DATE FILED: August 11, 2016 12:03 PM
FILING ID: 4AB6314A32A00
CASE NUMBER: 2016SC637

COLORADO SUPREME COURT Colorado State Judicial Building 2 East 14th Avenue Denver, CO 80203	
Colorado Court of Appeals, Case No. 2014CA2073 Judges Taubman, Jones, and Harris Office of Administrative Courts, Case No. OS2014-0008 Hon. Robert N. Spencer, Administrative Law Judge	
Petitioner: COLORADANS FOR A BETTER FUTURE, v. **Respondents:** CAMPAIGN INTEGRITY WATCHDOG, and OFFICE OF ADMINISTRATIVE COURTS.	▲ **COURT USE ONLY** ▲
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PETITION FOR WRIT OF CERTIORARI	

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition complies with all applicable requirements of C.A.R. 32 and 53, including all formatting requirements set forth in these rules. I also certify that this Petition contains 3,644 words, excluding material not counted under C.A.R. 28(g)(1).

s/ Paul M. Sherman
Paul M. Sherman

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Petitioner Coloradans for a Better Future (CBF) seeks a writ of certiorari to review the judgment of the Colorado Court of Appeals in this case.

ISSUE PRESENTED

Whether the Court of Appeals erred in concluding that pro bono and reduced-cost legal services are "contributions" within the meaning of Colorado's campaign-finance laws.

OPINIONS BELOW

The decision of the Court of Appeals is reported at *Campaign Integrity Watchdog v. Coloradans for a Better Future*, --- P.3d ----, No. 14CA2073, 2016COA51, 2016 WL 1385200, 2016 Colo. App. LEXIS 460 (Colo. App. Apr. 7, 2016), and is attached to this Petition at Appendix A. The decision of the Office of Administrative Courts, OS2014-0008 (Office of Admin. Cts., Sept. 9, 2014), is published on the Secretary of State's website at http://tracer.sos.colorado.gov/PublicSite/SearchPages/ComplaintDetail.aspx?ID=319.

JURISDICTION

The Court of Appeals issued its decision on April 7, 2016. CBF sought an extension of time to file a petition for rehearing, which was granted on April 22, 2016. CBF timely petitioned for rehearing on May 19, 2016, and that petition was

denied on July 14, 2016. This petition is timely filed under C.A.R. 52(b)(3). This Court has jurisdiction under C.R.S. § 13-4-108.

INTRODUCTION

This case raises a pure question of law that is of vital importance to virtually every political speaker in the State of Colorado: Is the provision of pro bono or reduced-cost legal aid a "contribution" within the meaning of Colorado's campaign-finance laws? The Court of Appeals—against the urging of the Colorado Secretary of State and the plain text of Colorado law—concluded that such legal aid is a contribution. That ruling was error, and this Court should grant certiorari to correct it.

The consequences of the decision below are profound and extend far beyond the parties to this case. Colorado currently has over 1,600 active political groups. For those that are subject to contribution limits, such as political committees and small-donor committees, the ruling will sharply limit their ability to rely on pro bono or reduced-cost legal aid, both of which are vital to groups seeking to navigate Colorado's campaign-finance laws. Even for groups that are not subject to contribution limits, the ruling exposes them to abusive litigation under Colorado's unusual private-complaint system. Respondent Campaign Integrity Watchdog (CIW), for example, has filed more than 50 campaign-finance lawsuits in recent

years, with the avowed mission of waging "political guerilla legal warfare (a.k.a Lawfare)" against its founder's political opponents.[1]

The ruling below also raises serious issues under both the First Amendment and the Supremacy Clause of the U.S. Constitution. Indeed, the only other court to have considered a similar regime, in Washington State, held it unconstitutional just last year. *Inst. for Justice v. State*, No. 132101527, 2015 WL 1331982 (Wash. Super. Ct. Feb. 20, 2015). All of these problems can easily be avoided, however, by adopting an interpretation of Colorado campaign-finance law that excludes pro bono or reduced-cost legal services from the definition of "contribution." Not only is this interpretation possible; it is by far the more natural reading of the law. Accordingly, to ensure that political speakers in Colorado have access to necessary and constitutionally protected legal services, this Court should grant certiorari and correct the Court of Appeals' interpretation.

STATEMENT OF THE CASE

This case is the fourth lawsuit prosecuted by former political candidate Matthew Arnold—either personally or through his organization CIW—against Coloradans for a Better Future (CBF), a political organization that in June 2012

[1] Matt Arnold, *Turning the Tables: Fighting Back against the Left's Lawfare in Colorado*, Common Sense News (Feb. 2014), B-7, https://issuu.com/avinnola/docs/csn_digital_press_ed_feb_14.

criticized Arnold's fitness for public office. App. 2. Filed in April 2014—nearly two years after CBF had engaged in electoral activity of any kind—this fourth case alleges that CBF should have disclosed as a "contribution" the value of time spent by its former attorney when, for no charge, he helped the organization file its termination document with the Secretary of State.

Convinced that they had properly terminated their political organization and were therefore no longer subject to further abusive lawsuits by CIW, CBF did not enter an appearance to defend against this latest lawsuit. Despite not filing a brief, CBF prevailed before the administrative court, which dismissed CIW's complaint. Final Agency Decision, *Campaign Integrity Watchdog v. Coloradans for a Better Future*, OS2014-0008 (Office of Admin. Cts. Sept. 9, 2014).

