

<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 2023-65</p> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>RESIGN DPS BOARD,</p> <p>Respondent.</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>CASE NUMBER</p> <p>2024 AHO _____</p>
<p>COMPLAINT</p>	

Pursuant to § 1-45-111.7, C.R.S. (2022) 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 Resign DPS Board (“Respondent,” “the Committee”).

BACKGROUND

1. To foster transparency and assist voters in assessing the sources of contributions and expenditures, Colorado law requires any person making an independent expenditure to register with the appropriate authority and report the expenditure.

2. Here, the Committee distributed \$4,000 of advertisements urging Denver electors to “Vote out incumbent candidates up for re-election” during the 2023 Denver School Board race. Not only did the Committee fail to register and disclose its expenditure, but it also failed to include a compliant disclaimer on that expenditure as well.

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. Respondent is Resign DPS Board, an independent expenditure committee registered with the Colorado Secretary of State, ID # 20235046748.

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).

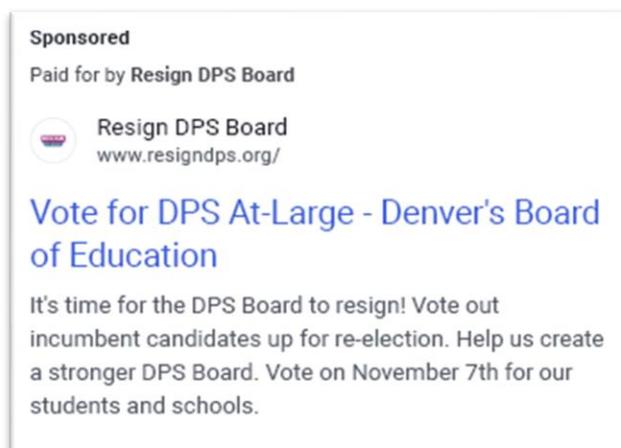
8. This complaint is timely filed within 30 days of the Division’s January 24, 2024, Notice of Investigation according to § 1-45-111.7(5)(a)(IV).

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

ALLEGATIONS

10. During the 2023 election for Denver School Board, the Committee paid \$4,000 to “effect.org” for Google Advertisements. The advertisement ran from October 20, 2023 through November 2, 2023 and said: “Vote out incumbent candidates up for re-election...Vote on November 7th, for our students and our schools.”

11. The advertisement targeted Denver zip codes, and included a link to Respondent’s website.



12. As it originally ran, the advertisement included a “paid for by” disclaimer. However, the disclaimer did not identify a natural person as the registered agent. Additionally, the disclaimer did not indicate the advertisement was not authorized by any candidate. The Committee’s website did not originally include any “paid for by” disclaimer. The website also lacked any statement that the advertisement was not authorized by any candidate.

13. As of October 20, 2023, the Committee was not registered as an independent expenditure committee.

14. The Committee did not disclose this expenditure within 48 hours.

15. On November 1, 2023, Kevin Williams filed a campaign finance complaint against the Committee. The Williams Complaint alleged that the Committee had failed to register as an independent expenditure committee, had failed to disclose its independent expenditures, and had failed to include compliant disclaimers on its electioneering communications.

16. The Division provided the Committee notice of the Complaint the same day.

17. On November 2, 2023, the Committee stopped advertising on Google. The Committee also updated its website to include the disclaimer: ““Resign DPS is a 501(c)4 registered in the State of Colorado, Steven M. Weiser, Registered Agent. Resign DPS Board is not authorized by any candidate.”

18. On December 14, 2023, Respondent registered as an independent expenditure committee, and filed two reports, both backdated to October 19, 2023, disclosing the Google advertisement expenditure.

19. Because these filings were untimely, the Committee was automatically assessed a penalty under Rule 18 of the Secretary’s Rules on Campaign and Political Finance. Those penalties totaled \$2,700.

20. That same day, the Committee filed a waiver request. The Secretary’s waiver committee has reduced that penalty from \$2,700 to \$50.

COLORADO CAMPAIGN FINANCE LAW

21. Under Colorado law, 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 donations accepted or expenditures made reaches or exceeds one thousand dollars.” § 1-45-107.5(3).

22. Such committees must also report their expenditures to the Secretary of State, and where—like here—the expenditure is made within 30 days of an election, such reports must be filed within 48 hours “after the person obligates moneys for the independent expenditure.” § 1-45-107.5(6).

23. Moreover, any person making an independent expenditure of over \$1,000 must include in the communication a “paid for by” disclaimer identifying the person paying for the communication and, if that person is a non-natural person, a registered agent who is a natural person. § 1-45-107.5(5). Additionally, the disclaimer must include “a statement that the communication is not authorized by any candidate”. 8 CCR 1505-6, Rule 22.1.1(b) of the Secretary’s Rules Concerning Campaign and Political Finance.

24. An “independent expenditure” is “an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate.” Colo. Const. Art. XXVIII, § 2(9).

25. 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.” Colo. Const. art. XXVIII, § 2(8)(a).

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

26. All preceding allegations are incorporated.

27. Resign DPS Board made an independent expenditure totaling \$4,000 on or before October 20, 2023.

28. Resign DPS Board was obligated to register as an independent expenditure committee within two business days of making that expenditure.

29. Resign DPS Board did not register as an independent expenditure committee until after the November 7, 2023 election, on December 14, 2023.

30. 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(6), C.R.S.)

31. All preceding allegations are incorporated.

32. Resign DPS Board made an independent expenditure totaling \$4,000 on or before October 20, 2023.

33. Resign DPS Board was obligated to report that expenditure within forty-eight hours.

34. Resign DPS Board did not report that expenditure until after the November 7, 2023 election, on December 14, 2023.

35. 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 THREE
Failure to Include a Sufficient Disclaimer
(§ 1-45-107.5(5), C.R.S. and 8 CCR 1505-6, Rule 22.1.1(b))

36. All preceding allegations are incorporated.

37. Resign DPS Board made an independent expenditure totaling \$4,000 on or before October 20, 2023.

38. Neither the communication paid for by that expenditure, nor the website to which that communication linked, included a compliant “paid for by” disclaimer statement.

39. 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 23rd day of February, 2024.

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 and/or email this 23rd day of February 2024, addressed as follows:

Resign DPS Board
C/O Registered Agent Heather Lamm
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Denver, CO 80209
heatherlamm@gmail.com
Respondent

Kevin Williams
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Denver, CO 80209
kmwilliams@gmail.com
Third Party Complainant

/s/ Kyle M. Holter