



General Assembly
State of Colorado
Denver

20 August 2013

Via: United States Mail and Electronic Mail

Executive Committee of the Legislative Council
State Capitol Building
200 East Colfax Avenue
Denver, Colorado 80203

RE: *Final Report of the Committee Designated to Investigate the Complaint Filed Pursuant to Rule 36 of the Senate and House of Representatives*

Dear Mr. President, Majority Leader Carroll, Minority Leader Cadman, Mr. Speaker, Majority Leader Hullinghorst, and Minority Leader DelGrosso:

Pursuant to Rule 36(d)(5) of the Joint Rules of the Senate and House of Representatives, we, the undersigned members of the committee selected to investigate the complaint filed by Representative Cheri Gerou against Mr. Joseph Neville ("complaint"), have completed, to the extent possible, our investigation of the Complaint and respectfully submit our Final Report.

As part of its investigation, this committee reviewed the complaint submitted by Representative Gerou and the responsive memorandum and personal statement filed by Mr. Neville, through his attorney Shawn Mitchell. The committee interviewed Representative Cheri Gerou, Joseph Neville, and other persons who provided relevant information. The committee also reviewed written statements submitted by certain individuals and the documentary evidence submitted by Mr. Neville as part of the committee's initial request.

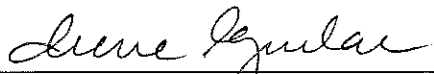
During Mr. Neville's initial appearance, Mr. Neville provided testimony and brought further questions from the committee including a request to provide certain documentation. The committee requested that Mr. Neville return on April 3, 2013, to respond to follow-up questions and to produce said documentation. While Mr. Neville produced none of the requested documentation before the hearing, he appeared at the committee's April 3, 2013, hearing only to read a prepared statement, which concluded with the statement that he declined to participate further in the committee's proceedings. After reading his statement, Mr. Neville left the committee's hearing room and thereafter did not make himself available

to answer any of the committee's additional questions. He refused to appear, as requested by the committee, at its April 10, 2013, hearing. He again refused and failed to appear at the committee's April 18, 2013, hearing. Additionally, Mr. Neville did not produce the additional documentation requested by the committee.

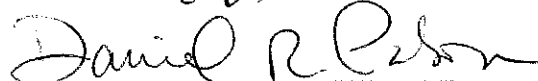
As a result, there remain outstanding questions to which the members of the committee would like answers from Mr. Neville and documentation that the members of the committee would still like to examine. These questions include Mr. Neville's involvement in threatening Representative Gerou. Regrettably, this committee did not have the opportunity to complete its investigation as thoroughly as it would have liked due to Mr. Neville's refusal to participate in the process beyond his initial appearance. Not only are the members of the investigating committee concerned with preserving the due process rights of Mr. Neville by affording him every opportunity to present his perspective on the facts forming the basis of the complaint, but also with preserving the integrity of the legislative institution. The members of this committee believe the Executive Committee should share in this committee's concern about the establishment of a precedent in which a relevant witness, particularly the very subject of a complaint, refuses to participate in a process established by legislative rule.

For this very reason, the General Assembly has the authority to vest in any of its committees the power to subpoena witnesses. Joint Rule 36(d)(5) authorizes the Executive Committee to pursue subpoena power in accordance with Joint Rule 33 if the Executive Committee finds that subpoenas are necessary for this Joint Rule 36(d) investigation. The Executive Committee may, under the provisions of these rules, consider seeking the authority to issue a subpoena *duces tecum* to be served upon Mr. Neville in order to compel his appearance and testimony and the production of the additional requested documentation so that the investigation of the matter may be satisfactorily completed before the Executive Committee undertakes its deliberations.

Respectfully submitted,



Senator Irene Aguilar, Chair



Representative Dan Pabon



Senator Mark Scheffel

Enclosure

*xc: Representative Cheri Gerou
Joseph Neville*



General Assembly
State of Colorado
Denver

**REPORT OF COMMITTEE OF LEGISLATORS
ON COMPLAINT AGAINST A LOBBYIST**

TO: Executive Committee of the Colorado General Assembly

FROM: Senators Aguilar and Scheffel and Representative Pabon, the Committee of Legislators appointed or designated pursuant to Joint Rule 36

DATE: August 20, 2013

Pursuant to Joint Rule 36(d), the legislative committee investigating the complaint filed by Representative Cheri Gerou against Mr. Joseph Neville submits the following report:

I. ACTIVITIES

The Committee, comprised of Senator Irene Aguilar, Senator Mark Scheffel, and Representative Dan Pabon, ("Committee") has met five times, on March 20 and 27 and April 3, 10, and 18, 2013. The Committee reviewed the Complaint filed by Representative Cheri Gerou. The Committee also reviewed a responsive memorandum and a personal statement filed by Mr. Neville, through his attorney, Shawn Mitchell, dated March 25, 2013 and March 26, 2013, respectively, as well as a statement of facts submitted by Representative Gerou on March 25, 2013. The Committee interviewed Representative Cheri Gerou, Joseph Neville, Sergeant Darce Weil of the Colorado State Patrol, Sergeant-at-Arms John Judson, Chief Sergeant-at-Arms John Wallin, Trooper Chad Hayes of the Colorado State Patrol, Totsy Rees, Trooper Steven Hodge of the Colorado State Patrol, Minority Leader Mark Waller, and, by telephone, Daniel Carey, a National Rifle Association representative. The Committee also reviewed written statements submitted by Daniel Carey and Dan Cartin and documentary evidence submitted by Mr. Neville at the Committee's initial request. Finally, the Committee reviewed an email Mr. Mitchell sent on Mr. Neville's behalf, dated April 18, 2013, a video clip featuring Dudley Brown, the executive director of Rocky Mountain Gun Owners, and several relevant news articles.

In addition to the documents attached as appendices, as identified below in the statements of undisputed facts and disputed facts, other documents that were presented to the Committee during the course of its investigation accompany this report. The documents include:

- a. The Complaint filed by Representative Cheri Gerou, dated February 25, 2013;
- b. Representative Gerou's statement of facts, submitted on March 25, 2013;
- c. 7A highlighted photocopy of Joint Rule 36, submitted by Representative Gerou on March 25, 2013;
- d. A legal memorandum submitted by Joseph Neville, through his attorney, dated March 25, 2013;
- e. Joseph Neville's personal statement, dated March 26, 2013;
- f. A list of suggested questions for witnesses, submitted by Joseph Neville, through his attorney, dated March 25, 2013;
- g. An email from Joseph Neville's attorney to the Committee, dated April 18, 2013;
- h. A KUSA Channel 9 news article, dated February 15, 2013, that was included in materials initially distributed to the Committee, which may be accessed at: <http://www.9news.com/rss/story.aspx?storyid=317265>
- i. Bartels, L. (2013). RMGO gun lobbyist Joe Neville slapped with ethics complaint, hearing is Friday. The Denver Post. Accessed at: <http://blogs.denverpost.com/thespot/2013/02/28/joe-neville-gun-lobbyist-joe-neville-slapped-with-ethics-complaint/91730/>
- j. Bartels, L. (2013). Colorado gun lobbyist faces ethics probe by lawmakers. The Denver Post. This article can not longer be accessed electronically free of charge.
- k. Bartels, L. (2013). Ethics committee discusses possible subpoena of Colorado gun lobbyist. The Denver Post. Accessed at: http://www.denverpost.com/breakingnews/ci_22995929/ethics-committee-discusses-possible-subpoena-colorado-gun-lobbyist.
- l. The video clip, dated March 23, 2013, that the Committee reviewed on April 18, 2013, which may be accessed at: http://www.youtube.com/watch?feature=player_embedded&v=W8CMQEQh-ns

II. ALLEGATION AND RESPONSE

Representative Gerou's Complaint stated:

"Pursuant to Joint Rule 36(b)(1), I submit a claim of ethics violation by Mr. Joe Neville, lobbyist for the Rocky Mountain Gun Owners Association on 15

February 2013. Specifically, Mr. Neville threatened political retribution against me during a conversation in the lobby of the House Chambers concerning an upcoming vote in the House."

In both his memorandum and personal statement, Mr. Neville denied the accusations made in the Complaint and argued that Joint Rule 36, as applied to him, is overbroad and violates his First Amendment rights under the United States Constitution. In the email of April 18, 2013, Mr. Neville's attorney elaborated that "Mr. Neville respectfully submits that a rule that purports to prohibit advising of a 'political' response to a lawmaker is a blatant violation of core First Amendment rights." In an email dated April 18, 2013, Mr. Neville's attorney stated that the committee's line of questioning on March 27, 2013, confirmed the threat to Mr. Neville's right to free speech, and to the chilling of Mr. Neville's right to petition government.

III. VIOLATION ELEMENTS

Joint Rule 36 provides in relevant part:

36. Lobbying Practices

- (b) **Prohibited practices.** No person engaging in lobbying shall:
 - (1) Attempt to influence any legislator or elected or appointed state official or state employee or legislative employee by means of deceit or by threat of violence or economic or political reprisal against any person or property, with intent thereby to alter or affect said legislator's, elected or appointed state official's, state employee's, or legislative employee's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or her or the agency or body of which he or she is a member.

To find a violation of paragraph (b) (1) of this rule, as alleged in the Complaint, the Executive Committee of the Colorado General Assembly would need to determine the following elements were present and find that:

- (a) A person engaged in lobbying;
- (b) Attempted to influence a legislator;
- (c) By threat of political reprisal against a person;
- (d) With the intent to alter or affect the legislator's decision, vote, opinion, or action concerning a matter to be considered by the legislator or by the body of which the legislator is a member.

