

**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.

**COLIN LARSON, and COLIN FOR COLORADO**  
Respondents.

**AHO Case No. 2023-003**

(Elec. Div'n Case Nos:  
2022-109, -110, -111, -112, -  
113, -114, -115, -116, & -117)

**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 dispositive order terminating the underlying case.

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

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this case for review, the Deputy Secretary may issue a Final Agency Order with a different result than that recommended by the AHO or the Deputy Secretary may remand the matter to the AHO for further consideration.

In order to challenge AHO's recommendation to dismiss this case, 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. General Filing Requirements**

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

#### **II. Exceptions**

Pursuant to section 24-4-105, a party may appeal the AHO's order recommending dismissal of this case to the Deputy Secretary by means of the exceptions review process ("Exceptions"). In order to appeal the dismissal, 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 AHO's order shall file a Designation of Record within twenty (20) days from the date of this Order. Any party that wishes to challenge any factual findings in the AHO's order must also designate relevant transcript(s), or parts thereof, if any, 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.

**III. Computation and Modification of Time**

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

**IV. 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.

**V. Final Order**

The Deputy Secretary may affirm, set aside, or modify any, all, some, or no parts of the AHO's 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 underlying decision by the AHO are insufficient to complete an appropriate review. In such instance, the Deputy Secretary will remand the case back to the AHO with instructions. The AHO may thereafter conduct further proceedings and ultimately issue a subsequent initial decision upon remand. The parties will have the same appeal rights with respect to any subsequent 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 underlying decision from the AHO through Exceptions, and the Deputy Secretary has chosen not to initiate review of the underlying decision on 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 a right to seek judicial review of the underlying decision in the District Court. See § 24-4-105(14)(c), C.R.S.

IT IS SO ORDERED.

**DONE** and **ORDERED** this 1<sup>st</sup> day of March 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 March 1, 2024:

**Complainant –**

Peter Baumann, Senior Assistant Attorney General  
Colorado Department of Law  
[Peter.Baumann@CoAG.gov](mailto:Peter.Baumann@CoAG.gov)

**Respondent –**

Suzanne Taheri, Esq.  
Counsel for Colin Larson; Colin for Colorado  
[st@westglp.com](mailto:st@westglp.com)

**Underlying Citizen Complainant**

Marcie Little  
[marcielittleCO@proton.me](mailto:marcielittleCO@proton.me)

**Administrative Hearing Officer Macon Cowles –**

[AdministrativeHearingOfficer@ColoradoSOS.gov](mailto:AdministrativeHearingOfficer@ColoradoSOS.gov)

**Elections Division –**

Colorado Secretary of State, Elections Division  
[cpfcomplaints@coloradosos.gov](mailto:cpfcomplaints@coloradosos.gov)

*/s/ Christopher P. Beall*  
Deputy Secretary of State



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**ADMINISTRATIVE RECORD AND EXHIBITS**

1. The Administrative Record consists of the pleadings in nine related Tracer files under cases numbered ED2022-109, ED2022-110, ED2022-111, ED2022-112, ED2022-113, ED2022-114, ED2022-115, ED2022-116, and ED2022-117 as well as those in the Administrative Hearing Officer Docket for 2023 AHO 0003 on or before February 16, 2024. The Record also includes the Division’s Exs. 1 through 17, all admitted into evidence, and the 8 page pdf file not admitted in evidence containing the Division’s demonstrative exhibits referred to in closing argument. Finally, the Record includes the video recording of the hearing. The recording is 3:03:23 in length. From time to time, the summary of evidence includes time markers in the format h:mm:ss indicating where that testimony occurred in the recording.

2. Without objection, the exhibits in the table below were admitted at the beginning of the hearing. Exs. 1-17 are in a single pdf file of 73 pages. In the body of this Initial Decision, I will refer to exhibit numbers and give the page number of the 73 page exhibit packet when referring to exhibits.

<b>Exhibit No.</b>	<b>Item</b>
<b>DIVISION’S EXHIBITS</b>	
1	Campaign Finance Complaint filed by Marcie Little
2	Letter dated December 16, 2022, from Suzanne Taheri to Tim Gebhardt on behalf of Rep. Colin Larson and Colin for Colorado3
3	Letter dated December 16, 2022, from Suzanne Taheri to Tim Gebhardt on behalf of Cole Communications and Victor’s Canvassing
4	Letter dated January 6, 2023, from Katie Kennedy to Tim Gebhardt on behalf of Restore Colorado Leadership Fund, including attachments.
5	Report from TRACER reflecting expenditures made by Restore Colorado Leadership Fund IEC to Victor’s Canvassing
6	Report from TRACER reflecting expenditures made by Restore Colorado Leadership Fund 527 to Cole Communications

<b>Exhibit No.</b>	<b>Item</b>
7	Deputy Secretary's Order in this matter dated May 1, 2023.
8	Cole Communications, LLC's Information Sharing Directive.
9	Victor's Canvassing, LLC's Information Sharing Directive.
10	Colin Larson's Discovery Responses
11	Mailer in opposition to Tammy Story
12	Record of Expenditures by Ready Colorado Action Fund to Victor's Canvassing in October 2022.
13	Record of Expenditure by Unite for Colorado Action IEC to Victor's Canvassing in July 2022.
14	Record of Expenditure for Unite for Colorado Action IEC to Victor's Canvassing in October 2022.
15	Record of Expenditure supporting Colin Larson by Ready Colorado Action Fund in June 2022.
16	Record of Expenditure supporting Colin Larson by Ready Colorado Action Fund in October 2022.
17	Record of Expenditure opposing Tammy Story by Ready Colorado Action Fund in October 2022.

#### **APPLICABLE LAW**

3. 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.

4. 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.

5. Campaign finance in Colorado is governed by Colo. Const. art. xxviii, the Fair Campaign Practices Act (FCPA) in 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.

6. Candidate committees like Colin for Colorado are prohibited from receiving contributions in excess of the legal limit from any one contributor. Colo. Const. art. XXVIII, §

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3(1). The limit is adjusted every four years and published by the Secretary of State. Colo. Const. art. XXVIII, § 13. For state house races in 2022, that limit was \$200 for the primary and general elections, for a total of \$400.

7. Colorado law requires all candidate committees to “report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; [and] expenditures made[.]” § 1-45-108(1)(a)(I), C.R.S. (2022).

8. Expenditures that are not controlled by or coordinated with any candidate or an agent of a candidate are “independent expenditures,” and are not considered contributions to the candidate they support. However, “[e]xpenditures that are controlled by or coordinated with a candidate or candidate’s agent are deemed to be both contributions by the maker of the expenditures, and expenditures by the candidate committee.” Colo. Const. art. XXVIII, § 2 (9).

9. “Any expenditure or spending on a covered communication that is controlled by or coordinated with a candidate or candidate's agent or a political party is considered both a contribution by the maker of the expenditure or spending, and an expenditure by the candidate committee.” § 1-45-108(8)(a), C.R.S. (2022).

