

<p>STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th floor Denver, Colorado 80203</p> <hr/> <p>BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, <i>in re</i> ED 2022-94, 2022-98</p> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>FOOTHILLS FIRE PROTECTION DISTRICT, DUEY FREEMAN PAUL DEETH SCOTT FERGUSON STEVE BECK TJ CARNEY, and ALAN ANDERSON</p> <p>Respondents.</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>CASE NUMBER</p> <p>AHO 2023-_____</p>
<p>COMPLAINT</p>	

Pursuant to § 1-45-111.7, C.R.S. (2022) and Rule 24 of the Secretary’s Rules on Campaign and Political Finance, 8 CCR 1505-6, the Elections Division of the Secretary of State files this Complaint against Solomon for Colorado (the “District”), Duey Freeman, Paul Deeth, Scott Ferguson, Steve Beck, TJ Carney, and Alan Anderson (collectively, “Respondents”).

BACKGROUND

1. Colorado law prohibits state agencies or political subdivisions from expending any funds to urge voters to vote for or against any ballot issue, referred measure, or recall measure.

2. The purpose of this provision is to prevent the government itself from engaging in electoral advocacy, instead requiring it to maintain as much neutrality as possible on electoral matters that are put to a vote.

3. Here, the District distributed a newsletter to voters in the Foothills Fire Protection District encouraging them to support two ballot measures that appeared on those voters' November 8, 2023, ballot. The newsletter included only information in support of the measures. It did not include arguments against the measures. Because the communications qualified as electoral advocacy, and because they did not present a factual summary of the pros and cons of the two measures, they were unlawful.

4. Accordingly, the Division brings this complaint for appropriate relief.

PARTIES

5. Complainant is the Elections Division ("Division") of the Colorado Secretary of State.

6. Respondents are:

- a. The Foothills Fire Protection District, a special district in Jefferson County, CO;
- b. Duey Freeman, a former Board Member of the District who voted in favor of or otherwise authorized the expenditure on the newsletter;
- c. Paul Deeth, a former Board Member of the District who voted in favor of or otherwise authorized the expenditure on the newsletter;
- d. Scott Ferguson, a former Board Member of the District who voted in favor of or otherwise authorized the expenditure on the newsletter;
- e. Steve Beck, a former Board Member of the District who voted in favor of or otherwise authorized the expenditure on the newsletter;
- f. TJ Carney, a former Board Member of the District who voted in favor of or otherwise authorized the expenditure on the newsletter;
- g. Alan Anderson, the former Fire Chief for the District who voted in favor of or otherwise authorized the expenditure on the newsletter.

JURISDICTION AND VENUE

7. The Division has jurisdiction under § 1-45-111.7.

8. The Division files this complaint with a hearing officer consistent with § 1-45-111.7(5)(a)(IV), (6).

9. This complaint is timely filed within thirty days of the Division's June 26, 2023, Notice of Investigation according to § 1-45-111.7(5)(a)(IV).

10. Venue is proper before the hearing officer under § 1-45-111.7(5).

ALLEGATIONS

11. During the November 2022 general election, voters in the Foothills Fire Protection District were presented with two ballot measures. The first was a \$12.7 million bond measure, and the second was a \$111,000 increase to the District's mill levy.

12. The purpose of these measures was to construct a new firehouse for the District and conduct annual upkeep.

13. On October 19, 2022, the Division received a campaign finance complaint against the District. The October 19, 2022, complaint was filed by Robert Heine. The Heine Complaint alleged that the District had distributed a "4 page color pamphlet" encouraging voters to support the two ballot measures.

14. The Heine Complaint included photos of the pamphlet. The pamphlet appeared to be a monthly newsletter distributed by the District called "The Firefly." It appeared to be the October 2022 version of the newsletter.

15. The newsletter was all about "2022 Ballot Issue Information November Ballot issues 6B and 6C."

16. The newsletter included letters from the Board President, Duey Freeman, the Treasurer, Scott Ferguson, and the Chief, Alan Anderson. The letters explained the reasons the District had placed the measures on voters' ballots.

17. For example, Freeman's letter noted that "[w]ith the construction of a new fire station, we can provide our firefighters with the facility they need to protect our community."

18. Ferguson's letter noted that the cost to taxpayers would be an annual increase of "\$53.46 for every \$100,000 of the assessed value of your home per year," and that for a family whose home is assessed at \$1 million it would be "less than \$45 a month," or "less than a couple going to a restaurant once a month." Ferguson also noted that this amount was "a fraction of what most of us pay for homeowner's insurance, yet it provides better protection if an emergency strikes."

19. Finally, Anderson's letter noted the new station would dramatically improve response times for firefighters.

20. The newsletter concluded: "We ask for your support, and don't hesitate to contact any Board member if you have questions or comments." The newsletter then listed contact information for the President, Freeman, the Vice President, Deeth, the Treasurer, Ferguson, the Secretary, Beck, and the Assistant Secretary, Carney.

