

First Regular Session
Sixty-third General Assembly
STATE OF COLORADO

REENGROSSED

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

LLS NO. 01-0212.01 Bob Lackner

SENATE BILL 01-092

SENATE SPONSORSHIP

Anderson, and Gordon

HOUSE SPONSORSHIP

Decker,

Senate Committees

Judiciary

House Committees

State, Veterans, & Military Affairs

A BILL FOR AN ACT

101 **CONCERNING THE FAIR CAMPAIGN PRACTICES ACT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Adds partnerships and limited liability companies to the list of natural persons and entities whose contributions and contributions in kind to candidate committees are limited under the Fair Campaign Practices Act (FCPA).

Specifies that contributions and contributions in kind to state senate and district attorney candidate committees are limited on the basis of a 2-year election cycle, rather than a 4-year election cycle as is the case under current law.

Broadens the definition of a "political message" produced by an

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
3rd Reading Unamended
February 27, 2001

SENATE
Amended 2nd Reading
February 26, 2001

independent expenditure under the FCPA to include, in addition to messages advocating the election or defeat of any candidate, a message delivered by telephone, any print or electronic media, or other written material that:

- Unambiguously refers to such candidate;
- Is broadcasted, printed, mailed, delivered, or distributed within 30 days before a primary election or 60 days before a general election; and
- When read or heard as a whole, and with limited reference to external events, goes beyond a mere informational discussion of public issues and that is susceptible of no other reasonable interpretation than as an exhortation or plea for action urging voters to vote for or against such candidate.

Excludes certain election-related information and communications from the definition of political message.

Makes a conforming amendment to the existing definition of "independent expenditure".

In response to the decision of the United States Court of Appeals for the Tenth Circuit in *Citizens for Responsible Government State Political Action Committee, et. al., v. Davidson*, Nos. 99-1414, 99-1431, 99-1434, and 99-1435 (December, 26, 2000):

- Provides that any person making an independent expenditure in excess of \$1,000 shall report to the appropriate officer the amount of the expenditure, a detailed description of the use of the expenditure, and the name of the candidate whom the independent expenditure is intended to support or oppose. Specifies that this report shall be filed in accordance with existing deadlines for report filing.
- Eliminates the 24-hour notice of certain independent expenditures, notice to other candidates, information identifying the person making the independent expenditure, and disclaimer as to authorization in connection with independent expenditures.

Requires any person or political committee making an independent expenditure in excess of \$1,000 to disclose contributor information to the secretary of state consistent with existing requirements for candidate committees, issue committees, and political parties.

Increases the civil penalty for an intentional violation of the contribution limits contained within the FCPA from double to triple the amount contributed or received in violation of the act.

Makes conforming amendments.

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

2 **SECTION 1. Legislative declaration - disclosure of certain**
3 **contributor information in connection with a political message**
4 **produced as an independent expenditure under the "Fair Campaign**
5 **Practices Act".** (1) The general assembly hereby finds and declares that:

6 (a) In the case of *Buckley v. Valeo*, 424 U.S. 1 (1976), the United
7 States supreme court permitted disclosure only of expenditures for
8 communications that expressly advocate the election or defeat of a clearly
9 identified candidate.

10 (b) Since the *Buckley* decision, most courts that have addressed the
11 issue have held that the only communications that qualify as express
12 advocacy are words of exhortation urging action for or against a clearly
13 identified candidate.

14 (c) In a number of recent statewide election campaigns in
15 Colorado, the line between expressly advocating for or against a clearly
16 identified candidate and educating voters on important public issues has
17 become severely blurred. Specifically, certain communications produced
18 and disseminated by entities that have come to be known as educational
19 committees have gone beyond a mere informational discussion of public
20 issues and, when read or seen as a whole, are susceptible of no other
21 reasonable interpretation but as an exhortation to take electoral action for
22 or against a clearly identified candidate.

23 (2) The general assembly further finds and declares that:

24 (a) Under *Buckley*, governmental infringement on political speech
25 must be substantially related to a compelling governmental interest and be
26 narrowly drawn so as to be the least restrictive means of furthering that
27 interest.

1 (b) The provisions of sections 3 and 4 of this act requiring
2 disclosure of contributor information in connection with a political
3 message produced as an independent expenditure under the "Fair
4 Campaign Practices Act", article 45 of this title, are substantially related
5 to a compelling governmental interest and are narrowly tailored so as to
6 be the least restrictive means of furthering that interest.

