

Campaign Finance Complaint Cover Sheet

Submit Original to:
Colorado Secretary of State
Campaign Finance
1700 Broadway, Suite 200
Denver, CO 80290

If faxing or emailing, original must follow within 5 calendar days
Phone: 303-894-2200
FAX: 303-869-4861
Email: cpfhelp@sos.state.co.us
Website: www.sos.state.co.us

Your complaint must be typed or written separately and attached to this form.

*** Denotes Required Field**

Your Information - Information about the person filling the complaint (complainant)

* Full Name: _____

* Mailing Address: _____

* Telephone Number: _____ Email Address: _____

Counsel's Information - If you are represented by counsel, you must provide the following:

Attorney's Name: _____ Telephone Number: _____

Law Firm: _____

Mailing Address: _____

Respondent's Information - Information about the person alleged to have committed the violation:

* Full Name: _____

* Mailing Address: _____

* Telephone Number: _____ Email Address: _____

Briefly summarize the allegations made in the attached complaint.

By submitting this form, with the attached complaint, I hereby certify that I wish to initiate a lawsuit against the named respondent(s). I am aware of the procedure outlined in section 9(2)(a) of Article XXVIII of the Colorado Constitution, and know that by filing this complaint I will be required to appear at a hearing within 15 days of the referral of the complaint, to prove my claims by a preponderance of the evidence. I understand that the Secretary of State's office will not conduct an investigation or otherwise assist with the prosecution of my complaint. If this complaint is found to be frivolous, groundless, or vexatious, I may be required to pay attorney's fees.

* Complainant's Signature: _____ Date:

Counsel's Signature (required if applicable): _____ Date:

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290



Scott Gessler
Secretary of State

Suzanne Staiert
Deputy Secretary of State

June 19, 2014

Matthew Azer, Director
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, CO 80203

Re: In the Matter of Campaign and Political Finance Violations alleged by Elizabeth Ann Geisleman v. Ramirez for Colorado and Robert Ramirez

Dear Mr. Azer:

In accordance with Section 9(2)(a) of Article XXVIII of the Colorado Constitution, I am referring the above-referenced complaint to your office for assignment to an administrative law judge. Our office received the original complaint on June 19, 2014.

We expect the parties to direct all future pleadings and correspondence to your office.

Sincerely,

Suzanne Staiert
Deputy Secretary of State

Enclosure

cc: Respondent
Ramirez for Colorado
Robert Ramirez
10354 W. 107th Circle
Westminster, CO 80021

Complainant
Elizabeth Ann Geisleman
c/o Edward T. Ramey
Heizer Paul LLP
2401 15th Street, Suite 300
Denver, CO 80202

Campaign Finance Complaint Cover Sheet

RECEIVED
Below State Office

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Colorado Secretary of State
Campaign Finance
1700 Broadway, Suite 200
Denver, CO 80290

If faxing or emailing, original must follow within 5 calendar days
Phone: 303-894-2200
FAX: 303-869-4861
Email: cpfhelp@sos.state.co.us
Website: www.sos.state.co.us

JUN 19 2014
8:15 AM
ELECTIONS
SECRETARY OF STATE

Your complaint must be typed or written separately and attached to this form.
* Denotes Required Field

Your Information - Information about the person filing the complaint (complainant)

* Full Name: Elizabeth Ann Gelsleman

* Mailing Address: 6937 Dudley Drive, Arvada, CO 80004

* Telephone Number: 303-550-0470

Email Address: lgelsleman@gmail.com

Counsel's Information - If you are represented by counsel, you must provide the following:

Attorney's Name: Edward T. Ramey

Telephone Number: 303-376-3712

Law Firm: Helzer Paul LLP

Mailing Address: 2401 15th Street, Suite 300, Denver, CO 80202

Email Address: eramey@hpflrm.com

Respondent's Information - Information about the person alleged to have committed the violation:

* Full Name: Ramirez for Colorado and Robert Ramirez

* Mailing Address: 10354 W. 107th Circle, Westminster, CO 80021

* Telephone Number: 303-324-5414

Email Address: robert.ramirez@ramirezforcolorado.com

Briefly summarize the allegations made in the attached complaint.

Respondent has failed to timely file campaign finance disclosure reports for a candidate committee due on January 15, May 5, May 19, June 2, and June 16, 2014, in violation of Colo. Const. art. XXVIII, sections 9(2) and 10, C.R.S. 1-45-108, and 8 CCR 1505-6 Rule 18.4.

By submitting this form, with the attached complaint, I hereby certify that I wish to initiate a lawsuit against the named respondent(s). I am aware of the procedure outlined in section 9(2)(a) of Article XXVIII of the Colorado Constitution, and know that by filing this complaint I will be required to appear at a hearing within 15 days of the referral of the complaint, to prove my claims by a preponderance of the evidence. I understand that the Secretary of State's office will not conduct an investigation or be involved in any way after the complaint is transmitted to the Office of Administrative Courts. If this complaint is found to be frivolous, groundless, or vexatious, I may be required to pay attorney's fees.

* Complainant's Signature: *Elizabeth Ann Gelsleman*

Date: 6-18-14

Counsel's Signature (required if applicable): *Edward T. Ramey*

Date: 6-18-14



RECEIVED

JUN 19 2014 8:15 AM
es

ELECTIONS
SECRETARY OF STATE



Edward T. Ramey
Direct Dial: 303-376-3712
eramey@hplfirm.com

June 18, 2014

Hon. Scott Gessler
Colorado Secretary of State
1700 Broadway, Suite 200
Denver, Colorado 80269

Re: Campaign Finance Complaint Against Ramirez for Colorado and Robert Ramirez

Dear Secretary Gessler:

Pursuant to Colo. Const. art. XXVIII, §§9(2) and 10, C.R.S. §§1-45-108 and 1-45-111.5, and 8 CCR 1505-6 Rule 18.4, Elizabeth Ann Geiselman, through counsel, submits the following campaign finance complaint against Ramirez for Colorado, a candidate committee, and Robert Ramirez.

1. According to the records of the Secretary of State posted on the TRACER website, Ramirez for Colorado registered as a candidate committee pursuant to C.R.S. §1-45-108(3) on October 9, 2009. Exhibit 1.
2. Pursuant to 8 CCR 1505-6 Rule 17.1, a candidate committee is required to file a disclosure report of its contributions and expenditures for every reporting period – even if the committee has no activity to report during the reporting period – until it is terminated pursuant to the Secretary of State's Rules.
3. There is no indication on the Secretary of State's TRACER website that Ramirez for Colorado has been terminated, and its status is reported as "active." Exhibit 1.
4. Robert Ramirez filed a Candidate Affidavit on March 19, 2014, stating that he is a candidate for the 2014 election for the office of Colorado House District 29, and that he is familiar with the provisions of the Colorado Fair Campaign Practices Act. Exhibit 2.
5. According to the records of the Secretary of State posted on the TRACER website, Ramirez for Colorado has failed to file a disclosure report of its contributions and expenditures since December 6, 2012. Exhibit 1.

2401 15th Street, Suite 300 Denver, CO 80202 P: 303.595.4747 F: 303.595.4750 www.hplfirm.com

6. Also according to the records of the Secretary of State posted on the TRACER website, Ramirez for Colorado has received numerous delinquency notices from the office of the Secretary of State regarding its delinquent filings, indicating penalty accruals aggregating in the tens of thousands of dollars. Exhibit 1.

7. Pursuant to Colo. Const. art. XXVIII, §10(1), a candidate is personally liable for penalties imposed on his candidate committee.

8. As pertinent to this Complaint, the Secretary of State's TRACER website indicates that Ramirez for Colorado has failed to file disclosure reports of its contributions and expenditures due on the following dates (within 180 days prior to the filing of this Complaint):

January 15, 2014
May 5, 2014
May 19, 2014
June 2, 2014
June 16, 2014

9. Pursuant to Colo. Const. art. XXVIII, §10(2)(a), Ramirez for Colorado and Robert Ramirez are liable for penalties in the amount of \$50 per day for each day that each of the disclosure reports listed in paragraph 8, above, were not filed by the close of business on the day due. As of June 18, 2014 (the date of filing of this Complaint) these penalties have accrued as follows:

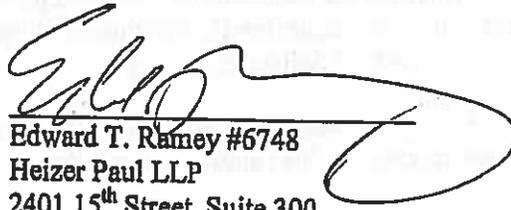
January 15, 2014 report – 154 days – \$7,700
May 5, 2014 report – 44 days – \$2,200
May 19, 2014 report – 30 days – \$1,500
June 2, 2014 report – 16 days – \$800
June 16, 2014 report – 2 days – \$100

The total penalties due as of June 18, 2014, are, therefore, \$12,300 – with penalties continuing to accrue at \$50 per day for each disclosure report listed above and each subsequent disclosure report due and not timely filed.

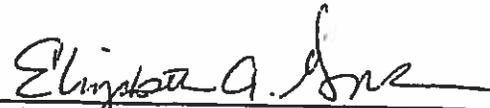
10. Additionally, pursuant to C.R.S. §1-45-111.5(1.5)(d), an Administrative Law Judge may – and is requested here to – order disclosure of the source and amount of any undisclosed donations and expenditures.

WHEREFORE, Complainant respectfully requests assessment of the appropriate penalty against both Ramirez for Colorado and Robert Ramirez individually, entry of an order requiring disclosure of the source and amount of any undisclosed contributions and expenditures, and such additional relief as may be deemed appropriate.

Hon. Scott Gessler
June 18, 2014
Page 3



Edward T. Ramey #6748
Heizer Paul LLP
2401 15th Street, Suite 300
Denver, CO 80202
Phone: 303-376-3712
Fax: 303-595-4750
Email: eramey@hpfirm.com



Elizabeth Ann Geisleman, Complainant



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- Committee Registration
- Candidate Affidavit



Candidate and Candidate Committee Detail

Home > Search > Candidates > Candidate and Candidate Committee Detail

Help with this page

Registered User Login

Campaign Finance Manual (PDF)

Candidate Information - Election Year 2014

To view other candidates for this office, select name:

RAMIREZ, ROBERT

Name: RAMIREZ, ROBERT
 Mailing Address: 10354 W. 107TH CIRCLE
 WESTMINSTER, CO 80021
 Phone: 303-324-8414 Fax:
 Email: ROBERT.RAMIREZ@RAMIREZFORCOLORADO.COM
 Web:
 Has Accepted Voluntary Spending Limits: No

Candidate ID: 20095818100
 Current Candidate Status: Active
 2014 Campaign Status: Active
 Date Affidavit Filed: 03/19/2014
 Jurisdiction: STATEWIDE
 Party: Republican
 Office: Colorado House
 District: House District 29

Candidate Committee Information

Name: RAMIREZ FOR COLORADO
 Physical Address: 10354 W. 107TH CIRCLE
 WESTMINSTER CO 80021
 Mailing Address: 10354 W. 107TH CIRCLE
 WESTMINSTER CO 80021
 Phone: 303-324-8414 Fax:
 Web: WWW.RAMIREZFORCOLORADO.COM

Committee ID: 20095818210
 Committee Type: Candidate Committee
 Status: Active
 Date Registered: 10/09/2009
 Date Terminated:

Purpose: STATE HOUSE OF REPRESENTATIVES, REP FOR HOUSE DISTRICT 29

Registered Agent: REPRESENTATIVE ROBERT RAMIREZ Phone: 303-324-8414 Email: ROBERT@RAMIREZFORCOLORADO.COM

Financial Summary

Finance History

This data is current as of: DECEMBER 6, 2012 - REPORT OF CONTRIBUTIONS AND EXPENDITURES

Period end date: 11/30/2012 Filed on: 12/07/2012

Election Cycle: 2012 STATE CANDIDATE 2 YEAR CYCLE (12/3/2010 - 12/6/2012)

Candidate Expenditures: \$0.00

Committee:	Beginning Balance:	\$5,204.76	Less Total Expenditures:	\$92,982.35
	Plus Total Contributions:	\$83,129.53	Less Total Loans Repaid:	\$0.00
	Plus Total Loans Received:	\$0.00	Ending Balance:	\$5,352.03

Reported non-monetary items not included above:
 Non Monetary Contributions: \$10,142.00 Non Monetary Expenditures: \$0.00

Campaigns

Candidate/Committee	Election Cycle	Party Affiliation	Jurisdiction	Office	District	Status
ROBERT RAMIREZ	2014 STATE CANDIDATE 2 YEAR CYCLE (12/7/2012 - 12/4/2014)	Republican	STATEWIDE	Colorado House	House District 29	Active
ROBERT RAMIREZ	2012 STATE CANDIDATE 2 YEAR CYCLE (12/3/2010 - 12/6/2012)	Republican	STATEWIDE	Colorado House	House District 29	Inactive
ROBERT EDGAR RAMIREZ	2010 STATE CANDIDATE 2 YEAR CYCLE (12/5/2008 - 12/2/2010)	Republican	STATEWIDE	Colorado House	House District 29	Inactive

Filing History

Filter By: All Report Types Apply Filter

Candidate/Committee	Description	Period Begin	Period End	Due Date	Filed Date	Amended	Status
ROBERT RAMIREZ	Candidate Affidavit				03/19/2014 02:09 PM	No	Filed
RAMIREZ FOR COLORADO	DECEMBER 6, 2012 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	10/25/2012	11/30/2012	12/08/2012	12/07/2012 11:34 PM	No	Filed
		11/08/2012	11/09/2012	11/09/2012		No	Filed



Candidate/Committee	Description	Period Start	Period End	Report Due Date	Filed Date	Filed
RAMIREZ FOR COLORADO	MAJOR CONTRIBUTOR REPORT				11/03/2012 03:17 PM	
RAMIREZ FOR COLORADO	OCTOBER 29, 2012 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	10/11/2012	10/24/2012	10/29/2012	10/30/2012 01:33 PM	No Filed
RAMIREZ FOR COLORADO	OCTOBER 15, 2012 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	09/27/2012	10/10/2012	10/15/2012	10/15/2012 10:27 PM	No Filed

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Filings Due

Candidate/Committee	Description	Period Start	Period End	Due Date
RAMIREZ FOR COLORADO	APRIL 15, 2013 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	12/01/2012	03/31/2013	04/15/2013
RAMIREZ FOR COLORADO	JULY 15, 2013 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	04/01/2013	06/30/2013	07/15/2013
RAMIREZ FOR COLORADO	OCTOBER 15, 2013 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	07/01/2013	09/30/2013	10/15/2013
RAMIREZ FOR COLORADO	JANUARY 15, 2014 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	10/01/2013	12/31/2013	01/15/2014
RAMIREZ FOR COLORADO	MAY 5, 2014 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	01/01/2014	04/30/2014	05/05/2014

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Penalties

Information regarding late filings or penalties imposed prior to January 1, 2010 can be found by searching the relevant Document Images associated with a candidate or a committee, by looking in the candidate or committee's Filing History for discrepancies between report due dates and the date reports were filed, or by contacting the Secretary of State's Office.

Candidate/Committee	Description	Type	Date	Waiver Requested	Status
RAMIREZ FOR COLORADO	JUNE 18, 2014 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	LATE FILING	06/18/2014	No	Open
RAMIREZ FOR COLORADO	JUNE 2, 2014 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	LATE FILING	06/02/2014	No	Open
RAMIREZ FOR COLORADO	MAY 19, 2014 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	LATE FILING	05/19/2014	No	Open
RAMIREZ FOR COLORADO	MAY 5, 2014 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	LATE FILING	05/05/2014	No	Open
RAMIREZ FOR COLORADO	JANUARY 15, 2014 - REPORT OF CONTRIBUTIONS AND EXPENDITURES	LATE FILING	01/15/2014	No	Open

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Complaints

No complaints found

Document Images

Filter By: All Document Types Apply Filter

Candidate/Committee	Date	Type	Comment
RAMIREZ FOR COLORADO	08/17/2014	Delinquency Letter	
RAMIREZ FOR COLORADO	08/12/2014	Delinquency Letter	NOTICE OF DELINQUENT CAMPAIGN FINANCE DISCLOSURE AND IMPOSITION OF PENALTY / 04-15-2013 REPORT
RAMIREZ FOR COLORADO	08/12/2014	Delinquency Letter	NOTICE OF DELINQUENT CAMPAIGN FINANCE DISCLOSURE AND IMPOSITION OF PENALTY / 07-15-2013 REPORT
RAMIREZ FOR COLORADO	08/12/2014	Delinquency Letter	NOTICE OF DELINQUENT CAMPAIGN FINANCE DISCLOSURE AND IMPOSITION OF PENALTY / 10-15-2013 REPORT
RAMIREZ FOR COLORADO	08/12/2014	Delinquency Letter	NOTICE OF DELINQUENT CAMPAIGN FINANCE DISCLOSURE AND IMPOSITION OF PENALTY / 01-15-2014 REPORT

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Colorado Secretary of State
 Elections Division
 1700 Broadway, Ste. 200
 Denver, CO 80290
 Ph: (303) 894-2200 x 6383
 Fax: (303) 869-4861
 www.sos.state.co.us



Space Below For Office Use Only

CANDIDATE AFFIDAVIT
 [Art. XXVIII, Sec. 2(2) & 1-45-110(1), C.R.S.]

- State, County, School District, and Special District Candidates file with the Secretary of State
- Municipal Candidates file with the Municipal Clerk

This affidavit certifies that I, **ROBERT RAMIREZ**, a member of the Republican political party/organization (if applicable), am a candidate for the 2014 election, [Art. XXVIII, Sec. 2(2)] for the office of **Colorado House, District House District 29**.

I understand that campaign finance activities in Colorado are governed by Article XXVIII of the Colorado Constitution, Article 45, Title 1 of the Colorado Revised Statutes (C.R.S.) (also known as the Fair Campaign Practices Act (FCPA)), and the Secretary of State's Rules Concerning Campaign and Political Finance.

I further certify that I am familiar with the provisions of the Colorado Fair Campaign Practices Act (FCPA) as required in §1-45-110 of the Colorado Revised Statutes.

Date: 03/19/2014

Physical Address of Candidate: 10354 W. 107TH CIRCLE
 WESTMINSTER CO 80021

Mailing Address: 10354 W. 107TH CIRCLE
 WESTMINSTER CO 80021

Business Phone:

Residence Phone: (303) 324-5414

FAX:

E-Mail Address: ROBERT.RAMIREZ@RAMIREZFORCOLORADO.COM

Web Address:



Form: CPF 1 Revised 08/2011

BEFORE THE SECRETARY OF STATE
STATE OF COLORADO

Case No. OS 2014-_____

IN THE MATTER OF THE CAMPAIGN AND POLITICAL FINANCE VIOLATIONS
ALLEGED BY ELIZABETH ANN GEISLEMAN V. RAMIREZ FOR COLORADO
AND ROBERT RAMIREZ.

MOTION FOR CONTINUANCE

The undersigned Respondent, Robert Ramirez and his candidate committee, Ramirez for Colorado, hereby moves this honorable Court to grant a continuance in the above captioned complaint. As grounds for such motion Respondent states as follows:

1. A hearing on this complaint is presently set for July 2, 2014, at 9:00 a.m. at the Office of Administrative Courts.
2. The undersigned Respondent has only recently been informed of the campaign finance complaint, and requires additional time to seek competent legal counsel and/or representation and prepare an appropriate defense to the allegations set forth in the Complaint.
3. Pursuant to Colorado Constitution Article XXVIII, Section 9 (2)(a), Respondent is entitled to an extension of up to thirty days upon the filing of a motion requesting the same, or longer upon a showing of good cause.

Wherefore, Respondent respectfully requests that this Honorable Court continue the hearing date for thirty days or more.

Respectfully submitted this 27th day of June, 2014,

Robert Ramirez
Ramirez for Colorado
10354 W. 107 Circle
Westminster, CO 80021
303-324-5414
robert.ramirez@ramirezforcolorado.com

RESPONDENT

Certificate of Mailing

This is to certify that on the 27th day of June, 2014, a true and correct copy of the above and foregoing MOTION FOR CONTIUNANCE was sent by first class mail, postage prepaid, and/or sent via facsimile or electronic transmission to the following:

Office of Administrative Courts
633 17th Street, 14th Floor
Denver, Colorado 80203
(303) 866-2000 phone
(303) 866-5909 fax

Complainant:

Elizabeth Ann Geisleman
6937 Dudley Drive
Arvada, Colorado 80004
(303) 550-0070 phone
lgeisleman@gmail.com

Counsel for Complainant:

Edward T. Ramey, Esq.
Heizer Paul LLP
2401 15th Street, Suite 300
Denver, Colorado 80021
(303) 376-3712 phone
eramey@hpfirm.com

Robert Ramirez

BEFORE THE SECRETARY OF STATE
STATE OF COLORADO

Case No. OS 2014-0015

IN THE MATTER OF THE COMPLAINT FILED BY ELIZABETH A. GEISLEMAN
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS
BY RAMIREZ FOR COLORADO AND ROBERT RAMIREZ.

ENTRY OF APPEARANCE

COMES NOW the undersigned, Ryan R. Call, Esq., and hereby enters his appearance as counsel on behalf of the Respondent, Robert Ramirez and Ramirez for Colorado, in the above-captioned complaint.

Respectfully submitted this 12th day of August, 2014.

Ryan R. Call Reg. # 37207

Hale Westfall LLP
1600 Stout Street, Suite 500
Denver, Colorado 80202
Phone: 720-904-6010
Fax: 720-904-6020
rcall@halewesfall.com

Colorado Republican Committee
5950 S. Willow Drive, Suite 210
Greenwood Village, Colorado 80111
Phone: 303-758-3333
ryan@cologop.org

ATTORNEY FOR RESPONDENT

Certificate of Mailing

This is to certify that on the 12th day of August, 2014, a true and correct copy of the above and foregoing ENTRY OF APPEARANCE was sent by first class mail, postage prepaid, and/or sent via facsimile to the following:

Office of Administrative Courts:

1525 Sherman Street, 4th Floor
Denver, CO 80203
303-866-2000 phone
303-866-5909 fax

Attorney for the Complainant:

Edward T. Ramey, Esq.
Heizer Paul LLP
2401 Fifteenth Street, Suite 300
Denver, CO 80202
303-595-4747 phone
303-595-4750 fax

Respondent:

Robert Ramirez
Ramirez for Colorado
10354 West 107th Avenue
Westminster, CO 80021

Ryan R. Call, Esq.

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 20140015

STIPULATED AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY ELIZABETH A. GEISLEMAN
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY
RAMIREZ FOR COLORADO AND ROBERT RAMIREZ**

The parties to this proceeding, through their undersigned counsel, respectfully submit the following Stipulated Agency Decision for entry by this Court:

I. Proceedings in this case.

1. Complainant Elizabeth A. Geisleman filed a Campaign Finance Complaint against Respondents Ramirez for Colorado and Robert Ramirez with the Colorado Secretary of State on June 19, 2014. The Complaint was referred to the Office of Administrative Courts on the same date pursuant to Section 9(2) of Article XXVIII of the Colorado Constitution.

2. A hearing was initially set for this matter for July 2, 2014. Respondents filed a Motion for Continuance of the hearing on June 30, 2014, the hearing was vacated, a setting conference was held on July 1, 2014, and the hearing was rescheduled for August 12, 2014.

3. At the hearing on August 12, 2014, Complainant appeared through counsel, Edward T. Ramey, and Respondents appeared through counsel, Ryan R. Call. Counsel advised the Court that a stipulation had been reached and would be submitted to the Court for entry of a Stipulated Agency Decision.

II. Stipulations and Findings of Fact.

4. Ramirez for Colorado registered as a candidate committee with the Secretary of State on October 9, 2009. The committee remained active as of the date of the hearing.

5. Robert Ramirez filed a candidate affidavit with the Secretary of State on March 19, 2014, stating that he was a candidate for election to the office of Colorado State Representative from House District 29, and that he was familiar with the provisions of the Colorado Fair Campaign Practices Act. Mr. Ramirez had previously been a candidate for the same House District 29 seat in 2010 and 2012.

6. Notwithstanding the fact that he maintained an active candidate committee during the time periods in question, no campaign finance reports were filed by Ramirez for Colorado

with the Secretary of State subsequent to the filing of December 6, 2012, until the initiation of this proceeding. Numerous delinquency notices were issued to Ramirez for Colorado by the Secretary of State. As pertinent to the 180 time period addressed by the Complaint filed in this action, Ramirez for Colorado had not filed campaign finance reports due on January 15, May 5, May 19, June 2, and June 16, 2014.

7. On August 11, 2014, on the eve of the hearing in this case, Ramirez for Colorado filed campaign finance reports for each of the delinquent periods.

8. The campaign finance reports filed on August 11, 2014, by Ramirez for Colorado indicate that there was no account activity, in terms of either contributions or expenditures, with the exception of minor bank service charges, during the 180 period addressed by the Complaint in this action. The reports indicate that Ramirez for Colorado maintained a fund balance during this period of \$1,000 or less, though counsel for Ramirez for Colorado advises the Court that the negative balance reflected on the reports is inaccurate and that the account has an actual balance of \$102.90.

9. Ramirez for Colorado is currently seeking to terminate active status.

III. Stipulated Conclusions of Law.

10. Pursuant to Section 10(2)(a) of Article XXVIII of the Colorado Constitution, a penalty of \$50 per day is to be imposed for each day that a statement or other information required to be filed with the Secretary of State is not filed by close of business on the day due.

11. 8 CCR 1505-6, Rule 18.1.2, Scenario #2(d), however, provides for a reduction in penalty to the total amount of the filer's fund balance as of the date on which the delinquent report(s) is filed, if the committee is promptly terminated.

12. The parties concur that the reduction provided in 8 CCR 1505-6, Rule 18.1.2, Scenario #2(d) is appropriate for application in this case.

