 may be given to the state political party, from any person. Colo. Const., Art. XXVIII, § 3(3); 8 CCR 1505-6, Rule 10.14.2(g). Federal law provides that any person may contribute up to \$10,000 to a federal political committee established and maintained by the state committee of a political party in any calendar year for the purpose of influencing federal elections. 2 U.S.C. § 441a(a)(1)(D). State political committees may accept no more than \$550 from any person in any state house of representatives election cycle, and state small donor committees may accept no more than \$50 from any natural person in any calendar year. Colo. Const., Art. XXVIII, §§ 2(14), 3(5); 8 CCR 1505-6, Rule 10.14.2(g). Similarly, contributions to various state candidate committees are limited to certain aggregate amounts depending on the office sought. *See, e.g.*, Colo. Const., Art. XXVIII, § 3(1); 8 CCR § 1505-6, Rule 10.14.2. The contribution limits described in Section 3 of Article XXVIII make no mention of independent expenditure committees. Independent expenditure committees formed and operated exclusively

for the purpose of influencing state and local elections are therefore not subject to any contribution limits.

b. The General Assembly specifically directed that independent expenditure committees are not political committees, and are not subject to contribution limits

The Fair Campaign Practices Act specifies that contribution limits do not apply to independent expenditure committees. Section 3(5) of Article XXVIII places a \$550 limit on contributions to political committees. The Fair Campaign Practices Act, however, states that an independent expenditure committee “shall not be treated as a political committee”:

An independent expenditure committee shall not be treated as a political committee and, therefore, shall not be subject to the requirements [i.e., contribution limits] of section 3(5) of article XXVIII of the state constitution.

C.R.S. § 1-4-103.7(2.5). Thus, the General Assembly explicitly directed that independent expenditure committees are not subject to the contribution limits applicable to political committees.

2. A Party-Sponsored Independent Expenditure Committee Is Not a “Political Party” Within the Meaning of Article XXVIII

An independent expenditure committee is not a “political party” for purposes of the contribution limit set forth in Section 3(3)(a) of Article XXVIII. A political party is defined in Article XXVIII as follows:

“Political party” means any group of registered electors who, by petition or assembly, nominate candidates for the official general election ballot. “Political party” includes affiliated party organizations at the state, county and election district levels, and all such affiliates are considered to be a single entity for the purposes of this article . . .

Colo. Const., Art. XXVIII, § 2(13). Under this definition, an independent expenditure committee is not a “political party” subject to any contribution limits.

a. A party-sponsored independent expenditure committee does not nominate candidates

“Political party” is defined as “any group of registered electors who . . . *nominate candidates* for the official general election ballot.” *Id.* (emphasis added). Just as the Colorado Republican Party’s state political committee and state small donor committee do not convene nominating assemblies or participate in the nomination of candidates, its independent expenditure committee does not play any formal role in the nomination of candidates for elections. An independent expenditure committee is therefore excluded from the definition of “political party.”

In a 2004 Advisory Opinion, Secretary of State Donetta Davidson applied this same reasoning in concluding that the Colorado Federation of Republican Women was not a “political party” within the meaning of Article XXVIII:

The reference to “affiliated party organizations at the state, county and election district levels” would include the state political party, the county political parties affiliated with the state party and district-level affiliates associated with the state party that are active, formal *and necessary participants in the nomination of candidates to the general election ballot.*

Jan. 26, 2004 Advisory Opinion, at 2 (emphasis added; copy attached). Thus, Secretary Davidson concluded, based on the definition in Article XXVIII, that the nominating function is a necessary prerequisite for a party organization to be considered a “political party.” If an entity, organization, or committee does not nominate candidates, it is not a “political party.”

b. The phrase “affiliated party organizations” is limited to regional party political party committees, such as county and district political committees

The definition also states that “political party” includes “affiliated party organizations.” Colo. Const., Art. XXVIII, § 2(13). The phrase “affiliated party organizations,” however, is

immediately modified by a phrase concerning regional party organizations: “*at the state, county and election district levels.*” *Id.* (emphasis added). This implicates a principle of construction known as *ejusdem generis*:

