

Comments on Proposed Revisions and Amendments to the Secretary of State's 'Rules Concerning Campaign and Political Finance,' 8 C.C.R. 1505-6

by Diana Hsieh, Ph.D

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My name is Diana Hsieh. I'm an ordinary citizen, albeit with a Ph.D in philosophy. I earn my living my writing and speaking on applying ethical principles to daily life. I'm not a political activist by trade. I have strong views on politics, but I'm not terribly interested in engaging in the rough and tumble of politics.

On occasion, however, I jump into the fray, usually because I care about some issue so deeply that I just can't stand to remain silent. That's almost always some issue local to Colorado. That happened in 2008, with Amendment 48, then again in 2010 with Amendment 62. Those were the “personhood” amendments, and I opposed them vehemently.

Here, I wish to recount how the existing campaign finance rules impaired my ability and willingness to speak against those amendments. Then I will explain why the proposed revisions will have the very same chilling effects on the speech of ordinary citizens like me. Finally, I will suggest changes to the current system that would substantially protect freedom of speech within the constraints of Colorado's constitution.

In 2008, Ari Armstrong and I wrote and published an 18-page policy paper against Amendment 48. We didn't merely want to oppose the advocates of “personhood,” we also wanted to offer an alternative to the major pro-choice coalition, which we regarded as compromising on the moral issues. They didn't speak for us; we wanted to speak for ourselves.

Ari and I published that 2008 policy paper under the auspices of the “Coalition for Secular Government.” That's a nonprofit corporation registered in Colorado, but really, that's just me and a blog. The Coalition for Secular Government didn't solicit or accept donations, and I paid for its few expenses personally. Consistent with that, Ari and I wrote the paper without any compensation whatsoever: it was purely a volunteer effort. After we completed the paper, I spent a few hundred dollars of my own money to print and mail copies of the paper to media and activists in Colorado.

At the time, I didn't imagine that these activities would be subject to any campaign regulations. After all, I was just exercising my right to speak freely on an issue that I cared deeply about — or so I thought. However, just to be sure, I checked the web site of Colorado's Secretary of State. I found nothing relevant to my activities, so I thought I was in the clear.

However, I was very wrong in that. A friend knowledgeable about Colorado's campaign finance laws told me about the regulations for “issue groups.” So I went back to the web site of Colorado's Secretary of State, searching for information. Even once I knew what to look for, it took me over an hour to find the relevant regulations. Even after I read them again and again, I was still quite confused about how to comply with the law.

More importantly, I was appalled that my home state forbade me from speaking freely on an ballot issue that I cared deeply about — even just to spend a few hundred dollars of my own

money promoting a paper that I wrote with a friend. Even worse, I could be subject to hefty fines for failing to comply with laws that I could neither find by diligent searching, nor understand by careful reading.

In addition, I found complying with the regulations — entering store names, addresses, and amounts for my few purchases of photocopies, envelopes, labels, and stamps — to be so onerous that, after filing my first report, I swore that I'd not promote the paper in any way that required money thereafter. Hence, the burdens of complying with the law -- even just to spend a few hundred dollars -- were sufficient to silence me, in part.

The same problems arose in 2010 when Ari Armstrong and I wanted to significantly revise and expand our paper for Amendment 62. Instead working for weeks on the new paper for free, we used a new business model that I'd developed in the meantime to solicit pledges to fund the project. People who supported our work could pledge to fund it in any amount they chose. If \$2000 or more was pledged in total, we would update and expand the policy paper. People would only pay their pledges if we completed the work by the deadline. Much to our delight, we received 63 pledges, ranging from \$4 to \$300, for a total of \$2795. These contributors agreed with our position, and they wanted us to speak for them in defense of abortion rights.

Ari and I were enthused and motivated by these pledges. They were concrete proof that we weren't alone: other people cared about what we were doing and supported us with their own hard-earned dollars. Plus, we were very grateful to be able to pay ourselves for the many hours of work required to revise, publish, and promote the new paper. With these funds, we could also buy Facebook ads to promote the paper.

