

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290



Jena M. Griswold
Secretary of State
Christopher P. Beall
Deputy Secretary of State

BEFORE THE
COLORADO DEPUTY SECRETARY OF STATE
1700 Broadway, Suite 550
Denver, Colorado 80290

IN THE MATTER OF

ELECTIONS DIVISION of the SECRETARY OF STATE,
Complainant,

vs.

THOMAS DUNAGAN candidate committee
Respondent.

AHO Case No. 2023-021

(Elec. Div'n Case No: 2023-18)

PROCEDURAL ORDER REGARDING AHO'S INITIAL DECISION
(with attached copy of same)

Pursuant to section 24-4-105(16)(a), C.R.S., of the Colorado Administrative Procedures Act, section 1-45-111.7(6)(b), C.R.S., of the Colorado Fair Campaign Practices Act, and Rule 24.18 of the Secretary of State's Rules Concerning Campaign and Political Finance, 8 CCR 1505-6, service is hereby effected of the attached copy of the Initial Decision issued on today's date by the Secretary of State's Administrative Hearing Officer ("AHO") in the above-referenced matter.

The Colorado Deputy Secretary ("Deputy Secretary") hereby serves this Procedural Order Regarding AHO's Initial Decision ("Procedural Order") upon the parties to notify all concerned of their rights, responsibilities, and deadlines should any party seek review by the Deputy Secretary of this Initial Decision.

This case remains open across the period of potential appeal and review by the Deputy Secretary. The Deputy Secretary is not bound by the Initial Decision's recommended ruling. If the Deputy Secretary

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takes up this case for review, the Deputy Secretary may issue a Final Agency Order with a different result than that recommended in the Initial Decision.

In order to challenge the Initial Decision, a party must file exceptions with the Deputy Secretary pursuant to the procedures outlined in subsections 24-4-105(14), (15) and (16), C.R.S. and this Order.

I. Initiation of Review on Deputy Secretary's Own Motion

The Deputy Secretary hereby initiates review of the Initial Decision upon his own motion pursuant to sections 1-45-111.7(6)(b) and 24-4-105(14)(a)(II).

II. General Filing Requirements

All requests and pleadings must be filed in writing electronically with the Deputy Secretary and not with the OAC. The email address for filing exceptions is: OACAppeals@ColoradoSoS.gov.

Any party that files a pleading or related document with the Deputy Secretary must also serve a copy of such pleading or related document upon the opposing party.

III. Exceptions

Pursuant to section 24-4-105, a party may appeal the Initial Decision to the Deputy Secretary by means of the exceptions review process ("Exceptions"). In order to appeal the Initial Decision, a party must file "Exceptions to the Initial Decision" according to the deadlines and procedures outlined below:

A. Designation of Record

Any party who seeks to reverse or modify the Initial Decision shall file a Designation of Record within twenty (20) days from the date of this Order. Any party that wishes to challenge factual findings in the Initial Decision must also designate relevant transcript(s), or parts thereof, of the proceedings before the AHO in their Designation of Record. A transcript is not necessary if the requested review is limited to a pure question of law.

Within ten (10) days after service of the Designation of Record, any other party, including the Deputy Secretary, may file a "Supplemental Designation of Record" including any additional transcripts, or parts thereof, of the proceedings before the AHO. The Supplemental Designation of Record shall specify all or part of the Record to be additionally included in the appeal.

A party ordering transcript(s) is responsible for ordering and filing such transcripts with the Deputy Secretary. It is recommended that a party contact the AHO and a certified court reporter for information on how to order a transcript.

B. 30-Day Deadline for filing Exceptions

Exceptions are due within thirty (30) days after the date of this Procedural Order. A party may request an extension of time to file Exceptions prior to thirty (30) days after the date of this Procedural Order. An extension of time will be granted for good cause.

The parties should be aware that delays in receiving an ordered transcript will **not** result in an automatic extension of the deadline for filing Exceptions. Rather, a proper motion for such relief must be filed.

C. Deadlines for Responses, Replies, and Proposed Orders

Responses: Either party may file a response to the other party's Exceptions within fourteen (14) days from the date of the Exceptions filing.

Replies: Either party may file a reply to the other party's response to Exceptions within seven (7) days from the date of the responsive filing.

