

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 2002-009

ORDER GRANTING SUMMARY JUDGMENT AND AGENCY DECISION

IN THE MATTER OF THE COMPLAINT FILED BY ALISON MAYNARD REGARDING ALLEGED VIOLATIONS OF THE FAIR CAMPAIGN PRACTICES ACT ON THE PART OF KEN SALAZAR, an individual; CITIZENS FOR KEN SALAZAR, INC., a candidate committee, by and through CHRIS ROMER, personal representative thereof; THE COCA-COLA COMPANY; MULTIMEDIA HOLDINGS CORPORATION; THE DENVER POST CORPORATION; and BIGHORN CENTER FOR PUBLIC POLICY, a Colorado nonprofit corporation.

All parties have filed either motions for summary judgment or motions to dismiss in this matter.¹ Hearing on these motions was held on September 26, 2002. Complainant Alison Maynard appeared *pro se*. Ken Salazar was represented by Maurice G. Knaizer, Deputy Attorney General. Citizens for Ken Salazar, Inc., (“Citizens for Salazar”) was represented by Timothy P. Daly, Isaacson, Rosenbaum, Woods, Levy, P.C. The Coca-Cola Company (“Coca-Cola”) was represented by Carol A. Laham, Wiley Rein & Fielding LLP, who appeared by telephone. Multimedia Holdings Corporation (“KUSA-Channel 9”) was represented by Richard P. Holme, Davis Graham & Stubbs LLP. The Denver Post Corporation (“Denver Post”) was represented by Mary Hurley Stuart, Holme Roberts & Owen LLP. Bighorn Center for Public Policy (“Bighorn”) was represented by Mark G. Grueskin, Isaacson, Rosenbaum, Woods & Levy, P.C.

STATEMENT OF THE ISSUES

Complainant asserts three violations of the Fair Campaign Practices Act (“Act”). All three violations relate to donations or payments made by various Respondents in connection with anti-bullying television spots and newspaper statements which Complainant contends benefited Attorney General Salazar’s re-election campaign and therefore constituted either contributions, contributions in kind or expenditures under the Act. First, Complainant contends that Attorney General Salazar and Citizens for Salazar, his candidate committee, failed to report the contributions or expenditures made by Coca-Cola, KUSA-Channel 9, and the Denver Post to create, air or print the television spots and newspaper statements. Second, she alleges that the contributions made by Coca-Cola, KUSA/Channel 9, Bighorn, and the Denver Post exceeded the

¹ At the beginning of hearing, Complainant filed a Cross-Motion for Partial Summary Judgment on the First and Second Claims for Relief. During the course of the hearing, however, Complainant orally moved for summary judgment on the third claim for relief. All parties therefore agree that this matter should be fully resolved based on either the motions to dismiss or motions for summary judgment.

\$2,500 limit on campaign contributions. Third, Complainant alleges that KUSA-Channel 9 and the Denver Post failed to report their contributions in kind to Citizens for Salazar.

FINDINGS OF FACT

Based on stipulated facts and exhibits, admissions, and affidavits filed by the parties in conjunction with their motions, the Administrative Law Judge finds that there is no genuine issue regarding the following facts:

1. Ken Salazar, Attorney General of the State of Colorado, was a candidate² for this office at all times relevant to this proceeding. He is currently seeking re-election in the November 5, 2002 election.

2. Since 1998, Citizens for Salazar has been a candidate committee pursuant to Section 1-45-103(2), C.R.S.

3. In 2001, Attorney General Salazar proposed that KUSA-Channel 9; Coca-Cola; and Bighorn, a nonprofit corporation, partner with him to address the issue of bullying in Colorado schools through a media campaign and other activities. Each of these groups agreed and committed funds or donated services. In addition, the Denver Post agreed to provide editorial and news coverage regarding the issue of bullying and the safe schools initiative.

4. A 30-second television spot ("television spot") was created to address bullying in schools. This spot was intended to increase the awareness of parents, students and the public about the problem of bullying.