CIW appealed, arguing that any pro bono or discounted legal aid provided to a political organization is a political "contribution." Insolvent, defunct, and unable to secure volunteer legal counsel due to Arnold's practice of filing bar complaints and sanctions demands against its attorneys, CBF did not file an appellee's brief. *See* Pet. for Reh'g 8, 2014CA2073 (Colo. App. filed May 19, 2016). The Secretary of State, however, twice sought to intervene. The Court of Appeals denied the Secretary intervention, relegating the Secretary to filing an amicus brief, which argued that the legal services rendered to CBF were not reportable campaign

contributions. Br. of *Amicus Curiae* Colo. Sec'y of State 5-9, 2014CA2073 (Colo. App. filed May 8, 2015).

The Court of Appeals reversed the administrative court's decision and ruled that legal aid to a political organization qualifies as a political contribution whenever it is either pro bono or "billed but not paid." App. 20. The court based its decision on two provisions in the Fair Campaign Practices Act's definition of "contribution." First, the Act defines "contribution" to include "[a]ny payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization." C.R.S. § 1-45-103(6)(c)(I). The Court of Appeals determined that pro bono or discounted legal aid is a "gift." App. 19-20. The court did not acknowledge that the Secretary of State had submitted a brief disagreeing with that interpretation.

The Court of Appeals then went beyond the arguments in CIW's briefing and relied on another statutory provision, which CIW itself had not invoked. App. 19-20. That provision, C.R.S. § 1-45-103(6)(b), defines contributions to include certain services to *candidate committees* for which the service provider receives less than full consideration. The statutory provision is silent as to groups like CBF, which is not a candidate committee but rather was classified as a "political organization" under Colorado law. Even so, the Court of Appeals held that this

provision supplied an independent basis for concluding that CBF received a reportable contribution. App. 19-20.

Out of concern for the profound impact the Court of Appeals' ruling will have on parties not before the court, the Institute for Justice, a public-interest law firm, petitioned for rehearing on CBF's behalf. For a third time, the Secretary of State sought to intervene, citing the pressing need for "adversarial briefing on a fundamental question of statutory and constitutional interpretation before this Court—briefing that the Court has not heretofore permitted in this case." Sec'y's Mot. to Intervene 11-12, 2014CA2073 (Colo. App. filed Apr. 21, 2016). The Court of Appeals denied CBF's petition for rehearing and denied the Secretary's renewed request to intervene.

REASONS FOR GRANTING THE PETITION

The decision of the Court of Appeals will seriously harm hundreds of political speakers who are not before the court. Political speakers throughout Colorado rely on pro bono or reduced-cost legal services to navigate Colorado's complex system of campaign-finance laws, and election-law attorneys provide these services as an ordinary part of their practice. The Court of Appeals' decision—combined with Colorado's laws that allow "any person" to prosecute

enforcement suits—exposes all of those groups and attorneys to abusive lawsuits that are designed to harass them into silence.

The decision of the Court of Appeals also raises serious constitutional problems. By burdening the right of political speakers to access legal aid, including pro bono legal aid rendered in federal civil-rights litigation, the court's interpretation of Colorado law violates both the First Amendment and the Supremacy Clause of the U.S. Constitution. These problems are easily avoided, however, by interpreting Colorado's campaign-finance laws to exclude such services. This interpretation is not only permissible; it is far more natural.

Finally, there are no vehicle problems with this case. This case presents pure questions of law, all of which can be decided on the existing record despite the fact that CBF did not file briefs on the merits below. The arguments that CBF is presenting are not new; they merely build on arguments the Secretary of State made below. Moreover, it would be fundamentally inequitable to punish CBF for its failure to secure legal counsel below, when CBF's inability to engage in the adversarial process was caused in significant part by Respondent CIW's serial abuse of this State's judicial system.

I. The Court of Appeals' Ruling Harms Political Speakers Throughout Colorado.

Before terminating in 2014, Petitioner CBF was one of more than 1,600 political organizations or committees currently registered with the Colorado Secretary of State.[2] All of these groups are subject to a campaign-finance regime that both the Secretary of State and the U.S. Court of Appeals for the Tenth Circuit have described as "complex." *Sampson v. Buescher*, 625 F.3d 1247, 1260 (10th Cir. 2010); *see also id.* ("[T]he official who oversaw the Secretary of State's campaign finance department testified that she advises those with difficult questions to retain an attorney."). For this reason, political candidates, committees, and organizations routinely rely on legal aid—much of which is provided pro bono or at reduced costs—to navigate this regulatory minefield.

The ruling below will make providing this legal aid substantially more difficult and, in some cases, impossible. Hundreds of groups regulated under Colorado's campaign-finance laws are limited in the size of contributions they may accept. Committees for State House and Senate candidates, for example, may not accept more than $400 in contributions per election cycle from any person. 8 Colo.

[2] A TRACER search conducted on August 10, 2016, disclosed 770 candidate committees, 312 political committees, 157 issue committees, 136 party committees, 134 small-donor committees, 69 independent-expenditure committees, and 55 political organizations.

Code Regs. 1505-6:10.16.1(g). For small-donor committees, the cap is $50 per year. *Id*. Even a single hour of pro bono legal assistance could easily exceed these limits.