Proposed Orders: Either party may file a proposed final agency order. Such proposed order may be filed together with the party's Exceptions, response, or reply.

IV. Computation and Modification of Time

All time periods are calculated pursuant to Colorado Rules of Civil Procedure Rule 6.

V. Oral Arguments

The Deputy Secretary may permit oral argument upon request by either party. Such request must be filed with the exceptions, response, or reply. If permitted, each party will be allotted a defined time limit for oral argument. The requesting party will present first and may reserve time for rebuttal. The Deputy Secretary will be permitted to ask questions. Oral argument must be confined to the arguments and evidence presented during the hearing or in the exceptions and responses thereto. Evidence or arguments outside the record may not be presented during oral argument.

VI. Final Order

The Deputy Secretary may affirm, set aside, or modify any, all, some, or no parts of the Initial Decision, including any of its Findings of Fact, Conclusions of Law, and recommended dismissal, sanction or other penalty within the Deputy Secretary's authority. Under most circumstances, the Deputy Secretary will issue a Final Agency Order at the conclusion of his review. On occasion, however, the Deputy Secretary may conclude that either the factual basis or legal analysis, or both, in the Initial Decision are insufficient to complete an appropriate review of the Initial Decision. In such instance, the Deputy Secretary will remand the case back to the AHO with directions to issue a revised Initial Decision. The AHO will subsequently issue a Revised Initial Decision upon remand. The parties will have the same appeal rights with respect to the Revised Initial Decision as they had with the original Initial Decision.

The ultimate Final Agency Order is subject to judicial review under section 24-4-106. However, when neither party has timely appealed the Initial Decision through Exceptions and the Deputy Secretary has chosen not to initiate review of the Initial Decision upon his own motion, the Initial Decision becomes a Final Agency Order after thirty days of service of this Order by operation of law. See § 24-4-105(14)(b)(III), C.R.S. Under these circumstances, neither party has the right to seek judicial review of the Initial Decision in the District Court. See § 24-4-105(14)(c), C.R.S.

IT IS SO ORDERED.

DONE and **ORDERED** this 13th day of February 2024.

CHRISTOPHER P. BEALL


Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **PROCEDURAL ORDER REGARDING AHO'S INITIAL DECISION** along with the accompanying **INITIAL DECISION** by Administrative Hearing Officer Macon Cowles was served on the following parties via electronic mail on February 13, 2024:

Complainant –

Peter Baumann, Senior Assistant Attorney General
Colorado Department of Law
Peter.Baumann@CoAG.gov

Respondent –

Thomaas Dunagan
Dunagan0916@gmail.com

Underlying Citizen Complainant

Marge Campbell
Nightnursemc50@yahoo.com

Administrative Hearing Officer Macon Cowles –

AdministrativeHearingOfficer@ColoradoSOS.gov

Elections Division –

Colorado Secretary of State, Elections Division
cpfcomplaints@coloradosos.gov

/s/ Christopher P. Beall
Deputy Secretary of State

ADMINISTRATIVE RECORD AND EXHIBITS

2. The Administrative Record consists of the pleadings in the Tracer file under docket No. ED2023-23¹ as well as those in the Administrative Hearing Officer Docket² on or before February 6, 2024. The Record also includes the 34 page pdf file containing the Division’s Exs. 1 through 7, the two separate pdf files with Respondent’s Exs. A and B, and the 8 page pdf file containing the Division’s demonstrative exhibits used in closing argument.

3. Without objection, the exhibits in the table below were admitted at the beginning of the hearing. The Division submitted Exs. 1-7 in a single pdf file of 34 pages. In the body of this Decision, I will refer to exhibit numbers and give the page number of the pdf to which the Decision refers.

Exhibit No.	Item
DIVISION’S EXHIBITS	
1	Marjorie L. Campbell Complaint of violations, pp. 1-18
2	Discovery responses, pp. 18-20
3	Facebook photos, pp. 21-26
4	Thomas Dunagan Committee Registration, Feb. 23, 2022, p. 27
6	Tracer Financial Summary for Thomas Dunagan Candidate Committee, p. 29
7	June 7, 2022 - Report of Contributions and Expenditures, Thomas Dunagan Candidate Committee, pp. 30-34
RESPONDENT’S EXHIBITS	
A	Elections Division Request for Information from Marjorie L. Campbell, Sept. 6, 2023
B	Marjorie Campbell’s response to the Division’s Requests, Oct. 11, 2023

¹ <https://tracer.sos.colorado.gov/PublicSite/SearchPages/ComplaintDetail.aspx?ID=845>

² Docket No. 2023-0021, Thomas Dunagan, Candidate Committee, <https://www.sos.state.co.us/pubs/elections/HearingOfficerDocket/index.html>

4. Respondent objected to Ex. 5, p. 28 of the pdf and not listed above. The Hearing Officer reserved ruling on the objection pending testimony to lay the foundation for its admissibility. The exhibit was not offered again during the hearing, so it was not admitted as evidence.

