

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

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| <p>FRESH VISION OP, INC., et al.,</p> <p><i>Plaintiffs,</i></p> <p>v.</p> <p>MARK SKOGLUND, Executive Director, Kansas Governmental Ethics Commission, et al.,</p> <p><i>Defendants.</i></p> | <p>Case No. 24-cv-4055</p> <p>Judge Daniel D. Crabtree</p> <p>Stipulated Facts</p> |
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The Parties jointly stipulate to the following facts:

1. Plaintiff FreshVision OP, Inc. (“FreshVision”) is a 501(c)(4) dedicated to addressing issues of local concern in and around Overland Park, Kansas.
2. Plaintiffs James Muir and Chengney Thao are the President, Secretary/Treasurer, and board members of FreshVision.
3. The Kansas Governmental Ethics Commission (“KGEC”), is charged with enforcing the Kansas Campaign Finance Act (“KCFA”), and is comprised of nine commissioners—two appointed by the governor, one by the president of the senate, one by the speaker of the house of representatives, one by the minority leader of the house of representatives, one by the minority leader of the senate, one by the chief justice of the supreme court, one by the attorney general and one by the secretary of state. K.S.A. 25-419a(b), (d).
4. Defendant Mark Skoglund is the Executive Director (“ED”) of the KGEC. He has served in that position since he was appointed by the KGEC in 2017.
5. ED Skoglund and each KGEC commissioner are named defendants.
6. “A majority vote of five members of the commission shall be required for any action of the commission.” K.S.A. 25-419a(c).

7. “The commission may investigate, or cause to be investigated, any matter required to be reported upon by any person under the provisions of the campaign finance act, or any matter to which the campaign finance act applies irrespective of whether a complaint has been filed in relation thereto.” K.S.A. 25-4158(c).

8. “The commission may authorize the executive director to investigate any matter required to be reported by any person under the relevant law, or any matter to which the relevant law applies irrespective of whether a civil penalty has been assessed or a complaint has been filed in relation to it.” K.A.R. 19-3-1.

9. “Whenever any matter is brought to the attention of a member of the commission or the executive director which appears to raise an issue of a violation of the relevant law, the executive director is authorized to conduct a preliminary inquiry on the issue of whether there are facts sufficient to support the appearance of a violation. At the conclusion of a preliminary inquiry, the executive director shall report to the commission. The commission shall thereafter determine whether further investigation is required.” K.A.R. 19-3-3.

10. “The executive director shall file a complaint following the completion of an investigation conducted pursuant to Kan. Admin. Reg. 19-3, if in the executive director’s judgment there is probable cause to believe that a provision of relevant law has been violated.” K.A.R. 19-5-1.

11. Under K.S.A. 25-4164, if the commission determines a violation of the Kansas campaign finance act occurred, it “shall” report its findings “to the attorney general and to the county or district attorney of the appropriate county.”

12. Skoglund previously filed complaints with the KGEC against Muir and Thao related to FreshVision, which were resolved by the ED’s voluntary dismissal of the complaint.

13. The complaints before the KGEC alleged that express advocacy was a major purpose of FreshVision.

14. There are no current allegations before the KGEC that express advocacy is FreshVision’s major purpose.

15. Plaintiffs allowed FreshVision to go dormant between the resolution of the matter before the KGEC and the filing of this case.

16. Because of the adjudicative nature of KGEC, the Commission as a body can reach a different determination than the ED, in his role as complainant, on interpretations of the relevant KCFA laws and regulations.

17. A “political committee” is “any combination of two or more individuals or any person other than an individual, a major purpose of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for state or local office or make contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office.” K.S.A. 25-4143(I)(1).

18. The term “political committee,” as defined by K.S.A. 25-4143(I), is referenced in K.S.A. 25-4145, 25-4148.

19. K.A.R. 19-21-3 identifies factors to be considered in determining whether two or more persons, or an entity, is a political committee.

20. A Kansas political committee is required to file reports with the KGEC. K.S.A. 25-4145(a), 25-4148.

21. Within these reports, a Kansas political committee must identify, among other things, the names of those making contributions to the political committee and to whom the political committee makes expenditures. K.S.A. 25-4145(b).

22. Entities that do not qualify as a political committee as defined by KSA 25-4143(I), but make contributions or expenditures in an aggregate amount of \$100 or more on express advocacy within a calendar year, are governed by K.S.A. 25-4150.

23. K.S.A. 25-4150 provides, in relevant part: “Every person, other than a candidate or a candidate committee, party committee or political committee, who makes contributions or expenditures, other than by contribution to a candidate or a candidate committee, party committee or political committee, in an aggregate amount of \$100 or more within a calendar year shall make statements containing the

information required by K.S.A. 25-4148, and amendments thereto. Such statements shall be filed in the office or offices required so that each such statement is in such office or offices on the day specified in K.S.A. 25-4148, and amendments thereto.”

