



# ZAKHEM LAW

Attorneys and Counselors at Law

January 7, 2014

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

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

Dear Mr. Secretary:

I would like to extend my regrets for not being in attendance for the hearing on the above-referenced matter, but prior engagements occupy my time. This letter will have to serve as my recommendation or testimony in lieu of my attendance. Please enter this letter into the record.

I have reviewed the Request for Declaratory Order ("Request") and Secretary's Declaratory Order [Draft] ("Draft Order") filed by the Colorado Republican Party ("CRP") and I find both to be well-grounded in existing law and common sense application to Colorado's campaign finance structures.

First, it seems clear that the First Amendment prohibits restriction on independent expenditures with regard to any organization as to the amount expended (*see Colo. Republican Fed. Campaign Comm. v. FEC (Colorado I)*, 518 U.S. 604, 618 (1996) (political parties); *FEC v. Nat'l Conservative PAC (NCPAC)*, 470 U.S. 480 (1985) (political action committees); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 795 (1978) (corporations); *Citizens United v. FEC*, 558 U.S. 310, 365 (2010) (unions and corporations)), or contributed. *See Wis. Right to Life State PAC v. Barland*, 664 F.3d 139, 153-54 (7th Cir. 2011); *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010). Second, the Draft Order is based upon CPR's representations that the IEC will not coordinate with the party committee or individual candidates; thereby insuring that the expenditures will, in fact, be independent. *See Colorado I*, 518 U.S. at 617; 8 CCR § 1506-6, Rule 1.4.

Rule 1.4, adopted by the Secretary after significant input from the political parties, watchdog organizations and public comment, provides for succinct definition and easy-to-follow guidelines relating to coordination. Any political party seeking to organize an independent expenditure committee will, like any other IEC sponsor, be subject to private enforcement through the Secretary of State complaint process for any violation of Rule 1.4. Therefore, it is

inappropriate for the Secretary to interpret existing law or regulation in a manner that prohibits CRP (or any other political party) from exercising its constitutional right to make independent expenditures in a manner different than any other organization operating an IEC under Colorado law.

It is, likewise, important to remember that CRP has a First Amendment right to communicate its values to the electorate, potential candidates and the public at large. “Political speech is the lifeblood of democracy — it is the means by which citizens learn about candidates, hold their leaders accountable, and debate the issues of the day.” *Republican Party of New Mexico v. King*, No. 12-2015, slip op. at 3 (10<sup>th</sup> Circuit, December 18, 2013), citing *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam). Political speech from a major political party with whom any candidate for public office is free to associate is no less important for our democracy. A political party must not be silenced when it seeks to speak out for itself and its own interests.

For the reasons stated above, I urge the Secretary of State to GRANT the Draft Order.

Sincerely,  
ZAKHEM LAW, LLC



John S. Zakhem, Esq.

cc: Richard Westfall, Esq.