☒FORM 1.2. DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND

DATE FILED: October 7, 2021
CASE NUMBER: 2021CV33166

District Court Denver County, Colorado 1427 Bannock Street Denver, Colorado 80202	
Plaintiff: **No On EE—A Bad Deal for Colorado, Issue Committee** v. Defendant(s): **Christopher Beall,** in his official capacity as Colorado Deputy Secretary of State and, **Jena Griswold,** in her official capacity as Colorado Secretary of State	▲ COURT USE ONLY ▲
Attorney for Plaintiff: Suzanne Taheri, Reg. No. 23411 MAVEN LAW GROUP 1600 Broadway, Suite 1600 Denver, CO 80202 Phone: (303) 263-0844 Email: staheri@mavenlawgroup.com	Case Number: Division: Courtroom:

DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 **applies** to this case **unless** (check one box below if this party asserts that C.R.C.P. 16.1 **does not** apply):

   ☑ This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**

☐ This party is seeking a monetary judgment against another party for more than $100,000.00, including any penalties or punitive damages, but excluding attorney fees, interest and costs, as supported by the following certification:

By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000."

Or

☐ Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. ☐ This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: 10/07/2021 **s/Suzanne Taheri**
Signature of Party or Attorney for Party

NOTICE
This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1427 Bannock Street Denver, Colorado 80202	DATE FILED: October 7, 2021 CASE NUMBER: 2021CV33166
Plaintiff: No On EE—A Bad Deal for Colorado, Issue Committee **v.** **Defendant: Christopher Beall,** in his official capacity as Colorado Deputy Secretary of State and, **Jena Griswold,** in her official capacity as Colorado Secretary of State	COURT USE ONLY Case Number: Division Courtroom
Attorney for Plaintiff: Suzanne Taheri, No. 23411 Maven Law Group 1600 Broadway, Suite 1600 Denver, CO 80202 Phone Number: (303) 263-0844 Email: staheri@mavenlawgroup.com	

COMPLAINT FOR JUDICIAL REVIEW OF AGENCY ACTION

No on EE-A Bad Deal for Colorado (the "Committee") brings this action for judicial review and respectfully requests this court vacate and reverse the Final Agency Order issued by Defendants.

Jurisdiction and Venue

1. This Court has jurisdiction pursuant to sections 24-5-105 and 24-4-106, C.R.S.

2. Venue is proper in the District Court for the City and County of Denver pursuant to section 24-4-106, C.R.S., Colo. Const., Art. VI, §§ 1, 9(1). Defendant's office is located in the City and County of Denver.

Parties

3. Plaintiff, In the Matter of No on EE—A Bad Deal for Colorado, a registered issue committee, was the subject of the order issued by the Defendants.

4. Defendants are responsible for issuing the final agency action finding against Plaintiff.

5. Defendant Secretary of State Jena Griswold (the "Secretary") is the Secretary of State for the State of Colorado and Defendant Christopher Beall is the Deputy Secretary of State responsible for issuing the order under C.R.S. 1-45-111.7.

Factual Allegations

6. On October 8, 2020, a complaint was filed against the Committee alleging the Committee failed to name its registered agent in its election advertising.

7. On May 26, 2021 the Office of Administrative Court's Administrative Law Judge ("ALJ"), acting as a hearing officer for the Defendants, issued a decision in this matter finding against the Committee and assessed a fine in the amount of $10,000.

8. No party filed exceptions to the decision.

9. The Deputy Secretary of State initiated review on his own motion.

10. On September 2, 2021 the Deputy issued a Final Agency Order finding against the Committee and assessed a fine of $30,000, triple the original fine.

FIRST CLAIM FOR RELIEF

(Contrary to Constitutional Right)

11. Paragraphs 1-10 are incorporated as though set forth fully herein.

12. For purposes of the Eighth Amendment, "[t]he notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law." *Austin v. United States*, 509 U.S. 602, 610, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) (quoting *United States v. Halper*, 490 U.S. 435, 447-48, 109 S. Ct. 1892, 104 L. Ed. 2d 487 (1989)).

13. Statutory penalties are subject to the constitutional prohibition against excessive fines. *See Associated Bus. Prods.*, 126 P.3d at 326; *Wolford v. Pinnacol Assurance*, 81 P.3d 1079, 1084 (Colo. App. 2003), *rev'd on other grounds*, 107 P.3d 947 (Colo. 2005). The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

14. The Supreme Court has held that a civil fine is excessive "if it is grossly disproportional to the gravity of a defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). Likewise, a division of this court has said that a penalty "is excessive if the amount is so disproportionate to a defendants circumstances that there can be no realistic expectation that the defendant will be able to pay it." *Boulder Cty. Apartment Ass'n*, 97 P.3d at 338.

15. In *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575, 580, 583, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996), the Supreme Court articulated factors that should be considered when weighing the "reasonableness of a punitive damages award." In deciding whether the constitutional line for an excessive fine "has been crossed," the Court later condensed these factors by instructing lower courts to "focus on the same three criteria: (1) the degree of the defendant's reprehensibility or culpability; (2) the relationship between the penalty and the harm to the victim caused by the defendant's actions; and (3) the sanctions imposed in other cases for comparable misconduct." *Cooper Indus.*, 532 U.S. at 425.

16. As is the case here, a statutory damage award can be "devastatingly large . . . out of all reasonable proportion to the actual harm suffered," which could be a "sufficiently serious case [that] the due process clause might be invoked." *Parker v. Time Warner Entm't Co.*, 331 F.3d 13, 22 (2d Cir. 2003); *see also St. Louis, Iron Mountain & S. Ry. Co. v. Williams*, 251 U.S. 63, 66-67, 40 S. Ct. 71, 64 L. Ed. 139 (1919) (Although states have wide latitude in setting penalties for statutory violations, states cannot impose penalties "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.").

17. Disclaimer requirements are subject to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Buckley v. Valeo*, 424 U.S. 1, 64, 66, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)); *see also Citizens United v. Gessler*, 773 F.3d 200, 209 (10th Cir. 2014).

18. Not only must a disclosure requirement be substantially related to a sufficiently important government interest, but the disclosure requirement must also be narrowly tailored to the government's interest. *Americans for Prosperity Foundation v. Bonta,*, U.S. 141 S. Ct.2373 (2021). "While exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest." *Id.* "[A] substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored." *Id.* at 2384.

19. In order to pass exacting scrutiny, disclosure and disclaimer requirements must be substantially related and narrowly tailored to a sufficiently important government interest. *AFP*, 141 S. Ct. 2373.

20. "The *Buckley* Court identified important government interests that could meet the [exacting scrutiny] burden, including 'provid[ing] the electorate with information,' 'deter[ring] actual corruption and avoid[ing] the appearance of corruption,' and 'gathering the data necessary to detect violations of' other election laws." *Indep. Inst. v. Williams*, 812 F.3d 787, 792 (10th Cir. 2016) (quoting *Buckley*, 424 U.S. at 66-68). However, "the strength of the

governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Id.* (quoting *Doe v. Reed*, 561 U.S. 186, 196, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010)).

21. The statute or rule must have a substantial relationship and be narrowly tailored to the informational interest to survive exacting scrutiny. *See APF*, 141 S. Ct. at 2383.

22. In this case, Respondent was found to have violated the disclaimer laws. There is no dispute that Respondent did in fact properly name the committee on the disclaimer. Respondent only failed to name the registered agent, Patrick McDonald.

23. However, this requirement to provide the name of the registered agent provides no substantive information to the electorate. There is no address, phone number, website or other contact information on the disclaimer. To find contact information for the committee the voter must access the committee registration. When the voter does this, they will also find the registered agent. The requirement is duplicative.

24. The statute here is not narrowly tailored. There are less restrictive means to provide this information to voters. That is to simply require the committee's name on the disclaimer, which the Plaintiff did.

25. The final agency order also identifies no governmental interest to be achieved through the disclosure. The only mention of the electorate interest is that the electorate did not receive the, "full disclaimer to which it is entitled." (Order, p.13)

26. The First Amendment, which applies against Respondent by operation of the Fourteenth Amendment, guarantees the right to free speech. The Eighth Amendment protects Respondent from excessive fines.

27. By enforcing these provisions, the Department, under color of law, deprives Respondent, its donors, and their audience, of the right of free speech in violation of the First, Eighth and Fourteenth Amendments to the United States Constitution.

SECOND CLAIM FOR RELIEF

(Abuse of Discretion)

28. Paragraphs 1-27 are incorporated as though set forth fully herein.

29. In light of the fact that the committee's name was on the disclaimer, the failure to list the agent's name is a de minimis violation at best. For this reason, the fine assessed is far in excess of the harm.

30. In the Final Agency Order, the final decision makers, stated, "the Initial Decision provides no rationale nor any analysis on how the hearing officer reached the conclusion that $10,000—as opposed to some other amount—was an appropriate penalty, apparently

picking that number out of the air without any evidence in the record or citation to rule or law."

31. Yet, the ALJ Decision contained more relevant analysis then the order of the Final Agency Order. The ALJ found the fine, "exorbitant". *Decision*, p.4 A review of similar offenses would support that conclusion.

32. In contrast, the final decision makers in their order found "Respondent significantly cooperated with the Division's review and investigation of the complaint" and "Respondent disclosed more than Colorado law required at least with regard to information about the payee in which in-kind contributions." *Decision*, pp. 13-14. These are not relevant factors.

Designation of Record

The record maintained by the Secretary pursuant to section C.R.S. 24-4-105 is the official for purposes of this judicial review.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter judgment reversing the Defendant's Final Agency Order;
2. Order attorney fees and costs; and
3. Grant such further relief as this Court deems just and appropriate.

Respectfully submitted this 7th day of October 2021.

By: *s/ Suzanne Taheri*

Suzanne Taheri

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202	DATE FILED: October 8, 2021 CASE NUMBER: 2021CV33166
Plaintiff: **No On Ee A Bad Deal For Colo Issue Commi** v. **Defendants:** **Christopher Beall et al**	▲ **COURT USE ONLY** ▲ Case Number: **2021CV33166** Ctrm: 409

ORDER RE: DISCOVERY PROTOCOL

The following discovery protocols shall guide all counsel in their conduct of written and oral discovery in this case.[1]

PREAMBLE

Counsel are reminded that all discovery responses shall be made in the spirit and with the understanding that the purpose of discovery is to elicit facts and to get to the truth. The Rules of Civil Procedure are directed toward securing a just, speedy and inexpensive determination of every action. The discovery process shall not be employed to hinder or obstruct these goals nor to harass, unduly delay or needlessly increase the cost of litigation.

These discovery protocols shall be considered as part of the responsibility of parties and counsel to comply with the Rules of Civil Procedure relating to discovery.

Should the Parties have a discovery dispute, parties shall submit a joint notice of discovery impasse, not longer than 3 pages, apprising the Court of the nature of the dispute. The Court will review all notices and proceed according to its judgment.

WRITTEN DISCOVERY

1. The parties should refrain from interposing repeated boilerplate type objections such as "overbroad, unduly burdensome, vague, ambiguous, not reasonably calculated to lead to the discovery of admissible evidence" and other similar objections. In the event any such objections are made, they shall be followed by a clear and precise explanation of the legal and factual justification for raising such an objection. Additionally, if the objecting party otherwise responds to the discovery request but does so subject to or without waiving such an objection, that party shall describe with reasonable specificity the information

[1] Regarding electronic document production, this Court applies *The Sedona Principles for Electronic Document Production* and advises counsel to be familiar with the practices and procedures it sets forth.

which may be available but which is not being provided as a result of the objection raised.

2. When a responding party claims not to understand either a discovery request or the meaning of any words or terms used in a discovery request, that party shall, within fourteen (14) days of receiving the discovery request, seek clarification of the meaning from counsel who served the discovery. A failure to seek such clarification shall be considered a violation of this Order for Discovery Protocol.

3. A discovery response which does not provide the information or material requested but promises to do so at some point in the future will be treated as the equivalent of no response unless the party so responding provides a specific reason for the information not being produced as required by the Rules of Civil Procedure, and also provides a specific date by which such information will be produced.

4. A response to a discovery request that does not provide the information or material requested but rather states that the party is continuing to look for or search for such information or material will be treated as the same as no response unless that party provides a clear description of where such information or material is normally located, who is normally in custody of such information or material, where the party has searched, the results of the search, as well as the identity of all persons who have engaged in such a search. The responding party shall also provide a clear explanation of the ongoing search and a specific date by which the search will be complete.

5. Whenever a party objects to discovery based upon a claim of attorney/client privilege, work product protection or any other privilege or protection, that party shall produce a detailed privilege/protection log that includes at least the following for each such item for which privilege is claimed:

   a. The information required by C.R.C.P. 26(b)(5);

   b. The date of the information or material;

   c. All authors and recipients; and

   d. The specific privilege or protection which is claimed.

   e. The proponent of the privilege has the burden of establishing that privilege. Failure to comply with this paragraph 5 and Order for Discovery Protocol will constitute a waiver of the claimed privilege.

DEPOSITIONS

1. Depositions shall be conducted in compliance with the Colorado Rules of Civil Procedure.

2. During all depositions, counsel shall adhere strictly to C.R.C.P. 30(d)(1) and (3). No objections may be made, except those which would be waived if not made under C.R.C.P. 32(d)(3)(B) (errors, irregularities), and those necessary to assert a privilege, to enforce a limitation on evidence directed by the Court, or to present a C.R.C.P. 30(d)(3) motion (to terminate a bad faith deposition). Objections to form shall be stated: "Objection as to form." Any further explanation is inappropriate and prohibited unless specifically requested by the attorney asking the question.

3. There shall be no speaking objections. It is inappropriate and prohibited for an attorney, during the course of questioning, to advise a witness to answer "if you know," or "if you remember." It is similarly prohibited for an attorney during questioning to advise a witness not to speculate. All such questions shall be considered speaking objections. All deponent preparation shall be conducted prior to the commencement of the deposition and shall not take place during the course of the deposition.

4. It is appropriate for the deponent to request clarification of a question. However, it is not appropriate for counsel to do so.

5. A deponent and an attorney may not confer during the deposition while questions are pending. Similarly, neither a deponent nor counsel for a deponent may interrupt a deposition when a question is pending or a document is being reviewed, except as permitted by C.R.C.P. 30(d)(1).

6. Counsel shall refrain from excessive objections that have the purpose or effect of disrupting the flow of questioning or the elicitation of testimony.

7. Counsel may instruct the deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under paragraph 3 of C.R.C.P. 30(d). Whenever counsel instructs a witness not to answer a question, counsel shall state on the record the specific reason for such an instruction, the specific question, part of a question or manner of asking the question upon which counsel is basing the instruction not to answer the question.

Date: October 8, 2021

BY THE COURT:



Marie Avery Moses
District Court Judge

DISTRICT COURT CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: October 8, 2021 CASE NUMBER: 2021CV33166
Plaintiff(s): **No On Ee A Bad Deal For Colo Issue Commi** v. Defendant(s): **Christopher Beall et al**	▲ **COURT USE ONLY** ▲ **Case Number: 2021CV33166** **Courtroom: 409**
DELAY REDUCTION ORDER	

All civil courtrooms are on a delay reduction docket.

IF AN ATTORNEY OR PRO SE PARTY FAILS TO COMPLY WITH THIS ORDER, THE COURT MAY DISMISS THE CASE WITHOUT PREJUDICE. THIS ORDER IS THE INITIAL NOTICE REQUIRED BY C.R.C.P 121 § 1-10, AND C.R.C.P. 41(B)(2).

A. In all civil actions, the following deadlines must be met:

1. **Service of Process:** Proof of service of process under C.R.C.P. 4 for all defendants must be filed within **63 days** after the date of filing of the complaint. After **63 days**, the action may be dismissed by the Court against any defendant for whom proof of service has not been filed.

2. **Default:** Application for entry of default under C.R.C.P. 55(a) must be filed within **14 days** after default has occurred.

   If all defendants are in default, a motion for entry of default judgment under C.R.C.P. 55(b) must be filed with the application for entry of default. Motions for entry of default judgment must comply with C.R.C.P. 121 § 1-14. Reasonable inquiry regarding a person's military status requires confirmation through the Department of Defense's Servicemembers Civil Relief Act website (https://scra.dmdc.osd.mil) or equivalent confirmation.

3. **Trial Setting:** The Responsible Attorney as defined in C.R.C.P. 16(b)(2) must file and serve a Notice to Set the case for trial and must complete the setting of the trial no later than **14 days** from the date the case is at issue. You must include in your notice how many days for trial and whether jury trial or court trial. (Note: this is a shorter timeframe than would otherwise be required by C.R.C.P. 16.1(g).) A case is "at issue" when: (a) all parties have been served and have filed all pleadings permitted by

C.R.C.P. 7; or (b) defaults or dismissal have been entered against all non-appearing parties; or (c) at such other time as the Court directs. **Setting days and hours are Tuesday, Wednesday, and Thursday from 10:00 a.m. to 12:00 p.m.**

4. Cases filed under **C.R.C.P. 16:**

   a) **Case Management Conference:** The notice to set trial must also include a notice to set a Case Management Conference as required by C.R.C.P. 16(d)(1), to be held no later than **49 days** after the case is at issue.

   b) **Proposed Case Management Order:** At least **7 days** before the Case Management Conference, the parties must file, in editable format, a proposed Case Management Order consisting of the matters set forth in C.R.C.P. 16(b)(1)-(17) and take all necessary actions to comply with those subsections.

   c) **Waiver of Case Management Conference:** If all parties are represented by counsel, a joint request to waive the case management conference may be included in the proposed Case Management Order, but unless such a request has been granted, counsel and any unrepresented parties should plan on appearing for the case management conference.

5. Cases filed under **C.R.C.P. 16.1:**

   a) **Certificate of Compliance:** Not later than **49 days** after the case is at issue, the Plaintiff (or the Responsible Attorney) must file a Certificate of Compliance as required under C.R.C.P. 16.1(h). No Case Management Order or Case Management Conference is required.

B: Additionally, in all civil actions, the following provisions apply:

Service of this Order: The Plaintiff or Responsible Attorney must send a copy of this order to all other parties who enter an appearance.

Related Cases: An attorney entering an appearance in this case who is aware of a related case is ordered to complete and file in this case an Information Regarding Related Case(s) form available in Room 256 of the City and County Building or at: https://www.courts.state.co.us/userfiles/file/Information_Regarding_Related_Cases_Form(1).doc

Date: **October 8, 2021**

BY THE COURT:



Marie Avery Moses
Denver District Court Judge

DISTRICT COURT, COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	DATE FILED: October 8, 2021 CASE NUMBER: 2021CV33166
Plaintiff: **No On Ee A Bad Deal For Colo Issue Commi** v. **Defendants:** **Christopher Beall et al**	↑ **COURT USE ONLY** ↑ **Case No: 2021CV33166** **Courtroom: 409**

PRE-TRIAL ORDER

This Pre-Trial Order shall apply to each case assigned to Courtroom 409 of Denver District Court. **Counsel and pro se parties are expected to familiarize themselves with the contents of this Order and all its requirements which in some cases are different from the standard requirements under the Colorado Rules of Civil Procedure**. Procrastination or general lack of diligence in the preparation of your case will not constitute good cause for non-compliance with this Pre-Trial Order. Questions regarding the contents or interpretations of this Order should be raised before trial and will not be addressed during trial.

Plaintiff shall serve copies of this Pre-Trial Order on any *pro se* Parties, pursuant to C.R.C.P. 5, and file a Certificate of Service with the Court within 14 days of the date thereof. In the event of any conflict between this Pre-Trial Order and C.R.C.P. 16 or 121, this Order shall govern.

1. DUTY TO CONFER

Colo. R. Civ. P. 121 § 1-15(8) states that "moving counsel and any self-represented party shall confer with opposing counsel and any self-represented parties before filing a motion." Rule 121 § 1-15(8) requires the parties to identify and attempt to resolve emerging issues before engaging in motions practice. The duty to confer requires counsel to confer in good faith either by telephone, in person, email, or in writing with any party who might potentially oppose the relief requested.

Conferral efforts must be commenced at least 2 business days before a motion is filed with the court, unless such advanced notice would be impossible under the circumstances, in which case, counsel shall explain why conferral could not be commenced in a timely manner.

The word "shall" in Rule 121 § 1-15(8) is a mandatory requirement. Before filing a motion, the moving party must confer with any potentially opposing party, as detailed above. "If no conference has occurred, the reason why, including all efforts to confer, shall be stated." The reason why no conference has occurred must be explained in substantive detail, and a lack of

conferral with be excused only under unusual or extraordinary circumstances. On one end of the spectrum, it will not be acceptable for the moving party to make a single phone call, leave a voicemail requesting conferral, and submit a corresponding motion shortly thereafter without the required conferral. On the other hand, the Court will not allow a moving party to be hamstrung by an opposing party if the moving party has made numerous attempts to confer by leaving messages and there is no timely return communication. The Court will evaluate whether parties have satisfied the duty to confer on a case-by-case basis.

The Court also reads Rule 121 § 1-15(8) as applying to pro se parties in the same manner as it applies to any attorney entering an appearance before the Court.

2. PRO SE PARTIES

Parties appearing without counsel are encouraged to contact Colorado Legal Services/Metro Volunteer Lawyers, 1905 Sherman Street, Suite 400, Denver, Colorado 80203, Phone (303) 837-1313 to determine whether they qualify for free or reduced-cost legal representation.

In cases involving self-represented, or pro se, parties, the Court orders that the Responsible Attorney, as defined in CRCP 16(b)(2), must notice the case for a case management conference.

This Division requires case management conferences in all cases in which one or more parties are proceeding pro se, whether the case is governed by CRCP 16 or CRCP 16.1.

3. CASE MANAGEMENT ORDER

(C.R.C.P. 16.1 cases are excluded – see the Delay Reduction Order issued)

The provisions of C.R.C.P. 16 concerning a Case Management Order will apply. If all parties have not participated in the preparation of a Case Management Order, that fact shall be noted in the title of the Proposed Case Management Order.

Not later than 42 days after the case is at issue and at least ten (10) days before the case management conference, the parties shall file, in editable format, a proposed Case Management Order—NOTE: this timeline is different than the timeline established by C.R.C.P. 16. In accordance with C.R.C.P. 16, the joint proposed Case Management Order must contain the following information: the "at issue" date; contact information for the "responsible attorney;" a description of the "meet and confer" discussions; a brief description of the case from each side, and of the issues to be tried (one page per side); a list of pending, unresolved motions; an evaluation of the proportionality factors from C.R.C.P. 26(b)(1); a confirmation that the parties discussed settlement and description of prospects for settlement; proposed deadlines for amending the pleadings; the dates when disclosures were made and any objections to those disclosures; an explanation of why, if applicable, full disclosure of damages has not been completed and when it will be; subjects for expert testimony with a limit of only one expert per side per subject unless good cause is established consistent with proportionality; acknowledgement that oral discovery

motions may be required by the court; provision for electronic discovery when significant electronic discovery is anticipated; estimated time to complete discovery and length of trial so the court can set trial requests over 5 days at the case management conference; and a catchall for other appropriate matters.

The Case Management Conference may be vacated if (1) there are no disagreements regarding any aspect of the proposed Case Management Order, (2) dates for trial and pre-trial conference have been agreed to and set with the Court, and (3) all parties agree to vacate the Case Management Conference. **The request to vacate the Case Management Conference should be included in the opening paragraph of the proposed Case Management Order.**

- The Court will issue an ADR Order requiring mediation to occur 60 days before trial. The ADR Order will be issued once trial dates have been set.
- During depositions, the Court instructs attorneys to make "trial objections" (e.g. "objection: Hearsay" or "objection: Foundation," nothing more), rather than "form of question." Responses to objections should, likewise, be "trial responses." After addressing the objection, witness will answer the question (except as to objections based upon privilege or other issues that mandate a court ruling).
- Parties have the authority to stipulate to changes in discovery deadlines with the following proviso: No such agreement by the parties will be good cause to continue the trial date.

4. TRIAL SETTINGS

Trial or hearing settings may **only** be obtained Tuesday through Thursday between the hours of 10:00 a.m. and noon, and only upon the filing of a Notice to Set. The Notice to Set shall be filed at least 48 hours in advance of the setting day chosen. The responsible attorney must set the case management conference date and the trial date at the same time.

Trial settings will typically be conducted through the use of email. Therefore, all Notices to Set must include the names and email addresses for all counsel, support staff, and pro se parties with whom dates are to be cleared.

At the date and time designated in the Notice to Set, the responsible attorney or a staff member shall email the court clerk at the following address: 02Courtroom409@judicial.state.co.us and shall copy all counsel, support staff, and *pro se* parties with whom dates are to be cleared.

If the parties do not accept one of the trial dates given to them during the setting process, within ten (10) days, the Court will unilaterally set a trial date.

The Notice to Set must contain the number of days or the amount of time for the trial or hearing being set. No case will be set for more than 5 days without prior approval of the Court.

No case will be set beyond one year after the case is filed without prior approval of the Court. **The Court adheres to the provisions of Chief Justice Directive (CJD) 08-08 which requires that 90% of all civil actions filed shall be concluded within one year of filing.**

5. MOTIONS

1. DO NOT, UNDER ANY CIRCUMSTANCES, COMBINE PLEADINGS (i.e., Defendant's Motion for Summary Judgment and Response to Plaintiff's Motion for Summary Judgment). IF YOU DO YOUR PLEADING MAY BE STRICKEN *SUA SPONTE*.

2. Plan ahead as "forthwith" motions are discouraged. Due to the electronic filing system, filings are not received by this division at the same they are filed—and are often not transmitted to the division for 48 hours. If the filing is an emergency and needs immediate attention from the Court, please email the courtroom clerk at 02Courtroom409@judicial.state.co.us and alert them of the filing. However, please note that your emergency may not be considered the Court's emergency.

3. The Court interprets C.R.C.P. 121, § 1-15 to require the moving party to give non-moving party(s) at least two business days to respond before the moving party files the motion.

4. The parties shall comply with the formatting requirements of C.R.C.P. 10 for each and every motion. If a pleading, motion, e-filed document under CRCP 121, § 1-26, or any filing does not comply with CRCP 10, it may be stricken.

5. A motion will be followed by a response, and a reply, unless this Court has eliminated a reply or other pleading pursuant to C.R.C.P. 121. No other pleadings relating to a given motion will be accepted for filing unless permitted by court order.

6. The requirements of C.R.C.P. 121 § 1-15 concerning the content of briefs will be strictly enforced. **Except as otherwise outlined in this order, all motions and briefs are limited to 10 pages in length and must be double spaced.** Should a party wish to exceed the Court's limit, the party shall seek court approval prior to filing the motion.

7. The requirements of C.R.C.P. 121 § 1-15 concerning the time for filing motions will be strictly enforced. Extensions of the deadlines are strongly discouraged because they make it unlikely that the motions will be ruled on in advance of trial. The Court may, if appropriate, expedite the briefing schedule.

8. Once motions are at issue, they will be ruled upon as the Court's docket permits, usually without a hearing. Motions hearings will be set so as not to interfere with the conduct of other trials.

9. **Expert Testimony: Motions challenging expert testimony pursuant to C.R.E. 702 must be filed at least 70 days (10 weeks) before trial unless a different time is permitted by court order.** C.R.C.P. 16(c). Motions shall include the following: (1) identification of the expert witness and separately state each opinion/testimony the moving party seeks to exclude; (2) a response for each opinion/testimony with the specific

foundational challenge made to the opinion/testimony, e.g., relevancy, sufficiency of facts and data, methodology. C.R.E. 702 and 703; and, (3) indication of whether an evidentiary hearing is requested, explain why such a hearing is necessary, and specify the time needed for the evidentiary hearing (assuming time is divided equally between the parties).

The Court in its discretion may set a hearing to determine the admissibility of the challenged opinions under the Colorado Rules of Evidence.

10. **MOTIONS TO CONTINUE**: There shall be a shortened period for briefing Motions to Continue. **Responses shall be filed within 7 days; Replies shall be filed within 2 days**.

11. **MOTIONS IN LIMINE: Motions *in limine* shall not exceed 5 pages and must be filed at least 35 days prior to trial unless a different time is permitted by court order.** C.R.C.P. 16(c). Responses shall be filed no more than 7 days after the motion is filed, unless a different time is permitted by court order. No replies shall be allowed.

    No party may file more than five (5) motions in *limine*.

    Any unopposed motions *in limine* shall be combined into one consolidated motion.

12. **Other pretrial motions must be filed at least 42 days before trial unless a different time is permitted by court order.** For any motion filed between 54 and 42 days before trial, responses shall be filed **14 days** after the filing of the motion unless a different time is permitted by court order. No replies shall be allowed.

13. **Motions for Summary Judgment (C.R.C.P Rule 56 Motions):** Please read **ADDENDUM** to this Pre-Trial Order: Motions for Summary Judgment (C.R.C.P. 56)

6. TRIAL PREPARATION CHECKLIST

1. **Trial Management Order.** Plaintiff's counsel is required to prepare and submit a signed Trial Management Order (TMO) 28 days before the date of trial. The TMO shall comport with the provisions set forth in C.R.C.P. 16(f). **ALL parties must participate in the preparation of the TMO.** Should the parties be unable to agree on the proposed TMO or if counsel believes it would be helpful, a Trial Management Conference may be scheduled upon notice, to be attached to the proposed TMO submitted. Counsel should be aware that when the Court has multiple trials ready to be tried on a particular date, the presence and timeliness of a TMO is one criteria used to determine priority.

2. **Jury Instructions.**

    The first party represented by counsel to demand a jury trial (unless demand is withdrawn) shall meet and confer with the opposition regarding jury instructions. The Parties are encouraged to combine instructions for the ease of the jury.

The Parties shall jointly file one Microsoft Word document containing all stipulated instructions 48 hours prior to the Pre-Trial Conference. Each Party shall each file one Microsoft Word document containing that party's disputed instructions 48 hours prior to the Pre-Trial Conference. All jury instructions shall include a citation to the CJI or other authority for the instruction. Each party shall file a proposed Verdict Form separately from the jury instructions. All jury instructions and verdict forms **must be filed electronically and emailed to 02Courtroom409@judicial.state.co.us,** no later than 48 hours before the Pre-Trial Conference.

The parties shall agree upon a succinct 2:1 statement of the case instruction that the Court can read to the jury at the beginning of the trial. If the parties cannot agree, one 2:1 instruction shall be submitted with highlights on the language upon which the parties cannot agree.

3. **Juror Notebooks.**

a. **Juror Notebooks**: Each trial juror will be provided with a juror notebook by the Court. The court provides small (1 inch) binders. At the pretrial conference, the Court will address if and how exhibits will be provided to the jurors. The Court only allows non-voluminous exhibits to be provided. If the Court permits exhibits to be provided to jurors, each party must provide a sufficient number of copies of the exhibits for the jury and any alternates. Each page must be three-hold punched in advance so it can be placed in a notebook and separated by tabs. Generally, the Court will only permit stipulated exhibits to be provided to the jury; however, if the parties are unable to agree on whether a particular exhibit should be given to the jury, they may address this issue at the pre-trial conference.

b. **Glossary of Terms**: If there are any scientific or other specialized terms which will be used repeatedly during the trial, those should be set forth, with an agreed-upon definition. If the parties have a legitimate dispute about the definition of any term, just the term should be listed.

c. **Timeline of Events**: If a timeline of events would be helpful for the jury, a stipulated timeline may be included in the juror notebooks.

4. **Exhibits.** Counsel are encouraged to prepare a written stipulation as to undisputed facts and stipulate to the admission of exhibits as to which there is no controversy. Counsel shall prepare an **index of exhibits** expected to be offered, including a list of those exhibits to which there is a stipulated admission. Counsel may allow opposing counsel to view proposed exhibits prior to trial either by providing a soft copy, or by inspecting and copying in person. If you provide two copies for the Court and a copy for opposing counsel, there will be no requirement that you offer your exhibits in sequence.

Please mark all exhibits prior to trial. Stipulated Exhibits shall be marked with letters (A, B, C, D, etc.).

Plaintiff's exhibits shall be marked in **numerical sequence from 1-1,000.**

Defendant's exhibits shall be marked in **numerical sequence beginning with 1,001.**

Each exhibit shall have numbered pages, clearly marked. The civil action number of the case should also be placed on each of the exhibit labels.

It is expected that a copy of each exhibit will be provided to opposing counsel and that you will have a copy of each of your exhibits. In addition, a copy of exhibits shall be provided to the Court. To expedite trial, each exhibit to be offered should be viewed by opposing counsel prior to trial and a determination made as to whether an objection will be made as to the admissibility of the exhibit. Only where counsel has not had a reasonable opportunity to view an exhibit in advance will trial be interrupted for such a review.

Because civil divisions no longer have Court Reporters and because of a reduced work force in the Denver District Court, this Court is no longer able to maintain custody of exhibits after the termination of hearings and trials. Therefore, it is **ORDERED** that, unless the Court orders otherwise or all parties agree on the record that exhibits need not be retained, the parties will upload all exhibits tendered and admitted at trial to the case through the CCE e-filing system **not later than 2 days after the trial concludes**. In cases where exhibits are not capable of being uploaded, the exhibits shall be placed on a portable digital device and preserved untampered by the proponent of the exhibits pending appeal. Otherwise, when uploading exhibits, the parties shall file a caption sheet and label each exhibit accordingly, e.g., Exhibit 1,001 (admitted); Exhibit 1,008 (tendered, not admitted). In addition to uploading all of the exhibits, the following shall also apply:

- The parties shall retain custody of their respective exhibits and depositions, whether or not the exhibit was received into evidence, until the need for the exhibits and depositions has terminated and the time for appeal has expired or all appellate proceedings have been terminated plus sixty-three days.
- No withdrawn exhibit shall be modified in any manner.
- No demonstrative exhibit shall be preserved as part of the record in the case, either in this Court or for transmittal to the Court of Appeals. The parties shall provide a photograph(s) of any such exhibit(s) on or before the first day of trial for inclusion in the record. Photograph(s) shall be in digital format and electronically filed and all parties shall agree that the items are accurately represented. The proponent of the exhibit shall retain possession of the item, as with all other respective exhibits upon completion of the trial.
- **THE COURT SHALL DESTROY ANY EXHIBITS LEFT IN THE COURTROOM 14 DAYS FOLLOWING THE END OF TRIAL.**

Any violation of this order regarding the maintenance of exhibits will be subject to sanctions including contempt of court under C.R.C.P. 107.

5. **Scheduling/Witnesses.** Unless otherwise ordered by the Court, the trial day will start at 8:30 a.m. and end at 5:00 p.m. (Court trials will begin at 9:00 a.m.) Counsel and parties are expected in court 30 minutes prior to beginning each day of trial so that any

preliminary matters may be addressed without inconveniencing the jury. The Court will typically take one break, for 15 – 20 minutes, in the morning and afternoon. Unless otherwise determined by the Court, lunch break will be from approximately noon until 1:00 p.m.

Counsel shall provide the Court a copy of their witness list. If the parties decide to use a freelance Court Reporter, an additional copy shall be provided to the Court Reporter to eliminate the need to request the spelling of witnesses' names. Witnesses should be listed in the order that you anticipate calling them. It is the obligation of counsel to have witnesses scheduled to prevent any delay in the presentation of testimony or running out of witnesses before 5:00 p.m. on any trial day. Accordingly, there shall be no more than five - (5) minutes delay between witnesses. Delay in this regard may result in the Court requiring the non-delaying party to commence its case in chief or the delaying party may be deemed to have rested its case.

6. **Voir Dire, Opening Statements and Closing Arguments.** The Court will conduct an extensive voir dire, including basic background questions, inquiry into biographical information and juror qualifications. Counsel will be limited to 25 minutes on voir dire unless otherwise ordered by the Court. Counsel will be limited to 20 minutes for opening statement unless otherwise ordered by the Court. Time limits for closing argument will be determined at the close of the evidence; however, counsel may plan for time limits on closing argument of not less than that time afforded for opening statement.

7. **Depositions.** If you are going to use depositions in lieu of live testimony you must provide designations of such testimony to opposing counsel not later than 28 days before trial. Objections to all or part of the deposition testimony offered must be made not later than 14 days before trial and must cite page, line, and the specific evidentiary grounds supporting the objection. **The same rules apply to both video and written depositions.** When applicable, counsel are also required to provide a person, e.g., co-counsel, etc., to read the testimony into the record.

8. **Court Reporters.** Civil divisions no longer have Court Reporters. Unless the parties decide to bring in a freelance Court Reporter, all court proceedings will be recorded on the Court's digital recording device, ForTheRecord ("FTR"). The Denver District Court has further enacted the policy *en banc* that if counsel agree to hire a freelance Court Reporter, such agreement shall be subject to the Court Order regarding Official Record and Use of Court Reporters which will be issued separately when applicable. **The parties shall apprise the Court of their desire to use a freelance Court Reporter no later than 28 days before the date of trial**.

9. **Interpreters**. Pursuant to Chief Justice Directive 06-03, the courts shall assign and pay for language interpretation for all parties in interest during or ancillary to a court proceeding.

If you require a language interpreter, **you must inform the court (via email to 02Courtroom409@judicial.state.co.us) not later than 35 days prior to your next court**

appearance or hearing, and not later than 35 days prior to trial, to ensure that an interpreter is present to assist you. Failure to timely contact the Court may prevent you from receiving an interpreter on the date and time of your scheduled court appearance and also may require that your court date be rescheduled. A court-appointed approved interpreter will be scheduled to assist you for all court appearances at no charge. A language interpreter may only interpret what is said between parties during a hearing and immediately prior to or after the hearing. A language interpreter may not provide legal advice or any other service that is not related to interpreting. Interpreters may not provide any services that may constitute a violation of the language interpreter's Code of Professional Responsibility.

If interpreter services are no longer needed, you must advise the Court not later than 72 hours prior to your scheduled court appearance or you may be held responsible for the cost associated with the interpreter. Failure to comply with this notice of cancellation will impact the Managing Interpreter's ability to provide interpreter services to other parties in interest and may also impact your ability to obtain interpreter services in the future.

All interpreters appearing on the record must be approved and appointed by the Court through the Office of Language Access.

10. **Audio-Visual Technology.** If you intend to use any special equipment/technology such as video or audio recordings, movies, slides, PowerPoint or other computer generated technology, as well as projectors, screens, or monitors, **you must provide it**. The parties are encouraged to share in the use of a single system rather than have two sets of projectors, TVs, monitors, screens, etc. You must contact the Division Clerk **prior** to the scheduled trial date to arrange the set-up and use of such technology.

    Any audio recordings shall be played over the Court sound system. **Parties shall be responsible for bringing any and all electrical cables and audio connecting cables.** Parties shall plug their audio playing device into an auxiliary input on the Court's lectern. The auxiliary input requires connection via a 1/8" headphone jack cable or RCA stereo jack cable.

11. **Trial Briefs.** Trial Briefs may be filed, but must not exceed ten (10) pages in length, double spaced. Briefs shall be filed not later than 10 days before trial.

12. **Proposed Findings of Fact and Conclusions of Law.** For court trials, counsel shall file electronically, seven (7) days following of trial Proposed Findings of Fact and Conclusions of Law in electronic, **editable format**. The Court uses Microsoft Office Word.

13. **Discovery Procedures.**[1] Discovery in all cases will be subject to the provisions of the Court ordered Discovery Protocol attached.

[1] This Court applies *The Sedona Principles for Electronic Document Production* and advises counsel to be familiar with its practices and procedures. *See* https://thesedonaconference.org/publication/The_Sedona_Principles

14. **Settlement.** The parties are to notify the Court within 24 hours of settlement or resolution of their case. It is not productive for the Court to expend unnecessary time and effort on pending matters that are rendered moot by settlement between the parties. All documents confirming settlement shall be filed not later than 28 days from the date of settlement, unless otherwise ordered by the Court.

15. **Compliance.** This Pre-Trial Order applies to **ALL** cases without exception. Counsel are expected to familiarize themselves with the provisions of this order. Failure to comply with this Order will not be excused due to lack of familiarity with the requirements set forth herein.

Date: October 8, 2021

BY THE COURT:



Marie Avery Moses
District Court Judge

ADDENDUM

MOTIONS FOR SUMMARY JUDGMENT (C.R.C.P. 56)

Summary Judgment Motions pursuant to C.R.C.P. 56 shall be filed at least 91 days (13 weeks) before trial.

a. Motion, Page Limits, and Exhibits

These procedures contemplate the filing of a single motion for summary judgment by a party. The sections of a motion/response/reply discussed below that address facts will not count toward the page limit outlined in C.R.C.P. 121 § 1-15(1)(a). Additionally, the case caption, signature block, certificate of service, and attachments will not count toward the page limit.

b. Exhibits

Exhibits attached to a motion for summary judgment, a response in opposition, or a reply must follow the following format. Defendant must label his/her/its exhibits by letters: A, B, C, etc. If the Defendant needs to attach more than 26 exhibits, Defendant may instead number his/her/its exhibits starting at 501, 502, 503, etc. Plaintiff must designate his/her/its exhibits by numbers: 1, 2, 3, 4, etc.

When filing any exhibits in support of, or opposition to, a motion, the party must label the exhibit and include its title so that the description appears in the register of actions. For example: "Ex. A, John Smith Decl." "Ex. 3, Sales Contract." "Ex. F, Plaintiff Depo."

Voluminous exhibits are discouraged on Summary Judgment.

c. Motion Format

Facts Section. The moving party must use the following format: **the movant must create a section of the motion titled "Statement of Undisputed Material Facts" and must set forth in simple, declarative sentences, separately numbered and paragraphed, each material fact which the movant believes is not in dispute and which supports movant's claim that movant is entitled to judgment as a matter of law.** The movant must avoid adding unnecessary adjectives or adverbs to his or her material facts. In general, the Court finds such descriptors vague and unhelpful to adjudicate summary judgment motions. **Within 24 hours of filing a Motion for Summary Judgment, the moving party must provide its "Statement of Undisputed Material Facts" to all other parties in an editable format such as Microsoft Word.** This shall enable other parties to incorporate the Statement of Undisputed Material Facts into their Response to Motion for Summary Judgement, as described below.

Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes that fact. General references to

pleadings, depositions, or documents are insufficient if the document is over one page in length. A "specific reference" means the title of the document (e.g., "Exhibit A, Pl. Depo.") and a specific paragraph or page and line number; or, if the document is attached to the motion, the paragraph or page and line number.

Legal Argument Section. For each claim for relief or defense as to which judgment is requested, the motion must: (a) identify which party has the burden of proof; (b) identify each element that must be proved; (c) for each identified element, identify the material undisputed facts that prove that element and the pinpoint location in the filed record; or (d) if the respondent has the burden of proof, identify the elements which the movant contends the respondent cannot prove (with reference to the record).

d. Response Format

Facts Section. Any party opposing the motion for summary judgment must create a section of the response titled "Response to Statement of Undisputed Material Facts," which **shall include the exact language and numbering contained in the moving party's "Statement of Undisputed Material Facts"** and must respond immediately below each numbered Statement of Undisputed Material Fact by deeming the facts "undisputed," "disputed," or "undisputed for purposes of summary judgment." A "disputed" response must address the fact as tendered by the movant, not a fact that the non-movant wishes had been tendered. Proper responses to a "disputed" fact should be limited to an argument that (1) the particular parts of materials in the record don't establish the absence or presence of a genuine dispute; or (2) the movant cannot produce admissible evidence to support the fact. The response must be accompanied by a brief factual explanation to support the dispute.

If the non-movant fails to properly address the other party's assertion of fact as required here, the Court generally will consider the fact undisputed for purposes of the motion.

If the party opposing the motion believes that there are additional disputed (or undisputed) facts which it has not adequately addressed in the submissions made in the facts section, the party must create a separate section of the response titled "Statement of Additional Disputed (or Undisputed) Facts," and must set forth in simple, declarative sentences, separately numbered and paragraphed, each additional material undisputed/disputed fact which undercuts movant's claim that it is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes the fact or at least demonstrates that it is disputed/undisputed.

Legal Argument Section. The response must utilize the same format for each claim/defense as set forth above: (a) if the respondent disputes the statement of the burden of proof on necessary elements, it must identify such as disputed and must provide supporting legal authority. (b) If the movant has the burden of proof, the respondent must identify all elements for which there are disputed material facts, as well

as provide a brief explanation of the reason(s) for the dispute and specific references to supportive evidence in the record appendix. Stipulation to facts not reasonably in dispute is highly encouraged. (c) If the respondent has the burden of proof, for each element identified by the movant as lacking proof, the respondent should identify the facts and their location in the record that establish that element.

e. Reply Format

Facts Section. At the beginning of the reply, the movant must list the facts that are undisputed and disputed including their respective paragraph number.

The movant must create a section titled "Reply Concerning Undisputed Facts" and must include any **factual** reply regarding the facts asserted in its motion to be undisputed, supported by specific references to material in the record. The reply will be made in separate paragraphs numbered according to the motion and the opposing party's response.

The movant must create a section titled "Response Concerning Disputed Facts" to respond to those facts claimed to be in dispute, and either admit that the fact is disputed or supply a brief factual explanation for its position that the fact is undisputed, accompanied by a specific reference to material in the record which establishes that the fact is undisputed. The movant's response to undisputed fact must be done in paragraphs numbered to correspond with the opposing party's paragraph numbering.

Legal Argument Section. The movant must respond to the legal arguments made by the respondent and must not raise new issues.

Finally, legal argument is not permitted in the factual sections of the motion/response/reply and should be reserved for the legal argument section(s) of the documents. If, for example, a party believes that an established fact is immaterial, that argument must go in the legal argument section, and the fact should be admitted. If, on the other hand, a party believes that the reference to material in the record does not support the claimed fact, that fact may be disputed accompanied by a brief factual argument made under these procedures.

DISTRICT COURT CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: October 14, 2021 CASE NUMBER: 2021CV33166
Plaintiffs/Petitioners: **No on EE – A Bad Deal for Colorado, Issue Committee** v. **Defendants/Respondents:** **Christopher Beall**, in his official capacity as Colorado Deputy Secretary of State and, **Jena Griswold**, in her official capacity as Colorado Secretary of State	▲COURT USE ONLY▲
Attorneys for Plaintiffs/Petitioners: Suzanne Taheri, Reg. No. 23411 MAVEN LAW GROUP 1600 Broadway, Suite 1600 Denver, CO 80202 Phone: (303) 263-0844 email: staheri@mavenlawgroup.com	Case Number: 2021CV033166 Div: 409

WAIVER AND ACCEPTANCE OF SERVICE

The undersigned hereby accepts service on behalf of Jena Griswold, and on her behalf waives any requirement of formal service of process in this action under C.R.C.P. 4.

Dated this _13__ day of __October_____, 2021.

__*s/ Peter G. Baumann*_____
Peter G. Baumann

DISTRICT COURT CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: October 14, 2021 CASE NUMBER: 2021CV33166
Plaintiffs/Petitioners: **No on EE – A Bad Deal for Colorado, Issue Committee** v. **Defendants/Respondents:** **Christopher Beall**, in his official capacity as Colorado Deputy Secretary of State and, **Jena Griswold**, in her official capacity as Colorado Secretary of State	▲COURT USE ONLY▲
Attorneys for Plaintiffs/Petitioners: Suzanne Taheri, Reg. No. 23411 MAVEN LAW GROUP 1600 Broadway, Suite 1600 Denver, CO 80202 Phone: (303) 263-0844 email: staheri@mavenlawgroup.com	Case Number: 2021CV033166 Div: 409

WAIVER AND ACCEPTANCE OF SERVICE

The undersigned hereby accepts service on behalf of Christopher Beall, and on his behalf waives any requirement of formal service of process in this action under C.R.C.P. 4.

Dated this _13__ day of __October_____, 2021.

__*s/ Peter G. Baumann*_____
Peter G. Baumann

District Court, City and County of Denver, Colorado 1427 Bannock Street Denver, CO 80202	DATE FILED: October 14, 2021 CASE NUMBER: 2021CV33166
Plaintiff **No on EE – A Bad Deal for Colorado, Issue Committee** v. Defendants **Christopher Beall**, in his official capacity as Colorado Deputy Secretary of State and, **Jena Griswold**, in her official capacity as Colorado Secretary of State	**COURT USE ONLY** Case Number: 2021CV033166 Division: 409 Courtroom:

DISTRICT COURT CIVIL SUMMONS

TO THE ABOVE NAMED DEFENDANT: Jena Griswold

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court an answer or other response to the attached Complaint. If service of the Summons and Complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 21 days after such service upon you. If service of the Summons and Complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 35 days after such service upon you. Your answer or counterclaim must be accompanied with the applicable filing fee.

If you fail to file your answer or other response to the Complaint in writing within the applicable time period, the Court may enter judgment by default against you for the relief demanded in the Complaint without further notice.

Dated: October 12, 2021

_____
Clerk of Court/Clerk

s/Suzanne Taheri_____
Signature of Plaintiff's Attorney

Suzanne Taheri
MAVEN LAW GROUP
1600 Broadway, Suite 1600
Denver, CO 80202
Phone: (303) 263-0844
email: staheri@mavenlawgroup.com

This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Complaint must be served with this Summons. This form should not be used where service by publication is desired.