Where, in a particular statute, general words follow a designation of particular subjects . . . the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things . . . of the same kind

City & County of Denver v. Taylor, 292 P. 594, 595-96 (Colo. 1930). Here, the specific enumeration of regional party organizations restricts the meaning of “affiliated party organizations” to county or district-level affiliates such as the Democratic Party of Denver or the Jefferson County Republican Party or the 11th State Senatorial District Republican Central Committee that convene party assemblies and permit delegates to such assemblies to nominate or designate partisan candidates to the ballot. This was precisely what Secretary Davidson concluded in her advisory opinion. *See* Advisory Opinion, at 2 (“affiliated party organizations” includes “the county political parties affiliated with the state party and district-level affiliates associated with the state party”). This reading of the definition eliminates the ability to evade the contribution limit by, for example, contributing the maximum amount to each and every county or district political party committee in the State. This reading is further reinforced by Article XXVIII, Section 3(3)(a), which states that the contribution limit for political parties includes “at the state, county, district, and local level combined.”

3. There Are No Source Prohibitions on Contributions to Independent Expenditure Committees

Section 3(4) of Article XXVIII formerly provided that “[i]t shall be unlawful for a corporation or labor organization to make contributions to a candidate committee or a political

party, and to make expenditures expressly advocating the election or defeat of a candidate”

While the prohibition against a corporation or labor organization making direct contributions to candidate committees or political party committees has not yet been successfully challenged, the prohibition against making expenditures expressly advocating the election or defeat of a candidate has since been declared unconstitutional in light of the *Citizens United* decision. *See In re Interrogatories by Ritter*, 227 P.3d 892 (Colo. 2010). Notably, however, the now-unconstitutional prohibition made no mention of prohibited contributions to independent expenditure committees. Thus, even before *Citizens United*, the Colorado Constitution excluded independent expenditure committees from the prohibition on corporate or labor union contributions. *See Reale v. Board of Real Estate Appraisers*, 880 P.2d 1205, 1209 (Colo. 1994) (It is an “accepted principle of constitutional construction that the enumeration of certain specified things in a constitution will usually be construed to exclude all other things not so enumerated.”) (quoting *Whitney v. Bolin*, 330 P.3d 1003, 1005 (Ariz. 1958)).

4. Colorado’s Constitutional and Statutory Regime Explicitly Recognizes the Ability of a Political Party to Sponsor and Maintain Other Committees and Separate Segregated Funds that Are Subject to Distinct Contribution and Expenditure Restrictions

Section 2(12)(b) of Article XXVIII states explicitly that a “‘political committee’ does not include political parties” and that “[a]ll political committees established, financed, maintained or controlled by the same political party” are to be “treated as a single political committee” and is subject to the individual and corporate contribution limits of \$550 per election cycle. Similarly, section 2(14)(b) of Article XXVIII states that a “‘small donor committee’ does not include political parties” and that “[a]ll small donor committees established, financed, maintained or controlled by the same political party” are to be “treated as a single small donor committee” and

subject to the individual contribution limits of \$50 per natural person per year. Thus, while the political party committees affiliated with the Republican Party at the state, county, and district level are subject to the aggregate annual contribution limit of \$3,400 per person, the state political committee and state small donor committee sponsored by the Colorado Republican Party are also able to accept an *additional* \$550 per election cycle and \$50 per calendar year from eligible contributors respectively. This treatment is exactly the same afforded any other political committee and small donor committee established, financed, maintained or controlled by any other corporation, labor organization, or any other person or group of persons. Similarly, the independent expenditure committee sponsored by the Colorado Republican Party is able to accept contributions and make independent expenditures just as any other independent expenditure established, financed, maintained or controlled by any other corporation, labor organization, or any other person or group of persons.

IV. THE REPUBLICAN PARTY'S INDEPENDENT EXPENDITURE COMMITTEE WILL BE STRUCTURED AND OPERATED TO ENSURE THAT NO EXPENDITURES WILL BE COORDINATED WITH CANDIDATES

The question of whether a political party's expenditures are truly independent and not coordinated with candidates is a question of fact. *Colorado Republican Committee*, 518 U.S. at 617. In that regard, the Colorado Republican Party's independent expenditure committee will have in place significant structural and operational protections, further described below, to ensure that no expenditure will ever be coordinated with any candidate.