10. CFP Rule 21 defines “coordination” as follows:

Expenditures or spending are coordinated with a candidate committee or political party if:

21.1.1 A person makes an expenditure or engages in spending at the request, suggestion, or direction of, in consultation with, or under the control of that candidate committee or political party; or

21.1.2 An independent expenditure or electioneering communication is created, produced, or distributed:

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- (a) After one or more substantial discussion(s) between the candidate or political party and the person making the expenditure or engaging in the spending,
    - (1) In which the person making the expenditure or engaging in the spending received non-public information about the candidate or political party's plans, projects, activities, or needs; and
    - (2) The information is material to the creation, production, or dissemination of an independent expenditure or electioneering communication; or
  - (b) By a common consultant who provides, or has provided during the election cycle, professional services to the candidate committee or political party as well as to the person making the expenditure or engaging in the spending; and
    - (1) In which the person making the expenditure or engaging in the spending received non-public information about the candidate or political party's plans, projects, activities, or needs; and
    - (2) The information is material to the creation, production, or dissemination of an independent expenditure or electioneering communication.

#### SUMMARY OF TESTIMONY

##### **Timothy Gebhardt**

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

11. Mr. Gebhardt is the Campaign and Political Enforcement Manager in the Elections Division of the Colorado Secretary of State. He manages a team of 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.

12. 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

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30 days during which the investigators decide whether to move to dismiss the complaint or file a hearing officer complaint.

13. In this case, there were nine complaints against various respondents that were part of Marci Little's complaint this is Ex. 1, received November 7, 2022.

14. Exhibit 2 is a response to the Division's request for information to: Larson and the Colin for Colorado candidate committee. The written response through counsel in Exhibit 2 to question number one was as follows:

“Mr. Larson provided high-level direction on which Colorado State House races, Restore Leadership Fund, IEC (RCLF IEC) would make expenditures. Mr. Larson worked with Daniel Cole in Mr. Cole's capacity as general consultant for RCLF IEC to direct expenditures.”

15. Daniel Cole was named as a respondent in the citizen complaint. Larson was in a competitive race. Daniel Cole worked for Colin for Colorado.

16. Exhibit 3 is the response, through his counsel, of Daniel Cole's two entities, Cole Communications and Victor's Canvassing to questions submitted by the Division. The Division asked in question 8 whether these entities had any barriers in place to prevent the sharing of nonpublic information with other entities. In response to that question, no information was provided to show that any barriers or firewalls existed. Ex. 3 pp. 27-28/73.

17. The Division concluded, after investigation, that there was no direct evidence of coordination, but there was substantial circumstantial evidence due to the interconnectedness of the parties. They were concerned about those relationships and the lack of documentation of a firewall in place concerning the potential sharing or receipt of nonpublic information. They also looked into Ready Colorado IEC and Unite for Colorado IEC, each of which contributed to the Larson campaign.

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18. It appeared initially that Restore Colorado IEC did make an independent expenditure in Colin Larson's race in 2022. That was in the form of the payment for about \$8,882 to Axiom Strategies, a large communications firm, for an opposition mailer about Mr. Larson's opponent in the campaign. Exhibit 4 is the response of the Restore Colorado Leadership Fund (RCLF) IEC to an inquiry about that payment. Ex. 4 is authored by Katie Kennedy, who is Restore's designated Tracer filing agent. In the answer, she explains that she originally reported the Axiom invoice as having been paid by Restore Colorado. The very next day after recording the expenditure on Tracer, however, she learned that that invoice from Axiom actually should have gone to Ready Colorado. She was informed of the error in an email from Tyler Sandberg, a consultant to RCLF IEC. That email is in Exhibit 4, p. 32/73, in which Tyler Sandberg says:

“This invoice is incorrect. It lists a mailer - Larson G03 - that is supposed to be charged to Ready Colorado Action Fund IEC, not Restore Colorado Leadership Fund (RCLF).

“That's an issue because Rep. Larson oversees RCLF and thus the IE cannot be spending on his race.”

19. Ex. 11 is the mailer that was sent by Axiom and which resulted in the \$8,882 charge. That mailer was received during the investigation, and it shows that the mailer was paid for by Ready Colorado Action Fund IEC. Daniel Cole was a consultant to Ready Colorado.

20. During the investigation phase, the Division lacks subpoena power, and Respondents provided no documents that supported the existence of the appropriate firewalls within any of the interconnected entities.

21. There is no evidence that Mr. Larson was using Ready Colorado or Unite Colorado or Cole as his consultant in August.

22. Ex. 7 is the May 1, 2023 Order of the Deputy Secretary granting in part, and denying in part, the divisions motion to dismiss the complaint. The order directed the division to file a

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hearing officer complaint within 14 days against Colin Larson, Colin for Colorado, Restore Colorado leadership fund IEC, Restore Colorado Leadership Fund 527, Daniel Cole, Cole Communications, LLC and Victor's canvassing, LLC.

23. Responding to Ms. Taheri's questions, Mr. Gebhardt says that Cole Communication sent out a single text for Colin Larson in June – a GOTV text. None of the groups supported Colin Larson's campaign in the primary. They did support him in the general election.

24. Which voters are Republicans is publicly available information; and Colin Larson's candidacy was public information. The Division performed a detailed investigation at the end of which it filed a Motion to Dismiss the complaint. But the enforcement team got subpoena power only after the Hearing Officer Complaint was filed.

25. Mr. Larson was not on the email chain that is included in Katie Kennedy's submission for Restore in Ex. 4.

26. He has no information indicating that Colin Larson knew about the Tammy Story mailer. He has no evidence that there was coordination in August. And there is no evidence that Larson did any business with Daniel Cole's companies after the text message in June. No evidence that Ready or Restore or Unite were spending on Mr. Larson's race in June. No evidence of coordination in June. No evidence of coordination with Mr. Larson's campaign in August. No evidence that Mr. Larson was using Ready, Restore, Unite or Cole Communications for his race.

27. The investigation revealed that Mr. Larson was providing high level advice and raising money for RCLF. The only evidence they have of RCLF spending money on Mr. Larson's race is the Tracer filing, quickly withdrawn, saying that RCLF paid for the mailer. RCLF's originally paid the invoice to Axiom for Ex. 11, an opposition piece benefitting Mr. Larson's race. Larson G-03 is the reference for the ad. The ad has the disclaimer that the flyer was paid for by Ready

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Colorado Action Fund IEC. The disclaimer could be inaccurate as to who paid for it. But there is no evidence for that other than the initial payment, that was changed.

28. It is not unusual to amend a filing; it happens regularly.

29. He does not recall speaking to the complainant, Marcie Little. She was upset that some members were not invited to a meeting. She lives in Colorado Springs. She never said why she was interested in Mr. Larson's race.

30. Redirect by Mr. Baumann. Ex. 2, p. 24. Colin Colorado paid Cole Communications \$726.10 on July 1, 2022 for the text message. Ex. 13, p. 68 is an Expenditure Detail that shows Unite for Colorado paying Victor's Canvassing July 15-August 30 for canvassing for many House and Senate candidates including Colin Larson. So, July is when Unite Colorado began to support his campaign.

31. On redirect by Mr. Baumann, the witness said that Colin Larson paid Cole Communications \$726.10 on July 1, 2022 for the GOTV text.

32. July is when Unite for Colorado began to support the Colin Larson campaign, as shown by Ex. 13 which shows a payment of \$110,476.16 by Unite on July 13, 2022 for "door hangers and canvassing" for many Colorado House candidate, including Colin Larson.

