



December 11, 2011

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

Re: Proposed Rulemaking Campaign and Political Finance  
8 CCR 1505-6

Dear Secretary Gessler:

Thank you for the opportunity to provide comments regarding the proposed changes to the campaign and political finance rules. Friends of Colorado Hospitals (Friends) is a registered political committee supported by the members of the Colorado Hospital Association (CHA) which represents 95 hospitals and health systems across the state. For over 30 years, the committee has provided a strong, united voice by supporting statewide candidates who demonstrate a deep commitment to issues impacting our members, the thousands they employ and the patients they serve.

Friends is monitoring the process and is interested in receiving clarification of certain points of the proposed rules:

**1. Rule 1.12.3**

CHA has formed issue committees in the past and requests clarification of the following:

- Purpose of and basis for the 30% expenditure threshold;
- Bright line Test;
- Difference in “major purpose” thresholds between issue committees and political committees; and
- The impact this proposed rule has since Rule 4.1 has been rejected by a court

**2. Rule 1.18.2**

Please provide an explanation of why political committees would be subject to a “major purpose” test and the basis for the 50% of expenditure threshold.

**3. Rule 1.4.2**

Please provide the intent for including political committees in Rule 1.4.2 and a clarification of what constitutes a “substantial discussion”.

#### **4. Rule 3.1**

Proposed Rule 3.1 appears to prohibit contributions by a political committee to another political committee. There is no constitutional or statutory prohibition to this effect. In fact, charts published as part of the new rules proposed by Secretary do not indicate such a prohibition. This change is a marked departure from the current Rule 2.7. Please clarify whether such contributions will be prohibited.

#### **5. Rule 4.1**

On November 18, 2011, District Judge Bruce Jones rejected the Secretary's rule.

- Has the Secretary appealed that court ruling?
- What rule applies now?
- Does this proposed rule conflict with provisions in proposed Rule 1.9.3, 1.9.4 and/or 4.3.

#### **6. Rule 7.2**

A political organization which expressly advocates for the election or defeat of a specific candidate(s) should be considered a political committee subject to the same limits and disclosure requirements as political committees, particularly since there are no limits to contributions to these organizations and less disclosure required. Please provide an explanation as to why the current rule is being repealed.

#### **7. Rule 7.2.3**

Please explain how the Secretary or the public would know if the lack of a disclosure filing by a political organization is due to lack of activity or is an actual failure to report since a political organization is not required to file a disclosure report for every applicable filing period.

#### **8. Rule 8.1.2**

Please provide a clarification as to whether this new rule does away with having to file lists of specific candidates a political committee might support on the required registration statement.

The new requirement to disclose party affiliations of candidates supported or opposed is troubling. Friends is a nonpartisan political committee—party affiliation has nothing to do with its stated purpose. Since there is no disclosure of party affiliation required by statute, please explain the decision to require disclosure of candidate party affiliation as it would apply to political committees.

**9. Rule 10**

The administrative burdens of the new required disclosures in Rule 10.1.1 and 10.2.1 are troubling. Please provide the basis for such a level of disclosure for contributions and expenditures under \$20.

**10. Rule 10.3.1**

This new rule seems impractical, overly complex and burdensome and provides little value to the public for this level of disclosure. For example, this rule does not take into account that there could be a justifiable lag between the time a credit card payment is “authorized” by the contributor and the time funds are actually credited to a political committee’s account. Compliance with and most likely enforcement of the new requirement is likely to be difficult. Required reporting of the date a monetary contribution is actually deposited to the committee’s account as the date actually received is preferable.

**11. Rule 10.5**

Please clarify whether the proposed time limit is based on 10 calendar days or 10 business days. Please explain the reason for the reduction in the time frame in order to return contributions found to be in excess of limit to avoid liability.

**12. Rule 17.4**

This rule has already drawn criticism from the General Assembly’s Legal Services Committee. Consideration was laid over until December 14. Colorado Ethics Watch has filed suit against the rule which is to be heard in February 2012. Please explain the impact of the lawsuit and the legislature’s objections to the reenactment of this rule. Until the matter is adjudicated, what rule applies?

**13. Rule 18**

Friends is committed to compliance with disclosure filing requirements and has never been fined for late reporting. However having over 6 pages of the proposed rules deal with waiver requests and penalties for violations is a concern. Please provide clarification of the following:

- “Good cause” appears to be vague and highly subjective, giving the Secretary overly broad discretion. Would an unexpected interruption of internet service qualify as “good cause” for a waiver or penalty reduction request?
- The proposed rule is overly complex and appears to foster a perverse incentive to impose larger and larger fines.
- Please clarify whether the penalty caps in this rule include penalties imposed by the Secretary as well as additional civil penalties imposed by an Administrative Law Judge (ALJ).
- Please clarify how this rule fits with Rule 18.5 regarding the 180-day limitation to penalty accrual and Rule 18.6 regarding the \$50 per day fine limitation.
- The statutory standard for increased penalties that may be levied by an ALJ for failure to make a timely filing of a required item is “knowingly and

intentionally”. Is “knowingly and intentionally” the same thing legally as “willful”? If not, please explain why the Secretary is using a different standard, i.e., “willful”, in the proposed rule.

- Use of fund balances to determine some of the penalty caps seems to inordinately benefit smaller committees who violate timely filing requirements. Please explain why the Secretary chose fund balance to determine certain penalty caps.

**14. Rule 18.1.3**

Please clarify whether the additional information that the Secretary or ALJ can request is limited to only those records maintained by the filer that are pertinent to the waiver request.

**15. Rule 18.1.6**

Please clarify whether the time period for response is calendar or business days and the event at which the 60 day time limit begins to toll. Please advise how many waiver or penalty reduction requests in the last year have taken more than 60 calendar days to resolve.

**16. Rule 18.4.2**

Please provide the reasoning as to why the original receipt date of an incomplete complaint is being used even if it was ultimately completed within 10 days of Secretary’s notification of incompleteness. This would seem to increase the time, resources and therefore cost for department to administer incomplete complaints.

**17. Rule 19.6**

Now that virtually all of the reports/registrations required of political committees must be filed electronically, it may be appropriate to be more lenient should the department’s website and/or filing system be unavailable for any reason for any period of time on the date the report is due.

Your consideration is appreciated.

Respectfully,



Susan Rudy

Coordinator of Advocacy Services