

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 15-0072.01 Bob Lackner x4350

SENATE BILL 15-061

SENATE SPONSORSHIP

Holbert,

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE NONAPPLICABILITY OF DISCLOSURE REQUIREMENTS**
102 **UNDER COLORADO LAW GOVERNING CAMPAIGN FINANCE IN THE**
103 **CASE OF CERTAIN ISSUE COMMITTEES THAT RAISE RELATIVELY**
104 **SMALL AMOUNTS OF MONEY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

In a recent decision handed down by the federal district court for Colorado, the federal court held that the disclosure and registration requirements imposed upon issue committees under the Colorado

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
February 3, 2015

constitution and the state "Fair Campaign Practices Act" (FCPA) were not to be applied to an advocacy organization that raised a relatively small amount of money to promote its issue advocacy, and further enjoined the secretary of state from enforcing the FCPA disclosure requirements against the organization.

In light of this order, **section 2** of the bill prohibits the application of the disclosure or reporting requirements specified in the FCPA to an issue committee unless and until the issue committee has accepted or made contributions or expenditures in excess of \$5,000. The bill requires an issue committee that accepts or makes contributions or expenditures in excess of \$5,000 to register with the appropriate officer within 10 calendar days of accepting or making such contributions and expenditures and to report all contributions received and expenditures made after reaching the \$5,000 threshold in accordance with the reporting schedule specified in the FCPA.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds, determines, and declares that:

4 (a) In 2002, the voters of the state passed article XXVIII of the
5 state constitution, which imposed a comprehensive regulatory scheme
6 governing campaign finance. Article XXVIII, among other things,
7 defined "issue committee" to mean "any person, other than a natural
8 person, or any group of two or more persons, including natural persons:
9 (I) That has a major purpose of supporting or opposing any ballot issue
10 or ballot question; or (II) that has accepted or made contributions or
11 expenditures in excess of two hundred dollars to support or oppose any
12 ballot issue or ballot question." This latter requirement triggers a legal
13 obligation on the part of the issue committee to report and disclose their
14 contributions and expenditures.

15 (b) In the case of *Sampson v. Buescher*, 625 F.3d 1247 (10th
16 Circuit 2010), the United States court of appeals for the tenth circuit
17 addressed a constitutional challenge to the threshold disclosure

1 requirement brought by a group of citizens who had raised less than
2 \$1,000 in monetary and in-kind contributions to oppose a local
3 annexation measure, but failed to register as an issue committee. The
4 tenth circuit held that the threshold disclosure requirement as applied to
5 plaintiffs unconstitutionally burdened their first amendment right to
6 association. The court held that the financial burden of state regulation on
7 plaintiffs' freedom of association approaches or exceeds the value of their
8 political effort; and the governmental interest in imposing those
9 regulations is minimal, if not nonexistent, in light of the small size of
10 their contributions. In the *Sampson* case, the court did not draw a
11 bright-line below which an issue committee cannot be required to report
12 contributions and expenditures. The court noted that the case before it "is
13 quite unlike ones involving the expenditure of tens of millions of dollars
14 on ballot issues presenting 'complex policy proposals.' We say only that
15 Plaintiffs' contribution and expenditures are well below the line".

16 (c) In the wake of *Sampson v. Buescher*, the Colorado secretary
17 of state (secretary) promulgated an administrative rule, rule 4.1, that
18 increased the contribution and expenditure threshold that triggers issue
19 committee status from \$200 to \$5,000 and exempted retrospective
20 reporting of contributions and expenditures once issue committee status
21 is achieved.

22 (d) A challenge to rule 4.1 was brought in Denver district court on
23 the grounds that the secretary exceeded his rule-making authority by
24 promulgating rule 4.1. The case ultimately reached the Colorado supreme
25 court, which held, in *Gessler v. Colorado Common Cause*, 2012 CO 44,
26 that the reporting and disclosure requirements at issue were not facially
27 invalidated by *Sampson v. Buescher*. Because the rule directly conflicts

1 with these still-valid constitutional and statutory provisions, the supreme
2 court found rule 4.1 unlawful and set it aside.

3 (e) A subsequent lawsuit was filed in federal district court
4 challenging the application of these reporting and disclosure requirements
5 to a small think tank and advocacy organization, Coalition for Secular
6 Government (CSG), that was uncertain whether its combined
7 contributions (reaching an expected amount of \$3,500 in 2014) required
8 it to register as an issue committee. In that case, *Coalition for Secular*
9 *Gov't v. Gessler*, United States district court, Case No. 12 CV 1708, the
10 federal court found that CSG fell outside the scope of issue committees
11 to which Colorado's campaign finance disclosure laws may
12 constitutionally apply. The federal court stated, "The nature of CSG and
13 its advocacy render any 'informational interest' the government has in
14 mandating contribution and expenditure disclosures so minimal as to be
15 nonexistent, and certainly insufficient to justify the burdens compliance
16 imposes on members' constitutional free speech and association rights".
17 The federal court further stated that "having to adjudicate it in every
18 instance as the Colorado Supreme Court [in *Gessler v. Colo. Common*
19 *Cause*, 2014 CO 44] implies is necessary *itself* offends the First
20 Amendment. By setting in stone the uncertainty that precipitated this
21 litigation in the first place, the Court's interpretation chills robust
22 discussion at the very core of our electoral process".