The independent expenditure committee sponsored by the Colorado Republican Party (the "IEC") will be managed by an independent executive director and advised by an independent management committee of not less than three persons, appointed by the State

Chairman. However, beyond the initial appointment of the executive director and the independent management committee, neither the State Chairman, nor any other officer or agent of the Colorado Republican Party, nor any committee of the Colorado Republican Party, will exercise any degree of management or control over the development of any of the plans, projects, activities, or expenditures of the IEC.

Structural safeguards will be in place to ensure that no coordination with candidates will ever occur. For example, neither the executive director, nor any member of the management committee of the IEC, may hold any office or position within the regular political party organization of the Colorado Republican Party at the state, county, district, or precinct level. Nor may they serve as a delegate to any Republican assembly or convention at the state, county or district level where any Republican candidate is to be nominated or designated to the primary election ballot. With the exception of participating at a Republican precinct caucus meeting or voting in a Republican primary election just as any other citizen, neither the executive director, nor any member of the management committee of the IEC, will be allowed to participate in the nomination or designation of any Republican candidate for public office. The executive director and management committee of the IEC will be prohibited from actively participating on the campaign committee of any candidate for public office that will be the beneficiary of any independent expenditures made by the IEC in the election cycle.

Officers, agents and committees of any political party committee affiliated with the Republican Party at the state, county, district or local level, will be expressly prohibited from making any requests or suggestions to the executive director or to any member of the management committee of the IEC, or consulting with or providing any direction with respect to

the development, creation, production or dissemination of any independent expenditure or electioneering communication paid for by the IEC.

The executive director and members of the management committee also will be expressly prohibited from soliciting any non-public information from any candidate for public elective office, or from any candidate committee or from any agent of such candidate seeking election in the current election cycle, regarding that candidate's campaign strategy, plans, projects, activities, or needs. Similarly, the executive director and members of the management committee will be expressly prohibited from soliciting any non-public information from the Colorado Republican Party's campaign strategy, plans, projects, activities, or needs.

With the exception of an attorney, accountant, or bookkeeper who may provide services within the scope of his or her profession, the IEC will not retain or utilize any common consultant or common vendor with the Colorado Republican Party or with any Republican candidate for public office that will be the beneficiary of any expenditure by the IEC, unless the common consultant or common vendor places effective barriers (i.e., "firewalls") to the transmission of non-public information between the IEC and the Colorado Republican Party and any and all Republican candidates or candidate committees.

Contributions to the IEC will be solicited from legal entities and persons that are permitted to contribute to independent expenditure committees under Colorado law. Contributions will be solicited by the executive director of the IEC and by other authorized agents of the IEC, including professional fundraisers and fundraising consultants. Contributions to the IEC will also be solicited by the State Chairman and by other authorized agents or representatives of the Colorado Republican Party. All contributions and any funds received in

response to a solicitation for donations to the IEC will be deposited into one or more designated bank accounts at a bank or branch of a bank located in Colorado. While the State Chairman and certain representatives from the Colorado Republican Party may be authorized to make deposits into the independent expenditure committee account and view current account balances for auditing and compliance purposes, the only persons authorized to sign checks, authorize transfers, or obligate or expend any funds of the IEC shall be the executive director and one or more members of the independent management committee of the IEC or their designated and authorized agent.

In every respect, the IEC will strictly operate within the framework defining “coordination” established by Rule 1.4 of the Rules Concerning Campaign and Political Finance promulgated by the Colorado Secretary of State at 8 CCR § 1505-6, and in accordance with how “contribution” and “independent expenditure” are defined in Art. XXVIII, §§ 2(5) and (9) of the Colorado Constitution and applied under relevant provisions of Colorado law. *See also Colo. Educ. Ass’n v. Rutt*, 184 P.3d 65 (Colo. 2008). The IEC will fully comply with all disclosure and reporting requirements mandated by C.R.S. § 1-45-107.5 and other applicable provisions of Colorado campaign finance law, and will assist donors to the IEC to fulfill their reporting requirements under the independent expenditure statute.