IV. STATEMENT OF UNDISPUTED FACTS

The Committee finds that the following facts surrounding the Complaint are undisputed:

1. Mr. Joseph Neville is the political director of, and lobbies for, the Rocky Mountain Gun Owners (RMGO).
2. In January of 2013, Representative Gerou received a phone call from Minority Leader Mark Waller, who told Representative Gerou that he had heard that Representative Gerou intended to support gun measures introduced during session. Representative Gerou asked Minority Leader Waller who he heard that information from, and he responded he heard it from Daniel Carey, a lobbyist for the National Rifle Association (NRA).
3. Daniel Carey confirmed that he conveyed a concern about Representative Gerou's vote to Minority Leader Waller based on a rumor he heard early on during the session that Representative Gerou might vote for the gun measures. Daniel Carey did not recall where he had heard the rumor.
4. Representative Gerou saw Daniel Carey approximately one week later and asked him why he was concerned about her position on the gun bills. Mr. Carey responded that he was not concerned about her position.
5. Later at a Jefferson County Central Committee hearing held at a local high school on February 5, 2013, Representative Gerou also heard from one of her constituents who mentioned a Facebook advertisement indicating that "Cheri Gerou wants to grab your guns". The constituent stated a belief that the advertisement was placed by RMGO.
6. On February 14, 2013, Representative Gerou argued against and voted against two bills concerning gun measures in the House Appropriations Committee.
7. Later that night, Representative Gerou received another phone call from Minority Leader Waller, who told her that he again heard that there was concern raised about how she would vote on the gun bills. Minority Leader Waller testified that he called Representative Gerou to confirm her vote on the gun measures.
8. Daniel Carey testified that he spoke with Minority Leader Waller a second time to confirm Representative Gerou's vote, as well as other members of the caucus. He specifically asked Minority Leader Waller about Representative Gerou's vote because it was a topic of concern earlier in the session, but he was not necessarily worried at the time of the second conversation that she would vote against the caucus. He testified that he just wanted to

reconfirm her position on the gun bills as part of his effort to make sure all of the caucus was on board with that position.

9. On February 15, 2013, the House of Representatives was scheduled to hear the same two bills concerning gun measures on second reading, as well as other bills concerning gun measures.

10. That morning, Representative Gerou saw Daniel Carey in the basement and she asked him who was sending her constituents misinformation about her position on the gun bills. He stated he did not know. Daniel Carey recalled that Representative Gerou mentioned that there were Facebook postings indicating that she was not going to vote against the gun bills. He had not seen those Facebook postings and he knew they were not posted by anyone from the NRA because he would have had to approve any such postings.

11. Later that morning, Representative Gerou began receiving phone calls and emails from her constituents about allegations they heard that she would be supporting the gun measures. Her constituents were angry and scared.

12. Representative Gerou took a phone call during second reading in which one of her constituents told her that the misinformation was coming from RMGO. Representative Gerou checked RMGO's blog, which indicated that she was going to vote for the gun bills. In response to seeing that, she was very angry.

13. Representative Gerou saw Daniel Carey in the lobby of the House chambers and she asked him if Dudley Brown of RMGO was responsible for the rumors regarding her position on the gun bills, and he responded affirmatively. Daniel Carey testified that this was the first time he had heard about RMGO's efforts to send mailers in Representative Gerou's district to affect her vote on the gun bills. He told Representative Gerou that NRA was not coordinating efforts with RMGO.

14. Representative Gerou then asked Daniel Carey if Dudley Brown was at the capitol that day because she wanted to speak with Mr. Brown about the allegations that she would support the gun measures. Daniel Carey responded that he was not sure if Dudley Brown was at the capitol that day, but that a lobbyist for RMGO, Mr. Neville, was there that day. Representative Gerou did not know Mr. Neville and had only had contact with Dudley Brown five years before when he called her to persuade her to sign a pledge, but she declined because her policy is to only sign pledges for her constituents.

15. Representative Gerou asked Daniel Carey to deliver a message to Mr. Neville asking that Mr. Neville stop scaring her constituents and to "f-- off". Daniel Carey told

Representative Gerou that he was not comfortable delivering that message, but that he would let Mr. Neville know that Representative Gerou wished to speak with him.¹

16. Mr. Neville had come to the capitol that morning to do some lobbying and to contact members. He placed his belongings in Representative Everett's office. He received a text from someone and went to see that person in the House gallery. He spoke with someone near the House and Senate chambers. Later, he came down and saw Daniel Carey.

17. Daniel Carey found Mr. Neville down the hall from the House chambers and told Mr. Neville that Representative Gerou wanted to speak with him. Daniel Carey also relayed to Mr. Neville that she was very upset about possible communications that RMGO disseminated in her district in relation to the gun measures.

18. Mr. Neville stated that it was not his agenda to speak to Representative Gerou that day. He knew she had voted against the gun bills in the House Appropriations Committee that day before and, therefore, she was not a target that day. When Daniel Carey told Mr. Neville that Representative Gerou wanted to speak with him, Mr. Neville gave his business card to a sergeant-at-arms to deliver to Representative Gerou.

19. Representative Gerou received Mr. Neville's business card in the House chambers and came out to the House lobby to meet with him. As Representative Gerou approached Mr. Neville in the lobby, Mr. Neville took a step toward her.

20. Both Representative Gerou and Mr. Neville testified that it was a tense morning and a difficult day at the capitol.

21. Both Representative Gerou and Mr. Neville testified that Representative Gerou began their conversation by telling Mr. Neville that he and his organization need to stop lying to her constituents. She then told Mr. Neville: "Go f--- yourself".

22. Representative Gerou testified that, before she swore at Mr. Neville, Mr. Neville sneered after she told him to stop lying and that she swore at him out of anger in response to his sneering. She testified that by sneering at her, Mr. Neville showed her that he did not respect her position on the gun bills.

¹ In his letter to the committee, attached as Appendix A, Daniel Carey does not mention that Representative Gerou asked him to deliver a message to Mr. Neville. Rather, he simply states: "After Representative Gerou stated that [she] would very much like to speak with Joe Neville, I found Joe down the hall ...".

23. Both Representative Gerou and Mr. Neville testified that, after Representative Gerou swore at Mr. Neville, Mr. Neville responded: "You're not helping yourself, you just earned yourself another round of mailers."

24. Representative Gerou then signaled to Sergeant-at-Arms Judson and asked him to escort Mr. Neville out of the capitol because Mr. Neville had threatened her.

25. Sergeant-at-Arms Judson testified that he did not hear them speaking and he only heard a loud voice immediately before Representative Gerou asked him to escort Mr. Neville out of the capitol. Another witness, Totsy Rees, a lobbyist, who was standing in the House lobby at the time testified that she did not hear the conversation between Representative Gerou and Mr. Neville until she heard Representative Gerou ask the sergeant-at-arms to remove Mr. Neville.² Ms. Rees did testify that she could tell that the conversation was heated, though, by the fact that both Representative Gerou and Mr. Neville were gesturing in the form of hand waving. Both Sergeant-at-Arms Judson and Ms. Rees testified that they did not observe any physical contact between Representative Gerou and Mr. Neville.

26. Sergeant-at-Arms Judson escorted Mr. Neville out of the House lobby, holding Mr. Neville's arm as they walked away from the House lobby. Mr. Neville asked if he could retrieve his belongings from Representative Everett's office. Sergeant-at-Arms Judson replied "No." Mr. Neville then asked Sergeant-at-Arms Judson if he knew how Mr. Neville could file a complaint, and Sergeant-at-Arms Judson replied that he did not know.

27. As Sergeant-at-Arms Judson escorted Mr. Neville to the elevator, they encountered Mr. Neville's father, former Senator Tim Neville, who told Sergeant-at-Arms Judson that he was a former senator and accompanied them. Upon exiting the elevator, Sergeant-at-Arms Judson asked Trooper Steven Hodge to escort Mr. Neville out of the building.

28. Mr. Neville's father returned to the elevator with Sergeant-at-Arms Judson and made several negative comments about Representative Gerou to Sergeant-at-Arms Judson.

29. Sergeant-at-Arms Judson testified that the entire ordeal lasted about seven or eight minutes. Immediately after the incident, Sergeant-at-Arms Judson returned to the House chambers and made handwritten notes about the incident that same day. His handwritten notes are attached as Appendix B.

² Although Representative Gerou testified that she heard after the incident that Daniel Carey overheard her conversation with Mr. Neville, Daniel Carey, in his letter to the committee, wrote "I was not present for the conversation that they had as far as it relates to this issue, and I don't know the details for the incident at hand."

30. Trooper Hodge heard a voice say "Don't touch me!". He looked up and saw Sergeant-at-Arms Judson escorting Mr. Neville. Sergeant-at-Arms Judson asked Trooper Hodge to escort Mr. Neville outside of the capitol. Trooper Hodge asked Mr. Neville for his card for identification purposes and he ran Mr. Neville's name through dispatch. He then took Mr. Neville through post 2 of the capitol, and that was all of the contact he had with Mr. Neville.