APPLICABLE LAW

5. This hearing was conducted in accordance with section 24-4-105 and section 1-45-111.7 6(a) and (b) of the Colorado Revised Statutes.

6. Pursuant to § 1-45-111.7(6)(a), C.R.S., this initial determination is subject to review by the Deputy Secretary of State for issuance of a final agency decision.

7. Campaign finance in Colorado is governed by Article XXVIII of the Colorado Constitution¹, Article 45 of Title 1 of the Colorado Revised Statutes, and the Secretary of State's Campaign & Political Finance ("CPF") Rules, 8 CCR 1505-6. These laws address contribution and spending limits, electioneering communications, various campaign finance registration, disclosure and disclaimer requirements, and prohibitions on certain kinds of campaign finance activities.

8. § 1-45-111.7 of the Fair Campaign Practices Act ("FCPA") sets forth Colorado's campaign finance complaint process. As required by the federal court in *Holland v. Williams*, No. 16-cv-00138-RM-MLC, 2018 U.S. Dist. LEXIS 245935, at *5 (D. Colo. June 29, 2018) no underlying citizen complaint alleging a violation of Colorado's campaign finance law may proceed without first undergoing the administrative review that is now specified in § 111.7 of the FCPA. Under § 111.7, the Division independently reviews citizen complaints and then determines whether to pursue its own charges before a hearing officer.

9. If the Division makes an initial determination that an underlying complaint alleges any violations that are curable, the Division is required to notify the respondent and provide an opportunity to cure. See § 1-45-111.7(3)(b)(II). If the Division determines that there is insufficient

evidence to support the alleged campaign finance violation, the Division must file a motion to dismiss the underlying complaint with the Deputy Secretary. See § 1-45-111.7(5)(a)(IV). The Division has no authority to dismiss an underlying complaint without approval from the Deputy Secretary.

10. **Statute of limitations.** Where the Division seeks sanctions against a candidate based on a citizen complaint of a violation of the FCPA, that citizen complaint must have been filed with the Secretary of State “no later than one hundred eighty days after the date on which the complainant either knew or should have known, by the exercise of reasonable diligence, of the alleged violation.” § 1-45-111.7(2)(b), C.R.S.

11. The Elections Division makes an initial determination about whether a complaint has been timely filed in its initial review under § 1-45-111.7(3)(a)(2)(I). However, if a complaint is untimely, the Secretary of State does not have subject matter jurisdiction to proceed with the case, because jurisdiction is conferred by the Colorado Constitution and Colorado statutes. *Isbam v. People*, 82 Colo. 550, 567-68, 262 P. 89, 96 (1927); *People v. Wilson*, 251 P.3d 507, 509 (Colo. App. 2010).

SUMMARY OF TESTIMONY

Timothy Gebhardt

Timothy Gebhardt gave the following testimony after first being duly sworn.

12. Mr. Gebhardt is the Campaign and Political Enforcement Manager in the Elections Division of the Colorado Secretary of State. He manages a team of three legal analysts who review and investigate complaints of violations of the Fair Campaign Practices Act. He explained in detail the process for investigating such complaints. The initial review is completed within ten days of receiving a citizen complaint. They investigate whether the complaint was timely, whether it alleges

violations of the Act and whether it alleges sufficient facts to support an inquiry about whether campaign finance violations have occurred.

13. If the team concludes that there has been a violation, they give the respondent an opportunity to cure. If the violation is not cured, then there is a further investigation phase that lasts 30 days during which the investigators decide about whether to move to dismiss the complaint or file a hearing officer complaint. In this case, they decided to file a hearing officer complaint.

