

STATE OF COLORADO SECRETARY OF STATE BEFORE THE ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290	Case Number: 2024 AHO 0024 (In re ED 2023-56)
ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. UNITE FOR COLORADO, d.b.a., ADVANCE COLORADO ACTION, Respondent.	
ORDER STAYING PROCEEDINGS	

1. The Elections Division has moved for a stay of these proceedings until the final judgment has issued in a related case entitled *Colorado Department of State v. Unite for Colorado* currently awaiting a decision in Unite for Colorado’s Petition for Certiorari to the Colorado Supreme Court (Case No. 2024SC281). Respondent does not oppose the stay. The Division refers to the case with a pending cert decision as “*Unite I*” which bears the Division’s ED Case No. 2020-57 and which pertains to Unite’s activities supporting three ballot measures in the 2020 election cycle.

2. The Division received another complaint, alleging campaign finance violations by Unite for Colorado in connection with its issue advocacy in 2021. The Division assigned this case the docket number ED Case No. 2021-27. This case is now known as *Unite II*. A bench trial was held by an ALJ on November 17, 2022, but the Deputy Secretary

vacated the ALJ's decision in its entirety and remanded for further proceedings. On October 2, 2023, the hearing officer granted the Division's Motion to Stay *Unite II* "until a final judgment is entered in the related case of" *Unite I* [which at that time was pending in the Court of Appeals].

3. The case before me is *Unite III*, Division Case No. ED 2023-0056. As noted in ¶16 of the Amended Order herein dated July 18, 2024, Respondent has raised potentially outcome determinative affirmative defenses, including constitutional challenges that require briefing prior to a hearing. I suggested that the best path forward might be for Respondent to file motions to dismiss that focus on the relevant law and particularly on whether an administrative court has the authority to decide constitutional challenges.

4. Anticipating what Respondent's motion to dismiss might include, the Division's Motion to Stay clearly lays out the extent to which the issues that may arise with focused attention on the legal issues in *Unite III* are intertwined with the issues on appeal in *Unite I*. *Unite I* has taken a winding path: 1) an Initial Decision by an ALJ (8/17/2021); 2) the Final Agency Order (12/8/2021) modifying the ALJ's Initial Decision; 3) the District Court's reversal (4/21/2023) of the Final Agency Order, and; 4) the Court of Appeals decision (3/28/2024) reversing the District Court.

5. The court agrees that the final disposition of *Unite I* may significantly, if not fully, resolve potentially dispositive legal issues in this case, providing significant legal guidance to the parties concerning *Unite*'s constitutional challenge to Colorado's campaign finance laws.

6. A stay is appropriate here for the same reasons it was appropriate in *Unite II*. The legal issues addressed in *Unite I* (and again in *Unite II*) will either be dispositive of—or will provide significant guidance concerning—the same issues presented in *Unite III*. The claims raised in the three cases are nearly the same: what legal standard is to be used in interpreting “major purpose” as expressed in Colo. Const. art. xxviii §2(10)(a)(I) and in the Fair Campaign Practices Act, §1-45-103(12)(b), and in Campaign & Political Finance Rule 4.3, 8 Code Colo. Regs. 1505-6. Whether *Unite for Colorado* was required to register as an issue committee and report contributions and expenditures in *Unite III* (ED 2023-56) will be guided by the final appellate decision rendered on the legal issues in *Unite I*.

7. The Secretary of State’s rules provide for a stay until all “appeals are resolved” when complaints “stem from a common set of operative facts as a pending complaint” and “the initial case will be determinative of the later case.” 8 CCR 1505-6, Rule 23.1.4. A hearing may also be continued upon a showing of “good cause.” See § 1-45-111.7(6)(a), C.R.S. Finally, the case law supports a stay until *Unite I* is finally and fully resolved. See generally *Nationwide Mut. Ins. Co. v. Mayer*, 833 P.2d 60, 62 (Colo. App. 1992) (“[I]f dual actions involve the same subject matter and the same parties. . . the second action must be stayed until the first is finally determined”); see also *In re Telluride Global Develop., LLC*, 380 B.R. 585, 592–93 (Bankr. 10th Cir. 2007) (applying “the prior pending action doctrine,” where the second of two pending federal actions “involve the same or similar claims and parties” may be stayed).

8. I find that there is good cause to stay this action pending the outcome of *Unite I*. The Motion to Stay is GRANTED.

SO ORDERED this 25th day of July 2024.

Macon Cowles

Macon Cowles, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby states and certifies that one true copy of this Order Staying Proceedings was sent via email on July 26, 2024 to the following:

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/s/ N. B. Porte

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