31. Sergeant Darce Weil, who was the acting supervisor for state patrol, overheard radio traffic that day concerning an individual who had been escorted out of the capitol and had requested to file a complaint. Sergeant Weil went to the House chambers and met with Representative Gerou to get her side of the story. She reported that Mr. Neville threatened her with mailers and she explained to Sergeant Weil what that meant. Sergeant Weil testified that Representative Gerou appeared upset but calm. He confirmed with her that there had been no threat of violence. Sergeant Weil then met with Mr. Neville who stated that Representative Gerou poked him in the chest. Mr. Neville initially asked about filing a complaint against Representative Gerou, and Sergeant Weil responded that Mr. Neville would have to file a report with the Denver police department. Mr. Neville was informed that he would be permitted back in the capitol and he decided he did not want to file a complaint at that time. Mr. Neville gave Sergeant Weil his card to deliver to Representative Gerou. Sergeant Weil testified that Mr. Neville handed Sergeant Weil a card for delivery to Representative Gerou for the purpose of having a conversation with Representative Gerou, and Representative Gerou testified that she received the card and she believed Mr. Neville wanted to speak with her for the purpose of apologizing to her. There was no testimony indicating that Mr. Neville and Representative Gerou had an additional conversation that day.

32. After the incident, Representative Gerou spoke with Dan Cartin, Director of the Office of Legislative Legal Services, to discuss whether Mr. Neville's conduct constituted an ethics violation. She then asked Chief Sergeant-at-Arms John Wallin for a copy of the rules. Chief Sergeant-at-Arms Wallin provided Representative Gerou with a copy of the rules, and Representative Gerou highlighted a portion of the first sentence of Joint Rule 36 (b) (1).

33. Representative Gerou's vote on the two gun bills that she voted against in the House Appropriations Committee the day before did not change; she voted against all of the gun bills that were before the House on second reading on the day of the incident.

34. Neither Mr. Neville nor RMGO sent another mailer to Representative Gerou's constituents after the February 15, 2013, incident. Upon request of the committee, Mr. Neville, through his counsel, furnished a mailer that purports to be "identical to the one that went into Rep. Gerou's district" but that has another legislator's name on it. The mailer is attached as Appendix C.

35. At the committee hearing on April 3, 2013, Mr. Neville was recalled for questioning about the mailer he furnished to the committee. Upon being recalled, Mr. Neville read a prepared statement which concluded with the assertion that he declined to participate further in the committee's proceedings. After reading his statement, Mr. Neville left the committee's hearing room. He did not appear, as requested by the committee, at its subsequent hearings on April 10, 2013, and April 18, 2013. Nor did Mr. Neville produce a copy of the Facebook advertisement in question, as requested by the committee in letters dated April 3, 2013, and April 10, 2013.

V. STATEMENT OF DISPUTED FACTS

There is disputed testimony concerning the following matters surrounding the Complaint:

1. Whether Daniel Carey confirmed that Dudley Brown or RMGO was responsible for the advertisements and misinformation disseminated to Representative Gerou's constituents.

a. Representative Gerou testified that when she spoke with Daniel Carey on the morning of February 15, 2013, he confirmed that Dudley Brown of RMGO was responsible for the advertisements and misinformation her constituents had received concerning her position on the gun bills.

b. In his letter to the Committee, dated April 4, 2013, Daniel Carey wrote:

"Representative Gerou asked me why the NRA was spreading information to her constituents that says she is in support of the anti-gun bills being heard in the House. I told Representative Gerou that communication from the NRA would have to go through me, and I have not authorized any such communication with her district as it relates to that issue. Representative Gerou asked me if Dudley Brown was doing so. I told her that I do not know because NRA is not coordinating efforts with Dudley Brown."

2. What was the nature of the physical contact between Representative Gerou and Mr. Neville, if any.

a. Although Representative Gerou and Mr. Neville both testified that Representative Gerou made physical contact with Mr. Neville during their conversation, there is disagreement in their testimony as to what that physical contact entailed.

- b. Mr. Neville testified that Representative Gerou grabbed his arm after he responded to her.
- c. Representative Gerou testified that she did not "grab" him, but rather she placed her hand on his right upper arm and asked him to come with her. She testified that, when Mr. Neville refused, she asked the sergeant-at-arms to escort Mr. Neville out of the capitol.
- d. Although Mr. Neville did not state this in his testimony before the committee, his personal statement submitted by his attorney to the committee on March 27, 2013, stated that Representative Gerou "began slapping her finger into the center of my chest".
- e. Sergeant Weil testified that Mr. Neville relayed a similar story to him, as did Representative Gerou, except that Mr. Neville told Sergeant Weil that Representative Gerou poked him in the chest.
- f. Neither Ms. Rees nor Sergeant-at-Arms Judson witnessed any physical contact between Representative Gerou and Mr. Neville.
- g. Trooper Chad Hayes, who made contact with Mr. Neville after he was escorted out of the capitol, testified that Mr. Neville told him that he wished to file a complaint against Representative Gerou based on being poked in the chest.

3. Whether Mr. Neville intended to influence Representative Gerou's vote on the gun bills on February 15, 2013.

- a. In response to questioning from the committee, Representative Gerou testified that Mr. Neville's statement to her, "You've just earned yourself another mailer" was an attempt to influence her by threat of political reprisal. In response to a question as to whether she thought the threat of a mailer was intended to affect her vote on the gun bills, she testified that she felt there was an aspect of bullying in his comment but that she was not sure why the comment was made.
- b. Mr. Neville, in response to questioning from the committee, however, testified that he was not trying to affect her vote that day when he mentioned the mailers. He testified that Representative Gerou had voted in their favor in the House Appropriations Committee and, therefore, she was not a target that day; it was not on his agenda to talk with Representative Gerou. He stated his

comment was merely a reaction to her demeanor and intimidation. Mr. Neville further testified that he had never had a legislator react to him that way in an "in-your-face" type of moment. He testified that the only thing he could think of to react to her comments was something with respect to mailers because that was apparently what she was so upset about. Mr. Neville agreed with a committee question that he had intended to influence Representative Gerou's vote at some point before the incident, and he elaborated it was through a grassroots, state-wide effort in which his organization sent out mailers. Mr. Neville further stated that he was not lobbying Representative Gerou on the day of the incident, and that his organization was targeting potential Democrat swing votes at that time.³ Furthermore, the Committee viewed a video during which another representative of the RMGO made statements admitting to political reprisal.


4. Whether Representative Gerou's position on the gun bills was public knowledge.
 - a. The committee asked various witnesses if they believed they knew how Representative Gerou would vote on the gun bills or whether her vote was in question at the time. Mr. Neville testified that, although Representative Gerou had voted against the gun bills in appropriations the day before, she had not filled out surveys his organization sent her about her position on gun issues and she had voted in favor of H.B. 13-1043, which concerned the statutory definition of a deadly weapon.
 - b. Totsy Rees testified that everyone knew how Representative Gerou was going to vote on the gun bills.
 - c. Minority Leader Waller testified that he recalls having had a conversation with Daniel Carey who indicated there was a rumor that Representative Gerou was considering voting in favor of the gun bills. He also testified that, before hearing of the rumor, he was "pretty confident" that Representative Gerou would vote against the gun bills. He further testified that he did not believe Representative Gerou's vote was in question at the time but that he followed up on his conversation with Daniel Carey because it was important for him, as minority leader, to have an idea of Representative Gerou's vote.

³ However, the email submitted by Mr. Neville's attorney on April 18, 2013, stated: "The final prong of Rule 36 'political reprisal,' however, is different. Mr. Neville respectfully submits that a rule that purports to prohibit advising of a 'political' response to a lawmaker is a blatant violation of core First Amendment rights."


- d. Representative Gerou testified that Mr. Carey told her that he was not concerned about her vote and knew where she stood on the gun bills. Daniel Carey confirmed in his testimony that he had her counted as voting against the gun bills. He testified that she was not a concern in the eyes of the NRA.
- e. Representative Gerou believed her position on the bills was widely known.

These are the facts, both disputed and undisputed, presented to the committee in part. The committee was unable to make any final conclusions without further testimony from Mr. Neville. The committee leaves the decision to pursue subpoenas as discussed in the committee's transmittal letter.

Respectfully submitted,



Senator Irene Aguilar, Chair



Representative Dan Pabon



Senator Mark Scheffel

Enclosure

*xc: Representative Cheri Gerou
Joseph Neville*

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030



April 4, 2013

Ms. Jennifer Gilroy
Revisor of Statutes
State Capitol Building
200 E Colfax Ave. Ste. 091
Denver, Colorado 80203-1716

Dear Ms. Gilroy:

On Friday, February 15, 2013 I spoke with Representative Cheri Gerou outside of House Chambers. Representative Gerou asked me why the NRA was spreading information to her constituents that says she is in support of the anti-gun bills being heard in the House. I told Representative Gerou that communication from the NRA would have to go through me, and I have not authorized any such communication within her district as it relates to that issue. Representative Gerou asked me if Dudley Brown was doing so. I told her that I do not know because NRA is not coordinating efforts with Dudley Brown. Representative Gerou asked me if Dudley Brown was in the building on that day because she would like to speak to him about this issue. I responded that I do not know Dudley Brown's whereabouts, but had seen lobbyist Joe Neville, who works with Dudley, and would be happy to find him for Representative Gerou.

After Representative Gerou stated that would very much like to speak with Joe Neville, I found Joe down the hall from house chambers and made him aware that Representative Gerou would like to speak with him and that she was very upset about potential communication from his group related to the gun bills in her district. Joe Neville then went to speak with her, but I was not present for the conversation that they had as far as it relates to this issue, and I don't know the details for the incident at hand.

I would be happy to provide any further information if needed. I can be reached dcarey@nrahq.org or 703-267-1239.

Sincerely,

Daniel Carey
Colorado State Liaison
NRA-ILA State & Local Affairs

Written documentation provided by
House Sgt.-at-Arms Jon Judson

FEB 15, 2013

11:03 AM

AT APPROX 11:03 AM IN THE HOUSE LOBBY REP. GERON WAS SPEAKING TO A YOUNG MAN IN A DARK JACKET. HE WAS ABOUT 5' 11" WITH DARK SHORT HAIR. REP. GERON SHOUTED TO ME THAT THE YOUNG MAN HAD JUST THREATENED ME AND PLEASE HAVE HIM REMOVED FROM THE BUILDING.