14. Ex. 1 is Marjorie Campbell's initial complaint. When it was received, it went through an investigation process. This was the second complaint lodged against Thomas Dunagan for campaign finance violations. The first one was by Angela Reiner. That complaint was dismissed as untimely, following the factual investigation. But the Marge Campbell complaint was investigated. It appeared to be timely filed, it alleged violations of the Fair Campaign Practices Act, and it set forth the factual basis for those violations. The three criteria were met, so they offered Respondent a chance to cure.

15. Ex. 3 includes images taken from the Thomas Dunagan Facebook page. Tracer is the state campaign finance system and disclosure site. It is the system where candidates and committees file reports that are required by law.

16. Ex. 4 is the Thomas Dunagan candidate committee registration form. It lists Thomas Dunagan as the registered agent.

17. Ex. 6 is the candidate committee page which specifies the dates of reports made by the candidate. It shows no expenditures – zero – for 2022. Exhibit 7 is report of contributions dated June 7, 2022. It shows zero contributions and no expenditures.

18. The investigation team reviewed all the reports filed by Thomas Dunagan and they all showed zero expenditures and zero contributions.

19. The team concluded that the complaint was timely filed. Ms. Campbell said it was June 2023 when she first discovered the violation. The statute requires that citizen complaints be filed within 180 days of the time that the complainant knew or should have known about the violation. She became aware of the violation in May or June 2023, so the August 2023 complaint was timely.

20. The complainant ran for coroner against Thomas Dunagan. She was aware of Mr. Dunagan's campaign materials. But she did not retrieve Mr. Dunagan's Tracer filings in 2022.

21. The Enforcement Division received 100 complaints in 2023. Mr. Dunagan was somewhat difficult to deal with during the investigation phase. He did not reply to requests for information. Most respondents do cooperate with the Division. But Mr. Dunagan was noncompliant. Many cases that are filed are the result of a candidate or candidate, committees, honest mistakes, or difficulties that they have interpreting the rules.

22. Responding to Mr. Dunagan's questions, Mr. Gebhardt testified that his team reviews all the pertinent documents. He thinks he has seen Ex. A, the Elections Division September 26, 2023 letter to Complainant Marjorie Campbell asking a series of questions. He reviewed Ex. B., Marjorie Campbell's answers to those questions, during the cure phase—after the initial investigation. He acknowledged seeing ¶ 1(a) of Ex. B wherein Marge Campbell said she learned about potential violations at the end of May or the first of June. The witness' attention was drawn to ¶ 1(b) where, referencing the primary election that occurred in March 2022, Ms. Campbell says:

“I had talked with Angela Reiner and her husband on multiple occasions after Mr. Dunagan won in the primary, and I knew that they were filing a complaint.”

23. Mr. Gebhardt testifies that he interprets this to mean that Ms. Campbell learned of the violation of the campaign finance laws after the primary election. The Complainant said she had no reason to doubt that appropriate reporting had been done before that time.

24. Mr. Dunagan testified that according to Marge Campbell's Complaint [Ex. A] and her responses [Ex. B] to the questions from the Secretary of State, she learned about possible violations *after* the primary—which he points out was in March 2022.

25. Mr. Dunagan then read into the record Ms. Campbell's response in Ex. B., ¶ 2(c).

I hadn't thought specifically about him violating campaign finance laws, but I was in no way surprised. In fact, I have known him personally to be purposefully deceitful, conniving, and absolutely lying and dishonest. (i.e. anything from telling members of the community that he had already been appointed as the "Interim Prowers County Coroner", which was blatantly false, up to telling the community that he had asked me to stay on as a deputy for him (I had been a deputy for about 25 years), which is categorically denied!

26. On Ex. 7, he reported funds that he had on hand at the beginning of the reporting period: \$245.05.

27. The difficulty Mr. Gebhardt said that they had with Mr. Dunagan during the investigation phase was in getting responses from Mr. Dunagan to the investigators' requests for information. Yes, there was a first complaint filed by Ms. Riner, and Mr. Dunagan was more cooperative in responding to requests for information regarding that complaint. And Mr. Dunagan did complete a form indicating his intent to cure. But he did not cure.

28. Mr. Gebhardt does not know the final reporting date for 2022 without the elections calendar in front of him. He does not have an answer for whether Ms. Campbell should have known about any problems with his [Mr. Dunagan's] filings while she was making her own filings with the Secretary of State.