IV. Conclusion and Judgment.

13. The parties concur, and the Court so Orders, that Ramirez for Colorado, and Robert Ramirez individually, are liable for a reduced penalty pursuant to Section 10(2)(a) of Article XXVIII of the Colorado Constitution and 8 CCR 1505-6, Rules 18.1.2 and 18.1.7 in the amount of \$102.90.

DONE AND SIGNED

MATTHEW E. NORWOOD
Administrative Law Judge

APPROVED

Edward T. Ramey
Counsel for Complainant

Ryan R. Call
Counsel for Respondents

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 2014-0015

FINAL AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY ELIZABETH A. GEISLEMAN
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY
RAMIREZ FOR COLORADO AND ROBERT RAMIREZ**

Hearing in this matter was held August 12, 2014 at the Office of Administrative Courts. Edward T. Ramey, Esq., appeared on behalf of the Complainant and Ryan Call, Esq., appeared on behalf of the Respondents. At the hearing the parties agreed to submit a stipulated agency decision for entry by the Administrative Law Judge. On August 18, 2014 the parties filed their Stipulated Agency Decision. Based on the Stipulated Agency Decision submitted by the parties, the Administrative Law Judge hereby enters the following as the Final Agency Decision in this matter.

I. Proceedings in this case.

1. Complainant Elizabeth A. Geisleman filed a Campaign Finance Complaint against Respondents Ramirez for Colorado and Robert Ramirez with the Colorado Secretary of State on June 19, 2014. The Complaint was referred to the Office of Administrative Courts on the same date pursuant to Section 9(2) of Article XXVIII of the Colorado Constitution.

2. A hearing was initially set for this matter for July 2, 2014. Respondents filed a Motion for Continuance of the hearing on June 30, 2014, the hearing was vacated, a setting conference was held on July 1, 2014, and the hearing was rescheduled for August 12, 2014.

3. At the hearing on August 12, 2014, Complainant appeared through counsel, Edward T. Ramey, and Respondents appeared through counsel, Ryan R. Call. Counsel advised the Court that a stipulation had been reached and would be submitted to the Court for entry of a Stipulated Agency Decision.

II. Stipulations and Findings of Fact.

4. Ramirez for Colorado registered as a candidate committee with the Secretary of State on October 9, 2009. The committee remained active as of the date of the hearing.

5. Robert Ramirez filed a candidate affidavit with the Secretary of State on March 19, 2014, stating that he was a candidate for election to the office of Colorado State Representative from House District 29, and that he was familiar with the provisions of the Colorado Fair Campaign Practices Act. Mr. Ramirez had previously been a candidate for the same House District 29 seat in 2010 and 2012.

6. Notwithstanding the fact that he maintained an active candidate committee during the time periods in question, no campaign finance reports were filed by Ramirez for Colorado with the Secretary of State subsequent to the filing of December 6, 2012, until the initiation of this proceeding. Numerous delinquency notices were issued to Ramirez for Colorado by the Secretary of State. As pertinent to the 180 day time period addressed by the Complaint filed in this action, Ramirez for Colorado had not filed campaign finance reports due on January 15, May 5, May 19, June 2, and June 16, 2014.

7. On August 11, 2014, on the eve of the hearing in this case, Ramirez for Colorado filed campaign finance reports for each of the delinquent periods.

8. The campaign finance reports filed on August 11, 2014, by Ramirez for Colorado indicate that there was no account activity, in terms of either contributions or expenditures, with the exception of minor bank service charges, during the 180 day period addressed by the Complaint in this action. The reports indicate that Ramirez for Colorado maintained a fund balance during this period of \$1,000 or less, though counsel for Ramirez for Colorado advises the Court that the negative balance reflected on the reports is inaccurate and that the account has an actual balance of \$102.90.

9. Ramirez for Colorado is currently seeking to terminate active status.

III. Stipulated Conclusions of Law.

10. Pursuant to Section 10(2)(a) of Article XXVIII of the Colorado Constitution, a penalty of \$50 per day is to be imposed for each day that a statement or other information required to be filed with the Secretary of State is not filed by close of business on the day due.

11. 8 CCR 1505-6, Rule 18.1.2, Scenario #2(d), however, provides for a reduction in penalty to the total amount of the filer's fund balance as of the date on which the delinquent report(s) is filed, if the committee is promptly terminated.

12. The parties concur that the reduction provided in 8 CCR 1505-6, Rule 18.1.2, Scenario #2(d) is appropriate for application in this case.

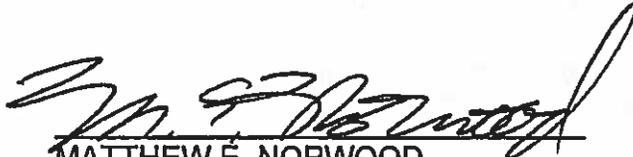
IV. Conclusion and Judgment.

13. The parties concur, and the Administrative Law Judge so Orders, that Ramirez for Colorado, and Robert Ramirez individually, are liable for a reduced penalty

pursuant to Section 10(2)(a) of Article XXVIII of the Colorado Constitution and 8 CCR 1505-6, Rules 18.1.2 and 18.1.7 in the amount of \$102.90.

DONE AND SIGNED

September 15, 2014.


MATTHEW E. NORWOOD
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above **FINAL AGENCY DECISION** was served upon the parties listed below by electronic mail, courier pickup or by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

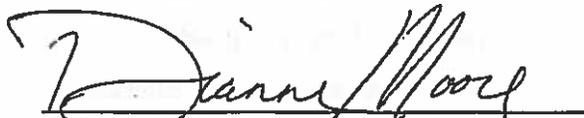
Edward T. Ramey, Esq.
2401 Fifteenth Street, Suite 300
Denver, CO 80202

Ryan Call, Esq.
1600 Stout Street, Suite 300
Denver, CO 80202

And via electronic transmission to:

Mr. Stephen Bouey
Colorado Dept. of State
stephen.bouey@sos.state.co.us

Dated: September 18, 2014.


Office of Administrative Courts

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th Floor Denver, Colorado 80203	
Complainant: Campaign Integrity Watch Dog v. Respondent: Pat Broe	▲ COURT USE ONLY ▲
Attorneys for: Pat Broe Jason Dunn #33011 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202-4437	Case Number: OS2014-0046
Phone Number: 303.223.1100 FAX Number: 303.223.1111 E-mail: jdunn@bhfs.com	
STIPULATION AND JOINT MOTION FOR ENTRY OF STIPULATED JUDGMENT	

Pursuant to Office of Administrative Courts Procedural Rule 15, and Colorado Rule of Procedure 54, Complainant Campaign Integrity Watchdog and Respondent Pat Broe jointly move for entry of a Stipulated Judgment in the form attached hereto.

The parties hereby stipulate as follows:

1. Respondent made contributions to the Colorado Republican Party Independent Expenditure Committee totaling one thousand dollars or more during the calendar year 2014 and

did not report such contributions to the Colorado Secretary of State during the time period required by Section 1-45-107.5(9)(a) of the Colorado Revised Statutes.

2. Respondent agrees to pay a civil penalty in the amount of fifty (50) dollars to the Colorado Secretary of State, pursuant to Colo. R. Concerning Campaign and Political Finance 18.1.2. scenario 2.

3. The parties' Stipulation is subject to approval by the Administrative Law Judge, and shall become binding upon the parties hereto (without any right to appeal or review) upon such approval. In the event the Administrative Law Judge does not approve this Stipulation, the parties are not bound by the terms of this Stipulation and shall retain all rights, claims, and defenses available to them in this action.

In support of this Motion, and pursuant to Office of Administrative Courts Procedural Rule 19, the parties hereby notify the Administrative Law Judge that they have reached an agreement to settle this action subject to, and in accordance with, the terms set forth above and in the proposed Stipulated Judgment.

Dated this _____ day of January, 2015.

CAMPAIGN INTEGRITY WATCHDOG

By: _____
Matthew Arnold

PRO SE FOR COMPLAINANT

BROWNSTEIN HYATT FARBER SCHECK, LLP

By: s/ Jason R. Dunn
Jason R. Dunn, #33011

ATTORNEYS FOR RESPONDENT

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th Floor Denver, Colorado 80203	<p align="center">▲ COURT USE ONLY ▲</p>
<p>Complainant:</p> Campaign Integrity Watch Dog v. <p>Respondent:</p> Pat Broe	
Attorneys for: Pat Broe Jason Dunn #33011 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202-4437	Case Number: OS2014-0046
Phone Number: 303.223.1100 FAX Number: 303.223.1111 E-mail: jdunn@bhfs.com	
<p align="center">[PROPOSED] STIPULATED JUDGMENT</p>	

The parties have stipulated to the entry of this Stipulated Judgment to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED AS FOLLOWS:

Findings of Fact

The following findings of fact are based upon the parties' stipulation:

1. Respondent made contributions to the Colorado Republican Party Independent Expenditure Committee totaling one thousand dollars or more during the calendar year 2014 and did not report such contributions to the Colorado Secretary of State during the time period and in the manner required by Section 1-45-107.5(9)(a) of the Colorado Revised Statutes.

2. Respondent agrees the Colorado Secretary of State shall be paid the sum of fifty (50) dollars as a penalty for the stipulated violation.

Judgment

1. The parties' agreed-upon civil penalty of fifty (50) dollars is a reasonable and appropriate penalty for the stipulated violation.

2. A civil penalty in the amount of fifty (50) dollars is hereby imposed upon the Respondent, pursuant to Colo. R. Concerning Campaign and Political Finance 18.1.2. scenario 2..

3. The Respondent the amount of the civil penalty shall be remitted to the Colorado Secretary of State within thirty (30) days of the date of mailing of this Judgment.

4. This decision is final under Colo. Const. art. XXVIII, § 9(2)(a) and C.R.S. § 24-4-106(11). Pursuant to the parties' stipulation, the parties waive any right to appeal or review.

Done and Signed
January __, 2015

ROBERT N. SPENCER
Administrative Law Judge

STATE OF COLORADO

OFFICE OF ADMINISTRATIVE COURTS

1525 Sherman Street, 4th Floor, Denver, Colorado 80203

**IN THE MATTER OF THE COMPLAINT FILED BY
CAMPAIGN INTEGRITY WATCHDOG REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE
VIOLATIONS BY KENT JOLLEY, PAT BROE, BRETT
JOLLEY, CAROL BURT, TERRENCE STEVINSON,
LARAMIE ENERGY II, LLC, W. BRUCE KOPPER, AND
ROBERT HUFFAKER**

▲ COURT USE ONLY ▲

CASE NUMBERS:

**OS 2014-0045, 46, 47, 48,
49, 50, 51, and 52¹**

FINAL AGENCY DECISION

Complainant, Campaign Integrity Watchdog (CIW), alleges that each Respondent made a contribution of \$1,000 or more to the Colorado Republican Party Independent Expenditure Committee and failed to report that donation to the Secretary of State as required by § 1-45-107.5(9), C.R.S. of the Colorado Fair Campaign Practice Act (FCPA). Hearing of the complaint is scheduled for February 26, 2015.

Stipulated Facts

On February 9, 2015, CIW and each Respondent filed a Stipulation and Joint Motion for Entry of Stipulated Judgment. In those stipulations, the parties agree to the following facts:

1. Each Respondent made a contribution to the Colorado Republican Party Independent Expenditure Committee (Committee) totaling one thousand dollars or more during the 2014 calendar year.
2. Although the Committee timely reported the contribution to the Colorado Secretary of State in a publicly available filing, the Committee did not inform the Respondents that upon making a contribution of one thousand dollars or more during the 2014 calendar year, each Respondent incurred a duty to file an individual donor report to the Secretary of State pursuant to FCPA § 1-45-107.5(9)(a).

¹ The complaints against all eight respondents were consolidated for hearing.

3. As a result, Respondents did not timely file individual donor reports. However, upon learning of the filing requirement Respondents promptly complied by submitting individual donor reports to the Secretary of State including full disclosure of the contributions made to the Committee.

The parties also stipulate that the appropriate sanction for these violations of § 1-45-107.5(9) is \$50 per Respondent.

Discussion

FCPA § 1-45-107.5(9)(a) imposes a duty upon "any person" who donates \$1,000 or more during a calendar year for the purpose of making an "independent expenditure" to report the donation to the Secretary of State. A "person" includes natural persons as well as committees and other organizations or group of persons. Colo. Const. art. XXVIII, § 2(11). An "independent expenditure" is an expenditure made for the purpose of expressly advocating the election or defeat of a political candidate, but which is not controlled by or coordinated with the candidate. Colo. Const. art. XXVIII, §§ (2)(8)(a) and (9). In addition to the duty imposed upon the donor, the FCPA also imposes a duty upon the donee to file a report of the donation with the Secretary of State. Section 1-45-107.5(7), C.R.S. Thus, the law requires both the donor and the donee to report the same donation.

The parties agree that the Committee, as donee, filed the required report, but the Respondents, as donors, did not file their reports until after becoming aware of CIW's complaint. Failure to comply with a reporting obligation imposed by the FCPA subjects the party who failed to file the report to a civil penalty of up to \$50 per day for every day the report is late. Colo. Const. art. XXVIII, § 10(2); FCPA § 1-45-111.5(1.5)(c). However, the ALJ has the discretion to issue "any appropriate order" allowed by law. Colo. Const. art. XXVIII, § 9(2). That discretion includes the ability to impose a penalty less than the maximum amount, or indeed no penalty at all if warranted by the circumstances. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210, 1218-19 (Colo. App. 2009).

The ALJ agrees with the parties that the minimum penalty of \$50 per Respondent is appropriate. There was no intent by Respondents to conceal their donations and, by virtue of the Committee's filings, all essential facts regarding the donations were already publicly available.

Initial Decision

The parties' Stipulation is accepted and their Joint Motion for Entry of Stipulated Judgment is granted. Each Respondent shall pay a civil penalty of \$50 to the Secretary of State, Campaign Finance, within 30 days of the date of mailing of this decision. The hearing scheduled for February 26, 2015 is vacated.

Done and Signed
February 10, 2015

ROBERT N. SPENCER
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **FINAL AGENCY DECISION** by depositing same in the U.S. Mail, postage prepaid, at Denver, Colorado addressed to:

Jason R. Dunn, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202-4432

Chantell Taylor, Esq.
Hogan Lovells US, LLP
1200 Seventeenth Street, Suite 1500
Denver, Colorado 80202

Campaign Integrity Watchdog
P.O. Box 372464
Denver, CO 80237

and

Suzanne Staiert
Deputy Secretary of State
1700 Broadway, Suite 270
Denver, CO 80290

this _____ day of February 2015.

Court Clerk

Wayne W. Williams
 Colorado Secretary of State
 1700 Broadway Suite 200
 Denver, CO 80290



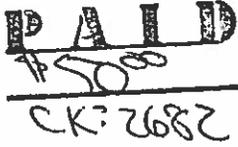
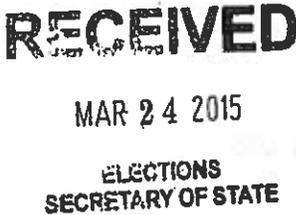
Invoice	20155007704
Date	3/25/2015
Due Date	5/24/2015

Bill To:

Remit To:

COLORADO SECRETARY OF STATE
 1700 Broadway Suite 200
 Denver, CO 80290

For Inquiries Call: 303-894-2200
 For Billing Questions Only: 303-894-2200 Ext 6107

Job Number	Customer ID	Shipping Method	Payment Terms	Master No.
	20150324Y		Net 60	4,075,818
Ordered	Item Number	Description	Unit Price	Ext. Price
1	74	FCPA Penalty ALJ FINAL AGENCY DECISION <div style="text-align: center;">   </div>  Doc ID: 193669 Doc Date: 3/24/2015 Type: Invoice - Pad Candidate/ Committee:	\$50.00	\$50.00

Total	\$50.00
Payment Amt	\$0.00
Amount Due	\$50.00

For proper credit, please reference your invoice number (20155007704) on your check.
 If no reference is made, your check may be returned and your bill will remain outstanding.
 After 60 Days all accounts that are past due will be sent to the State's Central Collection Agency.

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th Floor Denver, Colorado 80203	
IN THE MATTER OF THE COMPLAINT FILED BY CAMPAIGN INTEGRITY WATCHDOG REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY CITIZENS FOR RESONABLE RATIONAL & RESPONSIBLE GOVERNANCE	▲ COURT USE ONLY ▲
Attorneys for the Respondent: Ryan R. Call #37207 Allan Hale #14885 Richard A. Westfall #15295 Peter J. Krumholz #27741 HALE WESTFALL, LLP 1600 Stout Street, Suite 500 Denver, Colorado 80202	Case Number: OS2016-0018
Phone Number: 720-904-6010 FAX Number: 720-904-6020 E-mail: rcall@halewestfall.com ahale@halewestfall.com rwestfall@halewestfall.com pkrumholz@halewestfall.com	
ENTRY OF APPEARANCE	

Ryan R. Call and the law firm of Hale Westfall, LLP, hereby enters an appearance as counsel for Citizens for Reasonable Rational & Responsible Governance in the above-captioned matter.

Respectfully submitted this 13th day of October, 2015.

HALE WESTFALL, LLP

By: /s/ Ryan R. Call
Ryan R. Call, #37207

CERTIFICATE OF SERVICE

I certify that on this 13th day of October, 2016, I electronically filed a true and correct copy of the foregoing ENTRY OF APPEARANCE with the Office of Administrative Courts via CaseConnect, and served or sent a copy via email to the following:

Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, CO 80203

Matthew Arnold
P.O. Box 372464
Denver, CO, 80237
Email: campaignintegritywatchdog@gmail.com
Pro Se for Campaign Integrity Watchdog

Matthew D. Grove, Esq.
Assistant Solicitor General
Colorado Department of Law
Public Officials Unit, State Services Section
1300 Broadway, 6th Floor
Denver, CO 80203
Email: matt.grove@state.co.us
Attorneys for Colorado Secretary of State Wayne Williams

/s/ Ryan R. Call
Ryan R. Call

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th Floor Denver, Colorado 80203	
IN THE MATTER OF THE COMPLAINT FILED BY CAMPAIGN INTEGRITY WATCHDOG REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY CITIZENS FOR REASONABLE RATIONAL & RESPONSIBLE GOVERNANCE	▲ COURT USE ONLY ▲
Attorneys for the Respondent: Ryan R. Call #37207 Allan Hale #14885 Richard A. Westfall #15295 Peter J. Krumholz #27741 HALE WESTFALL, LLP 1600 Stout Street, Suite 500 Denver, Colorado 80202	Case Number: OS2016-0018
Phone Number: 720-904-6010 FAX Number: 720-904-6020 E-mail: rcall@halewestfall.com ahale@halewestfall.com rwestfall@halewestfall.com pkrumholz@halewestfall.com	
MOTION FOR CONTINUANCE AND REQUEST FOR SCHEDULING AND STATUS CONFERENCE	

Citizens for Reasonable Rational & Responsible Governance (“CRRRG” or “Respondent”), through its undersigned counsel, respectfully moves this Honorable Court to vacate the currently scheduled hearing and grant a continuance in the above-captioned matter.

As grounds for such motion, the Respondent states:

1. Undersigned counsel certifies under Colo. R. Civ. P. 121, Section 1-15(8) that he did confer with Matt Arnold, pro se Complainant on behalf of his wholly owned limited liability company and alter ego “Campaign Integrity Watchdog” (“CIW”) before filing this motion.

Undersigned counsel has been informed that the Complainant is not opposed to the motion to vacate the current scheduled hearing.

2. A hearing on this campaign finance complaint is presently set for Monday, October 17, 2016 at 9:00 a.m. in the Office of Administrative Courts.
3. Undersigned counsel has only recently been informed of the Complaint, and requires additional time to review the claims and prepare an appropriate defense to the allegations set forth in the Complaint, as well as respond to the Complainant's inappropriate requests for discovery.
4. Pursuant to Colo. Const. art. XXVIII, Section 9(2)(a), Respondent is entitled to an extension of up to thirty days upon the filing of a motion requesting the same, or longer upon a showing of good cause.

Wherefore, the Respondent respectfully requests that the scheduled hearing be vacated, and that in lieu of a new hearing date being set, a status and scheduling conference be set with the Court within thirty days to consider an appropriate briefing schedule and case management order to govern the proceedings in this case.

Respectfully submitted this 13th day of October, 2015.

HALE WESTFALL, LLP

By: /s/ Ryan R. Call
Ryan R. Call, #37207

CERTIFICATE OF SERVICE

I certify that on this 13th day of October, 2016, I electronically filed a true and correct copy of the foregoing MOTION FOR CONTINUANCE AND REQUEST FOR SCHEDULING AND STATUS CONFERENCE with the Office of Administrative Courts via CaseConnect, and served or sent a copy via email to the following:

Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, CO 80203

Matthew Arnold
P.O. Box 372464
Denver, CO, 80237
Email: campaignintegritywatchdog@gmail.com
Pro Se for Campaign Integrity Watchdog

Matthew D. Grove, Esq.
Assistant Solicitor General
Colorado Department of Law
Public Officials Unit, State Services Section
1300 Broadway, 6th Floor
Denver, CO 80203
Email: matt.grove@state.co.us
Attorneys for Colorado Secretary of State Wayne Williams

/s/ Ryan R. Call
Ryan R. Call

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4 th Floor, Denver, Colorado 80203	
CAMPAIGN INTEGRITY WATCHDOG, Complainant, v. CITIZENS FOR REASONABLE RATIONAL & RESPONSIBLE GOVERNANCE, Respondent.	▲ COURT USE ONLY ▲ CASE NUMBER: OS 2016-0018
ORDER VACATING HEARING AND NOTICE TO SET	

This matter comes before the Administrative Law Judge on the Motion for Continuance and Request for Scheduling and Status Conference, filed by the Respondent on October 13, 2016. The motion seeks a continuance of the hearing on the merits that was originally scheduled in this matter for October 17, 2016 and is unopposed by Complainant. Based on a review of the motion and the case file in the above-referenced matter, and pursuant to Colorado Constitution Art. XXVIII, sec. 9(2)(a), it is ordered that:

1. The hearing scheduled in this matter for October 17, 2016 is vacated.

2. There will be a telephonic setting conference on October 28, 2016 at 10:15 a.m., for the purpose of selecting a new date for the hearing on the merits in this matter and scheduling a case management conference. Parties should notify the Office of Administrative Courts (telephone: 303-866-5626) prior to the date of the setting conference of the telephone number at which they wish to be contacted.

DONE AND SIGNED

October 14, 2016


 MATTHEW E. NORWOOD
 Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this **ORDER VACATING HEARING AND NOTICE TO SET** was served via electronic transmission and U.S. Mail to:

Ryan R. Call, Esq.
Hale Westfall, LLP
1600 Stout Street, Suite 500
Denver, CO 80202
rcall@halewestfall.com

Campaign Integrity Watchdog
P.O. Box 372464
Denver, CO 80237
campaignintegritywatchdog@gmail.com

on this 17 day of October, 2016



Office of Administrative Courts

STATE OF COLORADO
Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Wayne W. Williams
Secretary of State

Suzanne Staiert
Deputy Secretary of State

September 29, 2016

Matthew Azer, Director
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, CO 80203

RECEIVED
16 SEP 29 AM 11:10
OFFICE OF
ADMINISTRATIVE COURTS

Re: In the Matter of Campaign and Political Finance Violations alleged by John K. Andrews Jr. v. Compassion and Choices Action Network

In accordance with Section 9(2)(a) of Article XXVIII of the Colorado Constitution, I am referring the above-referenced complaint to your office for assignment to an administrative law judge. Our office received the original complaint on September 28, 2016.

We expect the parties to direct all future pleadings and correspondence to your office.

Sincerely,

Suzanne Staiert
Deputy Secretary of State

Enclosure

Cc: Respondent
Compassion and Choices Action
Network
4155 E. Jewell Ave., Suite 200
Denver, CO 80222

Complainant's Counsel
Scott E. Gessler
Klenda Gessler & Blue, LLC
1624 Market Street, Suite 202
Denver, CO 80202

Campaign Finance Complaint Cover Sheet

Below Space For Office Use Only

Submit Original to:
Colorado Secretary of State
Campaign Finance
1700 Broadway, Suite 200
Denver, CO 80202

If faxing or emailing, original must follow within 5 calendar days

Phone: 303-894-2200
FAX: 303-869-4861
Email: cpfhelp@sos.state.co.us
Website: www.sos.state.co.us

RECEIVED
16 SEP 29 AM 11:40
OFFICE OF
ADMINISTRATIVE COURTS

RECEIVED

SEP 28 2016 Your complaint must be typed or written separately and attached to this form.

* Denotes Required Field

ELECTIONS
SECRETARY OF STATE
Information about the person filing the complaint (complainant)

* Full Name: John K. Andrews Jr.

* Mailing Address: 7156 S. Verbena Way, Centennial, CO 80112. DIRECT ALL COMMUNICATIONS TO UNDERSIGNED COUNSEL.

* Telephone Number: 720-839-6637 Email Address: sgessler@klendagesslerblue.com

Counsel's Information - If you are represented by counsel, you must provide the following:

Attorney's Name: Scott E. Gessler Telephone Number: (720) 839-6637

Law Firm: Klenda Gessler & Blue, LLC

Mailing Address: 1624 Market Street, Suite 202, Denver, CO 80202

Respondent's Information - Information about the person alleged to have committed the violation:

* Full Name: Compassion and Choices Action Network

* Mailing Address: 4155 E. Jewell Ave., Suite 200, Denver, Colorado 80222

* Telephone Number: (303) 639-1202 Email Address: Unknown

Briefly summarize the allegations made in the attached complaint.