WARNING: A valid summons may be issued by a lawyer and it need not contain a court case number, the signature of a court officer, or a court seal. The plaintiff has 14 days from the date this summons was served on you to file the case with the court. You are responsible for contacting the court to find out whether the case has been filed and obtain the case number. If the plaintiff files the case within this time, then you must respond as explained in this summons. If the plaintiff files more than 14 days after the date the summons was served on you, the case may be dismissed upon motion and you may be entitled to seek attorney's fees from the plaintiff.

TO THE CLERK: If the summons is issued by the clerk of the court, the signature block for the clerk or deputy should be provided by stamp, or typewriter, in the space to the left of the attorney's name.

District Court, City and County of Denver, Colorado 1427 Bannock Street Denver, CO 80202	DATE FILED: October 14, 2021 CASE NUMBER: 2021CV33166
Plaintiff **No on EE – A Bad Deal for Colorado, Issue Committee** v. Defendants **Christopher Beall**, in his official capacity as Colorado Deputy Secretary of State and, **Jena Griswold**, in her official capacity as Colorado Secretary of State	**COURT USE ONLY** Case Number: 2021CV033166 Division: 409 Courtroom:

DISTRICT COURT CIVIL SUMMONS

TO THE ABOVE NAMED DEFENDANT: Christopher Beall

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court an answer or other response to the attached Complaint. If service of the Summons and Complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 21 days after such service upon you. If service of the Summons and Complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 35 days after such service upon you. Your answer or counterclaim must be accompanied with the applicable filing fee.

If you fail to file your answer or other response to the Complaint in writing within the applicable time period, the Court may enter judgment by default against you for the relief demanded in the Complaint without further notice.

Dated: October 12, 2021

_____
Clerk of Court/Clerk

s/Suzanne Taheri_____
Signature of Plaintiff's Attorney

Suzanne Taheri
MAVEN LAW GROUP
1600 Broadway, Suite 1600
Denver, CO 80202
Phone: (303) 263-0844
email: staheri@mavenlawgroup.com

This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Complaint must be served with this Summons. This form should not be used where service by publication is desired.

WARNING: A valid summons may be issued by a lawyer and it need not contain a court case number, the signature of a court officer, or a court seal. The plaintiff has 14 days from the date this summons was served on you to file the case with the court. You are responsible for contacting the court to find out whether the case has been filed and obtain the case number. If the plaintiff files the case within this time, then you must respond as explained in this summons. If the plaintiff files more than 14 days after the date the summons was served on you, the case may be dismissed upon motion and you may be entitled to seek attorney's fees from the plaintiff.

TO THE CLERK: If the summons is issued by the clerk of the court, the signature block for the clerk or deputy should be provided by stamp, or typewriter, in the space to the left of the attorney's name.

DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, CO 80203 **Plaintiff:** NO ON EE—A BAD DEAL FOR COLORADO, **v.** **Defendants:** CHRISTOPHER BEALL, in his official capacity as Colorado Deputy Secretary of State, and JENA GRISWOLD, in her official capacity as Colorado Secretary of State.	DATE FILED: November 3, 2021 CASE NUMBER: 2021CV33166 **□COURT USE ONLY□** Case No. 2021CV33166 Ctrm./Div.: 409
Attorneys for Defendants: PHILIP J. WEISER Attorney General JESSICA ROSS, #44927* Assistant Attorney General PETER G. BAUMANN, #51620* Assistant Attorney General State Services Section Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, Colorado 80203 Telephone: (720) 508-6152 Email: jessica.ross@coag.gov peter.baumann@coag.gov *Counsel of Record	

DEFENDANTS' ANSWER TO COMPLAINT FOR JUDICIAL REVIEW OF AGENCY ACTION

Defendants, Christopher Beall, Colorado Deputy Secretary of State, ("Deputy Secretary") and Jena Griswold, Colorado Secretary of State ("Secretary"), by and through counsel, the Colorado Attorney General, hereby file their Answer to the Complaint for Judicial Review of Agency Action filed by No on EE—A Bad Deal for Colorado ("No on EE").

This appeal of a final agency action arises under § 24-4-106, C.R.S. and § 1-45-111.7(6)(b). Because this matter involves multiple complaints, filed by multiple different parties, this Answer uses "Appeal" to describe the Complaint for Judicial Review of Agency Action filed in this action on October 7, 2021.

Jurisdiction and Venue

1. In response to paragraph 1 of the Appeal, Defendants deny this Court has jurisdiction under section 24-5-105 as alleged by Plaintiff but admit jurisdiction is proper under section 24-4-106.

2. In response to paragraph 2 of the Appeal, Defendants admit venue is proper.

Parties

3. In response to paragraph 3 of the Appeal, Defendants admit that No on EE is a registered issue committee and was the subject of an order issued by the Deputy Secretary. Defendants deny the remaining allegations in paragraph 3 of the Appeal.

4. In response to paragraph 4 of the Appeal, Defendants admit that the Deputy Secretary issued a final agency order in the campaign finance matter arising out of No on EE's activity in the 2020 election. Defendants deny the remaining allegations in paragraph 4 of the Appeal.

5. In response to paragraph 5 of the Appeal, Defendants admit Jena Griswold is the Secretary of State for the State of Colorado and Christopher Beall is the Deputy Secretary of State. Defendants admit the Deputy Secretary is responsible for issuing final agency orders under § 1-45-111.7.

Factual Allegations

6. In response to paragraph 6 of the Appeal, Defendants admit that a third-party complaint was filed against No on EE on October 8, 2020, alleging that No on EE had failed to include a legally compliant disclaimer on its public communications. Specifically, the complaint alleged that No on EE had failed to include the name of No on EE's registered agent in those communications.

7. In response to paragraph 7 of the Appeal, Defendants admit that an Administrative Law Judge ("ALJ"), acting as a hearing officer under § 1-45-111.7, issued an initial decision on May 26, 2021. Defendants admit that the initial decision found that No on EE had violated Colorado campaign finance law, and that it imposed a $10,000 fine.

8. In response to paragraph 8 of the Appeal, Defendants admit that neither No on EE nor the Elections Division of the Secretary of State's Office filed exceptions to the initial decision.

9. In response to paragraph 9 of the Appeal, Defendants admit that the Deputy Secretary initiated his own review of the initial decision under §§ 1-45-111.7(6)(b) and 24-4-105.

10. In response to paragraph 10 of the Appeal, Defendants admit that the Deputy Secretary issued a Final Agency Order on September 2, 2021. Defendants further admit that the Final Agency Order adopted the ALJ's findings of fact and conclusions of law except as to the sanction imposed. Defendants further admit that the Final Agency Order imposed a fine of $30,000.

FIRST CLAIM FOR RELIEF

11. In response to paragraph 11 of the Appeal, Defendants hereby incorporate their responses to paragraphs 1-10 above.

12. In response to paragraph 12 of the Appeal, Defendants state paragraph 12 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 12.

13. In response to paragraph 13 of the Appeal, Defendants state paragraph 13 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 13.

14. In response to paragraph 14 of the Appeal, Defendants state paragraph 14 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 14.

15. In response to paragraph 15 of the Appeal, Defendants state paragraph 15 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 15.

16. In response to paragraph 16 of the Appeal, Defendants state paragraph 16 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 16.

17. In response to paragraph 17 of the Appeal, Defendants state paragraph 17 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 17.

18. In response to paragraph 18 of the Appeal, Defendants state paragraph 18 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 18.

19. In response to paragraph 19 of the Appeal, Defendants state paragraph 19 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 19.

20. In response to paragraph 20 of the Appeal, Defendants state paragraph 20 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 20.

21. In response to paragraph 21 of the Appeal, Defendants state paragraph 21 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 21.

22. In response to paragraph 22 of the Appeal, Defendants admit that No on EE was found to have violated § 1-45-108.3, requiring disclaimers on certain political communications. Defendants further admit that Respondent's relevant communications included the phrase: "Paid for by No on EE—A Bad Deal for Colorado," but did not include the name of No on EE's registered agent, Patrick McDonald.

23. In response to paragraph 23 of the Appeal, Defendants deny the allegations in paragraph 23.

24. In response to paragraph 24 of the Appeal, Defendants deny the allegations in paragraph 24.

25. In response to paragraph 25 of the Appeal, Defendants deny the allegations in paragraph 25.

26. In response to paragraph 26 of the Appeal, Defendants state paragraph 26 asserts legal conclusions or opinions about one or more of Plaintiff's claims for relief, to which no factual admissions or denials are required. To the extent a response is required, Defendants deny the allegations in paragraph 26.

27. In response to paragraph 27 of the Appeal, Defendants deny the allegations in paragraph 27.

SECOND CLAIM FOR RELIEF

28. In response to paragraph 28 of the Appeal, Defendants hereby incorporate their responses to paragraph 1-27 above.

29. In response to paragraph 29 of the Appeal, Defendants admit the committee's name was on the disclaimer, but deny the remaining allegations in paragraph 29.

30. In response to paragraph 30 of the Appeal, Defendants admit that paragraph 30 accurately quotes from the Final Agency Order issued by the Deputy Secretary, but deny that it was issued by "final decision makers."

31. In response to paragraph 31 of the Appeal, Defendants deny the allegations in paragraph 31.

32. In response to paragraph 32 of the Appeal, Defendants admit that paragraph 32 accurately quotes from the Final Agency Order issued by the Deputy Secretary. Defendants deny the remaining allegations in paragraph 32.

Designation of Record

The Secretary of State's Office is prepared to transmit the administrative record upon request from this Court.

PHILIP J. WEISER
Attorney General

s/ Peter G. Baumann
JESSICA ROSS, #44927*
Senior Assistant Attorney General
PETER G. BAUMANN, #51620*
Assistant Attorney General
State Services Section
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: (720) 508-6152
Email: jessica.ross@coag.gov
peter.baumann@coag.gov
*Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2021, a true and correct copy of the foregoing **ANSWER TO COMPLAINT FOR JUDICIAL REVIEW OF AGENCY ACTION** was duly filed and electronically served upon all counsel of record for the parties who have entered their appearances in this matter to date through the Colorado Courts E-Filing System.

s/ Xan Serocki
Xan Serocki

DISTRICT COURT, CITY AND COUNTY OF DENVER COLORADO 1427 Bannock Street	DATE FILED: November 9, 2021 CASE NUMBER: 2021CV33166
Plaintiff: No on EE—A Bad Deal for Colorado **v.** **Defendants: Christopher Beall,** in his official capacity as Colorado Deputy Secretary of State and, **Jena Griswold,** in her official capacity as Colorado Secretary of State	COURT USE ONLY Case Number: 2021CV33166 Division/Courtroom: 409

ORDER RE: BRIEFING SCHEDULE

THIS MATTER is before the Court on a Complaint for Judicial Review under C.R.S. § 24-4-106, filed by Appellant, No on EE—A Bad Deal for Colorado, on October 7, 2021, and the Proposed Stipulated Case Management Order, filed herein on November 3, 2021.

Pursuant to C.R.S. § 24-4-106 and C.A.R. 31(a), the Court hereby orders the following briefing schedule:

a. The Secretary of State will certify the agency record of ED2020-71 within **21 days** of this Order. The record shall include the original or certified copies of all pleadings, applications, evidence, exhibits, and other papers presented to or considered by the agency, rulings upon exceptions, and the decision, findings, and action of the agency. Appellant shall designate the relevant parts of such record and advance the cost therefor.
b. The Appellant shall file an opening brief within **42 days** of the certification of the record.
c. The Appellee shall file a response brief within **35 days** of the filing of the opening brief.
d. Appellant may file a reply brief within **21 days** of the response brief.

SO ORDERED this Tuesday, November 9, 2021

BY THE COURT:



Marie Avery Moses
Denver District Court Judge

District Court Denver County, Colorado 1427 Bannock Street Denver, Colorado 80202	DATE FILED: November 12, 2021 CASE NUMBER: 2021CV33166
Plaintiff: **No On EE—A Bad Deal for Colorado, Issue Committee** v. Defendant(s): **Christopher Beall,** in his official capacity as Colorado Deputy Secretary of State and, **Jena Griswold,** in her official capacity as Colorado Secretary of State	**▲ COURT USE ONLY ▲**
Attorney for Plaintiff: Suzanne M. Taheri, #23411 MAVEN LAW GROUP 1600 Broadway, Suite 1600 Denver, CO 80202 Phone Number: (303) 263-0844 Email: staheri@mavenlawgroup.com **Attorneys for Defendants:** PHILIP J. WEISER Attorney General JESSICA ROSS, #44927* Assistant Attorney General PETER G. BAUMANN, #51620* Assistant Attorney General State Services Section Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, Colorado 80203 Telephone: (720) 508-6152 Email: jessica.ross@coag.gov peter.baumann@coag.gov *Counsel of Record	Case Number: 2021CV33166 Div/Crtm.: 409
UNOPPOSED MOTION TO STAY SENTENCE	

Suzanne Taheri, on behalf of Respondent, "No on EE-a bad deal for Colorado", submits this unopposed motion to postpone the effective date of the agency action pending judicial review. As grounds therefore, Respondent states the following:

1. On May 26, 2021 the Office of Administrative Court's Administrative Law Judge ("ALJ") as a hearing officer for the Department issued a decision in this matter, setting a fine in the amount of $10,000. No party filed exceptions to the decision.
2. The Deputy Secretary of State, acting on behalf of the final decision makers of the Agency, initiated review on his own motion.
3. On September 2, 2021 the Deputy, again acting on behalf of the final decision makers of the agency, assessed a fine of $30,000, triple the original fine.
4. Respondent has filed an appeal of the order.
5. The committee has no resources and will have to raise funds to pay any fines assessed at the conclusion of the hearing
6. Pursuant to C.R.S. 24-4-106 Respondent requests a stay of the final order.

Wherefore, Respondent requests that the effective date of the Final Agency Order be postponed until final review.

Submitted this day of November 12, 2021.

/s/ Suzanne Taheri
Maven Law Group
staheri@mavenlawgroup.com
Attorney for Respondent

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	DATE FILED: November 17, 2021 CASE NUMBER: 2021CV33166
Plaintiff(s) NO ON EE A BAD DEAL FOR COLO ISSUE COMMI v. **Defendant(s)** CHRISTOPHER BEALL et al.	⚠ **COURT USE ONLY** ⚠ Case Number: 2021CV33166 Division: 409 Courtroom:

ORDER GRANTING UNOPPOSED MOTION TO STAY SENTENCE

The motion/proposed order attached hereto: GRANTED.

THIS MATTER comes before the Court upon the Unopposed Motion to Stay Sentence, filed herein November 12, 2021. The Court, having reviewed the Unopposed Motion and finding a showing that irreparable injury would otherwise result;

HEREBY ORDERS that the Motion is GRANTED. No fine shall be due until the judicial review of the agency action is complete.

Issue Date: 11/17/2021

MARIE AVERY MOSES
District Court Judge

District Court Denver County, Colorado 1427 Bannock Street Denver, Colorado 80202	
Plaintiff: **No On EE—A Bad Deal for Colorado, Issue Committee** v. Defendant(s): **Christopher Beall,** in his official capacity as Colorado Deputy Secretary of State and, **Jena Griswold,** in her official capacity as Colorado Secretary of State	**▲ COURT USE ONLY ▲**
Attorney for Plaintiff: Suzanne M. Taheri, #23411 MAVEN LAW GROUP 1600 Broadway, Suite 1600 Denver, CO 80202 Phone Number: (303) 263-0844 Email: staheri@mavenlawgroup.com **Attorneys for Defendants:** PHILIP J. WEISER Attorney General JESSICA ROSS, #44927* Assistant Attorney General PETER G. BAUMANN, #51620* Assistant Attorney General State Services Section Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, Colorado 80203 Telephone: (720) 508-6152 Email: jessica.ross@coag.gov peter.baumann@coag.gov *Counsel of Record	Case Number: 2021CV33166 Div/Crtm.: 409
UNOPPOSED MOTION TO STAY SENTENCE	

Attachment to Order - 2021CV33166

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1. On May 26, 2021 the Office of Administrative Court's Administrative Law Judge ("ALJ") as a hearing officer for the Department issued a decision in this matter, setting a fine in the amount of $10,000. No party filed exceptions to the decision.
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5. The committee has no resources and will have to raise funds to pay any fines assessed at the conclusion of the hearing
6. Pursuant to C.R.S. 24-4-106 Respondent requests a stay of the final order.

Wherefore, Respondent requests that the effective date of the Final Agency Order be postponed until final review.

Submitted this day of November 12, 2021.

/s/ Suzanne Taheri
Maven Law Group
staheri@mavenlawgroup.com
Attorney for Respondent

Attachment to Order - 2021CV33166

DATE FILED: November 30, 2021
CASE NUMBER: 2021CV33166

DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80203 **Plaintiff:** NO ON EE—A BAD DEAL FOR COLORADO, **v.** **Defendants:** CHRISTOPHER BEALL, in his official capacity as Colorado Deputy Secretary of State, and JENA GRISWOLD, in her official capacity as Colorado Secretary of State.	**□COURT USE ONLY□** Case No. 2021CV33166 Ctrm./Div.: 409
Attorneys for Defendants: PHILIP J. WEISER Attorney General JESSICA ROSS, #44927* Assistant Attorney General PETER G. BAUMANN, #51620 Assistant Attorney General Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway Denver, Colorado 80203 Telephone: (720) 508-6152 Email: jessica.ross@coag.gov; peter.baumann@coag.gov *Counsel of Record	

NOTICE OF SUBMISSION OF AGENCY RECORD

Defendants, Christopher Beall, in his official capacity as Colorado Deputy Secretary of State, and Jena Griswold, in her capacity as Colorado Secretary of

State, hereby provide notice that a certified copy of the agency record in ED 2020-71 has been filed as Exhibit A.

Respectfully submitted this 30th day of November, 2021.

PHILIP J. WEISER
Attorney General

s/ Peter G. Baumann
JESSICA ROSS, 44927*
Assistant Attorney General
PETER G. BAUMANN, 51620*
Assistant Attorney General
*Counsel of Record
Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned duly certifies that she served the foregoing upon all counsel of record listed below via the Colorado Courts e-Filing System this 30th day of November, 2021:

Suzanne Taheri
Maven Law Group
1600 Broadway, Suite 1600
Denver, CO 80202
staheri@mavenlawgroup.com

s/ Xan Serocki

Index

Secretary of State's Designation of Record

No on EE v. Beall et al., Denver District Court No. 2021CV33166

DATE FILED: November 30, 2021
CASE NUMBER: 2021CV33166

November 30, 2021

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2.	Notice of Initial Review and Opportunity to Cure, October 22, 2020	SOS0024
3.	Notice of Intent to Cure and Exhibits, November 5, 2020	SOS0030
4.	Notice of Investigation, November 18, 2020	SOS0037
5.	Request for Information, November 20, 2020	SOS0038
6.	Response to Request for Information and Exhibits, November 30, 2020	SOS0040
7.	Office of Administrative Courts Complaint, December 18, 2020 *Elections Division v. No on EE, OS 2020-0025*	SOS0046
8.	Notice of Hearing, December 28, 2020 *Elections Division v. No on EE, OS 2020-0025*	SOS0057
9.	Elections Division's Unopposed Motion to Continue, January 28, 2021 *Elections Division v. No on EE, OS 2020-0025*	SOS0060
10.	Order Vacating Hearing, January 29, 2021 *Elections Division v. No on EE, OS 2020-0025*	SOS0064
11.	Elections Division's Unopposed Motion to Re-Set Hearing, February 11, 2021 *Elections Division v. No on EE, OS 2020-0025*	SOS0067
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17.	Initial Decision, May 26, 2021 *Elections Division v. No on EE, OS 2020-0025*	SOS0145
18.	Procedural Order Regarding Initial Decision, May 27, 2021	SOS0151
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22.	Order Denying Motion to Vacate, October 12, 2021	SOS0205
23.	Motion to Stay, October 12, 2021	SOS0208
24	Order Denying Motion to Stay, October 21, 2021	SOS0210

Submit complaint by mail or email to:
Colorado Secretary of State
Campaign Finance Enforcement
1700 Broadway, Suite 200
Denver, CO 80290
CPFcomplaints@sos.state.co.us

RECEIVED
10/08/2020
ELECTIONS DIVISION

CAMPAIGN FINANCE COMPLAINT FORM

Any person may file a complaint up to 180 days after the date on which the Complainant either knew or should have known, by the exercise of reasonable diligence, of an alleged violation. A complainant must specifically identify one or more respondents, a violation of Colorado campaign finance rules and regulations (Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning Campaign and Political Finance), and allege specific facts to support a legal and factual basis for the complaint. (See section 1-45-111.7, C.R.S.) Please be advised, complaints are public information and the Respondent will be provided a copy of this Complaint.

***Denotes required field**

Your Information (Complainant)- Information about the person or entity filing the complaint:

*Full Name: Anna Jo Haynes

*Mailing Address: 3031 Dexter Street Denver

*Telephone Number: 303 917 5252 *Email Address: annajoh@milehighearlylearning.org

*Date Made Aware of Violation: Sept. 18, 2020

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

*Full Name: No on EE -- A Bad Deal for Colorado

*Mailing Address: P. O. Box 533 Indian Hills CO 80454

Telephone Number: 303.246.6496 *Email Address: yastremski67@gmail.com
partykasandy@comcast.net

Briefly summarize the allegations of your complaint including dates of the alleged violations and attach any supporting documents and materials.

Please see attached

By submitting this form and any supporting evidence or documentation, I hereby affirm that I have read and am familiar with the procedures set forth in section 1-45-111.7, of the Colorado Revised Statute (C.R.S.).

*Complainant's Signature: Anna Jo Haynes Date: 10-8-2020

Campaign Finance Complaint
Re: Incorrect Disclaimers and False Statements from "No on EE -- a Bad Deal for Colorado"
October 8th, 2020

Colorado campaign finance law requires that any:

> issue committee… or other person making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that… that supports or opposes a ballot issue or ballot question… shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.

C.R.S. §1-45-108.3(1). Such disclaimer is required for each and every such communication "that is broadcast, printed, mailed, delivered; [that is] placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed." *Id*. Further, such disclaimer must state:

> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

C.R.S. § 1-45-107.5(5)(a), incorporated as to issue committees by C.R.S. § 1-45-108.3(2).

"No on EE – A Bad Deal for Colorado" is a registered issue committee, opposing Proposition EE on the November statewide ballot. Based on its filing with the Secretary of State, the registered agent for No on EE is one Patrick MacDonald.

In all known communications with the public, No on EE has failed to include a legally compliant disclaimer. Specifically, the committee routinely fails to include the name of Mr. MacDonald as part of its disclaimer and likewise fails to state that he is the committee's registered agent. These communications include but are not limited to:

(1) Television advertisements;
(2) Radio advertisements;
(3) The campaign website – https://baddealforco.com/;
(4) Billboards; and
(5) Campaign literature.

Copies of all such communications have either been attached hereto as exhibits or saved at accessible websites set forth as follows:
https://drive.google.com/drive/folders/1motDnUpqtuqZhMizdkPPo6fH6Z-kWCPf?usp=sharing

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Any violation of the statutory campaign finance provisions may be addressed by a complaint filed as provided by law. C.R.S. § 1-45-111.7(2)(a).

Further, given that Proposition EE was placed on the ballot by HB20-1427, signed into law on July 8, 2020, this complaint is timely filed as it must be – and has been – filed within 180 days of when the violations became known or should have been known. C.R.S. § 1-45-111.7(2)(b). None of the affected communications were or could have been distributed prior to July 8, given that No on EE was formed and filed with the Secretary of State on August 31, 2020 according to the committee's registration on the Secretary's website.

Fines to be imposed for failure to affix legally required disclaimers are "**at least 5% of the cost of the noncompliant communication** including cost to broadcast" if mitigated before an election. However, if the violation is not so mitigated, the mandated penalty is "**at least 10% of the cost of the noncompliant communication** including cost to broadcast." SOS Campaign Finance Rule 23.3.3(d) (emphasis added).

Based on reports filed to date, No on EE has spent approximately:
$2,228,090.00 on TV and radio advertisements, $1,000.00 on its campaign website, $1,069,011.25 on billboards, and $3,125.83 on campaign literature. Using these amounts from campaign finance disclosures, the fine on No on EE should be fined no less than $165,061.35 (5% of the total amount on spent on noncompliant communications) or $330,122.71 (10% of the total amount spent on noncompliant communications). Included with this complaint is an addendum drawing from No on EE's financial reports to substantiate these numbers.

Liggett Vector Brands, one of the country's largest cigarette companies and based in Morrisville, North Carolina, gave the campaign $3,438,223.95 based on the most recent Oct. 5 major donor report. To date, 99.8% of No on EE's contributions come from out of state cigarette companies.

On information and belief, No on EE spent additional funds on noncompliant communications that are not included in these subtotals but that should be reported in upcoming disclosures. Therefore, the fine imposed should be greater than the above amounts, given the additional spending that must be disclosed by No on EE in its future reports.

Further, because the Secretary's rules set these penalty percentages as minimums by using the phrase "at least," the State should seek higher penalties given that this is a committee that is anything but a citizens' committee that was unaware of the statute's requirements, given its:

(1) Substantial corporate funding (Liggett Vector Brands LLC);
(2) Professional campaign management (assorted Colorado and Connecticut firms); and
(3) Access to competent, experienced legal counsel.

In addition to the penalties imposed, No on EE should be ordered to use a legally compliant disclaimer on all future communications. SOS Rule 23.3.4(d).

The noncompliant communications at issue in this complaint are even more problematic because No on EE knows them to be false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements "on any issue submitted to the electors at any election." These false statements include but are not limited to:

> -Intentionally misleading voters by portraying statements from the Liggett Vector Brand's legal counsel as independent reporting from the Colorado Sun, as seen here (at :21 seconds). Initial quote can be found here.
> -Repeated false claims (such as here, here and here) that the funding included in Proposition EE would not be guaranteed to go to preschool education, despite the funding being specifically outlined in the legislative language of the HB20-1427, the enacted legislation that referred Proposition EE to the voters, and that funding further would be enshrined in state law were it to pass with voter approval and would be audited annually by the state.

The fact that the campaign has routinely neglected to disclose the name of its registered agent underscores its clear disregard for Colorado law and its refusal to take full responsibility for these communications, as required by law. As penalties may be imposed after considering *either* mitigating or *aggravating* circumstances, including "evidence of an intentional act or pattern or practice of misconduct," SOS Rule 23.3.5(d), the knowing falsehood of No on EE communications must be considered an aggravating circumstance that requires the maximum penalty outlined above.

Addendum
Evidence of Expenditures

Included below are excerpts from No on EE's standard financial disclosures from September 21st and October 5th, as well as an additional major contributor filing on October 5th.

Statewide Billboards

No on EE reported a single campaign expenditure on their September 21st campaign finance disclosure. This expenditure was for $1,069,011.25 on September 4th to Milk Sono LLC for media/advertising, provided via in-kind contribution from Liggett Vector Brands LLC. No on EE's billboards appeared statewide starting on September 18th. This is No on EE's only advertising purchase before the billboards appeared statewide, indicating that this initial $1,069,011.25 was used specifically for the purchase of the statewide billboards.

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/04/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,069,011.25	7.Description	MEDIA/ADVERTISING
3. Aggregate Amount*	8. Employer	
$1,069,011.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	MILK SONO LLC
09/04/2020	5. Address	11 DAY ST.
2. Fair Market Value	6. City/State/Zip	NORWALK CT 06854
$1,069,011.25	7.Purpose	Advertising
Electioneering Comm?		MEDIA/ADVERTISING
No	8. Coordinated?	No

TV and Radio Advertising

As reported on their October 5 financial disclosure, the No on EE campaign expended $1,808,280.00 in advertising to Hulsen Media Services LCC from an in-kind contribution from Liggett Vector Brands for the exact same amount on the same date. No on EE began their TV advertising four days later on September 28th.

On October 5th, No on EE also filed a major contributor report which revealed another in-kind contribution from Liggett Vector Brands LCC in the form of $419.810.00 in "media/advertising" from Hulsen Media Services LCC.

October 5th Routine Filing

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/24/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,808,280.00	7.Description	ADVERTISING
3. Aggregate Amount*	8. Employer	
$2,877,291.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	AFFORDABLEBUTTONS.COM
09/25/2020	5. Address	3269 19TH NW #6
2. Fair Market Value	6. City/State/Zip	ROCHESTER MN 55901
$4,872.70	7.Purpose	Advertising
Electioneering Comm?		
No	8. Coordinated?	No

1. Date Expended	4. Name	HULSEN MEDIA SERVICES LLC
09/24/2020	5. Address	2400 LARAMIE TRAIL
2. Fair Market Value	6. City/State/Zip	AUSTIN TX 78745
$1,808,280.00	7.Purpose	Advertising
Electioneering Comm?		ADVERTISING
No	8. Coordinated?	No

October 5th Major Contributor disclosure

Reporting Date:	10/05/2020		
Total Contributions:	$419810.00		
Registered Agent:	PATRICK MACDONALD	**Filed Date:**	10/06/2020

Itemized Contributions

1. Date Accepted	**Non-Monetary**		**LLC MEMBER**
10/05/2020	4. Name	LIGGETT VECTOR BRANDS LLC	LIGGETT VECTOR BRANDS LLC
2. Contribution Amount	5. Address	3800 PARAMOUNT PARKWAY #250	Total LLC Contribution: $419810.00
$419,810.00	6. City/State/Zip	MORRISVILLE NC 27560	
3. Aggregate Amount*	7.Description	MEDIA/ADVERTISING-HULSEN MEDIA SERVICES LLC	
$3,438,223.95	8. Employer		
Electioneering Comm?	9. Occupation		
No			

Campaign Literature

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to printing. This expenditure occurred on September 29th to Campaign Products of the Rockies for $3,125.83. Campaign literature began to appear in North Park Hill in Denver the following week.

Schedule B - Itemized Expenditures Statement ($20 or more)
[C.R.S. 1-45-108(1)(a)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended 09/29/2020	4. Name	CAMPAIGN PRODUCTS OF THE ROCKIES
2. Amount $3,125.83	5. Address	1900 GRANT ST. #1170
	6. City/State/Zip	DENVER CO 80301
Electioneering Comm? **No**	7.Purpose	PRINTING
	8. Type	Consultant & Professional Services

Campaign Website

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to web design and development is $1,000.00 to Lombardi Design on No on EE's October 5th financial disclosure.

1. Date Expended 09/29/2020	4. Name	LOMBARDI DESIGN
2. Amount $1,000.00	5. Address	765 BARBERRY CIR.
	6. City/State/Zip	LAFAYETTE CO 80026
Electioneering Comm?	7.Purpose	GRAPHIC/WEB DESIGN

Any violation of the statutory campaign finance provisions may be addressed by a complaint filed as provided by law. C.R.S. § 1-45-111.7(2)(a).

Further, given that Proposition EE was placed on the ballot by HB20-1427, signed into law on July 8, 2020, this complaint is timely filed as it must be – and has been – filed within 180 days of when the violations became known or should have been known. C.R.S. § 1-45-111.7(2)(b). None of the affected communications were or could have been distributed prior to July 8, given that No on EE was formed and filed with the Secretary of State on August 31, 2020 according to the committee's registration on the Secretary's website.

Fines to be imposed for failure to affix legally required disclaimers are "**at least 5% of the cost of the noncompliant communication** including cost to broadcast" if mitigated before an election. However, if the violation is not so mitigated, the mandated penalty is "**at least 10% of the cost of the noncompliant communication** including cost to broadcast." SOS Campaign Finance Rule 23.3.3(d) (emphasis added).

Based on reports filed to date, No on EE has spent approximately:
$2,228,090.00 on TV and radio advertisements, $1,000.00 on its campaign website, $1,069,011.25 on billboards, and $3,125.83 on campaign literature. Using these amounts from campaign finance disclosures, the fine on No on EE should be fined no less than $165,061.35 (5% of the total amount on spent on noncompliant communications) or $330,122.71 (10% of the total amount spent on noncompliant communications). Included with this complaint is an addendum drawing from No on EE's financial reports to substantiate these numbers.

Liggett Vector Brands, one of the country's largest cigarette companies and based in Morrisville, North Carolina, gave the campaign $3,438,223.95 based on the most recent Oct. 5 major donor report. To date, 99.8% of No on EE's contributions come from out of state cigarette companies.

On information and belief, No on EE spent additional funds on noncompliant communications that are not included in these subtotals but that should be reported in upcoming disclosures. Therefore, the fine imposed should be greater than the above amounts, given the additional spending that must be disclosed by No on EE in its future reports.

Further, because the Secretary's rules set these penalty percentages as minimums by using the phrase "at least," the State should seek higher penalties given that this is a committee that is anything but a citizens' committee that was unaware of the statute's requirements, given its:

(1) Substantial corporate funding (Liggett Vector Brands LLC);
(2) Professional campaign management (assorted Colorado and Connecticut firms); and
(3) Access to competent, experienced legal counsel.

In addition to the penalties imposed, No on EE should be ordered to use a legally compliant disclaimer on all future communications. SOS Rule 23.3.4(d).

The noncompliant communications at issue in this complaint are even more problematic because No on EE knows them to be false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements "on any issue submitted to the electors at any election." These false statements include but are not limited to:

> -Intentionally misleading voters by portraying statements from the Liggett Vector Brand's legal counsel as independent reporting from the Colorado Sun, as seen here (at :21 seconds). Initial quote can be found here.
> -Repeated false claims (such as here, here and here) that the funding included in Proposition EE would not be guaranteed to go to preschool education, despite the funding being specifically outlined in the legislative language of the HB20-1427, the enacted legislation that referred Proposition EE to the voters, and that funding further would be enshrined in state law were it to pass with voter approval and would be audited annually by the state.

The fact that the campaign has routinely neglected to disclose the name of its registered agent underscores its clear disregard for Colorado law and its refusal to take full responsibility for these communications, as required by law. As penalties may be imposed after considering *either* mitigating or *aggravating* circumstances, including "evidence of an intentional act or pattern or practice of misconduct," SOS Rule 23.3.5(d), the knowing falsehood of No on EE communications must be considered an aggravating circumstance that requires the maximum penalty outlined above.

Addendum
Evidence of Expenditures

Included below are excerpts from No on EE's standard financial disclosures from September 21st and October 5th, as well as an additional major contributor filing on October 5th.

Statewide Billboards

No on EE reported a single campaign expenditure on their September 21st campaign finance disclosure. This expenditure was for $1,069,011.25 on September 4th to Milk Sono LLC for media/advertising, provided via in-kind contribution from Liggett Vector Brands LLC. No on EE's billboards appeared statewide starting on September 18th. This is No on EE's only advertising purchase before the billboards appeared statewide, indicating that this initial $1,069,011.25 was used specifically for the purchase of the statewide billboards.

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/04/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,069,011.25	7.Description	MEDIA/ADVERTISING
3. Aggregate Amount*	8. Employer	
$1,069,011.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	MILK SONO LLC
09/04/2020	5. Address	11 DAY ST.
2. Fair Market Value	6. City/State/Zip	NORWALK CT 06854
$1,069,011.25	7.Purpose	Advertising
Electioneering Comm?		MEDIA/ADVERTISING
No	8. Coordinated?	No

TV and Radio Advertising

As reported on their October 5 financial disclosure, the No on EE campaign expended $1,808,280.00 in advertising to Hulsen Media Services LCC from an in-kind contribution from Liggett Vector Brands for the exact same amount on the same date. No on EE began their TV advertising four days later on September 28th.

On October 5th, No on EE also filed a major contributor report which revealed another in-kind contribution from Liggett Vector Brands LCC in the form of $419.810.00 in "media/advertising" from Hulsen Media Services LCC.

October 5th Routine Filing

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/24/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,808,280.00	7.Description	ADVERTISING
3. Aggregate Amount*	8. Employer	
$2,877,291.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	AFFORDABLEBUTTONS.COM
09/25/2020	5. Address	3269 19TH NW #6
2. Fair Market Value	6. City/State/Zip	ROCHESTER MN 55901
$4,872.70	7.Purpose	Advertising
Electioneering Comm?		
No	8. Coordinated?	No

1. Date Expended	4. Name	HULSEN MEDIA SERVICES LLC
09/24/2020	5. Address	2400 LARAMIE TRAIL
2. Fair Market Value	6. City/State/Zip	AUSTIN TX 78745
$1,808,280.00	7.Purpose	Advertising
Electioneering Comm?		ADVERTISING
No	8. Coordinated?	No

October 5th Major Contributor disclosure

Reporting Date:	10/05/2020		
Total Contributions:	$419810.00		
Registered Agent:	PATRICK MACDONALD	**Filed Date:**	10/06/2020

Itemized Contributions

1. Date Accepted	**Non-Monetary**		**LLC MEMBER**
10/05/2020	4. Name	LIGGETT VECTOR BRANDS LLC	LIGGETT VECTOR BRANDS LLC
2. Contribution Amount	5. Address	3800 PARAMOUNT PARKWAY #250	Total LLC Contribution: $419810.00
$419,810.00	6. City/State/Zip	MORRISVILLE NC 27560	
3. Aggregate Amount*	7.Description	MEDIA/ADVERTISING-HULSEN MEDIA SERVICES LLC	
$3,438,223.95	8. Employer		
Electioneering Comm?	9. Occupation		
No			

Campaign Literature

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to printing. This expenditure occurred on September 29th to Campaign Products of the Rockies for $3,125.83. Campaign literature began to appear in North Park Hill in Denver the following week.

Schedule B - Itemized Expenditures Statement ($20 or more)
[C.R.S. 1-45-108(1)(a)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended 09/29/2020	4. Name	CAMPAIGN PRODUCTS OF THE ROCKIES
2. Amount $3,125.83	5. Address	1900 GRANT ST. #1170
	6. City/State/Zip	DENVER CO 80301
Electioneering Comm? **No**	7.Purpose	PRINTING
	8. Type	Consultant & Professional Services

Campaign Website

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to web design and development is $1,000.00 to Lombardi Design on No on EE's October 5th financial disclosure.

1. Date Expended 09/29/2020	4. Name	LOMBARDI DESIGN
2. Amount $1,000.00	5. Address	765 BARBERRY CIR.
	6. City/State/Zip	LAFAYETTE CO 80026
Electioneering Comm?	7.Purpose	GRAPHIC/WEB DESIGN


VOTE
NO
ON EE
www.BadDealforCO.com
Paid for by NO on EE: A Bad Deal for Colorado
NO NEW
TAXES
A $294 MILLION TAX HIKE! REALLY?
2362FA
OUTFRONT



No on Proposition EE: A $294 million tax increase

- NO New Taxes – As our economy recovers from COVID-19, now is not the time to raise taxes on Colorado voters.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on pre-school. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- Prop. EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from about $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.

"...When bills are passed that only affect lower income classes of people, the American dream becomes the American nightmare!..."

– Bishop Jerry Demmer
Pastor of The Absolute Word Church
President of The Greater Metro Denver Ministerial Alliance

www.BadDealforCO.com

Paid for by NO on EE: A Bad Deal for Colorado

SOS0019

SOS0019

NO NEW TAXES

VOTE NO ON A $294 MILLION TAX INCREASE

NO ON EE

SOS0020

SOS0020

and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE is basically a tax increase on the poor....” Krista Kafer, DP 9/11/2020

Proposition EE will Harm Small Retail Businesses

- EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from $4 a pack to $7 a pack before the tax increase, while so-called premium cigarettes will see only a small increase.
- Purchasers of discount cigarettes, primarily low-income adult smokers, would be severely burdened with this tax increase, paying a larger percentage of their income than would other, more affluent consumers.
- EE will raise the price of discount cigarettes from $4 a pack to $7 a pack before the tax increase, while so-called premium cigarettes will see only a small increase.

ENDORSEMENT – Pagosa Daily Post

“Proposition EE: Vote “NO!”. This proposition is a “sin tax” that increases taxes on tobacco, a product that is used significantly more by poor people in Colorado. Part of the tax money would be used to fund general education programs that lack funds because of the way that growth has been fueled and subsidized in Colorado. Literally, this tax would take money from poor people addicted to tobacco and subsidize wealthy developers who aren’t charged the cost of growth....” September 24, 2020

Paid for by No on EE: A Bad Deal for Colorado. Contact: info@baddealforco.com

PLACEHOLDER FOR VIDEO FILE

PLACEHOLDER FOR VIDEO FILE

OFFICE OF THE SECRETARY OF STATE, ELECTIONS DIVISION

STATE OF COLORADO

IN THE MATTER OF "NO ON EE - - A BAD DEAL FOR COLORADO"

2020-71

NOTICE OF INITIAL REVIEW AND OPPORTUNITY TO CURE

Anna Jo Haynes (Complainant) filed a Complaint (2020-71) with the Elections Division (Division) on October 8, 2020 under section 1-45-111.7(2)(a), C.R.S., alleging that the issue committee "No on EE – A Bad Deal for Colorado" (Respondent) violated Colorado campaign finance laws. Complainant alleges that Respondent failed to include required disclaimer statements on television advertisements and radio advertisements, billboards, campaign literature, and their campaign website. Complainant specifically alleges that Respondent's disclaimer statements were noncompliant because they did not include the name of Respondent's registered agent as required by Colorado campaign finance law. Complainant also alleges Respondent knows its communications to be "false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements."

The Division notified Respondent of the Complaint on October 8, 2020. The Division has now completed its initial review under section 1-45-111.7(3) C.R.S.

For the reasons stated below, the Division initially determines Complainant identified potential violations of Colorado campaign finance law and alleged sufficient facts regarding the potential violations. The Division also initially determines that Complainant alleged one or more violations that may be curable. Respondent will have ten business days from the date of this notice[1] to submit a Notice of Intent to Cure form to the Division and to cure any deficiencies and provide other relevant information on how Respondent has cured the alleged violations and substantially complied with the law.[2]

Analysis

Any person who believes that a violation of Colorado campaign finance law has occurred may file a complaint with the Colorado Secretary of State.[3] Upon receipt, the Division must initially review the complaint to determine (1) whether the complaint was timely filed; (2) whether the complaint

[1] The Division will consider this Notice of Initial Review as notice pursuant to section 1-45-111.7(4)(a), C.R.S.
[2] Section 1-45-111.7(4)(a)-(b), C.R.S.
[3] Section 1-45-111.7(2)(a), C.R.S.

specifically identified one or more violations of Colorado campaign finance law; and (3) whether the complaint alleged sufficient facts to support a factual and legal basis for the complaint.[4]

1. *Complaint was timely filed.*

The Division initially determines that the Complaint was timely filed. Complainants must file a complaint no later than 180 days after the date on which the complainant knew or should have known, by the exercise of reasonable diligence, of the alleged violation.

Respondent is an issue committee registered on August 31, 2020 "to oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." On July 8, 2020, HB20-1427 was signed into law referring Proposition EE, a tobacco and nicotine tax, to the ballot. Complainant alleges that Respondent failed to include required disclaimer statements on communications opposing Proposition EE. To support their allegations, Complainant provides excerpts from Respondent's campaign finance disclosure reports from September 21, 2020 and October 5, 2020 as well as an additional major contributor filing on October 5, 2020. Complainant reports they were made aware of the potential violations on September 18, 2020 and that "[n]one of the affected communications were or could have been distributed prior to July 8, given that No on EE was formed and filed with the Secretary of State on August 31, 2020 according to the committee's registration on the Secretary's website."[5] The Complaint was filed on October 8, 2020.

Based on the information provided by Complainant, the Division makes the initial determination that the Complaint was timely filed under section 1-45-111.7(2)(b), C.R.S., as the Complaint was filed within 180 days of when Complainant knew or should have known, through the exercise of reasonable diligence, of the alleged violations.

2. *Complainant specifically identifies one or more violations of Colorado campaign finance law.*

The Division initially determines that Complainant specifically identifies one or more violations of Colorado campaign finance laws. Complainant alleges Respondent violated Colorado campaign and political finance laws by failing to include required disclaimer statements on various campaign communications. Complainant specifically asserts that Respondent failed to include the required disclaimer statement on television and radio advertisements, billboards, campaign literature, and their campaign website. Complainant also alleges Respondent knows its communications to be "false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements."

Under Colorado law:

[4] Section 1-45-111.7(3)(a), C.R.S.
[5] *See* Complaint 2020-71.

> (1) A candidate committee, political committee, issue committee, small donor committee, political organization, political party, or other person making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered; placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in 1-45-107.5(5) for content, size, duration, and placement.
>
> (3) In addition to any other applicable requirements provided by law, any person who expends one thousand dollars or more per calendar year on electioneering communications or regular biennial school electioneering communications shall, in accordance with the requirements specified in section 1-45-107.5(5), state in the communication the name of the person making the communication. For purposes of this subsection (3), an "electioneering communication" also includes any communication that satisfies all other requirements set forth in section 2 (7) of article XXVIII of the state constitution but that is broadcast, printed, mailed, delivered, or distributed between the primary election and the general election.

Section 1-45-108.3, C.R.S.

Disclaimer requirements contained in section 1-45-107.5, C.R.S., state:

> ". . . the communication shall include in the communication a statement that: (I) The communication has been 'paid for by (full name of the person paying for the communication)'; and (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person."[6]

In summary, for any electioneering communication[7] distributed within 30 days of the primary election and through the general election, if a candidate has spent one thousand dollars or more in a calendar year on aggregate electioneering communications, then a disclaimer is needed on electioneering communications. For any non-electioneering communication, if the candidate spent more than a thousand dollars on that particular communication, then a disclaimer is required. The required disclaimer statements must include the name of an issue committee's registered agent.

As alleged, Complainant's allegations identify one or more potential violations of Colorado campaign finance laws.

[6] Section 1-45-107.5(5)(a), C.R.S.
[7] *See* COLO CONST. art XXVIII, § 2(7)(a).

3. *Complainant alleges sufficient facts to support a factual and legal basis for the violations of law alleged in the Complaint.*

The Division initially determines that Complainant alleges sufficient facts to support a factual and legal basis for the Complaint. Complainant alleges that Respondent failed to include required disclaimer statements on television and radio advertisements, billboards, campaign literature, and their campaign website.

Complainant provided evidence that Respondent's communications did not include required disclaimer statements by presenting photos of billboards, campaign fliers, and copies of video advertisements opposing Proposition EE. In addition, Complainant included a link to Respondent's website and a screen shot of the website with an allegedly noncompliant disclaimer statement. Complainant details that Respondent failed to include the required disclaimer statement on approximately $2,228,090.00 worth of TV and radio advertisements, $1,069,011.25 of billboards, $3,125.83 of campaign literature, and on Respondent's campaign website valued at approximately $1,000. Complainant further alleges that Respondent spent additional funds on noncompliant communications not reported in these subtotals.[8] Complainant also provided a record of Respondent's contribution and expenditure reports to show the contributions and expenditures made by Respondent associated with the allegedly noncompliant communications.

Based on the information Complainant provided, the Division determines that Complainant alleges facts that, if proven, could establish Respondent violated Colorado campaign finance laws.

4. *Respondent has the opportunity to cure the alleged violations.*

The Division makes the initial determination that the Complainant alleges one or more violations, that may be curable under section 1-45-111.7(4), C.R.S. If Respondent intends to cure, they have ten business days from the date of this notice to do so. Respondent must file with the Division a Notice of Intent to Cure form with reports, amendments, or other relevant information on how the potential violations have been cured and demonstrate how Respondent has substantially complied with the law.

When determining whether Respondent has substantially complied with the law, the Division must consider:

(1) The extent of the respondent's noncompliance;
(2) The purpose of the provision violated and whether the purpose was substantially achieved despite the noncompliance; and
(3) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.[9]

[8] *See* Complaint 2020-71.
[9] Section 1-45-111.7(4)(f), C.R.S.

However, if Respondent disputes the allegations, Respondent may also provide the Division with information for further review under section 1-45-111.7(5)(a), C.R.S. The Division may ask Respondent for additional information including the production of documents or other tangible items during the cure or investigation.[10]

Conclusion

For the reasons stated above, the Division makes the initial determination that there are potential violations of Colorado campaign finance law, but the alleged violations may be curable.

If Respondent disputes the allegations and does not establish cure and substantial compliance under 1-45-111.7(4), the Division will conduct an additional review, under section 1-45-111.7(5), C.R.S., to determine whether to file a motion to dismiss the Complaint with the Deputy Secretary of State or file a complaint with a hearing officer.

Dated this 22nd day of October 2020.

/s/Luis Lipchak
Luis Lipchak
Campaign Finance Enforcement Manager
Elections Division
Colorado Secretary of State

[10] Section 1-45-111.7(4)(c), C.R.S.; Section 1-45-111.7(5)(a), C.R.S.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Notice of Initial Review and Opportunity to Cure was served by electronic transmission to:

Complainant – Anna Jo Haynes
annajoh@milehighearlylearning.org

Respondent – No on EE -- A Bad Deal for Colorado
Registered Agent: yastremski67@gmail.com
Designated Filing Agent: partykasandy@comcast.net

on this 22nd day of October 2020.

