
STATE OF COLORADO
SECRETARY OF STATE
Administrative Hearing Office
1700 Broadway, Suite 550
Denver, CO 80290

Case number:

2025 AHO 08 CPF
(*in re* ED 2024-78 & 2024-99)

IN THE MATTER OF:

ELECTIONS DIVISION of the SECRETARY OF STATE

Complainant

v.

COLORADO DAWN,

Respondent

REVISED SCHEDULING ORDER

1. The scheduling order was previously entered herein March 18, 2025. The Order required an Answer to the March 17, 2025 Administrative Complaint on or before April 16, 2025. On April 10, Respondent filed a Motion to Stay based on this case having an overlapping issue with *No on EE—A Bad Deal for Colorado*, a case in which the Division is seeking a reversal of the Court of Appeals decision in *No on EE v. Beall*, 2024 COA 79. On April 16, Respondent answered the Complaint.

2. The Committee in *No on EE* was fined for its failure to name the registered agent as part of the disclaimer used on election communications. The case took several turns in arriving at the Colorado Supreme Court, where it is now on the docket. 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.” *Id.*, 2024 COA 79, ¶34, 558 P.3d 671, 680. The Division filed a Petition for Certiorari with the Colorado Supreme Court, which stayed the decision of the Court of Appeals in 2024SC540. Briefing was completed November 6, 2024, but no decision on certiorari, as of the date of this order, has yet been entered.

3. Respondent argues that this case should be stayed because it is based on “the alleged failure of Respondent (a nonprofit) to include the name of the registered agent

on communications sent to the electorate, as required by 1-45-108.3(4).” That is true as far as it goes. But there is more to the Complaint than that.

4. The Division’s case against Colorado Dawn is based not only on election communications that lacked compliant disclaimers (Count 1) but also on an alleged failure to report within 48 hours the \$1,000 expenditures for the creation of each of three websites in the month leading up to the election, as required by § 1-45-107.5(4)(c). (Count 2.)

5. As to Count 1, some of those disclaimers are alleged to be defective because they failed to name the registered agent; others were defective because they failed to name at all the person making the direct expenditure. § 1-45-108.3(4), C.R.S. (2024).

6. It is entirely unclear to me exactly which communications the Division is claiming to have had defective disclaimers. ¶2 of the Complaint alleges that “ten of [Respondent’s] communications lacked compliant disclaimers.” But which of the fifteen—or ten—communications are noncompliant is unexpressed.

- a. ¶46 of the Complaint alleges 15 text messages that fall into three buckets. One has six text messages, ¶46(a), another has ten text messages, ¶46(b)(i) and (ii), and a third has one text message, ¶46(c).
- b. There is no clarification within Count 1, ¶¶57-64, as to which text messages are alleged to be in violation of §1-45-108.3(4). The three buckets in ¶46 seem to be reiterated in ¶¶59-62, but it is not clearly stated which disclaimers are alleged to be defective. We are told that some of the disclaimers in the 15 text messages are not defective—but the Complaint does not identify which ones.
- c. ¶55 of the Complaint states Rule 22.1.3, 8 CCR 1505-6 that permits a “paid for by” disclaimer to be on a linked website where it is “impractical” to include it on the communication itself. But the Complaint does not clearly allege whether the Division thinks that the linked disclaimers in text messages in some of the texts were compliant with the Rule.

7. One can infer from the Complaint, as Respondent reasonably does in its Motion to Stay, that Count 1 alleges only a failure to include the name of the registered agent (in which case the Motion to Stay as to Count 1 should be granted). But I am not sure that that is the case. One can also infer that it was practical to include a disclaimer on the texts themselves, and that therefore the violation was that the communication contained no disclaimer at all.

8. The only way to straighten this out is for the Division to amend the Complaint. And I am ordering that that be done.

9. Because I am ordering the filing of an Amended Complaint and an Answer, there are other facts that need clarification. ¶137 of the Complaint says the Nonprofit spent “\$3,127,077.60 for communications *in support of Amendment 80.*” ¶138 says the Nonprofit spent “\$3,127,077.60 ... *in opposition to Amendment 80.* Both statements can’t be true.