I TOOK THE YOUNG MAN'S ARM AND ASKED HIM TO COME WITH ME TO THE EXIT. HE SAID HE DID NOT THREATEN REP. GERON. I SAID PLEASE COME WITH ME TO THE EXIT. AT THE ELEVATOR HE SAID HE HAD SOME ITEMS IN REP. EVERETT'S OFFICE AND COULD HE GET THEM I SAID NO. IN FRONT OF ROOM 271 AN OLDER MAN IN A DARK SUIT CAME UP AND SAID WHAT IS WRONG. THE YOUNG MAN ASKED HIM TO GET THEM. THE OLDER MAN GOT IN THE ELEVATOR WITH US AND WE WENT DOWN TO THE BASEMENT. THE YOUNG MAN ASKED ME HOW HE COULD FILE A COMPLAINT ON A REP. I SAID I DON'T KNOW. THE OLDER MAN SAID HE WANTED TO COMPLAIN ABOUT GERON ALSO.

AFTER LEAVING THE ELEVATOR I CONTACTED
TROOPER HODGE AT THE SECURITY CHECK AND
SAID HE WAS TO BE REMOVED FROM THE BUILDING
PER REP. GEROU.

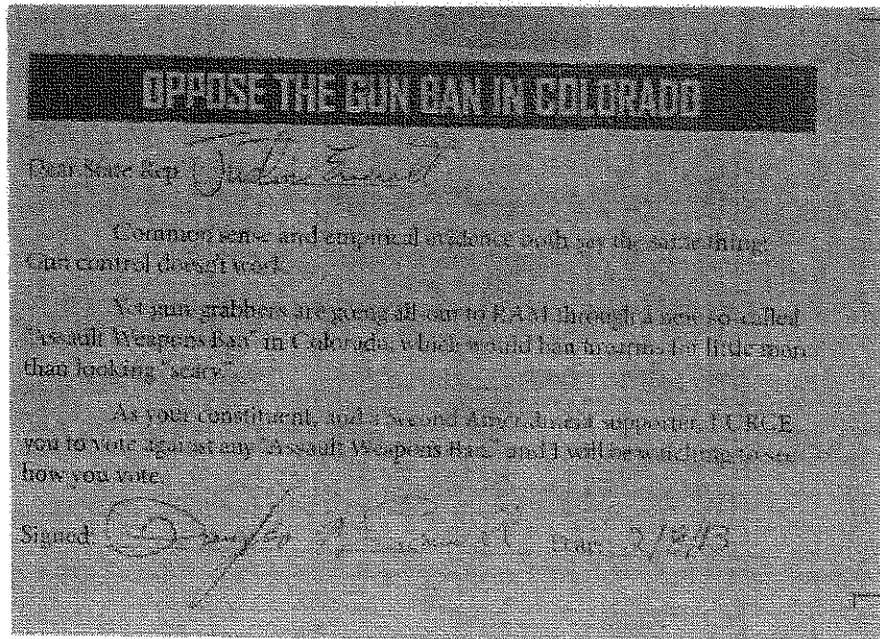
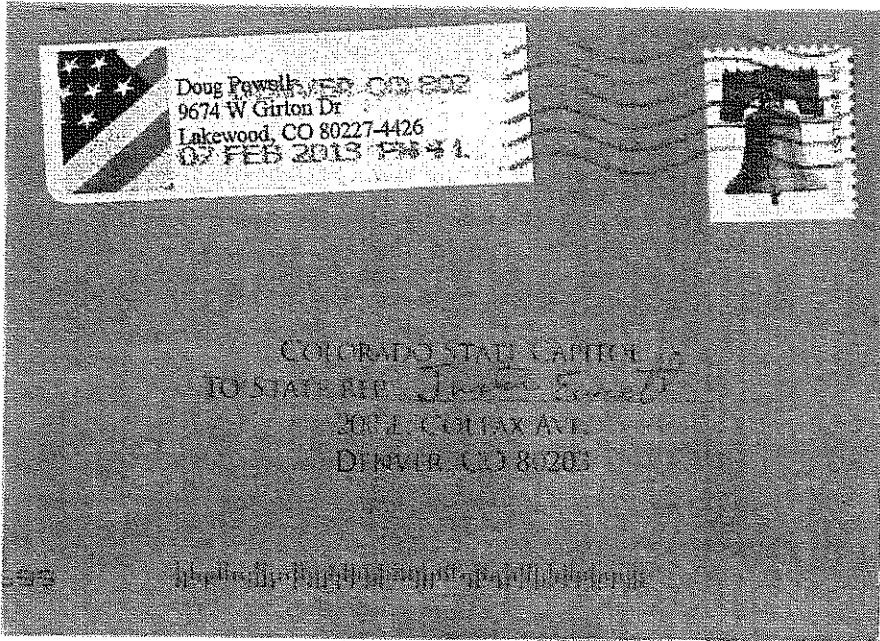
THE OLDER MAN RETURNED WITH ME
TO THE ELEVATOR RAMP IDENTIFIED HIMSELF AS
FORMER SEN. NEVELL. HE ALSO SAID I HAD NO
RIGHT TO REMOVE THE YOUNG MAN BASED ON
WHAT REP. GEROU SAID. I TOLD HIM THAT
HE SHOULD KNOW IF HE ASKED A SGT AT ARMS
TO REMOVE A PERSON WHEN HE WAS A SENATOR
THE SGT WOULD DO IT. HE SAID HE WOULD
NEVER ASK A SGT TO REMOVE SOMEONE.

HE WENT ON TO SAY HE HAD SEEN
REP. GEROU IN THE BASEMENT EARLIER TODAY.
HE MADE IT VERY CLEAR HE DID NOT LIKE THE
REPRESENTATIVE.

I LEFT MR. NEVELL AT THE DOOR
TO 271 & RETURNED TO THE CHAMBER

JON JUDSON
Jon Judson

11:34 AM 2-15-13



Appendices
to
Joint Rule 36 Committee's Final Report

Appendix A

State Representative
CHERI GEROU
P.O. Box 940
Evergreen, Colorado 80437
Capitol: 303-866-2582
Cell: 720-635-3806
E-mail: cheri.gerou@gmail.com



Member:
Appropriations Committee
Joint Budget Committee

COLORADO
HOUSE OF REPRESENTATIVES
State Capitol
Denver
80203

25 February 2013

Representative Mark Ferrandino
Speaker of the Colorado House of Representatives
State Capitol
200 East Colfax Ave., Room 271
Denver, CO 80203

Mr. Speaker:

Pursuant to Joint Rule 36(b)(1), I submit a claim of ethics violation by Mr. Joe Neville, lobbyist for the Rocky Mountain Gun Owners Association on 15 February 2013. Specifically, Mr. Neville threatened political retribution against me during a conversation in the lobby of the House Chambers concerning an upcoming vote in the House.

I respectfully request your review and consideration of this claim for further action.

Sincerely,

A handwritten signature in black ink that reads "Cheri Gerou". The signature is stylized, with the first letters of the first and last names being significantly larger and more prominent.

Cheri Gerou
State Representative
House District 25

Appendix B

Rep. Cheri Gerou
Witnesses and Areas of Inquiry
Hearing Pursuant to Joint Rule 36

The following are persons on my witness list who I believe to have knowledge of facts surrounding the events that give rise to my complaint against Mr. Neville under Joint Rule 36. Rather than providing specific questions, I am providing, on information and belief, a brief synopsis of the facts that I believe each witness may contribute and related areas of inquiry for the Committee to pursue.

Myself: I will provide testimony concerning the background of RMGO activities in relation to my District and the gun bills. This background and context is important to explain the events of February 15, 2013. RMGO is Mr. Neville's employer, which I believe engaged in a campaign of disinformation concerning my potential votes on the gun bills. I will also provide testimony setting for the facts about Mr. Neville's political threat conveyed to me on that day.

Daniel Carey (NRA Lobbyist): On February 15, 2013, in response to inquiry from me, Mr. Carey confirmed to me that Rocky Mountain Gun Owners (RMGO), Mr. Neville's employing organization, was responsible for rumors and misinformation concerning my position on the gun bills. I request you inquire of Mr. Carey concerning his interaction with RMGO and its representatives (Messrs. Brown and Neville) with respect to my potential votes and positions on the gun bills and my conversations with him on Feb. 15, 2013, as well as any conversations he had with any representative or employee of RMGO on that day. I have also been told that Mr. Carey observed and perhaps, overheard the conversation between Mr. Neville and me in lobby. So, I ask that you inquire as to whether he has direct knowledge of the conversation.

Joe Neville: On February 15, 2013, Mr. Neville conveyed a political threat to me in the lobby. Specifically, Mr. Neville stated that I had "earned [myself] another mailer against [me]" in my District for a primary. I request that you inquire of Mr. Neville concerning the activities of RMGO related to me and the votes on the gun bills and the then upcoming votes on the bills. Further, you should inquire concerning the specific events that occurred in the lobby on Feb. 15th.

Totsy Rees: Ms. Rees observed the exchange between Mr. Neville and myself in the lobby on Feb. 15th. It is my understanding that Mr. Neville alleges that I poked him in the chest with my finger during the exchange. Based upon my inquiries, I understand that Ms. Rees will refute this allegation and therefore, I request you inquire concerning everything Ms. Rees observed and heard, if anything, and specifically concerning whether I poked Mr. Neville with my finger.

