

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

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

CONCERNED CITIZENS OF CONIFER AND BENNETT AUSLAENDER,

Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State (“Division”), Concerned Citizens of Conifer (“Respondent Concerned Citizens”) and Bennett Auslaender (“Respondent Auslaender”) (collectively, “Respondents”).

Recitals

- A. Respondent Concerned Citizens is an organization with only one member – Respondent Auslaender.
- B. Respondent Auslaender is a resident of Conifer, Colorado.
- C. In the November 2023 election, residents of Elk Creek, Inter Canyon, and North Fork Fire Protection Districts voted on a local ballot measure to determine whether to consolidate the three districts.
- D. Respondent Auslaender spent \$1,625 on two newspaper ads that were published on October 5, 2023, and October 19, 2023, in the Canyon Courier and 285 Hustler newspapers.
- E. The newspaper ads urged voters to oppose the local ballot measure to consolidate the fire protection districts.
- F. The newspaper ads included the disclaimer: “Paid for by Concerned Citizens of Conifer” but failed to identify Respondent Auslaender or any other natural person as the registered agent, a violation of section 1-45-108.3(4), C.R.S.



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G. The newspaper ads also failed to identify Respondent Auslaender as the person paying for them, a violation of section 1-45-108.3(4), C.R.S.

H. Nothing in the Division's investigation suggested an intent to mislead the electorate. Rather, the Respondents intended the "Paid for by Concerned Citizens of Conifer" in its disclaimers to be a way of recognizing who was responsible for the ads.

I. The Division will be filing a complaint with the Administrative Hearing Officer (the "Administrative Proceedings") but will dismiss that complaint upon approval of this settlement agreement.

J. 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, the Committee shall pay \$81.25 to the Division.

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

Respondents did not mitigate the violations prior to the election. Therefore, the rule calls for a penalty of 10% of the cost of the newspaper ads. Here, the Committee spent \$1,625 on newspaper ads without a compliant disclaimer statement, which would suggest a penalty of approximately \$162.50.

However, the Division finds mitigating circumstances here – specifically that the noncompliant communications included a disclaimer, the disclaimer only lacked Respondent Auslaender's name. As it has in prior cases, the Division considers this to be a significant mitigating factor.

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Accordingly, the Division finds that a penalty of 5% of the cost of the newspaper ads, \$81.25, is sufficient to further the purposes of Colorado campaign finance law.

If Respondents fail 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

Respondents agree to comply with Colorado law relating to disclaimer statements 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 Respondent Auslaender for the payment provided for in Section 2 of this Agreement.

Section 5. Admissions

Respondents admit that they did not include compliant disclaimer statements on their newspaper ads.

Section 6. Release and Covenant Not to Sue

Respondents, for themselves, their agents, assigns, representatives, attorneys, and subrogees, release and forever discharge 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. Respondents further expressly agree and covenant that they 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

Respondents expressly waive 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).

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Section 8. Public Records

Respondents understand and agree that this Agreement may be made available to the public on the Secretary of State's TRACER Campaign Finance 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.

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Section 11. Warranties

Respondents 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.

ELECTIONS DIVISION OF THE SECRETARY OF STATE

03/06/2024

DATE

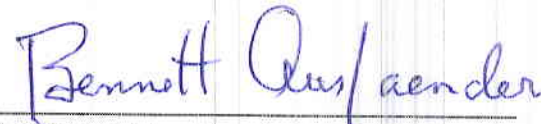


By: Alex Gentry
Campaign Finance Enforcement Analyst

CONCERNED CITIZENS OF CONIFER

2/8/24

DATE



By: Bennet Auslaender

ADOPTED AND APPROVED BY:

Mar. 7, 2024

DATE



By: Christopher P. Beall
Deputy Secretary of State