Thomas Dunagan

Thomas Dunagan gave the following testimony after first being duly sworn.

29. He is the elected Coroner of Prowers County. His responsibility is to determine the cause and manner of death of people in the jurisdiction. It is a part time position. He does have deputies that can fill those responsibilities when he is not available.

30. He announced his candidacy in February 2022. The primary election was March 7, 2022. On the Committee Registration form, Ex. 4, he listed himself as the Registered Agent and his wife Raelyn Dunagan as the filing agent. He was aware of the reporting duty, to report all campaign contributions. He did not know that he had to report expenditures of his own money for the campaign. He paid for yard signs from his personal bank account. His Candidate Committee had no bank account.

31. He ordered yard signs twice, made with two different designs. He ordered the second set with the disclaimer, but he can't find receipts indicating when that was or how much he paid. He also purchased post cards and two banners that were 4 ft. X 8 ft.

32. He also printed flyers using the printer that he and his wife have at home. Some of them were in color, and some were in black and white, like the one shown in Ex. 2 at p. 20 of the exhibit packet. He handed those out at Walmart and the rodeo. He is not sure how many of those he printed.



Ex. 3, p. 23 of the Election Division exhibit packet

33. The water bottles were a big hit with people. It is super-hot in southeast Colorado in the summer, so people liked being offered water. He and his wife printed out little labels on their printer at home and then stuck them on the water bottles.

34. He looked for receipts for expenditures and sent the investigators what he could find. Ex. 2, p. 18 is the receipt for \$920.00 that he spent for yard signs. The receipt is dated March 24, 2022, but he can't be certain if that was his first or second order of yard signs. One set of yard signs had no disclaimer and the other had the disclaimer "Paid for by Thomas Dunagan" and identifying his wife as the Registered Agent.

35. Ex. 2, p. 19 is a receipt for postcards: \$133.75.

36. He did display the yard signs and he distributed flyers right up to the election. Ex. 3, p. 26 is a photo from his Facebook page that shows both banners on display as of October 22, 2022. Postcards were on the table for people to take. He was unable to find receipts that indicate what he paid for the banners.

37. He did accept contributions to his campaign. The \$245.05 shown on Ex. 7 is the approximate total amount that he received as contributions to his campaign. The donations were received either in cash, or he put the money into his personal account.

38. Mr. Dunagan does intend to run for reelection as Coroner, or to run for some other office. He is the Chair of the Prowers County Republicans.

39. Mr. Dunagan testified that the Campbell complaint is untimely. The primary was March 2022. The first Complaint filed against him [ED2023-18] was filed by a funeral home operator who was afraid of losing business if he were elected. As for Marge Campbell, who ran against him for Coroner, she made a personal attack in her response, Ex. B, to the Division's questions.

40. Mr. Dunagan knows that he made mistakes in how he handled campaign contributions and expenses and he has learned a lot and will do better in the future.

41. Responding to additional questioning by the Assistant Attorney General, Mr. Dunagan says that the previous complaint was filed by Angela Riner in July 2023.

FINDINGS AND CONCLUSIONS

42. Thomas Dunagan was a candidate in two elections during 2022. The first was during the primary election in March 2022 in which he emerged as the Republican candidate for Prowers County Coroner; the second was the general election for that office in November 2022.

43. He announced his candidacy in February 2022 and duly filed the Thomas Dunagan Candidate Committee registration with the Colorado Secretary of State as required by law. Ex. 4. The registration listed himself as the Registered Agent and his wife Raelyn Dunagan as the Filing Agent.

44. He timely filed the other reports required of candidates, except that they all reported zero in contributions and zero in expenditures during that reporting period. He said that he thought he did not have to report the spending of his own money for the campaign. But he DID accept at least \$245.05 from others, indicated not as a contribution but as “Funds on Hand at the Beginning of Reporting Period” in the June 7, 2022 Report of Contributions and Expenditures, Ex. 7, p. 30. But whether this money was received in cash, transfer or checks he did not remember nor did he provide the Division with evidence based on bank records. Mr. Dunagan either pocketed the contribution or deposited it to his personal account.

45. The Division proved that Mr. Dunagan spent on his campaign for Coroner unreported amounts of at least \$920 plus tax on yard signs March 24, 2022 and \$133.75 on postcards June 6, 2022. In closing, the Division asked the Hearing Officer to assume that Respondent spent approximately \$400 on two banners and water bottles. I cannot do that without evidence, and there was none to support that assumption.

