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| DISTRICT COURT<br>CITY AND COUNTY OF DENVER, COLORADO<br>City and County Building<br>1437 Bannock Street, Room 256<br>Denver, CO 80202<br><br>COLORADO COMMON CAUSE,<br>a non-profit corporation,<br>and<br>COLORADO ETHICS WATCH,<br><br>Plaintiffs,<br><br>v.<br><br>SCOTT GESSLER,<br>in his capacity as Colorado Secretary of State,<br><br>Defendant. | ▲ **COURT USE ONLY** ▲ |
| *Attorneys for Secretary Gessler:*<br>JOHN W. SUTHERS, Attorney General<br>MAURICE G. KNAIZER, Deputy Attorney General*<br>1525 Sherman Street, 7th Floor<br>Denver, CO 80203<br>Telephone: (303) 866-5380<br>FAX: (303) 866-5671<br>E-Mail: maurie.knaizer@state.co.us<br>Registration Number: 05264<br>*Counsel of Record | Case No. 2011CV4164<br><br>Ctrm. 414 |
| **DEFENDANT'S ANSWER BRIEF** | |

The Defendant, Scott Gessler, in his capacity as Colorado Secretary of State (the Secretary), hereby submits his Answer Brief.

## STATEMENT OF ISSUES

1. Did *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010) abrogate reporting and disclosure requirements in Colo. Const. art. XXVIII, § 10(a)(II) and § 1-45-108, C.R.S. (2011), as applied to small issue committees, when the costs of compliance approach or exceed the value of the financial contributions to their political effort?

2. If the decision in *Sampson* did abrogate reporting and disclosure requirements for such issue committees, are there any reporting or disclosure requirements without the enactment of a statute or the promulgation of a rule?

## STATEMENT OF FACTS

The Tenth Circuit Court of Appeals issued its decision in *Sampson v. Buescher,* 625 F.3d 1247 (10th Cir. 2010) on November 9, 2010. On December 10, 2010, the Secretary's predecessor commenced a rule-making process in response to that decision. As part of the process, he published a Proposed Statement of Basis, Purpose, and Specific Statutory Authority, which provided, in pertinent part:

> In particular, new Rule 4.27 increases the contribution and expenditure threshold that triggers the requirement for an issue committee to register and file disclosure reports, in order to provide guidance in light of the ruling of the Tenth Circuit Court of Appeals in *Sampson v. Buescher,* Nos. 09-1389, 08-1415 (10th Cir. 2010)
>
> In determining the appropriate dollar threshold, the Secretary of State has considered various relevant factors, including but not limited to:
>
> - A definition of what might appropriately be considered a "small" issue committee that should not be subject to registration and reporting requirements;
> - The public's information interest in knowing who is spending and receiving money to support or oppose ballot measures;
> - Evidence indicating a correlation or lack thereof between contribution size and corruption relating to ballot-issue campaigns;
> - The burden presented by registration and reporting by groups of various sizes, including cost of complying; and
> - Data that support a particular threshold.

(Record, Tab 2)

The Secretary conducted extensive hearings at which the Plaintiffs appeared and presented evidence. (Record, Tabs 9, 13, 14) Based upon the record and the Secretary's analysis of *Sampson*, the Secretary promulgated Rule 4.27, 8 C.C.R. 1505-6. The Secretary set forth the basis and purpose of the rule:

> The Secretary of State has also carefully considered the reasoning expressed by the Court in the *Sampson* case. In particular, while the Court stated, "We do not attempt to draw a bright line below which a ballot-issue committee cannot be required to report contributions and expenditures" the Court nevertheless did say that the "Plaintiffs" contributions and expenditures" in that case were "well below the line". According to the Court's opinion (at footnote 5), the Plaintiffs' contributions and expenditures were $2,239.55 and $1,992.37. (Namely $813.53 in in-kind contributions, plus $1,426 in cash contributions, for a total $2,239.55 in contributions, all of which was expended except for $247.18 that remained in the bank account, for a total of $1,992.37 in expenditures.) Therefore, it appears from the Court's opinion that the minimum threshold must be "well above" the $2,239.55 in contributions and $1,992.37 in expenditures of the Plaintiffs in the Sampson case.