House Sgts. John Wallin and Jon Judson: It is my understanding that these individuals either have knowledge of the exchange between Mr. Neville and myself or were involved in escorting Mr. Neville from the building. I request that you inquire of them concerning

any specific observations, as well as any statements that Mr. Neville made to them while being escorted.

State Patrol Sgt Barce Weil and Trooper Chad Hayes: These State Patrolmen were involved in investigating my initial complaint against Mr. Neville, as well as escorting him from the Capitol. Also, they spoke with Mr. Neville while escorting from the building and perhaps on allowing him to reenter. I request you inquire of them concerning their conversations with Mr. Neville, as well as concerning any statements made by Mr. Neville to them concerning the events.

Appendix C

**Written documentation provided by
Chief House Sgt.-at-Arms John Wallin**

inquiry and command each person to whom it is issued to attend and give testimony at a time and place specified in such subpoena. A subpoena may also command the person to whom it is directed to produce such books, records, documents, or other tangible evidence as the issuing body may require.

- (2) Service of a subpoena may be made by a sheriff, the sheriff's deputy, or any other person who is at least eighteen years of age and not interested in the proceeding. Service shall be made by delivering a copy of the subpoena to the person named not later than forty-eight hours before the time specified for appearance in such subpoena unless, for good cause shown, a majority of the issuing body authorizes service within such forty-eight-hour period. The amount of fees for attendance and mileage shall be the same as that allowed by law for witnesses in civil cases and shall be paid after the witness is discharged from further attendance.
 - (3) If any person issued a subpoena pursuant to this Joint Rule believes the material or testimony subpoenaed to be trade secrets, as defined in section 18-4-408 (2) (c), C.R.S., irrelevant, or privileged or that its disclosure would be illegal, or unduly oppressive or burdensome, relief therefrom shall be requested in writing from the issuing body, and accompanied by a statement of the reasons for such belief.
- (c) Any witness subpoenaed to give testimony or produce evidence may have legal counsel present to advise him or her.
 - (d) A subpoena shall be signed by the President of the Senate or Speaker of the House of Representatives, or both, or the chairman of a committee, but a subpoena shall be issued only upon the vote of a majority of the membership of the General Assembly, either house, or a committee, as the case may be.
 - (e) The primary purpose of this Joint Rule is to assist the General Assembly, the houses thereof, and the committees thereof in the performance of their duties through the use of the subpoena power.

34. Wildlife Cash Fund

Repealed effective May 6, 1992. (Senate Joint Resolution 92-20)

35. Sunrise and Sunset Review Committee

Repealed May 5, 2004, House Joint Resolution 04-1038.

36. Lobbying Practices

- (a) **Definitions.** As used in this Joint Rule, unless the context otherwise requires:
 - (1) "Lobbying" shall have the meaning set forth in section 24-6-301 (3.5), Colorado Revised Statutes.
 - (2) "Lobbyist" means a professional lobbyist or a volunteer lobbyist as defined in section 24-6-301 (6) and (7), Colorado Revised Statutes or any state official or employee, engaged in lobbying pursuant to section 24-6-303.5, Colorado Revised Statutes. However, such terms and the provisions of this Joint Rule shall only apply to lobbying which relates to the legislative process.

(b) **Prohibited practices.** No person engaging in lobbying shall:

- (1) Attempt to influence any legislator or elected or appointed state official or state employee or legislative employee by means of deceit or by threat of violence or economic or political reprisal against any person or property, with intent thereby to alter or affect said legislator's, elected or appointed state official's, state employee's, or legislative employee's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or her or the agency or body of which he or she is a member;
- (2) Knowingly provide false information to any legislator or elected or appointed state official or state employee or legislative employee as to any material fact pertaining to any legislation;
- (3) Knowingly omit, conceal, or falsify in any manner information required by the registration and lobbyist disclosure reports;
- (4) Become an active participant in the internal organization or leadership races of the General Assembly;
- (5) Cause or influence the introduction of any bill or amendment for the purpose of afterwards being employed to secure its passage or defeat;
- (5.5) File against another lobbyist a complaint subsequently found by the Executive Committee to be frivolous.
- (6) Misappropriate or misuse state office supplies;
- (7) Use state reproduction machines without paying for such use;
- (8) Enter or use a legislator's or elected or appointed state official's or state employee's or legislative employee's office, phone, or parking space without explicit permission;
- (9) Attempt to remove or remove any document from any legislative office, desk, file cabinet, reproduction machine, or any other place without explicit permission.
- (10) Engage in sexually harassing behavior towards members, legislative employees of the General Assembly, or third parties or behavior violative of the sexual harassment policy under Joint Rule No. 38.

(c) **Registration – filing of disclosure statements – disclosure of relationship with client.**

- (1) Any lobbyist, except a volunteer lobbyist, shall register with the Secretary of State in accordance with section 24-6-303 or 24-6-303.5, Colorado Revised Statutes. The Secretary of State should provide from the registration statements filed by lobbyists such information as the chief clerk of the House of Representatives and the secretary of the Senate request for purposes of conducting the business of the chief clerk and secretary and to provide legislators with information pertinent to the performance of their legislative duties. Such information should be updated at

least monthly during the legislative session. This procedure shall be in lieu of any additional registration requirement of the House of Representatives or the Senate.

- (2) A volunteer lobbyist, as defined in section 24-6-301 (7), Colorado Revised Statutes, shall register with the chief clerk of the House of Representatives.
- (3) If the secretary of state learns of the existence of a substantial violation of part 3 of article 6 of title 24, C.R.S., by a person engaged in lobbying, the secretary of state shall promptly notify both the President of the Senate who shall notify all members of the Senate and the Speaker of the House of Representatives who shall notify all members of the House of Representatives. If such a notice is received and if a complaint pursuant to subsection (d) of this rule is filed, upon the adoption of a resolution, either house may restrict the access of the person identified in the notice to members, committees, and other activities of that house pending the outcome of the complaint.

(d) ***Violations – complaint.***

- (1) Any person who has knowledge of a violation of any provisions of this Joint Rule may file a written complaint, signed by the complainant and describing the alleged violation, with any member of the Executive Committee. The President and the Speaker shall inform the person accused of a violation of the fact that a complaint has been filed, the nature of the complaint, and the name or names of the person or persons filing the complaint. As soon as possible after the complaint has been filed and notwithstanding the provisions of part 4 of article 6 of title 24, the Executive Committee shall meet in executive session to discuss the complaint. The President and the Speaker may ask the lobbyist complained against to provide an explanation of his or her understanding of the issues raised in the complaint for the purpose of assisting the Executive Committee in making a preliminary determination of whether or not the complaint appears to be meritorious. During the executive session, the Executive Committee may dismiss the complaint. If the complaint is dismissed prior to the appointment of a committee of legislators, the complaint shall remain confidential. If the Executive Committee finds that a complaint filed by a lobbyist against another lobbyist was frivolous, the Executive Committee may direct that the President and Speaker inform the accusing lobbyist of the finding and appoint a committee of legislators pursuant to paragraph (2) of this subsection (d).
- (2) If the complaint is not dismissed, the Executive Committee may direct the President and the Speaker to appoint a committee of legislators to interview the parties involved, as well as any other persons who may be able to provide relevant information, and to present to the Executive Committee such facts and information obtained. Once a committee is appointed, the President and the Speaker shall provide the person who is the subject of the written complaint with a copy of the written complaint.
- (3) The committee shall consist of one legislator appointed by the Speaker of the House of Representatives, one legislator appointed by the President of the Senate, and one legislator designated by the two appointees. No more than two members of the committee shall be from the same political party. The legislators appointed to the committee shall have no personal interest in the alleged violation and shall have no business interest in or affiliation with the complainant or the alleged violator.

- (4) All proceedings of the committee shall be public. The accused shall be entitled to be present during the proceedings. The committee members shall submit a report to the Executive Committee.
- (5) After receiving the facts and information from the committee and after such facts and information have been provided to the person who is the subject of the written complaint, the Executive Committee shall act on said complaint at its next meeting or at a special meeting called for that purpose; however, the person who is the subject of the written complaint shall receive a reasonable opportunity to be heard by the Executive Committee and has the right to be present during its deliberations. The Executive Committee may dismiss the complaint or, if it determines that said violation occurred, it may prescribe such remedial measures as it deems appropriate, including, but not limited to, suspension of lobbying privileges before the General Assembly or any of its committees, or it may issue a letter of admonition or recommend a resolution of censure to be acted upon by the General Assembly. If the Executive Committee of the Legislative Council finds that the issuance of subpoenas is necessary in any such investigation, it may request such power, in accordance with Joint Rule No. 33, from the General Assembly or when the General Assembly is not in session from the entire Legislative Council.
- (6) The President of the Senate or the Speaker of the House of Representatives shall designate a person of the opposite gender from the President or Speaker with whom a written complaint alleging a violation of paragraph (10) of subsection (b) of this Joint Rule may be filed.

37. Remote Computer Access by Members to Legislative Data

Repealed May 5, 2004, House Joint Resolution 04-1038.

