

KBN Law, LLC

7830 W. Alameda Ave.  
Suite 103-301  
Lakewood, CO 80226

Phone: 720.773.1526  
Email: [MarioNicolaisEsq@gmail.com](mailto:MarioNicolaisEsq@gmail.com)

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Colorado House State, Veterans, and Military Affairs Committee

**Re: HB 17-1155: Cure Campaign Finance Reporting Disclosures**

Hon. Members of the Committee:

I write in strong **SUPPORT** of the bill before you and urge you to pass it through your committee. I had hoped to testify in person, but have been called out of state for business.

I have worked as a leading campaign finance attorney for the past decade and as a political consultant for nearly a decade before that; consequently, I have substantial experience and expertise in campaign finance compliance. Providing a notice and cure period for reporting committees will resolve several current problems in the campaign finance system while improving the system's fairness and increasing transparency.

The following is a brief summary list of problems faced by the current campaign finance system and how HB 17-1155 will improve each:

1. **Inadvertent Mistakes by Volunteer Treasurers** – many reporting committees, including most candidate committees, rely on volunteer treasurers to complete campaign finance reports. While some have prior experience as bookkeeper's or accountants, not all do. Furthermore, the rules for reporting are lengthy, complex, and difficult, often leading to minor, inadvertent errors or omissions. The current system subjects any of those errors to a \$50/day penalty, which can mean tens of thousands of dollars depending on the number of errors and length of time before a complaint is filed.

*HB 17-1155 addresses this issue by providing treasurers an opportunity to cure any accidental mistakes without subjecting the committees to exorbitant penalties.*

2. **CRS § 1-45-109(4)(b) & Disparity in the Law** – there is a current disparity in the law depending on who finds an error or omission. If the Colorado Secretary of State's Office (the "Secretary") finds a report is missing information, it is required to provide the committee with a notice and a 15-business day cure period. However, this has never happened because the Secretary does not review reports for content. Instead, all complaints are filed under the private enforcement provisions of campaign finance law which does not have a similar, explicit provision. Consequently, committees are denied the one safe harbor available for correcting inadvertent errors.

*HB 17-1155 ensures that committees receive the same notice and cure rights already provided in the current system, regardless of whether a complaint is filed by the Secretary or a private party.*

3. **Use of Political “Lawfare”** – there has been a recent increase in what one organization has described as “political guerilla legal warfare (a.k.a. Lawfare)” intended to use the campaign finance system as a tool for causing political opponents to be “distracted, forced to divert resources (time & money), and get smeared in the (often-complicit) media.” Such Lawfare has led to:

a. **Substantial Increase in Campaign Finance Complaints/Costs** – in the fourteen years between January 1, 2000 and December 31, 2013, the Secretary’s online filing system TRACER lists 309 campaign finance complaints, or an average of 22 per year. Since January 1, 2014, there have been 107 complaints filed, or an average of nearly 36 per year. The substantial increase has been due to an increase in complaints filed over minor, inadvertent errors in otherwise timely filed reports.

*HB 17-1155 would reduce the amount of litigation time spent on increased complaints by allowing the underlying issues to be addressed quickly.*

b. **Attempts to “Maximize Fines”** – because fines accrue at a rate of \$50/day, a complaint calculated to inflict the most political damage can maximize the fines against a committee by waiting until the statute of limitations (180 days) has nearly run. For example, a complaint over a contribution that failed to list one contributor’s occupation filed 180 days after the report would “maximize” the penalty at \$9,000 (180 days \* \$50/day). The fines grow exponentially when (1) the same error is repeated in the same report, and (2) the same error is reported in subsequent reports. The majority of complaints over the past two and a half years have been filed with less than 30 days remaining on the statute of limitations.

For example:

- One organization brought four separate complaints against the candidate committees “McLachlan for Colorado,” “Friends of Joe Salazar, the “Committee to Elect Brittany Pettersen,” and “Dave Young for Colorado.” After filing these original complaints, the organization waited 154 days before a second complaint against each – effectively increasing the potential fines by thousands of dollars.
- An organization filed a lawsuit alleging missing information related to two \$3.00 contributions 180 days after the violation, effectively seeking a fine of \$18,000 against the Colorado Republican Party.

*HB 17-1155 eliminates the ability of groups to “maximize penalties” because committees would be able to correct such minor errors through a notice and cure period.*

c. **Unaffordable Litigation Costs** – without a notice and cure period, committees are required to defend inadvertent errors through litigation due to the potential size of the penalties. The costs can run into the tens of thousands of dollars in attorney fees

and extend for a period of years. Many committees, especially those subject to contribution amount limits, cannot afford such costs.

*HB 17-1155 creates an affordable alternative that allows committees to fix any errors without incurring the monetary and time costs associated with litigation.*

- d. **Decreased Transparency** – because there is an incentive to maximize fines, complaints are filed months after discovery and often months after the relevant election.

*HB 17-1155 eliminates the incentive to hold off for months before filing a complaint, consequently issues will be resolved in a more timely fashion and transparency is increased.*

4. **Committees Have a Disincentive to Amend Errors** – currently there is no law requiring committees to amend reports containing errors or omission, but because a complaint may be filed against a committee correcting such errors, there is a disincentive to the committee for filing. Instead, the committee may be better served to do nothing until after the statute of limitations has passed.

For Example:

- If a committee inadvertently fails to report a contribution, it is unlikely anyone would ever know it had been omitted. However, if the committee subsequently amends its report to include the contribution, a complaint can be brought against it for failure to report in the first place. Consequently, the committee is better served either waiting until the statute of limitations has passed to amend the contribution or never reporting it at all.

*HB 17-1155 allows committees to fix inadvertent mistakes without concern over reprisal.*

5. **Chilling Effect, Specifically Regarding Candidates** – due to the increasingly litigious environment and costs associated with it, there is a chilling effect on individuals wishing to be involved with a reporting committee – whether as a part of a grassroots issue committee or independent expenditure committee. The chilling effect is amplified for candidates; because Colorado law makes candidates responsible for any penalties their candidate committee cannot pay, anyone choosing to run for office could potentially face thousands of dollars in personal debt. Recently, an ALJ penalized former Rep. Tim Dore's candidate campaign approximately \$2,000. Because his campaign was defunct and without funds, he is required to pay it personally. Where potential fines can quickly climb into the tens of thousands of dollars, and candidate contributions are curtailed by limits, the potential for future personal debts is a very real consideration for any candidate.

*HB 17-1155 allows committees to fix inadvertent errors and avoid the costs of litigation and penalties, therefore reducing the chilling effect. The reduction is amplified in regard to candidates.*

Mario Nicolais  
HB 17-1155: Cure Campaign Finance Reporting Disclosures  
Page 4

Thank you for your time and review.

Sincerely,

Mario D. Nicolais