

Andrea Gyger

From: Dwight Shellman <Dwight.Shellman@co.pitkin.co.us>
Sent: Thursday, December 15, 2011 12:00 PM
To: Andrea Gyger
Cc: Janice Vos; John Ely; Frieda Wallison; Blanca O'Leary
Subject: Pitkin County Comments - Proposed Rules Concerning Campaign and Political Finance 8-CCR 1505-6

Pitkin County respectfully submits the following comments to the proposed recodification of the Rules Concerning Campaign and Political Finance ("CPF Rules").

Pitkin County is one of only two home rule counties in Colorado, and the only county that has adopted unique campaign finance provisions. Many home rule cities and towns have adopted local campaign finance legislation, however. The scope of the preemptive effect on state law of local campaign finance rules adopted by home rule jurisdictions is very unclear. This fact unwittingly resulted in the disparate treatment of similarly situated filing entities (county political parties) in 2010. Specifically, the Republican and Democratic Parties in the City and County of Denver were permitted to file with the Secretary of State's office, while the equivalent county party organizations in Pitkin County were prohibited from doing so. We respectfully submit there is no constitutional or statutory basis for distinguishing these local party organizations in this fashion, and that the "appropriate officer" for all county party organizations throughout Colorado is and should be the Secretary of State, without regard to whether these organizations operate within a home rule city (as is Denver) or county (as in Pitkin County). The proposed recodification of the CPF Rules provides an excellent opportunity to clarify these long-standing ambiguities.

The county party organizations in Pitkin County *want* to be subject to the pertinent provisions of the Fair Campaign Practices Act, and to file party committee reports and papers with the Secretary of State's office utilizing the electronic filing system (TRACER). The reasons are many. Among other things, (1) the local parties have encountered difficulties opening and maintaining bank accounts without a Department of State committee identification number; (2) using the statewide system facilitates closer and more centralized scrutiny of the aggregate contribution limits applicable to county and state parties; and (3) excluding Pitkin County party committees from the statewide system may create administrative and substantive difficulties in maintaining compliance with applicable federal rules.

As currently drafted, proposed Rule 14.1 completely exempts from the applicability of the FCPA and Colo. Const. art. XXVIII "home rule counties and home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by" those statutory or constitutional provisions. Proposed Rule 14.4 permits local party organizations in home rule jurisdictions to "establish a separate account that is used solely for contributions made to the party, and expenditures made by the party, for purposes of supporting the party's county or municipal candidates for offices within the county or municipality. Contributions to and expenditures from such account shall not be included for purposes of any limitations or reporting contained in Article XXVIII or Article 45 of Title 1, C.R.S." The latter provision does not adequately address the needs and desires of Pitkin County's local party organizations.

County election staff is working to draft an ordinance for adoption by the Pitkin County Board of County Commissioners, to clarify the scope of local campaign finance regulation as set forth in the Pitkin County Home Rule Charter. The ordinance will state that local campaign finance regulation preempts state law only with respect to candidates for county office, committees supporting or opposing the election of county candidates, and committees supporting or opposing ballot issues or ballot questions referred by the board of county commissioners or initiated by a county elector for a vote by county electors in their capacity as such, and not in any other electoral capacity. The ordinance will further explicitly provide that all other candidates, committees and filing entities located or operating in Pitkin County that shall comply with all applicable provisions of state campaign finance law. In this way, Pitkin County will effectively direct that local party organizations file comply with article XXVIII, the FCPA and the CPF Rules.

We submit that, in order to clearly accommodate this constitutional exercise of Pitkin County's home rule authority, proposed Rule 14.1 be amended by adding the following clause to the end of the current draft: ", except to the extent otherwise provided by such charter, ordinances, or resolutions." Similar language should be added to proposed Rule 14.4.

Thank you for the opportunity to raise these issues in your rule-making process.

Very truly yours,

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