33. And Ready Colorado Action Fund did support Mr. Larson during the primary, as can be seen from the payment by Ready to Axiom on June 1, 2022 of \$8,934 for a mailer in support. Ex. 4. And Colin Larson did work with Restore Colorado and Cole to elect other Republicans to the House.

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34. Mr. Gebhardt doesn't know what GOTV stands for. In Colorado, unaffiliated voters can vote in primary elections. Entities like Restore Colorado don't often pay \$8,000 invoices by mistake.

**Colin Larson**

Colin Larson gave the following testimony after first being duly sworn.

35. Mr. Larson now works for the Colorado Restaurant Association. Before the election in 2022, he represented a different district in the Colorado House of Representatives than the one for which he ran in 2022. Redistricting changed the boundaries and number of the district in which he lived. He had won the primary easily, with a vote tally that ran 2:1 in his favor. In the general election when he ran against Tammy Story (D), it was considered a contested seat. The vote difference in the general election was 1-2%; he lost the election by fewer than 1,000 votes.

36. He explains that there is the Restore Colorado Leadership Fund 527 and also a Restore Colorado Leadership Fund IEC. It is the IEC that spends money that is raised by the 527. Like every other Republican Colorado House member, he did raise money for the 527. This is done by attending fundraisers and asking for donations. There is not a quota or an established amount that each member is expected to raise for the 527.

37. In August, Mr. Larson was asked by Representative Hugh McKean to take oversight responsibility for the Restore 527—to provide high level guidance about where to spend money on Colorado House races. He believes that Rep. McKean asked him to do this because they were friends and they had mutual trust and because it was believed that Mr. Larson would likely defeat Tammy Story for his own House race. Mr. Larson agreed to do this. Decisions were made in the consult with about ten consultants, including Daniel Cole. Mr. Larson continued in this role until the general election; but all decisions were made by one to two weeks before the election.

38. There was no conflict of interest for him to have that role, because he made it clear to Restore that he would not discuss his seat nor would Restore spend any money on his race. No one objected to his serving in this oversight role. Hugh McKean did not stay involved in Restore after August, so far as Mr. Larson knows, though Larson did not attend every meeting.

39. Tyler Sandberg was one of the consultants to Restore. And in 2022, Sandberg also worked as a consultant for Ready Colorado. Colin Larson is not included anywhere in the email chain, Ex. 4. pp. 32-33, where Sandberg advises that Restore should *not* have been invoiced for the \$8,934 mailer, Ex. 11, that was sent to voters in HD 25.

Tyler Sandberg <w.tyler.sandberg@gmail.com> Thu, Oct 27, 2022 at 12:14 AM  
 To: "cfehr@garrisonmanagementgroup.com" <cfehr@garrisonmanagementgroup.com>, Chris D'Aniello <cdaniello@axiomstrategies.com>  
 Cc: "katie@strategiccompliancellc.com" <katie@strategiccompliancellc.com>

This invoice is incorrect. It lists a mailer - Larson G03 - that is supposed to be charged to Ready Colorado Action Fund IEC, not Restore Colorado Leadership Fund (RCLF).

That's an issue because Rep. Larson oversees RCLF and thus the IE cannot be spending on his race.

Can you send back a corrected invoice?

40. Mr. Larson was overseeing Restore at the time the Sandberg email about the Axiom invoice was sent on October 27. At that point, Mr. Larson expected to win his seat. He was confident about that up until the first returns came in, at which point he realized he would probably lose. Ex. 5 shows payments of the Restore IEC to Victor's Canvassing on October 26 and 31, 2022. Mr. Larson was still overseeing Restore at that time.

Payee ▲	City, State	Expenditure Type	Amount	Date	Candidate/Committee Name	Ind. Elec.		
VICTOR'S CANVASSING	COLORADO SPRINGS, CO	Advertising	\$35,000.00	10/26/2022	RESTORE COLORADO LEADERSHIP FUND IEC	Yes	Yes	<a href="#">View</a>
VICTOR'S CANVASSING	COLORADO SPRINGS, CO	Advertising	\$35,000.00	10/26/2022	RESTORE COLORADO LEADERSHIP FUND IEC	Yes	Yes	<a href="#">View</a>
VICTOR'S CANVASSING	COLORADO SPRINGS, CO	Advertising	\$35,000.00	10/31/2022	RESTORE COLORADO LEADERSHIP FUND IEC	Yes	Yes	<a href="#">View</a>
VICTOR'S CANVASSING	COLORADO SPRINGS, CO	Advertising	\$35,000.00	10/31/2022	RESTORE COLORADO LEADERSHIP FUND IEC	Yes	Yes	<a href="#">View</a>

*Detail from Ex. 5*

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41. With Restore, he gave attention to mail and to polling. Restore did polling, and they did test messaging; but they did not use focus groups. Restore polled in eight or ten districts. Asked about messages that tested well, he said that it was different in different districts.

42. Ex. 6 shows the Restore IED expenditures to Cole Communications from February 22 to November 29, 2022. As part of Restore IEC, he discussed individual races with Cole and message strategy. He did not know if Cole worked for other IECs. After Mr. Larson took over Restore, he did not at all discuss his campaign with Cole.

43. The primary was in June, probably June 28. Cole's company did send a text message for the primary. The message was sent to likely Republican voters and would have urged people to vote for Colin Larson on election day. He is aware of the vote propensity score: mainly, the propensity of a voter to vote along party lines in an election. The reason he used Cole to send a text message is that the vendor that Colin Larson usually used was unavailable. So, he asked Cole to do it. At that time, he didn't know that Cole was a consultant for the 527. He did not discuss his House race with Cole after July 1, 2022.

44. Rep. Hugh McKean died October 30, 2022. Mr. Larson continued his role with Restore right up to the election. He does not know what was happening in the 527 before he took oversight of it in August.

45. Responding to Ms. Taheri's questions, Mr. Larson believes that the vote propensity score is partly based on how often people vote and partly on some consumer data, but he is not super familiar with the methodology. He does not recall asking Cole for data used or developed in connection with the text message they sent in his primary.

46. Restore Leadership Fund did no polling in his race or district, to his knowledge. They spent no money in his district, for or against him.

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47. Mr. Larson had his own consultant for his race: Frank McNulty and Square Street Strategic and Margot Radich. He never discussed his race with Tyler Sandberg or Daniel Cole after July 1. When he took oversight of Restore, he would speak to Daniel Cole about every two weeks, about how much money was available and where it should be spent.

48. As for Ex. 11, the opposition flyer, he did not know that that was going out. He first saw it when a constituent showed it to him while he was door knocking. He saw that Ready Colorado paid for it. He had no knowledge about the mistaken invoice and payment for the piece. He first learned about it from the Tracer amendment. But no one ever talked to him about it or emailed him about it. He was never informed about what Ready Colorado, Victor's Canvassing or Unite for Colorado were spending on his race.

49. On Redirect, Mr. Larson described District 25 as being suburban with some rural areas. Restore and Ready did spend money in suburban areas.

### **Daniel Cole**

Daniel Cole gave the following testimony after first being duly sworn.

50. Daniel Cole is a political consultant and he is appearing under subpoena. He has two companies through which he does his work: Cole Communications and Victor's Canvassing. All of his employees, technically, are employees of Victor's Canvassing. Cole Communications leases employees from Victor's Canvassing.