For purposes of Colorado campaign finance law, Proposition 106 became a ballot issue on April 28, 2016. Compassion and Choices Action Network ("CCAN") has a major purpose of supporting Proposition 106, and it has made contributions and expenditures in excess of \$4,500,000 to support Proposition 106. But CCAN has failed to register as an issue committee, and it has failed to file any contribution and expenditure reports. CCAN must register as a committee and report its contributions and expenditures.

By submitting this form, with the attached complaint, I hereby certify that I wish to initiate a lawsuit against the named respondent(s). I am aware of the procedure outlined in section 9(2)(a) of Article XXVIII of the Colorado Constitution, and know that by filing this complaint I will be required to appear at a hearing within 15 days of the referral of the complaint, to prove my claims by a preponderance of the evidence. I understand that the Secretary of State's office will not conduct an investigation or be involved in any way after the complaint is transmitted to the Office of Administrative Courts. If this complaint is found to be frivolous, groundless, or vexatious, I may be required to pay attorney's fees.

* Complainant's Signature: John Andrews

Date: 9.27.16

Counsel's Signature (required if applicable): Scott E. Gessler

Date: 9/28/2016

Print Form

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO
CASE No. OS-2016-_____**

16 SEP 29 AM 11:40
OFFICE OF
ADMINISTRATIVE COURTS

RECEIVED

**IN THE MATTER OF THE COMPLAINT FILED BY JOHN K. ANDREWS, JR.
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE
VIOLATIONS BY COMPASSION AND CHOICES ACTION NETWORK**

Introduction

This campaign finance complaint is brought against Compassion and Choices Action Network ("CCAN") because that organization failed to file as an issue committee, even though it has spent millions to support Proposition 106. CCAN has served as a conduit to hide the true source of over \$4.5 million dollars in contributions. This flood of undisclosed money is over 90% of all contributions made to support Proposition 106, and it dwarfs CCAN's past operating revenues.

Parties and Jurisdiction

1. John K. Andrews, Jr. is a registered Colorado elector. His mailing address is 7156 S. Verbena Way, Centennial, Colorado 80112.
2. Compassion and Choices Action Network ("CCAN") is a nonprofit corporation operating in Colorado. Its main office is located at 4155 E. Jewell Ave., Suite 200, Denver, Colorado 80222.
3. Jurisdiction is proper under Colo. Const. Art. XXVIII, § 9(2).

Factual background

4. Proposition 106 seeks to amend Colorado statute to legalize suicide under certain circumstances. Following a motion for rehearing, the Colorado Title Board fixed the ballot title and submission clause on April 28, 2016.
5. For purposes of Colorado campaign finance law, Proposition 106 became a ballot issue on April 28, 2016 under C.R.S. § 1-45-108(7)(a)(I).
6. "Yes on Colorado End of Life Option" registered as an issue committee under Colorado law on May 6, 2016. On May 13, 2016 it amended its registration, renaming itself "Yes on Colorado End of Life Options" (referred to as the "End of Life Committee" or the "Committee"). It again amended its registration on June 1, 2016.

7. The End of Life Committee received its first contribution from CCAN on May 6, 2016, in the amount of \$500,000. For its first contribution report on May 16, 2016, the End of Life Committee reported receiving a total of \$500,000 in monetary contributions, all of which came from CCAN. It also received \$12,455 in non-monetary contributions, of which \$11,955 came from Choices and Compassion (an organization connected with CCAN) and another \$500 from CCAN.

8. During its existence, the End of Life Committee has raised \$4,946,038, of which \$4,500,500 has come from CCAN, as follows:

Date	Monetary Contribution	Non-Monetary Contribution
May 6, 2016	\$500,000	
May 9, 2016		\$500
June 7, 2016	\$3,750,000	
September 8, 2016	\$250,000	

9. In addition, Compassion and Choices has contributed approximately \$178,878 in non-monetary contributions, as follows:

Date	Non-Monetary Contribution
May 6, 2016	\$50
May 6, 2016	\$49
May 11, 2016	\$11,856
June 3, 2016	\$17,932
June 6, 2016	\$315
September 14, 2016	\$129,288
September 14, 2016	\$3,242
September 14, 2016	\$11,785
September 14, 2016	\$315
September 14, 2016	\$514
September 14, 2016	\$1,105
September 14, 2016	\$2,219
September 14, 2016	\$85
September 14, 2016	\$64
September 14, 2016	\$59

10. These numbers are likely incorrect, because the End of Life Committee's contribution and expenditure reports contain numerous errors involving non-monetary

contributions and expenditures made by CCAN and Compassion and Choices. For example, the Committee's reports show:

- CCAN made \$815 in non-monetary expenditures on behalf of the End of Life Committee, but the Committee failed to report those as non-monetary contributions;
- Compassion and Choices -- and several for-profit companies -- made \$14,382 in non-monetary expenditures on behalf of the End of Life Committee, which failed to report corresponding non-monetary contributions;
- Compassion and Choices made \$11,856 in non-monetary contributions for "professional services" on May 11, and another non-monetary contribution of \$17,932 for employee services on June 3, 2016. But the End of Life Committee reported no non-monetary employee service contributions for most of June, all of July, and all of August, followed by a \$129,288 non-monetary contribution on September 14, 2016. Upon information and belief, the End of Life Committee did not lay off or fire all employees for the months of June, July, and August, and then suddenly increase its labor costs in September; and
- The End of Life Committee reported \$14,697 in non-monetary contributions that have no corresponding non-monetary expenses.

11. Although the End of Life Committee's total monetary and non-monetary contributions may be incorrect, reported numbers show that CCAN contributed approximately 91% of all contributions to the End of Life Committee. Any errors in the Committee's reporting does not materially alter this large percentage of contributions.

12. Although the End of Life Committee's total monetary and non-monetary contributions may be incorrect, reported numbers show that Compassion and Choices contributed approximately 4% of all contributions to the End of Life Committee. Any errors in the Committee's reporting does not materially alter this percentage of contributions.

13. Overall, the issue committee donors' true identities were hidden for 95% all contributions to the End of Life Committee, because neither CCAN nor Compassion and Choices publicly disclose their donors.

14. Based on reported revenue and expense numbers, CCAN's \$4,500,500 contribution represents the overwhelming amount of its expenses for 2016. CCAN's federal tax returns show the following revenue numbers for each fiscal year (from July 1st until June 30th of each year) as follows:

Year	Revenue	Expenses
2009-2010	\$385,365	\$420,666
2010-2011	\$295,884	\$238,734
2011-2012	\$305,659	\$104,673
2012-2013	\$808,413	\$834,232
2013-2014	\$323,390	\$118,593
2014-2015	\$3,019,976	\$370,964
Average	\$876,979	\$347,979
High	\$3,019,976	\$370,964

15. In addition to providing the vast majority of funding for the End of Life Committee, CCAN is closely connected Committee in the additional following ways.

- The two organizations share the same address at 4155 E. Jewell Ave., Suite 200, Denver, Colorado 80222;
- The two organizations share the same office space;
- CCAN frequently publicizes and endorses the Committee's activities on the web site CCAN shares with Compassion and Choices; and
- Both organizations share the same policy objectives.

16. CCAN is also closely connected to Compassion and Choices:

- Both organizations list www.compassionandchoices.org as their web site;
- The two organizations share the same address;
- The two organizations share office space;
- The two organization list one another as "affiliated organizations" on their IRS tax returns;
- "Compassion and Choices Magazine" publishes information about both Compassion and Choices and CCAN. Upon information and belief, the magazine publicizes CCAN's activities with CCAN's consent;
- The Compassion and Choices Action Network donation page appears on the Compassion and Choices web site; and

- The two organizations identify one another as affiliated organizations in their tax returns.

17. In the Summer, 2016, edition of "Compassion and Choices Magazine," CCAN publicly stated that it is "Advancing" a "Ballot Initiative" in Colorado.

18. On the CCAN donation page, located on the Compassion and Choices website, CCAN has solicited contributions specifically to "conduct ballot campaigns."

19. Colorado's Proposition 106 is the only ballot initiative in any state in 2016.

20. Colorado's Proposition 106 is the only ballot initiative that CCAN is advocating for in 2016.

21. CCAN is a highly sophisticated organization that has spent over \$4.5 million dollars to support Proposition 106.

22. CCAN is capable of spending substantial sums to hire legal and accounting help in order to comply with Colorado's campaign finance laws. For example, the End of Life Committee has spent nearly \$27,000 in legal fees alone.

23. CCAN's refusal to register and file as an issue committee is a flagrant and willful violation of Colorado's campaign finance laws.

FIRST Claim for Relief
(Failure to File as an Issue Committee
Colo. Const. Art. XVIII §2(10) and C.R.S. § 1-45-108(3.3))

24. The complainant incorporates all previous allegations.

25. On April 28, 2016, the effort to pass a ballot initiative legalizing medical suicide became a ballot issue for campaign finance purposes under C.R.S. § 1-45-108(7)(a)(I).

26. Under Colo. Const. Art. XXVIII § 2(10)(a) an issue committee is formed when any "group of two or more persons ... has a major purpose of supporting or opposing a ballot issue or question" or "has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question."

27. CCAN has a major purpose of supporting Proposition 106.

28. CCAN has made contributions or expenditures in excess of two hundred dollars to support Proposition 106.

29. CCAN become an issue committee no later than May 6, 2016, when it contributed \$500,000 to the End of Life Committee.

30. CCAN was required under C.R.S. § 1-45-108(1)(a)(I) to register as an issue committee with the Colorado Secretary of State.

31. Under C.R.S. § 1-45-108(3.3) CCAN was required to register as an issue committee within 10 days of receiving a contribution or making an expenditure to support Proposition 106.

32. Under C.R.S. § 1-45-108(3.3) the deadline for registration was no later than May 16, 2016.

33. CCAN failed to register as an issue committee.

**Second Claim for Relief
(Failure to File Issue Committee Reports
Colo. Const. Art. XVIII §2(10) and C.R.S. § 1-45-108(1)(a)(I))**

34. The Complainant incorporates all previous allegations.

35. As an issue committee, CCAN was required to file contributions and expenditure reports on:

- May 16, 2016;
- May 31, 2016;
- June 13, 2016;
- June 27, 2016;
- August 1, 2016;
- September 6, 2016; and
- September 19, 2016.

36. CCAN failed to file any issue committee reports.

37. By failing to file any reports, CCAN is liable for a fine of \$50 per day for each day a report is late.

38. As of this *Complaint* filed on September 28, 2016, CCAN must pay the following fines:

Report Due	Report Due Date	Days Late	Daily Fine	Total Fine
Committee Registration	16 May 2016	135	\$50	\$6,750
Contribution & Expenditure	16 May 2016	135	\$50	\$6,750
Contribution & Expenditure	31 May 2016	120	\$50	\$6,000
Contribution & Expenditure	13 June 2016	107	\$50	\$5,350
Contribution & Expenditure	27 June 2016	93	\$50	\$4,650
Contribution & Expenditure	1 Aug 2016	58	\$50	\$2,900
Contribution & Expenditure	6 Sep 2016	22	\$50	\$1,100
Contribution & Expenditure	19 Sep 2016	9	\$50	\$450
	Total	679	\$400	\$33,950

Prayer for Relief

39. The Complainant requests that the Court order the Proponents to register as an issue committee and complete all other necessary filings.

40. The Complainant requests that the Court order CCAN to pay a fine of \$50 per day for failure to register as an issue committee, and \$50 per day for each day a report has not been filed.

41. The total fine is \$33,950 and will continue to accrue at \$400 per day.

42. The Complainant requests all other relief as just and proper.

Respectfully submitted this 28th day of September, 2016.

KLENDAGESSLER & BLUE, LLC

By: s/ Scott E. Gessler 

Scott E. Gessler

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Counsel for John K. Andrews, Jr.

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4 th Floor Denver, Colorado 80203		
Campaign Integrity Watchdog (CIW) <hr/>		
VS. Alliance for a Safe and Independent Woodmen Hills (ASIWH) <hr/>		
		▲ COURT USE ONLY ▲
Attorney or Party Without Attorney Name and Address: First Name <u>Matt</u> Last Name <u>Arnold</u> MI: <u> </u> Suffix <u> </u> Company <u>Campaign Integrity Watchdog</u> Address <u>P.O. Box 372464</u> City <u>Denver</u> State <u>CO</u> Zip <u>80237</u> Phone #: <u>303-995-5533</u> Email: <u>campaignintegritywatchdog@gmail.com</u> Fax #: <u> </u> Atty Reg <u> </u>		CASE NUMBER: <u>OS2015-0014</u>
SUBPOENA TO PRODUCE		

To: Custodian of Records, American National Bank, 15 W Cimarron Street, Colorado Springs, CO 80903

You are ordered to:

Attend and give testimony at a deposition, hearing at the Office of Administrative Courts at _____ (address) on _____ (date) at _____ (time), as a witness for _____ (name of party) in this action. If for a deposition, the means of recording will be by shorthand reporter, video, audio.

OR

Attend, Produce, and give testimony at a deposition, hearing at the Office of Administrative Courts, at _____ (address), on _____ (date) at _____ (time), as a witness for _____ (name of party) in this action; If for a deposition, the means of recording will be by shorthand reporter, video, audio; and **PRODUCE** the following books, papers and documents, whether in physical or electronic form, or tangible things now in your possession, custody or control:

Date and time of production: _____

Unless otherwise agreed to in writing by all parties and privilege holder or holders and the person subpoenaed, production must be made no sooner than 14 days from the date of service of this subpoena and no later than _____ (date and time).

OR

<input checked="" type="checkbox"/> Produce the following books, papers and documents, whether in physical or electronic form, or tangible things now in your possession, custody or control (attach a separate sheet if necessary):	
1. All financial records of the Alliance for a Safe and Independent Woodmen Hills (ASIWH) organization, including any records of payments made by any party on behalf of the organization for any purpose, during the period 9 August 2014 through 1 May 2015, inclusive; including, but not limited to:	
<ul style="list-style-type: none">• Monthly bank statements for any/all accounts from which payments were made• Images of checks written from each account for the requested period;• Images of deposit slips and attached items deposited for each account.	
2. All financial records of Sarah Brittain Jack and/or Sarah Jack & Associates, during the period between 9 August 2014 through 1 May 2015, inclusive; including but not limited to:	
<ul style="list-style-type: none">• Monthly bank statements for any/all accounts from which payments were made• Images of checks written from each account for the requested period;• Images of deposit slips and attached items deposited for each account.	
Place of production:	Date and time of production: Unless otherwise agreed to in writing by all parties and privilege holder or holders and the person subpoenaed, production must be made no sooner than 14 days from the date of service of this subpoena and no later than
Via E-mail to: campaignintegritywatchdog@gmail.com	_____
Copy by mail to: Campaign Integrity Watchdog P.O. Box 372464 Denver, CO 80237	(date and time)

Notice form:

If this subpoena is served for production of records or a tangible thing, see the attached important notice which sets out portions of Colorado Rule of Civil Procedure 45 concerning protections for subpoenaed persons and the requirements for production of records and tangible things.

Identity of parties:

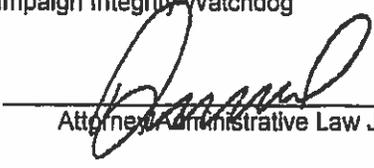
The following are the names of the parties in this action and the names, addresses, phone numbers and e-mail addresses of the attorneys for the parties and of any parties who have entered appearances without an attorney:

Name:	Address	Phone number:	Email Address
Campaign Integrity Watchdog (CIW)	P.O. Box 372464 Denver, CO 80237	303-995-5533	campaignintegritywatchdog@gmail.com
Alliance for a Safe and Independent Woodmen Hills (ASIWH)	407 S. Tejon Str. Suite C Colorado Springs, CO 80903	719-599-7309	rgardner@rsglaw.net
Robert Gardner (Atty for ASIWH)	407 S. Tejon Str. Suite C Colorado Springs, CO 80903	719-599-7309	rgardner@rsglaw.net

The party and the party's attorney who are serving this subpoena:

Campaign Integrity Watchdog, Matt Arnold *pro se* for Campaign Integrity Watchdog

Dated: 11-5-15



Attorney, Administrative Law Judge

AFFIDAVIT OF SERVICE

I declare under oath that, I am 18 years or older and not a party to the action and that I served the attached Subpoena on _____ (Person named in this Subpoena or name of agent served) in _____ (County) _____ (State) on _____ (date) at the following location:

Check one:

- By handing it to a person identified to me as _____ or by leaving it with the named person who refused service.
- I attempted to serve the person named in this subpoena on _____ occasions but have not been able to locate the named person.

Check one:

- Private process server
- Sheriff, _____ County

Fee \$ _____ Mileage \$ _____

Signature of Process Server

Name (Print or type)

My Commission Expires: _____

Notary Public /Deputy Clerk Date

WAIVER OF SERVICE

I hereby waive Personal Service and accept service of this subpoena by mail/fax. _____

Signature

Date

Phone Day: _____

Phone Evening: _____

NOTICE TO SUBPOENA RECIPIENTS
(when production of records or tangible things is sought)

Protecting a Person Subject to a Subpoena. (required by Colorado Rule of Civil Procedure 45(c))

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing Administrative Law Judge ("ALJ") must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

(2) Command to Produce Records or Tangible Things.

(A) Attendance Not Required. A person commanded to produce records or tangible things need not attend in person at the place of production unless also commanded to attend for a deposition, hearing, or trial.

(B) For Production of Privileged Records.

(i) If a subpoena commands production of records from a person who provides services subject to one of the privileges established by C.R.S. § 13-90-107, or from the records custodian for that person, which records pertain to services performed by or at the direction of that person ("privileged records"), such a subpoena must be accompanied by an authorization signed by the privilege holder or holders or by an ALJ order authorizing production of such records.

(ii) Prior to the entry of an order for a subpoena to obtain the privileged records, the ALJ shall consider the rights of the privilege holder in such privileged records, including an appropriate means of notice to the privilege holder or holders or whether any objection to production may be resolved by redaction.

(ii) If a subpoena for privileged records does not include a signed authorization or ALJ order permitting the privileged records to be produced by means of subpoena, the subpoenaed person shall not appear to testify and shall not disclose any of the privileged records to the party who issued the subpoena.

(C) Objections. Any party or the person subpoenaed to produce records or tangible things may submit to the party issuing the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials. The objection must be submitted before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, the party issuing the subpoena shall promptly serve a copy of the objection on all other parties. If an objection is made, the party issuing the subpoena is not entitled to inspect, copy test or sample the materials except pursuant to an order of the ALJ whom subpoena was issued. If an objection is made, at any time on notice to the subpoenaed person and the other parties, the party issuing the subpoena may move the issuing ALJ for an order compelling production.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On motion made promptly and in any event at or before the time specified in the subpoena for compliance, the issuing ALJ must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to attend a deposition in any county other than where the person resides or is employed or transacts his business in person or at such other convenient place as is fixed by an order of ALJ;

- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing ALJ may, on motion made promptly and in any event at or before the time specified in the subpoena for compliance, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific matters in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order attendance or production under specified conditions if the issuing party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

Duties in Responding to Subpoena. (required by Colorado Rule of Civil Procedure 45(d))

(1) Producing Records or Tangible Things.

(A) Unless agreed in writing by all parties, the privilege holder or holders and the person subpoenaed, production shall not be made until at least 14 days after service of the subpoena, except that, in the case of an expedited hearing pursuant to these rules or any statute, in the absence of such agreement, production shall be made only at the place, date and time for compliance set forth in the subpoena; and

(B) If not objected to, a person responding to a subpoena to produce records or tangible things must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand and must permit inspection, copying, testing, or sampling of the materials.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* Unless the subpoena is subject to subsection (c)(2)(B) of this Rule relating to production of privileged records, a person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) make the claim expressly; and

(ii) describe the nature of the withheld records or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

<p>STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS</p> <p>1525 Sherman Street, 4th Floor Denver, Colorado 80203</p>	
<p>IN THE MATTER OF THE COMPLAINT FILED BY CAMPAIGN INTEGRITY WATCHDOG REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY THE 'ALLIANCE FOR A SAFE AND INDEPENDENT WOODMEN HILLS' (ASIWH) POLITICAL COMMITTEE</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for the Respondent:</p> <p>Ryan R. Call #37207 Allan Hale #14885 Richard A. Westfall #15295 Peter J. Krumholz #27741</p> <p>HALE WESTFALL, LLP 1600 Stout Street, Suite 500 Denver, Colorado 80202</p>	<p>Case Number: OS2015-0014</p>
<p>Phone Number: 720-904-6010 FAX Number: 720-904-6020 E-mail: rcall@halewestfall.com ahale@halewestfall.com rwestfall@halewestfall.com pkrumholz@halewestfall.com</p>	
<p style="text-align: center;">MOTION TO QUASH SUBPOENAS</p>	

Certificate of Compliance

Undersigned counsel certifies under Colo. R. Civ. P. 121 that he did confer with Matt Arnold, *pro se* Complainant on behalf of his wholly owned limited liability company and alter ego "Campaign Integrity Watchdog," before filing this motion. Undersigned counsel has been informed that the Complainant is opposed to the relief requested.

Objections Properly Filed

On November 13, 2015, undersigned counsel informed Arnold in writing of the Respondent's objections to these subpoenas in accordance with Rule 45(c)(2)(C) of the Colorado Rules of Civil Procedure. Undersigned counsel objected to the three subpoenas on the grounds that they "are not timely, appropriate, or proper while a motion to dismiss is pending; they impose an unnecessary and undue burden on the respondents; they request documents, materials, evidence and testimony that will not lead to the discovery of information relevant to a legitimate campaign finance complaint; and they do not comport with the applicable rules of civil procedure."

In addition, Arnold was respectfully reminded that, "[d]espite having received clear instruction regarding Judge Spencer's position that further discovery was not appropriate when a motion to dismiss is pending, together with his clear direction that he would not make any rulings on any additional subpoenas, discovery requests, or subsequent motions to compel in connection with this matter until after the motion to dismiss has been ruled upon in late December or early January, [Arnold] nevertheless caused Campaign Integrity Watchdog's (CIW's) subpoenas to be served upon ANB Bank, UNB Bank, and Wells Fargo Bank on Friday, November 6, 2015 - the very same afternoon of the status conference" In response to these objections, Arnold would not agree to withdraw these subpoenas, nor did he offer to modify or specify conditions as an alternative, nor agree to postpone these or any further discovery requests until after a Motion to Dismiss is considered by this Court.

In addition to the opposition to this Motion to Quash Subpoenas already expressed in a decidedly less than professional manner, the Complainant will also no doubt take exception to

the fact that undersigned counsel has not entered an appearance on behalf of the banks named in the three subpoenas that are the subject of this Motion, and may improperly attempt to assert that neither the Respondent nor undersigned counsel has standing or grounds to object to these three subpoenas served upon third parties. Nevertheless, Rule 45(c)(2)(C) of the Colorado Rules of Civil Procedure explicitly provides, in relevant part, that “Any party or the person subpoenaed to produce records or tangible things may submit to the party issuing the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials.” Colo. R. Civ. P. 45(c)(2)(C) (*emphasis added*). The rules of procedure applicable in this case also provide that “[i]f an objection is made, the party issuing the subpoena is not entitled to inspect, copy, test or sample the materials except pursuant to an order of the court from which the subpoena was issued.” Colo. R. Civ. P. 45(c)(2)(C) (*emphasis added*). Thus, absent an order from this Court compelling discovery and the production of documents, none of the three banks subpoenaed are under any obligation to respond or comply with the Complainant’s demands.

Motion to Quash Subpoenas

Pursuant to Colo. R. Civ. P. 45(c)(3), Alliance for a Safe and Independent Woodmen Hills, a Colorado nonprofit corporation (“ASIWH” or the “Respondent”), by and through its undersigned counsel, hereby moves to quash three subpoenas for the production of documents served by Matt Arnold and Campaign Integrity Watchdog (“CIW”), his wholly owned limited liability company and alter ego, upon the following entities in connection with the above-captioned matter:

Custodian of Records, American National Bank
15 W Cimarron Street, Colorado Springs, CO 80903

Custodian of Records, UMB Bank
101 N. Cascade Avenue, Colorado Springs, CO 80903

Custodian of Records, Wells Fargo Bank
90 S. Cascade Avenue, Colorado Springs, CO 80903

Further, the Respondent respectfully requests that the Court modify or update its Case Management Order to provide clear and unambiguous guidelines for the Complainant and all parties regarding the time, manner, and scope of discovery that would be appropriate in this case to begin only after a Motion to Dismiss has been considered and ruled upon.

In support of this Motion to Quash Subpoenas, the Respondent states as follows:

This matter involves a campaign finance complaint by CIW against Alliance for a Safe and Independent Woodmen Hills, a Colorado nonprofit corporation, that has been adjudged to be and/or having sponsored a political committee that is required to be registered with the Colorado Secretary of State. In connection with this campaign finance complaint, the Complainant has filed three virtually identical subpoenas on three banks with branches in Colorado Springs demanding the production of:

1. All financial records of the Alliance for a Safe and Independent Woodmen Hills (ASIWH) organization including any records of payments made by any party on behalf of the organization for any purpose during the period 9 August 2014 through 1 May 2015, inclusive; including but not limited to:
 - Monthly bank statements for any/all accounts from which payments were made
 - Images of checks written from each account for the requested period;
 - Images of deposit slips and attached items deposited for each account.

2. All financial records of Sarah Brittain Jack and/or Sarah Jack & Associates, during the period between 9 August 2014 through 1 May 2015, inclusive; including but not limited to:
 - Monthly bank statements for any/all accounts from which payments were made
 - Images of checks written from each account for the requested period;
 - Images of deposit slips and attached items deposited for each account.

