

The Colorado Supreme Court directed government employees, lobbyists, nonprofit corporations and lawmakers who were the plaintiffs in Developmental Pathways v. Ritter, 178 P.3d 524, 535 (Colo. 2008), to seek answers to their questions about the application of Amendment 41 (Amendment 41 refers to what is now Article XXIX of the Colorado Constitution) from the Independent Ethics Commission (the “Commission”). In holding that the plaintiffs’ First Amendment claims were not ripe for adjudication, the supreme court noted that “[t]he Commission must first act by, for example, adopting rules governing the complaint process, before there is any enforcement or threat of enforcement of the provisions.” 178 P.3d at 534, n.8.

The plaintiffs provide the factual basis for their questions that was provided to the Colorado Supreme Court: the transcript of the three-day preliminary injunction hearing in Denver District Court from May 7 through May 9, 2007 (summarized below) and the published exhibits that they submitted to the court. The district court enjoined the enforcement of the gift bans in Amendment 41 on May 31, 2007; the preliminary injunction remained in effect until April 22, 2008, and the supreme court has suggested that the Amendment cannot be enforced until the commission adopts rules governing the complaint process. Thus, the factual basis that the plaintiffs present is based on the time period from December 31, 2006 (the date of the governor’s proclamation that Amendment 41 went into effect) through the last day of the preliminary injunction hearing, May 9, 2007. Once the rules go into effect, the plaintiffs will again have the same problems that they had between December 31, 2006, and May 31, 2007, and their political speech will be chilled. Therefore, their questions pertain to future conduct. Where appropriate, these written requests should be considered as requests for waivers by the Commission of the pertinent provisions of Amendment 41 or of section 24-18.5-101, C.R.S.

The impact of Amendment 41 on lobbying.

Because of limited time and staff assistance, lobbying is crucial to the operation of the legislative process, and much of the communication between government and the governed is through registered lobbyists. Two types of lobbying are (1) lobbying by a paid lobbyist or a volunteer lobbyist on behalf of an organization for the purpose of “aiding or influencing” the passage or defeat of any bill before the general assembly or rule or rate before a state agency,¹ see § 24-6-301(3.5), C.R.S.; and (2) goodwill lobbying that involves people getting together at a social event but not discussing a specific public policy issue.

Lawmakers vote on a wide range of issues, many that they know little about. They need information about proposed legislation or ordinances, and lobbyists provide that information, generally describing the impact of the proposal and its supporters and

¹ Lobbyists also contact state executive officials, county commissioners and city council members, but their role is less crucial in those contexts. At the county and municipal level, as well as for higher education, individuals are more likely to communicate directly with government employees.

opponents. Often, lobbyists provide fact sheets that a lawmaker saves and reviews when the measure is up for consideration. A lobbyist's most important assets are time to convey information to lawmakers and trust that the information provided is accurate.

Colorado has a part-time state legislature that meets for about 120 days each year. The legislature's non-partisan staff is relatively small, and its resources are limited; it provides drafting services and some research, but it cannot provide legislators with an understanding of the political and policy context for proposed legislation. Each legislator has one paid part-time staff member, and some legislators have volunteer staff to help with responding to constituent requests and correspondence. In the 2007 session, 650 bills were introduced, and each was entitled to a hearing under Colo. Const. art. 5, §20. In addition, term limits for elected officials have decreased lawmakers' institutional knowledge; thus, lobbyists often are the only source of historical information.

In early 2007, Colorado had 577 registered lobbyists and 1,140 individuals and entities that employ registered lobbyists. Lobbyists may be paid by a business entity, a trade association of for-profit entities, a nonprofit organization, or a governmental entity. Lobbyists represent organizations like the plaintiff Developmental Pathways and the Colorado Nonprofit Association (which has 1,200 nonprofit members), economic development consortiums like the plaintiff Adams County Economic Development, Inc. ("ACED"), and for-profit trade associations like the beer distributors represented by plaintiff Daniel Williams. Some lobbyists are employed directly by the organization they represent and lobbying occupies a relatively small portion of their time. Others may be hired by a variety of organizations for lobbying or political consulting only.