7 (c) The state of Colorado has a compelling governmental interest
8 in requiring disclosure of information about contributors in connection
9 with a political message produced by an independent expenditure that can
10 only be reasonably interpreted as a plea for action in support of or in
11 opposition to a particular candidate. Specifically, as recognized by the
12 *Buckley* court, such disclosure is supported by these three compelling
13 governmental interests:

14 (I) Disclosure provides the electorate with information as to where
15 political campaign money comes from and how it is spent in order to aid
16 the voters in evaluating those who seek public office;

17 (II) Disclosure deters actual corruption and avoids the appearance
18 of corruption by exposing large contributions and expenditures to the light
19 of publicity; and

20 (III) Recordkeeping, reporting, and disclosure requirements are an
21 essential means of gathering the data necessary to detect and deter
22 violations of the election laws.

23 (d) (I) The *Buckley* court recognized the danger from the impact
24 of the appearance of corruption stemming from public awareness of the
25 opportunities for abuse inherent in large contributions and that the
26 avoidance of the appearance of improper influence is critical if public
27 confidence in the system of representative government is not to be eroded.

1 The voters of Colorado affirmed their awareness of these dangers in the
2 legislative declaration of the "Fair Campaign Practices Act", article 45 of
3 title 1, Colorado Revised Statutes, which states that "large campaign
4 contributions create the potential for corruption and the appearance of
5 corruption".

6 (II) The practice of certain educational committees raise a real
7 threat of the appearance of, if not actual, corruption. In order to make
8 substantial expenditures in political campaigns, certain educational
9 committees have solicited and accepted contributions, without disclosing
10 those contributions, in excess of the limits on contributions and disclosure
11 requirements applicable to regulated persons or entities under the "Fair
12 Campaign Practices Act", article 45 of title 1, Colorado Revised Statutes.
13 Such anonymous contributions in excess of, and outside of, existing limits
14 under the act to committees that make large campaign expenditures
15 undermines public confidence in the integrity of the political process and
16 contributes to a perception on the part of the public that the political
17 process is corrupt.

18 (III) The "Fair Campaign Practices Act", article 45 of title 1,
19 Colorado Revised Statutes, states that the interests of the public are best
20 served by "full and timely disclosure of campaign contributions".
21 Pursuant to the act, the public generally has timely means to discover the
22 source of moneys contributed to political campaigns by regulated person
23 or entities and how such money has been spent. Such disclosure gives
24 voters the opportunity to take such information into account in casting
25 their ballots, and thereby provides some manner of keeping elected
26 officials accountable to the voters for the source of their campaign
27 funding. In contrast, the failure to disclose the funding of political

1 messages produced by educational committees before the election
2 deprives the public of the opportunity to evaluate information relevant to
3 such disclosure in casting their ballots. This lack of disclosure
4 additionally undermines public confidence in the political process and
5 aggravates popular feeling that the system is corrupt.

6 (e) In addition, the provisions of sections 3 and 4 of this act are
7 narrowly tailored to serve the state's compelling interest in disclosure.
8 The general assembly recognizes that, under controlling case authority,
9 disclosure merely of political messages that "unambiguously refer to a
10 candidate," without more, does not pass legal muster. Accordingly, the
11 only political messages produced as independent expenditures that will
12 require disclosure of contributor information under sections 3 and 4 of this
13 act are those that not only unambiguously refer to a particular candidate,
14 but also are disseminated a specified number of days before a primary or
15 general election, and are susceptible of no other reasonable interpretation
16 than as an exhortation or plea for action urging voters to vote for or
17 against such a candidate. In addition, this act also expressly excludes five
18 types of political communication from the definition of "political
19 message", thereby exempting information about the contributors to such
20 communication from mandated disclosure under the act.

21 (f) To allow certain persons or entities to deliver a message
22 unequivocally intending to influence an election a specified number of
23 days before an election, without requiring disclosure of the contributions
24 received, expenditures made, and obligations entered into by such persons
25 or entities and contrary to how analogous messages delivered by other
26 actors in the political process are treated, is inconsistent with the stated
27 intent of the voters who adopted the "Fair Campaign Practices Act",

1 article 45 of title 1, Colorado Revised Statutes, undermines public
2 confidence in the governmental process, and aggravates popular feeling
3 that the political system appears to be corrupt.

4 (g) The provisions of this act are also consistent with reasonable
5 and carefully drawn statutory provisions enacted by other states in
6 connection with required disclosure of contributor information in
7 connection with similar forms of political communication.