Even for those groups that are not subject to contribution limits, the court's ruling creates severe problems. As evidenced by the affidavits of 10 prominent election-law attorneys from across the political spectrum, the ruling below will not only result in lawyers' providing far less pro bono service than they currently provide, but will also prohibit them from engaging in commonplace practices, such as reducing their fees in the exercise of billing discretion. Exs. A-G to Mot. for Stay, 2014CA2073 (Colo. App. filed July 28, 2016). Private lawyers routinely offer discounts, or reduce fees, or choose not to sue non-paying clients. *See generally* J. Randolph Evans et al., *Deciding When to Sue a Client for Unpaid Fees*, 44 The Colo. Law. (No. 7) 127, 128 (July 2015). Yet campaign-finance attorneys who make any of these business decisions will now expose themselves—or their clients—to litigation over illegal or misreported "contributions."

And given Colorado's unusual private-enforcement system, the threat of this litigation is especially high. Respondent CIW, for example, is a serial abuser of Colorado's private-complaint system, filing dozens of "lawfare" complaints over

mostly trivial reporting errors. *E.g.*, Decision 2, *Campaign Integrity Watchdog v. Colo. Republican Party PAC*, OS2016-0002 (Office of Admin. Cts. Apr. 12, 2016) (complaint requested $36,000 penalty for reporting errors involving two $3 contributions), *available at* http://tracer.sos.colorado.gov/PublicSite/SearchPages/ComplaintDetail.aspx?ID=389. This February, CIW's founder, Matthew Arnold, threatened litigation against a political group if it did not pay him a $10,000 "settlement," warning that, otherwise, "'the beatings will continue until morale improves.'"[3] Even when these complaints fail, speakers are irreparably harmed by having spent thousands in legal fees to defend themselves. And according to Arnold, that alone is "a definite 'win' for the attackers."[4]

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[3] Corey Hutchins, *Watchdog or bully? How a $10,000 fine led to a GOP blowup*, Colo. Indep. (Feb. 25, 2016), http://www.coloradoindependent.com/157936/watchdog-or-bully-how-a-10000-fine-led-to-a-gop-blowup.

[4] Arnold, *Turning the Tables*, *supra* n.1, at B-4 ("[W]aging 'Lawfare' doesn't even require courtroom victories – if opponents can be distracted, forced to divert resources (time & money), and get smeared in the (often-complicit) media – then it's a definite 'win' for the attackers."); *see also* Matthew Arnold Speech, Jefferson Cty. Republican Men's Club (Oct. 19, 2015), at 34:20-34:40 ("Mainstream Colorado is no more, because Matt Arnold and Campaign Integrity Watchdog took them to task, took them to court, beat them up, made Mark Grueskin spend his time and money, and even though the judge bought the line that 'the dog ate their homework,' they shut down."), http://jeffcorepublicanmensclub.org/Videos/videos_October_2015.html; Matthew Arnold Interview, *Grassroots Radio Colorado* (Feb. 25, 2014), at 42:31-42:46 ("Campaign Integrity Watchdog will be very active in the coming months, and a few folks that are of the, shall we say, 'progressive'

The decision below will deprive many of Arnold's victims of the very thing they need most: access to free or reduced-cost legal aid to help them comply with the law and to defend against lawsuits that are designed to harass or intimidate them into silence.

II. The Court of Appeals' Ruling Raises Serious Problems Under the U.S. Constitution, All of Which Can Be Avoided by a More Natural Interpretation of the Law.

A. Because of its drastic consequences for political speakers throughout Colorado, the Court of Appeals' decision to treat pro bono legal aid as a political "contribution" raises serious First Amendment and Supremacy Clause issues. Indeed, the only other court to consider a similar regime recently held it unconstitutional. *Inst. for Justice v. State*, No. 132101527, 2015 WL 1331982 (Wash. Super. Ct. Feb. 20, 2015). Like this case, that case involved an effort to require a political organization to disclose as contributions the value of pro bono legal services it had received.

As the plaintiffs successfully argued in that case, categorizing pro bono aid as "contributions" presents serious First Amendment concerns, not only for the

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persuasion will probably end up spending a lot of money in places they hadn't planned on spending money."), https://soundcloud.com/libertycast/grassroots-radio-colorado-160.

groups receiving the aid, but also for the lawyers providing it. The U.S. Supreme Court has held that the provision of pro bono legal services is itself an important form of speech and association. *In re Primus*, 436 U.S. 412, 426-28 (1978). Speakers rely on pro bono legal aid to protect and vindicate their rights, and lawyers routinely provide such aid to promote broader societal goals.

The Court of Appeals' interpretation of "contribution" to include pro bono legal aid obviously burdens these activities. Foremost, and as already discussed, the court's ruling will preclude pro bono representation whenever the value of that representation exceeds Colorado's contribution limits, even if that representation is necessary for ordinary citizens to exercise or vindicate their First Amendment rights. *Supra* 8-9.

Because the Court of Appeals' interpretation would also apply to pro bono services rendered in federal civil-rights lawsuits, the ruling also creates serious federal preemption problems. Section 1983 "throw[s] open the doors of the United States courts" to those "threatened with … the deprivation of constitutional rights." *Patsy v. Bd. of Regents of Fla.*, 457 U.S. 496, 504 (1982) (internal quotation marks omitted). "Since the purposes and objectives of § 1983 are themselves broad ... the preemptive sweep of § 1983 is obviously considerable." *Beeks v. Hundley*, 34 F.3d 658, 661 (8th Cir. 1994).

