

**STATE OF COLORADO
IN THE OFFICE OF THE SECRETARY OF STATE**

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

TRACEY FERGERSON & THE COMMITTEE TO ELECT TRACEY

Respondents.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State ("Division"), Tracey Ferguson, and the Committee to Elect Tracey ("Respondents").

Recitals

A. Tracey Ferguson was a candidate in the May 2, 2023, election for the Cherokee Metropolitan District Water Board of Directors. Her committee is a candidate committee registered with the Colorado Secretary of State.

B. The Committee was formed for the purpose of supporting Tracey Ferguson's candidacy for Director of the Cherokee Metropolitan District, in the May 2023 special district election.

C. During the course of the 2023 campaign, the Committee:

1. Made four expenditures totaling \$882.93;
2. Reported no expenditures on the TRACER system; and
3. Failed to accurately report four expenditures totaling \$882.93 on one report of expenditures.

D. On May 16, 2023, the Division received a campaign finance complaint naming Tracey Ferguson as respondent. The complaint alleged that Tracey Ferguson failed to report expenditures and contributions.

E. During the Division's review and investigation, the Committee cooperated with the Division's investigation, including by identifying the unreported expenditures, which enabled the Division to identify the scope of the Committee's expenditures.

F. Also during the Division's review and investigation, Tracey Ferguson informed the Division that her campaign was entirely self-funded.

G. The Division concluded that the Committee failed to report four expenditures totaling \$882.93. The investigation also revealed that the Committee did not fail to report any contributions.

H. The Committee expressed an interest in curing the reported violations and submitted a Notice of Intent to Cure form. However, the Committee did not follow through with its reporting obligations concerning the \$882.93 worth of unreported expenditures.

I. Nothing in the Division's investigation suggested an intent to mislead the electorate.

J. The Division will be filing a complaint with the Administrative Hearing Officer (the "Administrative Proceedings"). The Administrative Hearing Officer complaint will be dismissed if the Settlement Agreement is adopted and approved.

K. The Division and Respondent desire to resolve this matter without the expense of continued litigation. Therefore, in consideration of the mutual covenants contained in this Agreement, the parties agree and covenant as follows:

Agreement

Section 1. Deputy Secretary of State Approval

This Settlement Agreement and all promises contained within are contingent upon approval of the Deputy Secretary of State, which approval will be demonstrated by the Deputy Secretary's signature to this agreement. In the event the Deputy Secretary does not approve this Settlement Agreement, neither the Recitals above nor the promises below shall be binding upon, or enforceable against, either the Division or Respondent.

Section 2. Payment of Stipulated Penalty

Within 14 days of the Committee's receipt of an invoice from the Division, **Respondent shall pay \$94.15 to the Division.**

This penalty reflects Rule 23.3.3 of the Secretary's Rules on Campaign Finance. 8 CCR 1505-6. Specifically, Rule 23.3.1 and Rule 23.3.3(b)(1).

Because the Committee failed to file complete and accurate reports, Rule 23.3.3 (b)(1) calls for a penalty of \$100 per report plus 5% of the activity not accurately or completely reported. Here, the Committee failed to report \$882.93 of expenditures that should have been reflected on three reports, which would suggest a penalty of approximately \$144.15. However, the Division finds mitigating circumstances here.

Respondent fully cooperated with the Division's investigation—most notably by providing documentation to assist with the Division's review of the unreported expenditures. Respondent is a first-time candidate and, despite having trouble with the TRACER system, took full responsibility for her inaccurate reporting. Her campaign was also entirely self-funded, reducing (though not eliminating) the harm to the public interest caused by Respondent's failure to report expenditures.

Accordingly, the Division finds that a penalty of \$94.15—\$50 per inaccurate or incomplete report plus 5% of the cost of the unreported activity and—is sufficient to further the purposes of Colorado campaign finance law.

Within 14 days of the Deputy's approval of this Agreement, the Committee also agrees to file disclosure reports concerning the unreported expenditures.

If Respondent fails to comply with the terms of the settlement agreement, the Division may pursue other remedies available at law.

Section 3. Compliance with Colorado Campaign Finance Law

Respondent agrees to comply with Colorado law relating to reporting contributions and expenditures and to otherwise comply with Colorado Campaign Finance Law, including Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, §§ 1-45-101, *et seq.*, and the rules of the Secretary of State concerning campaign and political finance.

Section 4. Dismissal of Administrative Proceedings

The Division will move to dismiss the Administrative Proceedings with prejudice within 7 days of when the Secretary of State sends a receipt to the Committee for the payment provided for in Section 2 of this Agreement.

Section 5. Admissions

Respondent admits that he filed one inaccurate or incomplete report of contributions and expenditures, amounting to \$882.93 of unreported expenditures.

Section 6. Release and Covenant Not to Sue

Respondent, for herself, her agents, assigns, representatives, attorneys, and subrogees, releases and forever discharges the Division, the Secretary of State, and the State of Colorado, and all of their former, current, and successor officers, employees, agents, and attorneys, from any and all claims, actions, causes of action, debts, demands, liabilities, losses, injuries, and/or damages arising from or relating to the Administrative Proceedings. Respondent further expressly agrees and covenants that she will not sue or assert any cause of action, at law or in equity and whether before a court of law or an administrative agency, against the Division, the Secretary of State, or the State of Colorado, or any of their former, current, and successor officers, employees, agents, and attorneys, for any claim arising from or related to the Administrative Proceedings.

Section 7. Waiver of Appeal Rights

Respondent expressly waives any right for further administrative or judicial review of any matter related to the Administrative Proceedings or this Agreement, including but not limited to any rights provided by §§ 24-4-105 and -106, C.R.S. (2022).

Section 8. Public Records

Respondent understands and agrees that this Agreement may be made available to the public on the Secretary of State's TRACER Campaign Finance reporting system and may also be made available to members of the public who serve a valid request under the Colorado Open Records Act, § 24-72-101, *et seq.*, C.R.S. (2021).

Section 9. Full and Complete Agreement

This Agreement, including any attachments referenced in the Agreement, constitutes the full and complete agreement of the parties and shall supersede any and all prior understandings, whether written or oral.

Section 10. Final Agency Action

This Settlement Agreement shall become final agency action under the State Administrative Procedures Act, §§ 24-4-101 *et seq.*, upon completion of all terms of compliance contained herein, including but not limited to dismissal of the Administrative Proceedings.

Section 11. Warranties

Respondent and the Division expressly warrant that they have carefully and completely read the terms of this Agreement. The parties expressly warrant that they have had the opportunity to consult with legal counsel before executing this Agreement, that they fully understand the terms of this Agreement, and that they enter into this Agreement knowingly and voluntarily, and without coercion, duress or undue influence. Each of the parties warrants that, in executing this Agreement, the parties have not relied upon any promise, warranty, or representation made by any other party, except as such promises, warranties, or representations are expressly stated in this Agreement. Finally, each of the signatories below warrants that they have authority to enter into the Agreement on behalf of the named parties.

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ELECTIONS DIVISION OF THE SECRETARY OF STATE

12/26/2023
DATE

Chance Cochran
By: Chance Cochran
Campaign Finance Enforcement Legal
Analyst

TRACEY FERGERSON

11/2/2023
DATE

Tracey Ferguson
By: Tracey Ferguson
Respondent

THE COMMITTEE TO ELECT TRACEY

11-02-2023
DATE

Jeffery Ferguson
By: Jeffery Ferguson
Registered Agent

ADOPTED AND APPROVED BY:

December 27, 2023
DATE

Christopher P. Beall
By: Christopher P. Beall
Deputy Secretary of State