5. The television spot portrays a young girl bullied by a classmate. The script reads as following: "When she was a little girl, she was afraid of monsters in the closet. Now she's afraid of monsters in the hallway. The torment can lead to isolation and insecurity. That's the reality. Get involved. Find out about the fears your kid faces every day and what you can do to help." The television spot then displays a telephone

² Attorney General Salazar was either a declared or undeclared candidate. Section 1-45-103(1.5), C.R.S., defines a "candidate" as follows:

(1.5) "Candidate" means any person who seeks nomination or election to any public office that is to be voted on in this state at any primary, general election, school district election, special district election, or municipal election. "Candidate" also includes a judge or justice of any court of record who seeks to be retained in office pursuant to the provisions of section 25 of article VI of the state constitution. A person is a candidate for election if the person either has publicly announced an intention to seek election to public office or retention of a judicial office or has received a contribution in support of the candidacy. A person remains a candidate for purposes of this article as long as the candidate maintains a registered candidate committee. A person who remains a candidate after an election cycle by reason of the maintenance of a registered candidate committee, but who has not publicly announced an intention to seek election to public office in the next or any subsequent election cycle, is an undeclared candidate for purposes of this article.

number and internet site and identifies the C.U. Center For The Study And Prevention Of Violence. The spot closes by listing as supporters “Colorado Attorney General Ken Salazar, 9News, Coca-Cola, and the Denver Post.” The list of supporters appears for approximately two seconds, making it difficult to identify Attorney General Salazar’s name.

6. Coca-Cola paid the costs of producing the television spot. The television spot ran seventy times on KUSA-Channel 9 from October 24 through December 23, 2001. Coca-Cola paid KUSA \$75,883.75 for the airtime for certain television spots aired on or before November 28, 2001.³ KUSA-Channel 9 aired the remaining television spots without charge as a public service and promotional announcement by KUSA-Channel 9. The fair market value of the airtime contributed by KUSA-Channel 9 exceeded \$2,500.

7. The record establishes no participation by the Denver Post in relation to the television spot. The Denver Post did not make any payment to KUSA-Channel 9 for the inclusion of its logo as a co-sponsor of the spot or provide any services to KUSA to produce the spot.

8. A similar anti-bullying message was published in the Denver Post newspaper (“newspaper”), a copy of which is attached as Exhibit 1 (“newspaper statement”).

9. The newspaper statement shows a girl sitting by her school locker with the text similar to that of the television spot: “When she was little, she was afraid of monsters in the closet. Now she’s afraid of monsters in the hallway. 1.6 million students are bullied every week. The torment can lead to loneliness, isolation, humiliation, and insecurity. But worst of all, it can lead to violence. That’s the reality. Get involved. Find out about the fears your kid faces every day. And what you can do to help.” The statement then lists a telephone number and website address.

10. The following information appears at the bottom of the newspaper statement: “With the support of: Colorado Anti bullying project, Bighorn Center (with its insignia), The Denver Foundation (with its insignia).” Additional supporters are listed below in the smallest font on the page with no insignias: “Colorado Attorney General Ken Salazar, The Denver Post, 9News, Colorado Fraternal Order of Police, CU-Boulder, National Campaign Against Youth Violence and Coca-Cola.” The only reference to Attorney General Salazar in the television spot is the inclusion of his name and title in the list of sponsors at the end.

11. The newspaper statements were published in the newspaper on February 28, March 14, March 28, and April 4, 2002.

12. Bighorn paid at least in part for the development of and print space for the full-page newspaper statement. The cost to Bighorn exceeded \$2,500.

3 The date of payment(s) by Coca-Cola to KUSA-Channel 9 is not established.

13. At all relevant times, the Denver Newspaper Agency LLP, not the Denver Post, published the newspaper. The Denver Post is responsible for the editorial and news content of the newspaper but is not responsible for its advertising or business operations.

14. Although Complainant alleges that the newspaper statements were published for a discounted rate, the record establishes only that they were published for rates established for certain nonprofit advertising.

15. Neither Coca-Cola nor KUSA-Channel 9 participated in the newspaper statements. Neither paid for the creation or publication of the newspaper statement.

16. The record establishes no expenditure by Citizens for Salazar in relation to either the television spots or the newspaper statements, and none has been alleged.

17. Citizens for Salazar did not report to the Secretary of State any of the following payments: Coca-Cola's payment of the costs of producing the television spot or its payment to KUSA of \$75,883.75 to air some of the television spots; KUSA-Channel 9's donation of airtime for some television spots; Bighorn's payment for the development and publishing of the newspaper statements; or any contribution by the Denver Post.

18. The anti-bullying initiative was not a ballot issue, and there was no issue committee formed to promote it.

19. On July 15, 2002, Alison Maynard filed a complaint with the Secretary of State alleging violations of the Act by Respondents Ken Salazar, Citizens for Salazar, Coca-Cola, and KUSA-Channel 9. On July 29, 2002, she filed an Amended Complaint with the Division of Administrative Hearings adding Respondents Bighorn and the Denver Post. Ms. Maynard is the Green Party nominee or candidate for Colorado Attorney General at the November 5, 2002 election.