Under the Court of Appeals' interpretation, however, Colorado law conflicts with this "preemptive sweep" by inhibiting legal aid to politically engaged speakers. Charities like the Institute for Justice, for example, are prohibited from making political contributions or engaging in partisan activity, and must be careful to avoid even the appearance of such activity. Requiring political entities to report "contributions" from such charities creates precisely this appearance and misleads the public. The Institute for Justice in this case, for example, has no interest in the outcome of the 2012 Republican primary for Colorado University Board of Regents, the race that led to Arnold's lawsuits against CBF. But if CBF were forced to identify the Institute for Justice as a "contributor," it would create the impression that the Institute supported CBF's specific political goals, rather than its First Amendment rights.

B. Neither of these conflicts with the First Amendment and the Supremacy Clause is compelled by the language of Colorado's campaign-finance laws. Quite the opposite; both provisions on which the Court of Appeals relied are subject to a more natural reading that avoids these constitutional problems.

The court's reliance on Section 1-45-103(6)(b) was clearly incorrect, because that section, on its face, applies only to candidate committees, not to political organizations like CBF. Although that section defines contribution to

include certain services "for which the contributor receives compensation or consideration of less than equivalent value," the value of those contributions is set in an amount "as determined by the *candidate committee*." C.R.S. § 1-45-103(6)(b) (emphasis added). The ruling below ignored the phrase "candidate committee," rendering it surplusage. In doing so, the Court of Appeals not only expanded the scope of the law to include nearly 1,000 additional active political committees and organizations that would otherwise be excluded; it also violated "the well-established rule of statutory construction that the entire statute is intended to be effective." *Flower v. People*, 658 P.2d 266, 268 (Colo. 1983) (citation omitted).

The other provision on which the court below relied, Section 1-45-103(6)(c)(I), is similarly inapplicable. That section states that "contribution" includes "[a]ny payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization." The Secretary addressed this section in its amicus brief, noting that it plainly was "concerned with monetary donations" and therefore "d[id] not apply" to pro bono or reduced-cost legal services. Br. of *Amicus Curiae* Sec'y of State 8, 2014CA2073 (Colo. App. filed May 8, 2015). The Court of Appeals, however, concluded that such services constitute a "gift" and are therefore contributions.

Here again, the court's interpretation ignored important statutory language, specifically the words surrounding "gift." Notably, the other statutory terms—payments, loans, pledges, advances, guarantees—all commonly denote transfers of money. Under the canon *noscitur a sociis*, these words "provide[] strong evidence" that the Legislature intended a similar meaning for "gift." *Young v. Brighton Sch. Dist. 27J*, 325 P.3d 571, 579 (Colo. 2014). That interpretation is also more consistent with the plain meaning of "gift," which ordinarily refers to a "voluntary transfer of *property* to another without compensation." *Black's Law Dictionary* (10th ed. 2014) (emphasis added). This is undoubtedly why the Secretary thought it obvious that Section 1-45-103(6)(c)(I) deals exclusively with monetary support.

This Court has been clear that "if a statute is capable of alternative constructions, one of which is constitutional, then the constitutional interpretation *must* be adopted," *People v. Zapotocky*, 869 P.2d 1234, 1240 (Colo.1994) (en banc) (emphasis added). As the foregoing demonstrates, both sections on which the Court of Appeals relied are not just *capable* of an alternative construction that excludes pro bono or reduced-cost legal services; they are far more naturally read to exclude such services. Accordingly, the Court of Appeals' decision was error, and this Court should grant certiorari to correct that error.

III. This Case Is a Suitable Vehicle in Which to Resolve These Issues.

As demonstrated above, the ruling below represents a significant and textually unwarranted expansion of Colorado's campaign-finance laws to cover legal services that, to date, have never been treated as contributions. The need for correction is pressing, and will only grow more so as the current campaign season progresses. Because the ruling below will be treated as binding precedent in the Office of Administrative Courts, any group targeted by CIW or a similar complainant for failure to properly disclose "contributions" of legal services will be forced to litigate for months or even years before they can seek review in this Court. If those groups are subject to contribution limits, they will not even be permitted to turn to pro bono or discounted aid to defend themselves.

The only way to avoid that harm is to grant certiorari in this case. And this Court should not be dissuaded from doing so merely because CBF lacked the resources to file briefs below. This case presents pure questions of law, with no factual disputes. And the legal issues themselves are not new—they were raised by the Secretary in his amicus brief and actually considered by the court below.

To deny CBF's petition because of its failure to file briefs below would also result in manifest injustice, because CBF's delay was attributable to Respondent CIW's abuse of the judicial process. *See* C.A.R. 2. CIW's founder, Matthew

Arnold, has pursued four cases against CBF in retaliation for comments on his fitness for public office. Three were filed despite CBF's insolvency and long after any relevant election. Arnold has also taken astonishing steps to punish any attorney who defends CBF. He subpoenaed CBF's first lawyer, then filed disciplinary complaints against both lawyers who represented CBF, demanding they be disbarred. Pet. for Reh'g 8, 2014CA2073 (Colo. App. filed May 19, 2016). Because CBF is insolvent, is disbanded, and no longer has any formal officers, neither of CBF's previous attorneys was willing to commit the time—or risk additional bar complaints and personal subpoenas—to defend this case. That CBF failed to defend against this fourth lawsuit is thus a direct consequence of Arnold's abusive litigation tactics.

