

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

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

COLORADO DEMOCRATIC PARTY,

Respondent.

SETTLEMENT AGREEMENT

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

Recitals

A. Respondent is a political party committee whose purpose is “elect Democrats in Colorado”.

B. On April 17, 2023, Respondent filed a Report of Contributions and Expenditures (“First Disclosure Report”), disclosing contributions it received from December 9, 2022 to March 31, 2023.

C. In reviewing the First Disclosure Report, the Division discovered a violation of Colorado campaign finance law. Specifically, the Division identified contributions that exceeded the legal limit for 2023. The Division identified that Colorado Dental PAC, a political committee, made one contribution of \$2,000 to Respondent on January 9, 2023 and made another contribution of \$2,000 to Respondent also on January 9, 2023. Together, these contributions exceeded the annual contribution limit by \$125.

D. On July 17, 2023, Respondent filed a Report of Contributions and Expenditures (“Second Disclosure Report”), disclosing contributions it received from April 1, 2023 to June 30, 2023.

E. In reviewing the Second Disclosure Report, the Division discovered two violations of Colorado campaign finance law. First, that on May 15, 2023, Polis for Colorado, a candidate committee, made a contribution of \$5,000 to Respondent. This contribution exceeded the annual contribution limit by \$1,125. Second, the Division discovered that Respondent reported receiving a contribution of \$6,875 from Bird for Colorado on June 16, 2023.

F. On September 12, 2023, the Division filed a Notice of Complaint and Opportunity to Cure against Respondent under section 1-45-111.7(7), C.R.S. alleging that Respondent accepted contributions over the contribution limit.

G. On September 13, 2023, Respondent returned \$125 to Colorado Dental PAC and Respondent returned \$1,125 to Polis for Colorado.

H. On September 15, 2023, Respondent amended its Second Disclosure Report, indicating that it had not received \$6,875 from Bird for Colorado but it had instead received \$3,000 from Bird for Colorado Leadership Fund.

I. Also on September 15, 2023, Respondent provided its Notice of Intent to Cure through its counsel. Respondent explained that it had returned the excessive contributions from Colorado Dental PAC and Polis for Colorado. With regard to the \$6,875 from Bird for Colorado, Respondent admitted that this was a reporting error and that it had only accepted \$3,000 from Bird for Colorado Leadership Fund.

J. Respondent also notified the Division that it had hired an outside auditing firm to review its records.

K. Because Respondent enjoyed the benefit of the excessive contributions for several months, the Division determined that Respondent had not substantially complied with its legal obligations. On January 17, 2024, the Division filed a Notice of Investigation.

L. During the Division's review and investigation, Respondent fully cooperated with the Division, including by providing supporting documentation to show it had returned the excessive contributions and explaining the reporting error. Nothing in the Division's investigation suggested an intent to mislead the electorate.

M. 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 adopted and approved.

N. 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 Respondent's receipt of an invoice from the Division, **Respondent must pay \$325 to the Division.**

This penalty reflects Rules 23.3.3(b)(1) and (c)(1) of the Secretary's Rules on Campaign Finance. 8 CCR 1505-6.

Under Rule 23.3.3(c)(1), the penalty for accepting a contribution that exceeds a contribution limit is at least \$100 and 10 percent of the prohibited activity. Here, the prohibited activity was \$1,250 – \$125 in excessive contributions from Colorado Dental PAC and \$1,125 in excessive contributions from Polis for Colorado. Rule 23.3.3(c)(1) therefore suggests a fine of at least \$225.

Under Rule 23.3.3 (b)(1), the failure to file complete and accurate reports is a fine of \$100 per report plus 5% of the activity not accurately or completely reported. Here, Respondent inaccurately reported it received \$6,875 from Bird for Colorado, when it had actually received \$3,000 from Bird for Colorado Leadership Fund. The inaccurately reported amount – \$3,875 – was disclosed in the Second Disclosure Report. Therefore, the fine would be \$293.75.

Taken together, Rules 23.3.3(b)(1) and (c)(1) suggest a penalty of \$518.75. However, the Division finds mitigating circumstances here. First, Respondent promptly returned the excessive contributions and amended its reporting upon receiving the Complaint. Moreover, Respondent was not participating in the November 2023 elections, the next elections relevant to Respondent occur in 2024. Even though Respondent had access to the excess contributions for a period of several months, those months did not encompass an election in which Respondent was participating. Furthermore, Respondent has hired an outside auditing firm to ensure proper compliance with campaign finance laws. Finally, Respondent fully

cooperated with the Division, including by providing supporting documentation to show it had returned the excessive contributions and explained the reporting error. This shows that Respondent did not intend to mislead the Division.

Based on the mitigating factors here, a fine of \$325 – \$225 for the excessive contributions and \$100 for the inaccurate reporting – is appropriate.

If Respondent fails to comply with the terms of the settlement agreement, the Division may pursue other means of collection available at law.

Section 3. Compliance with Colorado Campaign Finance Law

Respondent agrees to comply with Colorado law relating to reporting contributions and expenditures 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 Respondent for the payment provided for in Section 2 of this Agreement.

Section 5. Admissions

Respondent admits that it accepted aggregate contributions in excess of the applicable contribution limits from two entities and that it filed an inaccurate report of contributions and expenditures.

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 he 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

02/23/2024

DATE



By: Alex Gentry
Campaign Finance Enforcement
Legal Analyst

COLORADO DEMOCRATIC PARTY

1/23/2024

DATE



By: Karin Asensio
Registered Agent

ADOPTED AND APPROVED BY:

Feb. 26, 2024

DATE



By: Christopher P. Beall
Deputy Secretary of State