/s/John Molera
John Molera

Submit Original to:
Colorado Secretary of State
Elections Division
Campaign Finance Enforcement
1700 Broadway, Suite 200
Denver, CO 80290
CPFComplaints@sos.state.co.us

NOTICE OF INTENT TO CURE

Case Name: No on EE: A BAD DEAL for Colorado

Case No.: 2020-71

Respondent's Information:

* Full Name: Patrick MacDonald

* Mailing Address: 140 E 19th Ave., #400, Den Co 80203

* Telephone Number: 720 240 7355 Email Address: yastremski67@gmail.com

Respondent or authorized person filing notice on behalf of Respondent:

* Signature: [signature] Date: 11-5-2020

Describe here or in an attachment to this Notice any information demonstrating the violation(s) that have been cured, including a description and dates of the actions taken, and copies of amended reports or relevant documents. Respondent must demonstrate substantial compliance with the law. When determining substantial compliance, the Elections Division must consider: (1) the extent of the respondent's noncompliance; (2) the purpose of the provision violated and whether the purpose was substantially achieved despite the noncompliance; and (3) whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.[1] Please address each of these factors in the statement and evidence you provide to the Division.

[1] Section 1-45-111.7(3)(a), C.R.S.

Office of the Colorado Secretary of State, Elections Division

Notice of Intent to Cure Response

In the Matter of "No on EE – A Bad Deal for Colorado," Case number 2020-71

On September 18, 2020, Anna Jo Haynes ("Complainant") filed a complaint alleging that we, the No on EE – A Bad Deal for Colorado issue committee (the "Committee") neglected to include a disclaimer on our campaign website, collateral, television, radio and digital ads. The Committee was notified of the complaint on October 8, 2020. The Committee included a disclaimer on all campaign materials but inadvertently did not include the name of the registered agent in the disclaimer.,

Intent

The Committee did include the disclaimer, "Paid for by No on EE:A Bad Deal for Colorado", on all of the Committee's materials but inadvertently omitted the registered agent from the disclaimer.

The Committee was registered with the Colorado Secretary of State's Office on August 31, 2020. At that time, the Committee listed Sandy Partyke, a Colorado registered voter, as our filing agent and Patrick MacDonald, a Colorado registered voter, as our registered agent, according to state statute.

At the time of filing, Sandy Partyke was in touch with the Secretary of State's campaign finance office to go through the rules of in-kind donations specifically to ensure compliance at every level.

On September 16, 2020, Sandy Partyke attended a campaign finance webinar hosted by the Colorado Secretary of State's office, to ensure the Committee was in full compliance. During this webinar, Sandy does not recall the new requirement of including the registered agent as part of the disclaimer being highlighted during the presentation.

Because the Committee knew that many of our campaign contributions would be through in-kind contributions, we took the extra step of including who the in-kind contribution was paid to although this step was not required by law. Our intent was to have full transparency and accountability for anybody who wanted to see where the money contributed through an in-kind contribution was spent.

Cure

As soon as the Committee was made aware of the error we immediately began to cure.

1. We reprinted our door hangers and added stickers with the registered agent's information to the material we had already printed.
2. We were able to immediately fix 30% of our billboards and the others that cannot be cured will be taken down.

3. Our TV, digital and radio ads were immediately fixed (within 36 hours) adding the registered agent's name to the disclaimer already on the ad.
4. The website was cured immediately after receiving he complaint.

Costs

9/4/2020 Billboards – $1.069,011.25 –

Signage went up the week of September 16th

30% of billboards were cured by October 12th

9/25/2020 Paid Media - $1,808,280

This includes broadcast tv, streaming, radio and digital

9/25/2020 Radio – $70,249.24 total
9/29/2020 TV - 1,186,215
10/2-10/8 Digital – $170,500
10/2 – 11/3 Streaming through whole campaign – 281,250

Finally, as of Oct 8th, the following ballot issues also did not include a registered agent with their disclaimer, so clearly there seems to be confusion on this issue.
No Prop 116
No on Prop 117
No on Amendment B
No on Prop 114

No on EE: A Bad Deal for Colorado Case # 2020-71

Tv ad with Registered Agent Added https://www.youtube.com/watch?v=o0tLQLcZ2qw

Digital ad with Registered Agent https://youtu.be/wLSzcZdeCtQ?t=13

No on EE: A Bad Deal for Colorado Case # 2020-71

Website

Last Minute Public Policy and Back Room Deals

- HB20-1427 is a 43- page document introduced very late in the last legislative session, was reviewed for merely 20 minutes and the committee heard from just two witnesses. The proposal passed in the final 72 hours of the legislative session.
- The details of the bill were decided in a backroom deal without public discussion or input.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on Pre-School. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.
- Purchasers of discount cigarettes, primarily low-income adult smokers, would be severely burdened with this tax increase, paying a larger percentage of their income than would other, more affluent consumers.

"The measure was introduced in the final hours of the 2020 legislative session and so hastily brought that lawmakers didn't have a copy of the measure before its first committee hearing began." (Colorado Sun)

"...National Bureau of Economic Research, tobacco tax increases only have a small impact on adult consumption. If you consider that the poor are more likely to smoke than middle-class or wealthy adults, Proposition EE is basically a tax increase on the poor...." Krista Kafer, DP 9/11/2020

ENDORSEMENT – Pagosa Daily Post

"Proposition EE: Vote "NO!". This proposition is a "sin tax" that increases taxes on tobacco, a product that is used significantly more by poor people in Colorado. Part of the tax money would be used to fund general education programs that lack funds because of the way that growth has been fueled and subsidized in Colorado. Literally, this tax would take money

from poor people addicted to tobacco and subsidize wealthy developers who aren't charged the cost of growth…." September 24, 2020

Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent
Contact: info@baddealforco.com

No on Proposition EE: A $294 million tax increase

- NO New Taxes – As our economy recovers from COVID-19, now is not the time to raise taxes on Colorado voters.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on pre-school. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

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"...When bills are passed that only affect lower income classes of people, the American dream becomes the American nightmare!..."

– Bishop Jerry Demmer
Pastor of The Absolute Word Church
President of The Greater Metro Denver Ministerial Alliance

www.BadDealforCO.com

Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent.

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

Jena M. Griswold
Secretary of State
Judd Choate
Director, Elections Division

November 18, 2020

Sent via email correspondence to: yastremski67@gmail.com & partykasandy@comcast.net
No on EE – A Bad Deal for Colorado
P.O. Box 533
Indian Hills, CO 80454

RE: CPF Complaint 2020-71 No on EE – A Bad Deal for Colorado Notice of Investigation

Dear No on EE – A Bad Deal for Colorado:

The Elections Division of the Colorado Secretary of State's Office (Division) determined that Respondent has failed, or was unable, to cure and substantially comply with its legal obligations for each of the allegations in the Complaint under sections 1-45-111.7(4)(e)(III),(g), C.R.S. The Division will now conduct an additional review under section 1-45-111.7(5)(a), C.R.S. The Division must decide whether to file a complaint with the Office of Administrative Courts or file a motion to dismiss within thirty days of service of this letter.

Any information previously submitted to the Division during the complaint process will be considered by the Division in its further review and investigation. The Division may request additional information regarding the Complaint.

If you have any questions about this process, please do not hesitate to contact me via email at luis.lipchak@sos.state.co.us.

Sincerely,

/s/ Luis Lipchak
Luis Lipchak
Campaign Finance Enforcement Manager
Elections Division
Colorado Secretary of State

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

Jena M. Griswold
Secretary of State
Judd Choate
Director, Elections Division

November 20, 2020

Sent via email to: partykasandy@comcast.net and yastremski67@gmail.com
No on EE – A Bad Deal for Colorado
1732 Wazee St. #201
Denver, Colorado 80202

RE: CPF Complaint 2020-71 (No on EE) Request for Information

I am contacting you to request information and documentation regarding the above referenced campaign and political finance complaint filed with the Elections Division (Division). Complaint 2020-71 alleges Respondents violated Colorado campaign and political finance laws by failing to include required disclaimer statements on communications opposing Proposition EE. The Division is now requesting additional information regarding the allegations in the complaint.

The Division requests that you provide the following:

- Please provide information pertaining to all television and radio advertisements made by Respondent, including:
  - Copies of all television and radio advertisements.
  - The dates for which all radio and television advertisements ran.
  - Cost of each radio and television advertisement and date of the expenditure.
- Please provide information on all billboard advertisements made by Respondent, including:
  - A copy or photo of each billboard or a description of each design used for the billboard. Please also detail the number of billboards posted with each design.
  - The dates for which each billboard was posted.
  - The cost of each billboard and date of the expenditure.
- Please provide information on all printed campaign literature paid for by Respondent, including:
  - A copy or photo of each different printed communication design or a description of each design used and distributed. Please also detail the

number of each printed campaign communication distributed for each design.
    - The dates each printed campaign communication was distributed.
    - Cost associated with each type of printed campaign communication distributed, and the date of the expenditure.
- Please provide information on all digital advertisements paid for by Respondent, including:
    - Copies of all digital advertisements.
    - Dates each advertisement ran.
    - Identify the platform on which each advertisement was distributed.
    - Cost associated with each digital advertisement, and the date of expenditure.
- Please provide information on the streaming platform used by Respondent and the cost associated with each if multiple services were used.
- Please provide information on Respondent's campaign website including the cost of developing the website, dates website expenditures were made, as well as the dates that the website was operational and viewable to the public.
- Please provide a list of each electioneering communication made by Respondent in 2020 opposing Proposition EE including the cost of the communication, date the expenditure for the communication was made, and the date the communication was distributed, or otherwise made available to the public.

Please provide any available requested information by Wednesday, November 25, 2020.

Please feel free to contact me with any questions or concerns at john.molera@sos.state.co.us.

Sincerely,

/s/John Molera
John Molera
Campaign Finance Enforcement Investigator
Elections Division
Colorado Secretary of State

John Molera
Campaign Finance Enforcement Investigator
Elections Division
Colorado Secretary of State

CPF Complaint 2020-71 (No on EE) Request for Information November 25,2020

To Mr. John Molera,

Below is the information you have requested in your communication sent November 20, 2020.

In the Matter of "No on EE – A Bad Deal for Colorado," Case number 2020-71

On September 18, 2020, Anna Jo Haynes ("Complainant") filed a complaint alleging that we, the No on EE – A Bad Deal for Colorado issue committee (the "Committee") neglected to include a disclaimer on our campaign website, collateral, television, radio and digital ads. The Committee was notified of the complaint on October 8, 2020. The Committee included a disclaimer on all campaign materials but inadvertently did not include the name of the registered agent in the disclaimer.,

Intent

The Committee did include the disclaimer, "Paid for by No on EE:A Bad Deal for Colorado", on all of the Committee's materials but inadvertently omitted the registered agent from the disclaimer.

The Committee was registered with the Colorado Secretary of State's Office on August 31, 2020. At that time, the Committee listed Sandy Partyke, a Colorado registered voter, as our filing agent and Patrick MacDonald, a Colorado registered voter, as our registered agent, according to state statute.

At the time of filing, Sandy Partyke was in touch with the Secretary of State's campaign finance office to go through the rules of in-kind donations specifically to ensure compliance at every level.

On September 16, 2020, Sandy Partyke attended a campaign finance webinar hosted by the Colorado Secretary of State's office, to ensure the Committee was in full compliance. During this webinar, Sandy does not recall the new requirement of including the registered agent as part of the disclaimer being highlighted during the presentation.

Because the Committee knew that many of our campaign contributions would be through in-kind contributions, we took the extra step of including who the in-kind contribution was paid to although this step was not required by law. Our intent was to have full transparency and accountability for anybody who wanted to see where the money contributed through an in-kind contribution was spent.

Printed Material

Door Hanger – Please see attachment enclosed
The original door hanger did have a disclaimer but was missing the name of the registered agent.

Design: September 28, 2020

Cost: $90

Paid to: Lombardi Design. 765 Barberry Circle, Lafayette Colorado 80026

Invoice dated: October 1, 2020

Printing: September 29, 2020

Cost: $3125.83

Paid to: Campaign Products of the Rockies, P.O. Box 13325, Denver, Co 80201

Invoice Dated: September 29, 2020

Distribution: Less than 100 doorhangers without the name of the registered agent were distributed.

Door hangers were cured through adding the registered agents name onto door hanger as well as reprinting.

Website

Cost of website development as of October 8, 2020: $990

Website splash page was viewable to the public on September 8, 2020

Invoice for website was submitted October 1, 2020 and paid to Lombardi Design, 765 Barberry Cir., Lafayette Co 80026

The website contained the disclaimer but was missing the name of the registered agent. The registered agent's name was added on October 8, 2020

BillBoards

Billboards did have a disclaimer but were missing the registered agent's name. Picture of billboards attached

There were 82 billboards total and we were able to immediately fix 30% of our billboards by October 12, 2020. The others that cannot be cured will be taken down.

9/4/2020 Billboards – $1.069,011.25 as reported in our filing to the Secretary of State's Office
Signage went up the week of September 16th
30% of billboards were cured by October 12th

Paid Media

9/25/2020 Paid Media - $1,808,280

This includes broadcast tv, streaming (Hulu, You Tube), radio and digital

9/25/2020 Radio – $70,249.24 total
9/29/2020 TV - 1,186,215

10/2-10/8 Digital – $170,500
Digital ad during this time include our tv ad below as well as this ad. I do not have a version without the registered agent. Digital ad with Registered Agent
https://youtu.be/wLSzcZdeCtQ?t=13

10/2 – 11/3 Streaming through whole campaign – 281,250
Broadcast and digital ads

a. Backroom
   Smoke: https://www.dropbox.com/sh/dj8r9tcd55r99gh/AACuRpW5It9IK_RolYWEDWVKa?dl=0 With disclaimer but without registered agent name Ads ran TV 30 - Backroom Smoke: 9.25-10.9
a. Backroom Smoke
   Redux: https://www.dropbox.com/sh/cf06nkynn0irdz4/AABxFtPBPKN0bHxINZMoyXxva?dl=0
   With disclaimer and registered agent name. Cured October 8, 2020. Ad ran 10.9-10.23

John,

The above includes all electioneering communication you have requested. It was difficult to determine the exact cost of each digital ad as that is not the way it was purchased. Please let me know if there is any other information you need.

Thanks

Sheila MacDonald on behalf of Patrick MacDonald, Registered Agent


VOTE
NO
ON EE
www.BadDealforCO.com
TAX & SPEND
MUST END
A $294 MILLION TAX HIKE! REALLY?
Paid for by No on EE: A Bad Deal for Colorado. Patrick MacDonald, Registered Agent
OUTFRONT

SOS0043


NO NEW TAXES
VOTE NO ON A $294 MILLION TAX INCREASE
NO ON EE

No on Proposition EE: A $294 million tax increase

- NO New Taxes – As our economy recovers from COVID-19, now is not the time to raise taxes on Colorado voters.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on pre-school. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

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- Prop. EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from about $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.

"...When bills are passed that only affect lower income classes of people, the American dream becomes the American nightmare!..."

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www.BadDealforCO.com



Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent.

* * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	**RECEIVED** 12/18/2020 **OFFICE OF ADMINISTRATIVE COURTS** ✦ **COURT USE ONLY** ✦
Elections Division of the Secretary of State Petitioner VS. **No on EE- A Bad Deal for Colorado** Respondent	**CASE NUMBER:** **OS 2020-0025**

CASE INITIATION

This document is **FOR INFORMATION PURPOSES** and does not substitute for a charging document. The charging document must be included as an attachment. Additionally, this form does not replace the need of the initiating party to serve the charging document on all parties to the case.

The type of case being initiated is: **Violation of Fair Campaign Practices Act.** The board or governmental entity involved is **.**

Signer:
Xan Serocki
xan.serocki@coag.gov

Date:
12/18/2020

The signer certified that the case initiation was submitted to all parties: ☐

REV 9/18

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th floor Denver, Colorado 80203	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, *in re* ED 2020-71 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. NO ON EE – A BAD DEAL FOR COLORADO, Respondent.	▲COURT USE ONLY▲ CASE NUMBER OS 2020-_____

COMPLAINT

Pursuant to § 1-45-111.7, C.R.S. (2019), the Elections Division of the Secretary of State files this complaint against No on EE – A Bad Deal for Colorado ("No on EE").

BACKGROUND

1. To foster transparency and assist voters in understanding the sources of election-related communications, Colorado law requires issue committees, as well as other political entities, to include a "paid for by" disclaimer on certain communications.

2. Those disclaimers must include both the name of the person paying for the communication, and—if the person is not a natural person—the name of the registered agent for that entity.

3. Here, No on EE spent millions of dollars on communications requiring a disclaimer. While these communications indicated that they were "Paid for by No on EE," they omitted the name of the committee's registered agent.

PARTIES

4. Complainant is the Elections Division ("Division") of the Colorado Secretary of State.

5. Respondent is No on EE, a Colorado issue committee registered with the Colorado Secretary of State.

JURISDICTION AND VENUE

6. The Division has jurisdiction under § 1-45-111.7.

7. The Division files this complaint with the Office of Administrative Courts consistent with § 1-45-111.7(5)(a)(IV), (6).

8. This complaint is timely filed within thirty days of the Division's November 18, 2020, notice of investigation, according to § 1-45-111.7(5)(a)(IV).

9. Venue is proper before the Office of Administrative Courts under § 1-45-111.7(5).

ALLEGATIONS

Proposition EE is Placed on the Ballot

10. On July 8, 2020, Governor Jared Polis signed House Bill 20-1427, an act referring to voters a ballot question related to cigarette taxes. With his signature, Governor Polis placed the issue—which later became known as Proposition EE—on the November 3, 2020, ballot.

11. On August 31, 2020, No on EE registered as an issue committee with the Colorado Secretary of State. According to the committee, its purpose was "to oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature."

12. According to the Secretary of State's TRACER system, No on EE received over $4 million in non-monetary contributions during the 2020 election cycle, and in turn made over $4 million in expenditures. According to TRACER, nearly all of these expenditures were for "Advertising."

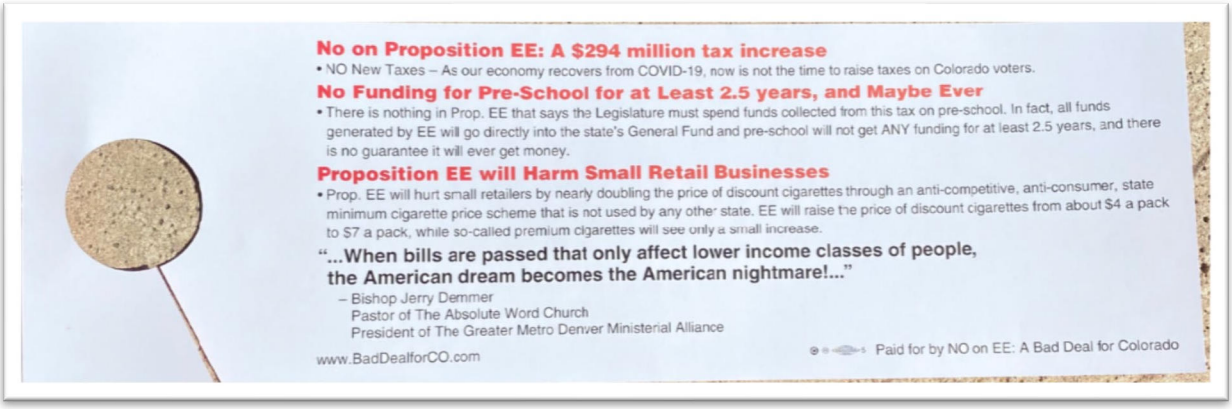
The Division Receives a Campaign Finance Complaint Against No on EE

13. On October 8, 2020, Anna Jo Hayes filed a campaign finance complaint against No on EE.

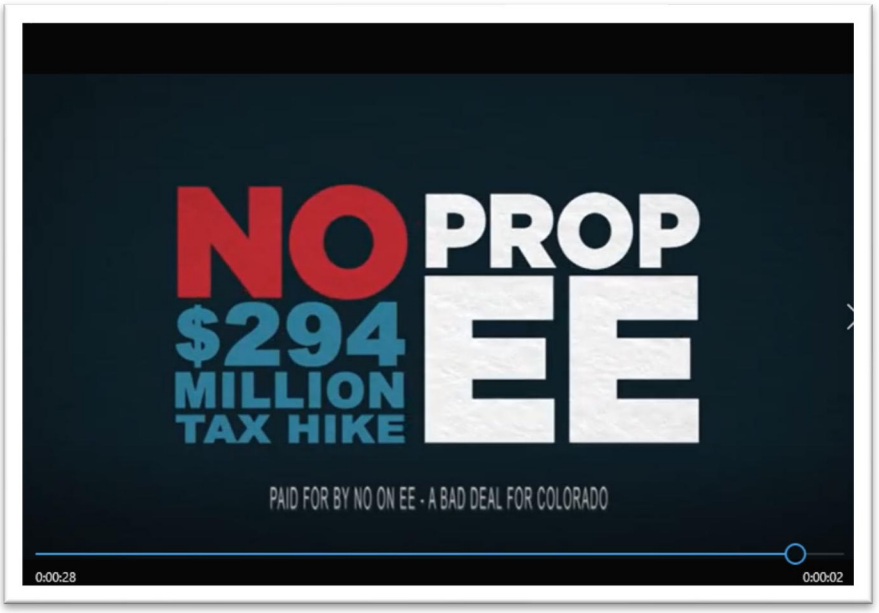
14. The complaint alleged that No on EE had "failed to include a legally compliant disclaimer" on its public communications. Specifically, the complaint alleged that No on EE had failed to include the name of the committee's registered agent as is required by law.

15. The complaint attached several examples of communications with the disclaimer: "Paid for by NO on EE: A Bad Deal for Colorado." None included the name of the registered agent. Two of the attached examples are reproduced below:





16. The complaint also included two video advertisements funded by No on EE. As shown in the screenshots below, both included the disclaimer: "Paid for by No on EE · A Bad Deal for Colorado." Neither included the name of the registered agent.





No on EE Attempts to Cure the Alleged Violations

17. The Division notified No on EE of the complaint shortly after it was filed. Then, on October 22, 2020, the Division sent No on EE a Notice of Initial Review and Opportunity to Cure. The Notice stated that the Division had initially determined that the complaint identified potential violations of Colorado campaign finance law, but also that the alleged violation may have been curable.

18. Under § 1-45-111.7(4), the Division gave No on EE ten business days to cure any alleged violations and provide the Division with information as to the committee's cure and compliance efforts.

19. No on EE responded on November 5, 2020 with a Notice of Intent to Cure.

20. In its response, No on EE explained that it included a disclaimer on all of its materials, "but inadvertently omitted the registered agent from the disclaimer."

21. The committee explained that "as soon" as it was made aware of the allegation, it:

a. "Reprinted" the door hangers and "added stickers with the registered agent's information" to material that had already been printed.

b. "Immediately" fixed 30% of the committee's billboards, and pledged to take down the ones that could not be cured.

c. "Immediately" fixed the committee's TV, digital and radio ads to add the name of the registered agent to the disclaimer.

d. "Immediately" cured the committee's website to reflect the name of the registered agent.

22. The committee also included a breakdown of its media costs.

23. According to No on EE, it spent $1,069,011.25 on billboards which went up the week of September 16th. According to No on EE, 30% of those billboards were cured by October 12th. This $1,069,011.25 corresponds to an expenditure listed in TRACER made by No on EE on September 4, 2020 to Milk Sono LLC.

24. According to No on EE, it spent a total of $1,808,280 on paid media, including broadcast tv, streaming, radio, and digital advertisements. This $1,808,280 corresponds to an expenditure listed in TRACER made by No on EE on September 24, 2020 to Hulsen Media Services LLC.

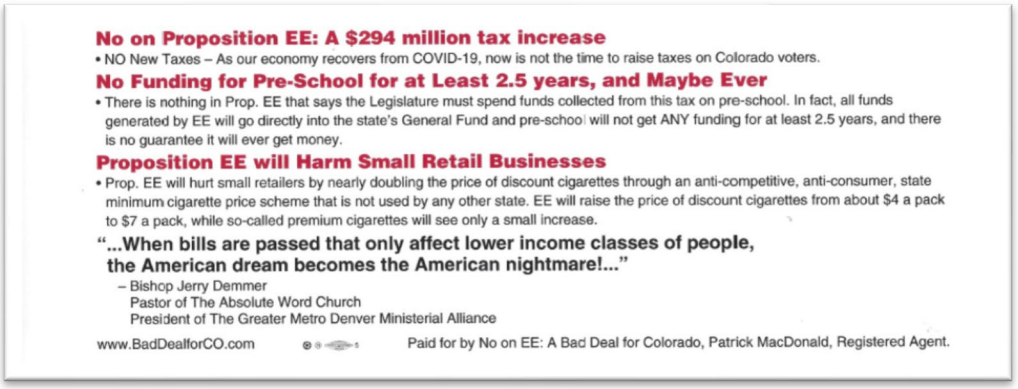
25. In addition to these two expenditures, TRACER lists No on EE as making an additional $1,364,436.20 on expenditures marked as "Advertising" between September 25, 2020 and November 2, 2020. This includes an additional $1,287,548.00 to Hulsen Media Services LLC.

26. On November 18, 2020, the Division informed No on EE that it was unable to determine that No on EE had cured and substantially complied with its legal obligations, and would be conducting an additional review under § 1-45-111.7(5)(a), C.R.S.

27. On November 20, 2020, the Division requested further information about No on EE's communications from the committee.

28. No on EE responded on November 30, 2020, with the following information:

a. Door Hanger: As to the Door Hanger, No on EE explained that its total expenditures on the door hanger were $3,125.83, and that "less than 100" door hangers were distributed without a compliant disclaimer. The remaining doorhangers were reprinted to include the name of the committee's registered agent, as reproduced below:



b. Website: As to the website, No on EE explained that the name of its registered agent had been added to the website disclaimer on October 8, 2020.

c. Billboards: As to its billboards, No on EE explained that it had purchased a total of 82 billboards, and that it had been able to cure 30% of those by October 12, 2020. The committee submitted an example of one of the cured billboards, which is reproduced below:



d. Paid Media: Finally, as to paid media, No on EE reiterated the total paid media spending figures it had originally shared with the Division on November 5. No on EE also included copies of the tv and digital advertisements that did include the name of the registered agent, and indicated that the advertisements had been updated on October 9, 2020. Screenshots from those cured advertisements reflect this change:



COLORADO CAMPAIGN FINANCE LAW

29. Under Colorado law

A[n] . . . issue committee . . . making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered; placed on a website, streaming media

> service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.

§ 1-45-108.3(1), C.R.S.

30. Under § 1-45-108.3(2), "[t]he disclaimer statement requirement by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5(5) for content, size, duration, and placement."

31. Those requirements, in turn, are that:

> [T]he communication shall include in the communication a statement that: (I) The communication has been "paid for by (full name of person paying for the communication)"; and (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

§ 1-45-107.5(a), C.R.S.

CLAIM ONE
Failure to Include Sufficient Disclaimers
(§ 1-45-108.3(1), C.R.S.)

32. All preceding allegations are incorporated.

33. No on EE spent millions of dollars on communications that opposed Proposition EE, including television and digital advertisements, door hangers, and billboards.

34. No on EE is not a natural person.

35. No on EE spent more than one thousand dollars on each of these communications.

36. The disclaimer on these communications failed to conform "to the requirements specified in section 1-45-107.5(5) for content, size, duration, and placement."

37. Specifically, these communications did not identify a natural person who is the registered agent for No on EE.

38. The Division is entitled to relief under Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act, § 1-45-101 et seq.

PRAYER FOR RELIEF

WHEREFORE, the Elections Division prays for judgment and relief as follows:

(a) Penalties to include appropriate fines; and

(b) Such other relief as is warranted by the facts and the law.

Respectfully submitted this 18th day of December, 2020.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Campaign Finance Fellow, No. 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served this 18th day of December, 2020, by U.S. mail, addressed as follows:

No on EE – A Bad Deal for Colorado
C/O Registered Agent Patrick MacDonald
PO Box 533
Indian Hills, CO 80454
303-246-6496
yastremski67@gmail.com

Anna Jo Haynes
3031 Dexter St.
Denver, CO 80207
303-917-5252
annajoh@milehighearlylearning.org

Third-Party Complainant

/s/ *Xan Serocki*

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Elections Division of the Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**

Notice

This document is for **INFORMATIONAL PURPOSES ONLY**.

Title:	NOH 2-1-21
Type/Category:	
Description:	
Status:	Pending
Signer Name:	
Date of Service/Issuance:	

Generated Date: December 28, 2020

/s/ Katherine Singleton
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State Complainant VS. **No on EE- A Bad Deal for Colorado** Respondent	**COURT USE ONLY** **CASE NUMBER:** **OS 2020-0025**

NOTICE OF HEARING

On December 18, 2020 the Elections Division of the Colorado Secretary of State referred this complaint to the Colorado Office of Administrative Courts pursuant to 8 CCR 1505-6 Rule 18.2.8. This matter has been assigned to an Administrative Law Judge at the Office of Administrative Courts for the purpose of conducting a hearing and issuing a written decision on the complaint.

A hearing on this complaint will be held through Google Hangouts at 9:00 AM on February 01, 2021. Prior to hearing, parties will receive via electronic mail an invitation to join the hearing virtually.

All pleadings, papers or other correspondence in this matter should now be filed directly with the Office of Administrative Courts and not with the Secretary of State. The mailing address for the Office is 1525 Sherman St., 4th Floor, Denver, CO 80203. The telephone number for the Office is 303-866-5626 and the FAX number is 303-866-5909.

NOTICE REGARDING PROCEDURES AT THE HEARING

This complaint was made pursuant to the Fair Campaign Practices Act, Article XXVIII of the Colorado Constitution and Section 1-45-101, et seq., C.R.S. Under these laws and Section 24-4-105, C.R.S., the person filing the complaint has the burden of proving by a preponderance of the evidence that a violation of the Fair Campaign Practices Act has occurred. Information about presenting a case before the Office of Administrative Courts can be found at http://www.colorado.gov/dpa/oac. By order of the Administrative Law Judge no prehearing statements are required to be filed.

At the hearing, each party will have the right to present personal testimony and the testimony of other witnesses, present documentary evidence, cross-examine witnesses and present argument to the Administrative Law Judge.

You may require the attendance of witnesses by subpoena, and subpoena forms may be obtained from the Office of Administrative Courts. A party wishing to subpoena

a witness shall be responsible for arranging for service of the subpoena as required by law.

Except as otherwise provided in Section 13-1-127, C.R.S. a party, who is not an individual, can not be represented by a non-attorney in this proceeding. A party may be represented by an attorney at the party's expense.

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **NOTICE OF HEARING** 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:

Peter Baumann
Department of Law
peter.baumann@coag.gov

Patrick McDonald
No on EE – A Bad Deal for Colorado
P.O. Box 533
Indian Hills CO 80454
yastremski67@gmail.com

Luis Lipchak
Elections Division
Luis.Lipchak@sos.state.co.us

Dated: 12/28/2020

/s/ Katherine Singleton
Court Clerk

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED 01/28/2021 10:57 AM OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**
Receipt Of Motion	

This document is for **INFORMATIONAL PURPOSES ONLY**. This form does not replace the need of the submitting party to serve the pleading on all parties to the case.

The attached UNOPPOSED MOTION TO CONTINUE HEARING was submitted by Xan Serocki to the Office of Administrative Courts on January 28, 2021 in the above referenced case.

Additional Notes:

Xan Serocki certified that a complete copy of this Motion was served on all parties.

Dated: January 28, 2021

Marc Marcel
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th floor Denver, Colorado 80203	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, *in re* ED 2020-71 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. NO ON EE – A BAD DEAL FOR COLORADO Respondent.	▲COURT USE ONLY▲ CASE NUMBER OS 2020-0025

UNOPPOSED MOTION TO CONTINUE HEARING

Under § 1-45-111.7(6)(a), C.R.S. and Rule 17 of the Office of Administrative Courts Procedural Rules (1 CCR 104-1), the Division moves to continue the hearing set in this matter. The Division proposes to file a status report on or before February 11, 2021. As good cause to support the motion, the Division states as follows:

1. The Division has conferred with Respondent regarding the relief requested in this motion. Respondent does not oppose the requested relief.

2. A hearing is currently set in this matter for February 1, 2021.

3. The parties have met to confer about a potential resolution of this matter on multiple occasions but have been unable to resolve the claims raised in the Division's complaint.

4. The Division understands that Respondent is in the process of retaining counsel to assist in this matter.

5. Upon retention, Respondent's counsel will require a short period of time to familiarize themselves with the case.

6. A continuance will benefit the parties, and the Court, by allowing for a more fulsome presentation of the issues raised in the Division's complaint.

7. Nor will the public be harmed by a continuance because the relevant election has passed.

Accordingly, the Division respectfully requests a continuance in this matter, with the Division proposing to file a status report on or before February 11, 2021.

Respectfully submitted this 28th day of January, 2021.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Campaign Finance Fellow, No. 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served this 28th day of January, 2021, by electronic mail, addressed as follows:

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

Patrick MacDonald
Registered Agent for Respondent, No on EE
Yastremski67@gmail.com

/s/ *Peter G. Baumann*

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	
Elections Division of the Secretary of State Petitioner, vs. No on EE- A Bad Deal for Colorado Respondent.	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **OS 2020-0025**

NOTICE OF ORDER ISSUANCE

The attached Order Vacating Hearing was issued January 29, 2021 in the above referenced case.

Dated: January 29, 2021

/s/ Marc Marcel
Marc Marcel
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	
ELECTIONS DIVISION OF THE SECRETARY OF STATE, Petitioner, vs. **NO ON EE – A BAD DEAL FOR COLORADO,** Respondent.	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **OS 2020-0025**

ORDER VACATING HEARING

This matter is before the undersigned Administrative Law Judge on the Unopposed Motion to Continue Hearing, filed by the Elections Division of the Secretary of State (Division) on January 28, 2021. Based on a review of the unopposed motion, and good cause having been shown pursuant to Rule 17 of the Rules of Procedure of the Office of Administrative Courts (1 CCR 104-1), it is hereby ordered that:

1. The hearing on the merits currently scheduled for February 1, 2021 has been vacated.

2. The Division shall file either a status report or a notice to set this matter for a new hearing on the merits by the close of business on February 11, 2021.

Done and Signed: January 29, 2021.

/s/ MICHELLE A. NORCROSS
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **ORDER VACATING HEARING** 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:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

Patrick MacDonald
Registered Agent for Respondent, No on EE
Yastremski67@gmail.com

Dated: January _29, 2021.

\s\Marc Marcel
Office of Administrative Courts

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STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED 02/11/2021 2:34 PM OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**
Receipt Of Motion	

This document is for **INFORMATIONAL PURPOSES ONLY**. This form does not replace the need of the submitting party to serve the pleading on all parties to the case.

The attached UNOPPOSED MOTION TO RE-SET HEARING was submitted by Xan Serocki to the Office of Administrative Courts on February 11, 2021 in the above referenced case.

Additional Notes:

Xan Serocki certified that a complete copy of this Motion was served on all parties.

Dated: February 11, 2021

Marc Marcel
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th floor Denver, Colorado 80203	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, *in re* ED 2020-71 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. NO ON EE – A BAD DEAL FOR COLORADO Respondent.	▲COURT USE ONLY▲ CASE NUMBER OS 2020-0025

UNOPPOSED MOTION TO RE-SET HEARING

In response to the Court's Order Vacating Hearing, dated January 29, 2021, the Division moves to re-set the hearing in the above-captioned matter. As good cause for the motion, the Division states as follows:

1. The Division has conferred with Respondent regarding the relief requested in this motion. Respondent does not oppose the requested relief.

2. On January 29, 2021, the Court vacated the hearing set in this matter at the Division's request. The Division's motion to vacate was premised on Respondent's interest in retaining counsel to assist in this matter.

3. As of the date of this motion, no counsel has entered an appearance on behalf of Respondent. And undersigned counsel is unaware of any counsel having been retained.

4. Therefore, in accordance with the Rules of Procedure of the Office of Administrative Courts and § 1-45-111.7(5), C.R.S. (2020), the Division requests that this matter be re-set for a hearing.

Respectfully submitted this 11th day of February, 2021.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Campaign Finance Fellow, No. 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served this 11th day of February, 2021, by electronic mail, addressed as follows:

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

Patrick MacDonald
Registered Agent for Respondent, No on EE
Yastremski67@gmail.com

/s/ *Peter G. Baumann*

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	
ELECTIONS DIVISION OF THE SECRETARY OF STATE, Petitioner, vs. **NO ON EE – A BAD DEAL FOR COLORADO,** Respondent.	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **OS 2020-0025**

ORDER GRANTING MOTION TO RESET HEARING DATE

This matter is before the undersigned Administrative Law Judge on the Unopposed Motion to Re-Set Hearing, filed by the Elections Division of the Secretary of State (Division) on February 11, 2021. Based on a review of the unopposed motion, and the case filings in this matter, it is hereby ordered that:

There will be a telephonic setting conference conducted in this matter on March 9, 2021 at 10:30 a.m. to reschedule the hearing on the merits in this matter. Parties shall notify the Office of Administrative Courts (telephone: 303-866-5626) of the telephone number at which they can be contacted for the setting conference.

Done and Signed: February 22, 2021.

/s/ MICHELLE A. NORCROSS
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **ORDER GRANTING MOTION TO RESET HEARING DATE** 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:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

Patrick MacDonald
Registered Agent for Respondent, No on EE
Yastremski67@gmail.com

Dated: February 22, 2021.

/s/ Marc Marcel
Office of Administrative Courts

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Elections Division of the Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**

Notice

This document is for **INFORMATIONAL PURPOSES ONLY**.

Title:	NOH 5-21-21
Type/Category:	
Description:	
Status:	Needs Follow Up
Signer Name:	
Date of Service/Issuance:	

Generated Date: March 10, 2021

/s/ Katherine Singleton
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	
Secretary of State Complainant VS. **No on EE-A Bad Deal for Colorado** Respondent	**COURT USE ONLY** **CASE NUMBER:** **OS 2020-0025**
SECOND NOTICE OF HEARING	

A hearing on this complaint will be held through Google Meet at 9:00 AM on May 21, 2021. Prior to hearing, parties will receive via electronic mail an invitation instructing them to join in virtually at the time of hearing.

NOTICE REGARDING PROCEDURES AT THE HEARING

This complaint was made pursuant to the Fair Campaign Practices Act, Article XXVIII of the Colorado Constitution and Section 1-45-101, et seq., C.R.S. Under this law the person filing the complaint has the burden of proving by a preponderance of the evidence that a violation of the Fair Campaign Practices Act has occurred. Information about presenting a case before the Office of Administrative Courts can be found at http://www.colorado.gov/dpa/oac. By order of the Administrative Law Judge prehearing statements required to be filed.

At the hearing, each party will have the right to present personal testimony and the testimony of other witnesses, present documentary evidence, cross-examine witnesses and present argument to the Administrative Law Judge.

You may require the attendance of witnesses by subpoena, and subpoena forms may be obtained from the Office of Administrative Courts. A party wishing to subpoena a witness shall be responsible for arranging for service of the subpoena as required by law.

A party may be represented by an attorney at the party's expense. A party can not be represented at a hearing by a person who is not an attorney.

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **SECOND NOTICE OF HEARING** 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:

Peter Baumann
Department of Law
peter.baumann@coag.gov

Patrick McDonald
No on EE – A Bad Deal for Colorado
P.O. Box 533
Indian Hills CO 80454
yastremski67@gmail.com

Dated: 03/10/2021

/s/ Katherine Singleton
Court Clerk

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED 05/20/2021 1:09 PM OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**
Receipt Of Stipulation	

This document is for **INFORMATIONAL PURPOSES ONLY**. This form does not replace the need of the submitting party to serve the pleading on all parties to the case.

The attached Stipulated Exhibits and Facts was submitted by Xan Serocki to the Office of Administrative Courts on May 20, 2021 in the above referenced case.

Additional Notes:

Xan Serocki certified that a complete copy of this Stipulation was served on all parties.

Dated: May 21, 2021

Marc Marcel
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th floor Denver, Colorado 80203	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, *in re* ED 2020-71 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. NO ON EE – A BAD DEAL FOR COLORADO Respondent.	▲COURT USE ONLY▲ CASE NUMBER OS 2020-0025

STIPULATED EXHIBITS AND FACTS

In advance of the May 21, 2021 hearing before the Office of Administrative Courts, Complainant the Elections Division and Respondent no on EE (collectively, the "Parties") hereby agree to the following stipulated exhibits and facts.

Stipulated Exhibits

- **Exhibit 1** – Campaign finance complaint filed on October 8, 2020 by Anna Jo Hayes
- **Exhibit 2** – Notice of Intent to Cure form, and supporting documents, submitted by Respondent on November 5, 2020.
- **Exhibit 3** – Response to Request for Information submitted by Respondent on November 25, 2020.

Stipulated Facts

1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.

10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.

11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.

12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.

13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

Respectfully submitted this 20th day of May, 2021.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Campaign Finance Fellow, No. 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

Attorney for Complainant Elections Division of the Secretary of State

/s/ Sheila MacDonald

Sheila MacDonald
Representative for No on EE: A Bad Deal for Colorado
1732 Wazee St. #201
Denver, CO 80202

Signed via E-mail Authorization

Representative for No on EE: A Bad Deal for Colorado

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served this 20th day of May, 2021, by electronic mail, addressed as follows:

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

/s/ *Peter G. Baumann*

EXHIBIT 3
OS 2020-0025

John Molera
Campaign Finance Enforcement Investigator
Elections Division
Colorado Secretary of State

CPF Complaint 2020-71 (No on EE) Request for Information November 25,2020

To Mr. John Molera,

Below is the information you have requested in your communication sent November 20, 2020.

In the Matter of "No on EE – A Bad Deal for Colorado," Case number 2020-71

On September 18, 2020, Anna Jo Haynes ("Complainant") filed a complaint alleging that we, the No on EE – A Bad Deal for Colorado issue committee (the "Committee") neglected to include a disclaimer on our campaign website, collateral, television, radio and digital ads. The Committee was notified of the complaint on October 8, 2020. The Committee included a disclaimer on all campaign materials but inadvertently did not include the name of the registered agent in the disclaimer.,

Intent

The Committee did include the disclaimer, "Paid for by No on EE:A Bad Deal for Colorado", on all of the Committee's materials but inadvertently omitted the registered agent from the disclaimer.

The Committee was registered with the Colorado Secretary of State's Office on August 31, 2020. At that time, the Committee listed Sandy Partyke, a Colorado registered voter, as our filing agent and Patrick MacDonald, a Colorado registered voter, as our registered agent, according to state statute.

At the time of filing, Sandy Partyke was in touch with the Secretary of State's campaign finance office to go through the rules of in-kind donations specifically to ensure compliance at every level.

On September 16, 2020, Sandy Partyke attended a campaign finance webinar hosted by the Colorado Secretary of State's office, to ensure the Committee was in full compliance. During this webinar, Sandy does not recall the new requirement of including the registered agent as part of the disclaimer being highlighted during the presentation.

Because the Committee knew that many of our campaign contributions would be through in-kind contributions, we took the extra step of including who the in-kind contribution was paid to although this step was not required by law. Our intent was to have full transparency and accountability for anybody who wanted to see where the money contributed through an in-kind contribution was spent.

Printed Material

Door Hanger – Please see attachment enclosed
The original door hanger did have a disclaimer but was missing the name of the registered agent.

Design: September 28, 2020

Cost: $90

Paid to: Lombardi Design. 765 Barberry Circle, Lafayette Colorado 80026

Invoice dated: October 1, 2020

Printing: September 29, 2020

Cost: $3125.83

Paid to: Campaign Products of the Rockies, P.O. Box 13325, Denver, Co 80201

Invoice Dated: September 29, 2020

Distribution: Less than 100 doorhangers without the name of the registered agent were distributed.

Door hangers were cured through adding the registered agents name onto door hanger as well as reprinting.

Website

Cost of website development as of October 8, 2020: $990

Website splash page was viewable to the public on September 8, 2020

Invoice for website was submitted October 1, 2020 and paid to Lombardi Design, 765 Barberry Cir., Lafayette Co 80026

The website contained the disclaimer but was missing the name of the registered agent. The registered agent's name was added on October 8, 2020

BillBoards

Billboards did have a disclaimer but were missing the registered agent's name. Picture of billboards attached

There were 82 billboards total and we were able to immediately fix 30% of our billboards by October 12, 2020. The others that cannot be cured will be taken down.

9/4/2020 Billboards – $1.069,011.25 as reported in our filing to the Secretary of State's Office
Signage went up the week of September 16th
30% of billboards were cured by October 12th

Paid Media

9/25/2020 Paid Media - $1,808,280

This includes broadcast tv, streaming (Hulu, You Tube), radio and digital

9/25/2020 Radio – $70,249.24 total
9/29/2020 TV - 1,186,215

10/2-10/8 Digital – $170,500
Digital ad during this time include our tv ad below as well as this ad. I do not have a version without the registered agent. Digital ad with Registered Agent
https://youtu.be/wLSzcZdeCtQ?t=13

10/2 – 11/3 Streaming through whole campaign – 281,250
Broadcast and digital ads

a. Backroom
   Smoke: https://www.dropbox.com/sh/dj8r9tcd55r99gh/AACuRpW5It9IK_RolYWEDWVKa?dl=0 With disclaimer but without registered agent name Ads ran TV 30 - Backroom Smoke: 9.25-10.9
a. Backroom Smoke
   Redux: https://www.dropbox.com/sh/cf06nkynn0irdz4/AABxFtPBPKN0bHxINZMoyXxva?dl=0
   With disclaimer and registered agent name. Cured October 8, 2020. Ad ran 10.9-10.23

John,

The above includes all electioneering communication you have requested. It was difficult to determine the exact cost of each digital ad as that is not the way it was purchased. Please let me know if there is any other information you need.

Thanks

Sheila MacDonald on behalf of Patrick MacDonald, Registered Agent

EXHIBIT 2

OS 2020-0025

Submit Original to:
Colorado Secretary of State
Elections Division
Campaign Finance Enforcement
1700 Broadway, Suite 200
Denver, CO 80290
CPFComplaints@sos.state.co.us

NOTICE OF INTENT TO CURE

Case Name: No on EE: A BAD DEAL for Colorado

Case No.: 2020-71

Respondent's Information:

* Full Name: Patrick MacDonald

* Mailing Address: 140 E 19th Ave., #400, Den Co 80203

* Telephone Number: 720 240 7355 Email Address: yastremski67@gmail.com

Respondent or authorized person filing notice on behalf of Respondent:

* Signature: [signature] Date: 11-5-2020

Describe here or in an attachment to this Notice any information demonstrating the violation(s) that have been cured, including a description and dates of the actions taken, and copies of amended reports or relevant documents. Respondent must demonstrate substantial compliance with the law. When determining substantial compliance, the Elections Division must consider: (1) the extent of the respondent's noncompliance; (2) the purpose of the provision violated and whether the purpose was substantially achieved despite the noncompliance; and (3) whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.[1] Please address each of these factors in the statement and evidence you provide to the Division.

[1] Section 1-45-111.7(3)(a), C.R.S.

Office of the Colorado Secretary of State, Elections Division

Notice of Intent to Cure Response

In the Matter of "No on EE – A Bad Deal for Colorado," Case number 2020-71

On September 18, 2020, Anna Jo Haynes ("Complainant") filed a complaint alleging that we, the No on EE – A Bad Deal for Colorado issue committee (the "Committee") neglected to include a disclaimer on our campaign website, collateral, television, radio and digital ads. The Committee was notified of the complaint on October 8, 2020. The Committee included a disclaimer on all campaign materials but inadvertently did not include the name of the registered agent in the disclaimer.,

Intent

The Committee did include the disclaimer, "Paid for by No on EE:A Bad Deal for Colorado", on all of the Committee's materials but inadvertently omitted the registered agent from the disclaimer.

The Committee was registered with the Colorado Secretary of State's Office on August 31, 2020. At that time, the Committee listed Sandy Partyke, a Colorado registered voter, as our filing agent and Patrick MacDonald, a Colorado registered voter, as our registered agent, according to state statute.

At the time of filing, Sandy Partyke was in touch with the Secretary of State's campaign finance office to go through the rules of in-kind donations specifically to ensure compliance at every level.

On September 16, 2020, Sandy Partyke attended a campaign finance webinar hosted by the Colorado Secretary of State's office, to ensure the Committee was in full compliance. During this webinar, Sandy does not recall the new requirement of including the registered agent as part of the disclaimer being highlighted during the presentation.

Because the Committee knew that many of our campaign contributions would be through in-kind contributions, we took the extra step of including who the in-kind contribution was paid to although this step was not required by law. Our intent was to have full transparency and accountability for anybody who wanted to see where the money contributed through an in-kind contribution was spent.

Cure

As soon as the Committee was made aware of the error we immediately began to cure.

1. We reprinted our door hangers and added stickers with the registered agent's information to the material we had already printed.
2. We were able to immediately fix 30% of our billboards and the others that cannot be cured will be taken down.

3. Our TV, digital and radio ads were immediately fixed (within 36 hours) adding the registered agent's name to the disclaimer already on the ad.
4. The website was cured immediately after receiving he complaint.