Rule 4.27 provides:

> In accordance with the decision of the Tenth Circuit Court of Appeals in *Sampson v. Buescher,* Nos. 08-1389, 08-1415 (10th Cir. 2010), an issue committee shall not be subject to any of the requirements of Article XXVIII of the Colorado Constitution or Article 45 of Title 1, C.R.S., until the issue committee has accepted $5,000 or more in contributions or made expenditures of $5,000 or more during an election cycle. An issue committee that accepts $5,000 or more during an election shall register with the appropriate officer within 10 calendar days of accepting or making such contributions and expenditures.
>
> a. Contributions received and expenditures made prior to reaching the $5,000 threshold are not required to be reported. Contributions received and expenditures made after reaching the $5,000 threshold shall be reported in

accordance with the reporting scheduled in section 1-45-108(2)(a), C.R.S.

b. An issue committee shall provide the committee's balance on the date of committee registration as a "beginning balance" on the committees initial Report of Contributions and Expenditures.

c. For purposes of this rule, an election cycle shall be the two-year house of representatives election cycle.

Under Rule 4.27, an issue committee is not required to report or disclose information until it reaches the $5,000 threshold. Once an issue committee reaches that threshold, it must report contributions and expenditures made or received after it reaches the threshold.

## ARGUMENT

### A. Introduction

Plaintiffs challenge the constitutionality of Rule 4.27. Plaintiffs argue that this rule conflicts with the definition of "issue committee" in Colo. Const. art. XXVIII, § 2(10)(a) and with the disclosure and reporting requirements in § 1-45-108 (1), (2) and (3), C.R.S. (2011). The Secretary contends that the Tenth Circuit's decision in *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010) abrogated the reporting requirements in these provisions as applied to issue committees because the reporting thresholds were too low, thereby imposing a significant burden on issue committees, and the government interest in disclosure of contributions or expenditures at or near that threshold is minimal, at best.

The resolution of this dispute depends upon the analysis of the impact of *Sampson*. Plaintiffs contend that the *Sampson* decision is an as-applied challenge that is limited to the narrow facts of the case. That is, the decision declaring the reporting and requirements

unconstitutional is limited to local government annexation elections, and the requirements remain in effect for all other issue committees in all other respects. The Secretary interprets *Sampson* to declare unconstitutional the reporting and the disclosure requirements as applied to small issue committees when the burden of reporting and disclosure approaches or exceeds the value of their financial contributions to their political efforts. If the Plaintiffs are correct, then Rule 4.27 is inconsistent with statutory and constitutional mandates. If the Secretary's interpretation is correct, then the Court must find that Rule 4.27 is consistent with his authority to administer and enforce campaign finance laws.

### B. Standard of Review

An agency rule is presumed to be valid, and plaintiffs must demonstrate that a rule-making agency has exceeded its statutory authority. *Table Services, Ltd. v. Hickenlooper*, 257 P.3d 1210, 1217 (Colo. App. 2011). An agency's interpretation of governing constitutional statutory provisions is entitled to great deference. *Id.* The courts impose a somewhat different standard when any agency attempts to harmonize it rulemaking with judicial precedent. The court will uphold the agency's rule, based upon its interpretation of case law, if the rule is not arbitrary, capricious, or manifestly contrary to law. *Clearing House Association, L.L.C. v. Cuomo*, 510 F.3d 105, 119 (2nd Cir. 2007), *aff'd in part, rev'd in part*, 129 S.Ct. 2710 (2009).

### C. Colorado Campaign Finance Laws Prior to *Sampson*

Voters enacted Colorado's present campaign finance structure in 2002 by adding the Campaign and Political Finance Amendment to the Colorado Constitution. Colo. Const. art. XXVIII. The Amendment defines "issue committee" as "any person, other than a natural person, or any group of two or more persons, including natural persons: (I)[t]hat has a major purpose of

supporting any ballot issue or ballot question; [and] (II) [t]hat has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question." Colo. Const. art. XXVIII, § 2(10)(a). The committee must deposit monetary contributions in a separate account. Colo. Const. art. XXVIII, § 3(9). An issue committee must register with the appropriate officer and report the name and address of any person who contributes twenty dollars or more, expenditures made and obligations incurred, among other matters. Section 1-45-108(1), C.R.S. (2011).