The financial records requested from these banks purport to be an attempt to provide a basis to sustain the Complainant's allegations that the Respondent failed to properly report certain contributions and/or donations and failed to report certain expenditures and other disbursements, including payments for attorney fees, court-ordered fines, penalties, and costs alleged in the CIW Complaint relating "at least" to combined cases OS 2014-006, -0009, and -0011, the related appellate proceeding 14CA1624 before the Colorado Court of Appeals, and legal matters involving the recovery of legal fees and costs in connection with an civil action for defamation involving ASIWH. While the campaign finance claims in the CIW Complaint are without merit and based on a flawed reading and application of Colorado campaign finance law, CIW already has or can readily obtain what it needs from the Respondent if Arnold chooses to pursue these claims before the Court. These subpoenas are not designed not to gather discoverable information related to actual or legitimate claims, but rather are simply a fishing expedition intended to harass and annoy the Respondent and other third parties, and to attempt to obtain other and unrelated information via the discovery and campaign finance complaint process that is beyond the scope and claims of this Complaint to be used by Arnold, CIW and/or other persons associated with them for an improper purpose or purposes.

I. The Subpoenas Are Undue and Unnecessary, therefore Quashing the Subpoena is Required Pursuant to Colo. R. Civ. P. Rule 45 (c)(A)

The Colorado Rules of Civil Procedure applicable in this case require that a party “responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Colo. R. Civ. P. 45(c)(1). The imposition of an undue burden likewise furnishes grounds for quashing the subpoena. A subpoena for the production of documents must be quashed or modified if such a demand “subjects a person to undue burden.” Colo. R. Civ. P. 45(c)(A)(iv). Here, the subpoenas of bank records—particularly those of Sarah Brittain Jack and Sarah B. Jack & Associates, LLC, who are not parties to the Complaint—are undue and unnecessary. The Complainant already has certain information regarding court fees and information regarding court costs, and information regarding certain attorney fees in connection with the defamation action involving ASIWH that provide the misguided basis for this Complaint, and the Complainant can readily obtain what it needs from the Respondent in the form of admissions, stipulations, or relevant financial records if the Court deems the legal basis for the Complaint to be legitimate or merit additional and relevant discovery.

As the Complaint deals with the alleged conduct, alleged contributions and alleged disbursements and expenditures of ASIWH, the Complainant does not provide any explanation, basis or legal foundation for why the financial records of Sarah Brittain Jack and Sarah B. Jack & Associates, LLC are related, necessary or relevant to the claims at issue in the Complaint.

It is unnecessary and burdensome for the Complainant to require these banks to incur costs and staff time to obtain, compile, and copy potentially voluminous records and individual copies of every check, and every attachment for every deposit covering a period of nearly ten

months, when the Respondent has the relevant information and records, or can attest to the value and amounts of the same via affidavit or stipulation, if deemed relevant for the purposes of the actual allegations and legal arguments set forth in the Complaint.

II. The Subpoenas are Overly Broad, Unreasonable, and Request Information and Documents that Lack Relevance to Legitimate Campaign Finance Complaint Claims

The subpoenas are particularly untenable given the status of each of the banks as third parties to the CIW campaign finance Complaint, and are stunningly ambitious in their overbreadth. The subpoenas are overbroad and unreasonable, as they purport to demand financial records covering a span of nearly ten months, including bank statements, financial records, copies of all individual checks and all individual deposit attachments and records of not only the Respondent nonprofit corporation, but also the same financial records of a private individual and a separate limited liability company, namely Sarah Brittain Jack and Sarah B. Jack & Associates, LLC, who are not even parties to the Complaint. *See Premier Election Solutions, Inc. v. Systest Labs Inc.*, No.09-cv-01822-WDM-KMT, 2009 WL 3075597, at *5 (D. Colo. Sept. 22, 2009) (holding that “[t]o the extent a subpoena sweepingly pursues material with little apparent or likely relevance to the subject matter it runs the greater risk of being found overbroad and unreasonable,” adding that subpoena recipient’s position as a third party “entitle[d] [it] to consideration regarding expense and inconvenience”); *see also People ex rel. MacFarlane v. Am. Banco Corp.*, 570 P.2d 825, 830 (Colo. 1977) (stating that subpoena’s language must “exhibit such particularity of description that the person subpoenaed be able to know what he is being asked to produce and that there be such particularity of breadth that good faith compliance would not be unduly burdensome.”).

A party is entitled to discovery that is “reasonably likely to lead to the discovery of admissible evidence” and thus “relevant” to the claims and defenses at issue. See Colo. R. Civ. P. 26(b)(1). See also *Bonanno v. Quizno's Franchise Co., LLC*, 255 F.R.D. 550, 553 (D. Colo. 2009) (“[W]hen a request for discovery is overly broad on its face or when relevancy is not readily apparent, the party seeking the discovery has the burden to show the relevancy of the request.”); see also *Berwick v. Hartford Fire Ins. Co.*, No. 11-CV-01384-MEH-KMT, 2012 WL 573939, at *4 (D. Colo. Feb. 21, 2012) (finding that subpoena request was “not limited . . . to the matters alleged in this action” and denying motion to compel discovery in connection with it).

Here, these three subpoenas are not limited in time, subject, or scope to the claims, allegations, or specific transactions identified and set forth in the CIW Complaint. In addition, the substantive defects in the subpoenas derive directly from the flawed nature of the legal claims that provide the basis for the underlying Complaint. Therefore, these subpoenas should be quashed pursuant to Colo. R. Civ. P. 45(c)(1) and Colo. R. Civ. P. 45(d)(3)(A), and the Complainant should be required to first demonstrate to the satisfaction of the Court the factual or legal basis for why the financial records and documents requested—or any other similar request for the production of documents, evidence, or testimony from the Respondent or from any other third party—would be highly relevant to the allegations and claims actually asserted in the Complaint, and how such relevant documents, evidence or testimony cannot be readily obtained either from the Respondent or from other publicly available sources prior to permitting the issuance or re-issuance of any further subpoenas and requests for discovery against third parties in connection with this matter.

III. The Subpoena Requests Documents Protected by the First Amendment Privilege

The subpoena also should be quashed in that it inevitably seeks the production of information protected from discovery by the First Amendment privilege. Numerous federal courts, including the Tenth Circuit, have recognized an evidentiary privilege that operates to forestall compelled discovery into confidential associational information. The privilege may be invoked “even if all of the litigants are private entities.” See *Grandbouche v. Clancy*, 825 F.2d 1463, 1466 (10th Cir. 1987); see also *Perry v. Schwarzenegger*, 591 F.3d 1126, 1135 (9th Cir. 2009) (“Compelled disclosures concerning protected First Amendment political associations have a profound chilling effect on the exercise of political rights.”).

Establishing the relevance of the requested information is insufficient to overcome the First Amendment privilege;¹ the requesting party also bears the burden of demonstrating the necessity of the information sought and the inability to obtain it from other sources. See *Grandbouche*, 825 F.2d at 1466; see also *Johnson v. Sch. Dist. No. 1 in Cnty. of Denver & State of Colorado*, No. 12-CV-02950-MSK-MEH, 2014 WL 717003, at *8 (D. Colo. Feb. 25, 2014) (quashing subpoena, reasoning that “although Plaintiff demonstrates that the information she seeks from [third party] is relevant to a central issue in her case, she fails to demonstrate that she cannot obtain the information from other available sources”).

Here, the Complainant has failed to demonstrate that it cannot obtain the information it seeks from other available sources. In addition, the subpoenas apparently seek information regarding persons previously associated with the nonprofit corporation relating to the

¹ Certain courts have imposed a more stringent threshold showing and requiring the requesting party first establish that the subpoenaed materials are “highly relevant” to the litigation. See *Perry*, 591 F.3d at 1141.

organization's legal defense, internal operations, fundraising, the identity of supporters, and other related matters. Such information is squarely within the protections of the First Amendment privilege. *See Perry*, 591 F.3d at 1159; *see also Independence Institute v. Gessler*, No. 10-cv-00609-PAB-MEH, 2011 WL 809781, at *2 (D. Colo. Mar. 2, 2011) (holding that "the associational privilege applies to Plaintiff Institute's internal associational activities, including budgetary information, sources of financing, the identities of its contributors and the corresponding amounts contributed.").

WHEREFORE, and for all of the reasons stated above, the Respondent respectfully requests that the three subpoenas served by CIW be quashed pursuant to C.R.C.P. 45(c)(3).

Dated this 16th day of November, 2015.

HALE WESTFALL, LLP

By: /s/ Ryan R. Call
Ryan R. Call, #37207

CERTIFICATE OF SERVICE

I certify that on this 16th day of November, 2015, I electronically filed a true and correct copy of the foregoing MOTION TO QUASH SUBPOENAS with the clerk of Court via the CaseConnect system and served via email upon the following:

Office of Administrative Courts
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Denver, CO 80203

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/s/ Ryan R. Call
Ryan R. Call

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4 th Floor, Denver, Colorado 80203	▲ COURT USE ONLY ▲
IN THE MATTER OF THE COMPLAINT FILED BY CAMPAIGN INTEGRITY WATCHDOG REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY COLORADANS FOR A BETTER FUTURE	
CASE NUMBER: OS 2014-0004	
ORDER AWARDING ATTORNEY FEES	

This order follows the ALJ's Final Agency Decision, dated February 25, 2015, dismissing a complaint by Campaign Integrity Watchdog (CIW) that Coloradans for a Better Future (CFBF) failed to report a contribution received and spending made to pay court-ordered costs awarded to CIW's principal officer, Matthew Arnold. In response to CFBF's request for an award of attorney fees, the ALJ held an evidentiary hearing on April 17 and May 19, 2015. The ALJ now awards CFBF \$3,100 in attorney fees.

Discussion

The Standard for an Award of Attorney Fees

The Fair Campaign Practice Act (FCPA) provides that a party in an action brought to enforce the fair campaign practice laws shall be entitled to recover the party's reasonable attorney fees and costs if a claim or defense lacked substantial justification, was interposed for delay or harassment, or if a party or attorney unnecessarily expanded the proceeding by improper conduct. Specifically, FCPA § 1-45-111.5(2) reads:

A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article shall be entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the office of administrative courts that the action, or any party thereof, lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to,

abuses of discovery procedures available under the Colorado rules of civil procedure. Notwithstanding any other provision of this subsection (2), no attorney fees may be awarded under this subsection (2) unless the court or administrative law judge, as applicable, has first considered the provisions of section 13-17-102(5) and (6), C.R.S. For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

In interpreting similar language found in § 13-17-102(4), C.R.S., courts have said that a claim or defense is frivolous if the proponent can present no rational argument based on the evidence or the law to support it. *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984); *Brown v. Silvern*, 141 P.3d 871, 875 (Colo. App. 2005), *cert. denied*. Similarly, a claim or defense is groundless if the proponent's allegations, while sufficient to survive a motion to dismiss for failure to state a claim, are not supported by any credible evidence at trial. *Id.* A vexatious claim or defense is one brought or maintained in bad faith. *Id.* To prevail on a claim for attorney fees, the claimant has the burden of proving the claim by a preponderance of the evidence. *Remote Switch Systems, Inc. v. Delangis*, 126 P.3d 269, 275 (Colo. App. 2005).

Although FCPA § 1-45-111.5(2) does not specifically adopt the procedure for determining a reasonable fee described in § 13-17-103, that section provides a useful list of factors that may be considered, including (1) the extent of any effort made to determine the validity of any action or claim before the action or claim was asserted; (2) the extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action; (3) the availability of facts to assist a party in determining the validity of a claim or defense; (4) the relative financial positions of the parties involved; (5) whether or not the facts determinative of the validity of a party's claim or defense were reasonably in conflict; (6) the extent to which the party prevailed with respect to the amount and number of claims in controversy; and (7) the existence and terms of any offer of judgment or settlement.

As noted in § 1-45-111.5(2), if the party against whom attorney fees are sought is not represented by an attorney, the ALJ must consider § 13-17-102(6), which reads in pertinent part:¹

(6) No party who is appearing without an attorney shall be assessed attorney fees unless the court finds that the party clearly knew or reasonably should have known that his action or defense, or any part thereof, was substantially frivolous, substantially groundless, or substantially vexatious.

CIW's Claims Were Substantially Groundless

In its complaint, CIW alleged that CFBF violated the FCPA in two ways. In its First Claim for Relief, it alleged that CFBF failed to report the contribution it received to pay \$200.20 in costs imposed by the Denver District Court. In its Second Claim for

¹ Section 13-17-102(5), which must also be considered, is not relevant to the facts of this case.

Relief, CIW alleged that CFBF failed to report the money spent to pay those costs. Neither claim was substantially justified by the facts.

As found in the ALJ's Final Agency Decision, CFBF's last campaign finance report was not due to be filed until May 5, 2014, and thus was subject to amendment until that date. On January 22, 2014, CFBF notified the Secretary of State that it wished to amend its report to disclose the \$200.20 it used to pay the court-ordered costs. Unfortunately, due to no fault of CFBF, the Secretary of State's reporting system was unable to immediately accept that amendment. When the problem was fixed, the Secretary of State formally accepted the amendment and it became public record available from the Secretary's TRACER reporting system.

When CIW filed its complaint on March 3, 2014, CFBF's amendment to its May 5th report was not yet available as a public record; therefore, CIW was not aware of it. However, because CIW filed its complaint two months before the closing date for the May 5th report, it could not be assured that CFBF would not file an amended report. CFBF did, in fact, file an amended report which became a public record on March 6th, three days after CIW filed its complaint. At that point, CIW's complaint was substantially groundless.

Specifically, CIW's First Claim for Relief was substantially groundless because CFBF reported everything the law required. As noted in the ALJ's Order Denying Motion to Reconsider Summary Judgment, FCPA § 1-45-108.5(1)(a) required that CFBF report its contributions and the name and address of each person contributing \$20 or more. CFBF clearly satisfied this obligation because it reported the \$200.20 contribution it received, identified Colorado Justice Alliance (CJA) as the contributor, and provided CJA's address.²

The Second Claim for Relief was also substantially groundless because CFBF reported that the \$200.20 it received from CJA was used to pay "state fines and penalty" ordered by the Denver District Court. CIW argues that this statement constituted a violation of the FCPA because CFBF did not accurately report that the expenditure was paid to Mr. Arnold, rather than to the district court. This is not a meaningful distinction. The fact that CFBF reported the \$200.20 expenditure as one made to the Denver District Court rather than to Mr. Arnold is inconsequential given that it was made in response to the district court's order to pay Mr. Arnold's costs.

The lack of substance in CIW's complaint is underscored by the fact that the payment at issue occurred a year-and-a-half after the election in which CFBF was involved, and therefore clearly had no bearing whatever on that election. The purpose of the FCPA is to limit the "disproportionate level of influence over the political process" that wealthy contributors and special interest groups wield. Section 1-45-102, C.R.S. Mr. Arnold's complaint is clearly not a good faith effort to further the legitimate purposes of the FCPA, but is nothing more than a game of "Gotcha."

As required by the FCPA, the ALJ takes into consideration that CIW's representative and alter ego, Matthew Arnold, is not an attorney. When an award of fees is sought against a non-attorney, the ALJ will grant that award only if the non-

² Motion for Summary Judgment, Ex. F, Sched. A.

attorney "clearly knew or reasonably should have known" that his claim was substantially frivolous, substantially groundless, or substantially vexatious. Sections 1-45-111.5(2) and 13-17-102(6), C.R.S. This requirement is met by Mr. Arnold's admission that prior to serving a subpoena duces tecum on CFBF on March 7, 2014, he reviewed the "publicly disclosed reports on TRACER" and thus should have been aware that CFBF filed an amendment to the May 5th report on March 6th.³ Moreover, on March 11, 2014, the Secretary of State's staff personally advised Mr. Arnold that CFBF's amendment was publicly available.⁴ Thus, he was personally aware within days of filing his complaint that CFBF had in fact reported the \$200.20 contribution and expense. Moreover, in January 2015, CFBF's attorney sent Mr. Arnold a letter pointing out that his claim lacked a factual basis because the allegedly missing information had been reported.⁵ The evidence thus shows that Mr. Arnold continued to pursue his complaint despite the fact that he knew or reasonably should have known that his claims were substantially groundless.

The ALJ also takes judicial notice of Office of Administrative Court's records which show that as of February 5, 2015, the date that CFBF filed its motion for summary judgment, Mr. Arnold personally or on behalf of CIW had filed no fewer than 35 fair campaign practice act complaints.⁶ Therefore, Mr. Arnold has far more experience in litigating these types of cases than most Colorado attorneys. Given that level of experience, it is reasonable to expect that he knows the requirements of the FCPA including the consequences for filing a groundless complaint.

The ALJ concludes that an award of fees in favor of CFBF is appropriate because the underlying facts are not in reasonable dispute, and CFBF completely prevailed in its motion to dismiss both of CIW's claims. Arnold had all the facts necessary to know that his claims were substantially groundless as early as March 7, 2014, yet he persisted in prosecuting those claims for well over and spurned CFBF's January 5, 2015 request to dismiss the case. This is not a case where the relative financial positions of the parties would caution against an award of fees. CFBF has terminated its political activities and according to its last report filed with the Secretary of State, has no bank balance. It is being represented in this case by its registered agent, an attorney appearing *pro bono*. The ALJ has no information about the resources available to CIW or Mr. Arnold, other than that CIW is Mr. Arnold's closely held corporation which he formed for the purpose of pursuing FCPA complaints. Finally, although the FCPA encourages the "strong enforcement of campaign laws" (§ 1-45-102, C.R.S.), nothing in the FCPA condones reckless or groundless enforcement.

The ALJ has considered, but rejected, CIW's argument that no fees should be awarded because CFBF's attorney is not being paid to represent CFBF in this action. The ALJ addressed this argument in the Order Denying Motion to Reconsider Order Quashing Subpoena, dated May 14, 2015, and adopts that rationale here. See, *In re*

³ See CIW's Response to Motion for Summary Judgment, ¶ 68, dated February 16, 2015.

⁴ See the Affidavit of Melissa Polk, an unmarked exhibit offered and accepted at the April 17th hearing.

⁵ See letter from Nickel to Arnold dated January 5, 2015, and Arnold's e-mail response, dated January 9, 2015. This correspondence is an unmarked exhibit offered and accepted at the May 19th hearing.

⁶ A court may take judicial notice of its own records. *Doyle v. People*, 2015 CO 10, ¶ 11. As required by CRE 201(e), the ALJ provided the parties notice at the May 19th hearing of its intent to take judicial notice of its records.

Marriage of Swink, 807 P.2d 1245, 1248 (Colo. App. 1991) (allowing an award of attorney fees where the attorney's services were provided *pro bono*); and *Zick v. Krob*, 872 P.2d 1290, 1296 (Colo. App. 1993) (in holding that an attorney representing himself was entitled to an award of fees, the court said, "the overriding reason for upholding the fees awarded here is that plaintiffs' claims were frivolous and groundless . . . the stated purpose for awarding attorney fees in such situations is to address the problem of increasing litigation which burdens the judicial system and interferes with the effective administration of justice").

Calculation of the Fee Award

In calculating the amount of the award, the ALJ applies the "lodestar" method. Under the lodestar method, a court first determines the number of hours reasonably expending on the litigation, and then multiplies that number by a reasonable hourly rate. *Mercantile Adjustment Bureau, LLC, v. Flood*, 278 P.3d 348, 352 (Colo. 2012).

CFBF supports its claim for fees with an affidavit of its attorney, Andrew Nickel, stating that he spent 40.5 hours, plus the time at the fee hearing, in defending CFBF against CIW's groundless claims. However, a line-by-line review of Mr. Nickel's time shows that approximately 17 hours were spent defending CIW's subpoena enforcement action in Denver District Court. This was not time reasonably expended in defending the FCPA complaint. The record shows that when CIW filed its complaint, CFBF did not bother to appear in the administrative proceeding for nearly a year. In the meantime, CIW subpoenaed CFBF's records and, when CFBF failed to respond, proceeded to enforce the subpoena in district court. Only then did CFBF, through Mr. Nickel, respond. Had CFBF filed its motion for summary judgment in March 2014 when it first had notice of CIW's complaint, the case would have been dismissed and the subpoena enforcement action would not have occurred. Because CFBF neglected to do so, it failed to mitigate its expense. It would not be fair to order CIW to pay the fees CFBF incurred defending a subpoena enforcement action that it could easily have avoided.⁷

Mr. Nickel's affidavit also includes time spent preparing for and attending the evidentiary fee hearing. However, a party is not automatically entitled to recover such fees unless the defense of the party's request for fees lacks substantial justification. However, CIW's defense of the fee award was not groundless. During the evidentiary hearing, CIW successfully questioned the reasonableness of a significant amount of hours claimed. Because the defense of CFBF's fee claim was not entirely groundless, frivolous, or vexatious, the ALJ declines to award attorney fees for CFBF's time pursuing the award.

The ALJ therefore finds that only those hours actually expended in researching and filing CFBF's successful motion for summary judgment, and reviewing and responding to CIW's motion for reconsideration, were reasonably expended on the litigation. This amounts to 15.5 of the hours claimed on Mr. Nickel's affidavit.

According to Mr. Nickel's affidavit, his customary fee for the type of work involved in this case is \$200 per hour. CIW does not challenge that hourly rate, and the ALJ

⁷ The ALJ also has doubts about his authority to award attorneys fees incurred in defending a collateral action in another jurisdiction.

finds it to be reasonable. Multiplying the allowed 15.5 hours by Mr. Nickel's reasonable hourly rate of \$200 per hour yields a fee award of \$3,100.

CFBF also seeks an award of fees for the time that another attorney, Mario Nicolais, spent representing CFBF's communications manager, Andy George. The ALJ denies this request for fees in its entirety because Mr. George is not a party to this proceeding and Mr. Nicolais is not CFBF's attorney.⁸

Order

Matthew Arnold, acting as the representative of CIW, continued to prosecute his complaint against CFBF after he knew or reasonably should have known that the claims were substantially groundless. CFBF is thus entitled to an attorney fee award of \$3,100 for its attorney's efforts in seeking and maintaining the dismissal of the complaint. Because Mr. Arnold was personally responsible for pursuing the groundless complaint, he is responsible for paying the fee award.

Done and Signed
May 27, 2015



ROBERT N. SPENCER
Administrative Law Judge

⁸ Mr. Nicolais apparently also participated in drafting CFBF's motion for summary judgment; however, because Mr. Nicolais is not CFBF's attorney, the ALJ makes no award for his time.

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **ORDER AWARDING ATTORNEY FEES** by electronic mail and by depositing same in the U.S. Mail, postage prepaid, at Denver, Colorado addressed to:

Andrew C. Nickel, Esq.
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Matthew Arnold
Campaign Integrity Watchdog
P.O. Box 372464
Denver, CO 80237
campaignintegritywatchdog@gmail.com

and

Suzanne Staiert
Deputy Secretary of State
1700 Broadway, Suite 270
Denver, CO 80290

This 27th day of May, 2015.



Court Clerk

BEFORE THE SECRETARY OF STATE
STATE OF COLORADO

CASE NO. OS 2007-0003

ORDER AWARDING RESPONDENT'S ATTORNEYS FEES AND COSTS

IN THE MATTER OF THE COMPLAINT FILED BY COLORADO CITIZENS FOR ETHICS IN GOVERNMENT REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY THE NORTHERN COLORADO VICTORY FUND and COMMITTEE FOR THE AMERICAN DREAM

This matter is before the ALJ upon motion of the Committee for the American Dream (CAD) for fees and costs associated with its defense of the Second Claim for Relief. The motion was granted by order dated May 18, 2007. CAD filed a Bill of Fees and Costs seeking \$8,955.00 in fees and \$524.61 in costs, and Colorado Citizens for Ethics in Government (CCEG) filed a memorandum in opposition. A hearing upon the reasonableness of those fees and costs was held June 12, 2007.¹ Having considered the parties' evidence and argument, the ALJ finds \$2,722.44 to be a reasonable allowance for CAD's fees and costs incurred in defending the second claim.²

Duty to mitigate

CCEG contends that CAD should be awarded little or nothing because it failed to mitigate its expenses by promptly responding to CCEG's informal and formal discovery requests. According to CCEG, it would have promptly dismissed the second claim once it received the documentation it requested.

Although a court has discretion to reduce a fee award if a party failed to extricate itself from a frivolous lawsuit at the earliest possible time, *Ruffing v. Lincicome*, 737 P.2d 440 (Colo. App. 1987), the ALJ does not find any unreasonable delay by CAD. CCEG's complaint was filed February 22, 2007. CCEG then made an informal request for discovery on February 28, 2007, and a formal request on March 6, 2007. CAD did not produce the documents in question until the morning of the hearing, March 13, 2007. Given the substantial volume of documents produced, and the exceptionally short time available for pretrial preparation, the ALJ finds no unreasonable delay in CAD's production of these documents.

Fees and costs up to point of dismissal of second claim

A party is not automatically entitled to recover the expenses incurred in

¹ CAD's oral motion to amend to add fees incurred to prepare its bill of fees and costs was denied.

² Although the authority for the award is § 1-45-111.5(2), C.R.S., the ALJ applies as analogous case law interpreting similar fee provisions in § 12-17-102, C.R.S. and C.R.C.P. 11.

successfully pursuing a motion for sanctions. Instead, attorney fees may be awarded only if the trial court determines that the defense to the motion lacked substantial justification. *Boulder County Comm'rs v. Kraft Bldg. Contractors*, 122 P.3d 1019, 1022 (Colo. App. 2005), *Parker v. Davis*, 888 P.2d 324 (Colo. App. 1994). Absent a finding that the defense to a motion for fees lacks substantial justification, it is error to award fees and costs incurred in challenging that defense. *Kraft Bldg. Contractors, supra*; *Foxley v. Foxley*, 939 P.2d 455 (Colo. App. 1996).

CAD does not argue, and the ALJ does not find, that CCEG's opposition to CAD's motion lacked substantial justification. The ALJ thus disallows that portion of CAD's fees and costs incurred after dismissal of the second claim on March 13, 2007.

