

July 24, 2019

The Honorable Jena Griswold, Secretary of State
Department of State
1700 Broadway
Denver, CO 80290

Via email to: sos.rulemaking@sos.state.co.us

Re: Proposed Rules Concerning Campaign and Political Finance

Dear Secretary Griswold,

Colorado Common Cause respectfully submits comment regarding the campaign finance rules proposed on July 9, 2019. Colorado Common Cause executive director Amanda Gonzalez will also be present at the Secretary's rulemaking hearing on July 24, 2019 to answer questions and provide additional comments.

Colorado Common Cause is a nonpartisan, grassroots organization dedication to upholding the core values of American Democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process.

We support a strong democracy where everyone's voice is heard and everyone plays by fair and commonsense rules. To that end, we are concerned that the disclosure requirements of HB19-1318, the Clean Campaign Act of 2019, are not clear and specific enough to accomplish the law's primary goal of increasing transparency and reducing or eliminating the influence of dark money in our elections.

Section 1. Comments on proposed rules.

Rule 1.23: This definition of transfer is the only rule that relates to the "earmark" provision in HB19-1318 and it does not provide adequate guidance to achieve the kind of transparency purported by advocates of the bill. The law itself amends the statutory definition of "earmark" but it does not provide guidance on when a donor has earmarked a transfer for the purposes of "making an independent expenditure or electioneering communication".¹ Without further regulatory guidance the earmarking conditions in law are insufficient to achieve the level of transparency the bill intended. Similar to some of the language used in rule 21.2, we suggest the addition of a rule which would address funds that are provided in response to a solicitation to fund, a discussion about funding campaign-related disbursements, or funds which the donor knew or should have known would be used to pay for independent expenditures, electioneering communication, or campaign-related disbursements.

Section 2. Additional recommendations.

The proposed rules do not contain guidance of the opt-out process for donors who claim they will face a "reasonable probability of harm, threats, harassment or reprisal to the person or to individuals affiliated with that person" created by HB19-1318. Covered organization must retain copies of opt-out forms and must provide copies of those forms to the Secretary when they are requested but the rules do not include a formal process or

¹ §1-45-107.5 C.R.S.

form that donors should use. We suggest that the secretary create such a process in rule. The process should specify require donors to describe their reasons for opting out in a sworn statement and the process should also request documentation or evidence of reasonable probably of harm, threats, harassment or reprisal. Without this kind of regulatory guidance donors may, knowingly or unknowingly, opt-out of disclosure for grounds that do not amount to a reasonable probability. Further, without documentation, evidence, and a sworn statement the Secretary's office will have no means of investigating potential violation of this provision of The Clean Campaign Act of 2019.

The process should also outline guidance for how to process incomplete requests, request by corporations, and requests that do not satisfy evidentiary requirements. Finally, we encourage the Secretary's office to clarify what information can and cannot be redacted and the method by which the covered organization should complete the redacting. These additions will aid in the thorough and uniform administration of the law.

Thank you for the opportunity to comment.

Sincerely,

Amanda Gonzalez

Executive Director
Colorado Common Cause