Legislators do not have private offices; they share an office with another legislator and the staffs for each. Because it is difficult to meet with anyone in the shared offices, lobbying traditionally has occurred at social events: meetings, lunches, receptions, and over coffee, as well as in the hallways of the capitol. When the legislative session ends, legislators return to their outside employment.

After Amendment 41 went into effect, meaningful opportunities for lobbyists (or individual constituents) to meet with legislators decreased dramatically. The legislative leadership ended the daily breakfast breakfasts given by various interest groups at the capitol between 7:30 a.m. and 9 a.m., when the legislative sessions convened. Many legislators attended the breakfasts because constituents who were members of the interest groups, in addition to other legislators and lobbyists, might be there. Many interest groups also cancelled the receptions held near the capitol after afternoon committee hearings ended. The receptions gave legislators an opportunity to meet with constituents, other legislators and lobbyists. The capitol and legislative offices emptied after afternoon hearings, and the lack of socializing opportunities meant that legislators did not meet the new members in either the house or the senate, nor did they meet lobbyists.

Since the passage of Amendment 41, lobbyists and legislators avoid sitting together in the capitol cafeteria or having coffee or lunch outside the capitol even if each pays for his or her own coffee or meal. They worry that someone might see them

together, assume that the lobbyist had bought the legislator coffee or a meal and file a complaint with the ethics commission. Even if a complaint alleging a violation of the gift bans is without foundation, neither can risk the damage to reputation from a complaint alleging unethical behavior.

During the 2007 session, lobbyists could talk with legislators if they could catch them walking between the house or senate chambers (registered lobbyists are not allowed on the floors of the house or the senate) and a committee hearing room. Or, they could request that a legislator come out of the legislative chamber or committee hearing for a brief conversation. A veteran lobbyist observed that the lack of opportunity to speak with legislators hurt new lobbyists or constituents even more than it hurt well-established lobbyists.

In addition to reducing the opportunities to meet with legislators, Amendment 41 prohibits lobbyists from providing any “thing of value of any kind or nature” to government officials and employees. Sec. 3(4). Fact sheets that lobbyists provide to legislators have a value of more than \$0. And any research on the impact of proposed legislation that a legislator might request from a lobbyist may violate the \$0 ban and subject the lobbyist and the legislator to the jurisdiction of the ethics commission. As a result, lobbyists provide less information to legislators than they provided before Amendment 41 went into effect.

Organizations with professional lobbyists on their staffs or hired as independent contractors may be subject to the \$50 gift ban. Sec. 3(4). The gift bans thus restrict both for-profit and nonprofit organizations from hiring lobbyists to convey their views to lawmakers and government officials.

Four of the plaintiffs, Developmental Pathways, Charles Shimanski (the CEO of Colorado Nonprofit Association), Frank Weddig (a Douglas County commissioner), and ACED stressed the importance of goodwill lobbying as a form of protected speech and association. For example, Developmental Pathways (which receives much of its money from government and is an “independent contractor” under Amendment 41) has an annual fundraising dinner to which it invites local elected officials, including the mayors of all of the cities served by Developmental Pathways. The goodwill generated by the dinner (knowledge about the programs Developmental Pathways provides for developmentally disabled persons) has helped the agency when it needed the support of local officials for a dedicated mill levy. After Amendment 41, Developmental Pathways could no longer provide dinners for the local officials, and most of them no longer attended.

For the same reason, some of the 1200 members of Colorado Nonprofit Association have either canceled goodwill events or experienced a dramatic decline in attendance by lawmakers and government employees. Nonprofit organizations that address controversial topics (like Focus on the Family or Planned Parenthood) or that provide services to a large number of clients (like Developmental Pathways) are more likely to have a complaint filed with this commission against them.