Unless this Court grants certiorari, other groups will undoubtedly suffer the same manifest injustice. Arnold is far from the only abuser of Colorado's private-complaint system; others, while less prolific, have used and will continue to use the private-enforcement system as a means of silencing their political opponents. If the targets of these attacks are denied access to pro bono or reduced-cost legal services, many of these speech-retaliatory efforts will succeed, and both the integrity of this State's courts and its political discourse will suffer as a result.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Dated: August 11, 2016.

Respectfully submitted,

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APPENDIX

COLORADO COURT OF APPEALS **2016COA51**

Court of Appeals No. 14CA2073
Office of Administrative Courts Case No. OS 2014-0008

Campaign Integrity Watchdog,

Plaintiff-Appellant,

v.

Coloradans for a Better Future,

Respondent-Appellee,

and

Office of Administrative Courts,

Appellee.

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

Division I
Opinion by JUDGE TAUBMAN
J. Jones and Harris, JJ., concur

Announced April 7, 2016

Matthew Arnold, Denver, Colorado, Authorized Representative of Campaign Integrity Watchdog

Cynthia H. Coffman, Attorney General, Frederick R. Yarger, Solicitor General, Matthew D. Grove, Assistant Solicitor General, Denver, Colorado, for Amicus Curiae

¶ 1 This is the fourth in a series of complaints brought by claimant, Campaign Integrity Watchdog (CIW), or its principal officer, Matthew Arnold, against Coloradans for a Better Future (CBF), a political organization under section 1-45-103(14.5), C.R.S. 2015, to challenge CBF's alleged failure to report contributions and spending. In 2012, Arnold lost the Republican primary election for University of Colorado Regent to Brian Davidson. During the run-up to the primary election, CBF purchased a radio advertisement supporting Davidson and other radio advertisements containing messages unfavorable to Arnold. After the election, Arnold, and later CIW with Arnold as its principal officer, filed a series of complaints with the Colorado Secretary of State (Secretary) alleging violations of the Fair Campaign Practices Act (FCPA).

¶ 2 CIW now appeals the decision of the administrative law judge (ALJ) concluding that no reporting violations for both billed and donated legal services had been established on the part of CBF.[1]

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[1] Pursuant to section 13-1-127(2), C.R.S. 2015, an officer of a closely held entity may represent the entity when: (1) the amount at issue does not exceed fifteen thousand dollars, exclusive of costs, interest, or statutory penalties, on and after August 7, 2013 and (2) the officer provides evidence satisfactory to the court of the officer to

Specifically, CIW challenges CBF's spending on legal fees in 2012 and 2013, as well as donated legal services in 2013 and 2014. We affirm in part, reverse in part, and remand to the ALJ for further proceedings.

I. Background

¶ 3 CIW appeals the rejection of its fourth complaint against CBF. In the first complaint, *Arnold v. Coloradans for a Better Future*, No. OS 2012-0024 and No. OS 2012-0025 (O.A.C. Jan. 11. 2013), the ALJ imposed a penalty of $4525 for CBF's failure to report certain electioneering communications.

¶ 4 In the second complaint, *Arnold v. Coloradans for a Better Future*, No. OS 2013-0007 (O.A.C. Dec. 26, 2013), Arnold alleged that CBF did not report in April 2013 the legal services it received to defend the first case as either contributions or expenditures. An ALJ found that Arnold did not prove any violation because there was no evidence that CBF paid for legal services as part of any

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appear on behalf of the closely held entity. Arnold responded to an order to show cause from our court, and after he established the requirements of section 13-1-127, the court discharged the order to show cause. Therefore, although Arnold is not an attorney, he is able to represent CIW in this case.

express advocacy. A division of our court affirmed in *Arnold v. Coloradans for a Better Future*, (Colo. App. No. 14CA0122, Feb. 5, 2015) (not published pursuant to C.A.R. 35(f)).[2]

¶ 5 In the third complaint, *Campaign Integrity Watchdog v. Coloradans for a Better Future*, No. OS 2014-004 (O.A.C. Feb. 25, 2015), CIW alleged that CBF failed to accurately report contributions it had received and expenses it had incurred to pay Arnold's court costs from an earlier case. The case was continued pending CBF's response to a subpoena duces tecum.

¶ 6 In the fourth and present case, CIW alleges that CBF did not report in April 2013, July 2013, October 2013, and January 2014 legal services it had received as either contributions or spending. An ALJ held a hearing on September 2, 2014, at which CBF did not appear. Nevertheless, the ALJ found in favor of CBF.

¶ 7 CBF did not file an answer brief in this appeal, but the Secretary filed a brief as amicus curiae in support of the ALJ's ruling.

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[2] Matthew Arnold formed CIW by filing its Articles of Organization pursuant to sections 7-80-203 and 7-80-204, C.R.S. 2015, in August 2013.

II. Mootness

¶ 8 We ordered CIW and the Secretary to show cause why we should not dismiss the appeal as moot. The record indicates that CBF was terminated[3] as a political organization on March 6, 2014 (before the ALJ issued his decision), and it was not clear to us that there was any practical relief that we could afford the organization if CIW were to prevail on appeal. Accordingly, we must first address whether this appeal is moot.

