

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

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

NO ON HH

Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State (“Division”) and No on HH (“Respondent” or “Committee”).

Recitals

- A. No on HH is an issue committee registered with the Colorado Secretary of State. Its purpose is to “oppose proposition HH.”
- B. The Committee spent \$1,851,735.52 to oppose Proposition HH, a ballot measure that was defeated in the November 7, 2023, statewide election.
- C. The Committee spent \$36,083.50 to run three Facebook advertisements from August 17-September 26, 2023—each urging Colorado voters to “Vote No on Prop HH.” Each advertisement included the disclaimer “Paid for by No on HH” but failed to identify a natural person as the Committee’s registered agent.
- D. Under Colorado law, communications costing more than \$1,000 must include a “paid for by” disclaimer disclosing the person who paid for the communication. If person who paid for the communication is not a natural person, the disclaimer must also identify a natural person as registered agent.

E. On September 19, 2023, the Elections Division filed a division-initiated complaint against the Committee. The complaint alleged that No on HH failed to identify a natural person as registered agent on the three Facebook advertisements.

F. By September 26, 2023, the Committee had updated the Facebook advertisements to properly identify Mike Fields as registered agent.

G. The Division provided the Committee with the Notice of Initial Review and Opportunity to Cure on September 28, 2023.

H. The Division filed a Notice of Investigation on November 16, 2023.

I. The Committee cooperated with the Division's review and investigation, including by sharing invoices related to the communications in question. The Committee also swiftly worked to correct the noncompliant communications once it received notice of the Complaint.

J. Nothing in the Division's review and investigation suggested an intent to mislead the electorate.

K. 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 approved by the Deputy Secretary of State.

L. 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 \$1,443.34** 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)(1).

Because the Committee mitigated its noncompliant disclaimer violations prior to the election, the Rule 23.3.3(d)(1) calls for a penalty of 5% of the cost of the communication, including the cost to distribute. Here, the Committee spent a total of \$36,083.50 on the noncompliant communications before correcting them, which would suggest a penalty of approximately \$1,804.18. However, the Division finds mitigating circumstances here.

The Committee quickly worked to correct the noncompliant communications as soon as it received notice of the Complaint—before even receiving the Division’s Notice of Initial Review and Opportunity to Cure. Furthermore, the Committee fully cooperated with the Division’s investigation, most notably by providing documentation to assist with the Division’s review of the expenditures requiring disclaimer statements. This demonstrates that the Committee lacked any intent to mislead the electorate.

Furthermore, the communication in question included the disclaimer “Paid for by No on HH” and was only noncompliant in that it failed to identify the Committee’s registered agent. The Committee was registered and someone looking for additional information about the communication would have been able to locate the Committee, and the registered agent, through the TRACER system.

Accordingly, the Division finds that a penalty of \$1443.34—or 4% of the cost of the noncompliant communications—is sufficient to further the purposes of Colorado campaign finance law.

If the Committee 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 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 the Committee for the payment provided for in Section 2 of this Agreement.

Section 5. Admissions

Respondent admits that it did not include compliant disclaimer statements on \$36,083.50 of campaign communications.

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.

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.

ELECTIONS DIVISION OF THE SECRETARY OF STATE

12/27/2023
DATE

Chance Cochran
By: Chance Cochran
Campaign Finance Enforcement Legal Analyst

COMMITTEE TO IMPROVE FOOTHILLS FIRE PROTECTION DISTRICT

11/17/23
DATE

M. P. Fields
By: Mike Fields
Registered Agent
No on HH

ADOPTED AND APPROVED BY:

January 5, 2024
DATE


By: Christopher P. Beall
Deputy Secretary of State