8 SECTION 2. The introductory portion to 1-45-105.3 (1),
9 Colorado Revised Statutes, is amended to read:

10 **1-45-105.3. Contribution limits.** (1) No natural person,
11 corporation, OR ANY OTHER LEGAL ENTITY, INCLUDING WITHOUT
12 LIMITATION, ANY LIMITED LIABILITY COMPANY, PARTNERSHIP, labor
13 organization, authorized committee, or political committee shall make a
14 combined total of contributions and contributions in kind during an
15 election cycle, or for a special legislative election, in excess of the
16 following amounts:

17 _____
18 _____

19 **SECTION 3.** 1-45-103 (7) and (11), Colorado Revised Statutes,
20 are amended to read:

21 **1-45-103. Definitions.** As used in this article:

22 (7) "Independent expenditure" means payment of money by any
23 person for the purpose of advocating the election or defeat of a candidate,
24 which expenditure is not controlled by, or coordinated with, any candidate
25 or any agent of such candidate. "Independent expenditure" includes
26 expenditures for political messages, ~~which unambiguously refer to any~~
27 ~~specific public office or candidate for such office,~~ but does not include

1 expenditures made by persons, other than political parties and political
2 committees, in the regular course and scope of their business and political
3 messages sent solely to their members.

4 (11) (a) "Political message" means a message delivered by
5 telephone, any print or electronic media, or other written material ~~which~~
6 THAT:

7 (I) Advocates the election or defeat of any candidate; or ~~which~~

8 (II) (A) Unambiguously refers to such candidate;

9 (B) IS BROADCASTED, PRINTED, MAILED, DELIVERED, OR
10 DISTRIBUTED WITHIN THIRTY DAYS BEFORE A PRIMARY ELECTION OR SIXTY
11 DAYS BEFORE A GENERAL ELECTION; AND

12 (C) WHEN READ OR HEARD AS A WHOLE, AND WITH LIMITED
13 REFERENCE TO EXTERNAL EVENTS, GOES BEYOND A MERE INFORMATIONAL
14 DISCUSSION OF PUBLIC ISSUES AND THAT IS SUSCEPTIBLE OF NO OTHER
15 REASONABLE INTERPRETATION THAN AS AN EXHORTATION OR PLEA FOR
16 ACTION URGING VOTERS TO VOTE FOR OR AGAINST SUCH CANDIDATE.

17 (b) "POLITICAL MESSAGE" DOES NOT INCLUDE:

18 (I) ANY NEWS ARTICLES, EDITORIAL ENDORSEMENTS, OPINION OR
19 COMMENTARY WRITINGS, OR LETTERS TO THE EDITOR PRINTED IN A
20 NEWSPAPER;

21 (II) ANY COMMUNICATION MADE SOLELY TO THE MEMBERS OF THE
22 ORGANIZATION MAKING THE COMMUNICATION OR MESSAGE;

23 (III) A COMMUNICATION MADE BY ANY CORPORATION, LABOR
24 ORGANIZATION, OR ASSOCIATION TO THE MEMBERS, OWNERS,
25 STOCKHOLDERS, EXECUTIVE OR ADMINISTRATIVE PERSONNEL, OR THEIR
26 FAMILIES;

27 (IV) NONPARTISAN VOTER REGISTRATION AND GET-OUT-THE-VOTE

1 CAMPAIGNS BY ANY CORPORATION, ORGANIZATION, OR ASSOCIATION
2 AIMED AT THE MEMBERS, OWNERS, STOCKHOLDERS, EXECUTIVE OR
3 ADMINISTRATIVE PERSONNEL, OR THEIR FAMILIES; OR

4 (V) IN THE CASE OF A CANDIDATE FOR ELECTIVE OFFICE WHO IS, AT
5 THE TIME OF THE ELECTION, HOLDING AN ELECTIVE OFFICE OR WHO HAS
6 HELD ELECTIVE OFFICE IN THE PAST, ANY PRINTED COMMUNICATION THAT
7 IS A VOTING RECORD OR VOTING GUIDE THAT:

8 (A) PRESENTS INFORMATION IN AN EDUCATIONAL MANNER THAT
9 DOES NO MORE THAN SET FORTH THE TITLE AND NUMBER OF A PARTICULAR
10 BILL AND THE NATURE OF THE CANDIDATE'S VOTE ON THE BILL;

11 (B) IS NOT COORDINATED WITH ANY CANDIDATE, CANDIDATE
12 COMMITTEE, OR AGENT OF A CANDIDATE; AND

13 (C) DOES NOT CONTAIN A PHRASE SUCH AS "VOTE FOR",
14 "RE-ELECT", "SUPPORT", "DEFEAT", OR "REJECT" AND WHEN READ AS A
15 WHOLE, AND WITH LIMITED REFERENCE TO EXTERNAL EVENTS, IS
16 SUSCEPTIBLE OF A REASONABLE INTERPRETATION OTHER THAN AS AN
17 EXHORTATION OR PLEA FOR ACTION URGING VOTERS TO VOTE FOR OR
18 AGAINST SUCH CANDIDATE OR CANDIDATES.