V. THE REPUBLICAN PARTY’S INDEPENDENT EXPENDITURE COMMITTEE WILL PLAY AN IMPORTANT ROLE IN THE MARKETPLACE OF IDEAS

The Colorado Republican Party is seeking no special rights or preferential treatment. The Colorado Republican Party is simply seeking clarification from the Secretary that it will be treated in exactly the same way as any other person, corporation, labor organization, association, organization, or entity that is permitted under Colorado’s state constitution, statutory framework

and case law to solicit unlimited funds for the purpose of independent expenditures and the ability to make independent expenditures to communicate to voters what the Republican Party stands for and influence the election of candidates for public office at the state and local level.

As Justice Breyer observed, “We do not see how a Constitution that grants to individuals, candidates and ordinary political committees the right to make unlimited expenditures could deny the same right to political parties.” *Colorado Republican Committee*, 518 U.S. at 618. If labor unions, corporations, advocacy groups, or individuals (none of whom actually appear on the ballot or can be directly held accountable by the voters for their political speech and political advocacy) are permitted to raise and independently spend unlimited funds from a variety of individual and corporate sources to influence state and local elections in Colorado, it cannot be reasonably argued that a political party committee – whose partisan candidates actually appear on the ballot and can be thus held directly responsible and accountable for their political speech and advocacy by the voters – should be prevented from doing the same.

In the recent recall elections in State Senate District 3 in Pueblo and State Senate District 11 in El Paso County in September 2013, independent organizations and state committees that are not subject to contribution limits and source prohibitions raised and spent significant funds in an attempt to influence the political process in Colorado. According to the Denver Post, the National Rifle Association spent more than \$360,000 to support the recall elections, and labor unions, including the SEIU and the AFL-CIO, and other Democrat-aligned individuals, groups and committees raised and spent more than \$3 million to attempt to defeat the recalls. New York City Mayor Michael Bloomberg personally contributed \$350,000 and liberal philanthropist Eli Broad personally contributed \$250,000 to the ironically named “Taxpayers for Responsible

Democracy,” a committee opposing recall elections and supporting State Senators John Morse and Angela Giron. And yet an individual wishing to directly support the Republican successor candidates in the recall elections – Bernie Herpin and George Rivera – could contribute no more than \$200 to each candidate’s candidate committee, and no more than \$2,825 to the Colorado Republican Party to use in support of those state legislative candidates (these limits, of course, applying to the candidates and Party as a whole for an entire year). The two Republican candidates and the Colorado Republican Party faced astounding disadvantages in their ability to raise funds and make expenditures to defend the Republican candidates and the Republican Party against the hundreds of thousands, if not millions, of dollars in negative political attacks.

According to campaign finance disclosures filed with the Colorado Secretary of State, in the 2012 calendar year alone, 527 political organizations accepted \$14,812,906 in contributions and made \$14,350,348 in expenditures to influence state and local elections. Independent expenditure committees (sometimes referred to as “state super PACs”) accepted \$6,302,334 in contributions and made \$6,304,337 in expenditures to influence the election of state and local candidates in the same period.⁴ According to numerous published sources and reports, social

⁴ Campaign spending by 527s, independent expenditure committees and other independent advocacy groups to influence state and local races in Colorado is a trend that continues to increase. *The Denver Post* described the influence the Colorado Democracy Alliance, or CoDA, has had on transforming the make-up of the Colorado state legislature, and reported that 527 political organizations spent over \$23 million to influence state races in Colorado in 2008 and 2010. “Of note, liberal groups won 17 of the 24 legislative races they put direct advocacy money into, The Post found. Senate Majority Leader John Morse of Colorado Springs raised \$163,769 for his re-election campaign. Outside groups, however, put in nearly \$600,000 on his behalf. Morse won by about 340 votes.” (Karen Crummy, “Spending by super PACs in Colorado is the dominion of Democrats”, published March 10, 2012; available at http://www.denverpost.com/breakingnews/ci_20148556/spending-by-super-pacs-colorado-is-dominion-democrats) If outside groups are permitted under Colorado law to spend such amounts to independently influence key state legislative races that will determine which political party