20. The record does not establish that the purpose of the television spots or newspaper statements was to increase Ken Salazar's name recognition among voters or that it actually did so, as alleged by the Complainant. The television spots and newspaper statements were not for the benefit of or on behalf of candidate Salazar or Citizens for Salazar and were not for the purpose of influencing the election or defeat of any candidate.

21. Notice of this proceeding has been provided to all Respondents in this matter, including the Denver Post, but has not been provided to the Denver Newspaper Agency LLP.

DISCUSSION

I. Propriety of Dismissal and Summary Judgment. Respondents Bighorn, Citizens for Salazar and Coca-Cola have filed motions to dismiss⁴ for failure to state a claim upon which relief can be granted. In considering a motion to dismiss on this

⁴ Coca-Cola has filed a motion for summary judgment as well.

ground, the Administrative Law Judge must accept all allegations of the complaint as true and must draw all inferences in favor of the non-movant. The Administrative Law Judge can make no findings of fact in relation to a C.R.C.P. 12(b)(5) motion. *Medina v. State*, 35 P.3d 443 (Colo. 2001).

Here, Bighorn, Coca-Cola and Citizens for Salazar contend that dismissal is proper based on the Amended Complaint's failure to include an allegation that the television spots and newspaper statements at issue contain express advocacy to vote for Attorney General Salazar. The Administrative Law Judge finds that a specific allegation of express advocacy is not required and that the Amended Complaint adequately cites the applicable law and sufficient facts to alert Respondents to the claims being made. Pleadings are to be construed in favor of the pleader, and pleadings should be liberally construed. *Denver & R.G.W.R.R. v. Wood*, 28 Colo. App. 534, 476 P.2d 299 (1970), *Lyons v. Hoffman*, 31 Colo. App. 306, 502 P.2d 980 (1972). In addition, since facts outside the pleading are needed to resolve this matter and were presented by the parties, the Administrative Law Judge treats these motions as motions for summary judgment.

Summary judgment is proper when the pleadings, affidavits, depositions, or admissions show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law. C.R.C.P. 56(c), *Clementi v. Nationwide Mutual Fire Insurance Company*, 16 P.3d 223, 225-6 (Colo. 2001); *Bebo Constr. Co. v. Mattox & O'Brien, P.C.*, 990 P.2d 78, 83 (Colo. 1999); *Dale v. Guar. Nat'l Ins. Co.*, 948 P.2d 545, 553 (Colo. 1997). *West American Insurance Co. v. Baumgartner*, 812 P.2d 696 (Colo. App. 1990). The non-moving party is entitled to the benefit of all favorable inferences that may be reasonably drawn from the undisputed facts. All doubts as to whether an issue of fact exists must be resolved against the moving party. *Bebo*, supra at 83; *Aspen Wilderness Workshop, Inc., v. Colorado Water Conservation Board*, 901 P.2d 1251 (Colo. 1995); *Sender v. Powell*, 902 P.2d 947 (Colo. App. 1995). In this matter, there is no genuine issue regarding the material facts, and summary judgment is therefore proper in relation to all claims of the Amended Complaint.

II. Proper Parties. The Denver Post has filed a motion for summary judgment asserting that it is not the proper Respondent in that it does not publish the newspaper. Complainant alleges in her Amended Complaint that the Denver Post exceeded the \$2,500 limit on contributions to Attorney General Salazar's re-election campaign by publishing the newspaper statements at a discounted rate and therefore making an in-kind contribution. The Amended Complaint also alleges that the Denver Post failed to report this in-kind contribution to Citizens for Salazar.

By means of an affidavit of its president, the Denver Post contends that it does not publish this newspaper. At the hearing, however, Complainant responded by submitting a part of the newspaper indicating that it is published by the Denver Post, and the Denver Post submitted an additional part reflecting that The Denver Newspaper

Agency LLP is responsible for the newspaper's business operations, presumably including its publication.