23 (f) In *Coalition for Secular Gov't v. Gessler*, the federal court
24 ordered and declared that CSG's expected activity of \$3,500 does not
25 require registration or disclosure as an issue committee and further
26 enjoined the secretary from enforcing the "Fair Campaign Practice Act"
27 disclosure requirements against it. The court additionally awarded CSG

1 its attorney fees and "advise[d] state lawmakers that the Secretary will be
2 on the hook for fees every time a group, like CSG, falls under the \$200
3 trigger for issue committee status and has to sue to vindicate its First
4 Amendment rights".

5 (2) By enacting Senate Bill 15-____, the general assembly intends
6 to follow and effectuate the holding and order of the United States district
7 court for Colorado by precluding the applicability of campaign finance
8 reporting, disclosure, and reporting requirements to issue committees that
9 raise or expend relatively small amounts of money to advocate for their
10 objectives. In this way, the state will be protecting the first amendment
11 associational rights of these organizations; provide a bright-line standard
12 so these entities will know the legal requirements that apply to them and
13 not have to guess whether their activities require compliance with the
14 reporting and disclosure requirements, thereby minimizing any chilling
15 of robust discussion at the heart of our electoral process; and save the
16 state the considerable amount of money in attorney fees that it will be
17 paying out to similar organizations in the future suing the state to
18 vindicate their first amendment rights.

19 **SECTION 2.** In Colorado Revised Statutes, 1-45-108, **amend** (1)
20 (a) (I), (1) (a) (II), (3.3), and (6); and **add** (1.5) as follows:

21 **1-45-108. Disclosure - definition.** (1) (a) (I) SUBJECT TO
22 SUBSECTION (1.5) OF THIS SECTION, all candidate committees, political
23 committees, issue committees, small donor committees, and political
24 parties shall report to the appropriate officer their contributions received,
25 including the name and address of each person who has contributed
26 twenty dollars or more; expenditures made, and obligations entered into
27 by the committee or party.

1 (II) SUBJECT TO SUBSECTION (1.5) OF THIS SECTION, in the case of
2 contributions made to a candidate committee, political committee, issue
3 committee, and political party, the disclosure required by this section shall
4 also include the occupation and employer of each person who has made
5 a contribution of one hundred dollars or more to such committee or party.

6 (1.5) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN
7 LIGHT OF THE ORDER OF THE FEDERAL DISTRICT COURT IN THE CASE OF
8 *COALITION FOR SECULAR GOV'T V. GESSLER*, CASE No. 12 CV 1708, THE
9 DISCLOSURE REQUIREMENTS SPECIFIED IN SUBPARAGRAPH (I) OR (II) OF
10 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND THE REPORTING
11 REQUIREMENTS SPECIFIED IN SUBSECTION (3.3) OR (6) OF THIS SECTION
12 SHALL NOT APPLY TO AGAINST AN ISSUE COMMITTEE UNLESS AND UNTIL
13 THE ISSUE COMMITTEE HAS ACCEPTED OR MADE CONTRIBUTIONS OR
14 EXPENDITURES IN EXCESS OF FIVE THOUSAND DOLLARS.

15 (b) AN ISSUE COMMITTEE THAT ACCEPTS OR MAKES
16 CONTRIBUTIONS OR EXPENDITURES IN EXCESS OF FIVE THOUSAND DOLLARS
17 SHALL REGISTER WITH THE APPROPRIATE OFFICER WITHIN TEN CALENDAR
18 DAYS OF ACCEPTING OR MAKING SUCH CONTRIBUTIONS AND
19 EXPENDITURES AND REPORT ALL CONTRIBUTIONS RECEIVED AND
20 EXPENDITURES MADE AFTER REACHING THE FIVE THOUSAND DOLLAR
21 THRESHOLD IN ACCORDANCE WITH THE REPORTING SCHEDULE SPECIFIED
22 IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION.

23 (3.3) Subject to the provisions of ~~subsection (7)~~ SUBSECTIONS
24 (1.5) AND (7) of this section, each issue committee shall register with the
25 appropriate officer within ten calendar days of accepting or making
26 contributions or expenditures in excess of two hundred dollars to support
27 or oppose any ballot issue or ballot question or upon receipt of the notice

1 from the secretary of state pursuant to section 1-40-113 (1) (b). If
2 required to register under the requirements of this subsection (3.3), the
3 registration of the issue committee shall include a statement containing
4 the items listed in paragraphs (a) to (e) of subsection (3) of this section in
5 connection with other committees and a political party.

6 (6) SUBJECT TO SUBSECTION (1.5) OF THIS SECTION, any issue
7 committee whose purpose is the recall of any elected official shall register
8 with the appropriate officer within ten calendar days of accepting or
9 making contributions or expenditures in excess of two hundred dollars to
10 support or oppose the recall. Reports of contributions and expenditures
11 shall be filed with the appropriate officer within fifteen days of the filing
12 of the committee registration and every thirty days thereafter until the date
13 of the recall election has been established and then fourteen days and
14 seven days before the recall election and thirty days following the recall
15 election.

16 **SECTION 3. Applicability.** This act applies to the portion of any
17 election cycle or for the portion of the calendar year remaining after the
18 effective date of this act and for any election cycle or calendar year
19 commencing after such effective date, whichever is applicable.

20 **SECTION 4. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.