51. Victor's sometimes does data management, to determine who should receive communications, to look at potential voters. In determining how to decide who gets a text message, he generally passes that task off to someone like Daniel Fenlason, the former data director for the Colorado Republican Party, or to another vendor. Either someone from his company pulls a list of

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voters or sometimes they turn to a text message vendor and offload the entire project to that vendor. He personally does not even have a log-in to extract that data from a database.

52. Victor's does do paid canvassing. They obtain the people they need to do the canvassing either from people who have worked for them before, or they use Indeed to get temporary employees—independent contractors. Only sometimes do they track which employees are working on which projects. He has three full time employees and one part time employee currently.

53. With his attention drawn to Ex. 3, a letter written by the Suzanne Taheri on behalf of the Maven Law Group and dated December 16, 2022, at first he says he has not seen it before, but when directed to the assertion in the first paragraph that it is a letter sent on behalf of Cole Communications and Victor's Canvassing, he says he "probably did review this." He is the chief decision-maker of Cole communications. The title he typically uses is "owner" and sometimes "CEO" or "owner" of Victor's. He is an officer of both.

54. His attention is drawn to Ex. 3 and the response in ¶ 8 on the second page. Cole Communications and Victor's currently have barriers to prevent the sharing of nonpublic information between committees, organizations, and candidate committees.

55. Both Cole Communications and Victor's canvassing have barriers or firewalls to prevent coordination where that is required. The policy existed in 2022, but the written policy was put in place after 2022. 1:50:00

56. Ex. 8, as to Cole Consulting and Ex. 9 as to Victor's, are the written firewall policies. Exs. 8 and 9 are identical. The policy that was in place in 2022 was that team members could not work on both the hard side and the soft side of a campaign in any given cycle.

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57. He communicated that policy to employees in 2022, but the primary way it was observed is that his employees work in the lanes that he assigns to them. Everyone in his shop is aware of the prohibition on coordination. Asked how the policy was communicated to independent contractors, he says that it may have been part of the written engagement. However, Daniel Fenlason is the COO of Victor's and in charge of on boarding so Mr. Larson is not aware of what precautions might have been taken. He doubts that they asked potential independent contractors if they had previously worked for committees. That would never be a problem, because professional canvassers don't typically work for candidate campaign committees. 1:57:30. If someone canvassed on behalf of a candidate committee that canvasser could not also work for an IEC. That would have violated Mr. Cole's policy in effect in 2022 and violate the written policy. But when they hired independent contractors, they did not screen potential contractors for that.

58. If he provided services to a campaign committee, it would violate the policy if he were also to provide services to an independent expenditure committee.

59. Cole Communications did work for Colin Larson in the primary election of 2022 in sending the GOTV text message. 2:01:00 The purpose of the GOTV text message is to get people to vote. Its purpose is not persuasion. Persuasion messages are targeted to people who are persuadable. GOTV text messages are targeted to people who are likely to vote for the candidates you represent. He cannot recall his involvement in sending out a primary text message for Colin for Colorado. If he were involved, it would have been only to pass along the need for the service to someone else who would perform it. Sometimes he is involved in the messaging and in the choice of targets. But he doesn't claim special skill in the area of text messages.

60. His companies did work for Unite for Colorado in 2022. He doesn't recall whether they worked for Ready Colorado. With his memory refreshed by Ex. 3, the witness says that he did

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work for the candidate committees of Hugh McKean, Steven Durham, and Holly Williams in 2022. Someone in Mr. Cole’s office spoke to Colin Larson about the text message during the primary, but Mr. Cole has no recollection of being involved.

61. In response to a question from the Hearing Officer, Mr. Cole explained his use of the terms “soft” and “hard” sides of campaigns. Colin for Colorado is an example of the hard side of a campaign, where there are spending and contribution limits. The IEC and 527 are on the soft side, where there are no such limits. 2:11:25 An independent expenditure in support of that campaign would be on the soft side.

62. He did work for a couple of organizations that worked to elect Colin Larson in 2022. He worked for Unite for Colorado Action and doesn’t specifically recall working for Ready Colorado. The reason he doesn’t recall is that during an election cycle, they are working for so many different entities—and sometimes they are not working *for* such entities, but *with* them. He is sure that the Tracer records are correct about which entities his two companies were working for. 2:08:00

63. He is careful to make sure that no one who is working on the soft side is also working on the hard side. 2:08:08 The overwhelming majority of the work that they do—98%—is working on the independent expenditure side of campaigns. He doesn’t recall what work they did for Hugh McKean’s candidate committee in 2022. He is sure they worked for Steven Durham’s committee but doesn’t remember what he did. But he does remember that for Holly Williams committee, they collected some signatures. He was careful to see that no one who worked for any of those candidate committees did any work on the soft side. He comments, however, that there was no soft side money spent on Steve Durham’s campaign.

64. Referring to Ex. 12, he does not recall whether either of his two companies did work for Ready Colorado that benefitted Colin Larson’s campaign. Ex. 12 reflects a payment to Victor’s

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Canvassing in support of two candidates, but not Colin Larson. He does not recall if either of his companies did any work for Ready Colorado Action Fund related to Colin Carson's race.

65. Referring to Ex. 13, his company Victor's Canvassing did door to door canvassing paid for by Unite for Colorado IEC. Ex. 13 lists a lot of candidates who were supported, one of whom was Colin for Colorado. This canvassing effort involved sending canvassers to the doors of voters that they wanted to target for persuasion of get out the vote. The canvasser is given a script and literature like door hangers, palm cards, etc. Canvassers working on different campaigns likely did not use the same script. There would be variations, depending on the segments of voters they were working on. Targets of persuasion would receive a different message than voters you are just trying to nudge into voting. Scripts can vary with the particularities of the district. Scripts are definitely different in different districts.

66. Was there a Colin Larson script? The House districts overlapped with Senate districts. The literature would have been appropriate to both. And the script would have communicated that the canvasser was supporting two candidates.

67. He has three FTEs and one PTE. Asked about file sharing on computers: the witness says that employees cannot open shared files. If an employee is working for one organization and another employee is working for another, there is no way for the one employee to see what the other employee is working on. They don't have a file sharing arrangement like that.

68. He also worked for Restore Colorado Leadership Fund 527. His work for the 527 and IEC is distinguished purely because of campaign finance rules. He thinks of them as a single entity.

69. Ex. 5 shows payments from the Restore Colorado IEC to Victor's Canvassing. He thinks those may have been for door to door canvassing.

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70. Ex. 6 shows the Restore Colorado IEC payments to Cole Communications starting in February 2022. He recalls most of those payments.

71. The witness was asked about his work on behalf of Restore Colorado Leadership Fund—both of them. He was the general consultant in charge of providing overall guidance to the operation. He worked with many different people, including Colin Larson, to decide on which races money should be spent. He recalls no specific instance of working with Mr. Larson on content or messaging; if he did do that, it would have been “minimal.” 2:24:14 He probably reviewed polling that the entities did, but he remembers receiving that information only orally. He did not use that polling information in working for other clients. It was not relevant to others of his clients. Both Restore Colorado Leadership Fund and Unite for Colorado were spending money in targeted and contested House races in 2022.

