

C Ethics Watch

May 7, 2009

The Honorable Bernie Buescher
Secretary of State of Colorado
1700 Broadway, Suite 250
Denver, CO 80290

VIA FACSIMILE: (303) 869-4860

Dear Secretary Buescher:

Colorado Ethics Watch (“Ethics Watch”) respectfully requests that you immediately initiate an inquiry pursuant to your authority under 8 C.C.R. 1505-6, Rule 6, to determine whether former U.S. Congressman Scott McInnis is in violation of state campaign finance law by announcing his candidacy for governor and subsequently soliciting, receiving or expending campaign funds before registering a candidate committee. Mr. McInnis may also have violated laws prohibiting coordination between a candidate and a 527 political organization.

On April 30, an internet news source posted a recording of a voice message left by Mr. McInnis in which he announced his candidacy, solicited support for his campaign, touted his campaign operations and revealed an apparent intention to illegally coordinate his campaign with a so-called 527 political organization. Mr. McInnis has acknowledged that indeed the message is authentic. *See* Jessica Fender, [McInnis Voicemail Raises Campaign Law Questions](#), The Denver Post, April 30, 2009. For your convenience, a recording of the message is enclosed.

The voice message raises several legal issues that warrant your immediate inquiry. First, state law expressly prohibits candidates from avoiding campaign contribution limits by coordinating with outside groups, including 527s. Colo. Const. art. XXVIII, § 5(3). In the voice message, Mr. McInnis stated that he had engaged Sean Tonner of Phaseline Strategies to handle “our... ah 527,” suggesting he plans to or may already be in violation of Colorado law.

Second, Colorado law requires a person who has publicly announced his or her intention to run for office to register a candidate committee with the secretary of state’s office *before* receiving contributions or making expenditures. This voice message and other media reports of Mr. McInnis’ public statements strongly suggest that he has publicly announced his intentions to run for governor in 2010. *See* Fender, The Denver

Post, April 30, 2009; Lynn Bartels, McInnis tells pals: "I'm in" governor race, The Denver Post, March 22, 2009. According Mr. McInnis' voice message, he has already "done extensive polling" and engaged staff to handle his "finances" and "day-to-day operations," which suggests he has already spent money or received, at a minimum, in-kind contributions. Ethics Watch staff confirmed with the secretary of state's office that no campaign committee registration statement has been filed for a McInnis campaign for governor.

Pursuant to Rule 6 of the Secretary of State's Rules Concerning Campaign and Political Finance, the secretary of state is authorized to initiate an inquiry and file a complaint if he or she discovers a possible violation of campaign finance laws. *See* 8 C.C.R. 1505-6, Rule 6. Specifically, Rule 6.1 provides (emphasis added):

If the appropriate officer, as defined in Section 2(1) of Article XXVIII, discovers a possible violation of Article XXVIII or Title 1, Article 45, and no complaint alleging such violation has been filed with the secretary of state pursuant to Article XXVIII, Section 9(2)(a), then the appropriate officer shall:

- a. Provide the person believed to have committed the violation with written notice of the facts or conduct that constitute the possible violation, and
- b. Allow seven business days to correct the violation or to submit written statements explaining the reasons that support a conclusion that a violation was not committed.

If, within the time allotted, "the person fails to correct the violation or to offer a satisfactory explanation, then the appropriate officer may file a complaint pursuant to Article XXVIII, Section 9(2)(a)." *See* 8 C.C.R. 1505-6, Rule 6.2. In this case, according to Article XXVIII, sec. 2(1), the secretary of state is the "appropriate officer" and may proceed through the process of filing a complaint with the Office of Administrative Courts if not satisfied with the response received pursuant to Rule 6.1(b). *See Patterson Recall Comm., Inc. v. Patterson*, ___ P.3d ___, 2009 Colo. App. LEXIS 567 (Colo. App. Apr. 16, 2009).

Based on the foregoing facts, there is a possibility that Mr. McInnis has violated state campaign finance laws. Pursuant to Rule 6.1, your office should forthwith provide Mr. McInnis with notice demanding a written explanation that supports a conclusion that violations were *not* committed. Because Rule 6.1 gives Mr. McInnis an opportunity to respond officially to your office before any complaint is filed, it is a superior option to a private party attempting to investigate key facts such as whether Mr. McInnis has spent money or accepted contributions (including contributions in kind) or illegally coordinated with a 527, and filing a complaint. If Mr. McInnis fails to provide an adequate explanation your office should then initiate a complaint pursuant to Rule 6.2 and Colo. Const. art. XXVIII, § 9(2)(a).

Thank you for your prompt attention to this matter. I look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Chantell Taylor". The signature is written in black ink and is positioned above the typed name.

Chantell Taylor
Director
Colorado Ethics Watch

Encl.