10. Another ambiguity has to be cleared up in the Amended Complaint. ¶ 39 says that the Nonprofit’s total expenses *between 2022 and 2024* were \$17,897,022.40.” And ¶40 says “the Nonprofit’s expenditures on ballot issues *between 2022 and 2024* accounted for 28.29% of its total expenditures.” That wording—“*between 2022 and 2024*”—could mean that the stated dollar amount and the percentage were for 2023 only. What is between 2022 and 2024? The answer is 2023. Or “*between 2022 and 2024*” could mean January 1, 2022 through December 31, 2024. Which is it? The Answer admits the allegations in both paragraphs 39 and 40. But the admissions do not clear up the ambiguity.

11. The Complaint is subject to a motion for a more definite statement under C.R.C.P. 12(e) because of the lack of clarity surrounding what specific acts are alleged to be violations. Such a motion would be addressed to the sound legal discretion of the trial court. *Mulligan v. Smith*, 32 Colo. 404, 408, 76 P. 1063 (1904); *Hall v. Cudahy*, 46 Colo. 324, 326, 104 P. 415 (1909).

12. Using the authority I have under §24-4-105(4) C.R.S. to “regulate the course of the hearing” and to enter “appropriate orders that shall control the subsequent course of the proceedings,” I am ordering Division to file an amended complaint by May 2, 2025 and Respondent to file an Answer to the Amended Complaint by May 16, 2025.

13. Respondent may—but need not—file an amended Motion to Stay at the same time the Answer is filed. The Division shall file a response to the Motion to Stay or the Amended Motion to Stay on or before May 23, 2025. It is not sufficient for the Division to have no position on the motion, however, as there are still the 48 hour reporting issues in Count 2. And the Answer admits that the 48 hour reports were not made with respect to three websites. See, Answer at ¶51.¹ I want to hear from both sides on the requested stay. I will rule on the stay very shortly thereafter.

14. The rest of the March 18, 2025 Scheduling Order remains the same.

15. Discovery shall be completed by June 16, 2025.

¹ While admitting that the 48 hour reports were not made in ¶51, Respondent did not answer the allegations in ¶66 of Count 2 that a) \$1,000 was spent on each of three websites, b) in October 2024, and c) that the websites “expressly advocat[ed] in favor of Amendment 80 and Propositions 128 and 130.”

16. Motions shall be handled in accordance with Campaign & Political Finance [CPF] Rule 24.9, 8 Code Colo. Regs. 1505-6. Dispositive motions must be filed no later than June 30, 2025.

17. Prehearing Statements in accordance with CPF Rule 24.11 shall be filed no later than 5:00 PM Monday, June 30, 2025.

18. Exhibits—exchanged. Exhibits of the parties are to be exchanged on the same date that Prehearing Statements are filed.

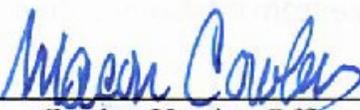
19. Exhibit format. Exhibits of the parties are also to be filed on the same date as the Prehearing Statements. Each party shall put its exhibits in a single pdf file, with each exhibit labeled (with the Division using numbers and the Respondent using letters) and bookmarked within the pdf file. The exhibit “labels” must contain the exhibit number or letter, the hearing date and the case number.

20. Trial Efficiencies. Include an estimate of time needed for direct examination of each witness in each parties’ case in chief, as well as the amount of time required to try the case.

21. No later than Monday, July 7, 2025 at 5:00 PM, the Division shall file a single exhibit list, noting stipulations as to admissibility and objections by the parties, using the template that will be provided by the Court Clerk on request.

22. Hearing in this matter, pursuant to §1-45-111.7(6)(a) and §24-4-105, C.R.S. is hereby scheduled for Friday, July 18, 2025 at 10:00 AM in the hearing room of the Secretary of State at 1700 Broadway, Suite 550, Denver, Co 80290.

SO ORDERED this 18th day of April 2025.



Macon Cowles, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one true copy of this Revised Scheduling Order was sent via email on April 18th, 2025 to the following:

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