

<p>STATE OF COLORADO SECRETARY OF STATE ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290</p> <hr/> <p>BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, <i>in re</i> ED 2023-03, 2023-11</p> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>HUSCH BLACKWELL LLP, and JOHN DOE(S)</p> <p>Respondents.</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>CASE NUMBER</p> <p>2023-_____</p>
<p>COMPLAINT</p>	

Pursuant to § 1-45-111.7, C.R.S. (2023) 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 Husch Blackwell LLP and other unidentified parties for whom Husch Blackwell LLP may have been working as agents (collectively, “Respondents”).

BACKGROUND

1. Under Colorado law, any person making independent expenditures in the aggregate of more than \$1,000 in a calendar year must register and report those expenditures to the appropriate officer.

2. In early-2023, Husch Blackwell, either on its own behalf or as agents for one or more unidentified persons, made independent expenditures related to the 2023 Granby Ranch Metropolitan District (“GRMD”) board election. Neither Husch Blackwell, nor anyone else, reported these expenditures to the Secretary of State.

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

PARTIES

4. Complainant is the Elections Division (“Division”) of the Colorado Secretary of State.

5. Respondents are Husch Blackwell LLP, and one or more unidentified persons for whom Husch Blackwell was acting as an agent in making expenditures during the May 2023 GRMD board elections.

JURISDICTION AND VENUE

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

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

8. This complaint is timely filed within fourteen business days of the Deputy Secretary’s October 16, 2023, Order Granting in Part and Denying in Part Motion to Dismiss and Remanding for a Hearing according to § 1-45-111.7(5)(a)(IV).

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

ALLEGATIONS

10. Granby Ranch Metro District is a special district located in Colorado. GRMD was created in 2003, and services 362 residential lots spread across 232 acres of residential land, primarily located on the north side of the Granby Ranch Ski Resort.

11. GRMD’s District Manager is Charles Wolfersberger. He also served as GRMD’s designated election official for the GRMD May 2023 Special District Election.

12. On March 14, 2023, Wolfersberger filed a complaint against Husch Blackwell alleging violations of Colorado campaign finance law. Specifically, Wolfersberger alleged that Husch Blackwell submitted requests to GRMD under the Colorado Open Records Act (“CORA”), that these requests were election-related, and that Husch Blackwell was an unregistered Political Committee under Colorado law.

13. After investigating the Wolfersberger complaint, the Division filed a Motion to Dismiss with the Deputy Secretary of State under section 1-45-111.7(3)(a)(II), C.R.S. The Deputy Secretary of State denied that Motion to the extent that the Wolfersberger Complaint alleged that Husch Blackwell may have made contributions to one or more candidates in the GRMD May 2023 election.

14. As a result, the Deputy Secretary directed the Division to conduct additional investigation into the Wolfersberger Complaint.

15. On May 5, 2023, while the Division was investigating the Wolfersberger complaint, it received a second campaign finance complaint filed by Natascha O’Flaherty, a candidate in the May 2023 GRMD board election.

16. The O’Flaherty complaint alleged violations of Colorado campaign finance law by Husch Blackwell, as well as Nick Raible (another candidate in the May 2023 GRMD board election) and two developers: GR Terra LLC and GRCO LLC.

17. GR Terra and GRCO are the developers of Granby Ranch. GR Terra is currently involved in litigation against GRMD. GR Terra is a Defendant in that case, as is another special district in Granby, the Headwaters Metropolitan District.

18. Both Headwaters Metropolitan District and GR Terra are represented in that litigation by Husch Blackwell.

19. In 2023, Husch Blackwell briefly represented two candidates for the May 2023 GRMD board election. According to Husch Blackwell, the scope of its representation was to “advise on compliance with campaign laws and regulations.” Husch Blackwell further indicated that these two candidates submitted self-nomination forms to GRMD on February 25, 2023, but GRMD rejected the self-nomination forms three days later and determined that the two individuals were not eligible for the election.

20. These putative candidates were Matthew Hoover and Roxanne Hoover. Both Matthew Hoover and Roxanne Hoover serve on the Board of the Headwaters Metropolitan District.

21. In May 2023, GRCO LLC sued Granby Ranch Metropolitan District in U.S. District Court for the District of Colorado. GRCO is represented in that lawsuit by Husch Blackwell.

22. So, in 2023, Husch Blackwell provided legal services for GR Terra LLC, GRCO LLC, Headwaters Metropolitan District, Roxanne Hoover, and Matthew Hoover.

23. Each of these entities—and in the Hoovers’ case, as board members for Headwaters—was or is in litigation against GRMD.

24. On information and belief, Husch Blackwell has never represented Nick Raible.

25. In 2022 and 2023, Husch Blackwell made numerous CORA requests to GRMD, including several that requested materials related to either the 2022 or 2023 GRMD board elections.

