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Richard Westfall, Esq.
Ryan Call, Esq.
Hale Friesen LLP
1660 Wynkoop Street, Suite 900
Denver, CO 80202

RE: *Citizens United v. FEC*

Dear Messrs. Westfall and Call:

Thank you for attending the meeting of the Secretary of State's Campaign Finance Advisory Committee on January 25, 2010. Secretary Buescher was appreciative of your comments concerning the impact of *Citizens United* on Colorado campaign finance law. Everyone in attendance at the meeting appears to agree that the holding in *Citizens United* renders unenforceable certain portions of Colo. Const. art. XXVIII, and that the Secretary and his elections staff have been working diligently to ensure that Colorado law remains consistent with the requirements of the First Amendment. I write to address your statements about potential litigation that you (and others) may file in light of *Citizens United*.

Because Colorado's campaign finance laws are largely embedded in the state constitution, however, there is no speedy way to amend or appeal those provisions. Even if the Secretary announces that he intends not to enforce these provisions in light of *Citizens United*, so long as they remain on the books, the Secretary remains subject to suit unless and until they are declared unenforceable by court order. The Secretary convened this week's meeting to discuss the most efficient method of procuring such an order without going through unnecessary litigation that would be funded at taxpayer expense.

With this goal in mind, the Secretary has requested that the Governor and General Assembly submit Interrogatories to the Colorado Supreme Court pursuant to Colo. Const. article VI, section 3, to seek a formal determination by the Court that the central holding of *Citizens United* renders unenforceable certain language of article XXVIII, sec. 3(4)(a), and sec. 6(2). Majority and minority party leadership in both houses of the General Assembly have informally indicated support for this approach, and the proposed Interrogatories are currently awaiting the Governor's approval. Pursuing adversarial litigation on these specific

issues, at least prior to seeking direction from the Colorado Supreme Court, would create needless expense both for your clients and for the taxpayers of Colorado.

There is bound to be disagreement concerning the scope of the Supreme Court's decision in *Citizens United*, and the Secretary acknowledges the likelihood of litigation concerning the breadth of the decision and whether it extends to the ban on corporate contributions. Forestalling that litigation in its entirety is probably unrealistic, but limiting its scope is not. If the Colorado Supreme Court agrees to answer the Interrogatories that the Secretary has drafted for submission, its opinion will quickly clarify, and hopefully reasonably limit, the scope of any future litigation to come. In addition to this effort, the Secretary is also exploring the feasibility of passing emergency rules to give effect to the central holding of *Citizens United* as it affects sections 3(4)(a) and 6(2). Given these swift and proactive efforts by the Secretary to avoid needless litigation, we urge you to forestall any claims on these specific issues. Should you nevertheless choose to move forward before the aforementioned efforts have been given a reasonable opportunity to resolve these issues, we will vigorously oppose any effort to claim prevailing party attorney's fees on such claims.

Please keep our office updated on your client's plans regarding the impact of *Citizens United* on Colorado law. As always, your cooperation and consideration are appreciated.

Sincerely,

FOR THE ATTORNEY GENERAL



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