

Frequently Asked Questions about Amendment 54

(Colorado Constitution Article XXVIII, adds Sections 15-17, amends Sections 2, 13) –

This FAQ is a general guide to Amendment 54 and its general impacts and implications for nonprofit organizations. It is not intended to provide legal advice and is not a substitute for legal counsel. For specific questions and circumstances related to Amendment 54, it may be prudent to retain legal counsel.

What does Amendment 54 do?

Prohibits individuals and organizations from making contributions for the benefit of a political party or candidate for state or local elected office if they hold a sole source government contract¹, or a collection of sole source government contracts, worth more than \$100,000 per calendar year. The \$100,000 threshold will be adjusted for inflation every four years to the nearest \$25.² This prohibition lasts for the term of the contract and two years after.³

Also, any individual or organization that has made a contribution to promote or influence the outcome of a ballot measure, or who has influenced such a contribution to be made, would be prohibited from entering into a sole source government contract related to that ballot issue.⁴

Grey Areas:

- *What does benefit mean? Does this mean monetary contributions only or does this include in-kind contributions or volunteer time?*
- *What does it mean for a contract to be related to a ballot measure? In what ways?*
- *Would the prohibition apply if the ballot issue contribution and the sole source contract are on similar issues but happen many years apart?*
- *Would this prohibition apply to contributions to a nonprofit that works to influence the outcome of a ballot issue but does not register or need to register with the state as an issue committee?*

What is a sole source government contract?

Any state or local government contract that "...does not use a public and competitive bidding process soliciting at least three bids prior to awarding the contract." Local governments include "counties, municipalities, school districts, special districts, and any public or quasi-public body receiving the majority of its funds from Colorado taxpayers."⁵

¹ Section 15

² Section 2 (14.4)

³ Section 15

⁴ Section 17 (2)

⁵ Section 2 (14.4)

Grey Areas:

- *If a nonprofit receives a majority of its funding from state or local governments, would it be considered a quasi-public entity for the purposes of Amendment 54? Since it would not collect tax revenue directly, would it be excluded from this definition?*
- *If three bids are solicited but not received, would the contract be a sole source contract for the purposes of Amendment 54?*
- *“Contract” is not defined. Is a grant the same as a contract for the purposes of Amendment 54 if it meets all the other criteria?*

Who are contract holders?

Besides individual contractors, “contract holders” means any non-governmental party to a sole source contract including:

- the party’s officers, directors, or trustees;
- any person who controls ten percent or more of shares or interest in that party;
- a labor organization and any of its political committees in the case of a collective bargaining agreement.⁶

Contract holders are prohibited from directly making campaign contributions to a political party or candidate for elected office or causing or inducing them to be made through an immediate family member.⁷ If a contract holder intentionally violates either prohibition, that contract holder will not be eligible to hold either a sole source contract or public employment in Colorado for three years.⁸

Nonprofit organizations are already prohibited by federal law from supporting or opposing a candidate for elected office.

Grey Areas:

- *Amendment 54 does not seem to apply to employees of a business unless they are also directors, officers, or trustees; shareholders, or part of a labor organization or one of its political committees. Would it apply to staff members that serve on a board in an ex officio capacity (e.g. as a non-voting director)?*
- *What does it mean to “cause” or “induce” an immediate family member to contribute directly or indirectly on behalf of a contract holder?*
- *While it does not seem like the language is intended to prohibit immediate family members of contract holders from making contributions independently of the contract holders, does Amendment 54 effectively prohibit them from making any campaign contributions?*

Who are immediate family members?

⁶ Section 2 (4.5)

⁷ Section 15

⁸ Section 17 (3)

An “immediate family member” means any “spouse, child, spouse's child, son-in-law, daughter-in-law, parent, sibling, grandparent, grandchild, stepbrother, stepsister, stepparent, parent-in-law, brother-in-law, sister-in-law, aunt, niece, nephew, guardian, or domestic partner.”⁹

Grey Area:

- *Uncles are not included here. Is this a loophole?*

Who else is affected?

- Persons keeping the books for the contract holder or acting on behalf of the government entity administering the contract. If either of these parties becomes aware of a contribution made or accepted in violation of Amendment 54, they must notify the Colorado Secretary of State or appropriate government official in writing within ten business days. If they intentionally fail to do so, they are required to compensate the government entity for an amount up to the total costs and expenses associated with the violation.¹⁰
- Persons who intentionally accept “...contributions on behalf of a candidate committee, political committee, small donor committee, political party, or other entity” either directly or indirectly from a sole source contract holder. Such persons are deemed to have engaged in corrupt misconduct and will be required to “compensate the government entity for all costs and expenses associated with the breach,” which may include the costs of securing a new contract.¹¹
- A knowing violation of Amendment 54’s prohibitions by an elected or appointed official is “grounds for removal from office and disqualification from holding any office of honor, trust, or profit in the state, and shall constitute misconduct or malfeasance.”¹²

Grey Areas:

- *Bookkeepers generally do not track the campaign contributions made by individual board members. Would Amendment 54 effectively require them to collect this information from board members or would they only be liable if they happen to find out about a prohibited contribution?*
- *What kinds of costs and expenses would have to be paid to a government entity administering a contract besides the costs of securing a new contract?*
- *Would a public official who violates Amendment 54 be banned from any public office in Colorado for ever or only three years?*

What does Amendment 54 require of sole source contract holders?