26. In 2022, Husch Blackwell submitted at least five CORA requests to GRMD, including:

- a. February 16 and February 18 requests for copies of all self-nomination forms submitted for the GRMD May 2022 Special District Election; and
- b. An April 11 request for a list of eligible electors for the GRMD May 2022, Special District Election.

27. In 2023, Husch Blackwell submitted 26 CORA requests to GRMD. These included:

- a. February 3, February 13, February 16, February 20, and February 27 requests for all self-nomination forms submitted for the May 2023 GRMD board election.
- b. A March 9 request for GRMD’s Mail Ballot Election Plan, the lottery results for ordering the candidate names on the ballot, and a copy of the certified ballot.

28. Although Husch Blackwell paid \$480 for the CORA requests, it indicates that it billed its unidentified client “approximately \$3,600 for the initial CORA requests and follow up correspondence.”

29. In response to a request from the Division, Husch Blackwell declined to identify the client who paid for these requests.

30. Husch Blackwell did indicate that it was not paid by Headwaters Metropolitan District, Matthew Hoover, Roxanne Hoover, or any other prospective or actual candidate in the GRMD May 2023 board election to make the CORA requests.

31. On September 11, 2023, the Division moved to dismiss both the Wolfersberger and O’Flaherty complaints under section 1-45-111.7(5)(a)(IV).

32. On October 16, 2023, the Deputy Secretary granted the motion to dismiss in part and denied the motion in part.

33. The Deputy Secretary concluded that there was “insufficient evidence to support a finding that Respondents Nick Raible, GR Terra LLC, GRCO LLC, or Headwater Metropolitan District violated Colorado campaign finance laws.”

34. However, the Deputy Secretary “denie[d] the Motion to Dismiss with respect to Husch Blackwell, LLP and direct[ed] the Division to file a Formal Complaint before the Secretary’s administrative hearing officer under Rule 24 pursuant to § 1-45-111.7(5)(a)(IV) on the issue of whether Husch Blackwell and/or its unidentified client violated the reporting requirements for independent expenditures.”

35. Specifically, the Deputy Secretary found it “plausible that the materials obtained through the CORA requests were likely used ‘for the purpose’ of expressly advocating for or against a candidate for the GRMD board by the undisclosed client,” and “[b]ecause the amount the client paid for the CORA work is more than \$1,000, Husch Blackwell’s work may constitute a contribution to an independent expenditure committee.”

COLORADO CAMPAIGN FINANCE LAW

36. Under Colorado law, “any person making an independent expenditure in an aggregate amount in excess of one thousand dollars in any one calendar year” is required to report the expenditure to the Secretary of State. § 1-45-107.5(4)(a).

37. Moreover, “any person that . . . makes an independent expenditure in excess of one thousand dollars shall register with the appropriate officer within two business days of the date on which an aggregate amount of . . . expenditures made reaches or exceeds one thousand dollars.” § 1-45-107.5(3)(a).

38. “‘Independent expenditure’ means an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate.” Colo. Const. art. XXVIII, § 2(9).

39. An “expenditure” is “any purchase, payment, distribution, loan, advance, deposit or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question.” Colo. Const. art. XXVIII, § 2(8)(a).

CLAIM ONE
Failure to Register
(§ 1-45-107.5(3)(a), C.R.S.)

40. All preceding allegations are incorporated.

41. In the lead-up to the May 2023 GRMD board election, Husch Blackwell, on its own behalf or as an agent of one or more unidentified persons, submitted multiple CORA requests related to the May 2023 election.

42. The value of these requests and Husch Blackwell’s follow-up work related to them was over \$1,000.

43. The Deputy Secretary concluded it was plausible that these CORA requests were likely used for the purpose of expressly advocating for or against a candidate for the GRMD board.

44. Neither Husch Blackwell nor its unidentified client(s) registered an independent expenditure committee with the Secretary of State.

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

CLAIM TWO
Failure to Report
(§ 1-45-107.5(4)(a), C.R.S.)

46. All preceding allegations are incorporated.

47. In the lead-up to the May 2023 GRMD board election, Husch Blackwell, on its own behalf or as an agent of one or more unidentified persons, submitted multiple CORA requests related to the May 2023 election.

48. The value of these requests and Husch Blackwell’s follow-up work related to them was over \$1,000.

49. The Deputy Secretary concluded it was plausible that these CORA requests were likely used for the purpose of expressly advocating for or against a candidate for the GRMD board.

50. Neither Husch Blackwell nor its unidentified client(s) reported an independent expenditure to the Secretary of State.

51. 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 3rd day of November 2023.

PHILIP J. WEISER
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CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served by mail this 3rd day of November 2023, addressed as follows:

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/s/ Carmen Van Pelt