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LAWYERS OF THE *Year*

Elite Electioneer

By **Hannah Garcia**
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MARK GRUESKIN | LAW WEEK FILE PHOTO

IT WAS THE late 1970s when an old Texas attorney asked Mark Grueskin what kind of lawyer he wanted to be. When Grueskin said he wanted to practice election law, the man didn't take him seriously.

"He sat back in his chair and laughed and said, 'son, no one practices election law. You find something serious to do,'" Grueskin said. "I feel like my practice has become the ultimate revenge."

The RechtKornfeld shareholder said he used to manage political campaigns and found some satisfaction there, "but it wasn't enough."

"I had this legal training and this political training and figured there had to be a way to meld them," he said.

Grueskin indeed had a busy year, racking up three appellate wins from issues spanning ballot measures to TABOR challenges.

In June, he won a ballot measure case representing appellant Phillip Hayes at the Colorado Supreme Court against the State Title Board. The court ruled that proposed Initiative 76 would have violated Article V, Section 1(5.5) of the Colorado Constitution, which prohibits a ballot measure from proposing more than a single subject.

"Sometimes in the election law field, what you can do is keep really bad things from happening, like the recall initiative on a crowded ballot," Grueskin said. "By and large, I really believe in voters."

The initiative would have repealed Article XXI of the Colorado Constitution, which provides the state's procedure for recall elections. It also sought to establish a new constitutional right to recall non-elected public officials.

"In the case before us, some voters might favor changes to the manner in which recall elections for elected officers are triggered and conducted, but not favor establishing a new constitutional right to recall non-elected officers, or visa-versa," Colorado Supreme Court Justice Gregory Hobbs wrote for the majority. "Initiative #76 unconstitutionally combines the two subjects in an attempt to attract voters who might oppose one of these two subjects if it were standing alone."

Grueskin said when representing an appellant, "particularly when there's a presumption that the government is right, it can be an uphill battle."

In August, Grueskin represented the Colorado Department of Transportation as outside counsel in a TABOR challenge against the Colorado Bridge Enterprise, which imposes a fee under legislative authority on every registered vehicle for bridge repairs.

The TABOR Foundation argued that it was a tax, not a fee, that should have been put to voters.

The Colorado Court of Appeals ruled in favor of the Bridge Enterprise and CDOT on appeal, finding that the charge did qualify as a TABOR-exempt fee and that the money raised from the fees could never be used for other purposes besides funding bridge repair.

"Every once in awhile as a lawyer, you get to help keep people safe, and that's extremely gratifying," Grueskin said. "I had great help from the Attorney General's Office as co-counsel," who represented the Colorado Bridge Enterprise.

Also in June, Grueskin represented Citizens for Integrity, an amicus curiae in Gessler v. Colorado Common Cause. In that case, Colorado Secretary of State Scott Gessler took a broad view of the 10th Circuit opinion in Sampson v. Buescher in which the court ruled that Colorado's disclosure requirement unduly burdens small-scale ballot initiative committees.

Using that court opinion, Gessler published Rule 4.1 to establish which issue committees should comply with state disclosure requirements.

"Unlike the issue committee requirements that the 10th Circuit considered in Sampson — which establish a $200 contribution and expenditure threshold that triggers issue committee status and require both retrospective and prospective reporting of contributions and expenditures once issue committee status is achieved — the new requirements under Rule 4.1 establish a $5,000 contribution and expenditure threshold and require only prospective reporting of contributions and expenditures," Chief Justice Nancy Rice wrote for the majority.

Grueskin said the amicus brief he and his client filed pointed out the narrow nature of the original 10th Circuit opinion, which ended up being a key point in the decision.

"It's such a liberating thing to be in the role of friend of the court because you're saying, 'you know what, (we) don't know what happened at trial, can't talk about the facts,' but this one legal issue has all the centrality to your decision that we can possibly focus on," Grueskin said. "You don't have to invalidate all of the regulatory structure by adopting a whole new set of rules, you just have to accommodate this set of facts."

Although the state legislature has the authority to reverse rules that violate state law, the slow grind of congressional proceedings make the courts one of the quickest avenues for relief, according to Grueskin.

"With the rules bill, it might take a year and a half for the legislature to act," Grueskin said. "In elections, a year and a half is an eternity. Litigation ends up being the way in which these issues get focused so that elections aren't skewed. That's really what's at stake."

Despite his love for practicing law that influences politics, Grueskin said he never plans to run for public office.

"Some people are cut out to be advocates, some are cut out to be arbiters," he said. •

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