

<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 2024-40, 48, 49</p> <p>ELECTIONS DIVISION OF THE SECRETARY  OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>VAN WINKLE FOR COLORADO</p> <p>Respondent.</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>CASE NUMBER</p> <p>2024 AHO _____</p>
<p><b>COMPLAINT</b></p>	

Pursuant to § 1-45-111.7, C.R.S. (2024) 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 Van Winkle for Colorado (“Respondent,” “the Committee”).

**BACKGROUND**

1. To foster transparency and assist voters in assessing the sources of direct ballot issue or ballot question expenditures, Colorado law requires persons who make expenditures on various election-related communications to include a “paid for by” disclaimer in those communications. If the person paying for the communication is a non-natural person, the disclaimer must also identify a natural person who is the registered agent of the entity paying for the communication.

2. Here, the Committee paid for and distributed over \$1,000 worth of text message promoting Kevin Van Winkle’s candidacy for Douglas County Commissioner. Those text messages failed to include compliant disclaimer statements, and failed to link to a webpage that included such disclaimer statements 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 Van Winkle for Colorado, a candidate committee registered with the Colorado Secretary of State, ID # 20235046303.

## **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 July 1, 2024, Notice of Initial Review and 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**

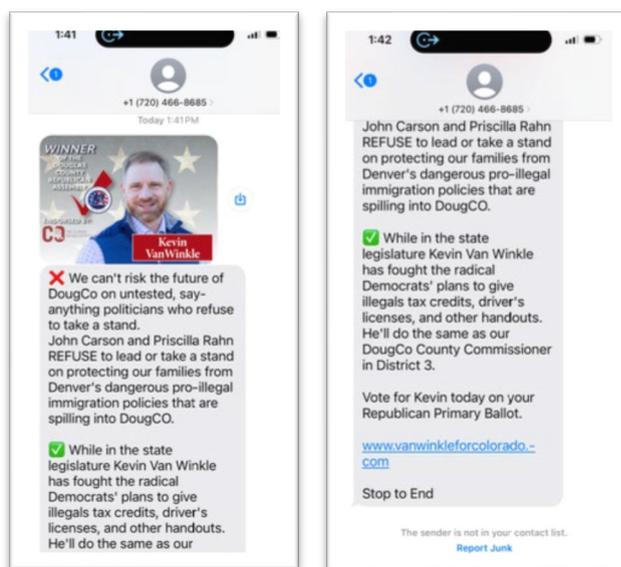
10. Van Winkle for Colorado is the candidate committee organized to support Kevin Van Winkle’s candidacy for Douglas County Commissioner, District 3.

11. Van Winkle appeared on the June 25, 2024, Republican primary ballot in Douglas County. He was victorious in that primary election, and will appear on the November general election ballot in Douglas County.

12. In the lead up to the June 25, 2024, primary election, the Committee sent at least four text messages to eligible electors in Douglas County.

13. Those text messages encouraged voters to vote for Van Winkle in the upcoming primary election, using phrases such as:

- a. “Vote today for Kevin Van Winkle.”
- b. “Vote for Kevin today on your Republican Primary Ballot.”
- c. “Join me in supporting Kevin Van Winkle and vote for him on your Republican primary ballot.”
- d. “[V]ote for Kevin Van Winkle today.”



14. One of the text messages is copied above.
15. Of those four messages, two included links to the Committee's campaign website, [www.vanwinkleforcolorado.com](http://www.vanwinkleforcolorado.com).
16. As of June 17, 2024, [www.vanwinkleforcolorado.com](http://www.vanwinkleforcolorado.com) did not include a disclaimer statement identifying who had paid for the website or the registered agent of the entity paying for the website.
17. None of the text messages included a "paid for by" disclaimer.
18. On June 17, 2024, the Division received a campaign finance complaint from Carolyn Pastore. The Pastore complaint alleged that the Committee had failed to include compliant disclaimers on text messages sent on June 11, 2024, and June 13, 2024.
19. Pastore filed additional complaints on June 21, 2024, relating to a text message sent by the Committee on June 20, 2024, and on June 24, 2024, relating to a text message sent by the Committee on June 21, 2024.
20. Upon receiving the initial Pastore Complaint, the Division reviewed the Committee's website and determined that a disclaimer statement was missing from the website. The website also expressly advocated for Kevin Van Winkle's election.
21. On July 2, 2024, the Division requested information from the Committee relating to the text messages.

