

<p>COURT OF APPEALS STATE OF COLORADO 2 East 14th Avenue Denver, Colorado 80203</p>	
<p>Office of Administrative Courts Honorable Robert N. Spencer, Administrative Law Judge Case No. OS-2014-0008</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">Case No. 2014CA2073</p>
<p>CAMPAIGN INTEGRITY WATCHDOG, LLC,</p> <p>Appellant,</p> <p>v.</p> <p>COLORADOANS FOR A BETTER FUTURE (CBF),</p> <p>and</p> <p>OFFICE OF ADMINISTRATIVE COURTS,</p> <p>Appellees.</p>	<p style="text-align: center;">AMICUS CURIAE BRIEF FOR THE CENTER FOR COMPETITIVE POLITICS IN SUPPORT OF NEITHER PARTY BUT IN SUPPORT OF REHEARING</p>
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DIVISION I
Opinion by Judge TAUBMAN, J. Jones and
Harris, JJ., Concur

**ORDER AFFIRMED IN PART,
REVERSED IN PART, AND CASE
REMANDED WITH DIRECTIONS**

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that

The amicus brief complies with the applicable word limit set forth in C.A.R. 29(d).

It contains 925 words (does not exceed 950 words).

The amicus brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

Dated: May 19, 2016

s/ Allen Dickerson
Signature of attorney or party

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Argument

I. The Interest of the Center for Competitive Politics

The Center for Competitive Politics (“CCP” or “Center”) is a § 501(c)(3) non-profit organization founded to educate the public concerning the benefits of increased freedom and competition in the electoral process. Toward that end, CCP engages in research, outreach, and education, and operates a pro bono legal center that brings legal challenges to state and federal laws unconstitutionally burdening the exercise of those freedoms. Because CCP’s activities are impacted by this Court’s decision to categorize pro bono legal services as political contributions, it provides specific insight into the need for a reconsideration of that ruling.

Appellant has objected to the filing of this brief, and an appropriate motion is being concurrently filed with the Court.

II. Declaring that pro bono legal services are a political “contribution” impedes Constitutional litigation.

Colorado law authorizes private citizens to bring campaign finance enforcement actions, and the Secretary of State is legally obligated to forward those complaints to an administrative law judge. Colorado Constitution art. XXVIII § 9(2)(a) Thus, anyone can force a speaker into an administrative proceeding—with all the accompanying time, effort, and expense—simply by filing a complaint. *Coal. for Secular Gov’t v. Williams*, 815 F.3d 1267, 1270 (10th Cir. 2016) (describing

process). This onerous rule creates opportunities for harassment and a concrete need for attorneys willing to represent political actors.

But by counting pro bono work as a “contribution,” this Court’s ruling suggests that attorneys support their clients’ political message. This is contrary to Colorado Rule of Professional Conduct 1.2(b), which provides that “[a] lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.” Thus a pro bono lawyer’s basis for representation may be (and often is) an interest in the rule of law or the vindication of constitutional rights. *See, e.g.,* Americans Civil Liberties Union, ACLU History: Taking a Stand for Free Speech in Skokie, <https://www.aclu.org/aclu-history-taking-stand-free-speech-skokie> (Discussing *National Socialist Party v. Skokie*, 432 U.S. 43 (1978)). Suggesting otherwise will necessarily chill representation of poorly-resourced and unpopular groups.

Moreover, while pro bono representation is encouraged by the laws governing lawyers, Colo. R.P.C. 6.1, very little legal work could be done, pro bono, for a candidate committee, because contributions to such committees are limited. This will leave many causes without legal representation.

These are no mere hypotheticals. The CCP legal team regularly represents clients who either are a type of political committee, or whose status as a regulated committee is the subject of a constitutional challenge. For example, in *Williams*, 815 F.3d at 1280, the Center successfully represented an organization seeking relief from Colorado’s issue committee reporting and disclosure requirements. The organization prevailed on the grounds that it raised too little money—\$3,500—to be regulated; it was necessarily also too small to afford paid legal representation. *Id.*

While the Coalition for Secular Government successfully asserted its First Amendment rights, this Court’s ruling would put future challenges in jeopardy. If an organization is found to be a political committee, *all* of the counsel’s time for such a challenge would be counted as a contribution, *unless* the organization could come up with thousands of dollars to pay its legal bill. And in a case involving a small organization, the value of those legal services might overwhelm the group’s other contributions, artificially inflating its fundraising totals and misleading any Coloradoan glancing at the relevant report.

All of this will necessarily deter attorneys—especially attorneys who do not support a client’s political goals, or attorneys working for studiously-nonpartisan public-service entities, from representing these groups. As this case, in which not a

single attorney appeared, demonstrates, that will harm the vindication of legal rights and the adversarial process itself.

III. Ruling that pro bono legal services are “contributions” creates serious ethical problems for Colorado attorneys.

This case concerns the campaigns for University of Colorado regent, where contributions are capped at \$400 for the primary and general elections. COLO. CONST. art. XXVIII, § 3(1)(b). Colorado’s \$400 contribution limit buys between one and two hours of a lawyer’s time. Few, if any, legal disputes can be resolved so quickly. After that, the client must pay its counsel using scarce campaign resources, or do without.

But the ruling also creates a problem for *paying* client-committees. They, even more than most parties, can run into unanticipated cash-flow problems. So, while an arrangement may originally have been for *paid* legal representation, a lawyer’s work may become “free.”

However, once an attorney enters a case, she is not permitted to withdraw merely for nominal nonpayment of fees. Colo. R.P.C. 1.16(b)(5) (requiring representation until “the client fails *substantially* to fulfill an obligation to the lawyer”) (emphasis added). Attorneys are subject to briefing schedules and other orders of the courts, regardless of fee status. Colo. R.P.C. 1.16(c).

Thus if the attorney is not being paid, but continues to work—as mandated by the Rules of Professional Conduct—then she may be making an unlawful “contribution” in excess of the applicable limits. The ruling creates a dilemma: violate the campaign finance laws by making too large a contribution, or impermissibly end representation of a client. This result is not what Colorado’s Constitution or statutes require. COLO. CONST. art. XXVIII, § 2(5)(b) (exempting “services provided without compensation by individuals volunteering their time” from the definition of “contribution”); C.R.S. 1-45-103(6)(a).

Conclusion

For the foregoing reasons, this Court should reconsider and reverse its ruling that the definition of “contribution” in C.R.S. § 1-45-103(6) includes pro bono legal representation.

Respectfully submitted,

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Dated: May 19, 2016

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing upon all parties herein by depositing copies of the same via ICCES or by United States mail, first-class postage prepaid, at Alexandria, Virginia, this 19th day of May, 2016, addressed as follows:

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