Costs

9/4/2020 Billboards – $1.069,011.25 –

Signage went up the week of September 16th

30% of billboards were cured by October 12th

9/25/2020 Paid Media - $1,808,280

This includes broadcast tv, streaming, radio and digital

9/25/2020 Radio – $70,249.24 total
9/29/2020 TV - 1,186,215
10/2-10/8 Digital – $170,500
10/2 – 11/3 Streaming through whole campaign – 281,250

Finally, as of Oct 8th, the following ballot issues also did not include a registered agent with their disclaimer, so clearly there seems to be confusion on this issue.
No Prop 116
No on Prop 117
No on Amendment B
No on Prop 114

No on EE: A Bad Deal for Colorado Case # 2020-71

Website

Last Minute Public Policy and Back Room Deals

- HB20-1427 is a 43- page document introduced very late in the last legislative session, was reviewed for merely 20 minutes and the committee heard from just two witnesses. The proposal passed in the final 72 hours of the legislative session.
- The details of the bill were decided in a backroom deal without public discussion or input.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on Pre-School. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.
- Purchasers of discount cigarettes, primarily low-income adult smokers, would be severely burdened with this tax increase, paying a larger percentage of their income than would other, more affluent consumers.

"The measure was introduced in the final hours of the 2020 legislative session and so hastily brought that lawmakers didn't have a copy of the measure before its first committee hearing began." (Colorado Sun)

"…National Bureau of Economic Research, tobacco tax increases only have a small impact on adult consumption. If you consider that the poor are more likely to smoke than middle-class or wealthy adults, Proposition EE is basically a tax increase on the poor…." Krista Kafer, DP 9/11/2020

ENDORSEMENT – Pagosa Daily Post

"Proposition EE: Vote "NO!". This proposition is a "sin tax" that increases taxes on tobacco, a product that is used significantly more by poor people in Colorado. Part of the tax money would be used to fund general education programs that lack funds because of the way that growth has been fueled and subsidized in Colorado. Literally, this tax would take money

from poor people addicted to tobacco and subsidize wealthy developers who aren't charged the cost of growth…." September 24, 2020

Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent
Contact: info@baddealforco.com

No on Proposition EE: A $294 million tax increase

- NO New Taxes – As our economy recovers from COVID-19, now is not the time to raise taxes on Colorado voters.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on pre-school. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- Prop. EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from about $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.

"...When bills are passed that only affect lower income classes of people, the American dream becomes the American nightmare!..."

– Bishop Jerry Demmer
Pastor of The Absolute Word Church
President of The Greater Metro Denver Ministerial Alliance

www.BadDealforCO.com

Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent.

No on EE: A Bad Deal for Colorado Case # 2020-71

Tv ad with Registered Agent Added https://www.youtube.com/watch?v=o0tLQLcZ2qw

Digital ad with Registered Agent https://youtu.be/wLSzcZdeCtQ?t=13

Submit complaint by mail or email to:
Colorado Secretary of State
Campaign Finance Enforcement
1700 Broadway, Suite 200
Denver, CO 80290
CPFcomplaints@sos.state.co.us

RECEIVED
10/08/2020
ELECTIONS DIVISION

EXHIBIT 1

OS 2020-0025

CAMPAIGN FINANCE COMPLAINT FORM

Any person may file a complaint up to 180 days after the date on which the Complainant either knew or should have known, by the exercise of reasonable diligence, of an alleged violation. A complainant must specifically identify one or more respondents, a violation of Colorado campaign finance rules and regulations (Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning Campaign and Political Finance), and allege specific facts to support a legal and factual basis for the complaint. (See section 1-45-111.7, C.R.S.) Please be advised, complaints are public information and the Respondent will be provided a copy of this Complaint.

***Denotes required field**

Your Information (Complainant)- Information about the person or entity filing the complaint:

*Full Name: Anna Jo Haynes

*Mailing Address: 3031 Dexter Street Denver

*Telephone Number: 303 917 5252 *Email Address: annajoh@milehighearlylearning.org

*Date Made Aware of Violation: Sept. 18, 2020

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

*Full Name: No on EE -- A Bad Deal for Colorado

*Mailing Address: P. O. Box 533 Indian Hills CO 80454

Telephone Number: 303.246.6496 *Email Address: yastremski67@gmail.com
partykasandy@comcast.net

Briefly summarize the allegations of your complaint including dates of the alleged violations and attach any supporting documents and materials.

Please see attached

By submitting this form and any supporting evidence or documentation, I hereby affirm that I have read and am familiar with the procedures set forth in section 1-45-111.7, of the Colorado Revised Statute (C.R.S.).

*Complainant's Signature: Anna Jo Haynes Date: 10-8-2020

Campaign Finance Complaint
Re: Incorrect Disclaimers and False Statements from "No on EE -- a Bad Deal for Colorado"
October 8th, 2020

Colorado campaign finance law requires that any:

> issue committee… or other person making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that… that supports or opposes a ballot issue or ballot question… shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.

C.R.S. §1-45-108.3(1). Such disclaimer is required for each and every such communication "that is broadcast, printed, mailed, delivered; [that is] placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed." *Id*. Further, such disclaimer must state:

> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

C.R.S. § 1-45-107.5(5)(a), incorporated as to issue committees by C.R.S. § 1-45-108.3(2).

"No on EE – A Bad Deal for Colorado" is a registered issue committee, opposing Proposition EE on the November statewide ballot. Based on its filing with the Secretary of State, the registered agent for No on EE is one Patrick MacDonald.

In all known communications with the public, No on EE has failed to include a legally compliant disclaimer. Specifically, the committee routinely fails to include the name of Mr. MacDonald as part of its disclaimer and likewise fails to state that he is the committee's registered agent. These communications include but are not limited to:

(1) Television advertisements;
(2) Radio advertisements;
(3) The campaign website – https://baddealforco.com/;
(4) Billboards; and
(5) Campaign literature.

Copies of all such communications have either been attached hereto as exhibits or saved at accessible websites set forth as follows:
https://drive.google.com/drive/folders/1motDnUpqtuqZhMizdkPPo6fH6Z-kWCPf?usp=sharing

Any violation of the statutory campaign finance provisions may be addressed by a complaint filed as provided by law. C.R.S. § 1-45-111.7(2)(a).

Further, given that Proposition EE was placed on the ballot by HB20-1427, signed into law on July 8, 2020, this complaint is timely filed as it must be – and has been – filed within 180 days of when the violations became known or should have been known. C.R.S. § 1-45-111.7(2)(b). None of the affected communications were or could have been distributed prior to July 8, given that No on EE was formed and filed with the Secretary of State on August 31, 2020 according to the committee's registration on the Secretary's website.

Fines to be imposed for failure to affix legally required disclaimers are "**at least 5% of the cost of the noncompliant communication** including cost to broadcast" if mitigated before an election. However, if the violation is not so mitigated, the mandated penalty is "**at least 10% of the cost of the noncompliant communication** including cost to broadcast." SOS Campaign Finance Rule 23.3.3(d) (emphasis added).

Based on reports filed to date, No on EE has spent approximately:
$2,228,090.00 on TV and radio advertisements, $1,000.00 on its campaign website, $1,069,011.25 on billboards, and $3,125.83 on campaign literature. Using these amounts from campaign finance disclosures, the fine on No on EE should be fined no less than $165,061.35 (5% of the total amount on spent on noncompliant communications) or $330,122.71 (10% of the total amount spent on noncompliant communications). Included with this complaint is an addendum drawing from No on EE's financial reports to substantiate these numbers.

Liggett Vector Brands, one of the country's largest cigarette companies and based in Morrisville, North Carolina, gave the campaign $3,438,223.95 based on the most recent Oct. 5 major donor report. To date, 99.8% of No on EE's contributions come from out of state cigarette companies.

On information and belief, No on EE spent additional funds on noncompliant communications that are not included in these subtotals but that should be reported in upcoming disclosures. Therefore, the fine imposed should be greater than the above amounts, given the additional spending that must be disclosed by No on EE in its future reports.

Further, because the Secretary's rules set these penalty percentages as minimums by using the phrase "at least," the State should seek higher penalties given that this is a committee that is anything but a citizens' committee that was unaware of the statute's requirements, given its:

(1) Substantial corporate funding (Liggett Vector Brands LLC);
(2) Professional campaign management (assorted Colorado and Connecticut firms); and
(3) Access to competent, experienced legal counsel.

In addition to the penalties imposed, No on EE should be ordered to use a legally compliant disclaimer on all future communications. SOS Rule 23.3.4(d).

The noncompliant communications at issue in this complaint are even more problematic because No on EE knows them to be false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements "on any issue submitted to the electors at any election." These false statements include but are not limited to:

> -Intentionally misleading voters by portraying statements from the Liggett Vector Brand's legal counsel as independent reporting from the Colorado Sun, as seen here (at :21 seconds). Initial quote can be found here.
> -Repeated false claims (such as here, here and here) that the funding included in Proposition EE would not be guaranteed to go to preschool education, despite the funding being specifically outlined in the legislative language of the HB20-1427, the enacted legislation that referred Proposition EE to the voters, and that funding further would be enshrined in state law were it to pass with voter approval and would be audited annually by the state.

The fact that the campaign has routinely neglected to disclose the name of its registered agent underscores its clear disregard for Colorado law and its refusal to take full responsibility for these communications, as required by law. As penalties may be imposed after considering *either* mitigating or *aggravating* circumstances, including "evidence of an intentional act or pattern or practice of misconduct," SOS Rule 23.3.5(d), the knowing falsehood of No on EE communications must be considered an aggravating circumstance that requires the maximum penalty outlined above.

Addendum
Evidence of Expenditures

Included below are excerpts from No on EE's standard financial disclosures from September 21st and October 5th, as well as an additional major contributor filing on October 5th.

Statewide Billboards

No on EE reported a single campaign expenditure on their September 21st campaign finance disclosure. This expenditure was for $1,069,011.25 on September 4th to Milk Sono LLC for media/advertising, provided via in-kind contribution from Liggett Vector Brands LLC. No on EE's billboards appeared statewide starting on September 18th. This is No on EE's only advertising purchase before the billboards appeared statewide, indicating that this initial $1,069,011.25 was used specifically for the purchase of the statewide billboards.

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/04/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,069,011.25	7.Description	MEDIA/ADVERTISING
3. Aggregate Amount*	8. Employer	
$1,069,011.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	MILK SONO LLC
09/04/2020	5. Address	11 DAY ST.
2. Fair Market Value	6. City/State/Zip	NORWALK CT 06854
$1,069,011.25	7.Purpose	Advertising
Electioneering Comm?		MEDIA/ADVERTISING
No	8. Coordinated?	No

TV and Radio Advertising

As reported on their October 5 financial disclosure, the No on EE campaign expended $1,808,280.00 in advertising to Hulsen Media Services LCC from an in-kind contribution from Liggett Vector Brands for the exact same amount on the same date. No on EE began their TV advertising four days later on September 28th.

On October 5th, No on EE also filed a major contributor report which revealed another in-kind contribution from Liggett Vector Brands LCC in the form of $419.810.00 in "media/advertising" from Hulsen Media Services LCC.

October 5th Routine Filing

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/24/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,808,280.00	7.Description	ADVERTISING
3. Aggregate Amount*	8. Employer	
$2,877,291.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	AFFORDABLEBUTTONS.COM
09/25/2020	5. Address	3269 19TH NW #6
2. Fair Market Value	6. City/State/Zip	ROCHESTER MN 55901
$4,872.70	7.Purpose	Advertising
Electioneering Comm?		
No	8. Coordinated?	No

1. Date Expended	4. Name	HULSEN MEDIA SERVICES LLC
09/24/2020	5. Address	2400 LARAMIE TRAIL
2. Fair Market Value	6. City/State/Zip	AUSTIN TX 78745
$1,808,280.00	7.Purpose	Advertising
Electioneering Comm?		ADVERTISING
No	8. Coordinated?	No

October 5th Major Contributor disclosure

Reporting Date:	10/05/2020		
Total Contributions:	$419810.00		
Registered Agent:	PATRICK MACDONALD	**Filed Date:**	10/06/2020

Itemized Contributions

1. Date Accepted	**Non-Monetary**		**LLC MEMBER**
10/05/2020	4. Name	LIGGETT VECTOR BRANDS LLC	LIGGETT VECTOR BRANDS LLC
2. Contribution Amount	5. Address	3800 PARAMOUNT PARKWAY #250	Total LLC Contribution: $419810.00
$419,810.00	6. City/State/Zip	MORRISVILLE NC 27560	
3. Aggregate Amount*	7.Description	MEDIA/ADVERTISING-HULSEN MEDIA SERVICES LLC	
$3,438,223.95	8. Employer		
Electioneering Comm?	9. Occupation		
No			

Campaign Literature

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to printing. This expenditure occurred on September 29th to Campaign Products of the Rockies for $3,125.83. Campaign literature began to appear in North Park Hill in Denver the following week.

Schedule B - Itemized Expenditures Statement ($20 or more)
[C.R.S. 1-45-108(1)(a)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended 09/29/2020	4. Name	CAMPAIGN PRODUCTS OF THE ROCKIES
2. Amount $3,125.83	5. Address	1900 GRANT ST. #1170
	6. City/State/Zip	DENVER CO 80301
Electioneering Comm? **No**	7.Purpose	PRINTING
	8. Type	Consultant & Professional Services

Campaign Website

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to web design and development is $1,000.00 to Lombardi Design on No on EE's October 5th financial disclosure.

1. Date Expended 09/29/2020	4. Name	LOMBARDI DESIGN
2. Amount $1,000.00	5. Address	765 BARBERRY CIR.
	6. City/State/Zip	LAFAYETTE CO 80026
Electioneering Comm?	7.Purpose	GRAPHIC/WEB DESIGN

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Elections Division of the Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**
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/s/ Katherine Singleton
Court Clerk

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OFFICE OF ADMINISTRATIVE COURTS

STATE OF COLORADO

CASE NO. OS 2020-0025

ELECTIONS DIVISION OF THE SECRETARY OF STATE Complainant, vs. NO ON EE - A BAD DEAL FOR COLORADO Respondent.	)	TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing pursuant to notice on May 21, 2021, in the offices of the Division of Administrative Courts, 1525 Sherman Street, 4th Floor, Denver, Colorado, before:

MATTHEW E. NORWOOD, Administrative Law Judge

APPEARANCES:

For the Complainant: Peter Baumann, Esq.

For the Respondent: Pro Se

Proceedings recorded by electronic sound recording and transcript produced by transcription service.

I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE COMPLAINANT:				
John Molera	13	--	--	--
FOR THE RESPONDENT:				
Sheila MacDonald	21	--	--	--

E X H I B I T S

COMPLAINANT'S:	PAGE
1 through 3 (stip.)	10

G

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE NORWOOD: We are recording in Case No. OS-2020-0025. The case is captioned the Elections Division of the Secretary of State versus No On EE - A Bad Deal for Colorado. Today is Friday, May 21, 2021. It's a little after nine o'clock in the morning. My name is Administrative Law Judge Matthew Norwood. I'm conducting using Google Meet.

Let's have the parties identify themselves starting with the Division.

MR. BAUMANN: Good morning, Your Honor. Peter Baumann from the Colorado Department of Law on behalf of the Elections Division. I believe I'm joined this morning by John Molera from the Division, Emily Korash (phonetic) from the Division, and I think one of the phone numbers is Luis Lipchak, also from the Division.

JUDGE NORWOOD: Okay. Now, I did not see that we had an attorney for No On EE. Some of your material, Mr. Baumann, was mailed to Ms. MacDonald, and I see Ms. MacDonald there on the screen.

Ms. MacDonald, I guess, first of all, did you intend to represent No On EE in this case?

(Pause.)

You're muted right now.

(Pause.)

I see your lips moving, Ms. MacDonald, but you're muted.

(Pause.)

Still muted.

(Pause.)

MS. MACDONALD: There you go. Can you hear me now?

JUDGE NORWOOD: I can.

MS. MACDONALD: Hi, this is Sheila MacDonald. I'm the person that will be speaking (inaudible) No On EE campaign.

JUDGE NORWOOD: Are you an attorney?

MS. MACDONALD: I am not.

JUDGE NORWOOD: The charging document indicates that No On EE is an issue committee. Let me make sure that's right. Do you agree with that, that it's an issue committee?

MS. MACDONALD: Yes, correct.

JUDGE NORWOOD: And what is your relationship to the issue committee?

MS. MACDONALD: I was in charge of the issue committee. I'm a political consultant, and I was the general consultant for the No On EE campaign.

JUDGE NORWOOD: Are you--do you consider yourself an officer of the issue committee?

MS. MACDONALD: I do.

JUDGE NORWOOD: What makes you an officer?

MS. MACDONALD: I was in charge of the committee. I was in charge of the bank account. I signed all the checks. I made all the strategic decisions for the committee.

JUDGE NORWOOD: Well, has there been any meeting or organization that gave you a title as officer?

MS. MACDONALD: Well, they made me the chief consultant. I don't think they called me an officer, but I was hired as the chief consultant, and my--I formed the committee.

JUDGE NORWOOD: You formed the committee?

MS. MACDONALD: We formed--yes, we formed the committee, so the registered agent works for me. My group is the MIDG Group, and Patrick MacDonald works for the MIDG Group. He is the registered agent.

JUDGE NORWOOD: Okay, yes, Patrick MacDonald is the registered agent.

MS. MACDONALD: Right.

JUDGE NORWOOD: Talk to me about the formulation of the committee; how did that happen?

MS. MACDONALD: We were hired to run the No side of the campaign, and then we put together a committee. I hired Sandy Partyka, who is the filing agent, and

(inaudible) MacDonald is the registered agent, so I put those people together, and we formed the committee, the issue committee.

JUDGE NORWOOD: And you said you--

MS. MACDONALD: (Inaudible.)

JUDGE NORWOOD: Who hired you?

MS. MACDONALD: Liggett.

JUDGE NORWOOD: Liggett, the--

MS. MACDONALD: Right.

JUDGE NORWOOD: --cigarette manufacturer?

MS. MACDONALD: Correct.

JUDGE NORWOOD: Well, then, so who makes up the committee?

MS. MACDONALD: A good question. Me and--well, Sandy, Patrick, and myself are the committee.

JUDGE NORWOOD: And Sandy--who is Sandy again?

MS. MACDONALD: Sandy Partyka is our compliance officer, and she is the filing agent on the committee.

JUDGE NORWOOD: And the other two individuals are you and Mr. MacDonald; is that right?

MS. MACDONALD: Right, that's correct.

JUDGE NORWOOD: You're husband and wife?

MS. MACDONALD: No, he's my brother.

JUDGE NORWOOD: Okay.

MS. MACDONALD: My brother, not my husband

(inaudible) kill me.

JUDGE NORWOOD: Well, so let's see, I'm going to take some notes and think about this. It sounds like Sandy Partyka has this title of compliance officer; right?

MS. MACDONALD: Right, she's the filing agent, correct.

JUDGE NORWOOD: And were you given any title?

MS. MACDONALD: I'm the general consultant, and I'm in charge of the bank account, the signing of the checks, and the strategic decision making.

JUDGE NORWOOD: And your brother Patrick is--what's his role?

MS. MACDONALD: He's just a--he's the--we used him as the registered agent.

JUDGE NORWOOD: Let me look at the statute again.

(Pause.)

Well, let me just ask you straight out: Do you have authority to appear on behalf of No On EE in this case?

MS. MACDONALD: I do.

JUDGE NORWOOD: And how did you get--

MS. MACDONALD: I mean, everybody knows I'm here. The client knows I'm here. Patrick actually would have been on this call with me. He has a sick child today, but he knows I'm here. Sandy knows I'm here. Every--

JUDGE NORWOOD: I mean, how is it that you were given that authority?

MS. MACDONALD: I guess because I was in charge of the campaign.

JUDGE NORWOOD: All right.

MS. MACDONALD: And so we were here because of me, so--and I've been dealing--I think Mr. Baumann will tell you and anybody from the Secretary of State's Office will tell you that it is me that they've been directly working with the past several months and actually since the start of the campaign.

JUDGE NORWOOD: Well, what about that, Mr. Baumann? Do you regard Ms. MacDonald as an officer of the--of No On EE?

MR. BAUMANN: Your Honor, we do. We have been dealing with Ms. MacDonald since the beginning of this matter and I believe the Secretary's Office since before I became involved.

It's our understanding that she has general authority on behalf of the committee both to bind the committee in contract and, really, for our purposes, our understanding, and I'm sure that she can share more, that she was an embodiment of the committee during the 2020 election cycle and still to this day.

JUDGE NORWOOD: All right. Well, then, Ms.

MacDonald, I will allow you to speak on behalf of the issue committee.

MS. MACDONALD: Thank you.

JUDGE NORWOOD: I should point out that we have a--we're having a problem logging into our sales force where we keep all of our documents. Now, I'm not sure how much of a problem that's going to be, because I have--I have reviewed this case ahead of time, and I think I have most of this in my memory, and I think both of the documents are stipulated to.

But we will--I'm just throwing that out as an issue. We may--I may ask you or the parties to publish their documents on the screen if we need to do that, because I'm not going to be able to look at them until we get our connection back together.

Anyway, so I guess let's talk about are there any preliminary matters? I'll ask you first, Mr. Baumann.

MR. BAUMANN: I don't think so, Your Honor. We sent a set of factual stipulations, including three stipulated exhibits, in yesterday. I'm not sure if those were caught up in the sales force problems. But, beyond that, we have no other preliminary matters.

JUDGE NORWOOD: And I saw that--I thought I saw a stipulation to certain exhibits. What were those exhibits that you agreed were stipulated or you say were stipulated

to?

MR. BAUMANN: It would be Exhibits 1, 2, and 3--

JUDGE NORWOOD: 1, 2--

MR. BAUMANN: --1, 2, and 3, which I will proffer, Your Honor, the only three exhibits the Division intends to introduce today.

JUDGE NORWOOD: Is that right, Ms. MacDonald, no objections to 1 through 3.

MS. MACDONALD: No.

JUDGE NORWOOD: They are admitted.

(Division's Exhibits 1 through 3 were received in evidence by stipulation.)

Anything else of a preliminary nature, Mr. Baumann?

MR. BAUMANN: No, thank you, Your Honor.

JUDGE NORWOOD: How about you, Ms. MacDonald? Anything of a preliminary nature?

MS. MACDONALD: No.

JUDGE NORWOOD: Then, Mr. Baumann, did you want to make an opening statement?

MR. BAUMANN: Very briefly, thank you, Your Honor. I think I mentioned the parties have agreed to a robust set of factual stipulations here that I think are going to answer many of your questions.

And just briefly, those stipulations established

that No on EE was an issue committee and is an issue committee, but was an issue committee during the 2020 election. No On EE included disclaimers on all of their advertisements, but originally those disclaimers did not include the name of the committee's registered agent, as is required under Colorado law.

We know that there was a significant effort to cure that alleged or that violation once the complaint was filed, and we also know that millions of dollars were spent on ads that did not include the name of the registered agent and that were distributed without the name of the registered agent. And those included billboards, some door hangers, very few door hangers, and paid media, including TV ads, streaming ads, those sorts of things.

Today you'll hear very briefly from the Division about their interactions with the committee. I understand that you'll likely then hear from the committee itself.

But ultimately in the end, what we're going to ask is for Your Honor, after you've heard from the committee and after you've had a chance to consider the evidence, to determine what a fair and just penalty is in this case, recognizing both the mitigating factors that the Division believes exists here and that I think you'll hear a lot about today, but also the significant extent of the non-compliance with Colorado law.

JUDGE NORWOOD: All right. And, Ms. MacDonald, did you want to make an opening statement, understanding this is not evidence?

MS. MACDONALD: I do. I just have a statement to read; and if this is the time to read it, I'll read it.

JUDGE NORWOOD: Well, it's not the time to read it if you want me to consider it as evidence. If you want me to consider--

MS. MACDONALD: Okay, then I--

JUDGE NORWOOD: --it as evidence, you'll need to tell it to me under oath.

MS. MACDONALD: I will do it to you under oath then.

JUDGE NORWOOD: Okay. The opening statement is the opportunity to just give me a roadmap of what you intend to show if you want to. The important thing to know is that it's not testimony, so it is the pitfall that people make, tell me things in opening statements and don't tell it to me as testimony and think that I can consider it, but I can't.

Was there--

MS. MACDONALD: Right.

JUDGE NORWOOD: You don't have to make an opening statement by any means. Was there anything you wanted to say, though, as a preliminary matter?

MS. MACDONALD: No, I don't think so. I'll just wait.

JUDGE NORWOOD: Okay. Then, Mr. Baumann, call your first witness.

MR. BAUMANN: Thank you, Your Honor. The Division calls John Molera.

JUDGE NORWOOD: Mr. Molera, I see you. Let me swear you in. Would you raise your right hand?

(Whereupon, Mr. Molera was sworn.)

JUDGE NORWOOD: You may examine the witness, Mr. Baumann.

MR. BAUMANN: Thank you, Your Honor.

JOHN MOLERA

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAUMANN:

Q Good morning, Mr. Molera. Could you please state your name and spell your last name for the record?

A Yes. My name is John Molera, and my last name is M-O-L-E-R-A.

Q And what do you do for work, Mr. Molera?

A I am the campaign finance enforcement investigator for the Secretary of State's Office.

Q And what are your responsibilities in that role?

A As campaign finance investigator, I investigate and assist in processing complaints primarily.

Q And these are campaign finance complaints; is that right?

A Yes, campaign finance complaints.

Q Are you familiar with the campaign finance complaint filed last year against the No On EE issue committee?

A I am.

Q And we don't need to look at it, but have you had a chance to review what has been previously marked as Exhibit 1 in this matter?

A I have.

Q And is that the complaint that came in last year against the No On EE committee?

A Yes, that is the complaint.

Q So what did you do when that--when you received that complaint?

A So we received the complaint on October 8th and notified the respondent, No On EE, that day. We sent copies of the complaint to the designated filing agent and the registered agent.

Q And when you say you reviewed the complaint, what did you review in the complaint?

A So essentially we conducted an initial review of

the complaint to determine whether the complaint was timely filed, if it alleged violations of Colorado campaign finance law, and if the complaint alleged sufficient facts to support the alleged violation.

Q And did you review--were there any materials--visual materials incorporated in the complaint?

A Yes, there were.

Q And did you review those materials?

A We did. Yes, I did.

Q And I'm just going to pull something up on my screen if you'll give me one quick moment.

(Pause.)

Mr. Molera, let me know when you can see my screen.

A I can see your screen.

Q Do you recognize this image?

A I do, yes.

Q And what is it?

A This is a billboard, a picture of a billboard that was attached to the complaint (unintelligible) No On EE.

Q And was it attached to the complaint, or was it incorporated through a link to a drive?

A That's right. It was incorporated through a link to a Google drive.

Q And did anything, when you viewed this image, stand out to you about that, about this billboard?

A Yeah, the thing that immediately stood out is that there was no registered agent on their disclaimer, the (unintelligible) disclaimer.

MR. BAUMANN: Thank you. I'm going to pull this down.

Your Honor, we're not introducing this.

JUDGE NORWOOD: I thought you said it's Exhibit 1, though, that's stipulated to.

MR. BAUMANN: It is incorporated in Exhibit 1, Your Honor. We're not introducing the image alone, but it's incorporated in Exhibit 1.

Mr. Molera, I'm going to pull up another image if you'll give me just a second.

Q (by Mr. Baumann) Mr. Molera, are you able to see this?

A I am, yes.

Q And do you recognize this image?

A I do, yes.

Q And it appears to be a screenshot, but can you describe what this image is?

A Yes. This is a video advertisement that was also incorporated in the complaint on that Google drive for No on EE.

Q And did anything stand out to you about this?
A Yes, the same thing. For the disclaimer there was no registered agent with their disclaimer, just the "paid for by No on EE".
Q Thank you, Mr. Molera, I'm going to pull this one down. So after you had a chance to review the complaint, what happened next?
A Well, we determined that the complaint was timely filed, that it did allege violations of Colorado campaign finance law, and that it alleged sufficient facts to support that alleged violation.
At that point we sent a notice of--or I'm sorry--we sent a notice of initial review to the registered agent and designated filing agent. At that point we gave the respondents ten days to submit a Notice of Intent to Cure form, and they sent that Notice of Intent to--and that Notice of Intent to Cure form was sent by Ms. MacDonald on November 5th.
Q And we don't have to review it, but have you had a chance to review what's been previously marked as Exhibit 2 in this matter?
A I have, yes.
Q And is that the Notice of--is that the Notice of Intent to Cure that you received?
A That is the Notice of Intent to Cure that I

received, yes.

Q And so what did you do after you received the committee's cure submission?

A After we received the committee's cure submission, we took a look at what was sent along with the cure submission, which included expenditures for TV, digital, website, door hanger advertisements, and attempted to match those up with expenditures that were made on-- expenditures and contributions that were reported on TRACER.

Q And so it sounds like, as part of your investigation, you reviewed the committee's reports on TRACER; is that right?

A We did. That was part of the investigation, yes.

Q And did anything stand out about those reports?

A One thing that stood out particularly was that the contributions that the committee received were almost entirely in-kind contributions from Liggett Vector Brands, LLC.

Q Did you have any further correspondence with the committee, Mr. Molera?

A We did have further correspondence. After the initial review was sent, as I mentioned, we received a Notice of Intent to Cure from Ms. MacDonald on November 5th. After we reviewed the information that was sent by No

On EE and Ms. MacDonald, we sent a Notice of Investigation on November 18th. Shortly thereafter I personally sent a request for additional information on November 20th.

Q And did you receive a response to that request?

A I did receive a response. Initially, I gave a deadline of November 25th for the respondents to respond to our request for information. On November 23rd I actually followed up to see how it was going and putting that information together. The respondent communicated to me that they needed some additional time, and I was willing to extend the deadline for that request for information until November 30th. At that point they did follow up and submit information responding to our request for information.

Q And have you had a chance to review what's been previously marked as Exhibit 3 in this matter?

A I have, yes.

Q And what is Exhibit 3?

A Exhibit 3 is the response to our request for information that expands slightly on the Notice of Intent to Cure information that they had previously sent.

Q And when you say "expands slightly," what did the committee say in response?

A The committee again submitted some of the same information, including the total cost for many of their advertisements. In addition to what they had originally

sent, they also included for the door hanger designs and website development who is invoiced for those expenditures, and then they broke the expenditures down in a little bit more detail.

Q And in either--in any of your correspondence with the committee, did you ever get any information reflecting a cure effort on the committee's behalf?

A Yes, yes, we did get information, and that was essentially a cure effort.

MR. BAUMANN: Thank you, Your Honor. No further questions.

JUDGE NORWOOD: Ms. MacDonald, do you have any cross-examination questions for Mr. Molera?

MS. MACDONALD: I do not.

JUDGE NORWOOD: Mr. Baumann, you may--do you have any other witnesses?

MR. BAUMANN: No, Your Honor. The Division rests.

JUDGE NORWOOD: Ms. MacDonald, did you want to testify yourself or call any witnesses?

MS. MACDONALD: No, I just want to testify myself.

JUDGE NORWOOD: Okay, let me swear you in as a witness.)

(Whereupon, Ms. MacDonald was sworn.)

JUDGE NORWOOD: Tell me what you'd like me to know.

SHEILA MACDONALD

having been first duly sworn, offered direct testimony as follows:

DIRECT TESTIMONY

First of all, thank you for (inaudible) this morning. I appreciate it.

We have (inaudible) facts stipulated by Mr. Baumann (inaudible) thus far. The No On EE campaign filed a campaign committee with the Secretary of State's Office, which included Sandy Partyka as the campaign filing agent and Patrick MacDonald as the campaign's registered agent.

Patrick is an employee of MIDG Group, of which I am the founder and president.

(Inaudible) related as a material disclaimer paid for by No On EE - A Bad Deal for Colorado was used according to the guidelines set forward by state statute. However, the registered agent's name was inadvertently left off.

Once we were alerted to the error, we moved quickly to remedy the situation to the best of our ability and added Patrick MacDonald, the No On EE registered agent for materials and advertising.

As the campaign consultant, I take full

responsibility, realizing the new laws in effect for the 2020 election cycle. While we certainly were not the only campaign that was confused on this issue, it remains my responsibility to understand the rules and regulations of campaign finance.

(Inaudible) filed our campaign paperwork, our intention was to be as open and transparent as possible when it came to filing our campaign finance reports. Our (inaudible) agent, Sandy Partyka, is an experienced compliance officer who has worked with numerous campaigns in Colorado and is a Colorado resident.

This was a campaign with one donor. (Inaudible) that there would be many donations that would be done as in-kind, I asked Sandy to do the following to ensure we were in full compliance: first, to attend a Webinar hosted by the Colorado Secretary of State to ensure we are in full compliance and to see if there was any new information.

Sandy has no recollection of there being mention of the new law requiring the registered agent's name on the campaign collateral. I also asked her to arrange a phone call with the Campaign Finance Office or the Secretary of State's Office to walk through the in-kind donation rules and processes. (Inaudible) learned that there was no requirement for a campaign to identify how in-kind (inaudible) expense.

In an attempt to be transparent as possible, I made the decision that in our reporting we would not show only the in-kind donation and who it was from, but also how it was spent. It was our position that voters deserve to know how money is spent in the campaign even for in-kind donations. This is not required by Colorado law at this time, but it should be.

When we submitted our ads to the TV stations (inaudible) the majority of our money was spent on advertising, they also did not catch the disclaimer being incomplete. (Inaudible) the TV stations are strict regarding the disclaimer and will not run ads without the correct disclaimer on the ad.

We circled back with them after the campaign, and two stations told our buyer they did not know that the registered agent was now required. This in no way excuses my error, but it does illustrate the lack of knowledge that this new requirement was in place for the 2020 election.

It is also important to note that the penalties for this new law were only finalized in September of 2020 during the middle of an election cycle, meaning the campaigns in the same election cycle who may have committed the same violation may not be subjected to the same penalties.

(Inaudible) I have to ask myself, did my

inadvertent error in leaving off the registered agent's name in the campaign collateral in any way compromise the voters' ability to know who was running this campaign, how to contact the campaign, or how to contact the campaign registered agent or the campaign filing agent?

The answer is no. All of that information was available on the Secretary of State's website.

(Inaudible) campaign file the campaign committee with the filing agent and a registered agent as required by Colorado law. (Inaudible) information was included as required by law. This information is available to any voter at any time.

The most important voice in this conversation is the Colorado voter. New laws that are enacted should always ask the--should be able to answer the question of how this supports and protects the voters of Colorado. I believe this new law requiring the registered agent on all campaign collateral to be overly burdensome in light of actual benefit to the voter.

No contact information is required along with the name, so no matter what, the voter still must go to the SOS website and look up the registered agent's information.

Finally, Colorado voters were not impacted negatively by this error. They voted overwhelmingly to pass EE and increase the tobacco tax and to create a base

on cost for packs of cigarettes to support various needs of the State.

I would like to thank the people who work with the Campaign Finance Office of the Colorado Secretary of State. I work with them a lot, they are great, they are knowledgeable, and they're always helpful. And I have appreciated their effort even during this current exercise.

Thank you.

JUDGE NORWOOD: Mr. Baumann, do you have any cross-examination questions for Ms. MacDonald?

MR. BAUMANN: I do not, Your Honor.

JUDGE NORWOOD: Ms. MacDonald, do you rest?

MS. MACDONALD: Yes, I rest.

JUDGE NORWOOD: Did you want to make a closing statement, Mr. Baumann?

MR. BAUMANN: I would, Your Honor. Thank you.

I think the stipulations really tell the story here, and so I don't want to dwell overly so on that. We know that there was a campaign finance violation, and we know that it was significant in scope.

If you look at Exhibits 2 and 3, the committee, in response to Mr. Molera's inquiries, outlines roughly 4 million dollars in total spending on advertising, and the parties have stipulated that somewhere between 3 and 3-1/2 million dollars of advertising went out without the name of

the registered agent on it.

So there's no question that there was a violation and that it was significant. And, frankly, it's that significant scope that has prevented parties from being able to reach a resolution in this matter to this point.

There are no constitutional penalties for disclaimer violations. The only appropriate framework established in law comes from the Secretary's rules for campaign and political finance, which state that the following fine structure will be considered: The rules establish that for non-compliant communications not cured before the election, the fine should be at least ten percent of the relevant communication, including the cost to broadcast.

For communications that are cured before the election, the fine is at least five percent, including the cost to broadcast.

And here, as we heard from Ms. MacDonald, as Mr. Molera testified, we know that there was an effort to cure, and you heard from Ms. MacDonald that that effort was swift and significant. And so it is the Division's position that the fine should be more aligned with the five percent figure than the ten percent figure.

Now, the rules also establish a series of aggravating and mitigating factors, and the parties have

stipulated to the fact that there is no evidence that this was an intentional effort to mislead the electorate. That's a mitigating factor. And, in fact, I think it's important to--a key fact here is that No On EE did have a disclaimer on all of its ads. That too is a mitigating factor.

I agree with Ms. MacDonald that the key voice today is the Colorado voter, but the Colorado voter is represented through the General Assembly, and the General Assembly has passed this law. They've decided that the disclaimers need to include the name of the committee's registered agent. That's the law that is binding on all of us here today, and that's the law that was binding on No On EE during the 2020 election cycle.

And there's actually been a bill introduced this session that would eliminate this requirement, and it came before the House State Affairs Committee yesterday, I believe, where the committee voted unanimously to postpone consideration of the bill indefinitely. So there does not appear to be much urgency within the General Assembly to revisit this requirement.

Regardless, this is not an easy case, because the penalty must be two things. It must be both reasoned and reasonable. It needs to be reasoned in that it must fit within a replicable framework that is fair and can be

applied to all other cases and that recognizes the significant extent of the non-compliance here and also that dozens if not hundreds of other committees did comply with this new requirement.

But it also needs to be reasonable in that it recognizes the mitigating factors, and it recognizes the lack of an intent to mislead the electorate and that recognizes the committee's efforts to cure.

So the Division is here today asking Your Honor to establish a fair and just penalty on these facts that is both reasoned and reasonable. Thank you.

JUDGE NORWOOD: What do you suggest for a fine?

MR. BAUMANN: Your Honor, I think if we take the 3-to-3.5-million-dollar stipulation, I think the Division would say that a fine should approximate five percent of that under the rules. I mean, that's the rules that the Division believed were binding certainly on them in settlement and that states that they will be considered.

I think the key here, Your Honor, is the Division's position that ultimately this is--the final Agency decision here will be made by the Deputy Secretary of State, and he's perfectly capable of reading the rules.

But what will be most helpful to him and what is most helpful for us today is, you have your own independent judgment and independent authority. You've heard the

evidence. You've heard from Ms. MacDonald. And so I think that what would benefit the Deputy Secretary the most is, having heard that evidence, to offer your independent judgment of where that fine should lie.

JUDGE NORWOOD: So are you suggesting, what, $30,000?

MR. BAUMANN: Oh, man, I need to refresh my math, but I think at a 3-million-dollar fine, five percent--well, five percent would be much more than $30,000. But, again, we do believe there are mitigating factors here that would reduce that down.

JUDGE NORWOOD: Let's work it out on the calculator.

(Pause.)

I think that's, what, $150,000? Does that sound right?

MR. BAUMANN: I think that's the five percent figure. That sounds--that sounds right.

JUDGE NORWOOD: But do you think that that should be mitigated lower?

MR. BAUMANN: I think Your Honor could certainly find mitigating circumstances here. And in the Division's review of this, and I think stipulated to, are a few mitigating circumstances that could mitigate that lower.

Again, we think that the rule speaks for itself,

but it's Your Honor that's had the opportunity to hear directly from Ms. MacDonald and construe what the mitigating circumstances are in this case.

JUDGE NORWOOD: And, like I said, I don't have the stipulation in front of me, but what are those mitigating circumstances? I didn't hear any evidence, for example, that people put stickers on that had the registered agent or anything like that that we've had in other cases.

MR. BAUMANN: So I think there are--there are two, and I'll start with the biggest mitigating factor here in the Division's opinion is the lack of an intent to mislead the electorate and the fact that there were disclaimers on these advertisements.

I do think we heard some evidence to--

JUDGE NORWOOD: (Inaudible) interrupt you real quick. The disclaimer you're talking about is just who paid for it but not the registered agent; right?

MR. BAUMANN: That's correct, Your Honor. Thank you.

The evidence that we heard today--and I think this is reflected in the stipulations--is that there was a cure effort here, and that cure effort included submitting revised advertisements to--I'm pulling up our stipulations just to make sure I have this right--but that door hangers

were reprinted to include the name of the registered agent, that the committee worked to add the name of the registered agent to various billboards. Their website--the name of the registered agent was added to the website.

And then it's our understanding--again, reflected in the stipulation--that the committee worked to replace the ads, the TV ads, the digital ads, that they had already submitted to the stations with revised copies that included the name of the registered agent for any ads left in that run of advertisements.

JUDGE NORWOOD: Okay, thank you.

MR. BAUMANN: Thank you, Your Honor.

JUDGE NORWOOD: Ms. MacDonald, did you want to make a closing statement, understanding this is not evidence?

MS. MACDONALD: I do.

JUDGE NORWOOD: Go ahead.

MS. MACDONALD: Leaving the registered agent's name off a campaign flier was not part of some preconceived plan to keep information from voters. I have taken responsibility for it and reacted within hours to remedy the error.

The penalty (inaudible) finalized during September of 2020 are not violation-based, but based on the spending budget of a campaign. (Inaudible) will have a

different penalty for a campaign that spends 500 than for a campaign that spends 50,000.

This does not seem logical to me. I would equate it with, if I am driving a Lamborghini, and Mr. Baumann is driving a Jeep CJ, and we're both going 20 miles over the speed limit down Colfax and get pulled over for a speeding ticket, I don't get a $5,000 speeding ticket, and he gets a $50 speeding ticket based on the type of car we're driving. The violation remains the same.

While the General Assembly passed the legislation, the rules were developed by the Secretary of State's Office, and they weren't finalized until the middle of an election cycle. I am not asking for no fine, but I think this fine schedule is draconian, and I ask that it be taken into consideration.

JUDGE NORWOOD: Do you agree that there was a violation?

MS. MACDONALD: I'm sorry? Say that again?

JUDGE NORWOOD: Do you agree that there was a violation?

MS. MACDONALD: I do agree that there was a violation.

JUDGE NORWOOD: What are you thinking that the appropriate fine would be?

MS. MACDONALD: For the violation? I don't know,

a thousand dollars, five thousand dollars. I certainly don't think 150 thousand dollars. I mean, this isn't a cost I'm passing on to my client (inaudible) error, and I will take responsibility for it, but (inaudible) mortgage my house to do it.

JUDGE NORWOOD: Well, I'm not sure, why are you talking about you personally having to pay the fine?

MS. MACDONALD: Well, why would I pass this on to my client or to the committee? I mean, I pay the committee. I just don't--I just don't--I think it would malfeasance. It's my error. I have taken responsibility for it. I just don't--I think 150 thousand for leaving a name off, it's not like the name had the phone number next to it. The people would still go to the Secretary of State's website to get the information. The name brings nothing to the disclaimer.

JUDGE NORWOOD: And maybe you've answered this already, but I'm understanding that the--you know, the respondent is the issue committee.

MS. MACDONALD: The respondent is the issue committee. That's correct.

JUDGE NORWOOD: Any fine would be imposed on the issue committee. I'm not sure why you, the actual person, Sheila MacDonald, would have to pay the fine.

MS. MACDONALD: The fine will be imposed on the

issue committee. That is correct.

JUDGE NORWOOD: Right, right. And you're not--are you saying you're legally--you would be legally obligated to pay the fine?

MS. MACDONALD: I am not saying that. I am not saying that. The fine would be imposed on the issue committee.

JUDGE NORWOOD: Okay. Any rebuttal closing, Mr. Baumann?

MR. BAUMANN: Very briefly, just two points, Your Honor. I think the reason the rules wheel (phonetic) off of total spending is that that's a proxy for the content that is distributed to the electorate. If we're talking about a five-hundred-dollar--a single five-hundred-dollar yard sign, far fewer members of the electorate see that than 3 to 3.5 million dollars in television ads. And so it really is a proxy for the effect that a violation has on the electorate.

The other point that I'd just like to make is, Ms. MacDonald brings up that these rules were finalized in September. That is true. They were--the final rules were adopted on September 30th, but emergency rules with the effect of law were adopted and promulgated on August 10th of 2020, and so were in effect throughout the entire campaign season.

JUDGE NORWOOD: And let me--you've talked about how the rules anticipate--they link the amount spent to the violation, but we don't--we really don't have evidence of a figure that would link how much was spent on advertisements that failed to contain the registered agent, do we?

MR. BAUMANN: I actually think we do, Your Honor. The parties have stipulated that that figure is between 3 and 3.5 million dollars. And again--

JUDGE NORWOOD: (Inaudible.)

MR. BAUMANN: I apologize, Your Honor, I don't mean to interrupt.

JUDGE NORWOOD: No, go ahead, yes.

MR. BAUMANN: And that reflects that the total spending, again, as reflected in Exhibits 2 and 3, is closer to 4 million dollars. But, again, there were cure efforts here. And it's our understanding and it's the stipulation that those cure efforts resulted in advertisements going out that did have the registered agent after this complaint was received.

And so that's where the 3, 3-and-a-half-million-dollar figure comes in. That's the parties' best approximation of how many ads went out without the name of the registered agent.

JUDGE NORWOOD: Okay. I think those are my only questions. Thank you both for your presentations, and I'll

be issuing my decision.

MS. MACDONALD: Thank you.

MR. BAUMANN: Thank you, Your Honor.

JUDGE NORWOOD: Thank you. Goodbye.

(Whereupon, the proceedings were concluded.)

TRANSCRIBER'S CERTIFICATE

I, Sylvia Besel, hereby certify that the foregoing constitutes a true and accurate transcript of all audible proceedings of the prehearing conference regarding Case No. OS-2020-0025, before the Office of Administrative Courts, May 21, 2021, which said hearing was mechanically recorded by the Office of Administrative Courts and transcribed by me to the best of my ability.

Dated at Aurora, Colorado, this 14th day of June, 2021.

/s/Sylvia Besel

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STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State, Complainant vs. **No on EE – A Bad Deal for Colorado,** Respondent	**CASE NUMBER:** **OS 2020-0025**
DECISION (Amended Certificate of Service)	

This is a campaign finance case pursuant to Colo. Const. art. XXVIII and the Fair Campaign Practices Act described at Section 1-45-101, C.R.S. Hearing was held and recorded remotely May 21, 2021 before Administrative Law Judge ("ALJ") Matthew E. Norwood. Peter Baumann, Campaign Finance Fellow, appeared for the Complainant ("Division"). Sheila MacDonald spoke on behalf of the Respondent ("the Committee"). The Committee is an issue committee as defined at art. XXVIII, sec. 2(10). Ms. MacDonald is not an attorney. She was permitted to speak for the Committee per Section 13-1-127(2), C.R.S.

Summary

Proposition EE was a ballot question for the Colorado November 3, 2020 election. It proposed the raising of taxes on tobacco and e-cigarettes, and was approved by the voters. The Committee failed to identify its "registered agent" in communications opposing Proposition EE, as is required by law. The Committee spent $3 million to $3.5 million on such non-conforming communications. The ALJ therefore imposes a $10,000 fine on the Committee.

Findings of Fact

Based on the evidence presented at hearing, and the stipulation of the parties, the ALJ makes the following findings of fact:

1. The Division and the Committee have made a stipulation of facts. The ALJ adopts that stipulation as a finding of fact. That stipulation provides:

> 1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

> 9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.
>
> 10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.
>
> 11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.
>
> 12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.
>
> 13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

2. The exhibits 1, 2, and 3 referenced in the stipulation of facts have also been admitted as evidence in the hearing before the ALJ.

3. The ALJ also specifically finds that the Committee was an issue committee as defined at art. XXVIII, sec. 2(10). It made expenditures or spent more than one thousand dollars per calendar year on communications that opposed a ballot question on the November 3, 2020 ballot, Proposition EE, and that the communications were broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or were otherwise distributed.

4. The communications failed to contain a disclaimer statement in accordance with Section 1-45-108.3(2), C.R.S., in that they did not identify the registered agent as required by Section 1-45-107.5(5)(a)(II), C.R.S.

5. The Committee argues that the requirement to disclose the name of the registered agent is new. Section 1-45-108.3(2)'s link to Section 1-45-107.5(5), C.R.S., which contains the requirement for identifying the registered agent, was approved May 29, 2019, and became effective August 2, 2019. 2019 Colo. Sess. Laws pp. 3046-47.

6. The Committee asserts that a $1,000 to $5,000 fine is appropriate.

7. The Division asks for a fine in the range of $150,000 to $350,000. It arrives at the top of this range by multiplying the maximum $3.5 million stipulated to above by 10%. It arrives at the bottom of the range by multiplying the minimum $3.0 million

stipulated to by 5%. The 10% and 5% figures appear in the Secretary of State's rules at Rule 23.3.3 (d), 8 CCR 1505-6.

8. A fine in the range proposed by the Division is exorbitant. In addition, it would likely never be paid. As argued by the Committee, the electorate had other publically available means to identify the registered agent, Mr. MacDonald. Considering the nature of the violation, but also considering the great deal of money spent by the Committee on communications not conforming to the law, a $10,000 fine is the appropriate sanction.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. The Division's complaint alleges that the Committee failed to include the registered agent information as required by Section 1-45-108.3(1), C.R.S. That subsection and subsection 108.3(2) provide:

> (1) A[n] … issue committee … making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5 (5) for content, size, duration, and placement.