Developmental Pathways

Facts

Developmental Pathways, Inc., is a non-profit agency that serves persons with developmental disabilities such as mental retardation and their families in Arapahoe and Douglas Counties and the portion of Adams County that includes Aurora. Established in 1964, Developmental Pathways provides a community-based alternative to institutional care that includes assistance in establishing an independent lifestyle, medical care, family support and transportation. Many of the recipients of these services, the value of which is more than \$50 annually, are family members of government employees. Amendment 41 may prevent persons with developmental disabilities who have family members employed by the government from receiving free or discounted services from Developmental Pathways. In addition, several government officials serve on Developmental Pathways' board of directors; these directors' ability to participate is impeded by Amendment 41.

Funding for Developmental Pathways comes from Medicaid, county mill levies, the State of Colorado and private donors. Developmental Pathways has a contract with the State of Colorado to provide services to certain persons with disabilities. Additional money comes from an annual fund-raising event, Pathways Achievement Silent Auction and Dinner. Many elected officials and policy-makers come as guests to the event, which honors recipients of Developmental Pathways services for their individual achievements. Amendment 41 prevents Developmental Pathways from inviting elected officials and policy-makers to the event, thus precluding Developmental Pathways from providing them with information about the success of its programs. Amendment 41 also damages Developmental Pathways' fund-raising ability because it is an independent contractor with the state, which may prohibit it from accepting gifts from anyone of more than \$50 per year.

Questions (requests for advisory opinions under section 24-18.5-101(4)(b)(II))

Is a nonprofit corporation that has a contract with the state or with a county an "independent contractor" subject to Amendment 41? See section 2(1) of Amendment 41. If the answer is "yes," does section 3(2) of Amendment 41 prohibit the nonprofit corporation from accepting donations of more than \$50 from anyone? Does the application of the prohibition violate the First Amendment and substantive due process (law shall not be unreasonable, arbitrary or capricious and means selected to enforce law must have reasonable and substantial relation to purpose of law)?

Is the "independent contractor" subject to Amendment 41 the nonprofit corporation or does "independent contractor" include all of the employees of a nonprofit corporation that has a contract with the state or with a county and the family members of the employees?

Are employees of an independent contractor and members of their families barred under section 3(2) of Amendment 41 from negotiating future employment or receiving a promise of future employment while they are employed by the government? See sections 2(1) and 3(2) of Amendment 41. If so, does the application of the bar violate substantive due process?

Questions (requests for letter rulings under section 24-18.5-101(4)(b)(III))

Is Developmental Pathways barred by section 3(2) of Amendment 41 from providing services valued at more than \$50 to family members of government employees? If so, does this application of Amendment 41 violate substantive due process?

Is a nonprofit corporation that hires a lobbyist or that has a staff member that lobbies occasionally subject to the \$0 gift ban? See sections 2(5) and 3(4) of Amendment 41. If so, does the ban violate the First Amendment?

If a nonprofit corporation is subject to the \$0 gift ban, is the nonprofit prohibited from accepting donations from anyone? If so, does the application of the prohibition violate the First Amendment and substantive due process?

Does the ban on “good will” lobbying provided by nonprofit organizations violate the First Amendment? See section 3(2) of Amendment 41.

May a nonprofit corporation that does not lobby provide solicited informational material to a legislator or a governmental employee if the research that went in to preparing the material or position paper is worth more than \$50 or if the printing or copying of the material costs more than \$50? See sections 3(2) and 3(3)(b) of Amendment 41. If not, does the ban violate the First Amendment?

Are meals with an annual aggregate value of more than \$50 that a nonprofit organization provides for all board members a prohibited gift under Amendment 41 when the meal is provided to a government employee or a family member of the government employee who is a board member? See sections 3(2) and (4).

Charles Shimanski

Facts

Charles Shimanski, a registered lobbyist, is the President and CEO of the Colorado Nonprofit Association. He testified about the importance of nonprofits working with elected officials on public policy for the needy by building one-on-one relationships with lawmakers and through publications and events to which lawmakers are invited. He described the events intended to bring nonprofits and lawmakers together that had been canceled because of Amendment 41 and the consequent decrease in relationship-building. Sixty-two percent of the nonprofits in Colorado are direct service providers in the fields

of health, human services, social services and education. Many of these nonprofits have contracts with the state and thus are “independent contractors” that may be subject to Amendment 41.