A. Applicable Law

¶ 9 A political organization may only terminate by filing a termination report if the organization's TRACER[4] account has a zero

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[3] "Terminate," a phrase used by the ALJ, is a term of art in the Secretary's regulations implementing the FCPA. *See* Dep't of State Reg. 1505-6, 8 Code Colo. Regs. 1505-6:4.4 (issue committees); 1505-6:12.3 (committees generally); 1505-6:18 (application penalties and violations for failure to comply); Colo. Sec. of State, *Colorado Campaign and Political Finance Manual* 34-35 (rev. July 2015), https://perma.cc/D792-UDVK. A political candidate, committee, or organization "terminates" and no longer exists when it files a termination report and meets certain criteria. *See* Dep't of State Reg. 1505-6, 8 Code Colo. Regs. 1505-6:4.4 (issue committees); 1505-6:12.3 (committees generally); 1505-6:18 (application penalties).

[4] The Colorado Secretary of State's Office developed a website called TRACER, an acronym for "Transparency in Contribution and Expenditure Reporting," to increase transparency of the campaign

balance, indicating that it has no cash or assets on hand and that there are no outstanding debts, penalties, or obligations. Dep't of State Reg. 1505-6, 8 Colo. Code Regs. 1505-6:12.

¶ 10 We normally refrain from addressing issues that have become moot because any opinion would not have a practical effect on an alleged controversy. *Trinidad Sch. Dist. No. 1 v. Lopez By & Through Lopez*, 963 P.2d 1095, 1102 (Colo. 1998).

B. Analysis

¶ 11 CIW contends that to conclude that a political organization that had filed a termination report could not be sued would lead to the absurd result that entities which were potentially liable for violating the FCPA could escape accountability by "terminating." We agree. Although CBF terminated its existence as a political organization before CIW filed its fourth complaint, we conclude the appeal is not moot.

¶ 12 The primary campaign finance law in Colorado is Article XXVIII of the Colorado Constitution, which was approved by the

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finance system to interested third parties, as well as to increase the efficiency of reporting for political candidates, committees, and organizations. *See* https://perma.cc/NG2H-2WZH.

voters in 2002. Article XXVIII imposes contribution limits, as well as reporting and disclosure requirements, and creates an enforcement process for violations of its provisions. Colorado also has the FCPA, §§ 1-45-101 to -118, C.R.S. 2015, which was originally enacted in 1971, repealed and re-enacted by initiative in 1996, substantially amended in 2000, and again substantially revised by initiative in 2002 as the result of the adoption of Article XXVIII. The Secretary further regulates campaign finance practices. *See* Dep't of State Reg. 1505-6, 8 Code Colo. Regs. 1505-6.

¶ 13 Neither the regulations nor the Colorado Campaign and Political Finance Manual, a manual produced by the Secretary which provides guidelines for proper compliance with campaign finance laws in Colorado, permits an entity to avoid potential liability for campaign finance violations by filing a termination report. *See* Colo. Sec. of State, *Colorado Campaign and Political Finance Manual* 34-35 (rev. July 2015), https://perma.cc/D792-UDVK; *see also* Dep't of State Reg. 1505-6, 8 Code Colo. Regs. 1505-6:4.4 (issue committees); 1505-6:12.3 (committees generally); 1505-6:18 (application penalties and violations for failure to comply). While the regulations and the manual only apply the term

"terminate" to candidates, candidate committees, and issue committees, the Secretary has applied "terminate" to political organizations, and we will do the same.

¶ 14 The Secretary notes that he routinely refers complaints filed against terminated entities to the Office of Administrative Courts (OAC), and the OAC typically resolves those cases on the merits. Indeed, section 9(2)(a) of article XXVIII states that "[a]ny person . . . may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation" and makes no distinction between active entities and terminated ones. While penalties imposed against a terminated political organization may prove difficult to collect, they are not mooted by a political organization's termination. *Cf. W. Spring Serv. Co. v. Andrew*, 229 F.2d 413, 420 (10th Cir. 1956) (under Colorado law, judgment against dissolved partnership is permissible). Concluding the appeal is not moot, we turn to the merits of the appeal.

III. Interpretation of Article XXVIII and FCPA

¶ 15 CIW raises two contentions on appeal: (1) the ALJ erred when he concluded that CBF did not need to report certain legal services as spending and (2) the ALJ erred when he concluded that CBF only

needed to report contributions that were for the purpose of promoting a candidate's nomination or election. We disagree with the first contention but agree with the second.

A. Standard of Review

¶ 16 We review de novo (1) statutory provisions, *Bryant v. Cmty. Choice Credit Union*, 160 P.3d 266, 274 (Colo. App. 2007); (2) constitutional provisions, *Rocky Mountain Animal Def. v. Colo. Div. of Wildlife*, 100 P.3d 508, 513 (Colo. App. 2004); and (3) an administrative agency's conclusions of law, *Specialty Rests. Corp. v. Nelson*, 231 P.3d 393, 392 (Colo. 2010).

B. Principles of Interpretation

¶ 17 We first determine whether statutory language or a constitutional provision has a plain and unambiguous meaning. *In re Great Outdoors Colo. Tr. Fund*, 913 P.2d 533, 538 (Colo. 1996); *Fischbach v. Holzberlein*, 215 P.3d 407, 409 (Colo. App. 2009).

¶ 18 "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). We read the statutory scheme as a whole to give

"consistent, harmonious, and sensible effect to all parts of the statute." *Salazar v. Indus. Claim Appeals Office*, 10 P.3d 666, 667 (Colo. App. 2000). We will not adopt a statutory interpretation that leads to an illogical or absurd result or is at odds with the legislative scheme. *Bryant*, 160 P.3d at 274.