2. The pertinent requirements of Section 1-45-107.5(5) for "content, size, duration, and placement" are:

> (5)(a) … any communication … shall include in the communication a statement that:
>
> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
>
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

3. "Communications" that must be disclosed under article XXVIII or article 45 are "electioneering communications." Art. XXVIII, sec. 6; Section 1-45-108(1)(a)(III), C.R.S. Such communications relate to those on behalf of a "candidate." Art. XXVIII, sec. 2(7); Section 1-45-103(9), C.R.S.

4. There is no “candidate” in the case of a ballot question such as Proposition EE. As such, the “communications” in opposition to a ballot question described in Section 1-45-108.3(1), C.R.S. are “communications” as that term is understood by common usage. Section 2-4-101, C.R.S.

5. The ALJ has discretion as to sanction. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009). A $10,000 fine is the appropriate sanction for the Committee’s violation.

Decision

The Committee has violated Sections 1-45-108.3(1) and (2), C.R.S. in that it failed to identify the registered agent in its communications opposing Proposition EE. It shall pay a $10,000 fine.

DONE AND SIGNED

May 26, 2021



MATTHEW E. NORWOOD
Administrative Law Judge

Certificate of Service

I certify that I have served a true and correct copy of the above **Decision** was served upon the parties listed below by email and U.S. mail to:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
1732 Wazee St., #201
Denver, CO 80202

Sheila@midggroup.com

Dated: ___06/01/2021_____

\s\ Marc Marcel
Office of Administrative Courts

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State, Complainant vs. **No on EE – A Bad Deal for Colorado,** Respondent	**CASE NUMBER:** **OS 2020-0025**
DECISION	

This is a campaign finance case pursuant to Colo. Const. art. XXVIII and the Fair Campaign Practices Act described at Section 1-45-101, C.R.S. Hearing was held and recorded remotely May 21, 2021 before Administrative Law Judge ("ALJ") Matthew E. Norwood. Peter Baumann, Campaign Finance Fellow, appeared for the Complainant ("Division"). Sheila MacDonald spoke on behalf of the Respondent ("the Committee"). The Committee is an issue committee as defined at art. XXVIII, sec. 2(10). Ms. MacDonald is not an attorney. She was permitted to speak for the Committee per Section 13-1-127(2), C.R.S.

Summary

Proposition EE was a ballot question for the Colorado November 3, 2020 election. It proposed the raising of taxes on tobacco and e-cigarettes, and was approved by the voters. The Committee failed to identify its "registered agent" in communications opposing Proposition EE, as is required by law. The Committee spent $3 million to $3.5 million on such non-conforming communications. The ALJ therefore imposes a $10,000 fine on the Committee.

Findings of Fact

Based on the evidence presented at hearing, and the stipulation of the parties, the ALJ makes the following findings of fact:

1. The Division and the Committee have made a stipulation of facts. The ALJ adopts that stipulation as a finding of fact. That stipulation provides:

> 1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

> 9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.
>
> 10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.
>
> 11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.
>
> 12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.
>
> 13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

2. The exhibits 1, 2, and 3 referenced in the stipulation of facts have also been admitted as evidence in the hearing before the ALJ.

3. The ALJ also specifically finds that the Committee was an issue committee as defined at art. XXVIII, sec. 2(10). It made expenditures or spent more than one thousand dollars per calendar year on communications that opposed a ballot question on the November 3, 2020 ballot, Proposition EE, and that the communications were broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or were otherwise distributed.

4. The communications failed to contain a disclaimer statement in accordance with Section 1-45-108.3(2), C.R.S., in that they did not identify the registered agent as required by Section 1-45-107.5(5)(a)(II), C.R.S.

5. The Committee argues that the requirement to disclose the name of the registered agent is new. Section 1-45-108.3(2)'s link to Section 1-45-107.5(5), C.R.S., which contains the requirement for identifying the registered agent, was approved May 29, 2019, and became effective August 2, 2019. 2019 Colo. Sess. Laws pp. 3046-47.

6. The Committee asserts that a $1,000 to $5,000 fine is appropriate.

7. The Division asks for a fine in the range of $150,000 to $350,000. It arrives at the top of this range by multiplying the maximum $3.5 million stipulated to above by 10%. It arrives at the bottom of the range by multiplying the minimum $3.0 million

stipulated to by 5%. The 10% and 5% figures appear in the Secretary of State's rules at Rule 23.3.3 (d), 8 CCR 1505-6.

8. A fine in the range proposed by the Division is exorbitant. In addition, it would likely never be paid. As argued by the Committee, the electorate had other publically available means to identify the registered agent, Mr. MacDonald. Considering the nature of the violation, but also considering the great deal of money spent by the Committee on communications not conforming to the law, a $10,000 fine is the appropriate sanction.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. The Division's complaint alleges that the Committee failed to include the registered agent information as required by Section 1-45-108.3(1), C.R.S. That subsection and subsection 108.3(2) provide:

> (1) A[n] … issue committee … making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5 (5) for content, size, duration, and placement.

2. The pertinent requirements of Section 1-45-107.5(5) for "content, size, duration, and placement" are:

> (5)(a) … any communication … shall include in the communication a statement that:
>
> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
>
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

3. "Communications" that must be disclosed under article XXVIII or article 45 are "electioneering communications." Art. XXVIII, sec. 6; Section 1-45-108(1)(a)(III), C.R.S. Such communications relate to those on behalf of a "candidate." Art. XXVIII, sec. 2(7); Section 1-45-103(9), C.R.S.

4. There is no "candidate" in the case of a ballot question such as Proposition EE. As such, the "communications" in opposition to a ballot question described in Section 1-45-108.3(1), C.R.S. are "communications" as that term is understood by common usage. Section 2-4-101, C.R.S.

5. The ALJ has discretion as to sanction. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009). A $10,000 fine is the appropriate sanction for the Committee's violation.

Decision

The Committee has violated Sections 1-45-108.3(1) and (2), C.R.S. in that it failed to identify the registered agent in its communications opposing Proposition EE. It shall pay a $10,000 fine.

DONE AND SIGNED

May 26, 2021



MATTHEW E. NORWOOD
Administrative Law Judge

Certificate of Service

I certify that I have served a true and correct copy of the above **Decision** was served upon the parties listed below by email and U.S. mail to:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
1732 Wazee St., #201
Denver, CO 80202

Sheila@midggroup.com

Dated: ___05/26/2021_____

_____
Office of Administrative Courts

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

Case Number: OS-2020-0025 (Elec. Div. No. 2020-71)

IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO

PROCEDURAL ORDER REGARDING INITIAL DECISION

Attached is the Initial Decision dated May 26, 2021, by the hearing officer assigned by the Office of Administrative Courts in the above-referenced matter. The Colorado Deputy Secretary ("Deputy Secretary") hereby serves the Initial Decision and this Procedural Order Regarding Initial Decision ("Order") upon the parties by email, as previously consented to by the Parties. *See* attached Certificate of Service.

Your case remains open across the period of potential appeal and review by the Deputy Secretary. The Deputy Secretary is not bound by the Initial Decision's recommended ruling. If the Deputy Secretary takes up your case for review, the Deputy Secretary may issue a Final Order with a different result than that recommended in the Initial Decision.

In order to challenge the Initial Decision, a party must file exceptions with the Deputy Secretary pursuant to the procedures outlined in subsections 24-4-105(14), (15) and (16), C.R.S. and this Order.

I. Initiation of Review on Deputy Secretary's Own Motion

The Deputy Secretary hereby initiates review of the Initial Decision upon his own motion pursuant to sections 1-45-111.7(6)(b) and 24-4-105(14)(a)(II).

II. General Filing Requirements

All requests and pleadings must be filed in writing electronically with the Deputy Secretary and not with the OAC. The email address for filing exceptions and any other papers with the Deputy Secretary is: OACAppeals@sos.state.co.us.

Any party that files a pleading or related document with the Deputy Secretary must also serve a copy of such pleading or related document upon the opposing party.

III. Exceptions

Pursuant to section 24-4-105, a party may appeal the Initial Decision to the Deputy Secretary by means of the exceptions review process ("Exceptions"). In order to appeal the Initial Decision, a party must file "Exceptions to the Initial Decision" according to the deadlines and procedures outlined below:

A. Designation of Record

Any party who seeks to reverse or modify the Initial Decision shall file a Designation of Record within twenty (20) days from the date of this Order. Any party that wishes to challenge factual findings in the Initial Decision must also designate relevant transcript(s), or parts thereof, of the proceedings before the hearing officer in its Designation of Record. A transcript is not necessary if the requested review is limited to a pure question of law.

Within ten (10) days after service of the Designation of Record, any other party, including the Deputy Secretary, may file a "Supplemental Designation of Record" including any additional transcripts, or parts thereof, of the proceedings before the hearing officer. The Supplemental Designation of Record shall specify all or part of the Record to be additionally included in the appeal.

A party ordering transcript(s) is responsible for ordering and filing such transcripts with the Deputy Secretary. It is recommended that a party contact the OAC and a certified court reporter for information on how to order a transcript.

B. 30-Day Deadline for filing Exceptions

Exceptions are due within thirty (30) days after the date of this Order. A party may request an extension of time to file Exceptions prior to thirty (30) days after the date of this Order. An extension of time will be granted for good cause.

The parties should be aware that delays in receiving an ordered transcript will not result in an automatic extension of the deadline for filing Exceptions. Rather, a proper motion for such relief must be filed.

C. Deadlines for Responses, Replies, and Proposed Orders

Responses: Either party may file a response to the other party's Exceptions within fourteen (14) days from the date of the Exceptions filing.

Replies: Either party may file a reply to the other party's response to Exceptions within seven (7) days from the date of the responsive filing.

Proposed Orders: Either party may file a proposed final order. Such proposed order may be filed together with the party's Exceptions, response, or reply.

IV. Computation and Modification of Time

All time periods are calculated pursuant to Colorado Rules of Civil Procedure Rule 6.

V. Oral Arguments

The Deputy Secretary may permit oral argument upon request by either party. Such request must be filed with the exceptions, response, or reply. If permitted, each party will be allotted a defined time limit for oral argument. The requesting party will present first and may reserve time for rebuttal. The Deputy Secretary will be permitted to ask questions. Oral argument must be confined to the arguments and evidence presented during the hearing or in the exceptions and responses thereto. Evidence or arguments outside the record may not be presented during oral argument.

VI. Final Order

The Deputy Secretary may affirm, set aside, or modify the Initial Decision's Findings of Fact, Conclusions of Law, and recommended sanction within the Deputy Secretary's authority. Under most circumstances, the Deputy Secretary will issue a Final Order at the conclusion of his review. On occasion, however, the Deputy Secretary may conclude that either the factual basis or legal analysis, or both, in the Initial Decision are insufficient to complete an appropriate review of the Initial Decision. In such instance, the Deputy Secretary will remand the case back to the hearing officer with directions to issue a revised Initial Decision. The hearing officer will subsequently issue a Revised Initial Decision upon remand. The parties will have the same appeal rights with respect to the Revised Initial Decision as they had with the original Initial Decision.

The Final Order is subject to judicial review under section 24-4-106. However, where nether party has timely appealed the Initial Decision through Exceptions and the Deputy Secretary has chosen not to initiate review of the Initial Decision upon his own motion, the Initial Decision becomes a Final Order after thirty days of service of this Order, unless the deadline for Exceptions has been extended, by operation of law. Under these circumstances, neither party has the right to appeal the Initial Decision.

DONE and **ORDERED** this 27th day of May, 2021.

CHRISTOPHER P. BEALL

Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **PROCEDURAL ORDER REGARDING INITIAL DECISION** was served on the following parties via electronic mail on this 27th day of May 2021.

For the Complainant:
Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

For the Respondent:
Sheila MacDonald
Sheila@midggroup.com

Courtesy copy to Elections Division:
CPFComplaints@sos.state.co.us

/s/ Christopher P. Beall

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State, Complainant vs. **No on EE – A Bad Deal for Colorado,** Respondent	**CASE NUMBER:** **OS 2020-0025**
DECISION	

This is a campaign finance case pursuant to Colo. Const. art. XXVIII and the Fair Campaign Practices Act described at Section 1-45-101, C.R.S. Hearing was held and recorded remotely May 21, 2021 before Administrative Law Judge ("ALJ") Matthew E. Norwood. Peter Baumann, Campaign Finance Fellow, appeared for the Complainant ("Division"). Sheila MacDonald spoke on behalf of the Respondent ("the Committee"). The Committee is an issue committee as defined at art. XXVIII, sec. 2(10). Ms. MacDonald is not an attorney. She was permitted to speak for the Committee per Section 13-1-127(2), C.R.S.

Summary

Proposition EE was a ballot question for the Colorado November 3, 2020 election. It proposed the raising of taxes on tobacco and e-cigarettes, and was approved by the voters. The Committee failed to identify its "registered agent" in communications opposing Proposition EE, as is required by law. The Committee spent $3 million to $3.5 million on such non-conforming communications. The ALJ therefore imposes a $10,000 fine on the Committee.

Findings of Fact

Based on the evidence presented at hearing, and the stipulation of the parties, the ALJ makes the following findings of fact:

1. The Division and the Committee have made a stipulation of facts. The ALJ adopts that stipulation as a finding of fact. That stipulation provides:

> 1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.

10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.

11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.

12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.

13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

2. The exhibits 1, 2, and 3 referenced in the stipulation of facts have also been admitted as evidence in the hearing before the ALJ.

3. The ALJ also specifically finds that the Committee was an issue committee as defined at art. XXVIII, sec. 2(10). It made expenditures or spent more than one thousand dollars per calendar year on communications that opposed a ballot question on the November 3, 2020 ballot, Proposition EE, and that the communications were broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or were otherwise distributed.

4. The communications failed to contain a disclaimer statement in accordance with Section 1-45-108.3(2), C.R.S., in that they did not identify the registered agent as required by Section 1-45-107.5(5)(a)(II), C.R.S.

5. The Committee argues that the requirement to disclose the name of the registered agent is new. Section 1-45-108.3(2)'s link to Section 1-45-107.5(5), C.R.S., which contains the requirement for identifying the registered agent, was approved May 29, 2019, and became effective August 2, 2019. 2019 Colo. Sess. Laws pp. 3046-47.

6. The Committee asserts that a $1,000 to $5,000 fine is appropriate.

7. The Division asks for a fine in the range of $150,000 to $350,000. It arrives at the top of this range by multiplying the maximum $3.5 million stipulated to above by 10%. It arrives at the bottom of the range by multiplying the minimum $3.0 million

stipulated to by 5%. The 10% and 5% figures appear in the Secretary of State's rules at Rule 23.3.3 (d), 8 CCR 1505-6.

8. A fine in the range proposed by the Division is exorbitant. In addition, it would likely never be paid. As argued by the Committee, the electorate had other publically available means to identify the registered agent, Mr. MacDonald. Considering the nature of the violation, but also considering the great deal of money spent by the Committee on communications not conforming to the law, a $10,000 fine is the appropriate sanction.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. The Division's complaint alleges that the Committee failed to include the registered agent information as required by Section 1-45-108.3(1), C.R.S. That subsection and subsection 108.3(2) provide:

> (1) A[n] … issue committee … making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5 (5) for content, size, duration, and placement.

2. The pertinent requirements of Section 1-45-107.5(5) for "content, size, duration, and placement" are:

> (5)(a) … any communication … shall include in the communication a statement that:
>
> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
>
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

3. "Communications" that must be disclosed under article XXVIII or article 45 are "electioneering communications." Art. XXVIII, sec. 6; Section 1-45-108(1)(a)(III), C.R.S. Such communications relate to those on behalf of a "candidate." Art. XXVIII, sec. 2(7); Section 1-45-103(9), C.R.S.

4. There is no "candidate" in the case of a ballot question such as Proposition EE. As such, the "communications" in opposition to a ballot question described in Section 1-45-108.3(1), C.R.S. are "communications" as that term is understood by common usage. Section 2-4-101, C.R.S.

5. The ALJ has discretion as to sanction. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009). A $10,000 fine is the appropriate sanction for the Committee's violation.

Decision

The Committee has violated Sections 1-45-108.3(1) and (2), C.R.S. in that it failed to identify the registered agent in its communications opposing Proposition EE. It shall pay a $10,000 fine.

DONE AND SIGNED

May 26, 2021



MATTHEW E. NORWOOD
Administrative Law Judge

Certificate of Service

I certify that I have served a true and correct copy of the above **Decision** was served upon the parties listed below by email and U.S. mail to:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
1732 Wazee St., #201
Denver, CO 80202

Sheila@midggroup.com

Dated: ___05/26/2021_____

_____
Office of Administrative Courts

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State

Christopher P. Beall
Deputy Secretary of State

BEFORE THE COLORADO DEPUTY SECRETARY OF STATE 1700 Broadway, Suite 200 Denver, Colorado 80290 IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO	OAC CASE NUMBER: **OS 2020-25** (ED Case No. 2020-71)

FINAL AGENCY ORDER

This matter comes before Christopher P. Beall, Colorado Deputy Secretary of State ("Deputy Secretary"), under sections 1-45-111.7(6)(b) and 24-4-105, C.R.S., upon the Deputy Secretary's own motion to review the Initial Decision issued by the hearing officer, and duly served upon the Parties on May 27, 2021.[1] The Initial Decision is attached as Exhibit 1 and is incorporated as set forth herein except to the extent otherwise described in this Final Agency Order. As discussed below, the Deputy Secretary affirms the finding of a violation of the Fair Campaign Practices Act ("FCPA"), but the Deputy Secretary reduces the requested penalty assessment

[1] The Secretary of State recused herself from the deliberations on this Final Agency Order.

sought by the Elections Division, which sought a fine of between $150,000 to $350,000, to a penalty of $30,000.

I. BACKGROUND

Respondent No on EE – A Bad Deal for Colorado ("Respondent") is a registered issue committee that was formed to oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature (Proposition EE).[2] Initial Decision ("ID") at 1-2, ¶¶ 1.1, 1.2. On October 8, 2020, Anna Jo Haynes filed an initial complaint with the Colorado Secretary of State against Respondent. ID at 2, ¶ 1.4. The initial complaint alleged that Respondent had violated Colorado campaign finance law by failing to include the name of its registered agent in its "paid for by" disclaimer in its relevant communications during the campaign. *Id.* The initial complaint also alleged that certain of Respondent's advertisements violated section 1-13-109(2)(a) in that they allegedly included recklessly false statements in the content of the advertising. *See* Stipulated Exhibit 1, Initial Compl. at 4, filed Oct. 8, 2020.[3]

After completing its initial review and investigation, the Elections Division of the Secretary of State's Office ("Division") filed a formal complaint in this matter with the Office of Administrative Courts on December 18, 2020, pursuant to section 1-45-111.7(6). The Division's formal complaint argued that Respondent violated campaign

[2] Respondent was essentially a single-donor campaign and the donor in question was Liggett Vector Brands LLC. *See* TR 05/21/2021, pp 5-6, 18.

[3] The hearing officer's Initial Decision does not mention the underlying complainant's allegation of reckless falsity in Respondent's advertising, presumably because the Elections Division did not raise that issue in its formal complaint before the Office of Administrative Courts.

finance law by failing to name its registered agent in its election advertising; the Division elected not to pursue the underlying complainant's assertion of violations of section 1-13-109(2)(a). On May 21, 2021, a hearing was held before the hearing officer assigned to the matter pursuant to section 1-45-111.7(6)(a), after which the hearing officer issued an Initial Decision. ID at 1.

The hearing officer concluded that Respondent violated section 1-45-108.3(1) & (2) when it distributed communications opposing a ballot initiative that did not include the name of its registered agent. *See* ID at 7-8. The hearing officer made what purported to be a factual finding concerning the Division's requested fine, stating that the Division's proposed amount "is exorbitant." ID at 4, ¶ 8. The Division's request of a fine of between $150,000 and $350,000 was based on Rule 23.3.3(d), 8 CCR 1505-6. ID at 3, ¶ 7. The hearing officer also included a factual finding that such a fine "would likely never be paid," although there is no testimony or evidence in the record to support this finding, nor any citation in the Initial Decision in support of the finding. ID at 4, ¶ 8. Ultimately, the hearing officer assessed a fine of $10,000. *Id.* at 8.

No party filed exceptions to the Initial Decision. However, the Deputy Secretary initiated review on his own motion. *See* Procedural Order Regarding Initial Decision (May 27, 2021). The Deputy Secretary adopts the Findings of Fact set forth in the Initial Decision except as set forth herein. The Deputy Secretary adopts the Conclusions of Law of the Initial Decision, except those provisions related to the recommended sanction. Pursuant to section 24-4-105(15)(b), and for the reasons

stated herein, the Deputy Secretary modifies the sanction to impose a $30,000 penalty.

II. STANDARDS OF REVIEW

A hearing officer's findings of evidentiary fact may be set aside by the Deputy Secretary on review of the initial decision only if they are contrary to the weight of the evidence. § 24-4-105(15)(b). Evidentiary facts are the detailed factual or historical findings upon which a legal determination rests. *State Bd. of Med. Exam'rs v. McCroskey*, 880 P.2d 1188, 1193 (Colo. 1994). By contrast, the Deputy Secretary may substitute his judgment for that of the hearing officer with respect to an ultimate conclusion of fact. *See* § 24-4-105(15)(b). Findings of ultimate fact involve a conclusion of law, or at least a mixed question of law and fact, and settle the rights and liabilities of the parties. *Reiff v. Colo. Dep't of Health Care Policy & Fin.*, 148 P.3d 355, 357 (Colo. App. 2006). Interpretation of a regulation by the agency charged with its enforcement is generally entitled to deference and must be accepted if it has a reasonable basis in law and is warranted by the record. *Id.* at 358. The Deputy Secretary may also modify the initial decision, or any sanction or relief entered therein, in conformity with the facts and the law. § 24-4-105(15)(b); *see also Colo. Real Estate Comm'n v. Hanegan*, 947 P.2d 933, 936 (Colo. 1997) (holding that an agency is afforded wide discretion to modify an initial decision's recommended sanction within the parameters of its authority). The Deputy Secretary reviews questions of law and the application of law to undisputed facts de novo. *See Winter v. Indus. Claim Appeals Office*, 2013 COA 126, ¶¶ 7-8, 321 P.3d 609, 612.

III. JURISDICTION

As a preliminary matter, the hearing officer issued the Initial Decision directly to the parties instead of filing it with the Deputy Secretary pursuant to section 24-4-105(14)(a). *See* Notice of Order Issuance, May 26, 2021. After the Deputy Secretary served the Procedural Order in this case, the Office of Administrative Courts issued an "Amended decision per art. xxviii, sec. 9" directly to the parties. *See* Notice of Order Issuance, June 1, 2021. This "Amended Decision" was identical to the Initial Decision, modifying only the certificate of service. *See id.* The Deputy Secretary concludes that the Amended Decision was a nullity, having been issued after the Initial Decision was served on the parties by the agency and after the agency had undertaken review on its own motion. *See* § 24-4-105(14)(a). Notwithstanding this improper procedure, the Deputy Secretary concludes jurisdiction is proper under section 1-45-111.7, and that any reliance on section 9(2)(a) was in error.

Prior to June 12, 2018, section 9(2)(a) "allowed any citizen to file a complaint alleging a campaign finance violation and required that the complaint be referred to an ALJ for a hearing and decision." *Day v. Chase for Colo.*, 2020 COA 84, ¶ 4, 479 P.3d 1. "'It also provided that the 'decision of the [ALJ] shall be final.'" *Id.* (quoting Colo. Const. art. XXVIII, § 9(2)(a)). However, on June 12, 2018, a federal court declared section 9(2)(a) facially unconstitutional. *Holland v. Williams*, 457 F. Supp. 3d 979, 996 (D. Colo. 2018); *see also Holland*, No. 1:16-cv-00138-RM-MLC, Dkt. No. 167 – Final Judgment (D. Colo. June 29, 2018) ("[I]t is hereby declared that Article XXVIII, § 9(2)(a) of the Colorado Constitution and Colo. Rev. Stat. § 1-45-111.5(1.5)(a)

are facially unconstitutional under the First and Fourteenth Amendments of the U.S. Constitution."). "*Holland* left Colorado's campaign finance laws without an enforcement mechanism." *Day*, ¶ 6. Therefore, days after *Holland* was issued, the Secretary of State ("Secretary") promulgated new rules—which ultimately became section 1-45-111.7[4]—that "did away with the requirement that complaints are automatically referred to an ALJ." *Id.* "Instead, the new rules provided that when a complaint is filed, the Elections Division reviews it and either (1) dismisses it; (2) provides the respondent an opportunity to cure the alleged violation; or (3) conducts additional review to determine whether to file a complaint with a hearing officer."[5] *Id.* Where the Division files a complaint with a hearing officer, the hearing officer holds a hearing and issues an initial decision, which is subject to review by the Deputy Secretary, who issues a final agency order. § 1-45-111.7(6)

In the *Holland* case, the Secretary was sued in his "official capacity" as the chief election officer of the State of Colorado, responsible for enforcement of all of Colorado's election laws. As such, the *Holland* case was brought against Colorado's

[4] Section 1-45-111.7 was adopted by the General Assembly in Senate Bill 19-232 – Concerning the Codification of the Rules of the Secretary of State Addressing the Procedures for Enforcement of State Laws Governing Campaign Finance, and went into effect on July 1, 2019. Prior to that, the new rules were codified in 8 CCR 1505-6.

[5] It was on the strength of these then-emergency rules, which now have become codified at section 1-45-111.7, that the federal court in *Holland* denied the plaintiff's motion for a permanent injunction. *Holland*, No. 1:16-cv-00138-RM-MLC, Dkt. No. 166 – Order (D. Colo. June 29, 2018) (denying plaintiff's request for a permanent injunction against the campaign finance enforcement regime established in section 9(2)(a) because "[i]n light of the new rules defendant has adopted, there is no danger of that violation recurring at this time," and retaining jurisdiction to enforce the court's declaration that section 9(2)(a) is facially unconstitutional).

election laws. The judgment of the federal court in *Holland* was a determination of the facial unconstitutionality of section 9(2)(a) *in toto*. The decision is binding on the Secretary in her official capacity, and through that office, the decision is binding on Colorado's election laws. Thus, enforcement of Colorado campaign finance law no longer rests in section 9(2)(a), but rather in section 1-45-111.7. *See, e.g.*, *People v. District Court*, 834 P.2d. 181, 184 (Colo. 1992) (finding statutes adopted by legislature to replace statutes declared unconstitutional controlling).

Because this matter proceeded under section 1-45-111.7, the ALJ was acting in this case as a hearing officer for the Secretary pursuant to section 1-45-111.7(6), and not as an ALJ under section 9(2)(a). *See* § 1-45-111.7(6); *see also In the Matter of Stop the Wolf*, Case No. ED 2020-01, Final Agency Order at 6 (February 5, 2021) (citing a "Memorandum of Understanding on Campaign Finance Hearing under § 1-45-111.7, C.R.S. (2019)" between the Secretary and the OAC, agreeing that ALJs are hearing officers as defined by and used in section 1-45-111.7). Under the statutory procedures applicable here, the hearing officer for the Secretary accepts complaints filed by the Division and presides over hearings consistent with sections 1-45-111.7 and 24-4-105. *See id.* Accordingly, the hearing officer's failure to file his "Initial Decision" with the Deputy Secretary was in error, as was the reliance on section 9(2)(a) in the Notice of Order Issuance.

IV. SANCTION

In the Initial Decision, the hearing officer recommended that Respondent pay a fine of $10,000. ID at 7-8. However, the Initial Decision provides no rationale nor any analysis on how the hearing officer reached the conclusion that $10,000—as opposed to some other amount—was an appropriate penalty, apparently picking that number out of the air without any evidence in the record or citation to rule or law. As explained below, and in conformity with the law and the facts, the Deputy Secretary concludes that the applicable mitigating circumstances warrant a reduction of the Elections Division's requested fine between $150,000 to $350,000 and imposes a $30,000 penalty.

A. Applicable Sanction Provisions

The governing constitutional and statutory provisions provide limited guidance regarding sanctions for violations such as Respondent's failure to identify its registered agent in its communications opposing Proposition EE as required by section 1-45-108.3. Because the legislature specifically subjected violations of the FCPA not listed in the constitution to the penalties in section 10 of article XXVIII of the state constitution ("section 10") or section 1-45-111.5, and because none of the penalties in those provisions directly address the violation at issue here, the Deputy Secretary concludes he has authority to impose a penalty based on the Secretary of State's rules that fill the gaps left by statute as to the proper penalty. Ultimately, the Deputy Secretary concludes that the mitigating circumstances present in this case warrant a reduction of the Division's requested fine down to $30,000.

1. Section 1-45-111.5(1.5)(b), C.R.S.

Unlike other provisions of the FCPA, section 1-45-108.3 itself does not specify a penalty for a person who violates it. However, section 1-45-111.5(1.5)(b) provides that "[a]ny person who commits a violation of either the secretary of state's rules concerning campaign and political finance or [the FCPA] that is not specifically listed in article XXVIII of the state constitution shall be subject to any of the sanctions specified in section 10 of article XXVIII of the state constitution or in [section 1-45-111.5]." Because a violation of section 1-45-108.3 is "not specifically listed in article XXVIII of the state constitution," section 1-45-111.5(1.5)(b) provides the basis for imposing a sanction here.

Section 1-45-111.5(1.5)(b) subjects a person who violates section 1-45-108.3 to any of the sanctions listed in either section 10 or section 1-45-111.5. By its plain language, however, section 10 specifies sanctions for only two categories of violations, neither of which apply here. *See* Colo. Const. art. XXVIII, § 10(1) (addressing sanctions for contribution and voluntary spending limit violations); *see also id.* at § 10(2)(a) (addressing sanctions for filing and reporting violations). The plain language of section 111.5 also fails to provide a penalty framework for violations of the disclaimer requirements. *See* § 1-45-111.5(1.5)(c) (addressing sanctions for

untimely reports, certain successive reporting violations, but no reference to disclaimer violations).[6]

The complication in this matter is that the violation at issue here does not neatly fit into the sanction provisions of either section 10 or section 111.5. The failure to comply with the requirement to name a registered agent in a "paid for by" disclaimer is simply not one of the violations identified in either section 10 or section 1-45-111.5. Rather than attempt to shoehorn the penalty amount into these constitutional and statutory provisions, the Deputy Secretary now turns to the Secretary of State's Rules regarding fine amounts, which are instructive toward reaching an appropriate penalty under the facts and circumstances of this case.

2. Rule 23.3

Section 1-45-111.5(1) provides the Secretary with rulemaking authority "as may be necessary to enforce and administer any provision of [the FCPA]." As applicable here, the Secretary has exercised this authority by promulgating Rule 23.3, "Settlement of complaints and fine structure for violations." 8 CCR 1505-6, Rule

[6] For the sake of reference, section 10(1) would authorize a penalty amount between $6 million and $17.5 million based on the range of doubling or up to five times the amount spent in violation of an applicable constitutional provision. In contrast, under section 10(2)(a) and section 1-45-111.5(1.5)(c), the penalty amount of at least $11,300 would be assessed based on a calculation of $50/day for each day of noncompliance, multiplied by 226 days for the number of days from the date of the initial violation to the date of the hearing. However, as stated above neither of these formulas are legally required because the violation in question does not fall within these penalty formulas.

23.3. Because Rule 23.3 speaks directly to the violation at issue here, the Deputy Secretary finds it persuasive in guiding his discretion as to the appropriate penalty.[7]

Pursuant to the specific fine formula outlined in Rule 23.3.3, if a person commits a disclaimer violation, an appropriate penalty may be reached by considering the amount spent on the noncompliant communications and whether the violation was mitigated prior to the election. Specifically:

> (1) If noncompliant communication is mitigated prior to the election: a fine of at least 5 percent cost of the noncompliant communication including cost to broadcast.

8 CCR 1505-6, Rule 23.3.3(d)(1).

Once the specific fine amount is calculated, the following mitigating or aggravating factors are also considered:

> (a) Nature and extent of the violation;
>
> (b) Timing of the violation (including proximity to the election);
>
> (c) Ability or effort to mitigate the violation;
>
> (d) Evidence of an intentional act or a pattern or practice of misconduct;
>
> (e) Extent to which the harm cause[d] by the violation or the value of the violation cannot be reasonably calculated.

[7] Because this matter proceeded to hearing, it is clear the parties were unable to reach a settlement. To the extent that inability was a result of the Division's belief that it could not accept a settlement amount below $150,000—the amount properly calculated under Rule 23.3.3(d)—the Deputy Secretary notes that Rule 23.3.5 provides the Division with specific authority to consider mitigating factors. Accordingly, the Division may also exercise discretion in reducing a fine amount from that which is listed in Rule 23.3.3 should the Division conclude mitigating factors support a reduction considering the circumstances as a whole. Such a settlement is subject to approval by the Deputy Secretary.

8 CCR 1505-6, Rule 23.3.5(a) – (e). The Rule further clarifies that "[o]ther aggravating or mitigating factors may be taken into consideration in reaching a just and equitable outcome." 8 CCR 1505-6, Rule 23.3.5(f).

B. Respondent shall pay a fine of $30,000.

Respondent spent between $3 and $3.5 million on noncompliant communications that were mitigated prior to the election. ID at 2-3. Looking to Rule 23.3.3(d)(1) as guidance, Respondent would be subject to a penalty of 5% of that amount: between $150,000 and $175,000. Although the hearing officer asserted that amount would have been "exorbitant," that finding is not supported by any evidence in the record. Moreover, the hearing officer's assertion amounts to a legal conclusion, rather than a factual finding, in light of the definition of "exorbitant" as "not coming within the scope of the law; exceeding the customary or appropriate limits in intensity, quality, amount, or size." *See* Merriam-Webster Dictionary (definition of "exorbitant"). The Division's requested penalty was quite plainly "within the scope of the law" as set forth in Rule 23.3.3(d)(1), and the hearing officer's assertion that the amount would be "exorbitant" is by definition legal error.

Additionally, Colorado law explicitly recognizes that

> [P]olitical contributions from corporate treasuries are not an indication of popular support for the corporation's political ideas and can unfairly influence the outcome of Colorado elections; and that the interests of the public are best served by . . . strong enforcement of campaign finance requirements.

Colo. Const. art. XXVIII, § 1. Strong enforcement of campaign finance law can often be achieved only by imposing fines that are significant enough to deter unlawful

behavior and compel compliance. Here, the hearing officer found that Respondent spent millions of dollars influencing Colorado's election without providing the electorate with the full disclaimer to which it is entitled. Consistent with this finding, the Deputy Secretary concludes that a penalty equivalent to 5% of the amount spent is within the scope of the law and therefore not "exorbitant," and the penalty recommended by the hearing officer is inadequate to reflect the extent of the violation, which involves millions of dollars spent.

Although the dollar volume of the advertising in violation of the FCPA was immense, the Deputy Secretary nevertheless concludes that mitigating factors support reducing the fine amount from 5% to 1% of the lower end of the range of Respondent's approximate spending on noncompliant communications. *See* 8 CCR 1505-6, Rule 23.3.5. The following factual findings, which are supported by the record before the Deputy Secretary, support this mitigation:

- **Ability or effort to mitigate the violation.** Immediately after receiving notice of the campaign finance complaint, Respondent worked to cure the alleged violation to the extent possible. ID at 2, ¶ 1.8. Respondent also significantly cooperated with the Division's review and investigation of the complaint. ID at 3, ¶1.11.
- **Evidence of an intentional act or pattern or practice of misconduct.** The Division did not uncover any evidence to suggest that Respondent was intentionally misleading the electorate by failing to include the name of Respondent's registered agent on its communications. ID at 3, ¶1.12.

- **Nature of the violation.** Although Respondent did not include the name of its registered agent in its disclaimer statement, it did disclose that the communications were "Paid for by No on EE – A Bad Deal for Colorado." ID at 2, ¶ 1.6. Respondent is a registered issue committee and thus its filings appear on TRACER. ID at 1, ¶ 1.1. In those filings, Respondent disclosed more than Colorado law required at least with regard to information about the payee to which in-kind contributions were made. ID at 3, ¶ 1.13. Accordingly, the electorate did have some information on who was funding the communications, which supports the purpose underlying the law's disclaimer requirements. *See* ID at 4, ¶ 8.

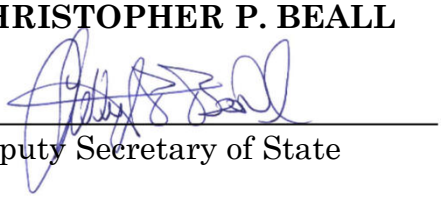
In sum, although the extent of Respondent's violation of section 1-45-108.3 was significant, the Deputy Secretary finds that the mitigating factors discussed above necessitate a reduction in the penalty amount suggested by Rule 23.3.3(d)(1). A reduction from 5% to 1% results in a penalty of $30,000, which the Deputy Secretary concludes is proper given the extent of the violation tempered by the mitigating factors discussed above. The Deputy Secretary further determines that a $30,000 fine as a penalty in this matter is sufficient to enforce the law under these circumstances, is proportional to the violations, and is not manifestly excessive in relation to the interests of the public in strong enforcement of campaign finance law.

V. CONCLUSION

For the reasons stated above, the Deputy Secretary enters this Final Agency Order adopting the Findings of Fact and Conclusions of Law set forth in the Initial Decision except as discussed above, and modifying the sanction. Applying the broad discretion afforded an agency, the Deputy Secretary orders Respondent to pay a fine in the amount of $30,000.

DONE and **ORDERED** this 2nd day of September, 2021.

CHRISTOPHER P. BEALL



Deputy Secretary of State

This decision becomes final upon electronic mailing. Pursuant to § 24-4-105(14)(c), C.R.S., the parties have waived their right to judicial review of the Final Agency Order except for those portions different from the content of the initial decision. Any party may appeal the modified portions of the Final Agency Order, specifically, all or part of the fine imposed, by commencing an action for judicial review before the District Court within thirty-five (35) days after the date of service of this Order. §§ 1-45-111.7(6)(b) and 24-4-106(4), C.R.S. A complainant may also seek judicial review by a state district court of a final agency action under section 24-4-106. § 1-45-111.7(5)(b), C.R.S.

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State, Complainant vs. **No on EE – A Bad Deal for Colorado,** Respondent	**CASE NUMBER:** **OS 2020-0025**
DECISION	

This is a campaign finance case pursuant to Colo. Const. art. XXVIII and the Fair Campaign Practices Act described at Section 1-45-101, C.R.S. Hearing was held and recorded remotely May 21, 2021 before Administrative Law Judge ("ALJ") Matthew E. Norwood. Peter Baumann, Campaign Finance Fellow, appeared for the Complainant ("Division"). Sheila MacDonald spoke on behalf of the Respondent ("the Committee"). The Committee is an issue committee as defined at art. XXVIII, sec. 2(10). Ms. MacDonald is not an attorney. She was permitted to speak for the Committee per Section 13-1-127(2), C.R.S.

Summary

Proposition EE was a ballot question for the Colorado November 3, 2020 election. It proposed the raising of taxes on tobacco and e-cigarettes, and was approved by the voters. The Committee failed to identify its "registered agent" in communications opposing Proposition EE, as is required by law. The Committee spent $3 million to $3.5 million on such non-conforming communications. The ALJ therefore imposes a $10,000 fine on the Committee.

Findings of Fact

Based on the evidence presented at hearing, and the stipulation of the parties, the ALJ makes the following findings of fact:

1. The Division and the Committee have made a stipulation of facts. The ALJ adopts that stipulation as a finding of fact. That stipulation provides:

> 1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.

10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.

11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.

12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.

13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

2. The exhibits 1, 2, and 3 referenced in the stipulation of facts have also been admitted as evidence in the hearing before the ALJ.

3. The ALJ also specifically finds that the Committee was an issue committee as defined at art. XXVIII, sec. 2(10). It made expenditures or spent more than one thousand dollars per calendar year on communications that opposed a ballot question on the November 3, 2020 ballot, Proposition EE, and that the communications were broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or were otherwise distributed.

4. The communications failed to contain a disclaimer statement in accordance with Section 1-45-108.3(2), C.R.S., in that they did not identify the registered agent as required by Section 1-45-107.5(5)(a)(II), C.R.S.

5. The Committee argues that the requirement to disclose the name of the registered agent is new. Section 1-45-108.3(2)'s link to Section 1-45-107.5(5), C.R.S., which contains the requirement for identifying the registered agent, was approved May 29, 2019, and became effective August 2, 2019. 2019 Colo. Sess. Laws pp. 3046-47.

6. The Committee asserts that a $1,000 to $5,000 fine is appropriate.

7. The Division asks for a fine in the range of $150,000 to $350,000. It arrives at the top of this range by multiplying the maximum $3.5 million stipulated to above by 10%. It arrives at the bottom of the range by multiplying the minimum $3.0 million

stipulated to by 5%. The 10% and 5% figures appear in the Secretary of State's rules at Rule 23.3.3 (d), 8 CCR 1505-6.

8. A fine in the range proposed by the Division is exorbitant. In addition, it would likely never be paid. As argued by the Committee, the electorate had other publically available means to identify the registered agent, Mr. MacDonald. Considering the nature of the violation, but also considering the great deal of money spent by the Committee on communications not conforming to the law, a $10,000 fine is the appropriate sanction.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. The Division's complaint alleges that the Committee failed to include the registered agent information as required by Section 1-45-108.3(1), C.R.S. That subsection and subsection 108.3(2) provide:

> (1) A[n] … issue committee … making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5 (5) for content, size, duration, and placement.

2. The pertinent requirements of Section 1-45-107.5(5) for "content, size, duration, and placement" are:

> (5)(a) … any communication … shall include in the communication a statement that:
>
> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
>
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

3. "Communications" that must be disclosed under article XXVIII or article 45 are "electioneering communications." Art. XXVIII, sec. 6; Section 1-45-108(1)(a)(III), C.R.S. Such communications relate to those on behalf of a "candidate." Art. XXVIII, sec. 2(7); Section 1-45-103(9), C.R.S.

4. There is no “candidate” in the case of a ballot question such as Proposition EE. As such, the “communications” in opposition to a ballot question described in Section 1-45-108.3(1), C.R.S. are “communications” as that term is understood by common usage. Section 2-4-101, C.R.S.

5. The ALJ has discretion as to sanction. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009). A $10,000 fine is the appropriate sanction for the Committee’s violation.

Decision

The Committee has violated Sections 1-45-108.3(1) and (2), C.R.S. in that it failed to identify the registered agent in its communications opposing Proposition EE. It shall pay a $10,000 fine.

DONE AND SIGNED

May 26, 2021



MATTHEW E. NORWOOD
Administrative Law Judge

Certificate of Service

I certify that I have served a true and correct copy of the above **Decision** was served upon the parties listed below by email and U.S. mail to:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
1732 Wazee St., #201
Denver, CO 80202

Sheila@midggroup.com

Dated: ___05/26/2021_____

_____
Office of Administrative Courts

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **FINAL AGENCY ORDER** was served on the following parties on September 2, 2021.

Respondent – No on EE – A Bad Deal for Colorado
Sheila MacDonald
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Denver, CO 80202
Sheila@midggroup.com

Petitioner - Colorado Secretary of State, Elections Division
Peter Baumann, Campaign Finance Fellow
Department of Law
Ralph L. Carr Colorado Judicial Center
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Peter.baumann@coag.gov

Courtesy Copy: Complainant – Anna Jo Haynes
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Denver, CO 80207
annajoh@milehighearlylearning.org

/s/ *Christopher P. Beall*
Deputy Secretary of State

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State
Melissa Belle Kessler
Legal & Policy Director

Memorandum to File
Re: Ethical Wall Law on OAC Case No. OS 2020-25, In the Matter of No on EE – A Bad Deal for Colorado

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Background

The instant case arose from a complaint filed with the Office of the Secretary of State on October 8, 2020, alleging violations of Colorado campaign finance law by No on EE – A Bad Deal for Colorado, a registered issue committee that was formed to oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature (Proposition EE).

After completing its initial review and investigation, the Elections Division of the Secretary of State's Office filed a formal complaint in this matter with the Office of Administrative Courts on December 18, 2020, pursuant to section 1-45-111.7(6), CRS. On May 21, 2021, a hearing was held before the hearing officer assigned to the matter pursuant to section 1-45-111.7(6)(a), CRS after which the hearing officer issued an Initial Decision.

On May 27, 2021, Deputy Secretary Chris Beall, the Secretary's designee as the final agency decision maker, initiated review of the Initial Decision on his own motion. On September 2, 2021, Deputy Secretary Beall entered a Final Agency Order adopting in part and rejecting in part the Findings of Fact and Law set forth in the Initial Decision.

Notice of Ethical Wall

The Secretary of State's Office has in place both Confidentiality and Process walls with respect to the handling of campaign finance cases. In pertinent part, these guidelines define "Final Decision Makers" as the Secretary of State, Deputy Secretary of State, Chief of Staff, and Legal and Policy Director. The Final Decision Makers support and assist the designated final agency decision maker, in this case, the Deputy Secretary of State, in reaching a final decision. Other neutral staff may also be involved in the final decision process, so long as they are not members of the Campaign Finance Enforcement Team.

In the instant matter, OAC Case No. OS 2020-25, it has been determined that additional ethical walls are required to ensure the removal of any possible appearance of bias in the case. For that reason, Secretary of State Jena Griswold, Chief of Staff Michael Whitehorn, and Government and Public Affairs Director John Magnino, are all walled-off from any discussion of this case and had no involvement or input in any stage of this matter, including the issuance of the Final Agency Order.

OAC case: OS 2020-25
ED Case No. 2020-71

IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO

MOTION TO VACATE FINAL AGENCY ORDER

Suzanne Taheri, on behalf of Respondent, "No on EE-a bad deal for Colorado", requests the Department vacate the Final Agency Order. As grounds therefore, Respondent states the following:

1. On May 26, 2021 the Office of Administrative Court's Administrative Law Judge ("ALJ") as a hearing officer for the Department issued a decision in this matter, setting a fine in the amount of $10,000. No party filed exceptions to the decision.
2. The Deputy Secretary of State, acting on behalf of the final decision makers, initiated review on his own motion.
3. On September 2, 2021 the Deputy, again acting on behalf of the final decision makers assessed a fine of $30,000, triple the original fine.
4. "Final decision makers" of campaign finance matters include the Secretary of State, Deputy Secretary of State, Chief of Staff and Legal and Policy Director. *See att'd.*
5. The Secretary of State has a conflict of interest in that her brother, Chris Griswold, who also serves as manager and spokesperson of the Secretary's political campaign, consulted on the on Yes on EE campaign. https://hilltoppublicsolutions.com/team/chris-griswold/
6. Other senior staff appointees are deemed "neutral" in the process, but the current director of Government and Policy, John Magnino, is anything but neutral. He was, in fact, the campaign manager for the Yes on EE campaign.
7. The essential principles of due process apply to administrative hearings. *Electric Power v. Denver,* 737 P.2d 822 (Colo.1987). "The essence of due process is basic fairness in procedure. Administrative agencies have the obligation . . . to be fundamentally fair to the individual in the resolution of a legal dispute . . . ." *DeKoevend v. Bd. of Educ. of West End Sch. Dist. RE-2,* 688 P.2d 219, 227 (Colo. 1984) (citations omitted). At a minimum, the process must include "a neutral and detached decision maker." *Id.*
8. Here, the SOS has a conflict of interest and she is not just a member of the committee, she supervises the other committee members.
9. Such a process deprives Respondent of its due process rights.
10. The fine assessed in the matter is arbitrary and violates Respondent's First and Eighth Amendment rights.
11. For purposes of the Eighth Amendment, "[t]he notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law." *Austin v. United States,* 509 U.S. 602, 610, 113 S. Ct. 2801, 125 L. Ed. 2d 488

(1993) (quoting *United States v. Halper*, 490 U.S. 435, 447-48, 109 S. Ct. 1892, 104 L. Ed. 2d 487 (1989)).

12. Statutory penalties are subject to the constitutional prohibition against excessive fines. *See Associated Bus. Prods.*, 126 P.3d at 326; *Wolford v. Pinnacol Assurance*, 81 P.3d 1079, 1084 (Colo. App. 2003), *rev'd on other grounds*, 107 P.3d 947 (Colo. 2005). The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."
13. The Supreme Court has held that a civil fine is excessive "if it is grossly disproportional to the gravity of a defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). Likewise, a division of this court has said that a penalty" is excessive if the amount is so disproportionate to a defendants circumstances that there can be no realistic expectation that the defendant will be able to pay it." *Boulder Cty. Apartment Ass'n*, 97 P.3d at 338.
14. In *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575, 580, 583, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996), the Supreme Court articulated factors that should be considered when weighing the "reasonableness of a punitive damages award." In deciding whether the constitutional line for an excessive fine "has been crossed," the Court later condensed these factors by instructing lower courts to "focus on the same three criteria: (1) the degree of the defendant's reprehensibility or culpability; (2) the relationship between the penalty and the harm to the victim caused by the defendant's actions; and (3) the sanctions imposed in other cases for comparable misconduct." *Cooper Industries v. Leatherman Tool Group*, 532 U.S. 424 (2001).
15. As is the case here, a statutory damage award can be "devastatingly large . . . out of all reasonable proportion to the actual harm suffered," which could be a "sufficiently serious case [that] the due process clause might be invoked." *Parker v. Time Warner Entm't Co.*, 331 F.3d 13, 22 (2d Cir. 2003); *see also St. Louis, Iron Mountain & S. Ry. Co. v. Williams*, 251 U.S. 63, 66-67, 40 S. Ct. 71, 64 L. Ed. 139 (1919) (Although states have wide latitude in setting penalties for statutory violations, states cannot impose penalties "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.").
16. Disclaimer requirements are subject to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Buckley v. Valeo*, 424 U.S. 1, 64, 66, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)); *see also Citizens United v. Gessler*, 773 F.3d 200, 209 (10th Cir. 2014).
17. Not only must a disclosure requirement be substantially related to a sufficiently important government interest, but the disclosure requirement must also be narrowly tailored to the government's interest. *Americans for Prosperity Foundation v. Bonta,*, U.S. 141 S. Ct.2373 (2021). "While exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest." *Id.* "[A] substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored." *Id.* at 2384.
18. In order to pass exacting scrutiny, disclosure and disclaimer requirements must be substantially related and narrowly tailored to a sufficiently important government interest. *AFP*, 141 S. Ct. 2373.