These exhibits might create a genuine issue regarding the material fact of who was responsible for establishing the rate to be charged to Bighorn for the newspaper statements and therefore whether the Amended Complaint named the proper party and whether proper notice was given to this party. In reliance on the president's affidavit, however, Complainant chose to seek the substitution "as the pertinent respondent" of The Denver Newspaper Agency LLP for the Denver Post, thereby conceding that the former publishes the newspaper and is the party responsible for establishing the rate for the newspaper statements. The Denver Post is therefore the wrong party, and the right party, The Denver Newspaper Agency LLP, has not been provided notice of this proceeding. Under these circumstances, Complainant's motion to substitute a new party, made at the hearing to consider the dispositive motions in this matter, is not timely and therefore is denied. The Denver Post's motion for summary judgment asserting that it is not the proper Respondent is granted.⁵

III. Applicability of Act to Television Spots and Newspaper Statements. The pivotal issue to be decided in this matter is whether the payments by Coca-Cola (to produce and air the television spots) and Bighorn (to produce and publish the newspaper statements) and the donation of airtime for the television spots by KUSA-Channel 9 were contributions or contributions in kind which trigger the limitations and reporting requirements of the Act. The Amended Complaint asserts in the second claim for relief that each of these Respondents made a contribution to Attorney General Salazar's re-election campaign in excess of the \$2,500 limit established by the Act. Section 1-45-105.3(1)(b), C.R.S.⁶

A contribution is defined in applicable part at Section 1-45-103(1.5), C.R.S., as follows:

(4) (a) "Contribution" means:

⁵ In any case, the record fails to establish that the publisher of the newspaper made an in-kind contribution to candidate Salazar or his candidate committee by publishing the newspaper statements for a discounted rate or provided anything of value in relation to the newspaper statements such that the Act might apply. The record also fails to establish, as explained below, that any of the alleged actions in this matter was taken for the benefit of or on behalf of candidate Salazar or Citizens for Salazar or for the purpose of influencing the election or defeat of any candidate.

⁶ Section 1-45-105.3(1)(b), C.R.S., provides as follows:

- 1) No natural person, corporation, labor organization, authorized committee, or political committee shall make a combined total of contributions and contributions in kind during an election cycle, or for a special legislative election, in excess of the following amounts:
 - (b) Two thousand five hundred dollars to any one lieutenant governor, secretary of state, state treasurer, or attorney general candidate committee;

- (I) The payment, loan, pledge, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, or political party;
- (II) Any payment made to a third party *for the benefit of* any candidate committee, issue committee, political committee, or political party;. . .
- (IV) Anything of value given, directly or indirectly, to a candidate *for the purpose of promoting the candidate's* nomination, retention, recall, or election.

(Emphasis added). The Act also defines a contribution in kind at Section 1-45-103(4.5), C.R.S.:

"Contribution in kind" means the fair market value of a gift or loan of any item of real or personal property, other than money, made to or for any candidate committee, issue committee, political committee, or political party *for the purpose of influencing the* passage or defeat of any issue or the nomination, retention, *election, or defeat of any candidate*. Personal services are a contribution in kind by the person paying compensation therefor. In determining the value to be placed on contributions in kind, a reasonable estimate of fair market value shall be used.

(Emphasis added).

In analyzing Complainant's claims, the Administrative Law Judge must first determine the meaning of the relevant language of the Act. The payments at issue, *i.e.*, those of Bighorn and Coca-Cola, were made to third parties, not to Attorney General Salazar or his candidate committee. They are therefore deemed to be contributions only if they were made "*for the benefit of*" Citizens for Salazar or indirectly to Attorney General Salazar "*for the purpose of promoting*" his re-election. Likewise, KUSA-Channel 9's donation of airtime for the television spot can only be considered a contribution in kind if it was made "*for any candidate committee . . . for the purpose of influencing the . . . election or defeat of any candidate.*"

Complainant argues that the payments and donation at issue meet these tests because they saved Attorney General Salazar's campaign the expense of these communications, designed to increase the his name recognition, and allowed it to spend the saved dollars on other campaign expenses.⁷ The meaning of these phrases, however, is clear and does not support Complainant's position. The television spots and newspaper statements are unrelated to Attorney General Salazar's candidacy and therefore to not promote his re-election, benefit his campaign committee, or attempt to influence the upcoming election for Attorney General.

⁷ Complainant asserts that Citizens for Salazar and Attorney General Salazar "saved" over \$500,000 due to the combined contributions and contributions in kind of the other Respondents. This figure is not supported by the record.