38. Sexual Harassment Policy

- (a) ***Sexual harassment policy of the General Assembly.*** It is the General Assembly's policy to create and maintain a work environment in which all members, legislative employees, and third parties are treated with dignity and respect. Members, legislative employees, and third parties have the right to a workplace that is free from sexual harassment, both subtle and overt. It is further the policy of the General Assembly to eliminate and prevent the recurrence of sexually harassing behavior which member, legislative employees, and third parties may encounter in the course of their work.
- (b) ***Sexual harassment – definition.***
 - (1) For purposes of this Joint Rule, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - (A) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - (B) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

Appendix D

SHAWN D. MITCHELL
Attorney at Law

12530 Newton Street
Broomfield, Colorado 80020

Phone (303) 464-9409
Fax (303) 464-9422

Senator Irene Aguilar
Senator Mark Scheffel
Representative Daniel Pabon

State Capitol
Denver Colorado 80203

March 25, 2013

RE: Rule 36 Investigation of Complaint filed by Rep. Cheri Gerou.

Dear Members of the Select Committee:

Through his undersigned counsel, Joseph Neville submits his attached personal statement regarding the events under investigation. As reflected in Mr. Neville's statement as well as published reports of Rep. Gerou's account to journalists, the known facts are that Rep. Gerou summoned Mr. Neville to the House lobby. She was heated. She poked him in the chest. She cursed him repeatedly. Mr. Neville did not respond or resist, but waited calmly until she was finished. Then he said she hadn't helped herself, and his organization would probably mail into her district again. She summoned a House Sergeant, accused Mr. Neville of threatening her, and

demanded that he be ejected from the capitol. The sergeant grabbed Mr. Neville and dragged him to the basement, and requested State Patrol to see that he leave the building.

Based on the undisputed facts and clear law, Mr. Neville respectfully requests that the complaint in this proceeding be dismissed and the investigation summarily concluded. This proceeding has fatal legal and factual problems, including:

1. The Rule at issue here is overbroad and interferes with core free speech.

Mr. Neville and Rocky Mountain Gun Owners proudly and unapologetically defend their right as Americans to talk to government officials as they choose to. Citizens and advocates have a clear constitutional right to advocate the policies they choose, to offer the political support they choose, and to advise lawmakers of whatever political opposition they choose. Subject to the limits of peaceful conduct and public order, citizens, including advocates, have a fundamental right to say anything they like to elected officials.

Anything less infringes on the guarantees of the First Amendment. The idea that legislators could declare it unethical to say: "If you oppose the positions I support, then I will oppose you," is a gross assault on the letter and spirit of the First Amendment.

Joint Rule 36 makes it a prohibited practice to:

(1) Attempt to influence any legislator or elected or appointed state official or state employee or legislative employee by means of deceit or by threat of violence or economic or political reprisal against any person or property, with intent thereby to alter or affect said legislator's, elected or appointed state official's, state employee's, or legislative employee's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or her or the agency or body of which he or she is a member;

Excerpting the applicable phrases indicates it is prohibited to: Attempt to influence any legislator by means of threat of political reprisal with intent thereby to alter or affect said legislator's vote.

The serious flaw in the rule is that it aims an arrow directly at basic political speech. Whatever sinister or unacceptable conduct the rule may have been intended to bar, it sweeps far beyond any permissible limit. Free speech and the right to petition government are fundamental Constitutional rights. Any restriction on them must be narrowly tailored to protect compelling state interests. Protecting politicians from hearing the reality that not everyone loves them or will support them is not such an interest.

Every day in every state in the nation, concerned citizens, groups, and professional advocates express their policy goals to lawmakers. An implicit and explicit part of that dialogue of self-government is that activists are likely to support lawmakers who support their views and may oppose lawmakers who oppose their views.

That is the understood purpose of Sierra Club Environmental Scorecards, NFIB "scored" votes, or any of a multitude of other grass roots groups' legislative ratings, rankings, reports, and scorecards. A rule which purports to ban undefined threats of "political reprisal" is a squeamish fiction which goes too far.

2. The facts reported and admitted by the complaining lawmaker show there is no violation under the rule's provisions.

Mr. Neville stands primarily on his fundamental right to petition government and to talk to lawmakers as he chooses. But, it's also important that the facts show the rule was not violated. For there to be a violation, a lobbyist must make a political threat in order to influence a lawmaker's

vote. Setting aside the issue that “threat” and “political reprisal” are undefined and chill traditional political speech, the known facts show the rule cannot apply here.

Rep. Gerou has publicly stated that she was going to vote against the gun bills anyway. She has stated that she believes the mailing and criticism aren’t even about the gun bills, but unrelated issues. That belief on Rep. Gerou’s part is mistaken, but her combined statements tend to show that Mr. Neville was not threatening, and Rep. Gerous did not perceive him to be threatening, her in an effort to change her vote on the bills they were discussing. If anything, Mr. Neville’s statement was simply a defensive reflex to the harsh attack he received from Rep. Gerou.

3. **The complaining lawmaker initiated the exchange and committed aggressive acts that meet the definition of one or more crimes. The lobbyist’s response was comparatively very calm. It is a miscarriage of justice and chill on free speech that he is subject to an investigation and possible discipline.**

It is reported that Rep. Gerou summoned Mr. Neville inside the Capitol, she confronted him in the House lobby, she poked him in the chest, and repeatedly cursed him in the public building.

This conduct meets the definition of at least two crimes:

C.R.S. Sec. 18-9-111. Harassment.

- (1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:
 - (a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact; or
 - (b) In a public place directs obscene language or makes an obscene gesture to or at another person;

C.R. S. Sec. 18-9-106. Disorderly conduct

(1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:

(a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace;

Despite her role as the instigator, aggressor, and arguably criminal actor in this encounter, Rep. Gerou had the arrogance to file a complaint against Mr. Neville and demand that he be “investigated.” For his part, Mr. Neville has preferred not to escalate this situation, or to make a legal case of it. He understands that important issues cause strong feelings. Tensions can run high. He believes Capitol communications and the legislative process will function better if adults and professionals can rise above temporary tensions and work in a constructive way.

Mr. Neville respectfully submits this committee should dismiss these proceedings.

s/ Shawn Mitchell

Shawn Mitchell

Attorney for Joseph Neville

Appendix E

Personal statement of Joseph Neville

Regarding the events of Friday, Feb. 15, 2013

I arrived at the Capitol about 8:30 am. I dropped my things off in Representative Everett's office, where I have permission to leave personal items.

At 8:45 I went to the House lobby to be ready for the morning session.

About 9:15, I went to the House gallery to visit with one of my association members who was visiting the capitol and called me with a question.

Around 9:30, while I was talking with the RMGO member, another Daniel Carey of the National Rifle Association said, "Representative Gerou is looking to speak with you. I just want to warn you she's not happy." I thanked him, excused myself from the discussion with my association member, and went to the House lobby.

I sent in a note on my card to Representative Gerou saying I was available to meet, and asked the House Sergeant at Arms to deliver it to her.

A few minutes later, Representative Gerou walked into the lobby. Before I could say anything, she began slapping her finger into the center of my chest, saying, "First off, you can go fuck yourself! You and Dudley can fuck off. RMGO is just a bunch of filthy liars. You have no clue what the fuck you're talking about!"

I was stunned at her attack, but stayed silent, while she poked and berated me. In the Navy, I was trained to respect authority and not to make things worse by escalating an ugly situation, even one that is abusive and unfair.

When she paused and stared, I said what instantly came to mind: "Representative Gerou, you're not really helping yourself. In fact, you probably just earned another round of mail."

She became livid and said: "How dare you threaten me?!" She turned to the Sergeant at Arms, who hadn't seemed to pay attention to the conversation, and told him that I threatened her. She demanded that he eject me from the capitol.

Without saying anything, the Sergeant grabbed my arm and yanked me down the hall. As he was yanking me, I asked "What is your reason for having me leave the building?" He replied, "Because you threatened a law maker."

I asked him, "Do you at least want to hear both sides?" He said, "It's not my problem." As the Sergeant continued to pull me down the hall, I asked him if I could get my keys and personal items from Representative Everett's office. He refused. I was not combative, nor resistant, but he continued to yank me into the elevator.

In the elevator, I said: "I'm not resisting. Can you take your hands off me?" He removed his hands from my arm until the doors of the elevator opened. He then pulled me through the hallway in the basement where he asked State Patrol to ensure that I would leave the building. I told the Sergeant several times, "Get your hands off me. I'm not resisting." He ignored my protest and kept his grip.

I waited outside until approximately 10:00, when my father, former Senator Tim Neville, who happened to be in the building that day, was able to bring my personal items and keys from Representative Everett's office. No one employed at the capitol had offered any help, not the sergeants, staff employees, nor State Patrol.

s/ Joseph Neville

March 26, 2013

Joseph Neville

Date

Appendix F

Suggested Witness Questions:

Questions for Rep. Gerou.:

Did the media report anything inaccurately about your statements about the incident?

Did you tell reporters or anyone you don't believe this is about the gun bills?

Did you ask another lobbyist to tell Mr. Neville you wanted to talk to him?

Did Mr. Neville respond to your request?

Did you start the conversation with angry profanities?

Did you poke your finger in his chest?

Did Mr. Neville interrupt or argue back?

About how long did you express your concerns to Mr. Neville?

How did you *expect* him to respond?

What did he say to you? Anything more?

What, if anything, do you think Mr. Neville wanted to get you to do by what he said?

What did you do next?

Did you consult with or seek advice from others before deciding to file a complaint?

Who? What did you discuss with each person? What factors did you consider?

Have you ever threatened other lobbyists or lawmakers to file ethical complaints against them?

How many?

Questions for the sergeant who escorted Mr. Neville away from the lobby:

Did you hear any of the exchange between Rep. Gerou and Mr. Neville? If so, what did you hear?

Do you accept a legislator's allegation as conclusive about the facts of an exchange with a lobbyist?

Did you respond to Mr. Neville's question whether you wanted to hear what happened by telling him: "Not my problem?"