24. The KGEC is tasked with creating the disclosure forms for these (and other) reporting requirements. K.S.A. 25-4158a.

25. Although K.S.A. 25-4150 states that a person or entity governed by that section “shall make statements containing the information required by K.S.A. 25-4148,” the KGEC does not currently require such person or entity to file the reports or provide the full breadth of information required of political committees in K.S.A. 25-4148. Nor has the KGEC required the filing of such information since at least 1992.

26. Instead, the KGEC currently provides a one-page form for reporting independent expenditures under K.S.A. 25-4150, which is titled “Receipts and Expenditures Report for a Person Other than a Candidate, Party Committee, or Political Committee.” Exhibit A is a true and correct copy of this form.

27. Currently, Exhibit A only requires a person or entity subject to K.S.A. 25-4150 to report some of the information that is required under K.S.A. 25-4148.

28. It is the KGEC’s current practice not to require Exhibit A to be filed if a person or entity (that is not a political committee) made no express advocacy independent expenditures or contributions during the relevant reporting period.

29. Exhibit A is available to be downloaded from the KGEC’s public website at <http://ethics.ks.gov/CFAForms/Independent%20Expend%20City.pdf>.

30. Exhibit A is applicable only to persons or entities that are not a candidate, a party committee, or a political committee, and it does not include contributions to or expenditures by a candidate, a party committee, or a political committee.

31. Exhibit A is the Independent Expenditure Form which is filed once a person or entity makes or receives an aggregate of \$100 in expenditures or contributions during a calendar year for the express purpose of nominating, electing or defeating a clearly identified candidate.

32. The KGEC has used similar forms to Exhibit A since at least 1992 to report K.S.A. 25-4150 expenditures and contributions. Exhibit B is a true and correct copy of the 1992 version of the form. Exhibit C is a true and correct copy of the 1998 version of the form.

33. Political committees do not file Exhibit A.

34. Instead, political committees file (a) a Statement of Organization, (b) a Registration Statement, (c) an Exemption Affidavit, filed by political committees that qualify for the exemption, and (d) Summary Pages and Schedules A-D for disclosing contributions and expenditures. These forms are available to be downloaded from the KGEC's website: <http://ethics.ks.gov/CFAForms/PACForms.htm>.

35. Exhibit D is a true and correct copy of the Statement of Organization.

36. Exhibit E is a true and correct copy of the Registration Statement.

37. Exhibit F is a true and correct copy of the Exemption Affidavit.

38. Exhibit G is a true and correct copy of the Summary Pages and Schedules A-D for disclosing contributions and expenditures.

39. Political committees must track various categories of money and file three reports during an election year in which a filing is required—a primary election report, a general election report, and an annual report. Political committees also file an annual report in years in which there is no election.

40. Political committees also file an annual report in years in which there is no election.

41. A person or entity that fails to comply with K.S.A. 25-4145 or K.S.A. 25-4148 following notice from the KGEC is subject to civil penalties. *See* K.S.A. 25-4152.

42. “[I]n addition to any other penalty prescribed under the campaign finance act,” a “civil fine, . . . , against any person for a violation of the campaign finance act in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each

subsequent violation,” may be assessed “in addition to any other penalty prescribed under the campaign finance act.” K.S.A. 25-4181.

43. Intentional “[f]ailure to file a campaign finance report” is “a class A misdemeanor. K.S.A. 25-4167.

44. A class A misdemeanor is punishable by a “term of confinement in the county jail” that “shall not exceed one year,” K.S.A. 21-6602(a)(1), and “in addition to or instead of the imprisonment authorized by law, may be sentenced to pay a fine.” K.S.A. 21-6611(b).

Respectfully Submitted,

By: /s/ Ryan A. Kriegshauser
Ryan A. Kriegshauser
Kan. Bar No. 23942
Joshua A. Ney
Kan. Bar No. 24077
Kriegshauser Ney Law Group
15050 W. 138th St.
Unit 4493
Olathe, KS 66063
Tel: 913.303.0639
Fax: 785.670.8446
ryan@knlawgroup.com
josh@knlawgroup.com

/s/ Charles Miller
Charles Miller*
Ryan Morrison*
Courtney Corbello*
Institute for Free Speech
1150 Connecticut Ave., NW
Suite 801
Washington, D.C. 20036
Tel: (202) 301-9800
Fax: (202) 301-3399
cmiller@ifs.org
rmorrison@ifs.org
ccorbello@ifs.org
*admitted pro hac vice

Counsel for Plaintiffs

By: /s/ Bradley J. Schlozman
Bradley J. Schlozman (KS Bar #17621)
HINKLE LAW FIRM LLC
1617 North Waterfront Parkway, Suite 400
Wichita, KS 67206
Tel.: (316) 267-2000
Fax: (316) 630-8466
E-mail: bschlozman@hinklaw.com

Garrett R. Roe (KS Bar #26867)
HINKLE LAW FIRM LLC
8711 Penrose Lane, Suite 400
Lenexa, KS 66219
Tel.: (913) 345-9205
Fax: (913) 345-4832
E-mail: groe@hinklaw.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on September 6, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to the e-mail addresses on the Court's electronic mail notice list.

/s/ Bradley J. Schlozman