72. Colin Larson’s race was not considered contested until “after the fact.” Unite for Colorado was canvassing in his district as early as July 2022. Daniel Cole was also the general consultant for the Senate Majority Fund, the IEC to elect Senate Republicans. So, he had an interest to make sure that targeted Senate candidates won. 2:26:08 Unite’s primary interest was the state Senate. Since they were already canvassing to support state Senate candidates, it was easy to “tack on” House Republican candidates as well. They canvassed for every House candidate whose district overlapped with Senate districts whose Republican candidate they had targeted for support.

73. He never shared information that he learned through Restore Colorado Leadership Fund with Unite for Colorado Action Fund. 2:27:15 Information was not shared; they cooperated on tasks. He was a consultant to Restore, but only a vendor to Unite. He never shared information that he learned through Restore Colorado Leadership Fund with Ready Colorado.

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74. If Unite for Colorado and Restore had messages that were at odds with each other, what would you do in that situation? [Objection overruled.] That hasn't arisen. His assumption would be that there would be no problem because they are both soft side entities and there is no prohibition on coordination—he would then ask his attorney for advice to confirm that.

75. He received no non-public information about Colin Larson's plans, projects, activities, or needs while working for his candidate committee. He recalls no conversation with Colin Larson or anyone else about any of these. If he talked to anyone, it would only have been about sending the text message. He received no non-public information about Colin for Colorado's plans, projects, activities, or needs while working for Restore Colorado. And he shared no non-public information about Colin for Colorado's plans, projects, activities, or needs with Ready Colorado. And he shared no non-public information about Colin for Colorado's plans, projects, activities, or needs with Unite for Colorado. 2:30:45

76. Responding to Ms. Taheri's questions, the witness testified that at the time the text message was sent, he probably did know about Colin Larson's involvement with Restore Colorado Leadership Fund, but Hugh McKean was in charge of RCLF at that time. Mr. Larson took on RCLF some months before the election. He learned from this hearing that it was in August. To his knowledge, RCLF spent no money on Colin Larson's case.

77. He gets personally involved for large clients in sending text messages when they are sending tens of thousands or hundreds of thousands of messages. If he had talked to Colin Larson about the text message in June 2022, where they sent out relatively few, he would just have connected the Larson campaign with the right person or vendor to do that.

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78. The longest text that could be sent through any vendor in 2022 was 320 characters. The content of the message in the Colin Larson text would likely have been to mention the candidates name, and to vote by a certain date. There is no persuasion attempted in a GOTV text.

79. Regarding putting his employees in a lane, there are some employees who are on the soft side and others on the hard side, though some employees could be on the hard side of one campaign and the soft side of a different campaign—but never working the soft and hard side for the same candidate. In 2022, he knew that he was on the soft side of campaigns for the Senate and the House, and so he “absolutely” stayed away from the hard side for any of those candidates.

2:35:40

80. The canvassing he did for Unite for Colorado was targeted in support of Senate candidates. His canvassing for Larson would have been “tacked on” to the canvassing for Senate candidates. Representative Larson was not considered to be a targeted race in 2022, so there was less spending on his race.

81. Responding to Mr. Baumann’s questions, one of his companies was paid by RCLF as far back as June 2022. 2:38:00 His memory refreshed by looking at Ex. 6, Cole Communications was paid by RCLF starting February 22, 2022. He did not consider his company Cole Communications to be on the soft side of RCLF; but he personally was on the soft side with RCLF.

#### **FINDINGS OF FACT**

82. The Initial Complaint of Marcie Little, Ex. 1, was the source of nine complaints of FCPA violations asserted against nine respondents.

- 1) Colin Larson
- 2) Colin for Colorado
- 3) Restore Colorado Leadership Fund 527
- 4) Restore Colorado Leadership Fund IEC
- 5) Daniel Cole

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- 6) Colorado Communications, LLC
  - 7) Victor's Canvassing, LLC
  - 8) Frank McNulty
  - 9) Square Strategy Group, LLC

83. After investigation, the enforcement staff moved to dismiss all the underlying complaints under section 1-45-111.7(5)(a)(IV), but the Deputy Secretary denied the motion as to Colin Larson, Colin for Colorado, Restore Colorado Leadership Fund IEC, Restore Colorado Leadership Fund 527, Daniel Cole, Cole Communications, LLC, and Victor's Canvassing, LLC. Ex. 7, p. 54/73. In due course, the Division filed the Administrative Complaint in this matter on May 19, 2024.

84. Campaign finance laws to counteract the corrosive influence of money in politics have been enacted and changed over decades in Colorado in response to the demand of voters and in respect to the constitutional rights at stake: freedom of speech, freedom of association and equal protection of the law. The FCPA and the two major constitutional amendments adopted by Colorado voters in 1996 (Amendment 15) and 2023 (Amendment 27) all call for "strong enforcement of campaign finance requirements." Colo. Const. art. xxviii, § 1; Fair Campaign Practice Act at § 1-45-102.

85. The "strong enforcement" of campaign finance requirements is directed at making transparent the sources and placement of money by powerful interests to influence the outcome of elections. The call for strong enforcement is in reaction to the fact "that large campaign contributions to political candidates create the potential for corruption and the appearance of corruption; that large campaign contributions made to influence election outcomes allow wealthy individuals, corporations, and special interest groups to exercise a disproportionate level of influence over the political process." Colo. Const. art. xxviii, §1. It is in recognition "that the interests of the public are best served by limiting campaign contributions, establishing campaign spending limits, full

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and timely disclosure of campaign contributions, and strong enforcement of campaign laws.” *Ibid.* Enforcement occurs within the constraints on transparency that have been imposed by judicial decisions interpreting important constitutional rights—freedom of speech, freedom of association and equal protection of the laws.

86. In the case at hand, the Administrative Complaint alleges two violations.
- a. Claim One alleges that the expenditures by Ready Colorado and Unite IEC in ¶¶ 87(b) and (c) were in support of Colin Larson’s campaign for the House should have been reported as contributions by his candidate committee because there was coordination between the IECs and Colin Larson. Admin. Compl. ¶¶ 47-51.
  - b. Claim Two alleges that the expenditures, properly viewed as contributions to Colin for Colorado, violated the FCPA because they exceeded \$400, which is the maximum contribution to a House race that is permitted by Colo. Const. art. xxviii §3. Admin. Compl. ¶¶ 52-55.

#### **The expenditures under scrutiny**

87. Testimony at trial focused on two expenditures that specifically supported Colin Larson’s campaign, as well as non-specific canvassing expenditures that benefitted the Larson campaign, among others. The central issue in the case is whether any of expenditures were a result of prohibited coordination between Larson and his candidate committee, on the one hand, and the soft side entities, on the other: Restore IEC, Restore 527, Ready Colorado or Unite for Colorado.

- a. The first specific expenditure was a July 1, 2022 expenditure of \$726.10. paid to Daniel Cole’s company Victor’s Canvassing to distribute a Get Out the Vote (GOTV) text message to voters in the primary. Ex. 3, p. 27/73, ¶ 8. The gist of the Division’s case was that communication and discussion surrounding the text message project may have provided the first occasion for Daniel Cole to receive non-public information about Mr. Larson’s campaign.
- b. The second specific expenditure was an October 26, 2022 payment to distribute by mail an opposition piece, Ex. 11, to voters in the general election. The gist of the Division’s case was that this expenditure of \$8,934.00 may have been the result of prohibited coordination. Ex. 15, p. 70/73.
- c. The non-specific expenditures benefitting the Colin Larson campaign were the \$110,476.16 to Victor’s Canvassing in July 2022, Ex. 13, and the \$200,000 paid to

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Victor's Canvassing in October 2022, Ex. 14. Unite for Colorado paid for both of those.