Was Mr. Neville disrespectful or belligerent with you?

Questions for Daniel Carey:

Did Rep Gerou tell you she wanted to see Mr. Neville?

What did she say to you?

Did you observe anything about her mood or attitude?

Did you convey to Mr. Neville your observation about Rep. Gerou's mood or attitude?

If so, what did you say?

Appendix G



Re: Alternative JR 36 Meeting Date in Case of Inclement Weather

Shawn Mitchell

to:

Jennifer Gilroy

04/18/2013 07:10 AM

Hide Details

From: Shawn Mitchell <sdmitchelllaw@gmail.com>

To: Jennifer Gilroy <jennifer.gilroy@state.co.us>

Dear Members of the Committee:

Thank you for the renewed invitation for Mr. Neville to meet with the committee and provide further information. Mr. Neville respects your role and authority to review alleged ethical violations. I write to clarify once more why he respectfully declines further participation.

The General Assembly has unquestioned authority under the state and federal Constitutions to set rules to govern its procedures and to preserve good order. But no rule or action may infringe basic constitutional rights to speech and to petition government.

At his first appearance, Mr. Neville provided requested information and answered extensive questions from this committee. It was established beyond doubt that he did nothing disorderly; he made no threat of violence or financial or other improper reprisal against a lawmaker. The final prong of Rule 36, "political reprisal," however, is different. Mr. Neville respectfully submits that a rule that purports to prohibit advising of a "political" response to a lawmaker is a blatant violation of core First Amendment rights.

The questions during Mr. Neville's testimony confirms the threat to free speech, and to the chilling of the right to petition government. Committee members asked him about how his organization selected lawmakers for mailings, how it determined the positions of lawmakers, how it decided what information to convey to the public.

Such intrusive questioning of a citizen organization's political thinking is akin to a strip search of the group's efforts to petition government. It is incompatible with the First Amendment.

There is a journalist in Denver right now standing on principle and risking jail in widely publicized case. She recognizes that interrogating her in court about her sources and her communications with them chills her important reporting work and threatens the right of free speech. Mr. Neville submits that the inquiries this committee proposes and has already made similarly delve into protected areas of the right to petition government. He cannot participate in that abuse.

Thank you for your attention to these concerns.

Shawn Mitchell

Attorney for Joseph Neville

On Tue, Apr 16, 2013 at 11:18 AM, Jennifer Gilroy <jennifer.gilroy@state.co.us> wrote:
Hi Mr. Mitchell -

Please be advised that Senator Aguilar has let us know that if the Senate has a late start tomorrow like it did today due to snow, then the Joint Rule 36 investigating committee will not meet at 7:30 tomorrow, but rather will meet at 7:30 Thursday morning, April 18th.

Either I or another member of staff will attempt to contact you in that event. We have this email address and the following telephone number for you: (303) 464-9409. If you would prefer to be texted or contacted at another number, please let me know.

Thank you for your attention to this matter.

Sincerely,

Jennifer Gilroy
Revisor of Statutes
Office of Legislative Legal Services
303.866.4327

Appendix H

Ask Dr. John Newslips DealChicken



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Pro-gun lobbyist kicked out of Colorado Capitol after alleged threat

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Brandon Rittiman FILED UNDER From the Capitol Home Local News

DENVER - Amid already high tensions over gun policy inside the state Capitol, a pro-gun lobbyist was thrown out of the building Friday at the request of a Republican House member.

Rep. Cheri Gerou (R-Evergreen) accuses the lobbyist of threatening her with political attack ads through a mail campaign after a heated exchange about upcoming votes on gun issues, which would violate ethics rules.

State Patrol officers responded, but the sergeant-at-arms escorted Rocky Mountain Gun Owners' Association lobbyist Joe Neville from the building at Gerou's request.

Gerou says it started when she got a call from GOP leaders asking if she planned to flip and vote in favor of four gun amendments being debated on the House floor.

Saying she has no such plans, Gerou set about finding the source of this rumor, which ultimately led her to the RMGO and Neville.

"I won't use the language she did," Neville told 9NEWS. "But she told me to f--- off."

Gerou freely admits to using the F-bomb, frustrated that RMGO (a pro-gun group that takes a more conservative stance on guns than

the NRA does) would fan the flames of an already hot debate.

For his part, Neville admits he was criticizing Gerou for being soft on guns.

Gerou says she would have informed leaders if she intended to vote for the gun control measures.

Neville will be allowed back into the Capitol and provided with a copy of the ethics rules prohibiting political retribution.

The lobbyist seemed taken aback by the exchange.

"To have a Republican representative threaten me doesn't seem very statesmanlike," said Neville. "You expect more of Representatives than that."

Gerou does have the option of filing a formal ethics complaint.

Asked if she will do so, Gerou replied "I don't know."

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Appendix I

The Spot — Blogs — The Denver Post

FEBRUARY 28, 2013, 10:57 PM

RMGO gun lobbyist Joe Neville slapped with ethics complaint, hearing is Friday

By LYNN BARTELS |  11 Comments

UPDATE: Legislative leaders decided to form an ethics committee ^[1] to investigate the charge.

The lobbyist for Colorado's most in-your-face gun rights group will learn Friday whether he faces an ethics investigation after a run-in with a fellow Republican over the fate of the first four gun bills introduced this session.



[2]

Lynn Bartels, The Denver Post
Rep. Cheri Gerou said a gun group targeting her isn't worried about her position on the Second Amendment, but on civil unions.

Joe Neville ^[3], political director for Rocky Mountain Gun Owners ^[4], said he doesn't believe he did anything wrong when he talked to Rep. Cheri Gerou of Evergreen earlier this month.

But she said at the time she was considering filing an ethics charge against him for violating "Rule 36 ^[5]." It states, in part, that lobbyists can't try to influence legislators "by means of deceit or threat ... or political reprisal."

Gerou also said she believes the group was targeting her because of her support for civil unions, which director Dudley Brown called "ludicrous."

Brown is embroiled in a lawsuit filed over political mailers ^[6] last year targeting fellow Republicans on civil unions.

Neville said he got a letter from legislative leaders saying Gerou had filed a complaint and they would take it up in an executive committee at 8:15 a.m. Friday. If the executive committee rules the complaint should proceed, a committee of senators and representatives will be appointed to review it and determine whether a violation occurred.

The complaint is confidential and all Speaker Mark Ferrandino^[7], D-Denver, would say Thursday was the committee was meeting in executive session “under Joint Rule 36.” The speaker said he couldn’t even say who or what the complaint involved, but the dust up was known throughout the Capitol and Neville said he was the target and Gerou filed it. She declined to comment.

Ferrandino confirmed that a Rule 36 complaint was filed last year but the committee did not feel it warranted an investigation and it was dismissed. The legislature in 2009 did appoint a committee to investigate a complaint that a lobbyist violated Rule 36 by getting involved in a leadership race. The committee ruled that lobbyist Erik Groves^[8] wasn’t aware of the rule, but should have been. He was admonished^[9].

Neville and Gerou spoke on Feb. 15, the same day the House met in an epic session to debate the four gun bills^[10]. Gerou said she confronted the lobbyist, and told him to quit “scaring her constituents” by falsely claiming she planned to support the four gun bills. She voted against all four.

Gerou admitted she told Neville to “(beep) off.” She said he replied, “You just earned yourself another round of mailers in your district.” She said she asked the sergeants to remove Neville from the building that day because she believed he had violated Rule 36.

Neville said at the time he didn’t believe he threatened anyone, and was taken aback when Gerou started poking him in the chest. He said the mailers simply asked her constituents to call her and ask her where she stood on the gun bills

But why would Rocky Mountain Gun Owners^[11] target Gerou if she opposed the gun-control legislation?

“Think about it,” Gerou said. “This has nothing to do with guns.”

At the time, she was the only House Republican openly supporting this year’s civil unions measure^[12]. Since then, Rep. Carole Murray of Castle Rock has voted for the bill^[13].

“Drawing the connections to civil unions is ludicrous,” Brown said.

“Gerou wasn’t saying where she’d be on all the gun bills so we added her to ‘unknowns’ list to get extra mailings and constituent contacts. Apparently she doesn’t know that her swing vote status earns her extra attention, but that’s why she got mad, and since she doesn’t like Neville in the first place. So, she popped a cork,” he said.

Gerou said she had no idea Neville was the lobbyist for the group until she started saying she wanted to know who was talking about where she stood on the gun bills.

Last year, the lawmaker tangled with Neville’s father, Tim, who at the time was a state senator and a fellow Jefferson County Republican. She was upset he sent Robocalls into the district about her support

for the 2012 civil unions bill, which died on the House floor. She claimed he lied in his phone message [14].

"I left him a message and said, 'You can send a Robo call. That's fair game. We do that in politics. Just don't lie to your constituents.'" Gerou said last year. "That's what I have problem with. Lying to people is not good public policy."

But Sen. Neville said he wasn't lying, there were differences of opinion on what the bill did, and he disagreed with her interpretation.