46. Mr. Dunagan spent \$920 for just one set of yard signs. Ex. 2. But there were two sets of yard signs that he ordered and paid for. The first set of 100 signs had no disclaimer at all (left below). The second set—how many yard signs we do not know—contained a disclaimer that incorrectly identified his wife Raelyn Dunagan as the Registered Agent (on the right below).



Detail from Ex. 3, p. 25 of the Election Division exhibit packet



Ex. 3, p. 21 of the Election Division exhibit packet

47. The Division characterized Mr. Dunagan as being non-responsive to their requests for information about how much he actually spent for various materials used in his campaign. Mr. Dunagan put on no evidence about why he would have any more difficulties accessing his bank account or credit card electronic records than anyone else. I take judicial notice of the wide availability and ease of customer access to credit card and bank records by customers with reasonable facility over the internet. C.R.E. 201. Mr. Dunagan has enough internet savvy to file Tracer reports online. Reasonable inferences from this are a) that Mr. Dunagan chose not to search bank and credit card records to obtain the information requested by the Division, and; b) withholding from the Division the amount that he spent for the second set of yard signs and the cost of the two banners was a conscious choice that he made.

Failures to report contributions and expenditures

48. The banners, yard signs, flyers printed at home and water bottles with “**VOTE Tommy Dunagan**” were all electioneering communications as defined by Colo. Const. art. xviii, §2(7) and §

1-45-103(9) of the FCPA. The evidence showed that yard signs were purchased March 24, 2022 and the postcards on June 6, 2022—between the primary March 7 and the general election November 8 for County Coroner in 2022.³ Mr. Dunagan spent more than \$1,000 on these electioneering communications.

49. Mr. Dunagan’s failure to report the expense of these electioneering communications was a violation of § 1-45-107.5(4)(a) of the FCPA and Campaign & Political Finance Rule 10.3, 8 Code Colo. Regs. 1505-6. There is no reporting exemption from this requirement for a candidate who spends his own money on these independent expenditures.

50. Mr. Dunagan’s failure to report contributions to his campaign, including his own contributions, is a violation of § 1-45-108(1).

- a. His failure to report contributions of twenty dollars or more is a violation of § 1-45-108(1)(a)(I).
- b. His failure to report contributions of two hundred fifty dollars or more (including his own) is a violation of § 1-45-107.5(4)(b)(I), which has additional reporting requirements as to donors making contributions at that scale.

Disclaimer requirement

51. § 1-45-107.5(5)(a) of the Fair Campaign Practices Act requires that a disclaimer be put on all electioneering communications.

³ The date of the primary was established by Mr. Dunagan’s testimony; the date of the general is taken from the Secretary of State’s 2022 Election Calendar available at <https://www.sos.state.co.us/pubs/elections/calendars/2022ElectionCalendar.pdf> (accessed Feb. 11, 2024)

52. Most of Mr. Dunagan’s campaign materials contained no disclaimer at all. The second set of yard signs, whose cost is unknown, contained the disclaimer “Paid for by Thomas



Image of Dunagan for Coroner yard sign taken from ¶ 20 of the Division’s Administrative Complaint

Dunagan Registered Agent Raelyn Dunagan.” The clearest image of the disclaimer in this set of yard signs is in the Admin. Compl. ¶ 20, a screen shot of which is shown to the left. The Division finds fault, Admin. Compl. ¶¶ 19-20 and ¶38, with that disclaimer because it failed to include the name of the actual Registered Agent, which Ex. 4 shows to be the candidate himself.

53. Section 1-45-107.5(5)(a)(II) requires the disclaimer to identify “a natural person who is the registered agent *if the person identified in subsection (5)(a)(I) is not a natural person.*” [Emphasis supplied.] The disclaimer did include “Paid for by Thomas Dunagan” and Thomas Dunagan, a natural person, is the name of the Candidate Committee. Ex. 4. I therefore do not read § 1-45-107.5(5)(a) to require disclosing a registered agent⁴ in addition to saying “Paid for by Thomas Dunagan” because the person identified as paying for the communication is a natural person. Disclosing Raelyn Dunagan as the registered agent was incorrect—she was the Committee’s Designated Filing Agent, Ex. 4—but I do not read the FCPA to impose sanctions for incorrectly identifying the registered agent where the registered agent did not have to be identified at all.