Shimanski testified that 5.3% of philanthropic funding to nonprofits nationwide comes from the private sector. Amendment 41 is a disincentive for nonprofits to seek funding from the private sector. Moreover, nonprofits that have contracts with the state may not be able to accept a charitable contribution greater than \$50 under Amendment 41.

Questions (requests for advisory opinions under section 24-18.5-101(4)(b)(II))

Is a nonprofit corporation that has a contract with the state or with a county an “independent contractor” subject to Amendment 41? See section 2(1) of Amendment 41. If the answer is “yes,” does section 3(2) of Amendment 41 prohibit the nonprofit corporation from accepting donations of more than \$50 from anyone? Does the application of the prohibition violate the First Amendment and substantive due process?

Is the “independent contractor” subject to Amendment 41 the nonprofit corporation or does “independent contractor” include all of the employees of a nonprofit corporation that has a contract with the state or with a county and the family members of the employees?

Questions (requests for letter rulings under section 24-18.5-101(4)(b)(III))

May a government employee be reimbursed by a non-profit organization for the reasonable expenses of attending a meeting or fact-finding mission if a for-profit entity provides 5% or more of the funding of a sponsoring non-profit organization? See section 3(3)(f) of Amendment 41. If not, does the restriction violate the First Amendment?

Is a nonprofit corporation that hires a lobbyist or that has a staff member that lobbies occasionally subject to the \$0 gift ban? See sections 2(5) and 3(4) of Amendment 41. If so, does the ban violate the First Amendment?

Are meals with an annual aggregate value of more than \$50 that a nonprofit organization provides for all board members a prohibited gift under Amendment 41 when the meal is provided to a government employee or the family member of a government employee who is a board member? See sections 3(2) and (4) of Amendment 41.

May a nonprofit corporation that does not lobby provide solicited informational material to a legislator or a governmental employee if the research used to prepare the material or position paper is worth more than \$50 or if the printing or copying of the material costs more than \$50? See sections 3(2) and 3(3)(b) of Amendment 41. If not, does the ban violate the First Amendment?

How does a nonprofit organization that has an annual event to which it invites lawmakers calculate the “fair market value” or aggregate actual cost” of the meal provided to lawmakers under section 3(2) of Amendment 41?

Does the exception for nonprofits receiving less than 5% for-profit funding in section 3(3)(f) of Amendment 41 apply to total funding or to event-based funding?

Daniel E. Williams

Facts

Daniel E. Williams was a member of the General Assembly from 1984 through 2002 and an Eagle County Commissioner from 1976 until 1984. He now is a professional, registered lobbyist representing a variety of entities and associations in their communication with legislators. Since 2003 he has served as co-chair of the general assembly’s blue ribbon panel on ethics.

Under Amendment 41, Williams believes that he cannot give, or offer to give, a state or local government official or employee anything of value, including written or oral informational material, whether requested or not. Amendment 41 also prohibits Williams both personally and on behalf of any other person or entity from paying for food for officials and employees either in the course of his business or in connection with a personal or social event.

Questions (all are requests for letter rulings under section 24-18.5-101(4)(b)(III), C.R.S.)

Does the \$0 gift ban in section 3(4) of Amendment 41, prohibiting lobbyists from providing any “thing of value of any kind or nature,” apply to “fact sheets” that lobbyists provide to lawmakers? If so, does the ban violate the First Amendment (freedom of speech and association and right to petition the government)?

May a lobbyist provide solicited informational material to a legislator or a governmental employee if the research that went in to preparing the material or position paper is worth more than \$0 or if the printing or copying of the material costs more than \$0? See sections 3(3)(b) and (4) of Amendment 41. If not, does the ban violate the First Amendment?

Does the ban on “good will” lobbying provided by for-profit organizations violate the First Amendment? See section 3(4) of Amendment 41. If so, does the ban violate the First Amendment?