19. "The *Buckley* Court identified important government interests that could meet the [exacting scrutiny] burden, including 'provid[ing] the electorate with information,' 'deter[ring] actual corruption and avoid[ing] the appearance of corruption,' and 'gathering the data necessary to detect violations of' other election laws." *Indep. Inst. v. Williams*, 812 F.3d 787, 792 (10th Cir. 2016) (quoting *Buckley*, 424 U.S. at 66-68). However, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Id.* (quoting *Doe v. Reed*, 561 U.S. 186, 196, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010)).
20. The statute or rule must have a substantial relationship and be narrowly tailored to the informational interest to survive exacting scrutiny. *See APF*, 141 S. Ct. at 2383.
21. In this case, Respondent was found to have violated the disclaimer laws. There is no dispute that Respondent did in fact properly name the committee on the disclaimer. Respondent only failed to name the registered agent, Patrick McDonald.
22. This requirement to provide the name of the registered agent provides no substantive information to the electorate. The voter registration records published by the Secretary show 19 Patrick McDonald's in Colorado. There is no address, phone number, website or other contact information on the disclaimer. To discover this information a voter must access Committee registration. When the voter does this, they will also find the registered agent. The requirement is duplicative.
23. The final agency order also identifies no governmental interest to be achieved through the disclosure. The only mention of the electorate interest is that it did not receive the, "full disclaimer to which it is entitled." (Order, p.13) Entitled for what reason? For what benefit to the electorate? The order is silent on this interest.
24. In light of the fact that the committee's name was on the disclaimer, the failure to list the agent's name is a de minimis violation at best. For this reason, the fine assessed is far in excess of the harm.
25. In the Final Order, the final decision makers, stated, "the Initial Decision provides no rationale nor any analysis on how the hearing officer reached the conclusion that $10,000—as opposed to some other amount—was an appropriate penalty, apparently picking that number out of the air without any evidence in the record or citation to rule or law."
26. Yet, the ALJ Decision contained more relevant analysis then the order of the final decision makers. The ALJ found the fine, "exorbitant". *Decision*, p.4 A review of similar offenses would support that conclusion. Prior to this fine the highest assessment for failure to comply with disclaimers was $500. *See att'd*. This assessment is 60x times. This certainly fits within "exorbitant". The ALJ also found the electorate had other publicly available means to identify the registered agent. *Decision*, p.4. These are relevant factors.
27. In contrast, the final decision makers in their order found "Respondent significantly cooperated with the Division's review and investigation of the complaint" and "Respondent disclosed more than Colorado law required at least with regard to information about the payee in which in-kind contributions." *Decision*, pp. 13-14. These are not relevant factors.
28. The First Amendment, which applies against Respondent by operation of the Fourteenth Amendment, guarantees the right to free speech. The Eighth Amendment protects Respondent from excessive fines.

29. By enforcing these provisions, the Department, under color of law, deprives Respondent, its donors, and their audience, of the right of free speech in violation of the First, Eighth and Fourteenth Amendments to the United States Constitution.

Wherefore, Respondent requests that the Final Agency Order be vacated, and the Decision entered as the final agency action.

Submitted this 1st day of October 2021.

/s/ Suzanne Taheri
Maven Law Group
staheri@mavenlawgroup.com
Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that the filing has been served by email this 1st day of October 2021, addressed as follows:

Peter.baumann@coag.gov

OACAppeals@coloradosos.gov

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
1/12/2019	AARON WILLIAM NOVY	COMMITTEE TO ELECT CALANDRA VARGAS, CALANDRA R VARGAS	ED2019-01	FALSIFIED REPORTING, ALLEGED ILLEGAL TERMINATION OF COMMITTEE ALLEGED	Closed	R	2/27/2019	ED Dismissed	THE ELECTIONS DIVISION FOUND THAT IT HAS INSUFFICIENT INFORMATION TO DETERMINE THAT RESPONDENT VIOLATED COLORADO CAMPAIGN FINANCE LAWS. THE COMPLAINT WAS DISMISSED.
1/23/2019	CHARLES L. HEATHERLY	JASON SALZMAN	ED2019-02	FAILURE TO REGISTER AS A POLITICAL COMMITTEE AND REPORT CONTRIBUTIONS...	Closed	NP	3/8/2019	ED Dismissed	Complaint alleged that ColoradoPols.com should have registered as a committee. THE ELECTIONS DIVISION FOUND THAT THE COMPLAINT DID NOT PROVIDE SUFFICIENT FACTS TO SUPPORT A VIOLATION OF COLORADO CAMPAIGN FINANCE LAW BY RESPONDENT.
1/23/2019	CHARLES HEATHERLY	COLORADO RISING FOR HEALTH AND SAFETY, PROGRESSNOW COLORADO	ED2019-03	FAILURE TO REGISTER AS AN ISSUE COMMITTEE AND FAILURE TO ACCURATELY DISCLOSE CONTRIBUTIONS ALLEGED	Closed	Issue (D)	3/9/2019	ED Dismissed	THE ELECTIONS DIVISION FOUND THAT RESPONDENT COLORADO RISING CURED THE DEFICIENCIES ALLEGED IN THE COMPLAINT AND SUBSTANTIALLY COMPLIED WITH COLORADO CAMPAIGN FINANCE LAW. THE ELECTIONS DIVISION ALSO FOUND THAT RESPONDENT PROGRESSNOW COLORADO WAS NOT REQUIRED TO REGISTER AN ISSUE COMMITTEE.
2/11/2019	DENNIS J. SIMPSON	GREG CATON, CITY OF GRAND JUNCTION, PHYLLIS NORRIS, DUKE WORTMANN	ED2019-04	PROHIBITED MUNICIPAL EXPENDITURES IN SUPPORT OF BALLOT MEASURE ALLEGE...	Closed	NP	5/7/2020	Settled	ED forwarded to OAC, settlement was reached. $313 fine.
3/5/2019	CAMPAIGN INTEGRITY WATCHDOG	COLORADO REPUBLICAN COMMITTEE INDEPENDENT EXPENDITURE COMMITTEE	ED2019-05	FAILURE TO REPORT CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING COM...	Closed	R	4/18/2019	ED Dismissed	THE ELECTIONS DIVISION DISMISSED THE COMPLAINT.
3/25/2019	DENNIS J. JONES	WILLIAM ARRICK, GREG BRAZILL, PATRICIA H. WADDLE	ED2019-06	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	NP	5/3/2019	Cured	Issue was a school board recall attempt. RESPONDENTS CURED THE DEFICIENCIES ALLEGED IN THE COMPLAINT.
4/10/2019	CAMPAIGN INTEGRITY WATCHDOG	COLORADO REPUBLICAN COMMITTEE INDEPENDENT EXPENDITURE COMMITTEE	ED2019-07	FAILURE TO REPORT DONATIONS, CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING COMMUNICATIONS ALLEGED	Closed	R	4/24/2019	ED Dismissed	THE ELECTIONS DIVISION DISMISSED THE COMPLAINT AS OUTSIDE THE APPLICABLE STATUTE OF LIMITATIONS.
6/12/2019	DONNA MARIE GINES	OFFICIAL RECALL COLORADO GOVERNOR JARED POLIS	ED2019-08	FAILURE TO FULLY DISCLOSE ALL REQUIRED INFORMATION FOR RECEIVED CONTR...	Closed	Issue (R)	6/24/2019	ED Dismissed	THE ELECTIONS DIVISION DISMISSED THE COMPLAINT BECAUSE THE COMPLAINT FAILS TO ALLEGE A VIOLATION OF COLORADO CAMPAIGN FINANCE LAW AND FAILS TO ALLEGE SUFFICIENT FACTS TO SUPPORT A LEGAL AND FACTUAL BASIS FOR THE COMPLAINT.
6/18/2019	DESTINY ROMPELLA	RESIST POLIS PAC	ED2019-09	ILLEGAL EXPENDITURE ALLEGED	Closed	Issue (R)	6/29/2019	ED Dismissed	THE ELECTIONS DIVISION DISMISSED THE COMPLAINT BECAUSE THE COMPLAINT FAILS TO ALLEGE A VIOLATION OF COLORADO CAMPAIGN FINANCE LAW.
7/24/2019	CAMPAIGN INTEGRITY WATCHDOG	COLORADO PIONEER ACTION	ED2019-10	FAILURE TO REGISTER AS A POLITICAL COMMITTEE, ILLEGAL TERMINATION OF A COMMITTEE, FAILURE TO REPORT CONTRIBUTIONS, DISBURSEMENTS, AND ELECTIONEERING COMMUNICATIONS ALLEGED	Closed	Political (R)	11/14/2020	ED Dismissed	
8/7/2019	JAMIE L SARCHE	RECALL TOM SULLIVAN	ED2019-11	FAILURE TO PROPERLY DISCLOSE CONTRIBUTIONS, EXPENDITURES AND IN-KIND DONATIONS ALLEGED	Closed	Issue (R)	1/9/2020	Settled	$4,100 fine, updated filings

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
8/7/2019	JAMIE L SARCHE	RESIST POLIS PAC, DISMISS POLIS	ED2019-12	DELIBERATE CIRCUMVENTION OF REPORTING REQUIREMENTS BY PROVIDING CONTRIBUTORS WITH A "POLIS PENNY" ALLEGED	Closed	Issue (R)	1/10/2020	Settled	$2,300 fine, no more anonymous contributions.
8/12/2019	STARLA BRETHAUER	OFFICIAL RECALL COLORADO GOVERNOR JARED POLIS	ED2019-13	DECEPTION BY AN ISSUE COMMITTEE TO COLLECT CONTRIBUTIONS ALLEGED	Closed	Issue (R)	9/3/2019	Dismissed by SoS	Dismissed by Deputy SoS upon request of ED Staff
8/16/2019	NANCY PALLOZZI	DEMOCRACY FIRST COLORADO AKA DEMOCRACY FOR COLORADO	ED2019-14	DISTRIBUTION OF COMMUNICATIONS BY UNREGISTERED ISSUE COMMITTEE ALLEGED	Closed	Issue (D)	12/20/2019	Settled	$250 fine as the result of a printing error (wrong paid for name on materials)
8/23/2019	CAMPAIGN INTEGRITY WATCHDOG	ALLIANCE FOR A SAFE AND INDEPENDENT WOODMEN HILLS	ED2019-15	VIOLATION OF CONTRIBUTION LIMITS, FAILURE TO TIMELY AND ACCURATELY DISCLOSE CONTRIBUTIONS ALLEGED	Closed	Political	11/12/2019	Dismissed by SoS	Dismissed by Deputy SoS upon request of ED Staff
9/3/2019	SCOTT SAUNDERS	LEWIS PALMER SCHOOL DISTRICT 38, STRONG D38 COMMUNITY	ED2019-16	FAILURE TO REPORT IN-KIND DONATIONS ALLEGED	Closed	Issue	11/21/2019	Dismissed	Dismissed by Deputy SoS upon request of ED Staff
9/3/2019	T CRAIG WALLER	CRAIG BAKER	ED2019-17	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed ELIGIBLE ELECTORS SPEAKING TRUTH TO POWER, regarding Arabian Acres MD
9/3/2019	T CRAIG WALLER	BETTY WILLIAMS	ED2019-18	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	T CRAIG WALLER	ALAN BROWN	ED2019-19	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	T CRAIG WALLER	DENNIS WILKINSON	ED2019-20	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	EDITH COFFMAN	BETTY WILLIAMS	ED2019-21	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	EDITH COFFMAN	DENNIS WILKINSON	ED2019-22	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	EDITH COFFMAN	CRAIG BAKER	ED2019-23	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/9/2019	COMMITTEE TO RECALL BRIGHTON MAYOR KEN KREUTZER, JEREMY TORGERSON	KEN KREUTZER	ED2019-24	FAILURE TO REGISTER AS AN ISSUE COMMITTEE OR SMALL-SCALE ISSUE COMMITTEE	Closed	Issue (NP)	9/26/2019	Dismissed by SoS	Municipal matter. Finding of no jurisdiction. Dismissed by Deputy SoS Flanagan upon request of ED Staff

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
9/13/2019	MARILYN CALLAN	CRAIG BAKER	ED2019-25	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/13/2019	MARILYN CALLAN	BETTY WILLIAMS	ED2019-26	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/27/2019	DOUGLAS BRUCE	COLORADANS FOR PROSPERITY AKA YES ON PROP CC	ED2019-27	FAILURE TO REPORT DONATIONS AS AGGREGATE ALLEGED	Closed	Issue	12/13/2019	Dismissed by SoS	Dismissed by Deputy SoS upon request of ED Staff; violations were cured
10/7/2019	WILLIAM ARRICK	CHARLES MICHAEL SOLOMONE	ED2019-28	FAILURE TO FILE CANDIDATE AFFIDAVIT ALLEGED	Closed	NP	12/23/2019	Settled	Dismissed by ALJ; $50 fine, updated filings. School District Candidate
10/15/2019	CINDRA BARNARD	KORY NELSON	ED2019-29	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	NP	2/12/2020	Settled	Dismissed by ALJ; $100 fine. School district candidate
10/15/2019	CINDRA BARNARD	ANDY JONES	ED2019-30	DISCLAIMER STATEMENT VIOLATIONS ALLEGED	Closed	NP	1/13/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/17/2019	CINDRA BARNARD	ANDY JONES	ED2019-31	DISCLAIMER STATEMENT VIOLATIONS ALLEGED	Closed	NP	1/13/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/18/2019	ARLAN KLUTH	SUSAN MEEK FOR DCSD (DOUGLAS COUNTY SCHOOL DISTRICT)	ED2019-34	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	NP	1/7/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/18/2019	ARLAN KLUTH	DOUGLAS COUNTY PARENTS	ED2019-32	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	Political	3/5/2020	Settled	Settled with $100 fine. Dismissed by ALJ upon settlement.
10/18/2019	ARLAN KLUTH	DOUGLAS COUNTY PARENTS	ED2019-33	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	Political	11/6/2019	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/18/2019	ARLAN KLUTH	HANSON FOR DCSD (DOUGLAS COUNTY SCHOOL DISTRICT)	ED2019-35	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	NP	1/7/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/18/2019	ARLAN KLUTH	DAVID RAY FOR BOE (BOARD OF EDUCATION)	ED2019-36	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	NP	1/7/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/25/2019	KATHERINE M. LEE	ANTHONY ROSSO	ED2019-37	ILLEGALLY OBTAINING PERSONAL INFORMATION OF ELECTORS IN THE FORM OF AN EMAIL LIST ALLEGED	Closed	NP	2/25/2020	Settled	Settled with $50 fine after being referred to OAC by Department. (School Board)
11/4/2019	DALE G. NICHOLS	BETTER JOBS COALITION	ED2019-38	FAILURE TO REPORT EXPENDITURES ALLEGED	Closed	IEC	2/20/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.
11/19/2019	JON F. G. GINSBERG	ROBERT A LEMBKE	ED2019-39	HAVA VIOLATION ALLEGED	Closed	NP	12/12/2019	Dismissed by SoS	ED moved to dismiss; Deputy Flanagan approved. Complaint was untimely and failed to allege any actual violation of CPF law. [Based upon the information provided, this appears to be a complainant who may have mental health issues.]
12/6/2019	DAVID J. CHANDLER	MARC WILLIAMS FOR MAYOR	ED2019-41	VIOLATION OF AGGREGATE CONTRIBUTION LIMIT ALLEGED	Closed	NP	12/20/2019	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.
12/3/2019	CLIFFORD G. FLEETWOOD	JOHN HICKENLOOPER	ED2019-40	THEFT OF PUBLISHING ASSETS ALLEGED	Closed	D	12/23/2019	Dismissed by SoS	Untimely complaint; ED moved to dismiss; Deputy Flanagan approved.
12/19/2019	LAURA RICHARDS	JENNIFER BACON	ED2019-42	FAILURE TO FILE CANDIDATE AFFIDAVIT ALLEGED	Closed	D	3/3/2020	Dismissed by SoS	Failure to file candidate affidavit was cured. Dismissed without fine or penalty.

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
1/24/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COLORADO STOP THE WOLF COALITION	ED2020-01	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Issue	2/5/2021	Fined	Agency-initiated action. ALJ recommended $1k fine, Deputy Secretary Raider increased fine to $22k. Final agency action complete.
2/4/2020	KATHERINE COLLINS DAVIS	MARIA FOR COLORADO	ED2020-02	FAILURE TO REPORT EXPENDITURE ALLEGED	Closed	D	5/11/2020	Dismissed by SoS	Division's Motion to Dismiss was granted by Deputy Rayder. Finding of no violation.
3/2/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COLORADO DEMOCRATIC PARTY	ED2020-03	CONTRIBUTION LIMIT VIOLATION ALLEGED	Closed	D	5/24/2020	Dismissed by SoS	Violation was cured; Division's motion to dismiss was granted by Deputy Rayder.
3/3/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	BERNARD FOR HD 7	ED2020-04	FAILURE TO DISCLOSE CONTRIBUTOR INFORMATION ALLEGED	Closed	D	6/13/2020	Dismissed by SoS	Violations 1 and 2 were dismissed outright. Violation 3 was cured. Division's motion to dismiss was granted by Deputy Rayder.
3/3/2020	MICHAEL PAGE	JOHN MICHAEL KELLY	ED2020-05	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	5/27/2020	Dismissed by SoS	Finding of no violation.
3/5/2020	CAMPAIGN INTEGRITY WATCHDOG	ELECTCLINT.COM	ED2020-06	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	R	5/27/2020	Dismissed by SoS	Finding of no violation.
3/11/2020	JOSHUA A. CLUPNY	FRIENDS OF MISSY, MISSY WARD	ED2020-07	FAILURE TO FILE REPORT ALLEGED	Closed	R	4/1/2020	Dismissed by SoS	Waiver requested; dismissed by Deputy Rayder at request of ED. Waiver was eventually granted.
3/23/2020	GRADY NOUIS	VAN BEBER FOR STATE HOUSE	ED2020-08	ERRONEOUS FILING BY COMMITTEE ALLEGED	Closed	R	9/2/2020	Settled	$200 fine.
3/26/2020	DAVID ALTMAN	NORA ENID GOOD, LAURA PALMER, PETER SIMMONS	ED2020-09	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	NP	5/24/2020	Dismissed by SoS	Dismissed - finding of no violation; Complaint was about an HOA election.
3/27/2020	KENNETH DANTI	PUEBLOCARES	ED2020-10	CREATION OF TWO ENTITIES CALLED "PUEBLOCARES" WITH THE PURPOSE OF AVOIDING FULL FINANCIAL DISCLOSURES AS REQUIRED BY LAW ALLEGED	Closed	Issue	4/15/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.
3/27/2020	CAMPAIGN INTEGRITY WATCHDOG	ELECTCLINT.COM	ED2020-11	FAILURE TO INCLUDE DISCLAIMER STATEMENT ON CAMPAIGN COMMUNICATIONS AL...	Closed	R	8/3/2020	Settled	$240 fine. Dismissed by ALJ upon settlement.
3/30/2020	THOMAS A. BLOMSTER	PUEBLOCARES	ED2020-12	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Issue	4/15/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.
3/30/2020	PETER SIMMONS	ARLETA JOY DEMOTS	ED2020-13	HOA FUNDS USED TO PROMOTE CONSERVATORY METRO BOARD CANDIDATES ALLEGED	Closed	NP	7/8/2020	Dismissed by SoS	No evidence found to sustain the complaint; dismissed by Deputy Rayder on request of ED. Complaints 2020-13, 2020-14, and 2020-15 joined together.
3/30/2020	PETER SIMMONS	DAVID E. ALTMAN	ED2020-14	HOA FUNDS USED TO PROMOTE CONSERVATORY METRO BOARD CANDIDATES ALLEGED	Closed	NP	7/8/2020	Dismissed by SoS	No evidence found to sustain the complaint; dismissed by Deputy Rayder on request of ED. Complaints 2020-13, 2020-14, and 2020-15 joined together.
3/30/2020	PETER SIMMONS	ROBERT C. GILES	ED2020-15	HOA FUNDS USED TO PROMOTE CONSERVATORY METRO BOARD CANDIDATES ALLEGED	Closed	NP	7/8/2020	Dismissed by SoS	No evidence found to sustain the complaint; dismissed by Deputy Rayder on request of ED. Complaints 2020-13, 2020-14, and 2020-15 joined together.
4/2/2020	PAMELA A. KUHRT	PUEBLO CARES	ED2020-16	ISSUE COMMITTEE NOT REPORTING CONTRIBUTIONS ALLEGED	Closed	Issue	4/15/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.

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4/7/2020	BRIAN MATER	ABEL J TAPIA	ED2020-17	FAILURE TO REGISTER AS A CANDIDATE ALLEGED	Closed	D	6/13/2020	Dismissed by SoS	Cured by filing affidavit; ED moved to dismiss because the complaint lacked severity. Deputy Rayder apporved dismissal.
4/13/2020	PETER SIMMONS	DAVID E. ALTMAN	ED2020-18	ILLEGAL CONTRIBUTION RECEIVED BY RESPONDENT ALLEGED	Closed	NP	5/4/2020	Dismissed by SoS	ED moved to dismiss. No factual or legal basis found for complaint. Deputy Rayder dismissed. Consolidaded complaints ED2020-18, ED2020-19, ED2020-20
4/13/2020	PETER SIMMONS	ARLETA JOY DEMOTS	ED2020-19	ILLEGAL CONTRIBUTION RECEIVED BY RESPONDENT ALLEGED	Closed	NP	5/4/2020	Dismissed by SoS	ED moved to dismiss. No factual or legal basis found for complaint. Deputy Rayder dismissed. Consolidaded complaints ED2020-18, ED2020-19, ED2020-20
4/13/2020	PETER SIMMONS	JANINE SCHILLING	ED2020-20	ILLEGAL CONTRIBUTION RECEIVED BY RESPONDENT ALLEGED	Closed	NP	5/4/2020	Dismissed by SoS	ED moved to dismiss. No factual or legal basis found for complaint. Deputy Rayder dismissed. Consolidaded complaints ED2020-18, ED2020-19, ED2020-20, ED2020-21
4/13/2020	PETER SIMMONS	ROBERT C. GILES	ED2020-21	ILLEGAL CONTRIBUTION RECEIVED BY RESPONDENT ALLEGED	Closed	NP	5/4/2020	Dismissed by SoS	ED moved to dismiss. No factual or legal basis found for complaint. Deputy Rayder dismissed. Consolidaded complaints ED2020-18, ED2020-19, ED2020-20, ED2020-21
4/13/2020	CAMPAIGN INTEGRITY WATCHDOG	COLORADO PIONEER ACTION	ED2020-22	ILLEGAL COMMITTEE TERMINATION, FAILURE TO ACCURATELY FILE REPORTS, VIOLATION OF CONTRIBUTION LIMITS ALLEGED	Closed	Political (R)	8/4/2020	Dismissed by SoS	Dismissed by Deputy Rayder at request of ED. NOTE: PARTIAL REPEAT ALLEGATIONS FROM 2019 COMPLAINT AND FAILURE TO ALLEGE VIOLATION(S) OF LAW.
4/15/2020	BRIAN TIMOTHY FENWICK	CODY J DAVIS	ED2020-23	PROHIBITED CONTRIBUTION ACCEPTED BY RESPONDENT ALLEGED	Closed	R	5/5/2020	Dismissed by SoS	ED moved to dismiss. Complaint fails to specifically identify one or more violations of Colorado campaign finance law by Respondent. Deputy Rayder dismissed.
4/15/2020	BRIAN TIMOTHY FENWICK	MESA COUNTY	ED2020-24	PROHIBITED CONTRIBUTION MADE TO CANDIDATE ALLEGED	Closed	R	7/1/2020	Dismissed by SoS	ED moved to dismiss. Motion granted by Deputy Rayder. APPEARANCE OF OFFICIALS ON FACEBOOK LIVE DOES NOT MEET THE CRITERIA OF WHEN DEFINES A CONTRIBUTION.
4/20/2020	GRADY NOUIS	VAN BEBER FOR STATE HOUSE	ED2020-26	INACCURATE DISCLOSURE FILINGS ALLEGED	Closed	R	9/2/2020	Settled	Settled for $200. Deputy Rayder approved settlement. Committee amended its reports to add over $2,000 in previously unnoted contributions.
4/20/2020	STEPHEN JACOBS	PARK FOREST WATER DISTRICT	ED2020-25	ILLEGAL USE OF STATE FUNDS ALLEGED	Closed	NP	7/6/2020	Dismissed by SoS	ED moved to dismiss; Motion granted by Deputy Rayder. INSUFFICIENT EVIDENCE TO SUPPORT CLAIMS; ACTIONS TAKEN BY RESPONDENT DO NOT QUALIFY AS A CONTRIBUTION AS DEFINED BY LAW.
4/23/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COLORADO REPUBLICAN COMMITTEE	ED2020-27	CONTRIBUTION ACCEPTED OVER THE LEGAL AGGREGATE AMOUNT ALLOWED BY LAW ...	Closed	Political Party (R)	8/3/2020	Dismissed by SoS	Issue was cured; ED moved to dismiss. Deputy Rayder granted motion to dismiss. NONCOMPLIANCE WAS MINIMAL; VIOLATION WAS CURED BY RESPONDENT.
4/28/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	FRIENDS OF ROBERT PRESCOTT	ED2020-28	CONTRIBUTIONS OVER THE LEGAL AGGREGATE AMOUNT ALLEGEDLY ACCEPTED	Closed	R	4/29/2020	Withdrawn	Statute was not in effect at the time the offense occurred.
5/6/2020	ALEXANDER CHRISTIAN NEUBAUER	MARIA FOR COLORADO	ED2020-29	INACCURATE TRACER FILING ALLEGED	Closed	D	7/23/2020	Dismissed by SoS	First Motion to Dismiss was denied. Subsequent investigation resulted in a new Motion to Dismiss. Motion to Dismiss granted by Deputy Rayder. FACTS DO NOT SUPPORT A LEGAL BASIS FOR COMPLAINT.
5/7/2020	TIM DICKSON	MARIA FOR COLORADO	ED2020-31	INACCURATE TRACER FILING ALLEGED	Closed	D	7/9/2020	Dismissed by SoS	RESPONDENT CURED AND SUBSTANTIALLY COMPLIED; SECOND CLAIM LACKS EVIDENCE TO SUPPORT LEGAL BASIS FOR CLAIM

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
5/6/2020	DOROTA WRIGHT-O'NEILL	SUZANNE STAIERT	ED2020-30	FAILURE TO FULLY DISCLOSE FINANCIAL RECORDS ALLEGED	Closed	R	3/18/2021	Fined	$850 fine issued by Deputy Beall as final agency decision.
5/11/2020	WILLIAM RAY	SENSIBLE GROWTH	ED2020-32	FAILURE TO FILE FINANCIAL DISCLOSURE ALLEGED	Closed	Issue	8/24/2020	Dismissed by SoS	Dismissed by Deputy Rayder. MOTION TO DISMISS FILED 7/20/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 8/24/2020. MOTION TO DISMISS GRANTED 8/24/2020. RESPONDENT CURED VIOLATION AND SUBSTANTIALLY COMPLIED WITH THE LAW
5/27/2020	H. B. MENDENHALL	FY HAUCK HOSE COMPANY	ED2020-33	FAILURE TO ACCURATELY FILE REPORT ALLEGED	Closed	Issue	1/14/2021	Settled	$430 fine
5/28/2020	DONNA LYNN WINDHOLZ	LESLEY ANNE SCHOONMAKER TAYLOR	ED2020-34	ERRONEOUS DONOR INFORMATION ON CONTRIBUTION ALLEGED	Closed	R	6/16/2020	Dismissed by SoS	Complaint did not allege an offense. ED moved to dismiss, Deputy Rayder approved. Donation was to committee to elect Rupert Parchment SD 23
5/28/2020	DONNA LYNN WINDHOLZ	RUPERT PARCHMENT	ED2020-35	CONTRIBUTION ACCEPTED WITH ERRONEOUS DONOR INFORMATION ALLEGED	Closed	R	9/14/2020	Dismissed by SoS	Cured / finding of no intent. MOTION TO DISMISS FILED 8/10/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 9/14/2020. MOTION TO DISMISS GRANTED BY DEPUTY SECRETARY ON 9/14/2020.
5/28/2020	DONNA LYNN WINDHOLZ	KERSEY AREA RESIDENTS AGAINST TAXATION KARAT, TIMOTHY JOHN PHIPPARD	ED2020-36	USE OF COMMITTEE FUNDS OTHER THAN RESPONDENT'S COMMITTEE ALLEGED	Closed	Issue	6/13/2020	Dismissed by SoS	Failed to assert a violation of law; ED moved to dismiss. Motion granted by Deputy Rayder.
6/8/2020	DONNA LYNN WINDHOLZ	LESLEY ANNE SCHOONMAKER TAYLOR	ED2020-37	ERRONEOUS INFORMATION SUBMITTED WITH CONTRIBUTION ALLEGED	Closed		6/16/2020	Dismissed by SoS	Complaint did not allege an offense. ED moved to dismiss, Deputy Rayder approved.
6/8/2020	KYLE ALEXANDER FEUER	KARL HANLON	ED2020-38	FAILURE TO REPORT EXPENDITURES & DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	10/7/2020	Settled	$300 fine, dismissed by OAC.
6/9/2020	DONNA LYNN WINDHOLZ	SHERYL FERNANDEZ	ED2020-39	FAILURE TO REPORT EXPENDITURES ALLEGED	Closed	R	8/25/2020	Dismissed by SoS	Someone sent email purportedly from respondent, but email was subsequently proven not to have originated from respondent. Marble for HD 49 (primary) MOTION TO DISMISS FILED 7/27/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 8/31/2020. MOTION TO DISMISS GRANTED 8/25/2020. INSUFFICIENT EVIDENCE TO SUPPORT ALLEGATIONS.
6/9/2020	DONNA LYNN WINDHOLZ	MARBLE FOR HD49	ED2020-40	FAILURE TO REPORT EXPENDITURES ALLEGED	Closed	R	8/25/2020	Dismissed by SoS	Respondent was the victim of fraud. See ED2020-39 MOTION TO DISMISS FILED 7/27/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 8/31/2020. MOTION TO DISMISS GRANTED 8/25/2020. INSUFFICIENT EVIDENCE TO SUPPORT ALLEGATIONS.
6/10/2020	KRISTEN HIRSCH	STEVEN ANDREW PALETZ	ED2020-41	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	8/25/2020	Settled	$250 fine
6/10/2020	GIL SELINGER	STEVEN L WOODROW	ED2020-42	PROHIBITED CONTRIBUTION ACCEPTED AND FAILURE TO DISCLOSE EXPENDITURES...	Closed	D	10/1/2020	Cured	Contribution over the limit was refunded; violation cured. MOTION TO DISMISS FILED 8/28/2020. DETERMINATION ON MOTION TO DISMISS REQUESTED BY 10/2/2020. MOTION TO DISMISS GRANTED 10/01/2020.

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
6/11/2020	DUSTI GURULE	COALITION FOR WOMEN AND CHILDREN	ED2020-43	FAILURE TO FILE REPORTS ALLEGED	Closed	Issue (R)	8/17/2020	Cured	Cured. ED Motion to Dismiss granted by Deputy Rayder
6/19/2020	TINA M PETERS	MESA COUNTY, TEAK SIMONTON	ED2020-46	ILLEGAL CONTRIBUTION ALLEGED	Closed	D	8/27/2020	Cured	MOTION TO DISMISS FILED 7/23/2020. DETERMINATION ON MOTION TO DISMISS REQUESTED FROM DEPUTY SECRETARY 8/27/2020. MOTION TO DISMISS GRANTED 8/27/2020. RESPONDENT CURED POTENTIAL VIOLATION.
6/18/2020	JENNIFER ENGEL	GARRISON PAUL GENSCHORCK	ED2020-44	FAILURE TO REGISTER CANDIDATE COMMITTEE, FAILURE TO ACCURATELY DISCLOSE EXPENDITURES ALLEGED	Closed	R	12/16/2020	Settled	$300 fine
6/18/2020	WILLIAM J RUSSELL	ARN MENCONI, VOTE ARN 2020	ED2020-45	FAILURE TO REPORT EXPENDITURE, DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	9/11/2020	Cured	MOTION TO DISMISS FILED 8/7/2020. DETERMINATION ON MOTION TO DISMISS REQUESTED FROM DEPUTY SECRETARY 9/11/2020. MOTION TO DISMISS GRANTED BY DEPUTY RAYDER 9/11/2020.
6/22/2020	CAMPAIGN INTEGRITY WATCHDOG	ELECTCLINT.COM	ED2020-47	FAILURE TO ACCURATELY DISCLOSE CONTRIBUTIONS AND EXPENDITURES, ILLEGAL USE OF CAMPAIGN CONTRIBUTIONS ALLEGED	Closed	R	11/25/2020	Settled	$100 fine.
6/22/2020	MICHAEL PRUZNICK	KRISTIN FOR LARIMER	ED2020-48	PROHIBITED CONTRIBUTION AND ERRONEOUS FILING ALLEGED	Closed	D	11/5/2020	Cured	Violations 1 and 3 were cured. Finding of no violation on #2. Dismissed by Deputy Rayder 11/5/2020
6/24/2020	MICHAEL PRUZNICK	KRISTIN FOR LARIMER	ED2020-49	TRANSFERRING OF FUNDS FROM ONE COMMITTEE TO ANOTHER ALLEGED.	Closed	D	11/5/2020	Cured	Violations 1 and 3 were cured. Finding of no violation on #2. Dismissed by Deputy Rayder 11/5/2020
6/29/2020	LLOYD COVENS	GARRISON ORTIZ FOR PUEBLO COUNTY, GARRISON ORTIZ	ED2020-50	FAILURE TO REPORT ELECTIONEERING COMMUNICATIONS AND ACCURATELY FILE REPORTS ALLEGED	Closed	D	7/8/2020	Withdrawn	Allegation was withdrawn.
7/6/2020	HEATHER PREWITT	COMMITTEE TO ELECT RICHIE FRANGIOSA	ED2020-51	INCOMPLETE TRACER FILINGS ALLEGED	Closed	L	10/9/2020	Cured	Violations were cured; Motion to dismiss granted by Deputy Rayder
7/29/2020	MARY RAY WHITE	ARICA ANDREATTA	ED2020-52	FAILURE TO INCLUDE THE REQUIRED "PAID FOR BY" DISCLAIMER STATEMENT ON SIGNAGE ALLEGED	Closed	D	8/19/2020	Dismissed by SoS	Finding of no violation; Motion to Dismiss granted by Deputy Rayder MOTION TO DISMISS FILED 8/12/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 8/19/2020. DISMISSED 8/19/2020 DUE TO LACK OF SPECIFIC FACTS ALLEGED IN COMPLAINT TO SUPPORT ALLEGATIONS.
8/11/2020	ALLAN I. KROLL	TAY ANDERSON FOR DENVER SCHOOL BOARD	ED2020-53	INACCURATE TRACER FILINGS ALLEGED	Closed	D	12/14/2020	Dismissed by SoS	Some violations were cured; the rest were finding of no violation. ED Motion to Dismiss granted by Deputy Rayder.
8/26/2020	AUDREY M. COLE	COMMITTEE TO ELECT RICHIE FRANGIOSA	ED2020-54	INACCURATE TRACER FILING ALLEGED	Closed	L	10/9/2020	Cured	See also: ED-2020-51 Cured; Motion to Dismiss granted by Deputy Rayder.
8/26/2020	AUDREY M. COLE	COMMITTEE TO ELECT RICHIE FRANGIOSA	ED2020-55	INACCURATE TRACER FILING ALLEGED	Closed	L	10/9/2020	Cured	See also: ED-2020-51 Cured; Motion to Dismiss granted by Deputy Rayder.
8/26/2020	AUDREY M. COLE	COMMITTEE TO ELECT RICHIE FRANGIOSA	ED2020-56	INCOMPLETE TRACER FILING ALLEGED	Closed	L	10/9/2020	Cured	See also: ED-2020-51 Cured; Motion to Dismiss granted by Deputy Rayder.
8/27/2020	KATHERINE DORMAN, SCOTT WASSERMAN	UNITE FOR COLORADO	ED2020-57	FAILURE TO REGISTER AN ISSUE COMMITTEE, FAILURE TO REPORT CONTRIBUTIONS ALLEGED	Open				ED Motion to Dismiss was denied by Deputy Rayder. Sent to OAC.

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
8/31/2020	MARK S. GRIFFITH	MATT ARNOLD, CAMPAIGN INTEGRITY WATCHDOG, GEORGE FOR DOUGCO, GEORGE PATRICK TEAL	ED2020-58	FAILURE TO REGISTER A COMMITTEE AND/OR REPORT IN-KIND DONATIONS	Closed	R	9/22/2020	Dismissed by SoS	ED Motion to Dismiss granted by Deputy Rayder
8/31/2020	RICHARD L. STELTER	DELTA COUNTY SHERIFF'S DEPARTMENT	ED2020-59	PROHIBITED IN-KIND CONTRIBUTIONS ALLEGED	Closed	Issue	11/13/2020	Settled	$500 fine.
9/4/2020	CAROLYN BOLLER	KARL STECHER	ED2020-60	FAILURE TO REGISTER A CANDIDATE COMMITTEE ALLEGED	Open	R			No update since initial filing.
9/10/2020	LAWRENCE TURNER	LINDA STANLEY, VOTE STANLEY DA11	ED2020-61	ILLEGAL CAMPAIGNING, PROHIBITED CONTRIBUTION, AND FAILURE TO REPORT E...	Closed	R	2/17/2021	Settled	$360 fine
9/11/2020	KATHERINE LEAF	SAMANTHA KOCH	ED2020-62	FAILURE TO FULLY DISCLOSE CONTRIBUTIONS AND EXPENDITURES ALLEGED	Closed	R	12/1/2020	Cured	Cured; Motion to Dismiss granted by Deputy Rayder.
9/16/2020	LESLEY THOMPSON	LARRY G. LISTON	ED2020-63	FAILURE TO PROPERLY INCLUDE DISCLAIMER STATEMENTS ON CAMPAIGN SIGNAGE...	Closed	R	4/12/2021	Fined	$250 fine, final agency decision isued by Deputy Beall
9/17/2020	ROBERT A. DEWEY	KAITLIN TURNER	ED2020-64	ILLEGAL USE OF LOGO IN CAMPAIGN ADVERTISEMENT ALLEGED	Closed	D	10/9/2020	Dismissed by SoS	Dismissed by Deputy Rayder; finding of no violation of CPF regulations.
9/23/2020	TINA WOODMAN	CLIFFORD LUCERO	ED2020-65	FAILURE TO INCLUDE DISCLAIMER STATEMENTS ON ELECTIONEERING COMMUNICAT...	Closed	D	9/28/2020	Withdrawn	Complaint was withdrawn
9/23/2020	LISA PASCOE	KAITLIN TURNER FOR DISTRICT ATTORNEY	ED2020-66	INFRINGEMENT OF FIRST AMENDMENT RIGHTS ALLEGED	Closed	D	10/15/2020	Dismissed by SoS	ED Motion to Dismiss granted by Deputy Rayder; finding of no CPF violation
10/2/2020	ANDREW SCHAFER	LARRY G. LISTON	ED2020-67	FAILURE TO INCLUDE DISCLAIMER STATEMENTS ON CAMPAIGN COMMUNICATIONS A...	Closed	R	4/12/2021	Fined	See also ED 2020-63 $250 fine.
10/6/2020	RONALD E. LEE	DENVER PUBLIC SCHOOLS, STEPHANIE F. DONNER	ED2020-68	CAMPAIGNING AT MANDATORY SCHOOL STAFF MEETING ALLEGED	Closed	NP	12/12/2020	Dismissed by SoS	ED Motion to Dismiss granted by Deputy Rayder; The meetings were apolitical in nature and that Respondents took steps to ensure that the meetings were not held for the purpose of promoting any person's candidacy for public office.
10/6/2020	RONALD E. LEE	KEO FRAZIER	ED2020-69	CAMPAIGNING AT MANDATORY SCHOOL STAFF MEETINGS ALLEGED	Closed	NP	12/12/2020	Dismissed by SoS	ED Motion to Dismiss granted by Deputy Rayder; The meetings were apolitical in nature and that Respondents took steps to ensure that the meetings were not held for the purpose of promoting any person's candidacy for public office.
10/8/2020	JEFFERSON COUNTY DEMOCRATIC PARTY	LIBBY SZABO FOR JEFFCO	ED2020-70	DISCLAIMER STATEMENT VIOLATIONS ALLEGED	Closed	R	6/9/2021	Fined	$500 fine.
10/8/2020	ANNA JO HAYNES	NO ON EE - - A BAD DEAL FOR COLORADO	ED2020-71	DISCLAIMER STATEMENT VIOLATION AND FALSE STATEMENTS ALLEGED	Open	Issue			OAC issued decision; no indication on the current record whether that decision was accepted or challenged.
10/9/2020	KENNETH D. CARDWELL	TOWN OF KIOWA, TOWN MANAGER, CLERK, AND MAYOR	ED2020-72	UNCLEAR ALLEGATIONS LISTED	Closed	NP	10/30/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed by Deputy Rayder
10/14/2020	PAUL VRANAS	QUINN PIGOTT, REPLACE DENVER BSL LLC	ED2020-73	FAILURE TO REGISTER AN ISSUE COMMITTEE ALLEGED	Closed	Issue	11/4/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed by Deputy Rayder

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
10/15/2020	YVETTE PROCTOR	ROCKY FORD VOTE YES COMMITTEE	ED2020-74	ILLEGAL USE OF FUNDS FOR CAMPAIGNING ALLEGED	Closed	Issue	11/5/2020	Dismissed by SoS	Deputy Rayder dismissed with order to open a new investigation into a different respondent, Foundation for Rocky Ford Schools. The Division does not appear to have heeded this order.
10/15/2020	LORI GOLDSTEIN	DEBORAH TETER	ED2020-75	FAILURE TO REGISTER AN ISSUE COMMITTEE ALLEGED	Closed	Issue	11/5/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed by Deputy Rayder
10/21/2020	THERESA WATSON	BOULDER COUNTY DEMOCRATIC PARTY	ED2020-76	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	12/15/2020	Settled	$50 fine
10/21/2020	DEBORA FISK	WENDELL A. KOONTZ	ED2020-77	FAILURE TO REGISTER A COMMITTEE ALLEGED	Closed	R	2/19/2021	Settled	$700 fine; failure to form candidate committee.
10/22/2020	F GUTHRIE CASTLE JR	OURAY COUNTY INTEGRITY PROJECT	ED2020-78	INCORRECT REGISTRATION AS INDEPENDENT EXPENDITURE COMMITTEE ALLEGED	Closed	Issue	11/13/2020	Dismissed by SoS	ED moved to dismiss; Deputy Rayder approved; complaint does not show sufficient facts.
10/27/2020	MATTHEW MENZA	BOULDER COUNTY DEMOCRATIC PARTY	ED2020-79	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	Political (D)	12/15/2020	Settled	$50 fine
10/23/2020	HARRY BARTON MENDENHALL II	VJ PROCTOR, YVETTE PROCTOR	ED2020-80	FAILURE TO FILE AND DISCLAIMER STAEMENT VIOLATIONS ALLEGED	Closed	Issue	11/16./2020	Dismissed by SoS	ED moved to dismiss; Deptuy Rayder granted.
10/30/2020	JESSIE VANCE	DAVID BLACH	ED2020-81	FAILURE TO FILE REPORTS ALLEGED	Closed	D	2/16/2021	Settled	$400 fine
10/30/2020	CAMPAIGN INTEGRITY WATCHDOG	JENNIFER FOR HD43	ED2020-82	ACCEPTED CONTRIBUTIONS OVER THE LEGAL LIMIT ALLEGED	Closed	D	3/30/2021	Settled	$300 fine, cured. Approved by M. Kessler.
10/30/2020	JESSIE VANCE	DAVID BLACH	ED2020-83	DISCLAIMER STATEMENT VIOLATIONS ALLEGED	Open	D	2/1/2021	Settled	$400 fine. Approved by Deputy Rayder.
11/2/2020	JERE LOWE	WENDELL A. KOONTZ	ED2020-84	MISINFORMATION ALLEGATION	Closed	R	2/19/2021	Settled	See Also ED2020-77 $700 fine. Approved by Deputy Rayder.
11/13/2020	CAMPAIGN INTEGRITY WATCHDOG	ELECTCLINT.COM	ED2020-85	FAILURE TO ACCURATELY FILE REPORTS AND FAILURE TO OBTAIN WRITTEN AFFIRMATION STATEMENT PRIOR TO ACCEPTING DONATIONS FROM AN LLC ALLEGED	Closed	R	2/27/2021	Dismissed by SoS	Finding of no violation. ED Motion to Dismiss granted by Melissa Kessler.
11/18/2020	IDRIS KEITH	JEFFREY BERNARD BAKER	ED2020-86	ETHICS COMPLAINT	Closed	R	12/10/2020	Dismissed by SoS	ED Moved to dismiss. Granted by Deputy Rayder.
12/3/2020	CAMPAIGN INTEGRITY WATCHDOG	3WEE TECHNOLOGIES LLC	ED2020-87	FAILURE TO DISCLOSE CONTRIBUTIONS AND EXPENDITURES; FAILURE TO OBTAIN WRITTEN AFFIRMATION PRIOR TO ACCEPTING A CONTRIBUTION FROM AN LLC; FAILURE TO FILE REPORTS RELATING TO ELECTIONEERING COMMUNICATION	Closed	R	2/27/2021	Dismissed by SoS	Finding of no violation; Motion to Dismiss granted by Melissa Kessler.
1/26/2021	LYNDA HOSKINSON	TOWN OF OAK CREEK	ED2021-01	UNCLEAR ALLEGATIONS	Closed	NP	2/15/2021	Dismissed by SoS	Complaint not timely filed; ED Motion to Dismiss granted by Melissa Kessler.
2/19/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	SULLIVAN FOR COLORADO	ED2021-02	CONTRIBUTION OVER AGGREGATE AMOUNT ALLOWED BY LAW ALLEGED	Closed	D	5/18/2021	Cured	Violation was cured; Motion to Dismiss granted by Deputy Beall

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
2/19/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	FROELICH FOR COLORADO	ED2021-03	CONTRIBUTION ACCEPTED OVER THE AGGREGATE AMOUNT ALLOWED BY LAW ALLEGE...	Open	D			
2/19/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	BRIANNA FOR COLORADO	ED2021-04	CONTRIBUTION ACCEPTED OVER THE LEGAL AGGREGATE AMOUNT ALLEGED	Open	D			
2/19/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	ESGAR LEADERSHIP FUND	ED2021-05	CONTRIBUTION ACCEPTED OVER THE LEGAL AGGREGATE AMOUNT & INCOMPLETE TRACER FILINGS ALLEGED	Closed	Political (D)	4/20/2021	Cured	Violations were cured; ED Motion to Dismiss granted by Deputy Beall.
3/11/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	CITIZENS FOR CHERRY CREEK SCHOOLS	ED2021-06	FAILURE TO FULLY DOSCLOSE REQUIRED CONTRIBUTOR INFORMATION ALLEGED	Open	NP			
3/11/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COMMITTEE TO ELECT DANEYA ESGAR	ED2021-07	INCOMPLETE CONTRIBUTOR INFORMATION REPORTED TO TRACER ALLEGED	Closed	D	4/20/2021	Cured	Vilations were cured; ED Motion to Dismiss granted by Deputy Beall.
3/23/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	PROGRESSIVE VOTERS GUIDE BALLOT INDEPENDENT EXPENDITURE COMMITTEE	ED2021-08	INDEPENDENT EXPENDITURES WITH NO ASSOCIATED CANDIDATES ALLEGED	Open	IEC			
3/23/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	DELTA COUNTY REPUBLICAN CENTRAL COMMITTEE	ED2021-09	ELECTIONEERING COMMUNICATION EXPENDITURE WITH NO ASSOCIATED CANDIDATES ALLEGED	Open	R			
4/15/2021	PATRICIA CALDERON	SHANNON BUSS, MARVIN CARDENAS	ED2021-11	TOWN RESOURCES TO PROMOTE AND CAMPAIGN FOR MAYOR CARDENAS ALLEGED	Closed	NP	5/5/2021	Dismissed by SoS	Municipal matter; finding of no jurisdiction. ED Motion to Dismiss granted by Deputy Beall.
4/15/2021	CAMPAIGN INTEGRITY WATCHDOG	TAY ANDERSON	ED2021-10	FAILURE TO FILE REQUIRED DISCLOSURES OF MONETARY GIFTS AND HONORARIA ALLEGED	Closed	D	5/6/2021	Dismissed by SoS	Finding of no violation; ED Motion to Dismiss granted by Deputy Beall.
4/20/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	ANGELA GARLAND FOR CHERRY CREEK SCHOOL DISTRICT BOARD OF EDUCATION	ED2021-12	INCOMPLETE CONTRIBUTOR INFORMATION IN TRACER ALLEGED	Open	NP			
4/20/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	GREG LOPEZ FOR GOVERNOR	ED2021-13	INCOMPLETE CONTRIBUTOR INFORMATION REPORTED TO TRACER ALLEGED	Open	R			
4/27/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	MESA COUNTY REPUBLICAN PARTY	ED2021-14	INCOMPLETE CONTRIBUTOR INFORMATION LISTED IN TRACER ALLEGED	Open	R			
5/4/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COMMITTEE TO ELECT LORA THOMAS	ED2021-15	INCOMPLETE INFORMATION REPORTED TO TRACER REGARDING ELECTIONEERING CO...	Open	R			

STATE OF COLORADO
Department of State

1700 Broadway
Suite 250
Denver, CO 80290

Jena Griswold
Secretary of State

Ian Rayder
Deputy Secretary of State

MEMORANDUM

To: **All Elections and Administrative Staff**
From: Jena Griswold, Secretary of State
Date: December 2020
Re: Confidentiality and Process Walls Around Campaign Finance

The process walls created by this memorandum concern: (1) inquiries on campaign finance compliance directed to the Elections Division (Division), and (2) pending campaign finance complaints that are being reviewed, investigated, and/or prosecuted by the Division. These process walls do not apply to internal discussions on campaign finance rulemakings, legislation, guidance documents, or policy making.