21. On October 24, 2022, the Division received a second complaint against "Foothills Fire and Rescue." This complaint was filed by Pati Stajcar, and included a link to a District Board of Directors meeting. The Stajcar Complaint alleged that during the meeting, the Fire Chief indicated that the District spent \$2,000 to promote the two ballot measures.

22. The Division reviewed video of the meeting, which occurred on October 18, 2022. During the meeting, Anderson talked about the Board's efforts to educate the community about the measures, and referenced the newsletter indicating: "The newsletter you just got in the mail cost this organization over \$2,000 to mail out to our community."

23. The video of that meeting is available through the District's website here: <https://tinyurl.com/5n6bv2kf>, and Anderson's comments occur at 1:39:10 on the meeting's timestamp.

24. As part of its investigation, the Division also reviewed the Districts minutes. On August 16, 2022, the Board voted unanimously to call for two Jefferson County Ballot questions. The Board also voted unanimously "to approve contracts with Diversified Consulting Services, Choice Advisors, Kline Alvarado Vieo and Piper Sandler for advisors in our upcoming bond election."

25. As part of the entry regarding the vote to refer the two measures, the minutes from that meeting note: "Chief Anderson presented a press release and talked about the message we put out to the public and rules the district has to follow in presentation/promotion of the ballot questions."

26. The Division gave the District notice of the two complaints, and on October 28, 2022, the Division issued a Notice of Initial Review, Consolidation, and Opportunity to Cure. In the Notice, the Division indicated that it had initially determined that the complaints were (1) timely filed, (2) identified potential violations of Colorado campaign finance law, and (3) alleged sufficient facts to support a legal and factual basis for the violation. The Division also consolidated the complaints because they arose from a common set of operative facts, and offered the District an opportunity to cure.

27. The District responded through counsel on November 4, 2022. The District indicated that the newsletter—including the statement “We ask for your support”—was not intended to urge electors to vote in favor of the ballot issues.

28. In an effort to cure the alleged violation, “and considering the temporal proximity of the election,” the District “prepared additional arguments against the ballot issues and combined them with the original Firefly pamphlet and posted the document, titled ‘A Factual Summary of Ballot Issues 6B and 6C Including Arguments Both For and Against the Proposals’ to the official District website on November 4, 2022.”

COLORADO CAMPAIGN FINANCE LAW

29. Under Colorado law, government entities are prohibited from expending “any moneys from any source, or mak[ing] any contributions, to urge electors to vote in favor of or against any: . . . (B) Local ballot issue.” § 1-45-117(1)(a)(I).

30. A government entity may, however, dispense a factual summary of a local ballot issue, so long as the summary includes “arguments both for and against the proposal,” and does not “contain a conclusion or opinion in favor of or against any particular issue.” § 1-45-117(1)(a)(II)(b)(I)

31. A violation of § 1-45-117 “shall be subject to the provisions of sections 9(2) and 10(1) of article XXVIII of the state constitution or any appropriate order or relief, including an order directing the person making that contribution or expenditure in violation of this section to reimburse the fund of the state or political subdivision . . . from which such moneys were diverted for the amount of the contribution or expenditure[.]” § 1-45-117(4)(a).

32. Section 10(1) of article XXVIII of the state constitution provides for civil penalties of “at least double and up to five times the amount contributed, received, or spent in violation” of Colorado law. Colo. Const. art. XXVIII, § 10(1).

33. Under Colorado law, “[i]f a board, commission, or council is found to have made a contribution or expenditure in violation of [section 1-45-117, C.R.S.], an individual member of the board, commission, or council who voted in favor of or otherwise authorized the contribution or expenditure may be ordered to reimburse an amount pursuant to subsection (4)(a) of this section as long as the amount does not exceed the amount ordered to be reimbursed by any other individual of the board, commission, or council who voted in favor or otherwise authorized the contribution or expenditure.” § 1-45-117(4)(b), C.R.S.

CLAIM ONE
Prohibited Expenditure
(§ 1-45-117(1)(a)(I), C.R.S.)

34. All preceding allegations are incorporated.

35. In October 2022 the Foothill Fire Protection District used public funds to distribute a newsletter encouraging voters in the district to support two ballot measures.

36. On information and belief, the District spent over \$2,000 on the newsletter.

37. Freeman, Deeth, Ferguson, Beck, Carney, and Anderson each voted in favor of or otherwise authorized this expenditure.

38. Although the District later sought to distribute factual summaries consistent with Colorado law, the new information was only distributed on the District’s website, as opposed to being mailed to voters, and was posted just four days before the election.

39. The Division is entitled to relief under Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act, § 1-45-101 et seq.

Respectfully submitted this 21st day of July, 2023.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

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CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served by mail and/or email this 21st day of July 2023, addressed as follows:

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