Apportionment

Fees and costs incurred to defend a dismissed claim should not be awarded if the work was useful in continuing litigation. See generally, *Am. Water Dev. Inc. v. City of Alamosa*, 874 P.2d 352, 382 (Colo. 1994) (determining a proper award of fees under C.R.C.P. 41(a)(2) where the plaintiff voluntarily dismissed one of four claims). Therefore, there must be a reasonable apportionment of the fees and costs between the dismissed claim and the surviving claim. Further, in determining the appropriateness of fees, it is not realistic to expect a trial judge to evaluate and rule on every entry, see *Am. Water Dev. Inc.*, 874 P.3d at 387 (citing *Copeland v. Marshall*, 641 F.2d 880, 903 (D.C. Cir. 1980)). Rather, a "percentage cut" has been endorsed as "a practical means of trimming fat from a fee application." See *Am. Water Dev. Inc.*, 874 P.3d at 387.

CAD estimates that, generally, 50% of its prehearing expense was incurred in analyzing and defending against the second claim, except for the day of hearing for which it claimed 10%.³ That would be a reasonable estimate if none of the effort involved in defending the second claim was useful to defend the first claim. The ALJ, however, finds that some overlap did exist between the two claims, and therefore apportions 40% of CAD's prehearing effort to the exclusive defense of the second claim, and 10% for the day of hearing.

Other Considerations

CCEG does not dispute the reasonableness of the hourly rates of CAD's attorney, nor does CCEG challenge any particular line item of the bill as unreasonable.

Award

CAD's fees and costs are awarded as follows:

Incurred prior to March 13, 2007:	\$6,300.00 (fees)	\$62.34 (costs)
40% apportionment	\$2,520.00 (fees)	\$24.94 (costs)

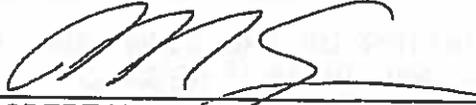
³ CAD claimed 70% allocation for the preparation, conduct and costs of taking Ms. Taylor's deposition. The ALJ reviewed the deposition and finds no more than 40% allocable exclusively to the defense of the second claim.

Incurring on March 13, 2007: \$1,775.00 (fees) \$ -0- (costs)
10% apportionment \$ 177.50 (fees) \$ -0- (costs)
Sum of apportioned expenses: \$2,697.50 (fees) \$24.94 (costs)

Total Award of Fees & Costs: \$2,722.44

CAD shall satisfy this award within ten business days of the mailing of this order.

Done and Signed
June 19, 2007


ROBERT N. SPENCER
Administrative Law Judge

Digitally recorded in CR #2

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above **ORDER AWARDING RESPONDENT'S ATTORNEYS FEES AND COSTS** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Scott E. Gessler, Esq.
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Chantell Taylor, Esq., Director
Colorado Citizens for Ethics in Government
1630 Welton Street, Suite 415
Denver, CO 80202

Jason B. Wesoky, Esq.
Brownstein Hyatt & Farber, P.C.
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Denver, CO 80202-4437

and

William Hobbs
Secretary of State's Office
1700 Broadway, Suite 270
Denver, CO 80290

on this 21 day of June 2007.


Court Clerk

RECEIVED

APR 23 2007

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

ARY OF STATE

CASE NO. OS 2007-0003

Doc ID: 160018 Doc Date: 08/16/12
Type: Complaints
Candidate/ Amended Decision - Colorado Citizens for Ethics In Government
Committee:

**AGENCY DECISION and AMENDED ORDER OF DISMISSAL OF NORTHERN
COLORADO VICTORY FUND**

**IN THE MATTER OF THE COMPLAINT FILED BY COLORADO CITIZENS FOR
ETHICS IN GOVERNMENT REGARDING ALLEGED CAMPAIGN AND POLITICAL
FINANCE VIOLATIONS BY THE NORTHERN COLORADO VICTORY FUND and
COMMITTEE FOR THE AMERICAN DREAM**

This matter is before Administrative Law Judge (ALJ) Robert Spencer upon the complaint of Colorado Citizens for Ethics in Government (CCEG) that the Northern Colorado Victory Fund (NCVF) and the Committee for the American Dream (CAD) violated Article XXVIII of the Colorado Constitution and § 1-45-108, C.R.S. of the Fair Campaign Practices Act (FCPA) by failing to file reports of electioneering communications (Count I); and that CAD violated Article XXVIII and the FCPA by failing to file itemized reports of membership contributions (Count II).

Procedural History

The Secretary of State received CCEG's complaint February 23, 2007. Pursuant to Colo. Const. art. XXVIII, § 9, the Secretary of State forwarded the complaint to the Office of Administrative Courts February 26, 2007. Hearing upon the complaint was held March 13, 2007. CCEG was represented by its Director, Chantell Taylor, Esq. and by Jason Wesoky, Esq., Brownstein Hyatt & Farber, P.C. CAD and NCVF were represented by Scott Gessler, Esq., Hackstaff Gessler, LLC. Per their joint request, the parties were allowed ten days following the hearing to file written closing arguments. Arguments were filed March 23, 2007, and the matter is now ripe for decision.

Prior to hearing, the parties verbally agreed to voluntarily dismiss NCVF. The verbal agreement was followed by a Stipulation for Dismissal filed March 29, 2007. In response to that stipulation, the ALJ issued a Final Agency Order and Order of Dismissal that was not clear that the dismissal was limited to NCVF. The ALJ corrects that oversight by amending the Final Agency Order and Order of Dismissal dated March 30, 2007 to dismiss only the charges against NCVF.

During the hearing, CCEG made an unopposed motion to dismiss Count II against CAD, which the ALJ granted. As a result, the only remaining charge is the allegation in Count I that CAD failed to file required electioneering communication reports.

Following the close of CCEG's case, CAD made a motion to restrict CCEG's

case to the specific communications described in paragraph 9 of the complaint, and to dismiss any allegation by CCEG related to communications not described in the complaint. The ALJ granted the motion. CCEG then moved to amend the complaint to add several allegations involving electioneering communications regarding other candidates. Because the motion to amend came during trial, the amendment was not one of right, but could only be granted by leave of the court. C.R.C.P. 15(a). Although motions to amend are to be freely granted when justice so requires, the proposed amendment alleged several new violations unrelated to those charged in paragraph 9. Coming as it did during the hearing, the amendment would have unduly prejudiced CAD's ability to defend against the new allegations. The ALJ therefore denied the motion to amend and limited CAD's allegations to those stated in the complaint. *Polk v. Denver Dist. Ct.*, 849 P.2d 23, 26 (Colo. 1993)(In ruling on a motion to amend, the court must consider the totality of the circumstances by balancing the policy favoring the amendment of the pleadings against the burden which granting the amendment may impose on the other parties).

Issue

CAD is a political committee registered with the Secretary of State. During the 2006 election cycle, it spent money buying television advertisements opposing the Democratic candidate for House District 52, Rep. John Kefalas. Between the dates of October 25 and November 4, 2006, CAD spent over \$28,000 for 568 such ads in the Fort Collins area, which includes House District 52. Because the ads opposed Rep. Kefalas by name, were broadcast to voters in his district, and were broadcast within 60 days of the general election, they were "electioneering communications" within the meaning of Colo. Const. art. XXVIII, § 2(7)(a). The issue is whether the ads were excepted from the definition of electioneering communications as communications "made by persons in the regular course and scope of their business," and if not, whether CAD reported its spending on the communications as required by Colo. Const. art. XXVIII, § 6(1), § 1-45-108(1)(a)(III), C.R.S., and the Secretary of State's regulations.

Findings of Fact

CAD's anti-Kefalas ads

1. CAD is a political committee registered with the Colorado Secretary of State. Its primary purpose is to support candidates for political office who have a pro-business and pro-property rights agenda, and to oppose those who do not.
2. CAD was established by the Colorado Association of Home Builders (CAHB) to further CAHB's political agenda. CAHB's Director of Government Affairs, Robert Nanfelt, is CAD's registered agent.
3. CAD's sole contributor is CAHB. In the 2006 election cycle, CAHB contributed a total of \$237,012 to CAD.
4. During 2006, CAD contracted with Rock Chalk Media LLC to produce and broadcast televised political advertisements, titled "F HD 52 Won't Pay Taxes." The ads

expressly advocated the defeat of the Democratic candidate for House District 52, Rep. John Kefalas, at the November 7, 2006 general election. House District 52 is in the Fort Collins area. CAD opposed Rep. Kefalas because, in CAD's view, he supported a new tax burden upon homeowners that was contrary to CAHB's pro-business pro-property rights agenda.

5. During the period of October 25, 2006 through November 4, 2006, Rock Chalk Media, on behalf of CAD, arranged with ComCast Spotlight to broadcast 568 ads opposing Rep. Kefalas to an audience that included voters within House District 52. By invoices dated October 30, 2006 and November 8, 2006, CAD was billed a total of \$28,435 for these ads. CAD paid the invoices.

6. "Any person" that spends more than \$1000 per calendar year on "electioneering communications" must report to the Secretary of State the amount expended on such communications, and the name and address of any person that contributed more than \$250 per year to the person making the electioneering communication. A political committee, such as CAD, is a "person" for the purposes of this reporting obligation.

7. Electioneering communications include any televised broadcast that unambiguously refers to a candidate for public office, is broadcast within 60 days prior to a general election, and is broadcast to an audience that includes members of the electorate for that public office. CAD's televised ads meet this definition of electioneering communications. The ads were broadcast within 60 days prior to the November 7th general election, unambiguously referred to Rep. Kefalas by name, and were broadcast to voters within House District 52.

CAD's routine activity

8. As a political committee, CAD's purpose is to support or oppose political candidates depending upon whether the candidates' views align with CAD's and CAHB's political philosophy. It does this by donating money to, and running political ads in favor of, candidates it supports; and by running political ads opposing candidates it does not support. CAD donated money to a significant number of candidates for political office in 2006, and paid for advertisements supporting or opposing several other candidates in addition to Rep. Kefalas.

9. An ad is not an electioneering communication if it was made in the regular course and scope of a person's business.

10. CAD is not engaged in business for livelihood, profit or gain. It is not a corporation or any other commercial enterprise. It does not produce, market or sell any product or service, and does not engage in any profession or occupation with a view toward making a profit or accumulating a surplus. It exists solely to influence the outcome of elections.

CAD's reports

11. Apart from its alleged duty to file reports of its electioneering

communications, CAD, as a political committee, was also obligated to file with the Secretary of State reports of all contributions received, including the name and address of each person who contributed twenty dollars or more, and all expenditures made and obligations entered.

12. During 2006, CAD filed a number of reports with the Secretary of State of expenditures made and contributions received. In six separate reports filed on or before December 6, 2006, CAD reported every contribution received from CAHB used to fund electioneering communications. Exhibit 1, pp. 15, 17, 22, 34, 46, 51, 52. It also reported the expenditures it made to Rock Chalk Media to produce and broadcast the ads against Rep. Kefalas. Exhibit 1, p. 50.

13. CAD did not file a separate electioneering report, and still had not filed such a report as of the day of hearing. CAD's reports of the expenditures to Rock Chalk Media did not identify Rep. Kefalas' by name as the target of the ads. Rather, the expenditure reports referred to the purpose of the payments to Rock Chalk Media as "Direct Advocacy Media Buy – HD-52."

14. In investigating the grounds for CCEG's complaint, its Executive Director accessed the Secretary of State's web site to locate evidence of unreported electioneering communication by CAD. CCEG's Executive Director, who is an attorney with knowledge of the campaign finance laws, was able to locate CAD's report of its expenditures to Rock Chalk Media in less than 15 minutes.

Discussion and Conclusions of Law

Colorado's campaign finance laws

The primary campaign finance law in Colorado is Article XXVIII of the Colorado Constitution, which was approved by the people of Colorado in 2002 as Amendment 27. Article XXVIII imposes contribution limits, encourages voluntary spending limits, imposes reporting and disclosure requirements, and vests enforcement authority in the Secretary of State. Colorado also has statutory campaign finance law, known as the Fair Campaign Practices Act (FCPA), §§ 1-45-101 to 118, C.R.S., which was originally enacted in 1971, repealed and reenacted by initiative in 1996, substantially amended in 2000, and again revised by initiative in 2002 as the result of the adoption of Article XXVIII. The Secretary of State, pursuant to regulations published at 8 CCR 1505-6, further regulates campaign finance practices.

Electioneering Communications

The sections of Article XXVIII at issue are those pertaining to "electioneering communications." Electioneering communication is defined in § 2(7)(a) to include any communication "broadcasted by television ... that: (I) Unambiguously refers to any candidate; and (II) Is broadcasted ... within ... sixty days before a general election; and (III) Is broadcasted to ... an audience that includes members of the electorate for such public office." However, electioneering communication does not include "Any communication by persons made in the *regular course and scope of their business.*"

Section 2(7)(b)(III) (*italics added*). Any person who expends one thousand dollars or more per calendar year on electioneering communications must submit reports to the Secretary of State as required by § 6(1) of Article XXVIII, § 1-45-108(1)(a)(III), C.R.S. of the FCPA, and Rule 9 of the Secretary of State's regulations. The last report is due 30 days after the general election. Section 6(1); § 1-45-108(2)(E), C.R.S.

CAD's anti-Kefalas ads were electioneering communications

CAD's television ads opposing Rep. Kefalas were electioneering communications within the meaning of Article XXVIII, § 2(7)(a) because they unambiguously referred to Rep. Kefalas by name, were broadcast within 60 days before the general election, and were broadcast to voters within his district.

CAD nonetheless argues that because the ads "expressly advocated" Rep. Kefalas' defeat, they were not electioneering communications. In support of its argument, CAD relies upon the voter education handbook (the Bluebook) prepared by the General Assembly Legislative Council to explain proposed Amendment 27. The Bluebook explains that the electioneering communication provisions were intended to address political advertisements that refer to a candidate "without specifically urging the election or defeat of the candidate."¹ CAD asserts that because the ads expressly urged the defeat of Rep. Kefalas, they could not meet the Bluebook definition of electioneering communications. CAD's argument is not persuasive. While the Bluebook explanation may be an indication of voter intent, it is not the law. The law is found in the language of Article XXVIII, § 2(7)(a) which expressly defines "electioneering communication" as any communication that "unambiguously refers to any candidate." Section 2(7)(a) makes no distinction between express advocacy and advocacy that is not express, provided the candidate is unambiguously identified. When language of a constitutional amendment is clear and unambiguous, the amendment must be enforced as written. *Davidson v. Sandstrom*, 83 P.3d 648, 654 (Colo. 2004). Although the court's obligation is to give effect to the intent of the electorate, in giving effect to that intent the court must look to the words used, reading them in context and according them their plain and ordinary meaning. *Sanger v. Dennis*, 148 P.3d 404, 412 (Colo. App. 2006). Courts are therefore bound by the words of the provision itself, and "they are not to suppose or hold the people intended anything different from what the meaning of the language employed imports." *Interrogatories Relating to the Great Outdoors Colorado Trust Fund*, 913 P.2d 533, 550 (Colo. 1996)(Lohr, J., dissenting and quoting *People ex rel. Carlson, Governor v. City Council of Denver*, 60 Colo. 370, 377, 153 P. 690, 692 (1915)).

The "regular course and scope of business" exception does not apply

The main thrust of CAD's defense is that regardless of whether its ads met the definition of electioneering communications in § 2(7)(a), they are exempt under § 2(7)(b)(III). CAD argues that because its purpose and primary activity is to support and

¹ Legislative Council of the Colo. Gen. Assembly, Research Pub. No. 502-1, 2002 *Ballot Information Booklet*, at 3-4.

oppose candidates, its purchase of the anti-Kefalas falls squarely within the § 2(7)(b)(III) "regular course and scope of business" exception. The ALJ concludes that CAD is not a "business," and therefore the exception does not apply.

"Business" is not defined in Article XXVIII or the FCPA. However, in *Lindner Packing & Provision Co. v. Industrial Comm. of Colo.*, 99 Colo. 143, 60 P.2d 924 (Colo. 1936), the court recognized that the word "business" may have different meanings depending upon the context in which it is used. On the one hand, the term may imply "an occupation of one's time in some activity with an objective of direct financial profit or livelihood accruing out of the activity." *Id.*, at 927. On the other hand, it might be used in the more general sense of "an occupation of one's time in some regular activity that may or may not have the objective of direct financial profit or livelihood." *Id.* The difference between the two meanings is whether the activity has a "profit objective." *Id.* Which meaning is appropriate depends upon the context of the case. *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859, 874 Colo. 1995)("When construed in statutes or in specific instruments, the meaning of "business" has been held to depend upon the context, the facts of the particular case, the intention of the parties, or upon the purposes of the legislation")(Erickson, J. and Kirshbaum, J. concurring in part, dissenting in part). In the context of the remedial and beneficent purposes of the Workmen's Compensation Act, "business" has been construed in the broad sense. *Lindner, supra* at 927. However, when the context of the legislation was to encourage development of self-insurance pools, the term "business" was narrowly construed to effectuate that purpose. *City of Arvada v. Colorado Intergovernmental Risk Sharing Agency*, 19 P.3d 10, 13 (Colo. 2001)(adopting the *Black's Law Dictionary* definition of "business" as "a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain.")

In the context of Article XXVIII's business exception, the term must be narrowly construed to effectuate the purpose of Article XXVIII. Section 1 of Article XXVIII states that one of the primary purposes of the amendment was to address the electorate's concern about "significant spending on electioneering communication," and that to address that concern, disclosure requirements were adopted to provide "full and timely disclosure of ... funding of electioneering communications, and strong enforcement of campaign finance requirements." The broad definition of "business" urged by CAD defeats this intent by exempting from the reporting requirement virtually every political committee and every other entity whose primary purpose is to influence elections. Exceptions that swallow the rule are not favored. *Fognani v. Young*, 115 P.3d 1268, 1275 (Colo. 2005)(citing *United States v. Peng*, 602 F. Supp. 298, 303 (S.D.N.Y. 1985)); see also *Colorado Common Cause v. Meyer*, 758 P.2d 153, 161-62 (Colo. 1988)(an interpretation that would exclude the great majority of entities from the filing and reporting requirements of the campaign finance law would be virtually irreconcilable with the goal of public disclosure that the statute was designed to accomplish).²

² In another agency decision, *In the Matter of the Complaint Filed by David Harwood Regarding Alleged Campaign and Political Finance Violations by Senate Majority Fund*, No. OS 2005-0013 (July 29, 2005), another ALJ adopted a definition of "business" that included the polling activity of the non-profit Senate

The kinds of activities that would clearly fall within the narrow exception of § 2(7)(b) include the commercial media producer whose business it is to produce ads, or the TV station whose business includes airing ads. Exempting the activities of these businesses from disclosure does no violence to the intent of Article XXVIII because their role is merely to sell a service, not influence an election. On the other hand, exempting organizations that do exist to influence elections flies in the face of Article XXVIII's intent to disclose such influence.

A broad exemption for entire categories of politically active organizations would also be inconsistent with the language of § 6(1), which imposes the reporting obligation on "any person" who expends more than one thousand dollars on electioneering communications. "Person" is defined in § 2(11) to include any "committee" or "other organization or group of persons." Political committees clearly fall within that definition. Had the electorate intended to exclude from the reach of § 6(1) all political committees and other entities formed to influence elections, it could easily have done so, but it did not. In the absence of such an exception, the ALJ is bound by the plain language which includes political committees. *Davidson v. Sandstrom, supra.*

The ALJ therefore concludes that the business exception does not apply to CAD. CAD's anti-Kefalas ads were electioneering communications subject to the constitutional, statutory and regulatory reporting requirements.

CAD failed to file required electioneering communication reports

CAD argues that even if it is required to report electioneering communications, it satisfied the requirement by the routine reports of contributions and expenditures it was required to file by FCPA § 1-45-108(1)(a)(I). That section requires all political committees to "report ... their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee." CAD points out that pursuant to this independent reporting obligation, it duly reported every one of CAHB's contributions and every one of its expenditures to produce and air the anti-Kefalas ads.

The ALJ agrees that it is possible to interpret the electioneering communication reporting obligations of Article XXVIII and the FCPA in a way that requires CAD to do no more than it did. Section 6(1) requires "reports" which include "spending on such electioneering communication, and the name, and address, of any person that contributes more than two hundred and fifty dollars per year ... for an electioneering communication." Similarly, § 1-45-108(1)(a)(III) requires a "report" of "the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications." The evidence shows that CAD reported all the CAHB contributions used to fund the anti-Kefalas ads, and disclosed all the expenditures it made to produce and air the ads. All this information was reported

Majority Fund. The ALJ's rationale, however, was not adopted by the court of appeals, *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 982, 964 (Colo. App. 2006).

before the deadline of December 7, 2006. Therefore, CAD's routine contribution and expenditure reports arguably satisfied the electioneering communication reporting requirements of § 6(1) and § 1-45-108(1)(a)(III).

CCEG, on the other hand, argues that CAD failed to meet its reporting obligations because it did not file separate electioneering communication reports, and did not identify the name of the candidate "unambiguously identified" in the ads, as required by Rule 9.3 of the Secretary of State's regulations. Rule 9, in its entirety, reads:

Electioneering Communications

9.1 All entities must keep a record of all contributions received for electioneering communications. All contributions received, including non-monetary contributions, of two hundred and fifty dollars or more, during a reporting period shall be listed individually on the electioneering report. [Article XXVIII, Sec. 6(1)]

9.2 All entities must keep a record of all expenditures made for electioneering communications. All expenditures of one thousand dollars or more per calendar year including name, address and method of communication, shall be listed individually on the electioneering report. [Article XXVIII, Sec. 6(1)]

9.3 The *name of the candidate(s)* unambiguously referred to in the electioneering communication shall be included *in the electioneering report*. [Article XXVIII, Sec. 2(7)(I)]

9.4 The unexpended balance shall be reported as the ending balance throughout the election cycle. Unexpended balances from the final report filed thirty days after the applicable election shall be reported as the beginning balance in the next election cycle.

8 CCR 1505-6, ¶ 9 (*Italics added*).

As CCEG points out, Rule 9.3 clearly requires disclosure of the name of the candidate referred to in the ad, and also requires a separate "electioneering report." CAD did not file separate electioneering reports, and although it did disclose in its expenditure report that the payments to Rock Chalk Media were for "Direct Advocacy Media Buy – HD-52," it did not identify Rep. Kefalas by name. CAD therefore did not comply with the requirements of Rule 9.3.

CAD seeks to avoid the requirements of Rule 9.3 by arguing that the Secretary of State "is without authority to add legal requirements not contained in the statute or the constitution." While the ALJ agrees that an agency may not adopt rules that exceed its statutory or constitutional authority, that is not what the Secretary has done.

Article XXVIII, § 8, gives the Secretary of State authority to promulgate rules "relating to filing" of reports required by Article XXVIII. Similarly, FCPA § 1-45-111.5(1), C.R.S. gives the Secretary of State authority to promulgate such rules "as may be

necessary to enforce and administer any provision of this article." Any rules and regulations that a state agency adopts pursuant to statutory rulemaking proceedings are presumed valid. *Wine and Spirits Wholesalers, Inc. v. Dept. of Revenue*, 919 P.2d 894, 896 (Colo. App. 1996), citing *Regular Route Common Carrier Conference v. Public Utilities Commission*, 761 P.2d 737 (Colo. 1988). Although no implied powers exist when an agency exceeds its jurisdiction by acting contrary to the Colorado Constitution, or when it acts contrary to express statutory provisions, or when such authority would be in derogation of statutory purpose, or when it does something entirely unrelated to its statutory purpose; an agency does not exceed its jurisdiction by exercising implied authority "to do all which is reasonably necessary to effectuate express duties." *Hawes v. Colorado Division of Ins.*, 65 P.3d 1008, 1017 (Colo. 2003); *Berg v. Colorado State Dept. of Social Services*, 694 P.2d 1291, 1292 (Colo. App. 1984)("The validity of a regulation depends upon whether it is reasonably related to a legitimate use of statute authority, and the burden of establishing unreasonableness is upon the party challenging the regulation.")

Rule 9.3 is an appropriate exercise of the Secretary of State's delegated authority because it is reasonably related to the Secretary's constitutional and statutory authority, and is reasonably necessary to effectuate Article XXVIII and the FCPA's mandate to make electioneering communications transparent to the public. It is not unreasonable for the Secretary of State to require persons making electioneering communications to file separate reports of such communications and identify the candidate in question. Separate reporting and candidate identification provides clarity and transparency that otherwise might be missing if, as here, the report is imbedded in a political committee's routine contribution and expenditure reports. Although CCEG's legally trained Executive Director was able to ferret out CAD's electioneering communications without much difficulty, it would likely be more difficult for the average citizen who is not legally trained to uncover that information if data is buried within routine contribution and expenditure reports rather than being clearly identified in separate reports as "electioneering communications."

Furthermore, Rule 9.3's requirement to specify the name of the candidate "unambiguously referred to" in the electioneering communications enables the Secretary to maintain a web site searchable by candidate name, as required by § 1-45-109(7)(b), C.R.S. (the secretary of state's web site "shall enable a user to produce summary reports based on search criteria that shall include, but not be limited to, the ... candidate.") Without requiring disclosure of the candidate "unambiguously identified" in the ads, the Secretary cannot fulfill this obligation.

The Secretary of State's regulations are reasonably related to his authority to enforce the campaign finance laws, and are reasonably necessary to fulfill his constitutional and statutory duties. They are therefore a lawful exercise of his authority.

CAD objects to a requirement for separate electioneering reports because it "would swamp the Secretary and all regulated committees with superfluous burdens." For reasons already explained, the ALJ does not agree that filing separate reports is superfluous. Separate reports help the Secretary of State fulfill his responsibilities and

help make electioneering communication data more transparent and accessible to citizens searching the Secretary's database. However, regardless of the merit of CAD's policy argument, the ALJ must interpret the regulation as written. Rules, like statutes, are to be given effect according to their plain and ordinary meaning. *Regular Route Common Carriers Conference v. Public Utilities Commission*, 761 P.2d 737, 745-46 (Colo. 1988); *Petron Dev. Co. v. Washington Cty. Bd. of Equalization*, 91 P.3d 408, 410 (Colo. App. 2004). The plain and ordinary meaning of Rule 9 requires CAD to file a separate "electioneering report" that includes the "name of the candidate." Whether or not this requirement is the best policy is for the Secretary of State to decide.