### D. The *Sampson* Case

Karen Sampson and other plaintiffs (collectively "Sampson") filed a lawsuit against the Colorado Secretary of State in 2006. *Sampson v. Coffman*, 06-cv-01858-RPM, 2008 WL 4305921 (D.Colo. Sept.18, 2008) (unpublished). Sampson resided in a residential developed area of unincorporated Douglas County. Another citizen initiated a petition to annex that area to the Town of Parker. Sampson objected to the annexation and contested the petition. The petition proponents then filed a complaint under the Colorado Campaign and Political Finance Amendment, Colo. Const. art. XXVIII. They alleged that Sampson had failed to comply with filing and disclosure requirements. In particular, they alleged that Sampson accepted or made contributions or expenditures in excess of $200 to oppose the annexation. *Id.* at *2. The complaint was referred to an Administrative Law Judge. Sampson retained counsel. A hearing was held, but a resolution was reached prior to the completion of the hearing. *Id.* at *4. Sampson stipulated that she was subject to constitutional and statutory disclosure requirements as of June 2, 2006. Subsequently, a notice of election was issued, and the annexation question was placed on the ballot. *Id.* at *4.

Sampson then filed suit in federal district court. She asserted a facial challenge to the campaign finance laws. *Id.* at *8. The trial court rejected the facial challenge because Sampson did not make the case "in the broad context of campaigns for political office or proposals presented by initiative or referendum." *Id.* Instead, the trial court concluded that "the application of the challenged campaign finance laws to a municipal annexation election raises issues that are different from the ballot issues and ballot questions at elections that are expressly within the scope of the requirements for registration, reporting and disclosure." *Id.* The court concluded that the annexation question did not become a ballot issue until the date that the notice of election was published. *Id.*

The court found that "the 'electorate' for an annexation election is different from the electorate for Colorado's other election laws." *Id.* at *11. The difference, according to the trial court, "has legal significance in balancing the competing interests required by established constitutional law applicable to governmental restrictions on individual liberty protected by the First Amendment." *Id.* The trial court concluded:

> No trial is necessary in this case because this court has limited this case to an as applied challenge to these laws requiring the formation of an issue committee and the reporting of contributions and expenditures in the election to determine the annexation of Parker North to the Town of Parker. There are no disputed facts material to these questions.
>
> As discussed above, the requirements did not become applicable to these plaintiffs before the notice of election.

*Id.* at *20.

The trial court held that the challenge to the law after the date of the election notice required a different analysis. The court found that the requirements were not "so onerous as to be unconstitutional as beyond the legitimate policy determination made by the voters on the citizen initiative for the adoption of Article XXVIII of the Colorado Constitution," *id.* at 21, although the court expressed "concerns about the low threshold for reporting as being tailored to the governmental purpose of transparency in the electoral process." *Id.* In *dicta*, the trial court reached a broader conclusion. If the legal analysis is incorrect, then the law is vague and indefinite as to when it becomes applicable and subject to abuse by private persons. *Id.* at *20.

Sampson appealed to the Tenth Circuit. *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010). The Court restated the factual backdrop and applicable Colorado law. The Court rejected the trial court's analysis. Instead, it agreed with Plaintiffs "as-applied First Amendment argument, holding that the Colorado registration and reporting requirements have unconstitutionally burdened their First Amendment right of association." *Id.* at 1254.

Although the Court's analysis commences with a comment about the "disconnect between the avowed purpose of the constitutional disclosure requirements and their effect in this case", *id.*, the Court did not limit its analysis to annexation elections, with their unique characteristics. The Court spoke generally about the fact that campaign reporting and disclosure requirements can infringe on the right of association. *Id.* at 1255. "When analyzing the governmental interest in disclosure requirements, it is essential to keep in mind that our concern is with ballot issues, not candidates." *Id.* The Court then identified three grounds justifying reporting and disclosure requirements: (1) gathering data necessary to detect violations of

contribution limitations; (2) publicizing large contributions and expenditures for the purpose of deterring actual corruption and the appearance of corruption; and (3) providing information to the public. *Id.* at 1256. The Court determined that only the last rationale applied to issue elections. *Id.*

The Court expressed deep doubts about the validity of the rationale that the public needs the information in the context of a ballot issue election. ("Non-disclosure could require the debate to actually be about the merits of the proposition on the ballot.") *Id.* at 1257. At best, disclosure in the context of ballot initiatives serves the "limited purpose" of determining who may benefit from legislation. *Id.* at 1259. The public interest in financial disclosure "is significantly attenuated when the organization is concerned with a single ballot issue and when the contributions and expenditures are slight." *Id.*

The Court did not limit its analysis to the plaintiffs. It extended the analysis to the "average citizen" who "cannot be expected to master on his or her own the many campaign financial-disclosure requirements set forth in Colorado's constitution, the Campaign Act, and the Secretary of State's Rules Concerning Campaign and Political Finance." *Id.* The Court noted that the cost of attorneys' fees alone exceeded the contributions. *Id.* at 1260. After reiterating that the campaign finance laws are intended to target large contributions designed to unfairly influence the outcome of Colorado elections, the Court stated that that purpose has "little to do with a group of individuals who have together spend less than $1,000 on a campaign (not including $1,179 for attorneys fees)". *Id.* at 1261.