**The GOTV primary election text message**

88. The Division first presented evidence on the GOTV text sent out in Colin Larson's Republican primary race, and the communications that may have occurred in connection with that transaction. That is the \$726.10 expenditure referenced in ¶ 87(a).

89. Before running against Tammy Story in the general election, Mr. Larson first had to win the Republican primary for District 25 in the Spring of 2022. As an incumbent, he handily beat the primary opponent nearly 2:1. While not mentioned at the hearing, it is a matter of common knowledge that there is lower turnout in primary elections than in the general. To secure the election of his party in the primary, Mr. Larson sent a GOTV text message to likely primary voters. The firm that he had used in the past to send such text messages was not available, and that is why he asked Daniel Cole or one of his companies to send out the text.

90. Mr. Cole remembers nothing of the transaction that led Cole Consulting to send out the GOTV text in the Colin for Colorado primary election. It is not known how many voters received the text. But text messaging is not a skill that Mr. Cole claims for himself, so his role in this was likely simply to pass along the request for texting services to an employee to accomplish.

91. Daniel Cole is an articulate political consultant who is in high demand by entities in this case that are aligned with a single political party, mainly, the Republican party. The evidence did not reveal a complete client list, but his testimony and the documents reveal that in the 2022 election he and/or his two companies worked for:

- a. The Senate Majority Fund
- b. Restore Colorado Leadership Fund 527, an "arm of the House GOP leadership," Ex. 7, p. 45/73

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- a. Restore Colorado Leadership IEC, “the spending arm of the House GOP’s leadership,” *ibid.*
  - b. Unite for Colorado
  - c. Ready Colorado
  - d. Hugh McKean, minority leader of the Republicans in the House of Representatives
  - e. Steven Durham
  - f. Holly Williams
  - g. Colin Larson and the Colin for Colorado candidate committee

92. Daniel Cole was paid \$229,276.20 for his consulting services for only two of the entities above, Restore 527 and Restore IEC—the “arms” of House Republican leadership. *Id.* at 47/73. There is no evidence about what he was paid by others of his clients. The inference is that his services are highly valued.

93. Colin Larson is an articulate witness and experienced politician, attractive to voters, a fact that can be seen by his success in being twice elected to represent House District 22 in Jefferson County. House districts were reapportioned and remapped as a result of the 2020 census. The House District for which Mr. Larson ran in 2022 was House District 25. His Democratic opponent was Tammy Story. Mr. Larson was widely expected to win that race, and he believed he would win the race—until the early voting returns were disclosed the night of the election. At that point, he was pretty sure that he would lose.

94. The expense for distribution of the GOTV text message was small--\$716.10—and it was done in the context of a race that the incumbent handily won. The expense was reported July 1, 2022. Ex. 2, p. 24, ¶ 7a, for a primary that concluded a few days earlier. The transaction was quick, with a simple message aimed at the single goal of getting people to vote, it was easily accomplished, it was inexpensive, it was the type of task that would require no discussion of strategy, candidate

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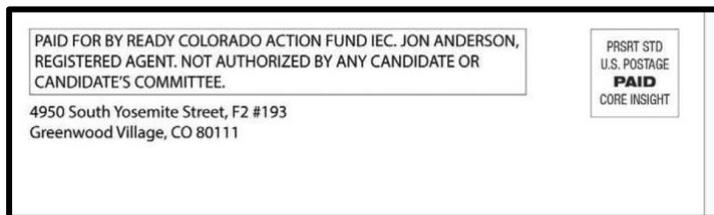
strength or vulnerability. The expenditure was also not at the scale that it would draw the attention of a highly skilled, well-connected and highly compensated political consultant like Mr. Cole.

95. Based on the evidence surrounding the GOTV text message, and particularly the details set out in ¶¶ 88-94, I conclude that there is no evidence to support an inference, much less a conclusion, that this transaction a) was the result of prohibited coordination, nor b) involved the exchange of any information between Larson and Colin for Colorado and the soft side entities, Restore IEC, Restore 527, Ready Colorado or Unite for Colorado that might later be used to coordinate expenditures in support of the Larson campaign.

96. I turn now to the evidence on coordination between Colin Larson’s campaign and the IECs’ expenditures in support of his campaign detailed in ¶ 87(b) (the opposition mailer sent the last week in October) and ¶ 87(c) (\$310,476.16 spent on canvassing in six Senate and thirteen House races, including Colin Larson’s).

### **The opposition mailer October 25, 2022**

97. Coming to a similar conclusion—mainly no coordination—is harder with respect to



*Detail from Ex. 11, p. 66/73*

the opposition mailer targeting Colin Larson’s opponent Tammy Story. Mr. Larson was widely expected to win his race against her, even though she was an

incumbent too. Why send this late-in-the-race mailer for nearly \$9,000? Who directed this? It was produced by Axiom Communications and perhaps mailed by them, but the bulk mail stamp is oddly incomplete because it does not have a permit number or city associated with the permit. Ex. 11, p. 66/73.

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98. The red flag went up when the Restore IEC, *which Colin Larson had been overseeing for three months*, paid for it. But that transaction was corrected the next day in Tracer, Ex. 4, p. 32/73, when Tyler Sandberg, political consultant both to Restore and to Ready, informed Axiom, Restore, and Garrison Management Group emphatically that Restore could not pay for the Axiom invoice because Colin Larson was in charge of Restore. The transaction was reversed. Restore received a credit and the invoice was paid instead by Ready Colorado.

**The non-specific expenditures for canvassing.**

99. The evidence disclosed that \$310,476.16 was spent on canvassing for various House and Senate Districts. Unite for Colorado paid Victor's Canvassing \$110,476.16 for door hangers and canvassing in July 2022. Ex. 13. And Unite paid Victor's Canvassing another \$200,000 for more canvassing in October. Ex. 14.

100. Each of those canvassing efforts benefitted the same six Republican Senate and thirteen Republican House races, among them Colin Larson's. Daniel Cole explained that the impetus for this effort was electing Republican Senate candidates, and that House Republican candidates whose districts overlapped with the targeted Senate races were merely "tacked on." That explanation makes sense, as far as it goes. But it begs the question: how was this decision made, to elevate the importance of Senate races over House races, and by whom? The object is to reclaim control of the General Assembly. The money is channeled from the 527 to the IECs. Is the Republican Party calling the shots? The IECs? The consultants? How is this mix of interests coordinated so as to advance in the same direction?

**CONCLUSIONS**

101. A hearing officer, charged with ascertaining the facts and whether those facts establish FCPA violations has many questions. The direct evidence from documents and testimony

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indicates no improper coordination—except for the red flag signaling questions about the initial payment of the Axiom invoice by Restore. Does this reveal coordination between Restore, with Colin Larson in charge, and Colin for Colorado? Or is there nothing to see here; it was just a mistake? Though it was corrected quickly—everyone knows the rules—the fact that there was a misdirection of an invoice by Axiom to Restore raises questions about what is going on behind the scene, who is in charge of planning and who is calling the shots. Who, in the language of Rule 21.1.1, is requesting, directing and consulting about these expenditures in ¶¶ 87(b) and (c)?