22. The Committee responded on July 11, 2024, through its registered agent, Kevin Van Winkle. Van Winkle indicated a belief that “the individual who filed the complaint was not completely aware of disclosure rules regarding electronic messages,” because the Committee’s website “included all the necessary paid for by disclaimer.”

23. Van Winkle included a screenshot of the Committee’s website, which now included a compliant disclaimer statement.

24. According to the web archive available at the Wayback Machine ([www.web.archive.org](http://www.web.archive.org)), that disclaimer statement was available on the Committee’s website at least as early as July 2, 2024.

25. Otherwise, the Committee did not respond to the questions in the Division’s request for information. The Division reiterated its requests on July 11, 2024, and extended the deadline for the Committee to respond. Among the Division’s requests was for the date the disclaimer statement was added to the website.

26. On July 19, 2024, the Committee responded, and indicated that the cost for the first two text messages was \$1,665.82.

27. The Division reviewed the Committee’s reports of contributions and expenditures. The Committee reported an \$800 expenditure for “web/design services” on June 5, 2024.

28. On July 30, 2024, the Committee filed its latest report of contributions and expenditures. In that report, the Committee identified four expenditures for “peer-to-peer” text messaging. Those expenditures were identified as electioneering expenditures. They were:

- a. \$804.49 on July 9, 2024, to OPN Sesame;
- b. \$861.33 on July 9, 2024, to OPN Sesame;
- c. \$680.17 on July 9, 2024, to OPN Sesame; and
- d. \$777.33 on July 9, 2024, to OPN Sesame.

29. On information and belief, the first two of those expenditures, totaling \$1,665.82 were for the two messages that included links to the Committee’s website, and the second two of those expenditures, totaling \$1,457.50 were for the two messages that did not include a link to the Committee’s website.

## **COLORADO CAMPAIGN FINANCE LAW**

30. Under Colorado law, “[a]ny person who expends one thousand dollars or more per calendar year on electioneering communications . . . shall, in accordance with the requirements specified in section 1-45-107.5(5), state in the communication the name of the person making the communication.” § 1-45-108.3(3), C.R.S.

31. That disclaimer statement must include “a statement that: (I) the communication has been ‘paid for by (full name of the person paying for the communication’; and (II) identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.” § 1-45-107.5(5)(a).

32. Under the Secretary’s Rules, “[i]f the size, format, or display requirements of an electronic or online communication make it impractical to include a disclaimer statement on the communication, the disclaimer statement must be available by means of a direct link from the communication to the web page or application screen containing the statement.” 8 CCR 1505-6, Rule 22.1.3.

### **CLAIM ONE** **Failure to Include Compliant Disclaimer** **(§ 1-45-108.3(3), C.R.S.)**

33. All preceding allegations are incorporated.

34. Van Winkle for Colorado is a candidate committee under Colorado law. In June 2024, within 30 days of the June 25, 2024 Republican primary election in which Kevin Van Winkle participated, the Committee distributed four text messages to Douglas County Voters that expressly advocated for Van Winkle’s election.

35. Those text messages did not include a compliant disclaimer statement.

36. Two of those four messages included links to the Committee’s webpage. But that webpage did not have a compliant disclaimer statement.

37. The Committee spent over \$1,000 on the text messages, and \$800 on the website.

38. The Division is entitled to relief under Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act, § 1-45-101 et seq., including, but not limited to:

- a. Under Rule 23.3.3(d),
  - i. a penalty of 5% of the cost of the first two text messages (\$83) if the website was updated prior to June 25, 2024, or 10% of the cost of the first two text messages (\$167) if the website was updated after June 25, 2024;
  - ii. a penalty of 10% of the cost of the third and fourth text messages (\$146).
  - iii. A penalty of 5% of the cost of the website (\$40).
- b. Such other relief as the Court deems just and proper.

Respectfully submitted this 31<sup>st</sup> day of July, 2024.

PHILIP J. WEISER  
Attorney General

*/s/ Peter G. Baumann*

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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 31<sup>st</sup> day of July 2024, addressed as follows:

Van Winkle for Colorado  
C/O Registered Agent Kevin Van Winkle  
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Highlands Ranch, CO 80126  
kevin@vanwinkleforcolorado.com  
*Respondent*

Carolyn Pastore  
1001 E. 62<sup>nd</sup> Ave. Box #401  
Denver, CO 80216  
cplovesgolfing@yahoo.com  
*Third Party Complainant*

/s/ Peter G. Baumann