

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

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

DOUGCO PROTECTIVE

Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State (“Division”) and DougCo Protective (“Respondent”).

Recitals

A. Respondent is a nonprofit corporation registered with the Business and Licensing Division of the Colorado Secretary of State’s Office.

B. According to its website, DougCo Protective “protect[s] and preserve[s] conservative values in Douglas County.

C. In late-October 2022, DougCo Protective spent \$1,100 on a mobile billboard truck. The truck drove around House District 43, and displayed videos referencing Bob Marshall, a candidate in the November 2022 general election for House District 43.

D. Among other things, the video directed viewers to a website called www.bobsnot4colorado.com, which included messages like: “Is Bob Marshall the right person to represent HD 43?” and “Bob’s Not 4 Colorado.”

E. Neither the truck, nor the videos displayed on the truck, included a “paid for by” disclaimer.

F. DougCo Protective reported its \$1,100 expenditure on the truck as an independent expenditure, but did not register as an independent expenditure committee.

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G. DougCo Protective did not produce or pay for the videos that were displayed on the truck.

H. On September 5, 2023, the Division filed a complaint with the Administrative Hearing Officer titled *Elections Division of the Secretary of State v. DougCo Protective* (the “Administrative Proceedings”). The case number is 2023 AHO 0014.

I. 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 \$360** 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(a), and (d).

Under Rule 23.3.3(a), a committee that spends between \$1,001 and \$5,000 without registering is subject to a penalty of at least \$300. Here, the total penalty satisfies that requirement. And the Division finds mitigating circumstances—namely that the Committee did report the expenditure, demonstrating a lack of intent to mislead the electorate. Accordingly, the Division finds that a penalty of \$250 – approximately 83% of the Rule 23.3.3(a) penalty - is appropriate for the failure to register violation.

Rule 23.3.3(d) addresses disclaimer violations, and provides for a fine of 10% of the cost of the communication, including cost to distribute, if the violation is not mitigated prior to the election. Here, DougCo Protective spent \$1,100, for a fine of \$110.

Together, this results in a fine of \$360.

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Finally, the Division is not requiring Respondent to register as an Independent Expenditure Committee at this time. The election in question has passed, and registration at this time would not provide any additional information to the electorate beyond what was included in Respondent's expenditure disclosure. However, should Respondent again qualify as an independent expenditure committee, it will need to register as such. The Division's assessment, and this Settlement Agreement, applies only to activity that occurred during the 2022 election cycle.

Section 3. Compliance with Colorado Campaign Finance Law

Respondent agrees to comply with Colorado law relating to disclaimer statements, registration and reporting, 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 upon the Deputy Secretary's approval of this Agreement.

Section 5. Admissions

Respondent admits that it did not register as an independent expenditure committee in 2022 and did not include disclaimer statements on the mobile billboard truck.

Section 6. Release and Covenant Not to Sue

Respondent, for itself, its 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 it 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.

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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 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

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.

ELECTIONS DIVISION OF THE SECRETARY OF STATE

November 13, 2023

DATE



By: Alex Gentry
Campaign Finance Enforcement Analyst

DOUGCO PROTECTIVE

November 13, 2023

DATE



By: Suzanne Taheri
Counsel

ADOPTED AND APPROVED BY:

November 14, 2023

DATE



By: Christopher P. Beall
Deputy Secretary of State