19 (VI) IN THE CASE OF A CANDIDATE FOR ELECTIVE OFFICE WHO IS
20 NOT, AT THE TIME OF THE ELECTION, HOLDING ELECTIVE OFFICE AND WHO
21 HAS NOT HELD ELECTIVE OFFICE IN THE PAST, ANY PRINTED
22 COMMUNICATION THAT IS A VOTING RECORD OR VOTING GUIDE THAT:

23 (A) PRESENTS IN AN EDUCATIONAL MANNER THE CANDIDATE'S
24 STATED POSITION ON A CAMPAIGN ISSUE BY REFERENCE TO THE
25 CANDIDATE'S COMMUNICATED POSITION ON THE ISSUE;

26 (B) IS NOT COORDINATED WITH ANY CANDIDATE, CANDIDATE
27 COMMITTEE, OR AGENT OF A CANDIDATE; AND

1 (C) DOES NOT CONTAIN A PHRASE SUCH AS "VOTE FOR", "REELECT",
2 "SUPPORT", "DEFEAT", OR "REJECT" AND WHEN READ AS A WHOLE, AND
3 WITH LIMITED REFERENCE TO EXTERNAL EVENTS, IS SUSCEPTIBLE OF A
4 REASONABLE INTERPRETATION OTHER THAN AS AN EXHORTATION OR PLEA
5 FOR ACTION URGING VOTERS TO VOTE FOR OR AGAINST SUCH CANDIDATE
6 OR CANDIDATES

7 **SECTION 4.** 1-45-107 (1) and (2), Colorado Revised Statutes, are
8 amended, and the said 1-45-107 is further amended BY THE ADDITION
9 OF A NEW SUBSECTION, to read:

10 **1-45-107. Independent expenditures.** (1) Any person making an
11 independent expenditure in excess of one thousand dollars shall ~~deliver~~
12 ~~notice in writing of such independent expenditure, as well as~~ REPORT TO
13 THE APPROPRIATE OFFICER PURSUANT TO SECTION 1-45-108 the amount of
14 such expenditure, ~~and~~ a detailed description of the use of such
15 independent expenditure, ~~within twenty-four hours after obligating funds~~
16 ~~for such expenditure. Such notice shall be delivered to all candidates in~~
17 ~~the affected race and to the secretary of state. The notice~~ AND shall
18 specifically state the name of the candidate whom the independent
19 expenditure is intended to support or oppose. ~~Each independent~~
20 ~~expenditure shall require the delivery of a new notice.~~

21 (2) ~~Any person making an independent expenditure in excess of~~
22 ~~one thousand dollars shall disclose in the political message produced by~~
23 ~~the expenditure, the full name of the person, the name of the registered~~
24 ~~agent, the amount of the expenditure, and the specific statement that the~~
25 ~~advertisement or material is not authorized by any candidate. Such~~
26 ~~disclosure shall be prominently featured in the political message.~~

27 (4) (a) ANY PERSON MAKING AN INDEPENDENT EXPENDITURE OF

1 ONE THOUSAND DOLLARS OR MORE PER CALENDAR YEAR SHALL MAKE SUCH
2 EXPENDITURES SOLELY FROM FUNDS THAT ARE:

3 (I) CONTRIBUTED BY A NATURAL PERSON, POLITICAL PARTY, OR
4 POLITICAL COMMITTEE; AND

5 (II) MAINTAINED IN A SEPARATE SEGREGATED FUND BY SUCH
6 PERSON FOR THE PURPOSE OF MAKING SUCH EXPENDITURES.

7 (b) A CORPORATION OR LABOR ORGANIZATION SHALL BE
8 CONSIDERED TO HAVE MADE AN INDEPENDENT EXPENDITURE FOR A
9 POLITICAL MESSAGE IF:

10 (I) THE CORPORATION OR LABOR ORGANIZATION DIRECTLY OR
11 INDIRECTLY DISBURSES ANY PORTION OF THE MONEYS USED TO DEFRAY THE
12 COSTS OF THE INDEPENDENT EXPENDITURE; OR

13 (II) ANY PORTION OF THE MONEYS USED TO DEFRAY THE COSTS OF
14 THE INDEPENDENT EXPENDITURE IS DISBURSED BY A POLITICAL COMMITTEE
15 THAT RECEIVES A CONTRIBUTION FROM THE CORPORATION OR LABOR
16 ORGANIZATION.