Given that Rule 9 is a lawful exercise of the Secretary of State's authority, the reporting obligations of Article XXVIII and the FCPA must be interpreted in light of Rule 9.3. When a statute is silent or ambiguous with respect to a specific issue, courts give great deference to an agency's interpretation of the statute, looking only to whether the agency's regulation is based on a permissible construction of the statute. *Smith v. Farmers Ins. Exchange*, 9 P.3d 335, 340 (Colo. 2000); see also *City and County of Denver v. Board of Assessment Appeals*, 802 P.2d 1109, 111 (Colo. App. 1990), citing *Ingram v. Cooper*, 698 P.2d 1314 (Colo. 1985). An agency's regulation is therefore controlling provided it is consistent with the agency's enabling statute.

Thus, although a possible interpretation of Article XXVIII and the FCPA would require CAD to do no more than it did, that is not the Secretary of State's interpretation. The Secretary of State, through Rule 9, has reasonably interpreted Article XXVIII and the FCPA to require separate electioneering communication reports, and identification of the name of the candidate referred to in the ads. That interpretation is binding. Because CAD did not comply with these reporting requirements, it is subject to sanction.

Sanction

Section 9(2)(a) of Article XXVIII grants the ALJ authority to conduct hearings of alleged violations of Article XXVIII and the FCPA, and if a violation is found, to impose "any appropriate order, sanction, or relief authorized by this article." Section 10(2)(a), in turn, authorizes a fine of \$50 per day for each day that a required report is not filed by the close of business on the day due. CAD was obligated to file Rule 9-compliant electioneering communication reports by December 7, 2006, but as of the date of hearing, had not done so. The lapse of time from December 8, 2006 to March 13, 2006 is 95 days, resulting in a possible fine of \$4,750.

The ALJ may set aside or reduce the penalty upon a showing of good cause. Article XXVIII, § 10(b)(I). CAD asks that the penalty be set aside entirely. In considering this request the ALJ has considered the following factors:

1. As a political committee, CAD is charged with knowledge of its reporting requirements, including those in the Secretary of State's regulations. Article XXVIII, § 1 contemplates "strong enforcement" of these requirements. Ignorance of the reporting requirements, or failure to comply with them because they are viewed as too burdensome, is no defense.

2. The issue of whether a political committee, like CAD, meets the "regular course and scope of business" exception to electioneering communication reporting is one of first impression. The only reported appellate decision dealing with the obligation of a committee to make electioneering communication reports, *Harwood v. Senate Majority Fund*, 141 P.3d 962 (Colo. App. 2006), left the issue unresolved.

3. Though it did not file a separate electioneering communication report, CAD did file routine expenditure and contribution reports that included most of the required electioneering communication information. There is no evidence CAD willfully attempted to hide its involvement in the electioneering communications at issue.

4. There is no evidence CAD has been previously sanctioned for reporting violations.

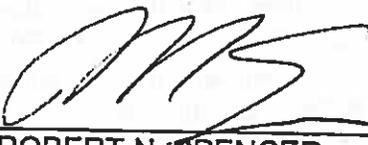
In light of these factors, the ALJ finds good cause to reduce the penalty to \$1000.

Agency Decision

The Final Agency Order and Order of Dismissal dated March 30, 2007 is amended to reflect only the dismissal of NCVF.

The remaining party, CAD, violated electioneering communication reporting requirements of Colo. Const. art. XXVIII, § 6(1) and FCPA § 1-45-108(1)(a)(III) by failing to file with the Secretary of State separate electioneering communication reports and failing to identify by name the candidate targeted in its communications, for a period of 95 days from December 8, 2006 through March 13, 2007. Pursuant to Colo. Const. art. XXVIII, § 10(2), the ALJ imposes a penalty of \$1000. This decision is subject to review by the Colorado Court of Appeals, pursuant to § 24-4-106(11), C.R.S. and Colo. Const. art. XXVIII, § 9(2)(a).

Done and Signed
April 18, 2007


ROBERT N. SPENCER
Administrative Law Judge

Digitally recorded in courtroom #1
Exhibits admitted

For complainant: exhibits A-F, H, J, K
For respondents: exhibits 1, 2

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above **AGENCY DECISION and AMENDED ORDER OF DISMISSAL OF NORTHERN COLORADO VICTORY FUND** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Scott E. Gessler, Esq.
Hackstaff Gessler, LLC
1601 Blake Street, Suite 310
Denver, CO 80202

Chantell Taylor, Esq., Director
Colorado Citizens for Ethics in Government
1630 Welton Street, Suite 415
Denver, CO 80202

Jason B. Wesoky, Esq.
Brownstein Hyatt & Farber, P.C.
410 17th Street, Suite 2200
Denver, CO 80202-4437

and

William Hobbs
Secretary of State's Office
1700 Broadway, Suite 270
Denver, CO 80290

on this 23rd day of April 2007.


Technician IV



4 of 6 DOCUMENTS

Anne L. McGihon, Plaintiff-Appellant, v. Thomas E. Cave and Jessica K. Peck,
Defendants-Appellees.

Court of Appeals No. 14CA2462

COURT OF APPEALS OF COLORADO, DIVISION ONE

2016 COA 78; 2016 Colo. App. LEXIS 698

May 19, 2016, Decided

NOTICE:

THIS OPINION IS NOT THE FINAL VERSION
AND SUBJECT TO REVISION UPON FINAL
PUBLICATION

PRIOR HISTORY: [****1**] City and County of Denver
District Court No. 14CV32935. Honorable Morris B.
Hoffman, Judge.
Cave v. McGihon, 2013 Colo. App. LEXIS 1829 (Colo.
 Ct. App., Nov. 27, 2013)

DISPOSITION: ORDER AFFIRMED.

COUNSEL: The Contigulia Law Firm, P.C., Andrew J.
Contigulia, Denver, Colorado, for Plaintiff-Appellant.

Law Firm of Hampton & Pigott, LLP, Audris G.
Hampton, David J. Pigott, Broomfield, Colorado, for
Defendant-Appellee Thomas E. Cave.

Timmins, LLC, Edward P. Timmins, Jo Deziel Timmins,
Denver, Colorado, for Defendant-Appellee Jessica K.
Peck.

JUDGES: Opinion by JUDGE MILLER. Taubman, J.,
concur. Fox, J., specially concurs.

OPINION BY: MILLER

OPINION

[*1] Plaintiff, Anne L. McGihon, appeals the
district court's order dismissing her petition for entry of
judgment based on an administrative law judge (ALJ)
order awarding her attorney fees under *section*
1-45-111.5(2), *C.R.S. 2015*, of the Fair Campaign
Practices Act (FCPA). We affirm.

I. Background

[*2] Defendant Thomas E. Cave filed a complaint
with the Colorado Secretary of State alleging that
McGihon, a lobbyist, violated the FCPA by allowing her
name to be placed on an event invitation on behalf of a
candidate for the Colorado House of Representatives.
Cave v. McGihon, slip op. at 1 (Colo. App. No.
13CA0137, Nov. 27, 2013) (not published pursuant to
C.A.R. 35(f)). Following a hearing, the ALJ dismissed
Cave's claims and awarded McGihon attorney fees in
[*2] the amount of \$17,712.38, finding that Cave's
claims were substantially groundless, frivolous, and
vexatious. *Id.* at 4. The ALJ awarded the fees jointly and
severally against Cave and Cave's counsel, Jessica K.
Peck. *Id.* at 4-5. Cave appealed the dismissal and the
attorney fees award, and a division of this court affirmed
the ALJ's order. *Id.* at 1.

[*3] McGihon filed a petition for entry of judgment
in the district court against Cave and Peck. Cave and

Peck filed separate motions to dismiss the petition under *C.R.C.P. 12(b)*. The district court granted the motions and dismissed the case for lack of subject matter jurisdiction. The court concluded that while *section 1-45-111.5(2)* allows an ALJ in campaign finance cases to award fees and costs against either party or its lawyers, no statutory authority exists for the district court to convert such an award into a district court judgment. The district court further held that the plain language of the *Colorado Constitution, article XXVIII, section 9(2)(a)*, permits only the secretary of state or the person filing an action to enforce the campaign finance laws to enforce the ALJ's order awarding fees.

II. Analysis

[*4] McGihon contends the district court erred when it dismissed her petition for entry of judgment due to lack of jurisdiction. As a question of first [*3] impression, we consider whether *section 1-45-111.5(2)* and *article XXVIII, section 9(2)(a)* permit a respondent who has been awarded attorney fees in an FCPA action to enforce the award in the district court. We conclude they do not.

A. Standard of Review

[*5] We review the interpretation of statutes and constitutional provisions, which are questions of law, de novo. *Roup v. Commercial Research, LLC, 2015 CO 38, ¶ 8, 349 P.3d 273* (statutes); *Bruce v. City of Colorado Springs, 129 P.3d 988, 992 (Colo. 2006)* (constitution).

B. Interpretation of Statutes and Constitutional Provisions

[*6] We are guided by the same rules of construction when interpreting statutory and constitutional provisions. *Huber v. Colo. Mining Ass'n, 264 P.3d 884, 889 (Colo. 2011)*; *Colo. Republican Party v. Williams, 2016 COA 26, ¶ 15*. Our task is to ascertain and give effect to the General Assembly's intent, or, in the case of a constitutional provision, the intent of the electorate that adopted it. *Novak v. Suthers, 2014 CO 14, ¶ 20, 320 P.3d 340* (statutory); *Harwood v. Senate Majority Fund, LLC, 141 P.3d 962, 964 (Colo. App. 2006)* (constitutional). We look first to the plain and ordinary meaning of the language used. *Roup, ¶ 8; Colo. Republican Party, ¶ 15*. Where the language is unambiguous, we do not resort to other rules of statutory interpretation but apply the language as written. *Reno v. Marks, 2015 CO 33, ¶ 20, 349 P.3d 248; Colo.*

Republican Party, ¶ 15. "Where a constitutional provision and a statute pertain to the same subject matter, we construe them in harmony." *Colo. Ethics Watch v. Clear the Bench Colo., 2012 COA 42, ¶ 10, 277 P.3d 931*.

C. *Section 1-45-111.5(2)* and *Colorado Constitution, Article XXVIII, Section 9(2)(a)*

[*7] The FCPA was enacted in 1996 and declares that "the interests of the public are best [*4] served by limiting campaign contributions, establishing campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws." § 1-45-102, *C.R.S. 2015*.

[*8] *Section 1-45-111.5(2)* was added to the FCPA in 2003 and allowed the prevailing party in a private campaign finance violation action to recover his or her reasonable attorney fees and costs. Ch. 339, sec. 6, § 1-45-111.5(2), 2003 Colo. Sess. Laws 2160.

[*9] In 2005, *section 1-45-111.5(2)* was substantially rewritten to limit the availability of attorney fees and costs in an action under the FCPA. Ch. 228, sec. 4, § 1-45-111.5(2), 2005 Colo. Sess. Laws 852. *Section 1-45-111.5(2)* in its current form provides:

A party in any action brought to enforce the provisions of *article XXVIII of the state constitution* or of this article shall be entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the office of administrative courts that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but [*5] not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure.

Thus, an ALJ determines whether fees and costs may be awarded. However, *section 1-45-111.5* is silent regarding how a party who is awarded attorney fees and costs by an ALJ can seek to enforce such an award. Nor do we find

language addressing enforcement of an ALJ's attorney fees order in any other section of the FCPA.

[*10] Some light is shed on this issue by article XXVIII, entitled "Campaign and Political Finance," which was added to the state constitution in 2002 to best serve the interests of the public "by limiting campaign contributions, establishing campaign spending limits, providing for full and timely disclosure of campaign contributions, independent expenditures, and funding of electioneering communications, and strong enforcement of campaign finance requirements." *Colo. Const. art. XXVIII, § 1. Section 9(2)(a)* of this article directs the secretary of state to refer any complaint alleging a campaign finance law violation to an ALJ for resolution. It also permits an ALJ to order a sanction or other relief, upon determination that a violation of the FCPA had occurred. The ALJ's

decision may be enforced by the secretary of state, or, if the secretary [*6] of state does not file an enforcement action within thirty days of the decision, *in a private cause of action by the person filing the complaint*. Any private action brought under this section shall be brought within one year of the date of the violation in state district court.¹

Colo. Const. art. XXVIII, § 9(2)(a) (emphasis added).

1 At oral argument, McGihon asserted for the first time in this litigation that the phrase "the person filing the complaint" refers to the person filing the complaint in the district court. We do not consider arguments that were not raised in the district court. *See Estate of Stevenson v. Hollywood Bar & Cafe, Inc.*, 832 P.2d 718, 721 n.5 (Colo. 1992) ("Arguments never presented to, considered or ruled upon by a trial court may not be raised for the first time on appeal."); *Farmer v. Raemisch*, 2014 COA 3, ¶ 5, 320 P.3d 394 (citing *Estate of Stevenson*). Nor do we consider arguments first asserted in oral argument. *See Bumbal v. Smith*, 165 P.3d 844, 847-48 (Colo. App. 2007). The constitutional provision references an "enforcement action" or a "private action" to describe an action brought in the district court to enforce an award or order already obtained from an ALJ. This is distinguishable

from the initial action filed by a complainant alleging a campaign practices violation.

[*11] Reading the language in *section 9(2)(a)* according to its plain and ordinary meaning, it provides that two [*7] persons may file an action to enforce an ALJ's order of sanctions for violations of the FCPA and *article XXVIII* in the district court: (1) the secretary of state or (2) "the person filing the complaint" alleging the campaign finance law violation. It does not make any provision allowing a respondent in a campaign finance action who is awarded attorney fees by an ALJ to file an action for enforcement of the ALJ's order in the district court. We note that *section 9(2)(a)* was enacted before the enactment of the revisions to *section 1-45-111.5(2)* that allowed the ALJ to award either complainants or respondents attorney fees. However, neither *article XXVIII* nor the statute was subsequently amended to create a parallel right of enforcement for both complainants and respondents who are awarded fees in a campaign finance violation action. Accordingly, the plain language of *section 1-45-111.5(2)* and *section 9(2)(a)* read together creates a nonreciprocal right to enforce an ALJ's attorney fees award ordered in a campaign finance violation action and leaves a respondent awarded fees and costs without a remedy under either the FCPA or *article XXVIII* to enforce that award. While this may create an unintended result, the legislature or the people must determine the remedy, [*8] and we are not a board of editors with power to rewrite statutes or the constitution to improve them. *See People v. Cooper*, 27 P.3d 348, 360 (Colo. 2001) (courts may not rewrite or eliminate clear and unambiguous statutes because they do not believe the legislature would have intended the consequences of the statutes); *Dep't of Transp. v. City of Idaho Springs*, 192 P.3d 490, 494 (Colo. App. 2008); *but cf. Rodriguez v. Schutt*, 914 P.2d 921, 929 (Colo. 1996) (holding that court may sever and strike only the portion of a statute held to be unconstitutional). Any shortcoming in the statutory language "is one that the legislature is well equipped to address." *City of Idaho Springs*, 192 P.3d at 494.

[*12] Finally, McGihon also contends in a somewhat conclusory manner that *section 24-4-106, C.R.S. 2015*, provides a basis for her enforcement of the ALJ award of attorney fees in the district court. We are not persuaded. *Section 24-4-106(4)* permits "any person adversely affected or aggrieved by any agency action" to seek judicial review in the district court. McGihon,

however, is not adversely affected or aggrieved by the ALJ's order. See § 24-4-102(3.5), C.R.S. 2015. Section 24-4-106(3) permits an action to be commenced for judicial enforcement of a final agency order, but only by or on behalf of an agency. The statute provides no method of enforcement for such an order by a private party.

[*13] Because McGihon was the respondent in the campaign finance violation action and not authorized by section 9(2)(a) to seek enforcement [**9] of the ALJ's attorney fees order in the district court, we conclude that the district court did not err when it dismissed her petition for lack of subject matter jurisdiction.²

2 Our decision does not affect the validity of the ALJ's original order awarding attorney fees, which was previously affirmed by a division of this court. *Cave v. McGihon*, slip op. at 1 (Colo. App. No. 13CA0137, Nov. 27, 2013) (not published pursuant to C.A.R. 35(f)).

D. Constitutionality

[*14] McGihon contends that adopting a plain language interpretation of section 1-45-111.5(2) and section 9(2)(a) that prohibits her from seeking enforcement of the attorney fees order in the district court violates her right to substantive due process and equal protection. Because McGihon raises these arguments for the first time on appeal, we do not address them.

[*15] In its order, the district court explicitly noted: "I do not address, because plaintiff does not argue, whether this unambiguous statutory language is unconstitutional under the state or federal constitutions, or whether the unambiguous constitutional language violates the federal constitution."

[*16] The record supports the district court's finding that McGihon did not assert her constitutional arguments in the district court. McGihon cites a single case [**10] indicating that we may, as a matter of discretion, review unpreserved challenges to a statute's constitutionality where doing so would clearly further judicial economy. *People v. Houser*, 2013 COA 11, ¶ 35, 337 P.3d 1238. *Houser*, however, is a criminal case, and in criminal cases, unlike civil cases, plain error review of unpreserved errors is allowed in specified circumstances. See *Hagos v. People*, 2012 CO 63, ¶ 14, 288 P.3d 116. The rule is otherwise for constitutional challenges in civil

cases: "We do not consider constitutional issues raised for the first time on appeal." *City & Cty. of Broomfield v. Farmers Reservoir & Irrigation Co.*, 239 P.3d 1270, 1276 (Colo. 2010); see also *Colgan v. State, Dep't of Revenue*, 623 P.2d 871, 874 (Colo. 1981); *Manka v. Martin*, 200 Colo. 260, 264, 614 P.2d 875, 877 (1980); *Raptor Educ. Found., Inc. v. State, Dep't of Revenue*, 2012 COA 219, ¶ 18, 296 P.3d 352.

III. Appellate Attorney Fees

[*17] McGihon, Cave, and Peck all request their attorney fees incurred on appeal. C.A.R. 39.5 requires that a party claiming attorney fees on appeal state the legal basis for his or her request in the party's principal appellate brief. McGihon makes no more than a cursory request for appellate fees and cites no legal authority for her request. We therefore deny her request. See, e.g., *Williams v. Rock-Tenn Servs., Inc.*, 2016 COA 18, ¶ 31.

[*18] We also deny Cave's and Peck's requests for appellate attorney fees. Citing *Keith v. Kinney*, 140 P.3d 141 (Colo. App. 2005), they contend that McGihon was unable to establish any element of her claim in the district court, and nonetheless filed a frivolous appeal. We disagree. Cave and Peck conceded at oral argument that they are obligated to [**11] pay the amounts awarded by the ALJ. This is a case of first impression involving construction of statutory and constitutional provisions. We conclude that McGihon acted in good faith in attempting to find a means of enforcing her undisputed fee award and that, accordingly, her appeal was not "wholly frivolous and groundless." *Id.* at 159.

IV. Conclusion

[*19] The order is affirmed.

JUDGE TAUBMAN concurs.

JUDGE FOX specially concurs.

CONCUR BY: FOX

CONCUR

JUDGE FOX, specially concurring.

[*20] I concur with the majority's conclusion that article XXVIII, section 9(2)(a) of the Colorado Constitution did not authorize McGihon to seek enforcement of the ALJ's attorney fees order. I write

separately to highlight the concession made during oral argument that neither Peck nor Cave challenges the *validity* of the ALJ's attorney fees order -- only the enforcement, under article XXVIII, section 9(2)(a). Given this concession, in my view, Peck's apparent disregard for the ALJ's order -- coupled with her failure to explain the apparent lack of effort to arrange to comply with the order -- may indicate a violation of her duties as a Colorado attorney. As an attorney licensed to practice law in Colorado, Peck has certain duties that may not bind her client, Cave (assuming he is not a lawyer). *See generally* Colo. RPC. For example, [**12] Colorado attorneys cannot knowingly disobey an obligation under the rules of a tribunal, *Colo. RPC 3.4(c)*, and cannot engage in conduct that is detrimental to the

administration of justice, *Colo. RPC 8.4(d)*.¹ *See also People v. Verce*, 286 P.3d 1107, 1108 (Colo. O.P.D.J. 2012) (concluding that a year-and-a-day suspension was appropriate for an attorney who disobeyed a court order to pay child support, resulting in substantial arrearages, thereby violating *Colo. RPC 3.4(c)* and *Colo. RPC 8.4(d)*).

1 As a Colorado attorney, McGihon's counsel has like constraints. And, although a judge of this court can note the apparent disciplinary violations, counsel is not at liberty to threaten disciplinary proceedings to enforce the ALJ's order. *See Colo. RPC 4.5*.

<p>COURT OF APPEALS, STATE OF COLORADO 101 West Colfax Ave., Suite 800 Denver, CO 80203</p>	<p>FILED IN THE COURT of APPEALS STATE OF COLORADO</p> <p>NOV -- 8 2010</p> <p>Clerk, Court of Appeals</p> <p>▲ Court Use Only ▲</p>
<p>Appeal from Office of Administrative Courts Administrative Law Judge Robert N. Spencer Case No. OS 2010-0009</p>	
<p>In the Matter of the Complaint Filed by Colorado Ethics Watch Regarding Alleged Campaign and Political Finance Violations by Clear the Bench Colorado</p> <p>Complainant-Appellee: COLORADO ETHICS WATCH</p> <p>v.</p> <p>Respondent-Appellant: CLEAR THE BENCH COLORADO</p>	
<p><i>Attorneys for Appellant:</i> Peter J. Krumholz, Reg. No. 27741 Hale Westfall, LLP 1445 Market St., Suite 300 Denver, Colorado 80202 Telephone: (720) 904-6010 Fax: (720) 904-6020 E-mail: pkrumholz@halewestfall.com</p>	<p>Case No.</p>
<p>NOTICE OF APPEAL</p>	

Respondent-Appellant, Clear The Bench Colorado, by and through their counsel and pursuant to C.A.R. 4(a), respectfully submit the following Notice of Appeal:

I. DESCRIPTION OF THE NATURE OF THE CASE

A. Statement of the Nature of the Controversy

This appeal arises from an administrative complaint filed by Complainant Colorado Ethics Watch ("CEW") against Clear the Bench Colorado ("CTBC"). CTBC is a committee which opposed the retention of three Colorado Supreme Court justices in the 2010 election cycle. CTBC registered with the Secretary of State as an issue committee and filed the requisite contribution and expenditure reports.

CEW filed an administrative complaint with the Secretary of State alleging that CTBC is in fact a political committee, and should have registered as such. CEW's original complaint, filed May 5, 2010, was dismissed at summary judgment because at the time of CEW's filing, none of the three justices had declared their intent to seek retention, and therefore they were not "candidates" as defined by art. XXVIII, section 2(2) of the Colorado Constitution. (The administrative law judge also awarded CTBC costs and attorney fees.) CEW then filed a supplemental complaint against CTBC on August 2, 2010, in which it repeated the same allegations.

CTBC defended against CEW's allegations on the grounds that (1) CTBC is an issue committee, not a political committee, and had complied with all requirements of issue committees; (2) CEW's claims were barred by the applicable statute of limitations; and (3) CEW was equitably estopped from claiming that CTBC is a political committee because CTBC relied upon directives from the staff of the Secretary of State to register as an issue committee.

A hearing on the merits was conducted at the Office of Administrative Courts on September 15, 2010. One week later, on September 22, the administrative law judge ("ALJ") issued a Final Agency Decision.

The ALJ concluded that CTBC meets the definition of a political committee and should have registered as such, and rejected CTBC's equitable estoppel argument. However, the ALJ also concluded that CTBC reasonably relied upon the Secretary of State's acceptance of its registration as an issue committee, and therefore imposed no sanction upon CTBC for its failure to register as a political committee.

B. Judgment, Order or Parts Being Appealed, and Statement Indicating the Basis for the Appellate Court's Jurisdiction

Defendants are appealing the Final Agency Decision entered by the Administrative Law Judge on September 22, 2010.

This Court has jurisdiction over this appeal by virtue of Colo. Const. art. XXVIII, § 9(2)(a) and C.R.S. § 24-4-106(11).

C. Whether the Judgment or Order Resolved All Issues Pending Before the Trial Court, Including Fees and Costs

The Final Agency Decision did not resolve the issue of fees and costs which the ALJ had awarded to CTBC as a result of the dismissal of CEW's original complaint. That issue remains pending before the ALJ. The Final Agency Decision did, however, resolve all issues relating to CEW's supplemental complaint.

D. Whether the Judgment Was Made Final for the Purpose of Appeal Pursuant to C.R.C.P. 54(b)

The Final Agency Decision is final for purposes of C.R.C.P. 54(b).

E. The Date the Judgment or Order Was Entered and the Date of Mailing to Counsel

The Final Agency Decision was signed and entered on September 22, 2010, and served on counsel by mail on September 23, 2010.

F. Whether There Were Any Extensions Granted to File Any Motion(s) for Post-Trial Relief

There were no extensions granted to file motions for post-trial relief.

G. The Date Any Motion for Post-Trial Relief Was Filed

Not applicable.

H. The Date Any Motion for Post-Trial Relief Was Denied or Deemed Denied Under C.R.C.P. 59(j)

Not applicable.

I. Whether There Were Any Extensions Granted to File Any Notices of Appeal

No extensions were granted to file any Notice of Appeal.

II. ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL

A. Whether the ALJ erred in concluding that CTBC is a political committee, not an issue committee.

B. Whether the ALJ erred in concluding that equitable estoppel does not apply to CEW's complaint based on the Secretary of State's directive to CTBC that it should register as an issue committee, not a political committee.