Adams County Economic Development, Inc.

Facts

Adams County Economic Development, Inc. (“ACED”), is a public-private nonprofit economic development consortium serving Adams County, nine municipalities in Adams County and 8,800 county businesses. ACED’s goals include creating a regional catalyst to develop high quality jobs and a strong tax base. ACED assists businesses that wish to relocate to or expand in Adams County with site selection, regulatory coordination, enterprise zone administration, incentive packages, research, publications and economic impact studies. ACED also educates state and local government officials and employees about development and business growth in Adams County.

ACED provided occasional tours for local elected officials and government employees to see projects similar to those proposed for Adams County. The government officials and employees who are part of ACED’s partnership no longer can participate because ACED receives more than 5% of its funding from for-profit entities. Sec. 3(3)(f). ACED also contracts with Adams County to assist new businesses seeking to relocate and thus may be an independent contractor covered under Amendment 41. For both reasons, ACED no longer sponsors educational trips.

ACED also furnished books and other informational materials and provided meals or refreshments at occasional seminars or luncheons. The value of these items may exceed \$50 in a calendar year. In addition, ACED’s lobbyist monitors legislation before the general assembly, provides information when requested by legislators, and communicates ACED’s position on pending legislation. Under Amendment 41, ACED believes that it no longer may spend any money on a response to a request for information from a legislator.

Question (request for advisory opinion under section 24-18.5-101(4)(b)(II))

Is an economic development consortium that has a contract with the state or with a county an “independent contractor” subject to Amendment 41? See section 2(1) of Amendment 41. If the consortium is an “independent contractor,” does each member of the consortium become an “independent contractor” subject to Amendment 41? If so, does application of the amendment violate substantive due process?

Questions (requests for letter rulings under section 24-18.5-101(4)(b)(III))

Is an economic development consortium that hires a lobbyist or that has a staff member that lobbies occasionally subject to the \$0 gift ban? See sections 2(5) and 3(4) of Amendment 41. If so, does the ban violate the First Amendment?

Are informational materials, meals, trips or honoraria paid for by an economic development consortium prohibited gifts under Amendment 41 when they are provided to

a government employee or the family member of a government employee? See sections 3(2) and (4) of Amendment 41.

May a nonprofit economic development consortium reimburse a government employee for the reasonable expenses of attending a meeting or fact-finding mission if a for-profit entity provides 5% or more of the funding of the sponsoring nonprofit organization? See section 3(3)(f) of Amendment 41. If not, does this restriction violate the First Amendment?

The impact of Amendment 41 on government employees.

Amendment 41 applies to government employees who were not covered by pre-existing ethics laws. The \$50 gift ban in section 3(2) impacts work-related events and materials as well as personal “gifts.” For example, University of Colorado professors may no longer be entitled under section 3(2)(f) to have their transportation and lodging paid by nonprofit corporations or the federal government when they attend conferences and seminars in their academic disciplines or when they testify before Congress.² Many faculty members also receive examination copies of textbooks provided free of charge by publishers. Under Amendment 41’s \$50 gift ban, state university and college programs that utilize materials provided free of charge may no longer be able to do so.

Amendment 41 applies to gifts valued at more than \$50 received by government employees and their family members unless the covered person provides “lawful consideration of equal or greater value in return.” Secs. 3(1) and (2). Under basic contract law, past performance generally is not adequate consideration. Plains Iron Works Co. v. Haggott, 188 P. 735 (Colo. 1920). This is a dramatic limitation on the personal lives of government employees, including independent contractors, and their families. The \$50 gift ban may prevent all government employees and their family members from receiving gifts from others or giving gifts to family members that total more than \$50 annually except on “special occasions.” Sec. 3(3)(g). The \$50 gift ban may apply to college scholarships based on past performance by the children of government employees. One witness was concerned about whether she and her partner, both state employees, would be able to inherit from the other.