The public may file a campaign and political finance (CPF) complaint with the Division under newly enacted section 1-45-111.7, C.R.S. A CPF Enforcement Team within the Division will handle all CPF complaints filed under the new law. The CPF Enforcement Team also has the authority, pursuant to section 111.7, to initiate investigations and file CPF complaints on its own. At the same time, a separate CPF Compliance Team within the Division operates to respond to questions from members of the public about complying with the CPF laws. In order to allow filers to contact the Division with questions, and to simultaneously ensure an objective enforcement process, process walls are necessary.

First, the Division will maintain a process wall between inquiries and discussions related to compliance and providing guidance, handled by the CPF Compliance Team, and the CPF Enforcement Team. This process wall is designed to ensure that the public can freely communicate with the Division to seek guidance on how to comply with CPF statutes and regulations (e.g., if they should register, how to file disclosure reports, etc.) without any concern that their questions could form the basis for a CPF investigation or complaint.

Second, the Division will also maintain a process wall between the Final Decision Makers and the CPF Enforcement Team. The CPF Enforcement Team reviews, investigates, and (if appropriate) prosecutes complaints, and the Deputy, or their designee, is responsible for making the final agency decision with respect to these complaints. This process wall is designed to ensure objectivity in the Division's processing of complaints, from intake through the final agency decision. Finally, to help ensure these walls are maintained the Division created the

following guidelines and processes. The last page of this memorandum identifies the positions affected by the process walls.

1) The Elections Division shall provide all affected personnel with copies of and guidance on the process walls.

    a. The Legal and Internal Operations Manager must provide this memorandum to all Elections Division, Final Decision Makers, and neutral staff.

    b. The Legal and Internal Operations Manager must provide ongoing guidance to relevant personnel on the process walls as appropriate.

2) The CPF Enforcement Team shall maintain separate email, phone, and electronic folders.

    a. All complaints will be directed to CPFcomplaints@sos.state.us.co and (303) 894-2200, ext. 6338; only the CPF Enforcement Team will have access to this inbox and phone line.

    b. All complaints[1] and related documents will be in the "CPF Complaints Folder" on the T drive; only the CPF Enforcement Team will have access to this folder. (T:/Elections/CPFComplaints).

    c. All questions on guidance and compliance will be directed to CPFhelp@sos.state.us.co and 303-894-2200 & press 3; the CPF Enforcement Team will not have access to this inbox or phone line.

    d. The Final Decision Makers and neutral staff will not have access to either email address (complaints or CPF Help), or to the CPF Complaints folder on the T drive.

    e. Both the CPF Compliance Team and the CPF Enforcement Team will have administrative access to TRACER. Some filers upload documents and save as drafts within the TRACER system in advance of filing their reports. The Enforcement Team can only review documents filed within the system, and not documents or information that are entered or drafts but not yet filed.

    f. The Final Decision Makers and neutral staff will not have administrative access to TRACER.

    g. When a complainant or respondent communicates with the Division regarding a CPF complaint, they will be immediately forwarded directly to CPF Enforcement Team without review of materials or any substantive discussion (except for

[1] For the purpose of this memorandum, unless otherwise indicated, "complaint" shall refer to complaints filed by a third party, complaints and investigations initiated by the CPF Enforcement Team, and complaints filed with the OAC.

conversations regarding curing and compliance, as provided elsewhere in this memorandum).

h. All documents put on TRACER are generally public and available to all teams. These include the initial complaint, Notice of Initial Review, motions to dismiss, orders from the Deputy Secretary of State, Office of Administrative Courts (OAC) Complaints, OAC orders, final agency decisions, documents filed with the OAC related to the Complaint, and documents related to the appeals. Some documents may not be made publicly available due to policy or legal concerns.

3) The **CPF Compliance Team** must adhere to the following procedures regarding compliance inquiries and guidance.

a. The CPF Compliance Team may not share or disclose to the CPF Enforcement Team identifying information about a member of the public who has posed a question at any time before a complaint has been filed.

b. The CPF Compliance Team may respond to a question asked by the CPF Enforcement Team about general guidance or technical compliance. The CPF Compliance Team may also respond to a question asked by the CPF Enforcement Team about a pending complaint, especially during the cure process, so long as no investigatory or confidential information regarding litigation strategy or settlement discussions about the complaint is discussed.

c. The CPF Compliance Team may work with the CPF Enforcement Team in drafting a response to a request for an advisory opinion, but may not disclose any identifying details of the party requesting the advisory opinion beyond those details necessary to be able to provide effective assistance in the drafting of the advisory opinion.

4) The **CPF Enforcement Team** must adhere to the following procedures regarding campaign finance complaints.

a. Once on TRACER, the complaint is public but the process walls detailed in this memorandum remain in place.

b. The CPF Enforcement Team may seek guidance from the CPF Compliance Team on pending complaints, especially during the cure process, so long as no investigatory or confidential information regarding litigation strategy, prosecutorial decisions, or settlement discussions about the complaint is discussed. Additionally, the CPF Enforcement Team may refer respondents to the CPF Compliance Team regarding technical questions on how to cure or comply with the law.

c. Other than as provided in 4(b), the CPF Enforcement Team will not discuss the complaint with the CPF Compliance Team other than to discuss the general

guidance or technical compliance the Compliance Team provides to members of the public.

d. At all times during the complaint and enforcement process, the CPF Enforcement Team will not discuss or disclose litigation strategy or prosecutorial decisions of the complaint with the Final Decision Makers, other than through motions to dismiss, proposed settlement agreements, or other documents necessary to the enforcement process.

e. At all times during the complaint and enforcement process, the CPF Enforcement Team may communicate with Prosecutorial Counsel from the Office of the Colorado Attorney General. The Enforcement Team may also communicate with respondents and complainants as well as their counsel, and outside third parties as needed for the purpose of assisting with the review and potential prosecution of the complaint.

5) The **Final Decision Makers** must adhere to the following procedures regarding campaign finance complaints.

a. The Final Decision Makers may not obtain non-public litigation strategy or prosecutorial decisions regarding a pending complaint from the CPF Enforcement Team; only information that is needed to adequately respond to press and outside inquiries.

b. The Final Decision Makers will have access to all public documents filed on TRACER and materials filed by the CPF Enforcement Team for adjudication, including motions to dismiss, along with any documents attached, and proposed settlement agreements.

c. The Final Decision Makers may seek guidance from the CPF Compliance Team on general compliance and technical questions.

d. The Final Decision Makers shall not disclose or discuss with other teams, non-public information, litigation strategy, or prosecutorial decisions on pending motions to dismiss and settlement agreements filed by the CPF Enforcement Team until a decision on the motion and settlement agreement has been made.

e. The Final Decision Makers do not direct or control the CPF Enforcement Team regarding investigation or charging decisions, and the CPF Enforcement Team shall retain independence in its investigation and charging decisions.

f. At all times during the complaint and enforcement process, Final Decision Makers may communicate with Adjudicative Counsel from the Office of the Colorado Attorney General.

6) **Neutral staff** from the Secretary of State's office.

   a. Neutral staff, including the Communications Director and Assistant Director, may discuss CPF compliance issues with CPF Compliance Team. This staff may also inquire about pending complaints with the CPF Enforcement Team but will not disclose non-public or confidential information obtained during those discussions to those on the other side of the process wall, with the press, or third parties.

7) Miscellaneous.

   a. Once a final agency decision has been made on a complaint, the process walls established by this memorandum are lifted. This includes an order from the Deputy dismissing the complaint and a final settlement agreement that has been signed by the parties and approved by the Deputy or her designee.

   b. If an agency decision is remanded by a District Court, the process walls will once again be in effect.

   c. This memorandum supersedes and replaces any and all prior guidance, whether formal or informal, concerning process walls established within the Division and/or the Administration related to CPF matters.

Jena Griswold
Colorado Secretary of State

Ian Rayder
Deputy Secretary of State

Administration and Elections Division Process walls

Final Decision Makers	**CPF Enforcement Team**	**CPF Compliance & Guidance Team**
Secretary of State Deputy Secretary of State Chief of Staff Legal and Policy Director	Legal & Internal Operations Manager CPF Enforcement Manager CPF Legal analyst CPF Investigator CPF Administrative Assistant Legal Team Admin Assistant	Campaign Finance Director CPF trainer CPF customer support staff Legal Analyst, Elections Division Assigned to CPF Compliance
All other Secretary of State staff are neutral (including the Communications Director/PIO and Assistant Communications Director/PIO)		

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State

Christopher P. Beall
Deputy Secretary of State

BEFORE THE COLORADO DEPUTY SECRETARY OF STATE 1700 Broadway, Suite 550 Denver, Colorado 80290 IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO	OAC CASE NUMBER: **OS 2020-25** (ED Case No. 2020-71)

ORDER DENYING MOTION TO VACATE FINAL AGENCY ORDER

This matter comes before Christopher P. Beall, Colorado Deputy Secretary of State ("Deputy Secretary"), upon the motion filed on October 1, 2021, by No on EE – A Bad Deal for Colorado ("Respondent") to vacate the Final Agency Order that was issued by this office on September 2, 2021. The Deputy Secretary concludes he lacks jurisdiction and therefore denies the Motion.

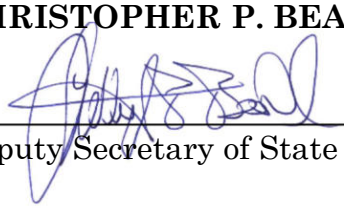
Administrative agencies generally have no jurisdiction to modify or set aside a final agency order once the aggrieved party has either appealed that decision or the time to appeal has passed. *Murr v. Civil Serv. Comm'n of City & Cnty. of Denver*, 2019 COA 51M, ¶ 43, 459 P.3d 699, 707; *see also id.* ¶ 46, 459 P.3d at 708 ("[T]e power to reopen a matter is lost when 'judicial review is initiated.'" (quoting *Citizens for Responsible Growth v. RCI Dev. Partners, Inc.*, 252 P.3d 1104, 1107 (Colo. 2011))). Here, the Deputy Secretary issued the Final Agency Order on September 2, 2021.

Main Number (303) 894-2200 TDD/TTY (303) 869-4867
Administration (303) 860-6900 Website www.coloradosos.gov
Fax (303) 869-4860 E-mail administration@coloradosos.gov

Any aggrieved party had 35 days from September 2, 2021, or until October 7, 2021, to seek judicial review of that decision. *See* §§ 1-45-111.7(6)(b), 24-4-106(4), C.R.S. On October 7, 2021, Respondent filed just such a petition for judicial review under § 24-4-106(4), C.R.S., in the Denver District Court. *See No on EE – A Bad Deal for Colorado Issue Comm. v. Beall*, Colo. Dist. Ct.-Denver No. 2021CV033166 (Compl. for Judicial Review of Agency Action, Oct. 7, 2021). Although that complaint has not yet been served on the Deputy Secretary, its filing divests the Deputy Secretary of jurisdiction to address Respondent's Motion. The Motion is accordingly denied for lack of jurisdiction. In light of this lack of jurisdiction, the Deputy Secretary's resolution here is without prejudice to, and without comment on, the substance of the contentions asserted in the Motion.

DONE and **ORDERED** this 12th day of October 2021.

CHRISTOPHER P. BEALL



Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **ORDER DENYING MOTION TO VACATE FINAL AGENCY ORDER** was served on the following parties via electronic mail on October 12, 2021.

Respondent – No on EE – A Bad Deal for Colorado
Suzanne Taheri
Maven Law Group
staheri@mavenlawgroup.com

Petitioner – Colorado Secretary of State, Elections Division
Peter Baumann, Assistant Attorney General
Department of Law
Peter.baumann@coag.gov

/s/ Christopher P. Beall
Deputy Secretary of State

OAC cases: OS 2020-25
ED Case No. 2020-71

IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO

REQUEST FOR STAY ON AGENCY ACTION

Suzanne Taheri, on behalf of Respondent, "No on EE-a bad deal for Colorado", requests the Department postpone the effective date of the agency action pending judicial review. As grounds therefore, Respondent states the following:

1. On May 26, 2021 the Office of Administrative Court's Administrative Law Judge ("ALJ") as a hearing officer for the Department issued a decision in this matter, setting a fine in the amount of $10,000. No party filed exceptions to the decision.
2. The Deputy Secretary of State, acting on behalf of the final decision makers of the Agency, initiated review on his own motion.
3. On September 2, 2021 the Deputy, again acting on behalf of the final decision makers of the agency, assessed a fine of $30,000, triple the original fine.
4. Respondent has filed an appeal of the order.
5. C.R.S. 24-4-106 allows for a stay of agency action upon a showing of irreparable injury. The Department has taken a position that any fines remitted during an agency review are "voluntary" and nonrefundable. The inability of a party to recoup their fine upon a favorable judgment is irreparable injury.

Wherefore, Respondent requests that the effective date of the Final Agency Order be postponed until final review.

Submitted this 12th day of October 2021.

/s/ Suzanne Taheri
Maven Law Group
staheri@mavenlawgroup.com
Attorney for Respondent

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State

Christopher P. Beall
Deputy Secretary of State

BEFORE THE COLORADO DEPUTY SECRETARY OF STATE 1700 Broadway, Suite 200 Denver, Colorado 80290 IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO	OAC CASE NUMBER: OS 2020-25 (ED Case No. 2020-71)

ORDER DENYING WITHOUT PREJUDICE
REQUEST FOR STAY ON AGENCY ACTION

This matter comes before Christopher P. Beall, Colorado Deputy Secretary of State ("Deputy Secretary"), upon the Request for Stay on Agency Action filed by No on EE – A Bad Deal for Colorado ("Respondent"), seeking postponement of the effective date of the Final Agency Order pending judicial review.

Pursuant to section 24-4-106(5), an agency may postpone the effective date of agency action pending judicial review upon a finding that "irreparable injury" would otherwise result from enforcement of the agency action prior to judicial review. In an effort to show such irreparable injury, Respondent asserts in its Request that "[t]he Department has taken a position that any fines remitted during an agency review are 'voluntary' and nonrefundable." Respondent's statement is incorrect in its premise and its application.

First, the voluntary payment rule bars recovery of a paid fine, even if there is no legal liability to pay in the first place, where one makes a voluntary payment with knowledge of all relevant facts, and then sues to recover that payment. *Skyland Metro. Dist. v. Mountain W. Enter., LLC*, 184 P.3d 106, 127 (Colo. App. 2007). However, the rule does not apply where the payor can show that payment was made under protest or duress or a mistake as to all relevant facts. *Id.* The Department has taken no position in this case that the voluntary payment rule would apply if the Respondent were to pay the assessed fine under protest. Moreover, Respondent has already manifested its clear protest to the Final Agency Order, specifically as to its $30,000 fine, by seeking judicial review under section 24-4-106(4). Accordingly, any payment made by Respondent at this time would not be voluntary, and the voluntary payment rule could not be asserted as a defense against a request for a refund. In this context where the voluntary payment rule does not and would not apply, Respondent's effort to rely on that rule as the basis for its assertion of irreparable injury is to no avail.

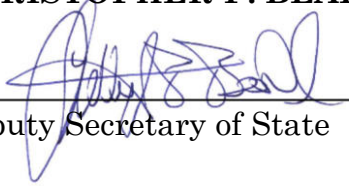
Next, while the Deputy Secretary does not object as a practical matter to postponing the effective date of the Final Agency Order pending judicial review, he is unable to do so here under section 24-4-106(5) because Respondent has failed to establish the necessary condition precedent of a finding that irreparable injury would otherwise result from enforcement of the agency action. Respondent sets forth no other bases apart from the voluntary payment rule upon which a finding of irreparable injury might be made. As a result, the Request lacks a sufficient basis

under section 24-4-106(5), and the Deputy Secretary must therefore deny Respondent's Request for Stay on Agency Action without prejudice for failing to demonstrate irreparable injury. Respondent may renew its request if it can articulate a valid basis for a finding of irreparable injury.

WHEREFORE, Respondent's Request for Stay on Agency Action is denied without prejudice.

DONE and **ORDERED** this 21st day of October 2021.

CHRISTOPHER P. BEALL



Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **ORDER DENYING WITHOUT PREJUDICE REQUEST FOR STAY ON AGENCY ACTION** was served on the following parties via electronic mail on October 21, 2021.

Suzanne Taheri
Attorney for Respondent
Maven Law Group
staheri@mavenlawgroup.com

Peter Baumann, Assistant Attorney General
Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Peter.Baumann@coag.gov

/s/ Christopher P. Beall
Deputy Secretary of State

DATE FILED: December 2, 2021
CASE NUMBER: 2021CV33166

DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO
1437 Bannock Street
Denver, CO 80203

Plaintiff:

NO ON EE—A BAD DEAL FOR COLORADO,

v.

Defendants:

CHRISTOPHER BEALL, in his official capacity as Colorado Deputy Secretary of State, and JENA GRISWOLD, in her official capacity as Colorado Secretary of State.

□COURT USE ONLY□

Case No. 2021CV33166

Ctrm./Div.: 409

Attorneys for Defendants:
PHILIP J. WEISER
Attorney General

JESSICA ROSS, #44927*
Assistant Attorney General
PETER G. BAUMANN, #51620
Assistant Attorney General
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway
Denver, Colorado 80203
Telephone: (720) 508-6152
Email: jessica.ross@coag.gov; peter.baumann@coag.gov
*Counsel of Record

AMENDED EXHIBIT A TO NOTICE OF SUBMISSION OF AGENCY RECORD

Respectfully submitted this 2nd day of December, 2021.

PHILIP J. WEISER
Attorney General

s/ Peter G. Baumann

JESSICA ROSS, 44927*
Assistant Attorney General
PETER G. BAUMANN, 51620*
Assistant Attorney General
*Counsel of Record
Attorneys for Defendants

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STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, JENA GRISWOLD, Secretary of State of the State of Colorado, do hereby certify that:

the attached are certified copies of the materials comprising the agency record in ED 2020-71 for No on EE v. Beall et al., Denver District Court No. 2021CV33166 consistent with section 24-4-106(6), C.R.S. 0.....

..... **IN TESTIMONY WHEREOF** I have unto set my hand ....

and affixed the Great Seal of the State of Colorado, at the City of Denver this 29th day of November, 2021.

Jena Griswold

SECRETARY OF STATE

Submit complaint by mail or email to:
Colorado Secretary of State
Campaign Finance Enforcement
1700 Broadway, Suite 200
Denver, CO 80290
CPFcomplaints@sos.state.co.us

RECEIVED
10/08/2020
ELECTIONS DIVISION

CAMPAIGN FINANCE COMPLAINT FORM

Any person may file a complaint up to 180 days after the date on which the Complainant either knew or should have known, by the exercise of reasonable diligence, of an alleged violation. A complainant must specifically identify one or more respondents, a violation of Colorado campaign finance rules and regulations (Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning Campaign and Political Finance), and allege specific facts to support a legal and factual basis for the complaint. (See section 1-45-111.7, C.R.S.) Please be advised, complaints are public information and the Respondent will be provided a copy of this Complaint.

***Denotes required field**

Your Information (Complainant)- Information about the person or entity filing the complaint:

*Full Name: Anna Jo Haynes

*Mailing Address: 3031 Dexter Street Denver

*Telephone Number: 303 917 5252 *Email Address: annajoh@milehighearlylearning.org

*Date Made Aware of Violation: Sept. 18, 2020

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

*Full Name: No on EE -- A Bad Deal for Colorado

*Mailing Address: P. O. Box 533 Indian Hills CO 80454

Telephone Number: 303.246.6496 *Email Address: yastremski67@gmail.com
partykasandy@comcast.net

Briefly summarize the allegations of your complaint including dates of the alleged violations and attach any supporting documents and materials.

Please see attached

By submitting this form and any supporting evidence or documentation, I hereby affirm that I have read and am familiar with the procedures set forth in section 1-45-111.7, of the Colorado Revised Statute (C.R.S.).

*Complainant's Signature: Anna Jo Haynes Date: 10-8-2020

Campaign Finance Complaint
Re: Incorrect Disclaimers and False Statements from "No on EE -- a Bad Deal for Colorado"
October 8th, 2020

Colorado campaign finance law requires that any:

> issue committee… or other person making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that… that supports or opposes a ballot issue or ballot question… shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.

C.R.S. §1-45-108.3(1). Such disclaimer is required for each and every such communication "that is broadcast, printed, mailed, delivered; [that is] placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed." *Id*. Further, such disclaimer must state:

> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

C.R.S. § 1-45-107.5(5)(a), incorporated as to issue committees by C.R.S. § 1-45-108.3(2).

"No on EE – A Bad Deal for Colorado" is a registered issue committee, opposing Proposition EE on the November statewide ballot. Based on its filing with the Secretary of State, the registered agent for No on EE is one Patrick MacDonald.

In all known communications with the public, No on EE has failed to include a legally compliant disclaimer. Specifically, the committee routinely fails to include the name of Mr. MacDonald as part of its disclaimer and likewise fails to state that he is the committee's registered agent. These communications include but are not limited to:

(1) Television advertisements;
(2) Radio advertisements;
(3) The campaign website – https://baddealforco.com/;
(4) Billboards; and
(5) Campaign literature.

Copies of all such communications have either been attached hereto as exhibits or saved at accessible websites set forth as follows:
https://drive.google.com/drive/folders/1motDnUpqtuqZhMizdkPPo6fH6Z-kWCPf?usp=sharing

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Copies of all such communications have either been attached hereto as exhibits or saved at accessible websites set forth as follows:
https://drive.google.com/drive/folders/1motDnUpqtuqZhMizdkPPo6fH6Z-kWCPf?usp=sharing

Any violation of the statutory campaign finance provisions may be addressed by a complaint filed as provided by law. C.R.S. § 1-45-111.7(2)(a).

Further, given that Proposition EE was placed on the ballot by HB20-1427, signed into law on July 8, 2020, this complaint is timely filed as it must be – and has been – filed within 180 days of when the violations became known or should have been known. C.R.S. § 1-45-111.7(2)(b). None of the affected communications were or could have been distributed prior to July 8, given that No on EE was formed and filed with the Secretary of State on August 31, 2020 according to the committee's registration on the Secretary's website.

Fines to be imposed for failure to affix legally required disclaimers are "**at least 5% of the cost of the noncompliant communication** including cost to broadcast" if mitigated before an election. However, if the violation is not so mitigated, the mandated penalty is "**at least 10% of the cost of the noncompliant communication** including cost to broadcast." SOS Campaign Finance Rule 23.3.3(d) (emphasis added).

Based on reports filed to date, No on EE has spent approximately:
$2,228,090.00 on TV and radio advertisements, $1,000.00 on its campaign website, $1,069,011.25 on billboards, and $3,125.83 on campaign literature. Using these amounts from campaign finance disclosures, the fine on No on EE should be fined no less than $165,061.35 (5% of the total amount on spent on noncompliant communications) or $330,122.71 (10% of the total amount spent on noncompliant communications). Included with this complaint is an addendum drawing from No on EE's financial reports to substantiate these numbers.

Liggett Vector Brands, one of the country's largest cigarette companies and based in Morrisville, North Carolina, gave the campaign $3,438,223.95 based on the most recent Oct. 5 major donor report. To date, 99.8% of No on EE's contributions come from out of state cigarette companies.

On information and belief, No on EE spent additional funds on noncompliant communications that are not included in these subtotals but that should be reported in upcoming disclosures. Therefore, the fine imposed should be greater than the above amounts, given the additional spending that must be disclosed by No on EE in its future reports.

Further, because the Secretary's rules set these penalty percentages as minimums by using the phrase "at least," the State should seek higher penalties given that this is a committee that is anything but a citizens' committee that was unaware of the statute's requirements, given its:

(1) Substantial corporate funding (Liggett Vector Brands LLC);
(2) Professional campaign management (assorted Colorado and Connecticut firms); and
(3) Access to competent, experienced legal counsel.

In addition to the penalties imposed, No on EE should be ordered to use a legally compliant disclaimer on all future communications. SOS Rule 23.3.4(d).

The noncompliant communications at issue in this complaint are even more problematic because No on EE knows them to be false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements "on any issue submitted to the electors at any election." These false statements include but are not limited to:

> -Intentionally misleading voters by portraying statements from the Liggett Vector Brand's legal counsel as independent reporting from the Colorado Sun, as seen here (at :21 seconds). Initial quote can be found here.
> -Repeated false claims (such as here, here and here) that the funding included in Proposition EE would not be guaranteed to go to preschool education, despite the funding being specifically outlined in the legislative language of the HB20-1427, the enacted legislation that referred Proposition EE to the voters, and that funding further would be enshrined in state law were it to pass with voter approval and would be audited annually by the state.

The fact that the campaign has routinely neglected to disclose the name of its registered agent underscores its clear disregard for Colorado law and its refusal to take full responsibility for these communications, as required by law. As penalties may be imposed after considering *either* mitigating or *aggravating* circumstances, including "evidence of an intentional act or pattern or practice of misconduct," SOS Rule 23.3.5(d), the knowing falsehood of No on EE communications must be considered an aggravating circumstance that requires the maximum penalty outlined above.

Addendum
Evidence of Expenditures

Included below are excerpts from No on EE's standard financial disclosures from September 21st and October 5th, as well as an additional major contributor filing on October 5th.

Statewide Billboards

No on EE reported a single campaign expenditure on their September 21st campaign finance disclosure. This expenditure was for $1,069,011.25 on September 4th to Milk Sono LLC for media/advertising, provided via in-kind contribution from Liggett Vector Brands LLC. No on EE's billboards appeared statewide starting on September 18th. This is No on EE's only advertising purchase before the billboards appeared statewide, indicating that this initial $1,069,011.25 was used specifically for the purchase of the statewide billboards.

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/04/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,069,011.25	7.Description	MEDIA/ADVERTISING
3. Aggregate Amount*	8. Employer	
$1,069,011.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	MILK SONO LLC
09/04/2020	5. Address	11 DAY ST.
2. Fair Market Value	6. City/State/Zip	NORWALK CT 06854
$1,069,011.25	7.Purpose	Advertising
Electioneering Comm?		MEDIA/ADVERTISING
No	8. Coordinated?	No

TV and Radio Advertising

As reported on their October 5 financial disclosure, the No on EE campaign expended $1,808,280.00 in advertising to Hulsen Media Services LCC from an in-kind contribution from Liggett Vector Brands for the exact same amount on the same date. No on EE began their TV advertising four days later on September 28th.

On October 5th, No on EE also filed a major contributor report which revealed another in-kind contribution from Liggett Vector Brands LCC in the form of $419.810.00 in "media/advertising" from Hulsen Media Services LCC.

October 5th Routine Filing

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/24/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,808,280.00	7.Description	ADVERTISING
3. Aggregate Amount*	8. Employer	
$2,877,291.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	AFFORDABLEBUTTONS.COM
09/25/2020	5. Address	3269 19TH NW #6
2. Fair Market Value	6. City/State/Zip	ROCHESTER MN 55901
$4,872.70	7.Purpose	Advertising
Electioneering Comm?		
No	8. Coordinated?	No

1. Date Expended	4. Name	HULSEN MEDIA SERVICES LLC
09/24/2020	5. Address	2400 LARAMIE TRAIL
2. Fair Market Value	6. City/State/Zip	AUSTIN TX 78745
$1,808,280.00	7.Purpose	Advertising
Electioneering Comm?		ADVERTISING
No	8. Coordinated?	No

October 5th Major Contributor disclosure

Reporting Date:	10/05/2020		
Total Contributions:	$419810.00		
Registered Agent:	PATRICK MACDONALD	**Filed Date:**	10/06/2020

Itemized Contributions

1. Date Accepted	**Non-Monetary**		**LLC MEMBER**
10/05/2020	4. Name	LIGGETT VECTOR BRANDS LLC	LIGGETT VECTOR BRANDS LLC
2. Contribution Amount	5. Address	3800 PARAMOUNT PARKWAY #250	Total LLC Contribution: $419810.00
$419,810.00	6. City/State/Zip	MORRISVILLE NC 27560	
3. Aggregate Amount*	7.Description	MEDIA/ADVERTISING-HULSEN MEDIA SERVICES LLC	
$3,438,223.95	8. Employer		
Electioneering Comm?	9. Occupation		
No			

Campaign Literature

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to printing. This expenditure occurred on September 29th to Campaign Products of the Rockies for $3,125.83. Campaign literature began to appear in North Park Hill in Denver the following week.

Schedule B - Itemized Expenditures Statement ($20 or more)
[C.R.S. 1-45-108(1)(a)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended 09/29/2020	4. Name	CAMPAIGN PRODUCTS OF THE ROCKIES
2. Amount $3,125.83	5. Address	1900 GRANT ST. #1170
	6. City/State/Zip	DENVER CO 80301
Electioneering Comm? **No**	7.Purpose	PRINTING
	8. Type	Consultant & Professional Services

Campaign Website

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to web design and development is $1,000.00 to Lombardi Design on No on EE's October 5th financial disclosure.

1. Date Expended 09/29/2020	4. Name	LOMBARDI DESIGN
2. Amount $1,000.00	5. Address	765 BARBERRY CIR.
	6. City/State/Zip	LAFAYETTE CO 80026
Electioneering Comm?	7.Purpose	GRAPHIC/WEB DESIGN

Any violation of the statutory campaign finance provisions may be addressed by a complaint filed as provided by law. C.R.S. § 1-45-111.7(2)(a).

Further, given that Proposition EE was placed on the ballot by HB20-1427, signed into law on July 8, 2020, this complaint is timely filed as it must be – and has been – filed within 180 days of when the violations became known or should have been known. C.R.S. § 1-45-111.7(2)(b). None of the affected communications were or could have been distributed prior to July 8, given that No on EE was formed and filed with the Secretary of State on August 31, 2020 according to the committee's registration on the Secretary's website.

Fines to be imposed for failure to affix legally required disclaimers are "**at least 5% of the cost of the noncompliant communication** including cost to broadcast" if mitigated before an election. However, if the violation is not so mitigated, the mandated penalty is "**at least 10% of the cost of the noncompliant communication** including cost to broadcast." SOS Campaign Finance Rule 23.3.3(d) (emphasis added).

Based on reports filed to date, No on EE has spent approximately:
$2,228,090.00 on TV and radio advertisements, $1,000.00 on its campaign website, $1,069,011.25 on billboards, and $3,125.83 on campaign literature. Using these amounts from campaign finance disclosures, the fine on No on EE should be fined no less than $165,061.35 (5% of the total amount on spent on noncompliant communications) or $330,122.71 (10% of the total amount spent on noncompliant communications). Included with this complaint is an addendum drawing from No on EE's financial reports to substantiate these numbers.

Liggett Vector Brands, one of the country's largest cigarette companies and based in Morrisville, North Carolina, gave the campaign $3,438,223.95 based on the most recent Oct. 5 major donor report. To date, 99.8% of No on EE's contributions come from out of state cigarette companies.

On information and belief, No on EE spent additional funds on noncompliant communications that are not included in these subtotals but that should be reported in upcoming disclosures. Therefore, the fine imposed should be greater than the above amounts, given the additional spending that must be disclosed by No on EE in its future reports.

Further, because the Secretary's rules set these penalty percentages as minimums by using the phrase "at least," the State should seek higher penalties given that this is a committee that is anything but a citizens' committee that was unaware of the statute's requirements, given its:

(1) Substantial corporate funding (Liggett Vector Brands LLC);
(2) Professional campaign management (assorted Colorado and Connecticut firms); and
(3) Access to competent, experienced legal counsel.

In addition to the penalties imposed, No on EE should be ordered to use a legally compliant disclaimer on all future communications. SOS Rule 23.3.4(d).

The noncompliant communications at issue in this complaint are even more problematic because No on EE knows them to be false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements "on any issue submitted to the electors at any election." These false statements include but are not limited to:

> -Intentionally misleading voters by portraying statements from the Liggett Vector Brand's legal counsel as independent reporting from the Colorado Sun, as seen here (at :21 seconds). Initial quote can be found here.
> -Repeated false claims (such as here, here and here) that the funding included in Proposition EE would not be guaranteed to go to preschool education, despite the funding being specifically outlined in the legislative language of the HB20-1427, the enacted legislation that referred Proposition EE to the voters, and that funding further would be enshrined in state law were it to pass with voter approval and would be audited annually by the state.

The fact that the campaign has routinely neglected to disclose the name of its registered agent underscores its clear disregard for Colorado law and its refusal to take full responsibility for these communications, as required by law. As penalties may be imposed after considering *either* mitigating or *aggravating* circumstances, including "evidence of an intentional act or pattern or practice of misconduct," SOS Rule 23.3.5(d), the knowing falsehood of No on EE communications must be considered an aggravating circumstance that requires the maximum penalty outlined above.

Addendum
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Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/04/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,069,011.25	7.Description	MEDIA/ADVERTISING
3. Aggregate Amount*	8. Employer	
$1,069,011.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	MILK SONO LLC
09/04/2020	5. Address	11 DAY ST.
2. Fair Market Value	6. City/State/Zip	NORWALK CT 06854
$1,069,011.25	7.Purpose	Advertising
Electioneering Comm?		MEDIA/ADVERTISING
No	8. Coordinated?	No

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October 5th Routine Filing

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09/24/2020	5. Address	3800 PARAMOUNT PARKWAY #250
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$1,808,280.00	7.Description	ADVERTISING
3. Aggregate Amount*	8. Employer	
$2,877,291.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

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2. Fair Market Value	6. City/State/Zip	ROCHESTER MN 55901
$4,872.70	7.Purpose	Advertising
Electioneering Comm?		
No	8. Coordinated?	No

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Electioneering Comm?		ADVERTISING
No	8. Coordinated?	No

October 5th Major Contributor disclosure

Reporting Date:	10/05/2020		
Total Contributions:	$419810.00		
Registered Agent:	PATRICK MACDONALD	**Filed Date:**	10/06/2020

Itemized Contributions

1. Date Accepted	**Non-Monetary**		**LLC MEMBER**
10/05/2020	4. Name	LIGGETT VECTOR BRANDS LLC	LIGGETT VECTOR BRANDS LLC
2. Contribution Amount	5. Address	3800 PARAMOUNT PARKWAY #250	Total LLC Contribution: $419810.00
$419,810.00	6. City/State/Zip	MORRISVILLE NC 27560	
3. Aggregate Amount*	7.Description	MEDIA/ADVERTISING-HULSEN MEDIA SERVICES LLC	
$3,438,223.95	8. Employer		
Electioneering Comm?	9. Occupation		
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Schedule B - Itemized Expenditures Statement ($20 or more)
[C.R.S. 1-45-108(1)(a)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended 09/29/2020	4. Name	CAMPAIGN PRODUCTS OF THE ROCKIES
2. Amount $3,125.83	5. Address	1900 GRANT ST. #1170
	6. City/State/Zip	DENVER CO 80301
Electioneering Comm? **No**	7.Purpose	PRINTING
	8. Type	Consultant & Professional Services

Campaign Website

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to web design and development is $1,000.00 to Lombardi Design on No on EE's October 5th financial disclosure.

1. Date Expended 09/29/2020	4. Name	LOMBARDI DESIGN
2. Amount $1,000.00	5. Address	765 BARBERRY CIR.
	6. City/State/Zip	LAFAYETTE CO 80026
Electioneering Comm?	7.Purpose	GRAPHIC/WEB DESIGN


VOTE
NO
ON EE
www.BadDealforCO.com
Paid for by NO on EE: A Bad Deal for Colorado
NO NEW
TAXES
A $294 MILLION TAX HIKE! REALLY?
23626A
OUTFRONT



No on Proposition EE: A $294 million tax increase

- NO New Taxes – As our economy recovers from COVID-19, now is not the time to raise taxes on Colorado voters.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on pre-school. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- Prop. EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from about $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.

"...When bills are passed that only affect lower income classes of people, the American dream becomes the American nightmare!..."

– Bishop Jerry Demmer
Pastor of The Absolute Word Church
President of The Greater Metro Denver Ministerial Alliance

www.BadDealforCO.com

Paid for by NO on EE: A Bad Deal for Colorado

SOS0019

SOS0019

NO NEW TAXES

VOTE NO ON A $294 MILLION TAX INCREASE

NO ON EE

SOS0020

SOS0020

and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from $4 a pack to $7 a pack before the tax increase, while so-called premium cigarettes will see only a small increase.
- Purchasers of discount cigarettes, primarily low-income adult smokers, would be severely burdened with this tax increase, paying a larger percentage of their income than would other, more affluent consumers.
- EE will raise the price of discount cigarettes from $4 a pack to $7 a pack before the tax increase, while so-called premium cigarettes will see only a small increase.

Proposition EE is basically a tax increase on the poor....” Krista Kafer, DP 9/11/2020

ENDORSEMENT – Pagosa Daily Post

“Proposition EE: Vote “NO!”. This proposition is a “sin tax” that increases taxes on tobacco, a product that is used significantly more by poor people in Colorado. Part of the tax money would be used to fund general education programs that lack funds because of the way that growth has been fueled and subsidized in Colorado. Literally, this tax would take money from poor people addicted to tobacco and subsidize wealthy developers who aren’t charged the cost of growth....” September 24, 2020

Paid for by No on EE: A Bad Deal for Colorado. Contact: info@baddealforco.com

PLACEHOLDER FOR VIDEO FILE

PLACEHOLDER FOR VIDEO FILE

OFFICE OF THE SECRETARY OF STATE, ELECTIONS DIVISION

STATE OF COLORADO

IN THE MATTER OF "NO ON EE - - A BAD DEAL FOR COLORADO"

2020-71

NOTICE OF INITIAL REVIEW AND OPPORTUNITY TO CURE

Anna Jo Haynes (Complainant) filed a Complaint (2020-71) with the Elections Division (Division) on October 8, 2020 under section 1-45-111.7(2)(a), C.R.S., alleging that the issue committee "No on EE – A Bad Deal for Colorado" (Respondent) violated Colorado campaign finance laws. Complainant alleges that Respondent failed to include required disclaimer statements on television advertisements and radio advertisements, billboards, campaign literature, and their campaign website. Complainant specifically alleges that Respondent's disclaimer statements were noncompliant because they did not include the name of Respondent's registered agent as required by Colorado campaign finance law. Complainant also alleges Respondent knows its communications to be "false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements."

The Division notified Respondent of the Complaint on October 8, 2020. The Division has now completed its initial review under section 1-45-111.7(3) C.R.S.

For the reasons stated below, the Division initially determines Complainant identified potential violations of Colorado campaign finance law and alleged sufficient facts regarding the potential violations. The Division also initially determines that Complainant alleged one or more violations that may be curable. Respondent will have ten business days from the date of this notice[1] to submit a Notice of Intent to Cure form to the Division and to cure any deficiencies and provide other relevant information on how Respondent has cured the alleged violations and substantially complied with the law.[2]

Analysis

Any person who believes that a violation of Colorado campaign finance law has occurred may file a complaint with the Colorado Secretary of State.[3] Upon receipt, the Division must initially review the complaint to determine (1) whether the complaint was timely filed; (2) whether the complaint

[1] The Division will consider this Notice of Initial Review as notice pursuant to section 1-45-111.7(4)(a), C.R.S.
[2] Section 1-45-111.7(4)(a)-(b), C.R.S.
[3] Section 1-45-111.7(2)(a), C.R.S.

specifically identified one or more violations of Colorado campaign finance law; and (3) whether the complaint alleged sufficient facts to support a factual and legal basis for the complaint.[4]

1. *Complaint was timely filed.*

The Division initially determines that the Complaint was timely filed. Complainants must file a complaint no later than 180 days after the date on which the complainant knew or should have known, by the exercise of reasonable diligence, of the alleged violation.

Respondent is an issue committee registered on August 31, 2020 "to oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." On July 8, 2020, HB20-1427 was signed into law referring Proposition EE, a tobacco and nicotine tax, to the ballot. Complainant alleges that Respondent failed to include required disclaimer statements on communications opposing Proposition EE. To support their allegations, Complainant provides excerpts from Respondent's campaign finance disclosure reports from September 21, 2020 and October 5, 2020 as well as an additional major contributor filing on October 5, 2020. Complainant reports they were made aware of the potential violations on September 18, 2020 and that "[n]one of the affected communications were or could have been distributed prior to July 8, given that No on EE was formed and filed with the Secretary of State on August 31, 2020 according to the committee's registration on the Secretary's website."[5] The Complaint was filed on October 8, 2020.

Based on the information provided by Complainant, the Division makes the initial determination that the Complaint was timely filed under section 1-45-111.7(2)(b), C.R.S., as the Complaint was filed within 180 days of when Complainant knew or should have known, through the exercise of reasonable diligence, of the alleged violations.

2. *Complainant specifically identifies one or more violations of Colorado campaign finance law.*

The Division initially determines that Complainant specifically identifies one or more violations of Colorado campaign finance laws. Complainant alleges Respondent violated Colorado campaign and political finance laws by failing to include required disclaimer statements on various campaign communications. Complainant specifically asserts that Respondent failed to include the required disclaimer statement on television and radio advertisements, billboards, campaign literature, and their campaign website. Complainant also alleges Respondent knows its communications to be "false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements."

Under Colorado law:

[4] Section 1-45-111.7(3)(a), C.R.S.
[5] *See* Complaint 2020-71.

> (1) A candidate committee, political committee, issue committee, small donor committee, political organization, political party, or other person making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered; placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in 1-45-107.5(5) for content, size, duration, and placement.
>
> (3) In addition to any other applicable requirements provided by law, any person who expends one thousand dollars or more per calendar year on electioneering communications or regular biennial school electioneering communications shall, in accordance with the requirements specified in section 1-45-107.5(5), state in the communication the name of the person making the communication. For purposes of this subsection (3), an "electioneering communication" also includes any communication that satisfies all other requirements set forth in section 2 (7) of article XXVIII of the state constitution but that is broadcast, printed, mailed, delivered, or distributed between the primary election and the general election.

Section 1-45-108.3, C.R.S.

Disclaimer requirements contained in section 1-45-107.5, C.R.S., state:

> ". . . the communication shall include in the communication a statement that: (I) The communication has been 'paid for by (full name of the person paying for the communication)'; and (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person."[6]

In summary, for any electioneering communication[7] distributed within 30 days of the primary election and through the general election, if a candidate has spent one thousand dollars or more in a calendar year on aggregate electioneering communications, then a disclaimer is needed on electioneering communications. For any non-electioneering communication, if the candidate spent more than a thousand dollars on that particular communication, then a disclaimer is required. The required disclaimer statements must include the name of an issue committee's registered agent.

As alleged, Complainant's allegations identify one or more potential violations of Colorado campaign finance laws.

[6] Section 1-45-107.5(5)(a), C.R.S.
[7] *See* COLO CONST. art XXVIII, § 2(7)(a).

3. *Complainant alleges sufficient facts to support a factual and legal basis for the violations of law alleged in the Complaint.*

The Division initially determines that Complainant alleges sufficient facts to support a factual and legal basis for the Complaint. Complainant alleges that Respondent failed to include required disclaimer statements on television and radio advertisements, billboards, campaign literature, and their campaign website.

Complainant provided evidence that Respondent's communications did not include required disclaimer statements by presenting photos of billboards, campaign fliers, and copies of video advertisements opposing Proposition EE. In addition, Complainant included a link to Respondent's website and a screen shot of the website with an allegedly noncompliant disclaimer statement. Complainant details that Respondent failed to include the required disclaimer statement on approximately $2,228,090.00 worth of TV and radio advertisements, $1,069,011.25 of billboards, $3,125.83 of campaign literature, and on Respondent's campaign website valued at approximately $1,000. Complainant further alleges that Respondent spent additional funds on noncompliant communications not reported in these subtotals.[8] Complainant also provided a record of Respondent's contribution and expenditure reports to show the contributions and expenditures made by Respondent associated with the allegedly noncompliant communications.

Based on the information Complainant provided, the Division determines that Complainant alleges facts that, if proven, could establish Respondent violated Colorado campaign finance laws.

4. *Respondent has the opportunity to cure the alleged violations.*

The Division makes the initial determination that the Complainant alleges one or more violations, that may be curable under section 1-45-111.7(4), C.R.S. If Respondent intends to cure, they have ten business days from the date of this notice to do so. Respondent must file with the Division a Notice of Intent to Cure form with reports, amendments, or other relevant information on how the potential violations have been cured and demonstrate how Respondent has substantially complied with the law.

When determining whether Respondent has substantially complied with the law, the Division must consider:

(1) The extent of the respondent's noncompliance;
(2) The purpose of the provision violated and whether the purpose was substantially achieved despite the noncompliance; and
(3) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.[9]

[8] *See* Complaint 2020-71.
[9] Section 1-45-111.7(4)(f), C.R.S.

However, if Respondent disputes the allegations, Respondent may also provide the Division with information for further review under section 1-45-111.7(5)(a), C.R.S. The Division may ask Respondent for additional information including the production of documents or other tangible items during the cure or investigation.[10]

Conclusion

For the reasons stated above, the Division makes the initial determination that there are potential violations of Colorado campaign finance law, but the alleged violations may be curable.

If Respondent disputes the allegations and does not establish cure and substantial compliance under 1-45-111.7(4), the Division will conduct an additional review, under section 1-45-111.7(5), C.R.S., to determine whether to file a motion to dismiss the Complaint with the Deputy Secretary of State or file a complaint with a hearing officer.

Dated this 22nd day of October 2020.

/s/Luis Lipchak
Luis Lipchak
Campaign Finance Enforcement Manager
Elections Division
Colorado Secretary of State

[10] Section 1-45-111.7(4)(c), C.R.S.; Section 1-45-111.7(5)(a), C.R.S.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Notice of Initial Review and Opportunity to Cure was served by electronic transmission to:

Complainant – Anna Jo Haynes
annajoh@milehighearlylearning.org

Respondent – No on EE -- A Bad Deal for Colorado
Registered Agent: yastremski67@gmail.com
Designated Filing Agent: partykasandy@comcast.net

on this 22nd day of October 2020.

/s/John Molera
John Molera

Submit Original to:
Colorado Secretary of State
Elections Division
Campaign Finance Enforcement
1700 Broadway, Suite 200
Denver, CO 80290
CPFComplaints@sos.state.co.us

NOTICE OF INTENT TO CURE

Case Name: No on EE: A BAD DEAL for Colorado

Case No.: 2020-71

Respondent's Information:

* Full Name: Patrick MacDonald

* Mailing Address: 140 E 19th Ave., #400, Den Co 80203

* Telephone Number: 720 240 7355 Email Address: yastremski67@gmail.com

Respondent or authorized person filing notice on behalf of Respondent:

* Signature: [signature] Date: 11-5-2020

Describe here or in an attachment to this Notice any information demonstrating the violation(s) that have been cured, including a description and dates of the actions taken, and copies of amended reports or relevant documents. Respondent must demonstrate substantial compliance with the law. When determining substantial compliance, the Elections Division must consider: (1) the extent of the respondent's noncompliance; (2) the purpose of the provision violated and whether the purpose was substantially achieved despite the noncompliance; and (3) whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.[1] Please address each of these factors in the statement and evidence you provide to the Division.

[1] Section 1-45-111.7(3)(a), C.R.S.