III. TRANSCRIPT INFORMATION

A. A transcript of the September 15, 2010 bench trial is required.

B. The approximate length of the transcript is 400 pages.

IV. PRE-ARGUMENT CONFERENCE

No pre-argument conference is requested.

V. NAME OF COUNSEL FOR THE PARTIES

Attorneys for Respondent-Appellant Clear the Bench Colorado:

Peter J. Krumholz, Reg. No. 27741
Hale Westfall, LLP
1445 Market St., Suite 300
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(720) 904-6010

Attorneys for Complainant-Appellee Colorado Ethics Watch:

Luis Toro
1630 Welton St., Suite 415
Denver, CO 80202

Aaron Goldhamer
Sherman & Howard, LLC
633 Seventeenth St., Suite 3000
Denver, CO 80202

VI. APPENDIX

The Appendix is attached hereto as follows:

Tab A Final Agency Decision dated September 22, 2010

Dated: November 8, 2010.

HALE WESTFALL, LLP


By :s/ Peter Krumholz
Peter J. Krumholz, Reg. No. 27741

Attorneys for Respondent-Appellant
Clear the Bench Colorado

CERTIFICATE OF SERVICE

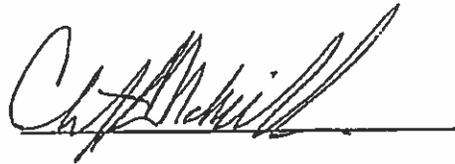
I certify that on this 8th day of November, 2010, the foregoing **NOTICE OF APPEAL** was served on all parties and other interested persons, via U.S. Mail, addressed to the following:

Luis Toro
1630 Welton St., Suite 415
Denver, CO 80202

Aaron Goldhamer
Sherman & Howard, LLC
633 Seventeenth St., Suite 3000
Denver, CO 80202

William A. Hobbs
Deputy Secretary of State
1700 Broadway, Suite 270
Denver, CO 80290

Office of Administrative Courts
633 17th St., Suite 1300
Denver, CO 80202

A handwritten signature in black ink, appearing to read "C. J. McMill", is written over a horizontal line.

<p>STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 655 17th Street, Suite 1300 Denver, Colorado 80202</p>	<p>IN THE MATTER OF THE COMPLAINT FILED BY COLORADO ETHICS WATCH REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY CLEAR THE BENCH COLORADO</p>
<p>A COURT USE ONLY A</p>	<p>CASE NUMBER: OS 2010-0009</p>
<p>FINAL AGENCY DECISION</p>	

This matter is before the Administrative Law Judge (ALJ) upon complaint by Colorado Ethics Watch (CEW) alleging that Clear the Bench Colorado (CTBC) violated the Colorado fair campaign practice laws by failing to register as a political committee. CTBC denies that it is required to register as a political committee, and asserts that it is properly registered as an issue committee.

Luis Toro, Esq., and Aaron Goldhammer, Esq., represent the Complainant, Colorado Ethics Watch. Scott Gessler, Esq. and Mario Nicolais, Esq., represent the Respondent, CTBC.

Case Summary

CTBC is a committee opposing the retention of three Colorado Supreme Court justices -- Justice Michael Bender, Justice Alex Martinez, and Justice Nancy Rice. CTBC is registered with the Secretary of State as an issue committee, and has filed the contribution and expenditure reports required of an issue committee.

On May 5, 2010, CEW filed a complaint with the Secretary of State alleging that CTBC is actually a political committee, and should have registered as such. Furthermore, CEW alleged that CTBC received two contributions in excess of the limits applicable to political committees. It sought appropriate sanctions for those infractions.

The parties filed cross motions for summary judgment. There was no dispute that CTBC had a major purpose of expressly advocating against the retention of the justices, received contributions and made expenditures in excess of \$200 for this purpose, is not registered as a political committee, and received two contributions in excess of the limit applicable to political committees. CEW contended the law is clear

¹ CTBC also opposed the retention of Chief Justice Mary Mulvaney, until Justice Mulvaney announced she would not seek retention.

that CTBC's advocacy against the justices made it a political committee, and therefore summary judgment should be granted in CEW's favor.

Although CTBC did not dispute most of CEW's factual allegations, it raised three defenses that it said warranted summary judgment in its favor. First, it said CTBC is an issue committee not a political committee, and that it has complied with all its obligations as an issue committee. Second, it said CEW's claims were barred by its statute of limitations. Third, it argued that CEW was equitably estopped from claiming that CTBC is a political committee because, according to CTBC, it relied upon a directive from the staff of the Secretary of State to register as an issue committee. CTBC sought an award of attorney fees for what it claimed was CEW's groundless, frivolous, and vexatious complaint.

On July 23, 2010, the ALJ entered summary judgment in favor of CTBC because, at the time CEW filed its complaint on May 5, 2010, none of the justices targeted by CTBC had yet filed a declaration of intent to seek retention, and therefore were not yet "candidates" as defined by Colo. Const. art. XXVIII, § 2(2). Because the justices were not yet candidates, CTBC was not a political committee, as defined by article XXVIII, § 2(12). The ALJ, however, granted CEW permission to file a supplemental complaint, based upon evidence that since the date of its original complaint, Justices Bender, Rice, and Martinez had filed declarations of intent to seek retention and thus were "candidates" for office, and CTBC had still not registered as a political committee.

CEW filed its supplemental complaint August 2, 2010. As before, CEW alleges that CTBC is a political committee because it continues to accept contributions and make expenditures in excess of \$200 with the major purpose of expressly defeating the retention of Justices Bender, Rice, and Martinez, who are now candidates as defined by article XXVIII, § 2(2).² CTBC continues to defend on the grounds that, even though the targeted justices are now candidates for retention, CTBC still does not meet the definition of a political committee. CTBC also continues to assert the affirmative defense of equitable estoppel.

Hearing on the merits of CEW's supplemental complaint was held at the Office of Administrative Courts September 15, 2010.³ For reasons explained below, the ALJ concludes that CTBC now meets the definition of a political committee, and should have registered as such. The ALJ also rejects CTBC's affirmative defense of equitable estoppel. However, the ALJ finds that CTBC reasonably relied upon the Secretary of State's acceptance of its registration as an issue committee, and therefore imposes no sanction upon CTBC for its failure to register as a political committee.

Findings of Fact

The following facts are supported either by stipulation of the parties or by a preponderance of the evidence in the record as a whole:

² There is no allegation that CTBC has accepted excess contributions since the time that the three justices became candidates for retention.
³ CTBC's motion to dismiss for failure to state a claim, or alternatively for summary judgment, was denied at the outset of the hearing.

1. CTBC is a committee formed in April 2009. Its director and active member is Matthew Arnold.
2. The terms of Justice Michael Bender, Justice Alex Martínez, and Justice Nancy Rice as justices of the Colorado Supreme Court are due to expire. In order to retain their judicial offices, they must run for retention in the November 2010 general election.
3. From its inception in April 2009, CTBC has expressly advocated against the retention of Justices Bender, Martínez, and Rice, and has solicited contributions and made expenditures for that purpose.
4. Justice Bender filed a Declaration of Intent to Run for Retention with the Secretary of State on May 28, 2010. Justice Rice filed her declaration on or about July 6, 2010, and Justice Martínez filed his declaration on or about July 9, 2010.
5. As a result of these filings, all three justices are "candidates" as defined by Colo. Const. art. XXVIII, § 2(2).
6. Since the date that Justices Bender, Rice, and Martínez became candidates, CTBC has accepted contributions and made expenditures in excess of \$200 in support of its purpose of opposing their retention.
7. Since the date that Justices Bender, Rice, and Martínez became candidates, CTBC has continued to expressly advocate against their retention.
8. CTBC's major purpose is to oppose the retention of those justices it believes do not follow the "rule of law." The following evidence supports this finding:
 - a. The parties stipulate that CTBC has "a" major purpose of opposing the retention of the targeted justices, though they disagree that it is "the" major purpose.⁴
 - b. In addition to advocating the defeat of the targeted justices, CTBC's registration form (Exhibit E, p. 3) states that its purpose is to, "Educate voters on the importance of judges observing the principles of the 'rule of law' in deciding cases" and "Educate Colorado voters on their right to non-retain judges who do not follow these principles." These additional purposes, however, are entirely collateral to CTBC's purpose of defeating those justices that do not meet its standards. The ALJ agrees with CEW's view that the discussion of voter "education" is simply the "windup to the pitch" that certain justices must not be retained. There is no evidence that CTBC ever had an independent purpose of voter education, apart from its ultimate goal of removing targeted justices.
 - c. CTBC was first formed in April 2009. It has no "track record" of advocating any matter other than the non-retention of justices in the upcoming election. All its expenditures in the current election cycle have been for that purpose.
 - d. A sample of CTBC's press releases for this week of July 21 to 28, 2010,

⁴ Citing *Buckley v. Valeo*, 424 U.S. 1, 78 (1976), CTBC suggests that to be a political committee, it must have the major purpose of supporting or opposing a candidate. It contends that simply having a major purpose of supporting or opposing a candidate is not sufficient. Because CTBC has the major purpose of opposing the justices' retention, the ALJ need not decide whether a major purpose is sufficient.

which is representative of CTBC's advocacy, show that CTBC's primary goal is to defeat the justices it considers unworthy of holding office:

- the "point" of Clear The Bench Colorado is to hold "the current justices accountable to the Colorado Constitution, the rule of law, and the citizens whose rights they are sworn to uphold." Exhibit 7, p. 1.
- "a grassroots movement called Clear the Bench Colorado . . . aims to get Coloradans to vote out three ultra-liberal Supreme Court justices." Exhibit 7, p. 2.
- "Haley starts out with a reasonably accurate summation of the 'judicial push' (to vote 'NO' on the unjust justices of the Colorado Supreme Court . . .)" Exhibit 7, p. 3.
- "Be a citizen, not a subject - get informed, then exercise your right to vote 'NO' this November on the four (er, three remaining) 'unjust justices' . . ." Exhibit 7, p. 4.
- e. In those statements that do contain some information that might be considered educational, such as Mr. Arnold's discussion of the judicial performance commission, it is imbedded in the context of an argument that the judicial performance system is unequal to the task of holding judges accountable, and therefore voters must "get informed, then exercise your right to vote 'NO' this November on the four (er, three remaining) 'unjust justices' . . ." Exhibit 7, p. 7.
- f. CTBC's primary, if not sole, purpose is summarized in the name selected for it by Mr. Arnold -- "Clear the Bench Colorado."
- 9. Political committees are subject to a contribution limit of \$525 from any one person per election cycle.⁵ Issue committees are subject to no contribution limit.
- 10. CTBC initially attempted to register with the Secretary of State as a political committee on April 20, 2009, stating that its purpose was "judicial retention." Exhibit B.
- 11. The Secretary of State rejected that registration. In an e-mail to Mr. Arnold dated May 1, 2009, the Secretary explained that the reason for rejection was "Purpose too vague also might fall under definition of issue committee." Exhibit C.
- 12. The e-mail was followed by a letter to Mr. Arnold dated May 4, 2009, Exhibit 10. That letter stated, in pertinent part:
The Committee's purpose is too vague. Per Rule 2.4 of the Secretary of State's Rules Concerning Campaign and Political Finance " . . . a political committee or small donor committee shall identify the types of candidates being supported or opposed, such as party affiliation or public policy position, and if known, the specific candidates being supported or opposed."
- 13. The letter advised Mr. Arnold to refile CTBC's registration as a political

⁵ See Colo. Const. art. XXVIII, §§ 3(5), as adjusted by § 3(13) and 8 CCR 1505-8, rule 12.7.

committees and identify "the specific judges you will either be supporting or opposing the retention of."

14. Unlike the May 1st e-mail, the letter made no mention of the possibility of filing as an issue committee.

15. Mr. Arnold did not re-register as a political committee. Instead, he sent an e-mail to Kristine Reynolds, a staff member of the Secretary of State's Elections Division, providing a draft registration form as an issue committee, and asking for advice as to "the proper classification and status of CTBC." Exhibit E.

16. The draft registration contained the following, revised, statement of purpose:

1. Educate Colorado voters on the importance of judges observing principles of the "rule of law" in deciding cases;
2. Educate Colorado voters on their right to non-retain judges who do not follow these principles;
3. Advocate for the non-retention of justices statewide who demonstrate a consistent pattern of deciding cases in contravention of the Colorado Constitution, established statutory law, legal precedent, and "rule of law" principles (naming judges as necessary to educate voters).

17. The staff of the Elections Division was uncertain as to whether a committee opposing judicial retention, such as CTBC, should register as a political committee or an issue committee, and in fact had accepted such a committee as a political committee in the past. See Exhibits 13 and D.

18. After holding an internal policy meeting to discuss the issue, the Elections Division determined that CTBC should register as an issue committee. As a result of that meeting, a representative of the Elections Division prepared a memo documenting that, "After much discussion our initial thought that they [CTBC] should register as an issue committee was agreed upon." Exhibit F. This memo was subsequently posted to the Secretary of State's website and was publicly available.⁶

19. The Deputy Secretary of State attended the policy meeting, and therefore was aware of the Election Division's position that committees opposing judicial retention should register as issue committees.

20. On June 9, 2009, the Elections Division formally accepted CTBC's registration as an issue committee. Exhibit G.

21. The Secretary of State has never adopted a regulation to codify the Election Division's position that committees opposing judicial retention should register as issue committees. Although a draft regulation was discussed at a Campaign Finance Advisory Panel meeting on June 18, 2009 (Exhibit H), opinion was divided and

⁶ The Elections Division continues to support this position. Exhibits I, J, K, L, N.

the regulation was not adopted.⁷

22. While the litigation of this case was pending, CTBC petitioned the Secretary of State to conduct emergency rulemaking to adopt a rule requiring committees supporting or opposing judicial retention to register as issue committees. The Secretary declined to do so. In a letter to CTBC's attorney, dated August 4, 2010 (Exhibit 12), the Director of the Elections Division advised CTBC that

... the question as to what type of committee is appropriate, remains without definitive answer.

The Secretary of State recognizes that there are credible arguments on both sides of this matter. Neither the Fair Campaign Practices Act nor the Colorado Constitution provides guidance as to how an organization like Clear the Bench shall be classified. In the event the law is not clear, it is ultimately left to the judicial branch to decide what a statute or constitutional provision means. The Secretary of State only provides guidance, in the form of rulemaking, to assist persons and organizations who are subject to relevant laws.

This current request has been made while litigation is ongoing between Colorado Ethics Watch and Clear the Bench. The Office of Administrative Courts will adjudicate the matter more quickly and with greater authority than is possible in emergency rulemaking. Furthermore, the proximity to the 2010 general election complicates the feasibility of adopting an emergency rule.

Due to the role of the court, the fact that a rule could be implemented just weeks before the general election, and the continuing litigation in this case, the Secretary of State is declining to issue an emergency rule as requested.

23. The Secretary of State, therefore, has not made a formal decision that committees opposing or supporting judicial retention must file as issue committees and not political committees. Although staff members of the Elections Division hold this belief and have given this advice to others, the Secretary of State has refused to adopt this position by formal rule making, and instead has deferred to the outcome of this litigation.

24. The parties to this litigation are CEW and CTBC. The Secretary of State is not a party to this litigation.

25. CEW is a private organization that is neither an agent of, nor in privity with, the Secretary of State. Therefore, CEW is not responsible for or bound by advice given to CTBC by the staff of the Elections Division.

26. CEW has made no representations to CTBC upon which CTBC has detrimentally relied.

⁷ This panel is composed of representatives of the Elections Division as well as interested members of the public. The panel is an advisory body only.

Discussion and Order

Colorado's Campaign Finance Laws

The primary campaign finance law in Colorado is Article XXVIII of the Colorado Constitution, which was approved by the voters in 2002. Article XXVIII imposes contribution limits, encourages voluntary spending limits, imposes reporting and disclosure requirements, and creates an enforcement process. Colorado also has statutory campaign finance law, known as the Fair Campaign Practices Act (FCPA), §§ 1-45-101 to 118, C.R.S., which was originally enacted in 1971, repealed and reenacted by initiative in 1996, substantially amended in 2000, and again substantially revised by initiative in 2002 as the result of the adoption of Article XXVIII. The Secretary of State, pursuant to regulations published at 8 CCR 1505-6, further regulates campaign finance practices.

Definition of a Political Committee

The validity of CEW's complaint depends upon the accuracy of its allegation that CTBC is a political committee. If CTBC is not a political committee it has no obligation to register as such.

A political committee is defined by Colo. Const. art. XXVIII, § 2(12)(a), as follows:

"Political committee" means any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates.

Emphasis added.

Though not specifically mentioned in § 2(12), a political committee must also have as its "major purpose" the nomination or election of a candidate (or the defeat thereof). *Alliance for Colorado's Families, v. Gilbert*, 172 P.3d 984, 970 (Colo. App. 2007)(citing *Buckley v. Valeo*, 424 U.S. 1 (1970)).

A "candidate" is defined by § 2(2), as follows (in pertinent part):

"Candidate" means any person who seeks nomination or election to any state or local office that is to be voted on in this state at any primary election, general election, school district election, or municipal election. "Candidate" also includes a judge or justice of any court of record who seeks to be retained in office pursuant to the provisions of section 25 of article VI. A person is a candidate for election if the person has publicly announced an intention to seek election to public office or retention, of a judicial office and thereafter has received a contribution or made an expenditure in support of the candidacy.

Emphasis added.

Colo. Const. art. VI, § 25, in turn, states, in pertinent part:

A justice of the supreme court, or a judge of any other court of record,

who shall desire to retain his judicial office for another term after the expiration of his then term of office shall file with the secretary of state, not more than six months nor less than three months prior to the general election next prior to the expiration of his then term of office, a declaration of intent to run for another term.

Emphasis added.

When language of a constitutional amendment is clear and unambiguous, the amendment must be enforced as written. *Davidson v. Sandstrom*, 83 P.3d 648, 654 (Colo. 2004). Although the court's obligation is to give effect to the intent of the electorate, in giving effect to that intent the court must look to the words used, reading them in context and according to their plain and ordinary meaning. *Sanger v. Dennis*, 148 P.3d 404, 412 (Colo. App. 2008).

The constitutional provisions cited above are clear that a justice becomes a "candidate" when that justice files a declaration of intent to run for retention with the Secretary of State. Once a justice becomes a candidate, any committee whose major purpose is the defeat of that candidate's retention in office and has accepted or spent over \$200 to expressly advocate against the candidate's retention, becomes a political committee within the meaning of § 2(12).

CTBC is a Political Committee

There is no dispute that Justices Bender, Rice, and Martínez have all filed declarations to run for retention as required by article VI, § 25, and therefore are all "candidates" within the meaning of art. XXVIII, § 2(2). CTBC is therefore a political committee because its major purpose is the defeat of those justices' retention in office, and it has accepted contributions and made expenditures in excess of \$200 to expressly advocate against their retention. These undisputed facts place CTBC squarely within § 2(12)'s definition of political committee. Because CTBC meets that definition, it was obligated to register as such with the Secretary of State, as required by § 1-45-108(3), C.R.S. That obligation ripened when CTBC cumulatively spent, or accepted, in excess of \$200 for the first time following Justice Bender's filing of his declaration of intent to run.

CTBC is Not an Issue Committee

Political committees and issue committees are mutually exclusive. The definition of political committee excludes issue committees, and the definition of issue committee excludes political committees. See art. XXVIII, §§ 2(12)(b) and 2(10)(b), respectively. Thus, because CTBC meets the definition of a political committee, it cannot be an issue committee as well.

Moreover, CTBC does not meet the definition of an issue committee. An issue committee is defined by § 2(10) to be a group of two or more persons that has a major purpose of supporting or opposing any ballot issue or ballot question and has accepted or spent in excess of \$200. Art. XXVIII, § 2(10)(a). The terms "ballot issue" and "ballot question" are not defined in article XXVIII, but are terms of art defined elsewhere in constitutional and statutory law that predated the electorate's adoption of article XXVIII.

Voters are presumed to know the law when they adopt constitutional amendments. *Common Sense Alliance v. Davidson*, 995 P.2d 748, 754 (Colo. 2000). The electorate, as well as the legislature, must be presumed to know the existing law at the time they amend or clarify that law.¹

"Ballot issue" is defined in article X, § 20(2)(a) as a "non-recall petition or referred measure in an election." This definition is part of the constitutional amendment known as TABOR (Taxpayer Bill of Rights), adopted in 1992. Ballot issue is also defined in statute at § 1-1-104(2.3), C.R.S. as a "state or local government matter arising under section 20 of article X of the state constitution [TABOR], as defined in sections 1-41-102(4) and 1-41-103(4), respectively." It also appears at § 1-40-102(1), C.R.S. where it is defined as "a nonrecall, citizen-initiated petition or legislatively-referred measure which is authorized by the state constitution, including a question as defined in sections 1-41-102(3) and 1-41-103(3)."² Sections 1-1-104(2.3) and 1-40-102(1) were adopted in 1993. Therefore all these definitions of ballot issue were law when the electorate adopted article XXVIII in 2002.

"Ballot question" is defined in statute as a "state or local government matter involving a citizen petition or referred measure, other than a ballot issue." Section 1-1-104(2.7), C.R.S. This provision was adopted in 1993, and was therefore law when article XXVIII was adopted in 2002.

All these definitions have the common requirement that a ballot issue or ballot question, whatever the subject, be a citizen initiated petition or a legislatively referred measure. Because judicial retention elections are mandated by article VI, § 25, they are neither citizen initiated nor legislatively referred, and thus are not "ballot issues" or "ballot questions."

The fact that article VI, § 25 requires that "a question" be placed on the "ballot" to determine whether a justice shall be retained, does not mean that the retention election becomes a "ballot question." As noted above, the term "ballot question" is a term of art defined in law well before article XXVIII was adopted. Had the drafters of article XXVIII intended to include advocacy of judicial retention within the scope of an issue committee, they could be expected to say so. Instead, the electorate used terms of art that were already defined in law and do not encompass retention elections.

Stretching the definition of "ballot question" to include retention elections creates an internal conflict in article XXVIII because a committee opposing or supporting a retention election would then be both a political committee and an issue committee simultaneously. This, however, is impossible because, as previously noted, the committees are mutually exclusive. Conflicting interpretations should be avoided. In order to effacuate legislative intent, courts must consider statutes as a whole and attempt to give consistent, harmonious, and sensible effect to all their parts. *State v. Nield*, 993 P.2d 493, 501 (Colo. 2000); *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962, 964 (Colo. App. 2006).³ Where ambiguities do exist, courts must interpret the constitutional provision as a whole in an attempt to harmonize all its parts.⁴ The only interpretation that results in harmony between the definitions of political and issue

¹ Sections 1-41-102 and 1-41-103 implement TABOR's odd-year election requirement.

committees is to restrict the terms "ballot question" and "ballot issue" to their historical denotation as citizen-initiated or legislatively referred measures, only.

CTBC attempts to avoid an internal conflict by adopting a strained construction of § 2(12). CTBC argues that the definition of political committee at § 2(12) does not include committees opposing judicial retention because § 2(12)(a) applies only to committees that "support or oppose the nomination or election of one or more candidates." Emphasis added. Although CTBC concedes that Justices Bender, Rice, and Martínez are "candidates" as defined in § 2(2), it argues that they are seeking "retention" and not "election," and therefore do not fall within the definition of § 2(12)(a).

The ALJ rejects this interpretation because it flies in the face of the plain language of § 2(2), which specifically defines "candidate" to include a justice who seeks to be retained.⁵ Nothing in this or any other constitutional provision suggests that a justice seeking to be retained is not running for "election." To the contrary, § 2(2) itself refers to a justice who seeks retention as a "candidate for election," and article VI, § 25, which describes the retention process, is titled "Election of Justices and Judges." Furthermore, § 25 specifies that if a majority of votes cast are in favor of retention, then the judge or justice is "elected to a succeeding full term." All this is consistent with the commonly understood meaning of the word "election," which means "the act of choosing." *Webster's New Universal Unabridged Dictionary* 582 (2nd ed. 1983). Clearly, a justice seeking to be retained in office is seeking to be chosen, or elected, to remain in that office.

The ALJ also finds unpersuasive the argument that because retention elections are in some ways similar to recall petitions, they should be treated as such. The fact that § 1-46-108(6), C.R.S. requires a committee for the recall of an elected official to register as an issue committee has little significance because public officials facing a recall are not defined as "candidates" by § 2(2). To the contrary, § 1-12-118(1) specifically states that the name of the person subject to recall "shall not appear on the ballot as a candidate for office." See also 8 CCR 1505-6, Rule 10.3 which permits an incumbent to open an issue committee to oppose his recall because he "is not a candidate for the successor election." Furthermore, although recall is similar to retention in that the office holder faces a "yes" or "no" vote, there are substantial dissimilarities. Most notably, recalls are initiated by citizen petition and seek to remove an official from office prior to the end of his or her term in office. Article X01, § 1. Retention elections, on the other hand, are required by law and occur only at the end of the judge or justice's term of office. Article VI, § 25. Because a recall petition is not the same thing as a retention election, and is governed by different rules, it is not a compelling point of comparison.

Nor is the ALJ bound by the Election Division's decision to accept CTBC's registration as an issue committee, or by the current belief of its staff that committees opposing or supporting judicial retention should register as issue committees. In taking those positions, the Elections Division did not have the benefit of the extensive briefing and evidence presently before the ALJ.