17 **SECTION 5.** 1-45-108 (1) (a), (2.3), and (3), Colorado Revised
18 Statutes, are amended to read:

19 **1-45-108. Disclosure.** (1) (a) All candidate committees, political
20 committees, issue committees, ~~and~~ political parties, AND ANY PERSON OR
21 POLITICAL COMMITTEE MAKING AN INDEPENDENT EXPENDITURE UNDER
22 SECTION 1-45-107 (1), shall report to the appropriate officer their
23 contributions received, including the name and address of each person
24 who has contributed twenty dollars or more; expenditures made; and
25 obligations entered into by the committee, ~~or~~ party, OR PERSON.

26 (2.3) A candidate committee, political committee, issue committee,
27 ~~or~~ political party, OR ANY OTHER PERSON that utilizes the electronic filing

1 system described in section 1-45-109 (6) to file reports with the secretary
2 of state shall have two additional days after each due date prescribed in
3 paragraph (a) of subsection (2) of this section in which to file such
4 reports.

5 (3) All candidate committees, political committees, issue
6 committees, and political parties, AND ANY PERSON MAKING AN
7 INDEPENDENT EXPENDITURE UNDER SECTION 1-45-107 (1), shall register
8 with the appropriate officer before accepting or making any contributions.
9 Registration shall include a statement listing:

10 (a) The organization's OR PERSON'S full name, spelling out, IN THE
11 CASE OF THE ORGANIZATION, any acronyms used therein;

12 (b) A natural person authorized to act as a registered agent FOR
13 THE ORGANIZATION;

14 (c) (I) IN THE CASE OF AN ORGANIZATION, a street address and
15 telephone number for the principle place of operations;

16 (II) IN THE CASE OF A PERSON, SUCH PERSON'S STREET ADDRESS
17 AND TELEPHONE NUMBER;

18 (d) All affiliated candidates and committees OF THE ORGANIZATION
19 OR PERSON;

20 (e) The purpose or nature of interest of the committee, or party, OR
21 PERSON.

22 SECTION 6. 1-45-111 (2), Colorado Revised Statutes, is
23 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24 **1-45-111. Duties of the secretary of state - enforcement.**
25 (2) (a.5) IF THE ADMINISTRATIVE LAW JUDGE FINDS THAT THE FILING OF A
26 COMPLAINT UNDER PARAGRAPH (a) OF THIS SUBSECTION (2) WAS
27 FRIVOLOUS, GROUNDLESS, OR VEXATIOUS, THE ADMINISTRATIVE LAW

1 JUDGE SHALL REQUIRE THE COMPLAINANT TO PAY THE REASONABLE AND
2 NECESSARY ATTORNEY FEES AND COSTS OF THE OTHER PARTY.

3 **SECTION 7.** 1-45-113 (1) and (2), Colorado Revised Statutes, are
4 amended to read:

5 **1-45-113. Sanctions.** (1) ~~It shall be a class two misdemeanor for any~~
6 ~~person to willfully and intentionally violate section 1-45-105.3, 1-45-105.5,~~
7 ~~1-45-106, 1-45-108, 1-45-114, 1-45-115, or 1-45-117. It shall be a class two~~
8 ~~misdemeanor for any person to willfully and intentionally fail to disclose any~~
9 ~~contribution or expenditure on any report filed pursuant to this article.~~

10 (2) In addition to the criminal penalty provided for in subsection
11 (1) of this section, Any person who intentionally violates any provision
12 of this article relating to contribution limits shall be subject to a civil
13 penalty of double the amount contributed or received in violation of the
14 applicable provision of this IN AN AMOUNT OF NOT LESS THAN FIVE
15 HUNDRED DOLLARS, BUT NOT MORE THAN FIVE THOUSAND DOLLARS article.

16 Candidates shall be personally liable for fines imposed against the
17 candidate's committee.

18 **SECTION 8. Effective date - applicability.** This act shall take
19 effect upon passage, and the limits on contributions and contributions in
20 kind contained in this act shall apply to any natural person, corporation,
21 partnership, labor organization, candidate committee, political party,
22 political committee, or authorized committee subject to such limits for the
23 portion of any election cycle or for the portion of the year remaining after
24 such effective date, and for any election cycle or calendar year
25 commencing after such effective date, whichever is applicable. Such
26 limits shall not apply to any contributions and contributions in kind made
27 prior to such effective date.

1 **SECTION 9. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.