ARTICLE PRINTED FROM THE SPOT

<http://blogs.denverpost.com/thespot/2013/02/28/joe-neville-gun-lobbyist-joe-neville-slapped-with-ethics-complaint/91730/>

URLs in this post:

- [1] Legislative leaders decided to form an ethics committee:
http://www.denverpost.com/breakingnews/ci_22697222/colorado-gun-lobbyist-faces-ethics-probe-by-lawmakers
- [2] Image: http://blogs.denverpost.com/thespot/files/2013/02/IMG_5214.jpg
- [3] Joe Neville: <http://blogs.denverpost.com/thespot/topic/joe-neville/>
- [4] Rocky Mountain Gun Owners: <http://www.facebook.com/rmgofb>
- [5] Rule 36: <http://blogs.denverpost.com/thespot/topic/rule-36/>
- [6] is embroiled in a lawsuit filed over political mailers:
http://www.denverpost.com/headlines/ci_22650330/colorado-gun-lobbyist-says-group-not-connected-gay
- [7] Mark Ferrandino: <http://blogs.denverpost.com/thespot/topic/mark-ferrandino/>
- [8] Erik Groves: <http://blogs.denverpost.com/thespot/topic/erik-groves/>
- [9] He was admonished: http://www.denverpost.com/news/ci_11838739
- [10] met in an epic session to debate the four gun bills:
http://www.denverpost.com/breakingnews/ci_22602748/gun-restrictions-pass-first-test-colorado-house
- [11] Rocky Mountain Gun Owners: <http://blogs.denverpost.com/thespot/topic/rocky-mountain-gun-owners/>
- [12] openly supporting this year's civil unions measure:
http://www.denverpost.com/popular/ci_22684168?source=pop_neighbors_greeley
- [13] Rep. Carole Murray of Castle Rock has voted for the bill:
http://www.denverpost.com/breakingnews/ci_22689812/gay-denver-lawmaker-presents-civil-unions-bill-third
- [14] She claimed he lied in his phone message:
<http://blogs.denverpost.com/thespot/2012/05/07/rep-cheri-gerou-fellow-jeffco-republican-lied-civil-unions/70410/#more-70410>

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Appendix J

Colorado gun lobbyist faces ethics probe by lawmakers

By Lynn Bartels *The Denver Post* *The Denver Post*

Posted:

DenverPost.com

A gun lobbyist who tangled with a fellow Republican earlier this month over gun bills will be the target of an ethics probe into whether he violated legislative rules.

Rep. Cheri Gerou, R-Evergreen, filed the complaint against lobbyist Joe Neville, the political director of Rocky Mountain Gun Owners, after an encounter in which she admits telling Neville to "(expletive) off" and he responded by saying: "You just earned yourself another round of mailers in your district."

Gerou said she believes that remark — threatening to send mailers critical of her to her constituents — violated Rule 36, which states, in part, that lobbyists cannot try to influence legislators "by means of deceit or threat ... or political reprisal."

Neville said he didn't violate the legislative rule.

"If Rep. Gerou wants to try to silence me, that's her prerogative, but she can't silence the thousands of Rocky Mountain Gun Owner supporters out there who will continue to fight for the Second Amendment," Neville said Friday.

The unanimous decision to investigate Gerou's complaint was made by a legislative leadership committee that includes four Democrats and two Republicans: the House speaker, Senate president, both majority leaders and both minority leaders.

Two lawmakers will be appointed to serve on the ethics committee, and they will chose a third member.

Gerou confronted Neville on Feb. 15, the day of a marathon debate on four Democratic gun bills. She said in an earlier interview that the tussle began when she told him to quit "scaring her constituents" by falsely claiming she planned to support the four gun bills. She voted against all four.

Neville said at the time he didn't believe he threatened anyone, and was taken aback when Gerou started poking him in the chest. He said the mailers simply asked her constituents to call her and ask her where she stood on the gun bills.

If after the ethics committee probe legislative leaders believe an ethics violation occurred, they can suspend lobbying privileges, issue a letter of admonition or recommend lawmakers censure Neville.

Appendix K

Ethics committee discusses possible subpoena of Colorado gun lobbyist

By Lynn Bartels *The Denver Post* *The Denver Post*

Posted:

DenverPost.com

An ethics committee hearing a complaint against a gun lobbyist who is refusing to cooperate is toying with whether to issue a subpoena to compel him to testify.

Rep. Dan Pabon, D-Denver, said Wednesday he worries about the precedent it would set if lobbyists, witnesses and others were allowed to snub ethics proceedings.

Joe Neville, political director of the Rocky Mountain Gun Owners, is accused by a Republican lawmaker of violating a legislative rule that says lobbyists cannot try to influence legislators "by means of deceit or threat"

Last week, Neville told the three lawmakers appointed to review the ethics complaint against him that he would no longer participate in what he called an "unconstitutional tribunal."

Sen. Mark Scheffel, R-Parker, said he's not sure Neville can provide any more "new and relevant" information for the committee.

"If I had to make a decision right now, I don't think a subpoena is necessary. Mr. Neville did appear. He did give testimony," Scheffel said.

The legislature would have to vote on whether to issue a subpoena, a power it last used more than 30 years ago, according to legislative records.

The ethics committee is drafting a report to give to the legislature's executive committee, compromised of leadership in both parties and in both chambers. The executive committee can dismiss the complaint or, if it determines a violation occurred, it can suspend lobbying privileges, issue a letter of admonition or recommend lawmakers censure Neville.

If there are "significant" holes when the report is complete, Scheffel said he might be able to support a subpoena.

But Pabon said he believes one is warranted.

"When someone has been asked on numerous occasions to provide facts for the committee that are relevant and absolutely critical to resolving factual issues, we need to have that information," he said. "It undermines the entire process and the institution when we are entitled to the information and a witness has refused to participate."

The committee chairwoman, Sen. Irene Aguilar, D-Denver, said the panel will meet against Wednesday.

Rep. Cheri Gerou, R-Evergreen, filed the complaint against Neville after an encounter in which she admits telling Neville to "(expletive) off" and he responded by saying: "You just earned yourself another round of mailers in your district."

Gerou said she believes that remark — threatening to send mailers critical of her to her constituents — violated Rule 36, which states, in part, that lobbyists cannot try to influence legislators "by means of deceit or threat"

She accused the gun group of "scaring" her constituents by telling them she planned to support the Democrats' package of gun bills, when she opposed them.

Lynn Bartels: 303-954-5327, lbartels@denverpost.com or twitter.com/lynn_bartels

Appendix L

Note:

**The following is merely a print representation
of the Youtube video referenced in the Final Report.**

The link to the Youtube video provided on page 2 of the Final Report has changed.

It may be accessed now at:

<http://coloradopols.com/diary/39694/dudley-bown-says-no-rule-will-stop-rocky-mountain-gun-owners-from-threatening-lawmakers-during-its-lobbying-efforts>

ColoradoPols.com

Politics, News & Inside Information

"That were only seven
Democrats in
Hinsdale County, and you ate
five of them!"



Attorney General

(D) Don Quick*	(5-6)↑
(R) Cynthia Coffman*	(3-1)↑
(R) Mark Waller*	(4-1)↑

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Dudley Bown says "No rule" will stop Rocky Mountain Gun Owners from threatening lawmakers during its lobbying efforts

22



by: Jason Salzman

Sat March 23, 2013 at 1:00 PM MDT

(Promoted by Colorado Pols)

On Corky Kyle's "In the Lobby" show March 4, the Executive Director of Rocky Mountain Gun Owners, Dudley Brown, said that he could care less about a regulation prohibiting lobbyists from threatening state lawmakers with political retribution for casting a vote.

Brown said "no rule" will stop his gun organization from threatening to throw lawmakers out of office if they don't vote his way.

Dudley Brown: I can tell you this much, though the claim here might be that you can't threaten political retribution for a vote, and our actual lobbyist is up for – in front of ethics charges for doing just that, that's exactly what our organization is doing. We're saying, "You vote wrong, and you're in a marginal district, we will come out and we will defeat you in the next election, if at all humanly possible." And I make no qualms about that. No rule in the Capitol is going to stop us from saying that.

Corky Kyle: Thanks, Dudley.

DB: Thank you!

CK: [Off camera] Bee-yoooo-tiful, dude!

DB: [maniacal laughter] –get tossed out as a lobbyist.

CK: Yeah, I know! Oh, it wouldn't be the first time somebody said something to me.

DB: Yeah, that would– So, I won't even say that. So sorry to say that. You can't say that? Really?! [inaudible] says that.

[in studio] **CK:** All right... [chuckling, to producer] you can turn the rest of that off...



The Legislature's Rule 36 prohibits lobbyists from influencing legislators "by means of deceit or by threat of ... political reprisal...with intent thereby to alter or affect said legislator's ... vote."

Attempt to influence any legislator or elected or appointed state official or state employee or legislative employee by means of deceit or **by threat of violence or economic or political reprisal** against any person or property, **with intent thereby to alter or affect said legislator's, elected or appointed state official's, state employee's, or legislative employee's decision, vote, opinion, or action** concerning any matter which is to be considered or performed by him or her or the agency or body of which he or she is a member [BigMedia emphasis]

Kyle chose not to press Brown on his brazen disregard for lobbying rules, which is a shame, because it would have made a perfect topic for Kyle's "In the Lobby" show, which focuses on the State Legislature, from the perspective of a lobbyist!

Kyle should invite Brown and others back to discuss: Should an outfit (Rocky Mountain Gun Owners) that promises not to abide by lobbying rules be allowed to lobby at all?

Already, as Brown noted in the interview, a Rocky Mountain Gun Owners employee is under investigation for breaking lobbying rules. And Brown has been sued in federal court recently for his alleged role in a political attack ad.

Brown is apparently playing by the rules in his court fight against gun-safety legislation, but, as with his lobbying efforts, he's taking an extreme tack.

Brown has already threatened a lawsuit, which he's said even the "NRA isn't going to support," to stop Colorado's new law requiring background checks on private gun sales. Brown has said his suit would stop all background checks for gun sales, not just private sales.

22 Community Comments, 0 Facebook Comments



***New**

Albert J. Nock says:

Sat March 23, 2013 at 3:15 PM MDT