The Court concluded:

> As stated above, campaign-disclosure statutes must survive exacting scrutiny. There must be a "substantial relation" between the requirement and a governmental interest that is sufficiently important to justify the burden on the freedom of association… *Here, the financial burden of state regulation on Plaintiffs' freedom of association approaches or exceeds the value of their financial contributions to their political effort; and the governmental interest in imposing those regulations is minimal, if not nonexistent, in light of the small size of the contributions. We therefore hold that it was unconstitutional to impose that burden on Plaintiffs. We do not attempt to draw a bright line below which a ballot-issue committee cannot be required to report contributions and expenditures.* The case before us is quite unlike ones involving the expenditure of tens of millions of dollars on ballot issues presenting "complex policy proposals." (Citation omitted). We say only that Plaintiffs' contributions and expenditures were well below the line.

*Id.* at 1261 (emphasis added).

**E. As-applied and Facial Challenge Analysis in Federal Courts**

The distinction between as-applied and facial constitutional challenges has perplexed courts over the years. *State v. Long,* 19 A.3d 1242, 1258 n.20 (Conn. 2011). The United States Supreme Court recently provided clarification. *Citizens United v. Federal Election Comm'n*, 130 S.Ct. 876 (2010). In *Citizens United*, the plaintiffs initially raised both facial and as-applied challenges to federal campaign finance regulations relating to expenditures for a film concerning Hillary Clinton. The plaintiffs there stipulated to dismissal of the facial challenge. *Id.* at 892. The Supreme Court was faced with the question of whether it should limit its analysis to the facts before it. It rejected a narrow interpretation of its authority to review and analyze an as-applied challenge when campaign finance laws are contested under the First Amendment:

> Second, throughout this litigation, Citizens United has asserted a claim that the FEC has violated its First Amendment right to free speech. All concede that this claim is properly before us. And "'[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments made below.'" (Citation omitted) Citizens United's argument that *Austin* should be overruled is not a new claim. (Citation omitted). Rather, it is - at most- "a new argument to support what has been [a] consistent claim: that [the FEC] did not accord [Citizens United] the rights it was obliged to provide by the First Amendment."

*Id.* at 893.

In addition, the Court announced a broader rationale for expanding the scope of as-applied challenges in the First Amendment context. "[T]he distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge. *The distinction is both instructive and necessary, for it goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint.*" *Id.* (emphasis added) "'[O]nce a case is brought, no general categorical line bars a court from making broader pronouncements of invalidity in properly 'as-applied' cases.'" *Id.* (quoting Fallon, "As-Applied and Facial Challenges and Third-Party Standing," 113 Harv. L. Rev. 1321, 1339 (2000))

A broader analysis is particularly appropriate in First Amendment cases for another reason. The Court noted that "substantial time would be required to bring clarity to the application of the statutory provision on these points in order to avoid any chilling effect cause by some improper interpretation." *Id.* at 895. The Court also cited "the primary importance of speech itself to the integrity of the election process" and the complexity of campaign finance

regulations. *Id.* "[O]nerous restrictions thus function as the equivalent of prior restraint by giving the FEC power analogous to licensing laws implemented in the 16th- and 17th- century England, laws and governmental practices of the sort that the First Amendment was drawn to prohibit." *Id.* at pp. 896-87.

The Court's approach was best summarized in the concurrence of Chief Justice Roberts:

> …it makes no difference of any substance whether this case is resolved by invalidating the statute on its face or only as applied to Citizens United. Even if considered in as-applied terms, a holding in this case that the Act may not be applied to Citizens United-because corporations as well as individuals enjoy the pertinent First Amendment rights-would mean that any other corporation raising the same challenge would also win. *Likewise, a conclusion that the Act may be applied to Citizens United-because it is constitutional to prohibit corporate political speech-would similarly govern future cases. Regardless whether we label Citizens United's claim a "facial' or "as-applied" challenge, the consequences of the Court's decision are the same."*

*Id.* at 919 (emphasis added). See, *Physician Hospitals of America v. Sebelius*, ---F.Supp.2d--. No. 6:10-cv-277, 2011 WL 1304456, n. 8 *6 (E.D. Tex., March 31, 2011) Thus, the impact of the decision in *Citizens United* extended to persons and circumstances not before the Court, even though the case was framed as an as-applied challenge.