54. All the rest of Mr. Dunagan’s electioneering communications, except the second set of yard signs, violated § 1-45-108.3 by not including any part of the disclaimer required by 1-45-107.5(5)(a).

⁴ The registered agent for the Thomas Dunagan Candidate Committee was the very same Thomas Dunagan.

Timeliness of the initial complaint and subject matter jurisdiction

55. I have made the findings above with awareness that my decision is only the Initial Decision and that the final agency decision is made by the Deputy Secretary. I turn my attention now to a fundamental jurisdictional question: was the citizen complaint that initiated this case timely filed? To make that finding, I have considered the following evidence.

- a. Complainant Marjorie Campbell was listed as a “May Call” witness, but the Division chose not to call her as a witness at the hearing. So the evidence we have from her is limited to the sworn answers in response to the Division’s Requests, Oct. 11, 2023, Ex. B.
- b. Ms. Campbell was vague about when she learned of the alleged violations. “I have NO idea of EXACT dates or times for anything....It would have been somewhere around the end of May/first of June 2023, I suspect.” Ex. B, ¶ 1(a).
- c. Angela Riner filed an earlier Fair Campaign Practices Act (“FCPA”) complaint against Mr. Dunagan, ED2023-18, on July 5, 2023 that the Deputy Secretary dismissed as untimely. Ms. Campbell states that Mr. Dunagan used to work for Angela Riner and her husband, and she intimates that there were bad feelings between Complainant Riner and Mr. Dunagan. Ex. B, ¶ 4(b). Ms. Campbell said she encouraged Ms. Riner, owner of a mortuary in Lamar, to file the earlier complaint against Mr. Dunagan. *Ibid.*
- d. Ms. Campbell was herself a candidate for the office of Coroner. She ran as an Independent and struggled with her own Tracer filings. “I kept getting [my Tracer filings] wrong ...and getting fined, but at least I TRIED!!” Ex. B, ¶ 6. There was a lot of animus between Ms. Campbell and Mr. Dunagan that went beyond their just

ving for the same elected office, as expressed in Ex. B, ¶ 1(c). Asked when she first looked at Respondent’s Tracer filings, she responded, “I have no idea.” Ex. B, ¶ 3(a) and (b).

- e. Asked by the Division what occurred to make her aware of potential violations, Ms. Campbell responded:

“I had talked with Angela Reiner and her husband on multiple occasions after Mr. Dunagan won in the primary, and I knew that they were filing a complaint. So when I looked it up, and saw Mr. Dunagan had reported NOTHING, I decided it might perhaps convince you to look into this man ... in depth!”

Ex. B., ¶ 1(b).

56. The FCPA has a very short statute of limitations. Citizen complaints must be filed with the Secretary of State “no later than one hundred eighty days after the date on which the complainant either knew or should have known, by the exercise of reasonable diligence, of the alleged violation.” § 1-45-111.7(2)(b), C.R.S. The Campbell Complaint was filed August 10, 2023. The Complaint is timely if Ms. Campbell knew or had reason to know of potential violations anytime on or after February 11, 2023.

57. As fact finder, I am not bound to accept as dispositive the assertion of Complainant that she learned of the violation “somewhere around the end of May/first of June 2023, I suspect.” Ex. B, ¶ 1(a). I can “properly consider any reasonable inferences and circumstances tending to weaken or discredit such evidence.” *Weingarten v. Bd. of Assessment Appeals*, 876 P.2d 118, 121 (Colo. App. 1994). As fact finder, it is my duty to determine the credibility of witnesses and exhibits, weigh the evidence, and resolve conflicts, inconsistencies, and disputes inherent in the evidence. *People v. Bernard*, 2013 COA 79, ¶ 16, 305 P.3d 433, 435-36. It is for the fact finder to make “inferences and

conclusions drawn from conflicting evidence.” *Olson v. Hillside Cmty. Church Sbc*, 124 P.3d 874, 877 (Colo. App. 2005).