⁹ Section 2 (8.5)

¹⁰ Section 17 (1)

¹¹ Section 17 (1)

¹² Section 17 (4)

Besides the prohibitions on making contributions to candidate campaigns and to influence ballot issues, Amendment 54 requires that contract holders fill out a sole source government contract summary on the Department of Personnel and Administration's website, <http://www.colorado.gov/dpa/dfp/sco/contracts.htm>.

Amendment 54 requires that contract holders report the following:

- names and addresses of contract holders and all other parties to the government contract;
- a brief description of the nature of the contract and goods and services performed;
- the duration, financial information, and other terms of the contract;
- other information required by the Department of Personnel and Administration that does not violate federal law, intellectual property rights, or entail disclosure of trade secrets¹³.

All sole source government contracts must now include language indicating that the contract holder has agreed not to make direct or indirect contributions in violation of Amendment 54¹⁴. The standard contract language can be found at

http://www.colorado.gov/dpa/dfp/sco/Amend_54/Sole_Source_Government_Contracts.pdf.

When does Amendment 54 take effect?

The amendment took effect on December 31, 2008 and applies to all sole source government contracts entered into on or after that date¹⁵. The Department of Personnel and Administration's guidance regards contract renewals as sole source contracts if fewer than three bids were solicited at the time of renewal.¹⁶ State and local government departments are including language requiring compliance with Amendment 54 in sole source contracts that are up for renewal.

How is Amendment 54 enforced?

Any registered voter may file a complaint in district court for injunctive or declaratory relief or civil damages and remedies as applicable¹⁷. In the former case, the court would be asked to declare that a contract holder, government entity, bookkeeper, or public official has acted in violation of Amendment 54 and/or is required to halt misconduct. In the latter case, the court may award civil damages and remedies.

The Department of Personnel and Administration maintains and publishes a summary of all sole source government contracts that are issued and receives sole source government contract summaries from all individuals and organizations that hold such contracts. This information is publicly available at <http://www.colorado.gov/dpa/dfp/sco/contracts.htm>.

¹³ Section 16

¹⁴ Section 17 (I)

¹⁵ Section 13

¹⁶ [http://www.colorado.gov/dpa/dfp/sco/Amend_54/Technical_Guidance\(2\).pdf](http://www.colorado.gov/dpa/dfp/sco/Amend_54/Technical_Guidance(2).pdf) 8.2

¹⁷ Section 17 (5)

Where can I learn more about Amendment 54?

More information about Amendment 54 is available on the Department of Personnel and Administration's website, <http://www.colorado.gov/dpa/dfp/sco/contracts.htm>. You may also contact the department by phone at (303) 866-6200.

Does the Colorado Nonprofit Association have a position on Amendment 54?

The Colorado Nonprofit Association opposed Amendment 54 during the 2008 election. Amendment 54 was one of several ballot measures that would upset the legal balance between employees and employers.

More importantly, it could cause board members to resign their positions if they have to choose between exercising their rights under the First Amendment to make campaign contributions and to serve on a board with a sole source government contract.

The Association is not part of the legal challenge to Amendment 54 at this time.

Has anyone filed a legal challenge to Amendment 54?

Yes. *Ritchie, et al v. Ritter, et al.* has been filed. "The plaintiffs in this case are Daniel Ritchie, Patrick Hamill, Charles V. Brown, Matthew R. Dalton, the University of Denver, and the Children's Hospital Association. All plaintiffs hold sole source government contracts subject to Amendment 54."

"The lawsuit alleges that Amendment 54 is unconstitutional, both on its face and as applied, because it impermissibly chills their constitutional rights to political speech and association in violation of the First and Fourteenth Amendments to the United States Constitution. The plaintiffs seek a preliminary injunction, halting Amendment 54's implementation or enforcement, pending the outcome of this underlying civil action in the Denver District Court."

The lawsuit does not challenge the part of Amendment 54 requiring contract holders to file a sole source government contract summary with the Department of Personnel and Administration.

The hearing is set for the week of June 22-24. A decision from the District Court is expected to be delivered two to four weeks after the hearing. This decision will be on the motion for preliminary injunction for sure but could include a decision on the lawsuit's merits. If the court rules in favor of the plaintiffs either way, the decision is likely to be appealed.¹⁸

A separate lawsuit has been filed challenging provisions of Amendment 54 pertaining to labor organizations. The plaintiffs include Kerrie Dallman, a teacher; Laurence Botnick, a professor; School District 14 Classroom Teachers Association Political Action Committee, and Aurora Fire Fighters Protective Association. The plaintiffs are challenging Amendment 54 on constitutional grounds and

¹⁸ Greenberg Traurig. Memo from Doug Friednash to the Colorado Preservation Council. March, 5, 2009. Pg. 1.

insofar as it impacts their ability to make contributions as labor organizations and affiliated individuals to candidates, political committees, and issue committees.

This FAQ was put together based on the text of the Amendment, information from the Department of Personnel and Administration, information from the Colorado Preservation Council, and a memo by Doug Friednash of Greenberg Traurig. Special thanks to Doug Friednash and Greenberg Traurig, as well as Janice Sinden and the Colorado Preservation Council, for providing valuable information for this FAQ.