Amendment 41 bans “promises or negotiations of future employment” worth more than \$50. Sec. 3(2). Full-time state and local employees may not seek or accept future employment while employees of the government without violating the amendment. Part-time employees and independent contractors may not seek or accept additional non-government part-time work. And their family members may not seek or accept future employment or additional non-governmental part-time work.

² Section 3(3)(f) exempts from the \$50 gift ban “reasonable expenses paid ... by state or local government for attendance at a convention” The exemption does not refer to expenses paid by the federal government.

Ann L. McGihon

Facts

Anne L. McGihon, is a state representative from Denver. As a member of the general assembly, McGihon cannot accept anything valued at more than \$50 from any person; she cannot host events at her home; she cannot be a guest of an organization at a meeting or accept food from the organization unless she is a speaker at the meeting; she cannot accept anything of value of any kind or nature, including informational materials, from a lobbyist. Amendment 41 interferes with McGihon's ability to obtain information pertinent to her duties. McGihon, who is a lawyer, testified that Amendment 41 would prevent her from acquiring new clients and developing her law practice.

Questions (requests for advisory opinions under section 24-18.5-101(4)(b)(II))

May a legislator or government employee request informational material from any person who is not a professional lobbyist if the research that went in to preparing the material or position paper is worth more than \$50 or if the printing or copying of the material costs more than \$50? See sections 3(2) and 3(3)(b) of Amendment 41. If not, does the ban violate the First Amendment?

Does the \$0 gift ban in section 3(4) of Amendment 41, prohibiting lobbyists from providing any "thing of value of any kind or nature," apply to "fact sheets" that lawmakers receive from lobbyists? If so, does the ban violate the First Amendment?

May a legislator or government employee request informational material from a professional lobbyist if the research that went in to preparing the material or position paper is worth more than \$0 or if the printing or copying of the material costs more than \$0? See sections 3(2) and 3(3)(b) of Amendment 41. If not, does the ban violate the First Amendment?

May a legislator be reimbursed by a nonprofit organization for the reasonable expenses of attending a meeting or fact-finding mission if a for-profit entity provides 5% or more of the funding of a sponsoring non-profit organization (for example, the Colorado Health Foundation receives more than 5% of its funding from HealthOne and McGihon chairs the House Committee that considers health-related legislation)? See section 3(3)(f) of Amendment 41. If not, does this restriction violate the First Amendment?

Are part-time lawmakers who are lawyers barred from obtaining new clients (or additional non-government part-time work) or changing law firms while they are lawmakers? See section 3(2) of Amendment 41. If so, does the application of section 3(2) violate substantive due process?

Frank Weddig

Facts

Frank Weddig is an Arapahoe County commissioner. Weddig is paid \$63,000 per year and has a \$7,000 expense account to pay for work-related meals and trips to conferences. The commissioners divide up duties of oversight and representation on various boards. Weddig is required as a county commissioner to attend ten to twelve meetings per month for organizations like Developmental Pathways that receive county funding. The meetings are often held at mealtimes, when more people are available. After four months, Weddig had exhausted his annual county budget allotment for meals at such events. As a result, he pays for these events himself and is less likely to attend.

County commissioners oversee land-use planning and receive informational materials from developers. For example, Arapahoe County was asked to approve transit development next to an RTD transit line. The transit development required a change in underlying zoning and pedestrian studies. Amendment 41 may prohibit the county from requesting information valued at more than \$50 from outside groups that can inform the county about the impact of the development on the county's infrastructure.

Arapahoe County has both federal and state lobbyists. The lobbyists relay information to legislators and also communicate with the thirteen cities in Arapahoe County. The \$0 ban in Amendment 41 prevents the free flow of information from the county to its lobbyists.

The \$50 gift ban restricts employees of the county, including independent contractors, and their family members in the same way that it impacts all other government employees.

Questions (requests for advisory opinions under section 24-18.5-101(4)(b)(II))

May a county commissioner be reimbursed by a non-profit organization for the reasonable expenses of attending a meeting or fact-finding mission if a for-profit entity provides 5% or more of the funding of a sponsoring non-profit organization? See section 3(3)(f) of Amendment 41. If not, does this restriction violate the First Amendment?