welfare organizations tax-exempt under Section 501(c)(4) of the Internal Revenue Code, labor unions tax-exempt under Section 501(c)(5) of the Internal Revenue Code, and other corporations and organizations that are not required to report or disclose their contributions and expenditures, spent millions more to influence elections and the debate over public policy in Colorado. In contrast, the two major political party committees *combined* accepted \$1,491,023 in contribution and made \$1,492,016 in expenditures with regulated state funds in the same calendar year. The voice and perspective of the candidates themselves, and the voice and perspective of the political parties whose political philosophy is represented by those partisan candidates, is being overwhelmed by spending by outside special interests that cannot be directly held accountable by the voters.

Rather than further restricting or limiting the rights of expression and association by independent groups and organizations as some so-called campaign finance reformers would advocate – and thus empower the state to act as a censor or limit constitutionally-protected political speech – the Colorado Republican Party believes the better course is for it to have the opportunity to compete on precisely the same playing field and according to the same rules of the game as other 527s and independent expenditure committees in the marketplace of ideas that is essential to our system of representative democracy. As John Stuart Mill described in *On Liberty*, an essay published in 1859, “Wrong opinions and practices gradually yield to fact and argument: but facts and arguments, to produce any effect on the mind, must be brought before it.” The Colorado Republican Party believes that the facts, argument, and perspective of the

holds majorities in the state legislature, why should a political party be prevented from doing the same if it also operates independently from the candidates that may benefit from such independent expenditures?

Colorado Republican Party – which represents the conservative political philosophy of the two major political parties – is an important voice in that marketplace of ideas, and it should have the ability and opportunity to raise funds and make expenditures without limit in order to express its independent voice just as any other person, corporation, labor organization or entity.

The purpose of this action is not to challenge the constitutionality of the contribution limits applicable to donations given directly to candidates or directly to a political party committee, or the limits imposed on what a political party may contribute to or spend in direct coordination with any candidate, nor does it seek to challenge the current prohibition on direct contributions from corporations or labor unions to candidates or political party committees. While Colorado Republican Party believes that the limits currently in place in Colorado are not narrowly tailored to prevent corruption, but instead threaten to impose excessive burdens on the First Amendment and other constitutionally-protected interests of candidates, political parties and volunteers, this petition does not seek to overturn those limitations. *See Randall v. Sorrell*, 548 U.S. 230 (2006).

This petition does, however, seek to ensure that the Colorado Republican Party is permitted to rely upon the clear, plain language of the constitutional and statutory regime governing independent expenditures as enacted by the state legislature, and ensure that the Colorado Republican Party is treated just as any other person, corporation, labor organization, association, organization, or entity. Granting this petition will enable the Party to solicit unlimited funds for the purpose of independent expenditures, which, in turn, will enable the Party to make independent expenditures to communicate to voters what the Republican Party

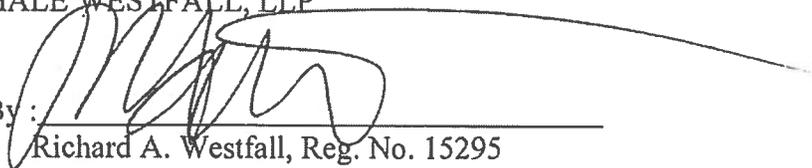
stands for and support the election of candidates for public office at the state and local level that share the Republican Party's philosophy and values.

CONCLUSION

For the reasons stated above, the Colorado Republican Party respectfully petitions the Secretary to issue a Declaratory Order confirming that the Party is authorized under existing law to sponsor, maintain and operate an independent expenditure committee ("IEC") that may raise funds in any amounts from any source permissible under Colorado law, just as any other independent expenditure committee sponsored, maintained, and operated by any other person, association or legal entity.

Respectfully submitted this 8th day of November, 2013.

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