Alas, my enthusiasm wore off quickly when I remembered the reporting requirements for “issue committees.” Once again, I had trouble finding the rules: I had to call the office of the Secretary of State to be pointed to their location on the web site. When I realized that I'd have to report the names and addresses of most of our contributors, I was deeply distraught. That reporting of personal information was required for any contribution of \$20 or more. For contributions of \$100 or more, I had to report the person's employer and its address too.

I was upset because such reporting violated the privacy of my contributors. As part of their right to free speech, people should be able to speak anonymously — or fund the speech of others anonymously. These campaign finance regulations forbid that for any contribution of \$20 or above, and that's wrong. Voters do not have a right to know the sources of funding for other people's political speech, any more than your neighbor has a right to know what you got for your birthday or what you buy at the bookstore.

Moreover, I feared serious harm might come to my contributors from this invasion of their privacy. Due to the furor over abortion in some quarters, the publication of personal information about my contributors made them easy targets for harassment or even violence by anti-abortion activists. Would you be willing to risk your life or your job in order to donate

\$25, \$50, or \$100 to a political cause? That's what my contributors were asked to do, and that's not reasonable.

On a more personal level, I was disheartened by the prospect of compiling and filing the reports. I knew that process would be far more onerous this time than in 2008. It was even worse than I expected, however, for reasons that I will explain shortly.

For a while, I considered canceling the project entirely. However, I couldn't stand the thought of being silenced by these campaign finance regulations. Instead, I decided to inform every pledger of the reporting requirements, then allow them to cancel or decrease their pledges, if they wished to preserve their privacy. Most were shocked and angered that the state of Colorado required me to gather and publish their personal information in order to accept their support for my work. Some reduced their pledges to be below the \$20 and \$100 thresholds. Most didn't want to be silenced, so they reaffirmed their commitment to pay what they'd pledged. A few were even so angry that they increased their pledges.

Consequently, Ari and I went forward with the project, revising and expanding the paper into a robust 43-page defense of abortion rights titled “The 'Personhood' Movement Is Anti-Life: Why It Matters that Rights Begin at Birth, Not Conception.” I was — and still am — extremely proud of that paper. Yet the burden imposed on me by these campaign finance regulations was almost too heavy to bear.

To comply with the law, I spent hours filling out and faxing paperwork to open bank and PayPal accounts for the Coalition for Secular Government. Then, once contributors began to pay their pledges, I had to compile and submit reports to the state every two weeks. Each report required a few hours of my time, and each was due a mere two to three business days after the close of the reporting period. To file the reports, I had to keep an extra set of books in an Excel spreadsheet, just so that I could track my contributions and expenditures in the format required for the reports. Of course, the reports for the state never quite matched my own records on the first try, so I'd have to double-check and triple-check every entry. I had to e-mail contributors for their addresses, and sometimes for places of work. Sometimes, finding the address of a business was a difficult chore: I was in a panic at 11:30 pm on the night that a report was due, desperately trying to find a physical address for Facebook. Even once I'd gathered all that information, the process of inputting it into the system — typing in address after address — was a major chore.

To add insult to injury, I was petrified of making a mistake with every report I filed. Too much was unknown to me — for example, the Facebook ads for the paper were paid for on my personal credit card, so should I report that as an expenditure when that credit card was billed, when it was paid, or when I reimbursed myself? When should I report contributions sent as checks — when I picked them up from the post office or when I deposited them in my account? If a person wrote two checks for \$19, would I have to report his name and address if I received and/or deposited them on the same day? I didn't know the answers to those questions, and I couldn't afford to consult a lawyer. I could only try to be careful — and hope for the best.

However, I forgot to file my first report for a few days, due to a mess of other pressing problems in my life from a backed up septic pipe in the house to scheduled travel to the east coast. In addition, I didn't have all the information that I needed for that report, including the addresses of many contributors. On realizing my error, I was in a state of dull panic for days, worrying that the \$1000 I'd earned for writing the paper — if not more from my personal funds — would vanish in a puff of \$50-per-violation-per-day fines. So I begged for a waiver. That was degrading, but I was desperate, particularly because I had no idea how some unknown state employee would judge my failure to file the report on time. Much to my relief, the waiver was granted some weeks later.

Those experiences strongly discouraged me from raising and spending more money to oppose Amendment 62, as I would have done otherwise. I could have asked for contributions to fund more Facebook ads, for example, but I didn't want to have to file more reports. I was simply weary of and disgusted by the whole process.