58. Ms. Campbell acknowledges having a hand in ginning up the Riner Complaint, ED2023-18, against Mr. Dunagan—a complaint that the Secretary dismissed as untimely. The Riners owned a mortuary that might lose business if Candidate Dunagan became Coroner Dunagan. Competing for the Coroner’s job was Candidate Campbell. Ms. Campbell discussed possible violations by Dunagan with the Riners “on multiple occasions after Mr. Dunagan won the primary”—which was held in March 2022, not March 2023. Furthermore, the Complainant acknowledges having encouraged the Riners to file a complaint against Mr. Dunagan. The discussions she had with the Riners certainly included Riners’ contention that Mr. Dunagan had not reported the \$400 that they gave to his campaign March 22, 2022, Admin. Compl. ¶ 13, because that was the basis of the Riner complaint in ED2023-18.

59. Furthermore Ms. Campbell had struggles of her own in making the required filings with the Secretary of State’s office and was fined a couple of times for missteps. And she knew during the leadup to the election that Mr. Dunagan was using campaign paraphernalia, because he posted photos of them on his Facebook page, and she was a friend of his on Facebook. Ex. B, ¶ 2(A) and (b). In addition, she didn’t like Mr. Dunagan, describing him as “deceitful, conniving, ...lying and dishonest.” Ex. B, ¶ 1(c). The inference is strong that when she was struggling with her own Tracer filings in 2022 that she would naturally have looked at the Dunagan Tracer filings to see what her opponent was doing and what he was reporting and who was giving to her opponent’s campaign.

60. Taking the findings set forth above and considering all the evidence, weighing each piece against the others, I find that Ms. Campbell either knew or should have known, by the exercise

of reasonable diligence, of the alleged violation” by Mr. Dunagan of the FCPA more than 180 days prior to her filing the Complaint, Ex. 1, on August 10, 2023.

61. Counsel for the Division argued in closing that the statute of limitations—i.e., whether the initial Complaint was timely filed—is an affirmative defense on which Respondent has the burden of proof. It certainly is listed with other affirmative defenses in C.R.C.P. 8(c) that ought to be “set forth affirmatively” either in answer to a complaint or in a Rule 12 motion to dismiss. But if the statute of limitations bars a claim, it deprives the court or agency of subject matter jurisdiction, which is conferred by the Colorado Constitution and Colorado statutes enacted by the General Assembly. *Isbam v. People*, 82 Colo. 550, 567-68, 262 P. 89, 96 (1927); *People v. Wilson*, 251 P.3d 507, 509 (Colo. App. 2010).

62. In this case, subject matter jurisdiction of the Secretary of State to hear an Administrative Complaint is conferred by the FCPA and particularly by §§ 1-45-111.5(1)(a) and 1-45-111.7, C.R.S. The jurisdiction of the Secretary to investigate and pursue sanctions for violations of the FCPA is conditioned on the initial complaint being filed “no later than one hundred eighty days after the date on which the complainant either knew or should have known, by the exercise of reasonable diligence, of the alleged violation.” § 1-45-111.7(2)(b), C.R.S.

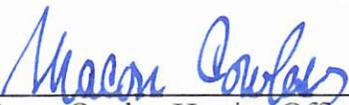
63. “Subject matter jurisdiction concerns a court's authority to hear and rule on a certain class of cases and is conferred by the state constitution and statutes. *See People ex rel. K.W.*, 317 P.3d 1237, 2012 COA 151, ¶ 10. A challenge to a court's subject matter jurisdiction is not waivable and may be raised at any time. *Herr v. People*, 198 P.3d 108, 111 (Colo. 2008). If a court does not have subject matter jurisdiction, it is deprived of any authority to act from the outset of the case. *People v. Martinez*, 350 P.3d 986, 2015 COA 33, ¶ 30.” *People ex rel. C.N.*, 2018 COA 165, ¶ 15, 431 P.3d 1219, 1223. Because a lack of subject matter jurisdiction means that a court has no power to hear a case or

enter a judgment, it is an issue that may be raised at any time. *Currier v. Sutherland*, 218 P.3d 709, 714 (Colo. 2009).

64. C.R.C.P. 12(h)(3) puts the matter emphatically: “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”

65. Accordingly, having found that the initial complaint of Ms. Campbell was filed more than 180 days after she knew or should have known of a potential violation, the Division’s Administrative Complaint in this matter must be, and the same hereby is, dismissed.

DONE this 13th day of February 2024.



Macon Cowles, Hearing Officer