Deference to an agency interpretation is not given when the interpretation misapplies or misconstrues the law, *Huddleston v. Bd. of Equalization*, 31 P.3d 156, 160

(Colo. 2001); or is contrary to the plain meaning of a statute or contrary to legislative intent, *Barnes v. Dept. of Revenue, Motor Vehicle Div.*, 23 P.3d 1235, 1236 (Colo. App. 2000); or has been inconsistent in the past. *Lobato v. Industrial Claim Appeals Office*, 105 P.3d 220, 223 (Colo. 2005). Furthermore, even if deference is due, it is weak where the agency's interpretation has not been adopted by rule, making or other formal adjudication. *Christensen v. Harris County*, 529 U.S. 576, 587 (2000). In recognition of these and other factors, the Elections Division has prudently declined CTBC's request for emergency rulemaking and instead has deferred to the outcome of this litigation, where the ALJ's decision on behalf of the agency will be based upon a fully developed record and will be subject to judicial review.

In summary, a fair reading of the plain language of article XXVIII, §§ 2(2) and 2(12), as applied to facts that are either undisputed or are proven by the evidence, shows that CTBC is a political committee and must be registered as such.

CEW is Not Equitably Estopped

Equitable estoppel is an affirmative defense which must be proven by the party asserting it.

The essential elements of an equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) lack of knowledge and the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.

V Bar Ranch LLC v. Cullen, 233 P.3d 1200, 1210 (Colo. 2010)(quoting *City of Thornton v. Bijou Irr. Co.*, 928 P.2d 1, 76 (Colo. 1996)).

For the purposes of this discussion, the key element is that estoppel can only be asserted against a "party" that made a false representation or concealed material facts, and that the party asserting the defense must have relied upon the conduct of the "party" to be estopped. The defense does not apply in this case because there is no evidence that CEW, the party to be estopped, made any false representation or concealed any material facts; nor is there any evidence that CTBC relied to its detriment upon any conduct by CEW. It is the Secretary of State, through its Elections Division staff, that made the representations upon which CTBC relied, not CEW. However, the Secretary of State is not a party to this litigation.

CTBC seeks to sidestep this problem arguing that CEW acted as an agent of the Secretary of State in bringing this litigation, or acted in privity with the Secretary by doing so. The ALJ does not agree. Article XXVIII, § 9(2) is carefully designed to keep the Secretary of State out of the litigation process. Under that provision, "any person"

who believes there has been a violation of the fair campaign practice laws may file a written complaint "with the secretary of state." Article XXVIII, § 9(2)(a). The Secretary is then obligated to "refer the complaint to an administrative law judge." *Id.* The ALJ, after holding a hearing in accordance with § 24-4-105 of the Administrative Procedure Act, renders a decision which is "final and subject to review by the court of appeals." *Id.* "The secretary of state and the administrative law judge are not necessary parties to the review." *Id.* Nothing in § 9(2) gives the Secretary any ability to control or oversee the conduct of the litigation,⁹ and nothing suggests that the person bringing the complaint does so on behalf of the Secretary or is an agent of the Secretary.¹⁰

CTBC relies upon a number of cases that recognize privity between the government and its citizens in certain matters of public interest. *Arlison, Topoka & Santa Fe Rwy. Co. v. Bd. of County Commrs*, 95 Colo. 435, 37 P.2d 761 (1934)(judgment against a county in a matter of general interest, such as the levy and collection of a tax, is binding not only on the county as the named defendant but also upon taxpayers not named as defendants); *McNichols v. City and County of Denver*, 101 Colo. 316, 74 P.2d 99, 102 (1937)(judgment against a governmental body in a matter of general interest to all its citizens and taxpayers is binding upon the latter, though they are not parties to the suit); *Lance v. Davidson*, 379 F.Supp. 2d 1157, 1125 (D. Colo. 2005)(in a challenge to legislative redistricting, individual citizens stand in privity with the General Assembly, which was a party to prior litigation); *Lance v. Dennis*, 444 F.Supp. 2d 1149, 1159 (D. Colo. 2005)(the extent to which individuals are privies of the state depends on whether the issue asserted by the private citizen and previously asserted by a public entity is a matter of general interest to all the people); *Safsky v. Paramount Communications, Inc.*, 7 F.3d 1464, 1470 (10th Cir. 1993)(when a state litigates common public rights, such as claims based upon damage to natural resources, the citizens of that state are represented in such litigation by the state and are bound by the judgment)(citing *Washington v. Washington State Comm'r Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979)).

These cases are not persuasive authority here because this is not a case where the Secretary of State has been party to prior litigation that could preclude CEW's claim. Rather, CTBC seeks to attribute to CEW positions informally taken by staff members of the Secretary of State. CTBC has cited no authority, and the ALJ is aware of none, that would create privity between the Secretary and CEW under these circumstances.

The Appropriate Sanction

Despite the failure of CTBC's defense of equitable estoppel, its reasonable reliance upon the Election Division's acceptance of its registration as an issue committee is worthy of consideration in determining the appropriate sanction. Pursuant to § 9(2), the ALJ has discretion to impose any "appropriate order, sanction, or relief" authorized by article XXVIII. The word "appropriate" is intended to give the ALJ

⁹ The design of § 9(2) wisely insulates the Secretary, who has political party affiliation, from allegations of political influence in the prosecution of fair campaign violations.

¹⁰ Only after the final decision has been rendered may the Secretary choose to become a party by filing an enforcement action. If the Secretary chooses not to do so, then the person bringing the complaint may pursue "a private cause of action to enforce the decision." *Id.*

discretion to "limit otherwise harsh results." *Patterson Recall Committee, Inc., v. Patterson*, 209 P.3d 1210, 1219 (Colo. App. 2009). This includes the "discretion to impose no sanction at all." *Id.*

In view of CTBC's reasonable reliance upon the Election Division's acceptance of its registration as an issue committee, and the Elections Division's advice that such a registration was appropriate, any monetary penalty against CTBC would be inequitable and unduly harsh. The ALJ therefore imposes none.

However, inasmuch as CTBC is a political committee, it must promptly register as such. It shall accomplish such registration within twenty (20) days of this decision, and thereafter abide by the rules applicable to political committees.

This decision is final and subject to review by the court of appeals, as provided by Colo. Const. art. XXVIII, § 9(2)(a) and § 24-4-106(1), C.R.S.

Attorney Fees

In granting summary judgment to CTBC against CEW's initial complaint, the ALJ awarded CTBC its attorney fees per § 1-45-111.5(2) because CEW's complaint, as then stated, lacked substantial justification. The ALJ, however, found that the amount of fees to be awarded might depend upon how much of CTBC's attorney's prior effort would assist in the defense of CEW's supplemental claim. The ALJ therefore deferred determination of the proper amount of fees to be awarded until after the merits of the supplemental complaint had been resolved. Because CEW's supplemental complaint has merit, no fees will be awarded for effort by CTBC's attorney that was reasonably necessary to defend against the supplemental complaint.

CTBC is directed to submit, no later than October 11, 2010, an itemization of those fees it incurred in defense of the dismissed claim.

Done and Signed
September 22, 2010


ROBERT N. SPENCER
Administrative Law Judge

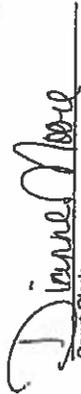
Digitally recorded CR #1
Exhibits admitted:
CEW's exhibits: 1-17
CTBC's exhibits: A-O

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above FINAL AGENCY DECISION by depositing same in the U.S. Mail, postage prepaid, at Denver, Colorado addressed to:

- Luis Toro, Esq.
1630 Welton Street, #415
Denver, CO 80202
- Aaron Goldthamer, Esq.
Sherman & Howard, LLC
633 Seventeenth Street, Suite 3000
Denver, CO 80202
- Scott E. Gestler, Esq.
Mario D. Nicolais, II, Esq.
Hackstaff Gassler, LLC
1601 Blake Street, Suite 310
Denver, CO 80202
- William A. Hobbs
1700 Broadway, Suite 270
Denver, CO 80290

this 22 day of September, 2010.


Court Clerk

<p>COURT OF APPEALS, STATE OF COLORADO 101 West Colfax Ave., Suite 800 Denver, CO 80203</p>	<p>FILED IN THE COURT of APPEALS STATE OF COLORADO</p> <p>NOV 23 2010</p> <p>Clerk, Court of Appeals</p> <p>▲ Court Use Only ▲</p>
<p>Appeal from Office of Administrative Courts Administrative Law Judge Robert N. Spencer Case No. OS 2010-0009</p>	
<p>In the Matter of the Complaint Filed by Colorado Ethics Watch Regarding Alleged Campaign and Political Finance Violations by Clear the Bench Colorado</p> <p>Complainant-Appellee: COLORADO ETHICS WATCH</p> <p>v.</p> <p>Respondent-Appellant: CLEAR THE BENCH COLORADO</p>	
<p><i>Attorneys for Appellant:</i> Peter J. Krumholz, Reg. No. 27741 Hale Westfall, LLP 1445 Market St., Suite 300 Denver, Colorado 80202 Telephone: (720) 904-6010 Fax: (720) 904-6020 E-mail: pkrumholz@halewestfall.com</p>	<p>Case No.</p>
<p>DESIGNATION OF RECORD</p>	

Respondent-Appellant, Clear The Bench Colorado, by and through their counsel and pursuant to C.A.R. 10, respectfully submits the following Designation of Record.

1. All items set forth in C.A.R. 10(a).
2. The complete reporters' transcript of the hearing that occurred on September 15, 2010, including opening statements and closing arguments, if any. (The hearing was reported via electronic recording, and Appellants are in the process of obtaining the audio of the hearing so that a written transcript can be prepared.)
3. All exhibits of Clear the Bench Colorado.
4. All exhibits of Colorado Ethics Watch.
5. All pleadings filed in this matter, including all exhibits or other items attached to such pleadings, if any.
6. A certified copy of the docket entries prepared by the Office of Administrative Courts.

Dated: November 23, 2010.

HALE WESTFALL, LLP


By :s/ Peter Krumholz
Peter J. Krumholz, Reg. No. 27741

Attorney for Respondent-Appellant
Clear the Bench Colorado

CERTIFICATE OF SERVICE

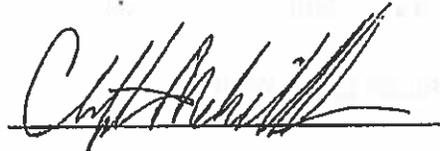
I certify that on this 23rd day of November, 2010, the foregoing DESIGNATION OF RECORD was served on all parties and other interested persons, via U.S. Mail, addressed to the following:

Luis Toro
1630 Welton St., Suite 415
Denver, CO 80202

Aaron Goldhamer
Sherman & Howard, LLC
633 Seventeenth St., Suite 3000
Denver, CO 80202

William A. Hobbs
Deputy Secretary of State
1700 Broadway, Suite 270
Denver, CO 80290

Office of Administrative Courts
633 17th St., Suite 1300
Denver, CO 80202

A handwritten signature in black ink, appearing to read "Cliff Archibald", is written over a horizontal line.

Colorado Court of Appeals 101 West Colfax Avenue, Suite 800 Denver, CO 80202	COPIES MAILED TO COUNSEL OF RECORD Tr. Ct. Judge Tr. Ct. Clerk
Office of Administrative Courts OS20100009	AND _____
Petitioner-Appellee: Colorado Ethics Watch, v.	ON <u>12/15/10</u>
Respondent-Appellant: Clear The Bench Colorado.	BY <u>SR</u>
Court of Appeals Case Number: 2010CA2291	
ADVISEMENT OF FILING NOTICE OF APPEAL	

A Notice of Appeal was filed on 11/08/10 in the case designated above. Include the Court of Appeals case number on all future pleadings and the record on appeal.

Please note that this document is advisory only and does not serve as confirmation that this court has jurisdiction or that all jurisdictional requirements have been met.

Also note that the Court of Appeals is statutorily required to advance industrial claim and juvenile appeals on its calendar. The court will expect counsel, pro-se parties and court reporters to meet all filing deadlines set forth by the Colorado Appellate Rules or by court order. In order to comply with the statutes and avoid unnecessary delay, motions to enlarge the time for filing the record on appeal or the briefs will generally be denied unless extremely compelling reasons are clearly demonstrated.

Required Filings:

A Designation of Record, if not already filed with the Notice of Appeal, must be filed with the trial court or agency and the Court of Appeals and include service on each court reporter who reported any proceedings from which transcripts are requested, within 10 days of the Notice of Appeal. See C.A.R. 10(b) for detailed requirements.

The record on appeal is due 02/07/11.

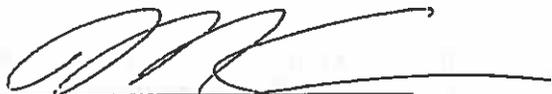
CHRISTOPHER T. RYAN
CLERK OF THE COURT OF APPEALS

By:  DATE: 12/15/10
Deputy Clerk

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 th Street, Suite 1300 Denver, Colorado 80202	▲ COURT USE ONLY ▲ COLORADO COURT OF APPEALS CASE NUMBER: 2010 CA 2291
BEFORE THE SECRETARY OF STATE STATE OF COLORADO IN THE MATTER OF THE COMPLAINT FILED BY COLORADO ETHICS WATCH REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY CLEAR THE BENCH COLORADO	
CERTIFICATE OF RECORD	

I, Robert N. Spencer, Administrative Law Judge of the Office of Administrative Courts, do hereby certify that the file attached hereto is the accumulated original record of the proceedings held before me in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of January, 2011.


 ROBERT N. SPENCER
 Administrative Law Judge
 Office of Administrative Courts

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 th Street, Suite 1300 Denver, Colorado 80202	▲ COURT USE ONLY ▲ COLORADO COURT OF APPEALS CASE NUMBER: 2010 CA 2291
BEFORE THE SECRETARY OF STATE STATE OF COLORADO IN THE MATTER OF THE COMPLAINT FILED BY COLORADO ETHICS WATCH REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY CLEAR THE BENCH COLORADO	
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A transcript of proceedings conducted on September 15, 2010 has been provided to the Office of Administrative Courts for inclusion in the Agency Record. The transcript has been separately numbered as transcript pages 1 through 255.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above **CERTIFICATE OF RECORD** and **INDEX** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado to:

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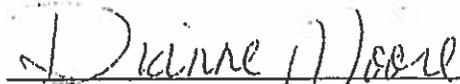
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on this 4 day of February, 2011.



Office of Administrative Courts

UNITED STATES COURT OF APPEALS November 7, 2016

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

ROCKY MOUNTAIN GUN OWNERS, a
Colorado non-profit corporation;
COLORADO CAMPAIGN FOR LIFE, a
Colorado non-profit corporation,

Plaintiffs-Appellants,

v.

WAYNE W. WILLIAMS, in his official
capacity as Secretary for the State of
Colorado; CITIZENS FOR
RESPONSIBILITY AND ETHICS IN
WASHINGTON, a Delaware non-profit
corporation, trading as Colorado Ethics
Watch,

Defendants-Appellees.

No. 15-1336

(D.C. No. 1:14-CV-02850-REB-KLM)
(D. Colo.)

ORDER AND JUDGMENT*

Before **KELLY, BRISCOE** and **GORSUCH**, Circuit Judges.

Rocky Mountain Gun Owners and Colorado Campaign for Life (Plaintiffs)
initiated this lawsuit to enjoin a then-ongoing state administrative proceeding initiated by
Colorado Ethics Watch (CEW) and to declare unconstitutional state election disclosure

* This order and judgment is not binding precedent, except under the doctrines of
law of the case, res judicata, and collateral estoppel. It may be cited, however, for its
persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

laws. The district court denied this relief and dismissed the case, citing the Younger v. Harris abstention doctrine. Plaintiffs appeal, arguing the district court applied an improper abstention standard. We have jurisdiction pursuant to 28 U.S.C. § 1291. Because there were no ongoing state proceedings when the district court ruled, we reverse and remand for the district court to determine in the first instance whether any of Plaintiffs' claims remain viable.

I.

The Colorado Constitution, Article XXVIII, and parallel statutory provisions require that any person who spends \$1,000 or more in a year on “electioneering communications” must file a disclosure report with the Colorado Secretary of State including, among other details, donor information. Colo. Const. art. XXVIII, § 6(1). Failing to file triggers civil penalties and a daily fine. Id. § 10(1)–(2). Although Colorado’s Secretary of State enforces these laws, the statute’s private enforcement provision allows “[a]ny person” to file a complaint with the Secretary, who must then refer the case to an administrative law judge (ALJ) in the Office of Administrative Courts (OAC). Id. § 9(1), (2)(a). A party dissatisfied with the ALJ’s ruling may appeal to the Colorado Court of Appeals within forty-nine days of service of the agency’s final decision. Id.; Colo. Rev. Stat. § 24-4-106(11)(b) (2016).

Plaintiffs are two Colorado non-profit organizations that lobby for specific political causes. Rocky Mountain Gun Owners advocate for Second Amendment rights. Aplt. Br. at 3. Colorado Campaign for Life advocates for the right to life. Id. They often

send election mailings to Colorado voters concerning these two issues and plan to do so in the future. Aplt. Reply Br. at 7; Aplt. App. at 18. Defendants are Colorado Ethics Watch (CEW) and Colorado Secretary of State Wayne Williams. CEW is a non-profit organization that advocates for government accountability and transparency. Aplee. Br. at 3. As mentioned above, the Secretary is charged with enforcing Colorado's election disclosure laws and passing private complaints on to the OAC.

Both Plaintiffs sent mailings in mid- and early June of 2014, respectively, which all parties agree fit the definition of "electioneering communications." Aplt. App. at 17-18, 37-47. Both Plaintiffs failed to file the required disclosure reports. Id. at 18. CEW filed a private complaint with then Secretary Scott Gessler (predecessor to Appellee Secretary Wayne Williams) on September 9, 2014. Id. at 18-19. The Secretary passed the complaint on to the OAC for a hearing. Id. at 19-20. Before the OAC hearing, Plaintiffs filed this action in the United States District Court for the District of Colorado challenging the constitutionality of the state's election disclosure scheme under both the United States and Colorado Constitutions. Id. at 10-70. Plaintiffs also requested a preliminary injunction and temporary restraining order (TRO) to prevent enforcement of the disclosure scheme either generally or as applied to them, and also to halt the then-upcoming OAC hearing. Id. at 71, 155. The district court denied Plaintiffs' requests for a preliminary injunction and TRO, finding that "[t]he administrative proceedings pending against [Plaintiffs] are the type of proceedings entitled to abstention under *Younger v. Harris*, 401 U.S. 37 (1971)." Id. at 164.

The Secretary then moved to dismiss Plaintiffs' constitutional claims on Younger abstention grounds on December 22, 2014. Id. at 166–74. The next day, the ALJ in the Colorado state proceedings issued his Final Agency Decision finding that Plaintiffs violated Colorado state law and rejecting their “as applied” constitutional challenges to the state law, which they had raised as a defense. Id. at 277. Plaintiffs could have appealed this decision to the Colorado Court of Appeals within forty-nine days after service of the Final Agency Decision, but chose not to do so. Aplee. Br. at 5; Colo. Rev. Stat. § 24-4-106(11). Although unclear from the record, service seems to have taken place shortly after December 23, 2014, meaning the time for appeal expired as late as mid-February of 2015. Aplt. App. at 277–78. Thus, the Colorado state proceedings ended in mid-February of 2015. Neither party contests that the state proceedings have ended.

Seven months later, on August 12, 2015, the district court granted the Secretary's motion to dismiss, again finding abstention proper. Id. at 279–90. In doing so, the district court stated that “the parties to this case *are involved* in a parallel state proceeding.” Id. at 286 (emphasis added). This was a clear misstatement of fact, as both parties had previously alerted the district court to the fact that the OAC proceedings had terminated. In particular, Plaintiffs stated in their brief in opposition to the motion to dismiss that “[o]n December 23, 2014, the [OAC] ruled that Plaintiffs failed to report electioneering communications and ordered them to each pay a civil penalty of \$8,450.” Id. at 177. Likewise, the Secretary acknowledged in his reply in support of the motion to

dismiss that “the underlying administrative court action ended with a final adjudication” on December 23, 2014, and attached a copy of the OAC’s order to his reply. Id. at 265. In addition, the Secretary stated that Plaintiffs “ha[d] until February 16, 2015, to appeal.” Id. Notwithstanding the district court’s misstatement regarding the continued pendency of the state proceedings, however, neither party alerted the district court to its error.

On appeal, Plaintiffs now argue that the district court applied the incorrect abstention standard, citing the Supreme Court’s most recent abstention case, Sprint Communications, Inc. v. Jacobs, ___ U.S. ___, 134 S. Ct. 584 (2013). Aplt. Br. at 2. Plaintiffs would have this court conclude that the private enforcement action CEW brought is not a type of state proceeding from which federal courts must abstain. Id. at 15–35. Defendants contest this characterization and also argue that the entire case is moot. Aplee. Br. at 1; Aplee. Reply Br. at 8–22.

Thus, the issues before us are whether the district court properly abstained and whether the underlying constitutional claims are moot.

II.

Standard of Review

We review *de novo* a district court’s decision to abstain based on Younger. Yellowbear v. Wyo. Atty. Gen., 525 F.3d 921, 923 (10th Cir. 2008). However, we review findings of fact for clear error. Highmark Inc. v. Allcare Health Mgmt. Sys., Inc., ___ U.S. ___, 134 S. Ct. 1744, 1748 (2014).

Younger Abstention

Generally, federal courts must exercise their jurisdiction when available. Sprint, 134 S. Ct. at 590–91. However, principles of “equity, comity, and federalism” motivate a “longstanding public policy against federal court interference with state court proceedings.” Steffel v. Thompson, 415 U.S. 452, 460–61 (1974); Younger v. Harris, 401 U.S. 37, 43–45 (1971). Such policies require a federal court to abstain from hearing a case before it when failing to do so would disturb an ongoing state proceeding. Younger, 401 U.S. at 45.

Therefore, the threshold question in Younger abstention analysis is whether a state proceeding is, in fact, ongoing. Steffel, 415 U.S. at 461–63; Boyle v. Landry, 401 U.S. 77, 80–81 (1971); Columbian Fin. Corp. v. Stork, 811 F.3d 390, 393 (10th Cir. 2016); see also Winter v. Wolnitzek, __ F.3d __, No. 16-5836/16-5839/16-5841, 2016 WL 4446081, at *2 (6th Cir. Aug. 24, 2016) (“In the absence of an ongoing enforcement action, Younger has no role to play, leaving us with authority, indeed an obligation, to resolve the case”); Banks v. Slay, 789 F.3d 919, 923 (8th Cir. 2015) (holding that abstention was inappropriate because the state appellate case ended and plaintiffs did not petition the state supreme court); ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund, 754 F.3d 754, 759 (9th Cir. 2014) (describing “ongoing” as the first and independent element). This threshold question is necessary because “the relevant principles of equity, comity, and federalism have little force in the absence of a pending state proceeding.” Steffel, 415 U.S. at 462 (quotations omitted). State court proceedings end when the time

for appeal expires. Bear v. Patton, 451 F.3d 639, 642 (10th Cir. 2006).

The Supreme Court's modern abstention cases involve a live state proceeding when the trial or appellate courts chose to abstain. See, e.g., Sprint, 134 S. Ct. at 590 (noting that the state court review of the state administrative proceeding was ongoing when the Eighth Circuit held abstention proper); Ohio Civil Rights Comm'n v. Dayton Christian Sch.s, Inc., 477 U.S. 619 (1986) (evaluating an injunction stalling an otherwise pending state civil rights commission investigation); Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n., 457 U.S. 423 (1982) (abstaining from a lawyer disciplinary hearing resolved a few weeks later in In re Hinds, 90 N.J. 604 (1982)); Huffman v. Pursue, Ltd., 420 U.S. 592, 608 (1975) (stating that the state court proceeding ended after the district court erroneously failed to abstain). Whether we apply Younger or Sprint in our abstention analysis, both require an ongoing state proceeding. See Sprint, 134 S. Ct. at 592 (assuming expressly, as a threshold matter, that the state proceeding was ongoing); Younger, 401 U.S. at 45 (discussing the foundation of abstention doctrine as prohibiting federal interference with "pending proceedings in state courts").

The district court made a clearly erroneous factual finding that the parallel state court proceedings were still ongoing at the time it granted the Secretary's motion to dismiss on Younger abstention grounds. App. 286 ("the parties to this case are involved in a parallel state proceeding."). In doing so, the district court apparently overlooked the statements in the Plaintiffs' response brief and the Secretary's reply brief indicating that the OAC proceedings terminated with a decision on December 23, 2014, and that the

Plaintiffs had until mid-February 2015 to appeal to the Colorado Court of Appeals. To be sure, neither party bothered to notify the district court after Plaintiffs allowed that time to lapse without filing an appeal, thereby ending the state proceedings for good. But nor did the district court ask the parties for a status update, or otherwise inquire about the status of the state proceedings, prior to granting the Secretary's motion to dismiss. For these reasons, we reverse the district court's dismissal, which was erroneously based on abstention principles, and remand for further proceedings.

In their briefs before this court, counsel agree that the state proceedings have concluded, but argue only as to the effect of that fact upon the continued vitality of Plaintiffs' claims. They do not address whether the district court erred by abstaining in the first place. Indeed, Plaintiffs invite us to revisit our abstention standard in light of Sprint. Because we dispose of this case on abstention's threshold question, we decline to wade further into the issue. Indeed, were we to proceed to address that issue, we would "run[] afoul of the prohibition on advisory opinions." Campbell-Ewald Co. v. Gomez, ___ U.S. ___, 136 S. Ct. 663, 679 (2016).

Mootness

The parties have also briefed the issue of whether the Plaintiffs' claims are moot. Defendants argue there is no possible relief that this court can grant because the state court enforcement proceedings are complete. Plaintiffs do not dispute this procedural fact, but argue their facial challenge to Colorado's election disclosure law is not moot because the harm caused by Colorado's law is capable of repetition yet potentially

evading review. Because the district court improperly abstained, it never reached the mootness issue. Thus, we leave this question to the district court on remand.

III.

We REVERSE the district court's grant of the motion to dismiss on Younger abstention grounds, and REMAND for further proceedings.

Entered for the Court

Mary Beck Briscoe
Circuit Judge