May a county planner request that a developer supply plans for a new subdivision if the plans that the developer supplies have a value of more than \$50? See sections 3(2) and 3(3)(b) of Amendment 41. If not, is the application of the sections to the planner's request a violation of the First Amendment and substantive due process?

Can the county supply information worth more than \$0 to its lobbyists? If not, does the \$0 gift ban violate the First Amendment?

May a county employee's child be the recipient of a scholarship worth more than \$50 and based on past performance without violating the gift ban in section 3(2) of Amendment 41? If not, does the application of the ban violate substantive due process?

May a county employee receive an inheritance from a relative that has a value in excess of \$50 without violating the gift ban in section 3(2) of Amendment 41? If not, does the application of the ban violate substantive due process?

David Getches

Facts

David Getches is the dean of the University of Colorado Law School. As a law school faculty member, his primary areas of teaching are American Indian law, water law, environmental law and public land law. He is a frequent speaker who receives reimbursement for his expenses and sometimes an honorarium, and the author of books and articles. Dean Getches often attends conferences where he is invited to attend but not to speak. Attendance at such events promotes faculty academic stature (as well as that of the university) and allows faculty members to participate in groups that share their values (and leverage their political impact).

Dean Getches is a board member for several natural resources nonprofit organizations, which allows him to influence public policy and law; he receives reimbursement for traveling to meetings. He has been invited to testify before Congress on Indian rights and the law of the Colorado River; he receives reimbursement from the federal government for his expenses. Under section 3(3)(f) of Amendment 41, he cannot receive reimbursement for travel expenses from the nonprofit organizations for which he is a board member because the organizations receive more than 5% of their funding from for-profit entities. He also cannot accept travel reimbursement from the federal government or from Indian tribes. Dean Getches' pay as an academic will not allow him to serve as a board member or travel to Washington D.C. to testify if he has to pay his own expenses.

Law school faculty members can engage in fee-generating or compensated activity not to exceed one-sixth of their time. Acting as a consultant or expert allows faculty to bring their experiences to the classroom. Given Amendment 41's ban on negotiating for outside employment, professors are uncertain whether they can negotiate, for example, to be an expert witness. In addition, the law school has adjunct professors who contract to teach a single class or seminar, and the law school also employs students in its part-time work-study program. Amendment 41 appears to prohibit adjunct professors and work-study students (as independent contractors) from negotiating for new employment or new clients.

Law school professors receive sample textbooks and treatises from publishers with the intent that the professor will select one or more of them for use in his or her class. Textbook publishers customarily send examination copies of textbooks to professors for use in a particular course at no charge to the professor. Each book sells for

\$100 or more, and each professor may receive six to ten different textbooks to keep. After examination, the professor will select one book to use in the course. Purchase by the law school of six to ten textbooks for each course for each professor for each semester would displace other library acquisitions. The definition of “gift” in Amendment 41, sec. 3(2), may ban examination copies of textbooks.

Questions (requests for advisory opinions under section 24-18.5-101(4)(b)(II))

May a professor or other university employee be reimbursed by a nonprofit organization for the reasonable expenses of attending a meeting or fact-finding mission if a for-profit entity provides 5% or more of the funding of a sponsoring nonprofit organization? See section 3(3)(f) of Amendment 41. If not, does this restriction violate the First Amendment?

May a professor or other university employee be reimbursed by the federal government for the reasonable expenses of testifying before a congressional committee or attending a meeting with federal government officials? See section 3(3)(f) of Amendment 41. If not, does this restriction violate the First Amendment?

Is the receipt by a university professor of an “examination copy” of a textbook, that sells for more than \$50, a “gift” that is banned under section 3(2) of Amendment 41? If so, does the ban violate the First Amendment?

Is the receipt of tickets by a professor or other university employee from a professional association (like a minority bar association) to attend the association’s annual banquet a “gift” that is banned under section 3(2) of Amendment 41? Does the answer change if the tickets are provided by a third party? If the answer to either question is “yes,” does the ban violate the First Amendment?