The content of the television spots and newspaper statements supports the Administrative Law Judge's determination that these communications do not meet the definitional test for either a contribution or a contribution in kind. They do not identify Attorney General Salazar as a candidate for any office, refer to any election, solicit funds for his campaign, or urge voters to take any electoral action, e.g., to vote for Attorney General Salazar or those candidate supporting the anti-bullying initiative. Rather, the content of these communications deals with bullying in schools, and Attorney General Salazar is simply identified as one of several supporters of the anti-bullying message. His name is not featured more prominently than any other supporter. In the newspaper statement, in fact, "Colorado Attorney General Ken Salazar" is less prominent than other supporters who are not candidates for office. In addition, in the television spot, the two seconds allotted to the list of four supporters, including Attorney General Salazar, is so short that it is even difficult to pick out his name.

Under these circumstances and given the content of the message, the television spots and newspaper statements were not for the benefit of Attorney General Salazar's candidate committee or for the purpose of promoting his re-election. The payments made by Bighorn and Coca-Cola in relation to the television spots are therefore not contributions, and KUSA-Channel 9's donation of airtime is not a contribution in kind pursuant to the Act.

Even if the express language of the Act did not dictate this conclusion, any interpretation of these provisions must also take into account the First Amendment protection afforded to the discussion of political issues and the concomitant restraints on state regulation of such speech. For these reasons, courts have narrowly construed the Act. *League of Women Voters v. Davidson*, 23 P.3d 1266, 1273-74 (Colo. App. 2001). In defining those communications subject to state regulation, courts have developed an "express advocacy" test, i.e., campaign finance reform legislation can only regulate those communications which in express terms advocate the election or defeat of a clearly identified candidate." *Buckley v. Valeo*, 424 U.S. 1, 43-44 (1976) ("*Buckley*"),⁸ *Federal Election Commission v. Christian Action Network*, 894 F. Supp. 946, 950-951 (W.D. Va. 1995).

In *Buckley*, the Supreme Court differentiated between permissible restrictions on "express advocacy" and impermissible restrictions on "issue advocacy." The Court gave substance to the "express advocacy" test by stating in a footnote that only those communications which use language such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," or "reject" are subject to regulation as express advocacy. *Buckley* at p. 44, fn. 52.⁹ The Act is applicable only to

8 Although the *Buckley* decision addressed the Federal Election Campaign Act of 1971, 2 U.S.C. § 431, and dealt with independent expenditures, its reasoning is equally applicable to the matter at hand.

9 This "bright line" test distinguishes between issue advocacy not subject to campaign finance regulation and express advocacy subject to such regulation. A bright line test is needed due to the inherent difficulty of distinguishing protected speech involving the discussion of political issues from exhortations to vote for or against a candidate. *Federal Election Commission v. Christian Action Network*, *supra* at 950-951.

communications which expressly advocate the election or defeat of a candidate for public office and use the words contained in the *Buckley* footnote or “other substantially similar or synonymous words.” *League of Women Voters v. Davidson, supra* at 1277. Communications which do not include express words advocating the election or defeat of a particular candidate are viewed as issue advocacy, which is protected from regulation by the First Amendment. *Citizens for Responsible Government v. Davidson*, 236 F.3d 1174, 1187 (10th Cir. 2000).

Neither the television spots nor the newspaper statements uses any of the words enumerated in the *Buckley* footnote or substantially similar or synonymous words. Since they do identify Attorney General Salazar as a supporter of a program to address bullying in schools, they at most “favorably present a candidate’s position on issues.” This favorable presentation of a candidate’s position on a particular issue is not sufficient to trigger the restrictions of the Act. See *League of Women Voters v. Davidson, supra* at 1277. The Act must be construed to include only the express advocacy of the election or defeat of a clearly identified candidate, and neither the television spots nor the newspaper statements include such language.

Complainant asserts that the communications here are coordinated expenditures pursuant to Section 1-45-107(3), C.R.S., and that as such they need not contain “express advocacy” to trigger the provisions of the Act. The Act identifies as contributions certain coordinated expenditures, *i.e.*, expenditures “*on behalf of a candidate for public office that are coordinated with or controlled by the candidate.*” (Emphasis added). Section 1-45-107(3), C.R.S.