¶ 19 Our duty in interpreting a constitutional amendment is to give effect to the electorate's intent in enacting the amendment. *Davidson v. Sandstrom*, 83 P.3d 648, 654 (Colo. 2004). We must give words their ordinary and popular meanings to ascertain what the voters believed the amendment to mean when they adopted it. *Havens v. Bd. of Cty. Comm'rs*, 924 P.2d 517, 522 (Colo. 1996).

C. Spending and Expenditures

¶ 20 The ALJ found that CBF either spent money on legal services in 2012 or 2013 for defending the previous campaign finance complaints or "had a contractual obligation to pay [its attorney's] invoices" during that time. CBF did not report any of this spending. However, the ALJ concluded that the FCPA did not define spending, applied the definition of expenditure, and concluded that the money spent on legal fees fell outside of that category because it followed

the primary election for University of Colorado regent and therefore was not reportable.

¶ 21 CIW contends that the money CBF spent on legal fees was reportable. We disagree.

1. Applicable Law

¶ 22 A political organization must disclose "[a]ny spending by the political organization that exceeds twenty dollars in any one reporting period." § 1-45-108.5(1)(b), C.R.S. 2015.

¶ 23 The FCPA defines spending as

> funds expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and includes, without limitation, any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything else of value by any political organization, a contract, promise, or agreement to expend funds made or entered into by any political organization, or any electioneering communication by any political organization.

§ 1-45-103(16.5).

¶ 24 The Colorado Constitution defines expenditure as

> any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or

> supporting or opposing a ballot issue or ballot question. An expenditure is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined.

Colo. Const. art. XXVIII, § 2(8).

2. Analysis

¶ 25 CIW argues that because political organizations are required to report and disclose any spending in excess of twenty dollars in a reporting period, the ALJ erred in ruling that CBF did not commit any reporting violations. We disagree.

¶ 26 First, the ALJ erred in concluding that "spending" is not defined in the FCPA. Spending is defined as quoted above in section 1-45-103(16.5).

¶ 27 CIW and the Secretary both argue that money spent by a group that is formed with the express purpose of influencing political campaigns is, by definition, unambiguously campaign related. We disagree. First, we note that neither CIW nor the Secretary attempted to define "campaign related," a term not used in section 1-45-103(16.5). Second, the definition of spending has two parts. The first limits covered spending to spending for a particular purpose, specifically expending funds to influence or

attempt to influence "the selection, nomination, election, or appointment of any individual to any state or local public office in the state." § 1-45-103(16.5). Only if this purpose is met do we turn to the second part of the definition to determine if the spent funds were spent in a manner covered by the definition — that is, by "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything else of value by any political organization, a contract, promise, or agreement to expend funds made or entered into by any political organization, or any electioneering communication by any political organization." *Id.*

¶ 28 Both CIW and the Secretary misapprehend the definition of spending because they focus on the "means" part of the definition and disregard the "purpose" part of the definition. They focus on the broad language in the statute as to what constitutes spending and overlook the "purpose" part of the FCPA's spending definition, which establishes the parameters of that term.

¶ 29 We recognize that CBF was registered as a political organization under section 1-45-103. There can be no dispute that political organizations are formed for the purpose of engaging in political speech. § 1-45-103(14.5) (A "political organization" is

defined as one that is "engaged in influencing or attempting to influence the . . . election . . . of any individual to . . . public office."). However, while a political organization exists for the sole purpose of influencing elections, not all spending by a political organization is necessarily spent to influence or attempt to influence an election. *See Shays v. Fed. Election Comm'n*, 511 F. Supp. 2d 19, 30 (D.D.C. 2007) ("A 527 group, by definition, has the 'primary' purpose of raising or spending money to influence the election or appointment of an individual to a political office.").

¶ 30 Here, CBF spent money on legal services in 2012 or 2013 to defend the previous campaign finance complaints or "had a contractual obligation to pay [its attorney's] invoices" during that period. The funds were not "expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state." *See* § 1-45-103(16.5). Therefore, we conclude the money CBF spent on legal fees did not constitute reportable spending. *See Ryan Ranch Cmty. Ass'n, Inc. v. Kelley*, 2014 COA 37M, ¶ 52, ___ P.3d ___, ___ ("[W]e may affirm a correct judgment for any reason supported by the record.") (*cert. granted* June 29, 2015).

D. Contributions

¶ 31 The ALJ concluded that an attorney "rendered some amount of legal service to [CBF] in January 2014 for which he did not bill[.]" An attorney either donated legal services to CBF to prepare contribution and expenditure reports in late 2013 and early 2014 or he or she billed for, but did not collect on, legal services to CBF.[5] Applying article XXVIII, section 2(5)(a)(IV), the ALJ ruled that, to prevail, CIW needed to prove that the legal services were donated for the purpose of promoting a candidate's nomination or election. The ALJ then concluded that the legal services were not reportable in-kind contributions because they were donated after the 2012 election, and thus could not have been provided with the intent to promote the election of a candidate.

¶ 32 CIW contends the ALJ erred when he concluded that CBF needed to report only contributions that were for the purpose of promoting a candidate's nomination or election. CIW argues that the legal services constituted reportable contributions, and CBF therefore violated disclosure and reporting requirements. We agree.

