

<p>STATE OF COLORADO  SECRETARY OF STATE  ADMINISTRATIVE HEARING OFFICER  1700 Broadway #550  Denver, CO 80290</p> <hr/> <p>BEFORE THE SECRETARY OF STATE,  COLORADO DEPARTMENT OF STATE, <i>in re</i>  ED 2023-33, 2023-36</p> <p>ELECTIONS DIVISION OF THE SECRETARY  OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>KWAME SPEARMAN FOR DPS,</p> <p>Respondent.</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>CASE NUMBER</p> <p>2024 AHO 0011</p>
<p><b>JOINDER IN RESPONDENT’S MOTION TO STAY</b></p>	

This matter is currently set for a hearing on Friday, August 30, 2024. On Sunday, August 25, 2024, Respondent moved to stay these proceedings. The Elections Division now joins Respondent in seeking a Stay.

Earlier this month, a Division of the Court of Appeals issued a published opinion addressing Colorado’s campaign finance disclaimer laws. *No on EE v. Beall*, 2024 COA 79. That decision creates substantial legal uncertainty concerning disclaimer statements, and the Department of State is in the process of determining how to proceed with its enforcement obligations in the wake of the holding. Accordingly, the Division moves to stay proceedings in this matter until the Department’s administration has had an

opportunity to assess the decision and its effect on ongoing enforcement matters. As good cause, the Division states:

1. The Division notes that Respondent, Kwame for DPS, has filed a similar Motion also seeking to continue Friday's hearing until a later date.

2. The issue in this case is whether Respondent, Kwame for DPS, included compliant disclaimer statements on over \$50,000 worth of campaign communications.

3. Some of the communications in question misidentified the entity paying for the communications. The Division's allegations related to those communications are unaffected by recent developments at the Court of Appeals.

4. Some of the communications in questions did not have a paid for disclaimer identifying who paid for the communication as required by section 1-45-108.3. The Division's allegations related to those communications are also unaffected by recent developments at the Court of Appeals.

5. However, some of the other communications either failed to identify or misidentified the Committee's registered agent. The Division alleges that this was a violation of sections 1-45-108.3(1) and (3), which incorporate section 1-45-107.5(5). For non-natural persons, like Respondent here, Section 1-45-107.5(5) requires disclaimer statements to identify the person's registered agent.

6. In *No on EE*, a split Division of the Court of Appeals held that the “registered agent disclosure requirement imposed on issue committees under section 1-45-108.3 violates issue committees’ free speech rights under the First Amendment.” 2024 COA 79, ¶ 34.

7. An issue committee is a committee that has a major purpose of advocating for or against a ballot measure. Colo. Const. art. XXVIII, § 2(10). Issue Committees are different entities than Candidate Committees, like Kwame for DPS, but the disclaimer requirements in section 1-45-108.3 apply to both issue committees and candidate committees.

8. The Department is in the process of assessing the *No on EE* decision and evaluating its affect on current cases.

9. The Department also has until September 12, 2024, to seek certiorari of the *No on EE* decision to the Colorado Supreme Court. The Division expects that the Department will do so.

10. The Division also expects that the Department may seek a stay of the *No on EE* decision pending certiorari.

11. Given the uncertainty caused by the *No on EE* decision, there is good cause to Stay proceedings in this matter—including the hearing set for August 30, 2024—until the Department determines how best to proceed with disclaimer cases in the wake of *No on EE*.

12. The Division is hesitant to seek a stay in this matter, given the delays that have plagued this case since its inception. However, a stay is in the best interests of Colorado’s electorate, as enunciated in the Colorado Constitution. *See* Colo. Const. art. XXVIII, § 1 (stating that “the interests of the public are best served by . . . strong enforcement of campaign finance requirements.”); § 1-45-102 (same).

13. Of the Division’s options for prosecuting this matter, a Stay is the most consistent with the public’s stated interest. The Division could proceed with the hearing on the full scope of its allegations, but *No on EE* creates legal uncertainty that could result in significant delays.

- a. For example, if penalties are ultimately imposed for violations related to the registered agent requirement, those penalties could be overturned on appeal if a court determines that *No on EE* applies equally to candidate committees as it does issue committees.
- b. Alternatively, if penalties are not imposed for those violations, and the Department successfully appeals the *No on EE* decision or determines it does not apply to candidate committees, Kwame for DPS will have evaded penalty for plainly violating valid law.

14. Alternatively, the Division could abandon claims related to the registered agent requirement, but that would be inconsistent with the public's stated interest in "strong enforcement." Such abandonment could also be reversed by the Deputy Secretary of State if he disagrees with the Division's decision, resulting in further delays.<sup>1</sup>

15. The best course of action is to stay proceedings in this matter to allow the Department to determine a global course of action related to disclaimer statement allegations in the wake of *No on EE*.

16. The Division expects that a determination will be made promptly, given the pending certiorari deadline of September 12, 2024.

17. The Division proposes to file a Status Report within 30 days of when a Stay is entered.

Accordingly, the Division moves to stay proceedings in this matter for at least 30 days, at which time the Division will file a Status Report.

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<sup>1</sup> The Division is prohibited from discussing specifics of current cases with the final agency decisionmakers, including the Deputy Secretary, by an ethical wall separating the Department's campaign finance prosecutors (the Division) from the final agency decisionmakers (the Administration). Accordingly, the Division cannot discuss this case, including how the Deputy Secretary would like the Division to proceed, with the Deputy Secretary or Department of State Administration.

Respectfully submitted this 26th day of August, 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 email and/or email this 26th day of August 2024, addressed as follows:

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*/s/ Peter G. Baumann*