In short, compliance with the campaign finance laws consumed hours of my life — hours that I could have spent promoting the paper, writing op-eds, working on other projects, or even just watching a movie with my husband. With every dollar contributed or expended, I risked fines that I couldn't afford to pay. I was unable to speak as a matter of right, but rather only by government permission. I felt the pressure to just give in and give up — to say nothing — very keenly.

How many other ordinary citizens decline to speak out on ballot measures due to these regulations? I can't give you numbers, but as one of those ordinary citizens, I can tell you that the chilling effect is very real.

Now, I'd like to turn to the proposed revisions to these regulations, whereby the reporting threshold would be increased from \$200 to \$5000 for total expenditures or contributions. By that new standard, the Coalition for Secular Government would have been exempt from filing in 2008 and 2010. As far as I'm concerned, that's not good enough: you're tacking up curtains on a house too ugly for anything but the wrecking ball.

Unfortunately, our state constitution forbids full recognition and respect for free speech rights in its demand for campaign finance regulations. However, the Secretary of State can and ought to make those regulations minimally intrusive and minimally burdensome. The proposed revisions do not do that: the reforms must go deeper.

So what's wrong with the proposed revisions?

First, the proposed threshold of \$5000 in total expenditures and contributions is far too low. A grassroots group without any resources or employees — such as the Coalition for Secular Government — could easily exceed that amount in contributions or expenditures, just to expose a few thousand voters to its message.

Second, the threshold will burden even groups who never exceed it. Groups under the threshold will be obliged to monitor total contributions and expenditures on work related to ballot measures just to ensure that they're not obliged to report — or risk huge fines.

Third, such a threshold would encourage small groups not to collect or spend more than \$5000, so as not to be burdened by onerous and invasive reporting requirements. As such, their speech would be silenced, as if by a glass ceiling set at \$5000.

Fourth, once a group reaches the \$5000 threshold, the reporting requirements are just as intrusive and onerous as they are now — meaning far too intrusive and onerous. Every \$20 contribution will have to be reported, as well every \$20 purchase at Office Depot. That is not required by the Colorado constitution, and it ought to stop.

Instead of the proposal made, I ask the Secretary of State to reject the whole notion of a threshold for reporting based on total contributions or expenditures. Instead, to comply with the Colorado constitution, only require the reporting of single donations and expenditures when over some significant amount, say \$5000. Moreover, full addresses should not be required for either contributions or expenditures. Instead, groups should only report names and perhaps cities.

Moreover, people attempting to speak out should not be subject to fines beyond their ability to pay — as with the current system of \$50 per day per violation. Instead, fines should be proportional to the actual expenditure or contribution — and require deliberate fraud, not mere mistake or ignorance.

Finally, a group's political opponents should not be able to drag them into court before an election over alleged campaign finance violations in order to silence them, as happened to the proponents of Amendment 48, and surely happens to others routinely.

With such changes to the campaign finance regulations, ordinary citizens in Colorado would be far more free to speak out on political issues than they are now. Under the present system, only large groups with millions of dollars — armed with lawyers to advise them on the law and assistants to compile and file reports — can afford to speak freely. The rest of us — ordinary citizens like me — are burdened and intimidated into silence. That flatly contradicts the stated purpose of campaign finance regulations in the Colorado constitution — and the changes proposed by the Secretary of State would only perpetuate that wrong.

Hence, I urge the Secretary of State to reform the current system of campaign finance regulations for “issue groups” in a substantial way, not merely as proposed. If these regulations must exist, make them minimally intrusive and burdensome so as to protect the free speech right of ordinary Colorado citizens.

Links:

Coalition for Secular Government:
<http://www.seculargovernment.us/>

Coalition for Secular Government on Amendment 48 (2008):
<http://www.seculargovernment.us/a48.shtml>

Coalition for Secular Government on Amendment 62 (2010):
<http://www.seculargovernment.us/a62.shtml>

Opponents of Amendment 48 Silencing Proponents Using Campaign Finance Regulations:
<http://archive.squarestate.net/diary/6961/amendment-48-campaign-eggendment-fined-for-campaign-finance-violations>

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