Again, in the first analysis the Administrative Law Judge must construe the meaning of this expenditure language. The language “*on behalf of a candidate*” of Section 1-45-107(3) is synonymous with “*for the benefit of*” a candidate in Section 1-45-103(4)(a)’s definition of a contribution. The television spots and newspaper statements are neither “*for the benefit of*” nor “*on behalf of*” candidate Salazar, and therefore Section 1-45-107(3), C.R.S., does not apply. In addition, even if the meaning of this phrase were not clear on its face, the requirement of express advocacy would be imputed to avoid an unconstitutional interpretation. The requirement of express advocacy is unaffected by the coordinated nature of an expenditure.¹⁰

All three claims for relief in the Amended Complaint are premised upon the existence of contributions or contributions in kind.¹¹ The Administrative Law Judge has

10 Complainant cites *Federal Election Commission v. Christian Coalition*, 52 F. Supp. 2d, 45, 88 (D.D.C. 1999) for the proposition that the “express advocacy” standard is inapplicable to coordinated expenditures. To the extent that this case finds that the existence of coordination transforms what would otherwise be unregulated communication into communication subject to regulation, the Administrative Law Judge finds the reasoning of this case unpersuasive and in conflict with the Supreme Court holding in *Buckley*. In addition, the type of coordination envisioned by this holding is not factually supported by the record in this matter.

11 The first claim for relief relies on a finding of contributions in that it charges Attorney General Salazar

concluded, first as a matter of statutory construction and second as a constitutional mandate, that the payments and donation in connection with the television spots and newspaper statements do not constitute either contributions or contributions in kind. The Administrative Law Judge therefore grants summary judgment in favor of all Respondents and dismisses all three claims for relief contained in the Amended Complaint.

III. Timeliness of Complaint (Coca-Cola and KUSA-Channel 9). Coca-Cola and KUSA-Channel 9 also assert that the Complaint was not timely filed. The Act provides that a complaint must be filed within 180 days “after the date of the alleged violation.” Section 1-45-111(2)(a), C.R.S. The only violation asserted against Coca-Cola is that its payments for the television spots exceeded the Act’s \$2,500 limit on contributions. Section 1-45-105.3(1)(b). The Complaint alleges the same violation by KUSA-Channel 9, as well as asserting that it failed to report its contribution in kind to Citizens for Salazar in violation of Section 1-45-114(2), C.R.S.

In relation to KUSA-Channel 9, any contribution in kind of donated airtime had to be made by December 23, 2001, the last day the television spots were aired. The second claim for relief in the Amended Complaint, which alleges a contribution in kind over \$2,500, must therefore have been filed no later than May 28, 2002. As the Amended Complaint was not filed until July 15, 2002, it was untimely and must be dismissed for this additional reason.

KUSA-Channel 9 and Coca-Cola also raise two novel issues in relation to the timeliness of the Complaint: 1) whether the date of any contribution by Coca-Cola must be assumed to be the last day the television spot was aired, *i.e.*, December 23, 2001, even when the date of payment is unknown, thereby making any complaint filed after May 28, 2002, untimely and 2) when a contribution in kind such as that alleged to have been made by KUSA-Channel 9 must be reported to a candidate committee. Since the Administrative Law Judge has already dismissed all claims on other grounds and these issues are ones of first impression, the Administrative Law Judge declines to rule on these dismissal grounds.

and Citizens for Salazar with failing to report contributions received from other Respondents. The second claim for relief charges Coca-Cola, KUSA-Channel 9, Bighorn and the Denver Post with exceeding the \$2,500 limit on contributions. The third claim for relief charges KUSA-Channel 9 and the Denver Post with failing to report their contributions in kind to Citizens for Salazar in violation of Section 1-45-114(2), C.R.S., which provides as follows:

(2) Any radio or television station, newspaper, or periodical that charges a candidate committee a lower rate for use of space, materials, or services than the rate such station, newspaper, periodical, or supplier charges another candidate committee for the same public office for comparable use of space, materials, or services shall report the difference in such rate as a contribution in kind to the candidate committee that is charged such lower rate pursuant to section 1-45-108.

IV. Other Pending Motions. Based on the rulings above, the other motions pending in this matter are now moot. These include the motions for extensions of time to file prehearing statements of Citizens for Salazar, KUSA-Channel 9, and Complainant;¹² Complainant's Motion to Disqualify; and Complainant's Request to Make Supplemental Argument.

AGENCY DECISION

It is the Agency Decision that Respondents have not violated the Fair Campaign Practices Act and that the Amended Complaint is therefore dismissed in its entirety. The hearing scheduled for October 15 and 16, 2002, has already been vacated.

DONE AND SIGNED

October 15, 2002

NANCY CONNICK
Administrative Law Judge

¹² Complainant did file a prehearing statement on September 26, 2002, at the prehearing conference.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above **ORDER GRANTING SUMMARY JUDGMENT AND AGENCY DECISION** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado to:

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on this ____ day of September, 2003.

Assistant to Administrative Law Judge

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