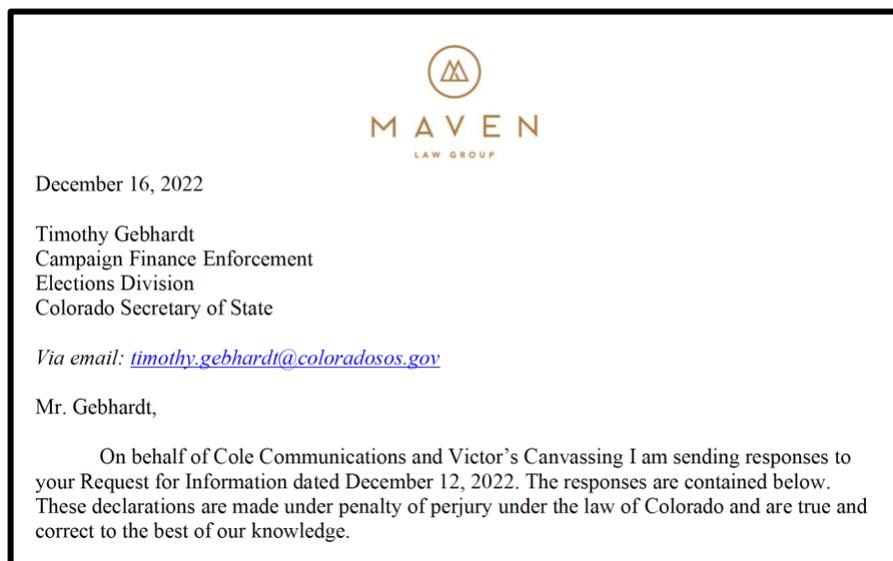
102. Counsel for the Larson Respondents discounted the case of the Division, saying there is no evidence here; that more than plausibility is required. As to that last point, of course she is right: more is required at a trial of the matter. Preponderance of the evidence describes the required burden of proof. § 24-4-105(7), C.R.S.; Campaign & Political Finance Rule 24.10.3, 8 Code Colo. Regs. 1505-6. *Renteria v. State Dep't of Personnel*, 811 P.2d 797, 803 (Colo. 1991).

103. But there is more than plausibility from this set of facts. There is motivation: the desire to win, to regain control or to hold a party majority that can control the General Assembly. There are conduits: sophisticated, experienced, knowledgeable “common consultants” moving between entities whose boundaries and management are porous. There is opportunity: meetings, fundraisers, discussions of polling, media buzz and issues, cooperative management, friendships. And there is a lot of money flowing through the entities and being placed in support of campaign committees to accomplish shared goals.

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104. The responses of counsel to discovery on behalf of Mr. Larson, Mr. Cole and RCLF, Ex. 2, Ex. 3 and Ex. 4, invite a conclusion of coordination and control. The issue in the case is coordination *in making expenditures*. That discovery responses are orchestrated by counsel filtered through her knowledge of the FCPA, is the very metaphor for the coordination at the center of the Division's claims. Here is the one that Ms. Taheri sent answering the Division's request for information from Mr. Cole in Ex. 3:



105. That these “responses to your Request for Information” are the studied work of counsel was very apparent when Mr. Cole, asked about the letter above, said that he had never seen it before! Cole, ¶ 53. Affidavits are common practice in state court for presenting sworn testimony not subject to cross examination. At least when a witness raises his hand before a notary and swears that what is in the affidavit is true, the witness may remember it. Testimony in this form—Exs. 2, 3 and 4, are reporting positions filtered through counsel and raise more questions than they answer. They inspire hastening along the path to the Administrative Complaint so that real discovery tools can be employed that get answers more directly from pertinent witnesses without the shaping intervention of counsel.

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106. There was a dearth of evidence in the Division’s case, however, that would connect the dots in such a way as to demonstrate coordination. Here are the questions that a trier of fact has during and after presentation of the evidence at trial.

- a. What was the overall pattern of spending and the strategy by this constellation of entities? Who developed that strategy? *How did the expenditure to Axiom for Ex. 11 map onto that overall pattern and strategy?* What was the temporal relationship among strategy and policy decisions, infusions of money into the 527, downloads of money from the 527 to the several IECs?
- b. Coordination is permitted on the soft side. So, with what other entities did RCLF coordinate in the 2022 election? RCLF was spending on other House races—not Colin Larson’s. Was there another 527 and IEC that was raising and spending money on campaigns that included Colin Larson’s campaign?
- c. In agreeing to take oversight of RCLF which supported other Republican House candidates, Mr. Larson took one for the team—because RCLF was spending hundreds of thousands of dollars on various campaigns, but they would be spending nothing on Colin Larson’s campaign with him in charge of RCLF.
  - i. Why would Mr. Larson agree to “oversee” spending a lot of money on other people’s campaigns unless there was some benefit elsewhere received? Is there evidence that tends to support the opposition mailer as a kind of “thank you” to Colin Larson?
  - ii. Is oversight of the 527 and IEC a paid position? Who does get paid for rendering services to the 527 and the IEC? How much do they get paid? Is compensation based in any part on results obtained? What is done with the money that remained in the IEC at the end of the election cycle? Are any bonuses paid?
- d. Who at Ready made the decision to support Colin Larson’s race—whose race was thought to be in the bag—by sending an opposition mailer at the very end of the campaign? Why wasn’t that mailer sent out *before* the ballots were mailed? Why was it sent at all?
- e. Who at Axiom received the work order for the mailer, Ex. 11? What were the instructions to Axiom about the audience, the message and the timing? Who sends out invoices from Axiom? Why did they invoice RCLF?
- f. What other consultants were acting in this space during the 2022 general election? There was a Senate Majority Fund. Was there a House Majority Fund? Or was RCLF performing that function? Was the Republican Party mapping out strategy and circulating that strategy to soft side and hard side entities. Campaigns are dynamic, changing with news cycles. What consultants and entities are processing the changes and altering strategy as a result?

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- g. What was Daniel Cole’s relationship to the Republican Party, as IECs not only cannot coordinate with candidates and their committees; they are also prohibited from coordinating with political parties.

An independent expenditure committee may not coordinate its campaign-related expenditures with a candidate, candidate committee, or political party.<sup>1</sup>

Rule 5.2.

