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December 14, 2011

Secretary of State
Scott Gessler
Colorado Department of State
1700 Broadway
Denver, Colorado 80290

Dear Secretary Gessler,

Your proposed campaign finance rules materially change, and in my opinion, undercut the laws pertaining to key campaign finance laws that are now in place. As you may recall, I am the author of the bill HB 07-1057 creating 527 disclosures in the State of Colorado as well as SB 10-203 triggering independent expenditure committee disclosures in the wake of *Citizens United* so can certainly offer some insight about the intent behind those provisions of state statute.

Regulations that modify existing law include (but are certainly not limited to) your definition of "political organization" (Rule 7.2). In that definition, you add four conditions to the existing definition that was adopted by the legislature in 2010. C.R.S.§ 1-45-103(14.5). For instance, you require that a "political organization" engage in express advocacy, known commonly as the "magic words" used in the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976). Those words include "Elect," "Defeat," "Smith for Congress," and others that are specifically listed. Our courts have acknowledged that these words and any others that are substantially synonymous define the extent of express advocacy. Other groups have engaged in, and reported contributions for and expenditures on, these electioneering communications even though they did not go as far as express advocacy. Your proposal is a major change to existing law, one that is at odds with what the voters adopted and in excess of what would be required to comply with any later decided cases.

Further, you list three other conditions, all of which must be met in order for an organization to qualify as an entity that pays for "electioneering communications." It must raise or spend more than $25,000 in a year, have as its major purpose the influencing of elections, and be exempt from taxation (or seek an exemption) from the IRS. All of these supplemental tests are troubling, but your creation of a "major purpose" test for a political organization is both unwarranted and unwise. It is unwarranted because it is not even implied by existing law. It is unwise because it creates a major loophole which will allow corporations, unions, trade associations, and other entities to escape the reporting requirement, even if they are engaged in express advocacy of candidates.

It so happens that the modest regulation of political organizations originated in a bill that I drafted and convinced my colleagues to enact just a few years ago (HB 07-1074). I can tell you that none of us

anticipated rules that would limit this legislation in the way that your proposed rules would do. You may recall the original public testimony at that legislative hearing where the testimony from the public provided overwhelmingly strong support for my explicit goal to maximize transparency and disclosures of money spent in Colorado elections. It was my intent to close all disclosure loopholes on campaign finance laws and you may recall you were the only witness who testified against the bill at that hearing. Rulemaking should not be an opportunity to re-legislate a different outcome.

The net effect of a variety of these proposed rules conflict in my opinion with the plain language of the statute, and run 180 degrees opposite of the legislative intent. The clear goal was to close loopholes and maximize public disclosures of campaign finance in Colorado. The disturbing net effect of these rules is to create new disclosure loopholes and to reduce the information available to the Colorado public about who is spending how much money trying to influence the outcome of their elections.

I strongly urge you to limit the exercise of your rule making process to comply with the Colorado Constitution and state statute. Thank you for your consideration.

Sincerely,

Senator Morgan Carroll
Aurora – Senate District 29