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December 8, 2011

Andrea Gyger  
Elections Division  
1700 Broadway  
Suite 250  
Denver, CO 80290

RE: Comments on Colorado Secretary of State's Proposed  
Rules Concerning Campaign and Political Finance

Dear Ms. Gyger:

I am submitting these comments in response to the Colorado Secretary of State's November 15, 2011, Notice of Proposed Rulemaking Concerning Campaign and Political Finance ("Proposed Rules") and their regulation of the activities of Federal Political Action Committees ("PACs"). I have been practicing campaign finance law for over 30 years, including 13 years as general counsel of the Federal Election Commission ("FEC"). For the reasons set forth below, I urge the Secretary of State to adopt the proposal found in Rule 7: *"Federal PACs and 527 Political Organizations."* The proposed clarification and changes improve existing Colorado campaign finance law by enhancing transparency. In brief, the proposed Rule 7 ensures that a Federal PAC contributing in Colorado makes those contributions from funds that are within Colorado source limits and prohibitions, and that such contributions will be fully disclosed pursuant to Colorado law in a manner conveniently accessible to the voters of Colorado.

## I. Current Colorado Law

Article XXVIII of the Colorado Constitution, Title 1, Article 45 of the Colorado Revised Statutes (CRS) and the Secretary of State's (SOS) Rules Concerning Campaign and Political Finance (Rules) generally require a group making political contributions in Colorado in excess of \$200 to register and report to the SOS as a political committee. At the same time, Section 1-45-108 (3.5) of the CRS currently allows a Federal PAC making contributions in Colorado to register by filing a copy of its FEC Statement of Organization, in lieu of registering on State forms, and then rely on the reports it files with the FEC, which will include the Colorado activity among the PAC's activities in connection with Federal elections, as well as elections in other states. The provision allowing the use of the Federal PAC in Colorado further states that the PAC "shall be subject to all other legal requirements pertaining to contributions and disclosure that are applicable to political committees."

In 2007, Rule 2.8, which implements Section 1-45-108 (3.5), was amended to provide that a Federal PAC that decides to rely on its reports filed with the FEC in lieu of filing reports in Colorado must itemize all contributions and expenditures of twenty dollars (\$20) or more and disclose the occupation and employer of any person who has made a contribution of one hundred dollars or more "on reports filed with the FEC." Rule 2.8 (a) & (b). The Rule further provides that "[o]nly contributions received by the committee that are within contribution limits established by Colorado Law shall be used to support or oppose state or local candidates in Colorado." Rule 2.8(c).

Because the Rule applies the Colorado limits to "contributions... used to support or oppose state or local candidates in Colorado," the Federal PAC has to ensure that just those contributions to the Federal PAC that are ultimately used to contribute to candidates in Colorado comply with Colorado's contribution limits. The Federal PAC can identify the contributions to be used in Colorado by either physically depositing the contributions in a separate bank account or by using the same account as the Federal PAC, and separately identifying those contributions on the PAC's FEC reports. However, because the Rule states that the Colorado disclosure requirements apply to contributions "on reports filed with the FEC," without reference to how they are used, it has been interpreted to require the Federal PAC to itemize on its FEC reports all PAC contributions and expenditures of \$20 or more and include the occupation and employer for contributions from natural persons of \$100 or more, regardless of whether those contributions or expenditures have any connection to the PAC's activity in Colorado.

The current Rule 2.8 appropriately applies the Colorado contribution limits to just those contributions received by the Federal PAC that are used to make contributions to state and local candidates in Colorado. In this way, it ensures that a Federal PAC operating in Colorado can not utilize contributions in excess of the limits Colorado has determined should apply to political committees making contributions in the State. At the same time, it does not impose those same limits on contributions to the Federal PAC that are used to fund contributions in Federal elections, as well as elections in other states, which can be expected to comprise the vast majority of the contributions a Federal PAC receives. Those contributions remain subject to the Federal contribution limits applicable to all Federal PACs.

However, the current requirement that all of the contributions the Federal PAC receives be itemized on FEC reports at Colorado's thresholds greatly increases the sheer number of entries the Federal PAC must include on its FEC reports by requiring itemization of every contributor who contributed between \$20 and \$200, even though the vast majority of those contributions will never be used in Colorado elections nor be contributed to candidates in Colorado. This imposes a burden on the PAC doing the reporting and the FEC, which is responsible for reviewing the reports and storing and making public the data they contain. More importantly, it also results in a significant decrease in the amount of useful and relevant information available to the citizens of Colorado. For example, under the existing rule and processes, an individual whose \$50 contribution was used to fund a Federal PAC's contribution in Colorado would be buried in potentially thousands of other individual contributions of \$20 or more that are used to fund Federal elections and elections in other states. As a consequence, a Colorado citizen would have little ability or time or energy to sift through exhaustive FEC disclosure reports in order to determine which individuals were actually funding Colorado's elections.

## II. The Proposed Rule

Proposed Rule 7 (formerly Rule 2.8) provides a Federal PAC wishing to make contributions in Colorado with a choice: 1) it can either register and report as a Colorado political committee, making all of its activity (whether occurring in Colorado or in other state or Federal elections) subject to the State's limits and reporting requirements; or, 2) the Federal PAC can file disclosure reports with the Secretary of State's office on Colorado forms, disclosing those contributions that the Federal PAC has identified as making up the funds used to support or oppose Colorado candidates. These reports will have to itemize all of the identified contributions of \$20 or more and include the occupation and employer of any person who has made a contribution of \$100 or more, as required by Colorado law.

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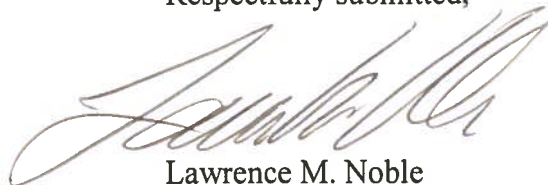
While this latter approach requires the Federal PAC to file Colorado reports and eliminates a Federal PAC's option of just relying on the report it files with the FEC, the trade-off is that it provides Federal PACs with clear and workable directions on how to make contributions in Colorado in a way that fulfills the letter and intent of the Colorado law. The separate reporting of contributions used for local and state elections in Colorado requires a Federal PAC to clearly show that those contributions comply with the Colorado limits, but avoids the unintended consequence of imposing Colorado's relatively strict contribution limits on all contributions received by that Federal PAC, which is likely using the majority of those received contributions in elections at either the Federal level and/or in a number of other states having different contribution limits or disclosure requirements. Further, and perhaps most importantly for the voters of Colorado, the modification embodied in proposed Rule 7 would ensure that Colorado citizens would be able to quickly and efficiently identify on SOS forms which contributions to a Federal PAC are being used in Colorado, rather than having to sift endlessly through Federal PAC reports filed at the FEC containing potentially thousands of contributions that would never be used by the PAC in Colorado elections.

If this Proposed Rule 7 change is adopted, Colorado will enhance its campaign finance transparency, and strengthen the application of its contribution limits, while making workable the rules under which a Federal PAC can contribute in Colorado.

### III. Conclusion.

For these reasons, I encourage the Secretary of State to adopt Proposed Rule 7 and make clear that it can be used by a Federal PAC to make contributions in Colorado in the manner described above.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lawrence M. Noble", is written in black ink. The signature is fluid and somewhat stylized, with a large initial "L" and "M".

Lawrence M. Noble