



CENTER *for* COMPETITIVE POLITICS

Congress shall make no law...

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CCP Files Complaint in the Fight for Free Speech in Colorado

Grassroots Group Inhibited by Vague Laws

Diana Hsieh is a doctor of philosophy who, together with her friend Ari Armstrong, wants to discuss her secular understanding of the principles of life, liberty, and property. To do this, Dr. Hsieh formed a nonprofit corporation, the Coalition for Secular Government (CSG).

As part of CSG's activities, Dr. Hsieh and Mr. Armstrong wrote a public policy paper discussing the moment at which civil rights ought to attach to human life. In order to garner interest in their philosophical position, Diana and Ari decided to make their arguments, in part, in the context of a proposed Colorado constitutional amendment which would grant civil rights to the unborn from the moment of conception. Over time, they updated the paper to take into account new developments surrounding this issue.

Even though CSG only ran a few Facebook ads promoting the policy paper, Diana feared that failing to register as a political committee with the government could bring about fines, investigations, and sanctions. So in both the 2008 and 2010 elections, CSG registered as an issue committee with the government before speaking about its philosophy of human life. CSG did this even though the most recent version of its paper only sported a single line recommending *any* political activity: "If you believe that 'human life has value,' the only moral choice is to vote against Amendment 62."¹

In 2010, Dr. Hsieh's house flooded and she was one day late in filing a contribution report to the Secretary of State. The government promptly fined her \$50, which was only waived after she appealed the decision to the Secretary. And simple compliance with Colorado's byzantine filing system frustrated Diana, and left her in constant fear of fines or lawsuits, just because she wanted to weigh in with her philosophical views.

This year, Diana and CSG plan to raise no more than \$3,500, nearly all of which will go toward updating and disseminating an expanded and updated copy of the public policy

¹ The current version of the paper is Ari Armstrong and Diana Hsieh, [The 'Personhood' Movement Is Anti-Life: Why It Matters that Rights Begin at Birth, Not Conception](http://www.seculargovernment.us/docs/a62.shtml), Coalition for Secular Government (2010) available at <http://www.seculargovernment.us/docs/a62.shtml>.

paper. Yet Colorado law may demand that CSG register as an issue committee, with all the paperwork and restrictions that status entails.

This cannot withstand constitutional scrutiny. Accordingly, the Center for Competitive Politics (CCP) filed a complaint with the United States District Court for the District of Colorado on July 2, 2012.

Colorado’s Laws are Unconstitutionally Vague

The Supreme Court has stated that an organization must have, as its “major purpose,” the influence of elections – otherwise, the state may not require it to submit to burdensome registration and disclosure requirements.

It seems like a simple matter of the English language: by definition, no entity or person can have multiple major purposes. Major derives from the phrase “majority,” that is, more than half. But Colorado has interpreted the Supreme Court’s requirement that Issue Committees have “a major purpose of supporting or opposing a ballot issue” as allowing entities to have as many as *three different* “major purposes.” As a result, organizations that may just spend *some* limited amount of time talking about politics—groups like the philosophically minded CSG—have no clear guidance as to when they must register as an issue committee. It is unconstitutional for the state to place political speakers at risk of punishment without providing sharp, bright line rules that can be easily understood and followed.

A Paradigm of Uncertainty

Furthermore, Colorado law is unclear as to whether or not a public policy paper is covered by the state’s expenditure laws or its press exemption. Does the dissemination of a policy paper qualify as an expenditure to further a political cause, just because the paper happens to discuss politics? The law does not say.

Political opinion that is more ideological, partisan, and political than CSG’s public policy paper is expressly covered by a broad media exemption. Yet, the law’s application to research or policy papers is unclear. CCP believes that the media exemption ought to apply to such materials, and that CSG need not register as an issue committee.

Colorado also maintains that registration of an issue committee may be mandated when an entity or person produces or funds a “written or broadcast communication.” But at what threshold? Federal courts look askance at using such proxy triggers. This again adds to the unlawful uncertainty of Colorado’s campaign finance regime.²

² *Colorado Right to Life Committee, Inc. v. Coffman*, 498 F.3d 1137 (10th Cir. 2007).

Colorado Ignores a Federal Court Decision

Even if we were to ignore all of the above, the Centennial State has refused to comply with a Federal court order that ought to make life easier for small, grassroots organizations like CSG.

Colorado has refused to take action to harmonize their disclosure and reporting laws with the Tenth Circuit's decision in *Sampson v. Buescher*.³ In that case, the Court found that the state's requirement that the full weight of Colorado campaign finance disclosure and reporting laws fall upon groups raising as little as \$200 was unconstitutional. In response, the Colorado Secretary of State attempted to raise that limit to \$5,000, but the Denver District Court found that the Secretary did not have the authority to make such a unilateral change.

So, even though CSG plans to raise and spend no more than \$3,500 in 2012 (\$1,500 less than the Secretary's proposed threshold), the law on the books still says they have to report to the State once they raise \$200. And the reality is that nobody, least of all small issue committees like CSG, knows when they have raised "too much" money to speak without state supervision.

The First Amendment must—if nothing else—require that individuals and committees know precisely when their activities fall within the state's regulatory sphere. And the state's laws must set that threshold at a reasonable level that does not, in practice, prevent small-scale, unregulated speech.

Client

The **Coalition for Secular Government** is a registered Colorado nonprofit corporation dedicated to promoting a secular, rational foundation for the rights to life, liberty, and the pursuit of happiness. Its president, Diana Hsieh, Ph.D., is a philosopher specializing in practical ethics.

Legal Team

CCP's legal team is led by the Center's legal director, **Allen Dickerson**. Dickerson is joined by associate **Tyler Martinez**.

About CCP

The Center for Competitive Politics (CCP) exists to promote and protect the First Amendment's political rights of speech, assembly, and petition by educating the public and government on the actual effects of money in politics and the results of a more free and competitive electoral process. CCP's key activities include filing *amicus* briefs and

³ *Sampson v. Buescher*, 625 F.3d 1247, 1249 (10th Cir. 2010).

representing parties in litigation, testifying before legislative audiences and government agencies, conducting original research, and communicating with the media. CCP legal briefs, testimony, and studies have been cited by Justices during oral argument in the United States Supreme Court and by legislators on the floors of the House of Representatives and the United States Senate.