- h. Daniel Cole was paid \$229,276.20 for two Restore Colorado entities that were the Republican arms of House GOP leadership. Ex. 7, p. 47/73. How much was he paid by the [Republican] Senate Majority Fund? Mr. Cole testified that it was the getting Republicans elected to the Senate that drove the canvassing targets, and dropping literature for House candidates was just “tacked on” to the Senate canvassing where House and Senate districts overlapped. Who made that decision?
- i. Daniel Fenlason, the former data director for the Colorado Republican Party, is now the COO of Victor’s Canvassing. That he held that position for the Party suggests that Mr. Fenlason is a data miner and analyst and that his sense of the politics would have a huge impact on how money is spent for all Republican races involved in restoring the majority. How many 527s did he “for and with” (to use Mr. Cole’s terminology, ¶ 62) during the general election of 2022? How many IECs did he work for? How many candidate committees? All of the employees of Cole’s two businesses actually are the employees of Victor’s, working under its COO. Two of the FTEs at Victor’s are, based on experience and earnings, movers and shakers among Republican strategists and donors? Who is the third FTE, and who is the PTE?
- j. When did Daniel Cole or the COO of Victor’s Canvassing have discussions with the Party, with other consultants for RCLF and were there documents exchanged? Were there “one or more substantial discussions,” Rule 21.1.2(a) and when did those discussions occur in relation to Restore’s expenditure in support Colin Larson’s candidacy in late October?
- k. What fundraisers did Colin for Colorado have? Who organized them? What industry or trade groups actually sponsored the fundraisers? Did anyone from Ready, Unite Restore or Republican Party leadership attend?
- l. The opposition mailer, Ex. 11, focuses on taxes. What were the issues that Colin Larson was best known for during his career as a representative? Was opposing taxes one of them?
- m. Colin Larson’s race was not targeted for spending a lot of money, as it was assumed he would win. So why did this mailer go out in late October, two weeks *after* ballots were mailed? Did the data analysts in one of the entities come upon information that

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<sup>1</sup> “Political party” is a defined term in Colo. Const., art. xxviii, § 2(13). The two parties that most voters are familiar with are the Republican Party and the Democratic Party.

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undercut the assumption that Mr. Larson would easily win his seat? Who besides Hugh McKean was in Republican leadership in the General Assembly? Did they also have positions in the Republican Party?

- n. How did Colin Larson's race figure into the overall Republican strategy of retaking the majority? Who developed the overall strategy? Did the consultants ever use white boards to discuss numbers and races? What did they use them for? Did they take any pictures of the white boards on their phones?
- o. What fundraisers did Colin Larson attend for RCLF? When and where were those fundraisers? Who from Unite, Ready, Restore and Republican leadership were present? What was the venue? Was alcohol served?
- p. Tyler Sandberg, with a few keystrokes, moves a \$9,000 debit from Restore to Ready. And he is a consultant to both of them. Who determines how the various entities direct and move money to accomplish a result, from the 527 to the IEC to Ready Colorado and Unite. If one follows the money as it is moved from source through entity conduits, where are the pulses of donations? Where is the battle plan? When, and in accordance with what plan, is money moved and spent?
- q. What about joint meetings and interconnected directorates of the various entities? RCLF, for example, had ten consultants working together. Larson, ¶ 37. Who were those consultants? Were they friends? Where did they meet? At whose office? Or at which restaurant or bar? At which gym or rec center?
- r. Larson said that he did not attend all of the RCLF management and consultant meetings. How was he apprised of what went on in the meetings he missed? Who prepared the agendas? How did the ten or so consultants who collaborated on RCLF decisions communicate about what was happening in the various races and what topics were reported in the press? Did they participate in a Slack channel? What platforms did they use?
- s. Polling: Who actually polled and when? Who paid for polling? How were decisions made about the races and issues that would be the subject of polling. What company was used? Were there meetings to discuss polling? Who attended? What was the temporal relationship between polling and expenditures, and in particular between polling and the expenditure on Colin Larson's race for the late October mailer? Under what circumstances were the results of polling disclosed or published, how and to whom?
- t. Hugh McKean and Colin Larson were friends. Who else were friends of Daniel Cole that were also political consultants for other campaigns in 2022?
- u. Daniel Cole described working for "so many entities" during the election season that it is hard to keep track. Who are all those entities, in addition to the ones listed in ¶ 91, and what relationships are there between them?

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107. There is only so much that the Division can do without subpoena power and other available discovery tools provided by the C.R.C.P. during the investigations that precede the filing of an Administrative Complaint. The Administrative Complaint opens the door to a more searching inquiry where the money and intention can be followed.

108. Evidence on some of these questions would have provided context and understanding about where the ¶ 87 expenditures fit into the accomplishment of goals widely shared among the political players including Restore, Ready, Unite and the Republican party. Such evidence would likely shed light one way or the other on whether there was coordination such that they should properly have been reported as contributions to Colin for Colorado.

109. Without more, however, I must look at the expenditures in isolation, as they were presented at trial.

110. Mr. Gebhardt has no information indicating that Colin Larson knew about the Tammy Story mailer. Gebhardt, ¶ 26. He has no evidence that there was coordination in August. And there is no evidence that Larson did any business with Daniel Cole's companies after the text message in June. *Ibid.* The only evidence that the Division has of RCLF spending money on Mr. Larson's race is the Tracer filing, quickly withdrawn, saying that RCLF paid for the mailer. *Id.*, ¶ 27.

111. Colin for Colorado used Cole Communications to send the GOTV text message during the primary for one reason only: the vendor he had used for this in the past was unavailable. He did not discuss his House race with Daniel Cole or Tyler Sandberg after July 1, 2022. *Id.*, ¶¶ 43 and 47. Mr. Larson made it clear when he took over leadership of RCLF in August that he would not discuss his House race nor would Restore spend any money on his race. *Id.*, ¶ 38. He did not know about the opposition piece created by Axiom in October until a constituent showed it to him while he was knocking on doors. *Id.*, ¶ 48. He did not know that Restore was invoiced by Axiom for

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the piece of it that was shortly cancelled and sent to Ready for Colorado instead. He was not included in the email discussing the invoice, its cancellation or its reissuance to, and payment by, Ready. *Id.*, ¶ 39. After he took over the leadership of Restore, he did not discuss his campaign with Cole. *Id.*, ¶ 42. He spoke to Daniel Cole about every two weeks, and only about how much money was available and where it should be spent. *Id.*, ¶ 47. He was never informed about what Ready Colorado, Victor’s Canvassing or Unite for Colorado were doing for, or spending on, his race. *Id.*, ¶ 47.

112. Daniel Cole cannot recall his involvement in sending out a primary text message for Colin for Colorado. If he were involved, it would have been only to pass along the need for the service to someone else who would perform it. Cole, ¶ 59. The only reason that Unite spent money canvassing in Colin Larson’s district in support of his House race is because it overlapped with a targeted Senate race where the Republicans had prioritized. Colin’s House race was tacked on to a target Senate race. *Id.*, ¶¶ 72 and 80. He never shared any information that he learned through Restore Colorado Leadership Fund with Unite for Colorado Action Fund or Ready Colorado. *Id.*, ¶ 73. And he received no non-public information about Colin Larson’s plans, projects, activities, or needs while working for his candidate committee. *Id.*, ¶ 75.

113. For Daniel Cole and other consultants effectively to place the money involved in 98% of their work, in order to achieve shared goals, they would have to learn a lot about how individual races for the General Assembly are going. There was no evidence, however, about how that was accomplished. Answers to some of the questions posed in ¶ 106(a) through (u) might have given rise to a different set of inferences than I can draw from the evidence before me.

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114. Based on all the evidence and testimony presented at the hearing, I find that the Division has not proved the elements of the campaign violations it has alleged in the Administrative Complaint by a preponderance of the evidence.

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Having failed to meet the burden of proof, the Complaint must be, and the same hereby is, DISMISSED.

**DONE** this 1<sup>st</sup> day of March 2024.

  
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Macon Cowles, Hearing Officer