If the definition of “gift” in section 3(2) of Amendment 41 is limited to gifts intended to influence official action, are gifts to professors or other university employees banned if the gift (1) influences inconsequential or benign actions (such as the adoption of a textbook) or (2) benefits the university and its students or promotes public policy (such as good will lobbying)?

Are professors and other university employees and their family members barred under section 3(2) of Amendment 41 from negotiating future employment or receiving a promise of future employment? If so, does application of the bar violate substantive due process?

Are professors and other university employees barred under section 3(2) of Amendment 41 from being recruited for or negotiating consulting contractual arrangements otherwise permitted by the university? If so, does application of the bar violate substantive due process?

Norma Anderson

Facts

Norma Anderson, a former member of the general assembly, is the mother-in-law of Pamela Anderson, the Jefferson County Clerk and Recorder. Pamela Anderson's children, ages six and nine, are Norma Anderson's grandchildren. Amendment 41 may prohibit Norma Anderson from spending more than \$50 per year on each of her grandchildren, the children of a county elected official, except on a "special occasion," which the Amendment does not define.

Question (request for letter ruling under section 24-18.5-101(4)(b)(III))

Are the gifts (including child care) that a grandmother gives to her grandchildren, the children of a county employee, on a non-"special occasion" limited to \$50 per child each year because they give rise to "personal financial gain" without "lawful consideration of equal or greater value in return"? See sections 3(2) and (3)(g) of Amendment 41. If so, does application of the limit violate the First Amendment right to associate and/or substantive due process?

Virginia Buczek

Facts

Amendment 41 applies to appointed members of boards that serve statutory towns. Sec. 2(3). The attorney for the Town of Firestone advised plaintiff Virginia Buczek that as of January 2007 she could no longer serve as a member of the town planning board. Buczek was a long-time volunteer member of the board and wanted to continue as a board member but her children are recipients of college scholarships based on past performance, and the town attorney concluded that the planning board's decisions could be subject to challenge if Buczek's family members had received "gifts" prohibited by Amendment 41. Amendment 41's gift limit forced Buczek to resign.

Questions (requests for advisory opinions under section 24-18.5-101(4)(b)(II))

Does the participation of a volunteer planning board member for a statutory town, whose children receive college scholarships based on past performance, subject the board's decisions to challenge because the scholarships are a "gift" banned by sections 2(3) and 3(2) of Amendment 41? If the answer is "yes," does the restriction violate the First Amendment?

At what age are the children of a government employee or independent contractor no longer subject to the gift ban?

Douglas Abraham

Facts

Douglas Abraham is the Chief of Police at the Denver Health Center Sciences campus of the University of Colorado. His department employs sixty people, and most of them are long-time employees. Under Amendment 41 staff members were unable to provide assistance to pay for the funeral of the young son of one of the officers or to contribute vacation hours, as allowed under a university policy, to an injured officer who had used up her sick leave. Officers in the department could not give tickets to sporting events to one another if the value of the tickets exceeded \$50. The police chief noted that law enforcement personnel who fail to comply with an ethics law jeopardize both their current employment and their ability to obtain future employment.

Questions (requests for advisory opinions under section 24-18.5-101(4)(b)(II))

Are government employees barred under section 3(2) of Amendment 41 from providing assistance of more than \$50 each to pay for the funeral of the son of a work colleague? If so, does application of the bar violate substantive due process?

Are government employees barred under section 3(2) of Amendment 41 from contributing vacation hours worth more than \$50 to an injured colleague who has used up her sick leave? If so, does the application of the bar violate substantive due process.

Are government employees barred from giving tickets to sporting events to one another under section 3(2) of Amendment 41 if the value of the tickets exceeds \$50? If so, does the application of the bar violate substantive due process?

Are government employees and their family members barred under section 3(2) of Amendment 41 from negotiating future employment or receiving a promise of future employment while they are employed by the government? If so, does the application of the bar violate substantive due process?