**F. Application of the As –Applied Analysis in Sampson to Colorado Campaign Finance Laws**

Plaintiffs contend that *Sampson* applies only to the parties and elections in that case. The response to this argument is simple: if the Tenth Circuit had sought to limit its holding to the Plaintiffs, it would have adopted the trial court's analysis specifically limiting the case to

annexation elections and affirmed the trial court's decision. Instead, the Tenth Circuit reversed the district court's decision, using broad language to do so. It utilized the *Citizens United* approach to as-applied challenges.

The Tenth Circuit first analyzed the definition of "issue committee," emphasizing that it includes two or more persons who have a major purpose of supporting or opposing a ballot issue and who have accepted or made contributions in excess of two hundred dollars to support or oppose a ballot issue. *Sampson,* 625 F.3d at 1249. It then detailed the reporting requirements imposed upon all issue committees. *Id.* at 1250. The panel stated that voters could not have intended the campaign finance laws to apply to committees formed by persons in Sampson's position. *Id.* at 1254.

The Tenth Circuit did not limit its legal analysis to the facts of the case or to the Plaintiffs. Instead, it found that "the reporting and disclosure requirements for *Colorado issue committees (at least those committees addressing ballot issues*) must be justified on the third ground-the informational interest." *Id.* at 1256 (emphasis added). After surveying Supreme Court case law, the Tenth Circuit stated, "while assuming that there is a legitimate public interest in financial disclosure from campaign organizations, we also recognized that this interest is significantly attenuated when the organization is concerned with only a single ballot issue and when the contributions and expenditures are slight." *Id.* at 1259. The Court then applied the broad analysis to the facts of the case. In holding that the burdens were unconstitutional, the Court concluded that in cases where the "the financial burden of state regulation of freedom of association exceeds the value of their financial contributions to their political effort; and the

governmental interest in imposing those regulations is minimal, if nonexistent, in light of the small size of the contributions", the requirements are unconstitutional. *Id.* at 1261.

As did the Supreme Court in *Citizens United*, the Tenth Circuit necessarily enunciated a holding applicable to issue committees other than the one formed by the plaintiffs. To narrow the holding to Sampson and the facts of the particular case would result in an abrogation of the court's responsibility in First Amendment cases and would cause a "substantial, [state-wide] chilling effect." *Citizens United,* 130 S.Ct. at 894. Under Plaintiffs' analysis, each small issue committee would have to bring a lawsuit to prove that the financial burden approaches or exceeds the value of the financial contributions to its political effort. Persons participating in an initiative involving a municipal ordinance would have to bring a lawsuit similar to the one brought by the *Sampson* plaintiffs. Persons who wish to support or oppose a statewide initiative by posting signs costing $201 dollars, and who incur expenses much greater than $200 to comply with state law, would be required to bring still another lawsuit. This result is contrary to both the spirit and the letter of *Citizens United* and to the language in *Sampson. Any doubt about the scope of the holding in Sampson must be resolved in favor of protecting speech from unconstitutional burdens upon speech.*

The holding in *Sampson* effectively abrogated the reporting and disclosure requirements in circumstances where the burden of reporting and disclosure approaches or exceeds the value of the financial contributions to their political effort. The declaration of unconstitutionality applies to registration and reporting requirements imposed upon issue committees when "the financial burden of state regulation on Plaintiffs' freedom of association approaches or exceeds

the value of their financial contributions to their political effort; and the governmental interest in imposing those regulations is minimal, if not existent, in light of the small size of the contributions." *Id*. at 1261.[1] Under *Sampson,* not all reporting and disclosure requirements are unconstitutional. Colorado may impose reporting and disclosure requirements if the requirements meet the constitutional standards enunciated in *Sampson*.