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[5] From the record, we cannot discern whether the services were pro bono or billed and unpaid.

1. Applicable Law

¶ 33 The FCPA defines "political organization," as relevant here, as

> a political organization defined in section 527(e)(1) of the federal "Internal Revenue Code of 1986," as amended, that is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code.

§ 1-45-103(14.5).

¶ 34 Under the Internal Revenue Code, a political organization is "organized and operated primarily for the purpose of . . . influencing or attempting to influence" an election. 26 U.S.C. § 527(e)(1)-(2) (2012).

¶ 35 A political organization must disclose "[a]ny contributions it receives, including . . . each person who has contributed twenty dollars or more to the political organization in the reporting period, and . . . each natural person who has made a contribution of one hundred dollars or more to the political organization[.]"

§ 1-45-108.5(1)(a), C.R.S. 2015.

¶ 36 Contributions are defined in the Colorado Constitution:

> (a) "Contribution" means:
>
> (I) The payment, loan, pledge, gift, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, small donor committee, or political party;
>
> (II) Any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party;
>
> (III) The fair market value of any gift or loan of property made to any candidate committee, issue committee, political committee, small donor committee or political party;
>
> (IV) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate's nomination, retention, recall, or election.

Colo. Const. art. XXVIII, § 2(5)(a).

¶ 37 The FCPA also defines contribution:

> (a) "Contribution" shall have the same meaning as set forth in section 2(5) of article XXVIII of the state constitution.
>
> (b) "Contribution" includes, with regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to

> the value in excess of such compensation or consideration as determined by the candidate committee.
>
> (c) "Contribution" also includes:
>
> (I) Any payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization;
>
> (II) Any payment made to a third party on behalf of and with the knowledge of the political organization; or
>
> (III) The fair market value of any gift or loan of property made to any political organization.

§ 1-45-103(6).

2. Analysis

¶ 38 CIW argues that CBF failed to report the "in-kind" contribution of legal services and that the ALJ erred when he relied on one part of the constitutional definition of contribution, while ignoring the FCPA definition. We agree.

¶ 39 The ALJ noted that the FCPA adopts the constitutional definition of contribution, and applied section 2(5)(a)(IV) of article XXVIII to conclude that the legal services were not reportable in-kind contributions. But even if the ALJ correctly concluded that subsection (a)(IV) does not apply to the legal services at issue here,

we conclude the ALJ erred in not applying other applicable parts of the FCPA definition of contribution.

¶ 40 As noted, section 1-45-103(6)(a) incorporates the definition of contribution set forth in article XXVIII, section 2(5). While it is true that sections 2(5)(a)(I)-(III) of article XXVIII do not by their terms apply to political organizations, sections 1-45-103(6)(c)(I)-(III) mirror sections 2(5)(a)(I)-(III), expressly applying them to political organizations.[6] Section 1-45-103(6)(b) further explains the definition of contribution under the FCPA. Sections 1-45-103(6)(b) and (c)(I)-(III) do not include any purpose limitation, and therefore must be considered independently of any purpose limitation in section 2(5)(a)(IV).[7]

¶ 41 We agree with CIW that subsection (b) or (c)(I) of section 1-45-103(6) applies here. As noted above, subsection (b) covers "a contribution for which the contributor receives compensation or

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[6] We note that article XXVIII of the Colorado Constitution was approved by the voters in 2002. The FCPA was amended in 2007 to encompass political organizations as noted in sections 1-45-103 and1-45-108.5, C.R.S. 2015. *See* Ch. 289, sec. 1, § 1-45-103, 2007 Colo. Sess. Laws 1224; Ch. 289, sec. 3, § 1-45-108.5, 2007 Colo. Sess. Laws 1225.

[7] In this way, the definition of contribution in the FCPA differs from the definition of spending.

consideration of less than equivalent value to such contribution, including, . . . services" and subsection (c)(I) covers "[a]ny . . . gift . . . made to any political organization." It is undisputed that the legal services at issue here were either a gift of services for which less than equivalent value was received (if the services were billed but not paid) or they were pro bono services. Therefore, CBF received a contribution which it was required to report.

IV. Costs and Fees

¶ 42 CIW requests we award it reasonable costs and fees in bringing this appeal pursuant to section 1-45-111.5(2), C.R.S. 2015. However, section 1-45-111.5(2) does not apply to costs on appeal. Therefore, we deny CIW's requests for costs and fees.

V. Conclusion

¶ 43 We affirm the ALJ's conclusion that CBF did not need to report certain legal services as spending, reverse the ALJ's conclusion that CBF needed to report only contributions that were for the purpose of promoting a candidate's nomination or election, and remand to the ALJ for further proceedings consistent with this opinion.

JUDGE J. JONES and JUDGE HARRIS concur.

C.R.S. § 1-45-103

(6) (a) "Contribution" shall have the same meaning as set forth in section 2(5) of article XXVIII of the state constitution.

(b) "Contribution" includes, with regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee.

(c) "Contribution" also includes:

(I) Any payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization;

(II) Any payment made to a third party on behalf of and with the knowledge of the political organization; or

(III) The fair market value of any gift or loan of property made to any political organization.

CERTIFICATE OF SERVICE

I hereby certify that I have served this Petition for Writ of Certiorari on all parties herein by depositing copies of the same via ICCES or by United States mail, first-class postage prepaid, this 11th day of August, 2016, addressed as follows:

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