Plaintiffs argue that Rule 4.27 is inconsistent with the definition of "issue committee" and the reporting requirements under Colorado law because *Sampson* does not apply to any ballot issue or ballot question other than annexation elections. Plaintiffs do not argue that Rule 4.27 is inconsistent with the holding in *Sampson* if the holding applies to issue committees formed to support or oppose ballot issues or ballot questions in elections in addition to annexation elections.

As shown, *Sampson* applies to reporting and disclosure requirements for all issue committees in ballot issue or ballot question elections. Without Rule 4.27, Colorado would not have any constitutionally-acceptable reporting and disclosure standards for issue committees.

### G. The Counterclaim Is Integral To the Lawsuit and May Be Raised By the Secretary in the Context of This Case.

The Secretary raised a counterclaim, asking this Court to declare "that, consistent with the holding in *Sampson v. Buescher*, the definition of issue committee is unenforceable unless and until the General Assembly enacts a statute, or the Secretary promulgates a rule, that

[1] Although headnotes in a case are not binding, it is instructive to note that West Codenote stated that § § 1-45-108(1)(a)(I, II), (2)(a)(II), (2)(b) and (3) were unconstitutional as applied. *Sampson,* 625 F.3d at 1247.

establishes a minimum level of contributions or expenditures that triggers the formation of an issue committee."

Plaintiffs contest the Secretary's legal authority to assert the counterclaim. They raise three arguments: (1) the Plaintiffs are not proper defendants (Opening Brief, p. 15); the Secretary cannot challenge the constitutionality of a constitutional provision from which he derives this authority (Opening Brief, pp. 15-16); and (3) the Secretary has not joined proper parties (Opening Brief, p. 16).

Contrary to Plaintiffs' argument, the Colorado rules of civil procedure acknowledge the right of a state governmental officer to raise issues concerning the constitutionality of a rule or statute. "When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute, or executive order, the officer or agency upon timely application may be permitted to intervene in the action." C.R.C.P. 24(b). As an intervenor, the public official may raise arguments that directly relate to the statute or regulation. Rule 24(b) does not limit the official's power to raise issues related to the statute or rule. As a corollary, if an official has the right to raise these issues as an intervenor, he has the right to raise these issues as a defendant. In this case, Plaintiffs are relying on constitutional and statutory provisions administered and enforced by the Secretary. The Secretary has the full authority to participate.

Plaintiffs also characterize the counterclaim as one seeking a declaration that a provision of the Colorado constitution is facially unconstitutional under federal law. (Opening Brief, p. 14). The description is incorrect. The Secretary is asking only for an interpretation concerning

the impact of *Sampson* and the enforceability of registration and reporting requirements without a rule or statute. A public officer who is responsible for enforcement and administration of a law may seek a declaratory judgment with the respect to the application and interpretation of that law. *State Department of Natural Resources v. Cyphers,* 74 P.3d 447, 449 (Colo. App. 2003).

The Secretary's counterclaim is merely an adjunct to the issues raised by the Plaintiffs. In this case, the Plaintiffs raised the question of the constitutionality of Rule 4.27 under *Sampson.* Plaintiffs assert that *Sampson* applies only to the specific facts and does not declare any provision unconstitutional beyond the specific facts. The Secretary's counterclaim complements the issues raised by Plaintiffs and the defenses raised by the Secretary. He asks this court to decide whether any disclosure or reporting requirements for issue committees remain in effect after *Sampson* without a supplementary statute or rule. The contentions of both Plaintiffs and the Secretary depend upon this Court's interpretation of the scope and effect of *Sampson.*

Substantively, the analysis set forth at pages 1-15 of this Brief applies to the counterclaim. The constitutional and statutory provisions are unconstitutional as applied to issue committees in circumstances where the financial burden of regulation on the freedom of association approaches or exceeds the value of the financial contributions to the political effort, and the governmental interest in the regulation is minimal. *Sampson*, 625 F.3d at 1261. If the Secretary's interpretation is correct, then Rule 4.27 is necessary to require any disclosure or reporting by an issue committee.

## CONCLUSION

For the reasons stated in this Brief, the Secretary respectfully requests that the Court enter judgment for him and against the Plaintiffs.

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## CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 2011, I duly served a true and complete copy of the within *DEFENDANT'S ANSWER BRIEF* to the following person(s) by the method(s) listed below:

| **Attorney Name** | **Law Firm or Party** | **Method of Service** |
|---|---|---|
| Nathan P. Flynn | Hill & Robbins PC | E-service |
| Jennifer Hutchison Hunt | Hill & Robbins PC | E-service |
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