Office of the Colorado Secretary of State, Elections Division

Notice of Intent to Cure Response

In the Matter of "No on EE – A Bad Deal for Colorado," Case number 2020-71

On September 18, 2020, Anna Jo Haynes ("Complainant") filed a complaint alleging that we, the No on EE – A Bad Deal for Colorado issue committee (the "Committee") neglected to include a disclaimer on our campaign website, collateral, television, radio and digital ads. The Committee was notified of the complaint on October 8, 2020. The Committee included a disclaimer on all campaign materials but inadvertently did not include the name of the registered agent in the disclaimer.,

Intent

The Committee did include the disclaimer, "Paid for by No on EE:A Bad Deal for Colorado", on all of the Committee's materials but inadvertently omitted the registered agent from the disclaimer.

The Committee was registered with the Colorado Secretary of State's Office on August 31, 2020. At that time, the Committee listed Sandy Partyke, a Colorado registered voter, as our filing agent and Patrick MacDonald, a Colorado registered voter, as our registered agent, according to state statute.

At the time of filing, Sandy Partyke was in touch with the Secretary of State's campaign finance office to go through the rules of in-kind donations specifically to ensure compliance at every level.

On September 16, 2020, Sandy Partyke attended a campaign finance webinar hosted by the Colorado Secretary of State's office, to ensure the Committee was in full compliance. During this webinar, Sandy does not recall the new requirement of including the registered agent as part of the disclaimer being highlighted during the presentation.

Because the Committee knew that many of our campaign contributions would be through in-kind contributions, we took the extra step of including who the in-kind contribution was paid to although this step was not required by law. Our intent was to have full transparency and accountability for anybody who wanted to see where the money contributed through an in-kind contribution was spent.

Cure

As soon as the Committee was made aware of the error we immediately began to cure.

1. We reprinted our door hangers and added stickers with the registered agent's information to the material we had already printed.
2. We were able to immediately fix 30% of our billboards and the others that cannot be cured will be taken down.

3. Our TV, digital and radio ads were immediately fixed (within 36 hours) adding the registered agent's name to the disclaimer already on the ad.
4. The website was cured immediately after receiving he complaint.

Costs

9/4/2020 Billboards – $1.069,011.25 –

Signage went up the week of September 16th

30% of billboards were cured by October 12th

9/25/2020 Paid Media - $1,808,280

This includes broadcast tv, streaming, radio and digital

9/25/2020 Radio – $70,249.24 total
9/29/2020 TV - 1,186,215
10/2-10/8 Digital – $170,500
10/2 – 11/3 Streaming through whole campaign – 281,250

Finally, as of Oct 8th, the following ballot issues also did not include a registered agent with their disclaimer, so clearly there seems to be confusion on this issue.
No Prop 116
No on Prop 117
No on Amendment B
No on Prop 114

No on EE: A Bad Deal for Colorado Case # 2020-71

Tv ad with Registered Agent Added https://www.youtube.com/watch?v=o0tLQLcZ2qw

Digital ad with Registered Agent https://youtu.be/wLSzcZdeCtQ?t=13

No on EE: A Bad Deal for Colorado Case # 2020-71

Website

Last Minute Public Policy and Back Room Deals

- HB20-1427 is a 43- page document introduced very late in the last legislative session, was reviewed for merely 20 minutes and the committee heard from just two witnesses. The proposal passed in the final 72 hours of the legislative session.
- The details of the bill were decided in a backroom deal without public discussion or input.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on Pre-School. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.
- Purchasers of discount cigarettes, primarily low-income adult smokers, would be severely burdened with this tax increase, paying a larger percentage of their income than would other, more affluent consumers.

"The measure was introduced in the final hours of the 2020 legislative session and so hastily brought that lawmakers didn't have a copy of the measure before its first committee hearing began." (Colorado Sun)

"...National Bureau of Economic Research, tobacco tax increases only have a small impact on adult consumption. If you consider that the poor are more likely to smoke than middle-class or wealthy adults, Proposition EE is basically a tax increase on the poor...." Krista Kafer, DP 9/11/2020

ENDORSEMENT – Pagosa Daily Post

"Proposition EE: Vote "NO!". This proposition is a "sin tax" that increases taxes on tobacco, a product that is used significantly more by poor people in Colorado. Part of the tax money would be used to fund general education programs that lack funds because of the way that growth has been fueled and subsidized in Colorado. Literally, this tax would take money

from poor people addicted to tobacco and subsidize wealthy developers who aren't charged the cost of growth…." September 24, 2020

Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent
Contact: info@baddealforco.com

No on Proposition EE: A $294 million tax increase

- NO New Taxes – As our economy recovers from COVID-19, now is not the time to raise taxes on Colorado voters.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on pre-school. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- Prop. EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from about $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.

"...When bills are passed that only affect lower income classes of people, the American dream becomes the American nightmare!..."

– Bishop Jerry Demmer
Pastor of The Absolute Word Church
President of The Greater Metro Denver Ministerial Alliance

www.BadDealforCO.com

Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent.

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

Jena M. Griswold
Secretary of State
Judd Choate
Director, Elections Division

November 18, 2020

Sent via email correspondence to: yastremski67@gmail.com & partykasandy@comcast.net
No on EE – A Bad Deal for Colorado
P.O. Box 533
Indian Hills, CO 80454

RE: CPF Complaint 2020-71 No on EE – A Bad Deal for Colorado Notice of Investigation

Dear No on EE – A Bad Deal for Colorado:

The Elections Division of the Colorado Secretary of State's Office (Division) determined that Respondent has failed, or was unable, to cure and substantially comply with its legal obligations for each of the allegations in the Complaint under sections 1-45-111.7(4)(e)(III),(g), C.R.S. The Division will now conduct an additional review under section 1-45-111.7(5)(a), C.R.S. The Division must decide whether to file a complaint with the Office of Administrative Courts or file a motion to dismiss within thirty days of service of this letter.

Any information previously submitted to the Division during the complaint process will be considered by the Division in its further review and investigation. The Division may request additional information regarding the Complaint.

If you have any questions about this process, please do not hesitate to contact me via email at luis.lipchak@sos.state.co.us.

Sincerely,

/s/ Luis Lipchak
Luis Lipchak
Campaign Finance Enforcement Manager
Elections Division
Colorado Secretary of State

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

Jena M. Griswold
Secretary of State
Judd Choate
Director, Elections Division

November 20, 2020

Sent via email to: partykasandy@comcast.net and yastremski67@gmail.com
No on EE – A Bad Deal for Colorado
1732 Wazee St. #201
Denver, Colorado 80202

RE: CPF Complaint 2020-71 (No on EE) Request for Information

I am contacting you to request information and documentation regarding the above referenced campaign and political finance complaint filed with the Elections Division (Division). Complaint 2020-71 alleges Respondents violated Colorado campaign and political finance laws by failing to include required disclaimer statements on communications opposing Proposition EE. The Division is now requesting additional information regarding the allegations in the complaint.

The Division requests that you provide the following:

- Please provide information pertaining to all television and radio advertisements made by Respondent, including:
  - Copies of all television and radio advertisements.
  - The dates for which all radio and television advertisements ran.
  - Cost of each radio and television advertisement and date of the expenditure.
- Please provide information on all billboard advertisements made by Respondent, including:
  - A copy or photo of each billboard or a description of each design used for the billboard. Please also detail the number of billboards posted with each design.
  - The dates for which each billboard was posted.
  - The cost of each billboard and date of the expenditure.
- Please provide information on all printed campaign literature paid for by Respondent, including:
  - A copy or photo of each different printed communication design or a description of each design used and distributed. Please also detail the

number of each printed campaign communication distributed for each design.
    - The dates each printed campaign communication was distributed.
    - Cost associated with each type of printed campaign communication distributed, and the date of the expenditure.
- Please provide information on all digital advertisements paid for by Respondent, including:
    - Copies of all digital advertisements.
    - Dates each advertisement ran.
    - Identify the platform on which each advertisement was distributed.
    - Cost associated with each digital advertisement, and the date of expenditure.
- Please provide information on the streaming platform used by Respondent and the cost associated with each if multiple services were used.
- Please provide information on Respondent's campaign website including the cost of developing the website, dates website expenditures were made, as well as the dates that the website was operational and viewable to the public.
- Please provide a list of each electioneering communication made by Respondent in 2020 opposing Proposition EE including the cost of the communication, date the expenditure for the communication was made, and the date the communication was distributed, or otherwise made available to the public.

Please provide any available requested information by Wednesday, November 25, 2020.

Please feel free to contact me with any questions or concerns at john.molera@sos.state.co.us.

Sincerely,

/s/John Molera
John Molera
Campaign Finance Enforcement Investigator
Elections Division
Colorado Secretary of State

John Molera
Campaign Finance Enforcement Investigator
Elections Division
Colorado Secretary of State

CPF Complaint 2020-71 (No on EE) Request for Information November 25,2020

To Mr. John Molera,

Below is the information you have requested in your communication sent November 20, 2020.

In the Matter of "No on EE – A Bad Deal for Colorado," Case number 2020-71

On September 18, 2020, Anna Jo Haynes ("Complainant") filed a complaint alleging that we, the No on EE – A Bad Deal for Colorado issue committee (the "Committee") neglected to include a disclaimer on our campaign website, collateral, television, radio and digital ads. The Committee was notified of the complaint on October 8, 2020. The Committee included a disclaimer on all campaign materials but inadvertently did not include the name of the registered agent in the disclaimer.,

Intent

The Committee did include the disclaimer, "Paid for by No on EE:A Bad Deal for Colorado", on all of the Committee's materials but inadvertently omitted the registered agent from the disclaimer.

The Committee was registered with the Colorado Secretary of State's Office on August 31, 2020. At that time, the Committee listed Sandy Partyke, a Colorado registered voter, as our filing agent and Patrick MacDonald, a Colorado registered voter, as our registered agent, according to state statute.

At the time of filing, Sandy Partyke was in touch with the Secretary of State's campaign finance office to go through the rules of in-kind donations specifically to ensure compliance at every level.

On September 16, 2020, Sandy Partyke attended a campaign finance webinar hosted by the Colorado Secretary of State's office, to ensure the Committee was in full compliance. During this webinar, Sandy does not recall the new requirement of including the registered agent as part of the disclaimer being highlighted during the presentation.

Because the Committee knew that many of our campaign contributions would be through in-kind contributions, we took the extra step of including who the in-kind contribution was paid to although this step was not required by law. Our intent was to have full transparency and accountability for anybody who wanted to see where the money contributed through an in-kind contribution was spent.

Printed Material

Door Hanger – Please see attachment enclosed
The original door hanger did have a disclaimer but was missing the name of the registered agent.

Design: September 28, 2020

Cost: $90

Paid to: Lombardi Design. 765 Barberry Circle, Lafayette Colorado 80026

Invoice dated: October 1, 2020

Printing: September 29, 2020

Cost: $3125.83

Paid to: Campaign Products of the Rockies, P.O. Box 13325, Denver, Co 80201

Invoice Dated: September 29, 2020

Distribution: Less than 100 doorhangers without the name of the registered agent were distributed.

Door hangers were cured through adding the registered agents name onto door hanger as well as reprinting.

Website

Cost of website development as of October 8, 2020: $990

Website splash page was viewable to the public on September 8, 2020

Invoice for website was submitted October 1, 2020 and paid to Lombardi Design, 765 Barberry Cir., Lafayette Co 80026

The website contained the disclaimer but was missing the name of the registered agent. The registered agent's name was added on October 8, 2020

BillBoards

Billboards did have a disclaimer but were missing the registered agent's name. Picture of billboards attached

There were 82 billboards total and we were able to immediately fix 30% of our billboards by October 12, 2020. The others that cannot be cured will be taken down.

9/4/2020 Billboards – $1.069,011.25 as reported in our filing to the Secretary of State's Office
Signage went up the week of September 16th
30% of billboards were cured by October 12th

Paid Media

9/25/2020 Paid Media - $1,808,280

This includes broadcast tv, streaming (Hulu, You Tube), radio and digital

9/25/2020 Radio – $70,249.24 total
9/29/2020 TV - 1,186,215

10/2-10/8 Digital – $170,500
Digital ad during this time include our tv ad below as well as this ad. I do not have a version without the registered agent. Digital ad with Registered Agent
https://youtu.be/wLSzcZdeCtQ?t=13

10/2 – 11/3 Streaming through whole campaign – 281,250
Broadcast and digital ads

a. Backroom
   Smoke: https://www.dropbox.com/sh/dj8r9tcd55r99gh/AACuRpW5It9IK_RolYWEDWVKa?dl=0 With disclaimer but without registered agent name Ads ran TV 30 - Backroom Smoke: 9.25-10.9
a. Backroom Smoke
   Redux: https://www.dropbox.com/sh/cf06nkynn0irdz4/AABxFtPBPKN0bHxINZMoyXxva?dl=0
   With disclaimer and registered agent name. Cured October 8, 2020. Ad ran 10.9-10.23

John,

The above includes all electioneering communication you have requested. It was difficult to determine the exact cost of each digital ad as that is not the way it was purchased. Please let me know if there is any other information you need.

Thanks

Sheila MacDonald on behalf of Patrick MacDonald, Registered Agent


VOTE
NO
ON EE
www.BadDealforCO.com
TAX & SPEND
MUST END
A $294 MILLION TAX HIKE! REALLY?
Paid for by No on EE: A Bad Deal for Colorado. Patrick MacDonald, Registered Agent
OUTFRONT

SOS0043


NO NEW TAXES
VOTE NO ON A $294 MILLION TAX INCREASE
NO ON EE

No on Proposition EE: A $294 million tax increase

- NO New Taxes – As our economy recovers from COVID-19, now is not the time to raise taxes on Colorado voters.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on pre-school. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- Prop. EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from about $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.

"...When bills are passed that only affect lower income classes of people, the American dream becomes the American nightmare!..."

– Bishop Jerry Demmer
Pastor of The Absolute Word Church
President of The Greater Metro Denver Ministerial Alliance

www.BadDealforCO.com



Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent.

* * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	**RECEIVED** 12/18/2020 **OFFICE OF ADMINISTRATIVE COURTS** ✦ **COURT USE ONLY** ✦
Elections Division of the Secretary of State Petitioner VS. **No on EE- A Bad Deal for Colorado** Respondent	**CASE NUMBER:** **OS 2020-0025**

CASE INITIATION

This document is **FOR INFORMATION PURPOSES** and does not substitute for a charging document. The charging document must be included as an attachment. Additionally, this form does not replace the need of the initiating party to serve the charging document on all parties to the case.

The type of case being initiated is: **Violation of Fair Campaign Practices Act.** The board or governmental entity involved is **.**

Signer:
Xan Serocki
xan.serocki@coag.gov

Date:
12/18/2020

The signer certified that the case initiation was submitted to all parties: ☐

REV 9/18

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th floor Denver, Colorado 80203	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, *in re* ED 2020-71 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. NO ON EE – A BAD DEAL FOR COLORADO, Respondent.	▲COURT USE ONLY▲ CASE NUMBER OS 2020-_____

COMPLAINT

Pursuant to § 1-45-111.7, C.R.S. (2019), the Elections Division of the Secretary of State files this complaint against No on EE – A Bad Deal for Colorado ("No on EE").

BACKGROUND

1. To foster transparency and assist voters in understanding the sources of election-related communications, Colorado law requires issue committees, as well as other political entities, to include a "paid for by" disclaimer on certain communications.

2. Those disclaimers must include both the name of the person paying for the communication, and—if the person is not a natural person—the name of the registered agent for that entity.

3. Here, No on EE spent millions of dollars on communications requiring a disclaimer. While these communications indicated that they were "Paid for by No on EE," they omitted the name of the committee's registered agent.

PARTIES

4. Complainant is the Elections Division ("Division") of the Colorado Secretary of State.

5. Respondent is No on EE, a Colorado issue committee registered with the Colorado Secretary of State.

JURISDICTION AND VENUE

6. The Division has jurisdiction under § 1-45-111.7.

7. The Division files this complaint with the Office of Administrative Courts consistent with § 1-45-111.7(5)(a)(IV), (6).

8. This complaint is timely filed within thirty days of the Division's November 18, 2020, notice of investigation, according to § 1-45-111.7(5)(a)(IV).

9. Venue is proper before the Office of Administrative Courts under § 1-45-111.7(5).

ALLEGATIONS

Proposition EE is Placed on the Ballot

10. On July 8, 2020, Governor Jared Polis signed House Bill 20-1427, an act referring to voters a ballot question related to cigarette taxes. With his signature, Governor Polis placed the issue—which later became known as Proposition EE—on the November 3, 2020, ballot.

11. On August 31, 2020, No on EE registered as an issue committee with the Colorado Secretary of State. According to the committee, its purpose was "to oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature."

12. According to the Secretary of State's TRACER system, No on EE received over $4 million in non-monetary contributions during the 2020 election cycle, and in turn made over $4 million in expenditures. According to TRACER, nearly all of these expenditures were for "Advertising."

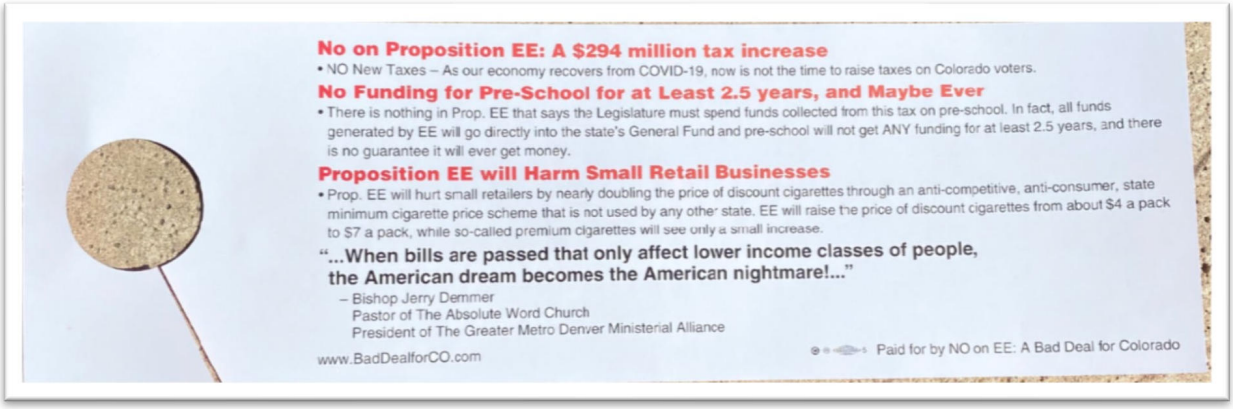
The Division Receives a Campaign Finance Complaint Against No on EE

13. On October 8, 2020, Anna Jo Hayes filed a campaign finance complaint against No on EE.

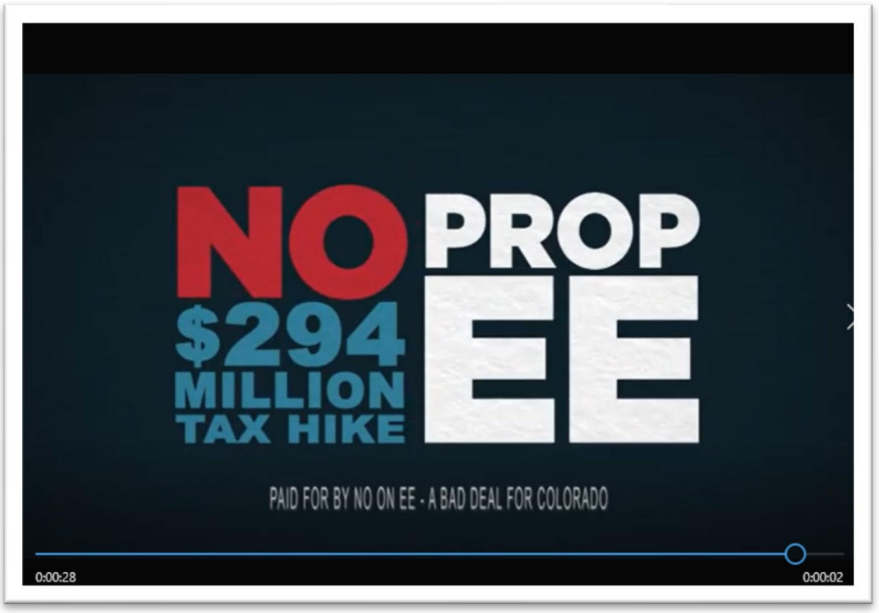
14. The complaint alleged that No on EE had "failed to include a legally compliant disclaimer" on its public communications. Specifically, the complaint alleged that No on EE had failed to include the name of the committee's registered agent as is required by law.

15. The complaint attached several examples of communications with the disclaimer: "Paid for by NO on EE: A Bad Deal for Colorado." None included the name of the registered agent. Two of the attached examples are reproduced below:





16. The complaint also included two video advertisements funded by No on EE. As shown in the screenshots below, both included the disclaimer: "Paid for by No on EE · A Bad Deal for Colorado." Neither included the name of the registered agent.





No on EE Attempts to Cure the Alleged Violations

17. The Division notified No on EE of the complaint shortly after it was filed. Then, on October 22, 2020, the Division sent No on EE a Notice of Initial Review and Opportunity to Cure. The Notice stated that the Division had initially determined that the complaint identified potential violations of Colorado campaign finance law, but also that the alleged violation may have been curable.

18. Under § 1-45-111.7(4), the Division gave No on EE ten business days to cure any alleged violations and provide the Division with information as to the committee's cure and compliance efforts.

19. No on EE responded on November 5, 2020 with a Notice of Intent to Cure.

20. In its response, No on EE explained that it included a disclaimer on all of its materials, "but inadvertently omitted the registered agent from the disclaimer."

21. The committee explained that "as soon" as it was made aware of the allegation, it:

a. "Reprinted" the door hangers and "added stickers with the registered agent's information" to material that had already been printed.

b. "Immediately" fixed 30% of the committee's billboards, and pledged to take down the ones that could not be cured.

c. "Immediately" fixed the committee's TV, digital and radio ads to add the name of the registered agent to the disclaimer.

d. "Immediately" cured the committee's website to reflect the name of the registered agent.

22. The committee also included a breakdown of its media costs.

23. According to No on EE, it spent $1,069,011.25 on billboards which went up the week of September 16th. According to No on EE, 30% of those billboards were cured by October 12th. This $1,069,011.25 corresponds to an expenditure listed in TRACER made by No on EE on September 4, 2020 to Milk Sono LLC.

24. According to No on EE, it spent a total of $1,808,280 on paid media, including broadcast tv, streaming, radio, and digital advertisements. This $1,808,280 corresponds to an expenditure listed in TRACER made by No on EE on September 24, 2020 to Hulsen Media Services LLC.

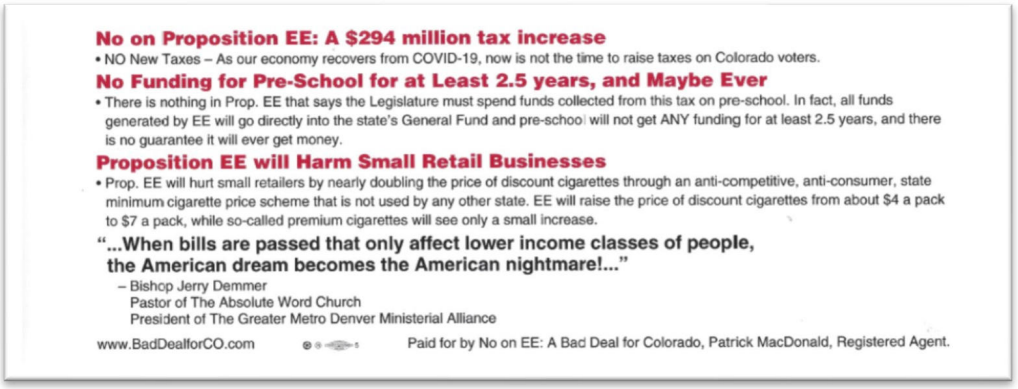
25. In addition to these two expenditures, TRACER lists No on EE as making an additional $1,364,436.20 on expenditures marked as "Advertising" between September 25, 2020 and November 2, 2020. This includes an additional $1,287,548.00 to Hulsen Media Services LLC.

26. On November 18, 2020, the Division informed No on EE that it was unable to determine that No on EE had cured and substantially complied with its legal obligations, and would be conducting an additional review under § 1-45-111.7(5)(a), C.R.S.

27. On November 20, 2020, the Division requested further information about No on EE's communications from the committee.

28. No on EE responded on November 30, 2020, with the following information:

a. Door Hanger: As to the Door Hanger, No on EE explained that its total expenditures on the door hanger were $3,125.83, and that "less than 100" door hangers were distributed without a compliant disclaimer. The remaining doorhangers were reprinted to include the name of the committee's registered agent, as reproduced below:



b. Website: As to the website, No on EE explained that the name of its registered agent had been added to the website disclaimer on October 8, 2020.

c. Billboards: As to its billboards, No on EE explained that it had purchased a total of 82 billboards, and that it had been able to cure 30% of those by October 12, 2020. The committee submitted an example of one of the cured billboards, which is reproduced below:



d. Paid Media: Finally, as to paid media, No on EE reiterated the total paid media spending figures it had originally shared with the Division on November 5. No on EE also included copies of the tv and digital advertisements that did include the name of the registered agent, and indicated that the advertisements had been updated on October 9, 2020. Screenshots from those cured advertisements reflect this change:



COLORADO CAMPAIGN FINANCE LAW

29. Under Colorado law

A[n] . . . issue committee . . . making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered; placed on a website, streaming media

> service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.

§ 1-45-108.3(1), C.R.S.

30. Under § 1-45-108.3(2), "[t]he disclaimer statement requirement by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5(5) for content, size, duration, and placement."

31. Those requirements, in turn, are that:

> [T]he communication shall include in the communication a statement that: (I) The communication has been "paid for by (full name of person paying for the communication)"; and (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

§ 1-45-107.5(a), C.R.S.

CLAIM ONE
Failure to Include Sufficient Disclaimers
(§ 1-45-108.3(1), C.R.S.)

32. All preceding allegations are incorporated.

33. No on EE spent millions of dollars on communications that opposed Proposition EE, including television and digital advertisements, door hangers, and billboards.

34. No on EE is not a natural person.

35. No on EE spent more than one thousand dollars on each of these communications.

36. The disclaimer on these communications failed to conform "to the requirements specified in section 1-45-107.5(5) for content, size, duration, and placement."

37. Specifically, these communications did not identify a natural person who is the registered agent for No on EE.

38. The Division is entitled to relief under Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act, § 1-45-101 et seq.

PRAYER FOR RELIEF

WHEREFORE, the Elections Division prays for judgment and relief as follows:

(a) Penalties to include appropriate fines; and

(b) Such other relief as is warranted by the facts and the law.

Respectfully submitted this 18th day of December, 2020.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Campaign Finance Fellow, No. 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served this 18th day of December, 2020, by U.S. mail, addressed as follows:

No on EE – A Bad Deal for Colorado
C/O Registered Agent Patrick MacDonald
PO Box 533
Indian Hills, CO 80454
303-246-6496
yastremski67@gmail.com

Anna Jo Haynes
3031 Dexter St.
Denver, CO 80207
303-917-5252
annajoh@milehighearlylearning.org

Third-Party Complainant

/s/ *Xan Serocki*

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Elections Division of the Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**

Notice

This document is for **INFORMATIONAL PURPOSES ONLY**.

Title:	NOH 2-1-21
Type/Category:	
Description:	
Status:	Pending
Signer Name:	
Date of Service/Issuance:	

Generated Date: December 28, 2020

/s/ Katherine Singleton
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State Complainant VS. **No on EE- A Bad Deal for Colorado** Respondent	**COURT USE ONLY** **CASE NUMBER:** **OS 2020-0025**

NOTICE OF HEARING

On December 18, 2020 the Elections Division of the Colorado Secretary of State referred this complaint to the Colorado Office of Administrative Courts pursuant to 8 CCR 1505-6 Rule 18.2.8. This matter has been assigned to an Administrative Law Judge at the Office of Administrative Courts for the purpose of conducting a hearing and issuing a written decision on the complaint.

A hearing on this complaint will be held through Google Hangouts at 9:00 AM on February 01, 2021. Prior to hearing, parties will receive via electronic mail an invitation to join the hearing virtually.

All pleadings, papers or other correspondence in this matter should now be filed directly with the Office of Administrative Courts and not with the Secretary of State. The mailing address for the Office is 1525 Sherman St., 4th Floor, Denver, CO 80203. The telephone number for the Office is 303-866-5626 and the FAX number is 303-866-5909.

NOTICE REGARDING PROCEDURES AT THE HEARING

This complaint was made pursuant to the Fair Campaign Practices Act, Article XXVIII of the Colorado Constitution and Section 1-45-101, et seq., C.R.S. Under these laws and Section 24-4-105, C.R.S., the person filing the complaint has the burden of proving by a preponderance of the evidence that a violation of the Fair Campaign Practices Act has occurred. Information about presenting a case before the Office of Administrative Courts can be found at http://www.colorado.gov/dpa/oac. By order of the Administrative Law Judge no prehearing statements are required to be filed.

At the hearing, each party will have the right to present personal testimony and the testimony of other witnesses, present documentary evidence, cross-examine witnesses and present argument to the Administrative Law Judge.

You may require the attendance of witnesses by subpoena, and subpoena forms may be obtained from the Office of Administrative Courts. A party wishing to subpoena

a witness shall be responsible for arranging for service of the subpoena as required by law.

Except as otherwise provided in Section 13-1-127, C.R.S. a party, who is not an individual, can not be represented by a non-attorney in this proceeding. A party may be represented by an attorney at the party's expense.

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **NOTICE OF HEARING** 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:

Peter Baumann
Department of Law
peter.baumann@coag.gov

Patrick McDonald
No on EE – A Bad Deal for Colorado
P.O. Box 533
Indian Hills CO 80454
yastremski67@gmail.com

Luis Lipchak
Elections Division
Luis.Lipchak@sos.state.co.us

Dated: 12/28/2020

/s/ Katherine Singleton
Court Clerk

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED 01/28/2021 10:57 AM OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**

Receipt Of Motion

This document is for **INFORMATIONAL PURPOSES ONLY**. This form does not replace the need of the submitting party to serve the pleading on all parties to the case.

The attached UNOPPOSED MOTION TO CONTINUE HEARING was submitted by Xan Serocki to the Office of Administrative Courts on January 28, 2021 in the above referenced case.

Additional Notes:

Xan Serocki certified that a complete copy of this Motion was served on all parties.

Dated: January 28, 2021

Marc Marcel
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th floor Denver, Colorado 80203	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, *in re* ED 2020-71 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. NO ON EE – A BAD DEAL FOR COLORADO Respondent.	▲COURT USE ONLY▲ CASE NUMBER OS 2020-0025

UNOPPOSED MOTION TO CONTINUE HEARING

Under § 1-45-111.7(6)(a), C.R.S. and Rule 17 of the Office of Administrative Courts Procedural Rules (1 CCR 104-1), the Division moves to continue the hearing set in this matter. The Division proposes to file a status report on or before February 11, 2021. As good cause to support the motion, the Division states as follows:

1. The Division has conferred with Respondent regarding the relief requested in this motion. Respondent does not oppose the requested relief.

2. A hearing is currently set in this matter for February 1, 2021.

3. The parties have met to confer about a potential resolution of this matter on multiple occasions but have been unable to resolve the claims raised in the Division's complaint.

4. The Division understands that Respondent is in the process of retaining counsel to assist in this matter.

5. Upon retention, Respondent's counsel will require a short period of time to familiarize themselves with the case.

6. A continuance will benefit the parties, and the Court, by allowing for a more fulsome presentation of the issues raised in the Division's complaint.

7. Nor will the public be harmed by a continuance because the relevant election has passed.

Accordingly, the Division respectfully requests a continuance in this matter, with the Division proposing to file a status report on or before February 11, 2021.

Respectfully submitted this 28th day of January, 2021.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Campaign Finance Fellow, No. 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served this 28th day of January, 2021, by electronic mail, addressed as follows:

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

Patrick MacDonald
Registered Agent for Respondent, No on EE
Yastremski67@gmail.com

/s/ *Peter G. Baumann*

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	
Elections Division of the Secretary of State Petitioner, vs. No on EE- A Bad Deal for Colorado Respondent.	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **OS 2020-0025**

NOTICE OF ORDER ISSUANCE

The attached Order Vacating Hearing was issued January 29, 2021 in the above referenced case.

Dated: January 29, 2021

/s/ Marc Marcel
Marc Marcel
Court Clerk

* * * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	
ELECTIONS DIVISION OF THE SECRETARY OF STATE, Petitioner, vs. **NO ON EE – A BAD DEAL FOR COLORADO,** Respondent.	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **OS 2020-0025**

ORDER VACATING HEARING

This matter is before the undersigned Administrative Law Judge on the Unopposed Motion to Continue Hearing, filed by the Elections Division of the Secretary of State (Division) on January 28, 2021. Based on a review of the unopposed motion, and good cause having been shown pursuant to Rule 17 of the Rules of Procedure of the Office of Administrative Courts (1 CCR 104-1), it is hereby ordered that:

1. The hearing on the merits currently scheduled for February 1, 2021 has been vacated.

2. The Division shall file either a status report or a notice to set this matter for a new hearing on the merits by the close of business on February 11, 2021.

Done and Signed: January 29, 2021.

/s/ MICHELLE A. NORCROSS
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **ORDER VACATING HEARING** 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:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

Patrick MacDonald
Registered Agent for Respondent, No on EE
Yastremski67@gmail.com

Dated: January _29, 2021.

\s\Marc Marcel
Office of Administrative Courts

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED 02/11/2021 2:34 PM OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**
Receipt Of Motion	

This document is for **INFORMATIONAL PURPOSES ONLY**. This form does not replace the need of the submitting party to serve the pleading on all parties to the case.

The attached UNOPPOSED MOTION TO RE-SET HEARING was submitted by Xan Serocki to the Office of Administrative Courts on February 11, 2021 in the above referenced case.

Additional Notes:

Xan Serocki certified that a complete copy of this Motion was served on all parties.

Dated: February 11, 2021

Marc Marcel
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th floor Denver, Colorado 80203	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, *in re* ED 2020-71 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. NO ON EE – A BAD DEAL FOR COLORADO Respondent.	▲COURT USE ONLY▲ CASE NUMBER OS 2020-0025

UNOPPOSED MOTION TO RE-SET HEARING

In response to the Court's Order Vacating Hearing, dated January 29, 2021, the Division moves to re-set the hearing in the above-captioned matter. As good cause for the motion, the Division states as follows:

1. The Division has conferred with Respondent regarding the relief requested in this motion. Respondent does not oppose the requested relief.

2. On January 29, 2021, the Court vacated the hearing set in this matter at the Division's request. The Division's motion to vacate was premised on Respondent's interest in retaining counsel to assist in this matter.

3. As of the date of this motion, no counsel has entered an appearance on behalf of Respondent. And undersigned counsel is unaware of any counsel having been retained.

4. Therefore, in accordance with the Rules of Procedure of the Office of Administrative Courts and § 1-45-111.7(5), C.R.S. (2020), the Division requests that this matter be re-set for a hearing.

Respectfully submitted this 11th day of February, 2021.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Campaign Finance Fellow, No. 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served this 11th day of February, 2021, by electronic mail, addressed as follows:

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

Patrick MacDonald
Registered Agent for Respondent, No on EE
Yastremski67@gmail.com

/s/ *Peter G. Baumann*

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	
ELECTIONS DIVISION OF THE SECRETARY OF STATE, Petitioner, vs. **NO ON EE – A BAD DEAL FOR COLORADO,** Respondent.	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **OS 2020-0025**

ORDER GRANTING MOTION TO RESET HEARING DATE

This matter is before the undersigned Administrative Law Judge on the Unopposed Motion to Re-Set Hearing, filed by the Elections Division of the Secretary of State (Division) on February 11, 2021. Based on a review of the unopposed motion, and the case filings in this matter, it is hereby ordered that:

There will be a telephonic setting conference conducted in this matter on March 9, 2021 at 10:30 a.m. to reschedule the hearing on the merits in this matter. Parties shall notify the Office of Administrative Courts (telephone: 303-866-5626) of the telephone number at which they can be contacted for the setting conference.

Done and Signed: February 22, 2021.

/s/ MICHELLE A. NORCROSS
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **ORDER GRANTING MOTION TO RESET HEARING DATE** 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:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

Patrick MacDonald
Registered Agent for Respondent, No on EE
Yastremski67@gmail.com

Dated: February 22, 2021.

/s/ Marc Marcel
Office of Administrative Courts

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Elections Division of the Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**

Notice

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Title:	NOH 5-21-21
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Description:	
Status:	Needs Follow Up
Signer Name:	
Date of Service/Issuance:	

Generated Date: March 10, 2021

/s/ Katherine Singleton
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	
Secretary of State Complainant VS. **No on EE-A Bad Deal for Colorado** Respondent	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **OS 2020-0025**

SECOND NOTICE OF HEARING

A hearing on this complaint will be held through Google Meet at 9:00 AM on May 21, 2021. Prior to hearing, parties will receive via electronic mail an invitation instructing them to join in virtually at the time of hearing.

NOTICE REGARDING PROCEDURES AT THE HEARING

This complaint was made pursuant to the Fair Campaign Practices Act, Article XXVIII of the Colorado Constitution and Section 1-45-101, et seq., C.R.S. Under this law the person filing the complaint has the burden of proving by a preponderance of the evidence that a violation of the Fair Campaign Practices Act has occurred. Information about presenting a case before the Office of Administrative Courts can be found at http://www.colorado.gov/dpa/oac. By order of the Administrative Law Judge prehearing statements required to be filed.

At the hearing, each party will have the right to present personal testimony and the testimony of other witnesses, present documentary evidence, cross-examine witnesses and present argument to the Administrative Law Judge.

You may require the attendance of witnesses by subpoena, and subpoena forms may be obtained from the Office of Administrative Courts. A party wishing to subpoena a witness shall be responsible for arranging for service of the subpoena as required by law.

A party may be represented by an attorney at the party's expense. A party can not be represented at a hearing by a person who is not an attorney.

CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the above **SECOND NOTICE OF HEARING** 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:

Peter Baumann
Department of Law
peter.baumann@coag.gov

Patrick McDonald
No on EE – A Bad Deal for Colorado
P.O. Box 533
Indian Hills CO 80454
yastremski67@gmail.com

Dated: 03/10/2021

/s/ Katherine Singleton
Court Clerk

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED 05/20/2021 1:09 PM OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**
Receipt Of Stipulation	

This document is for **INFORMATIONAL PURPOSES ONLY**. This form does not replace the need of the submitting party to serve the pleading on all parties to the case.

The attached Stipulated Exhibits and Facts was submitted by Xan Serocki to the Office of Administrative Courts on May 20, 2021 in the above referenced case.

Additional Notes:

Xan Serocki certified that a complete copy of this Stipulation was served on all parties.

Dated: May 21, 2021

Marc Marcel
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th floor Denver, Colorado 80203	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, *in re* ED 2020-71 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. NO ON EE – A BAD DEAL FOR COLORADO Respondent.	▲COURT USE ONLY▲ CASE NUMBER OS 2020-0025

STIPULATED EXHIBITS AND FACTS

In advance of the May 21, 2021 hearing before the Office of Administrative Courts, Complainant the Elections Division and Respondent no on EE (collectively, the "Parties") hereby agree to the following stipulated exhibits and facts.

Stipulated Exhibits

- **Exhibit 1** – Campaign finance complaint filed on October 8, 2020 by Anna Jo Hayes
- **Exhibit 2** – Notice of Intent to Cure form, and supporting documents, submitted by Respondent on November 5, 2020.
- **Exhibit 3** – Response to Request for Information submitted by Respondent on November 25, 2020.

Stipulated Facts

1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.

10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.

11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.

12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.

13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

Respectfully submitted this 20th day of May, 2021.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Campaign Finance Fellow, No. 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

Attorney for Complainant Elections Division of the Secretary of State

/s/ Sheila MacDonald

Sheila MacDonald
Representative for No on EE: A Bad Deal for Colorado
1732 Wazee St. #201
Denver, CO 80202

Signed via E-mail Authorization

Representative for No on EE: A Bad Deal for Colorado

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served this 20th day of May, 2021, by electronic mail, addressed as follows:

Sheila MacDonald
Representative for Respondent, No on EE
Sheila@midggroup.com

/s/ *Peter G. Baumann*

EXHIBIT 3
OS 2020-0025

John Molera
Campaign Finance Enforcement Investigator
Elections Division
Colorado Secretary of State

CPF Complaint 2020-71 (No on EE) Request for Information November 25,2020

To Mr. John Molera,

Below is the information you have requested in your communication sent November 20, 2020.

In the Matter of "No on EE – A Bad Deal for Colorado," Case number 2020-71

On September 18, 2020, Anna Jo Haynes ("Complainant") filed a complaint alleging that we, the No on EE – A Bad Deal for Colorado issue committee (the "Committee") neglected to include a disclaimer on our campaign website, collateral, television, radio and digital ads. The Committee was notified of the complaint on October 8, 2020. The Committee included a disclaimer on all campaign materials but inadvertently did not include the name of the registered agent in the disclaimer.,

Intent

The Committee did include the disclaimer, "Paid for by No on EE:A Bad Deal for Colorado", on all of the Committee's materials but inadvertently omitted the registered agent from the disclaimer.

The Committee was registered with the Colorado Secretary of State's Office on August 31, 2020. At that time, the Committee listed Sandy Partyke, a Colorado registered voter, as our filing agent and Patrick MacDonald, a Colorado registered voter, as our registered agent, according to state statute.

At the time of filing, Sandy Partyke was in touch with the Secretary of State's campaign finance office to go through the rules of in-kind donations specifically to ensure compliance at every level.

On September 16, 2020, Sandy Partyke attended a campaign finance webinar hosted by the Colorado Secretary of State's office, to ensure the Committee was in full compliance. During this webinar, Sandy does not recall the new requirement of including the registered agent as part of the disclaimer being highlighted during the presentation.

Because the Committee knew that many of our campaign contributions would be through in-kind contributions, we took the extra step of including who the in-kind contribution was paid to although this step was not required by law. Our intent was to have full transparency and accountability for anybody who wanted to see where the money contributed through an in-kind contribution was spent.

Printed Material

Door Hanger – Please see attachment enclosed
The original door hanger did have a disclaimer but was missing the name of the registered agent.

Design: September 28, 2020

Cost: $90

Paid to: Lombardi Design. 765 Barberry Circle, Lafayette Colorado 80026

Invoice dated: October 1, 2020

Printing: September 29, 2020

Cost: $3125.83

Paid to: Campaign Products of the Rockies, P.O. Box 13325, Denver, Co 80201

Invoice Dated: September 29, 2020

Distribution: Less than 100 doorhangers without the name of the registered agent were distributed.

Door hangers were cured through adding the registered agents name onto door hanger as well as reprinting.

Website

Cost of website development as of October 8, 2020: $990

Website splash page was viewable to the public on September 8, 2020

Invoice for website was submitted October 1, 2020 and paid to Lombardi Design, 765 Barberry Cir., Lafayette Co 80026

The website contained the disclaimer but was missing the name of the registered agent. The registered agent's name was added on October 8, 2020

BillBoards

Billboards did have a disclaimer but were missing the registered agent's name. Picture of billboards attached

There were 82 billboards total and we were able to immediately fix 30% of our billboards by October 12, 2020. The others that cannot be cured will be taken down.

9/4/2020 Billboards – $1.069,011.25 as reported in our filing to the Secretary of State's Office
Signage went up the week of September 16th
30% of billboards were cured by October 12th

Paid Media

9/25/2020 Paid Media - $1,808,280

This includes broadcast tv, streaming (Hulu, You Tube), radio and digital

9/25/2020 Radio – $70,249.24 total
9/29/2020 TV - 1,186,215

10/2-10/8 Digital – $170,500
Digital ad during this time include our tv ad below as well as this ad. I do not have a version without the registered agent. Digital ad with Registered Agent
https://youtu.be/wLSzcZdeCtQ?t=13

10/2 – 11/3 Streaming through whole campaign – 281,250
Broadcast and digital ads

a. Backroom
   Smoke: https://www.dropbox.com/sh/dj8r9tcd55r99gh/AACuRpW5It9IK_RolYWEDWVKa?dl=0 With disclaimer but without registered agent name Ads ran TV 30 - Backroom Smoke: 9.25-10.9
a. Backroom Smoke
   Redux: https://www.dropbox.com/sh/cf06nkynn0irdz4/AABxFtPBPKN0bHxINZMoyXxva?dl=0
   With disclaimer and registered agent name. Cured October 8, 2020. Ad ran 10.9-10.23

John,

The above includes all electioneering communication you have requested. It was difficult to determine the exact cost of each digital ad as that is not the way it was purchased. Please let me know if there is any other information you need.

Thanks

Sheila MacDonald on behalf of Patrick MacDonald, Registered Agent

EXHIBIT 2

OS 2020-0025

Submit Original to:
Colorado Secretary of State
Elections Division
Campaign Finance Enforcement
1700 Broadway, Suite 200
Denver, CO 80290
CPFComplaints@sos.state.co.us

NOTICE OF INTENT TO CURE

Case Name: No on EE: A BAD DEAL for Colorado

Case No.: 2020-71

Respondent's Information:

* Full Name: Patrick MacDonald

* Mailing Address: 140 E 19th Ave., #400, Den Co 80203

* Telephone Number: 720 240 7355 Email Address: yastremski67@gmail.com

Respondent or authorized person filing notice on behalf of Respondent:

* Signature: [signature] Date: 11-5-2020

Describe here or in an attachment to this Notice any information demonstrating the violation(s) that have been cured, including a description and dates of the actions taken, and copies of amended reports or relevant documents. Respondent must demonstrate substantial compliance with the law. When determining substantial compliance, the Elections Division must consider: (1) the extent of the respondent's noncompliance; (2) the purpose of the provision violated and whether the purpose was substantially achieved despite the noncompliance; and (3) whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.[1] Please address each of these factors in the statement and evidence you provide to the Division.

[1] Section 1-45-111.7(3)(a), C.R.S.

Office of the Colorado Secretary of State, Elections Division

Notice of Intent to Cure Response

In the Matter of "No on EE – A Bad Deal for Colorado," Case number 2020-71

On September 18, 2020, Anna Jo Haynes ("Complainant") filed a complaint alleging that we, the No on EE – A Bad Deal for Colorado issue committee (the "Committee") neglected to include a disclaimer on our campaign website, collateral, television, radio and digital ads. The Committee was notified of the complaint on October 8, 2020. The Committee included a disclaimer on all campaign materials but inadvertently did not include the name of the registered agent in the disclaimer.,

Intent

The Committee did include the disclaimer, "Paid for by No on EE:A Bad Deal for Colorado", on all of the Committee's materials but inadvertently omitted the registered agent from the disclaimer.

The Committee was registered with the Colorado Secretary of State's Office on August 31, 2020. At that time, the Committee listed Sandy Partyke, a Colorado registered voter, as our filing agent and Patrick MacDonald, a Colorado registered voter, as our registered agent, according to state statute.

At the time of filing, Sandy Partyke was in touch with the Secretary of State's campaign finance office to go through the rules of in-kind donations specifically to ensure compliance at every level.

On September 16, 2020, Sandy Partyke attended a campaign finance webinar hosted by the Colorado Secretary of State's office, to ensure the Committee was in full compliance. During this webinar, Sandy does not recall the new requirement of including the registered agent as part of the disclaimer being highlighted during the presentation.

Because the Committee knew that many of our campaign contributions would be through in-kind contributions, we took the extra step of including who the in-kind contribution was paid to although this step was not required by law. Our intent was to have full transparency and accountability for anybody who wanted to see where the money contributed through an in-kind contribution was spent.

Cure

As soon as the Committee was made aware of the error we immediately began to cure.

1. We reprinted our door hangers and added stickers with the registered agent's information to the material we had already printed.
2. We were able to immediately fix 30% of our billboards and the others that cannot be cured will be taken down.

3. Our TV, digital and radio ads were immediately fixed (within 36 hours) adding the registered agent's name to the disclaimer already on the ad.
4. The website was cured immediately after receiving he complaint.

Costs

9/4/2020 Billboards – $1.069,011.25 –

Signage went up the week of September 16th

30% of billboards were cured by October 12th

9/25/2020 Paid Media - $1,808,280

This includes broadcast tv, streaming, radio and digital

9/25/2020 Radio – $70,249.24 total
9/29/2020 TV - 1,186,215
10/2-10/8 Digital – $170,500
10/2 – 11/3 Streaming through whole campaign – 281,250

Finally, as of Oct 8th, the following ballot issues also did not include a registered agent with their disclaimer, so clearly there seems to be confusion on this issue.
No Prop 116
No on Prop 117
No on Amendment B
No on Prop 114

No on EE: A Bad Deal for Colorado Case # 2020-71

Website

Last Minute Public Policy and Back Room Deals

- HB20-1427 is a 43- page document introduced very late in the last legislative session, was reviewed for merely 20 minutes and the committee heard from just two witnesses. The proposal passed in the final 72 hours of the legislative session.
- The details of the bill were decided in a backroom deal without public discussion or input.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on Pre-School. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.
- Purchasers of discount cigarettes, primarily low-income adult smokers, would be severely burdened with this tax increase, paying a larger percentage of their income than would other, more affluent consumers.

"The measure was introduced in the final hours of the 2020 legislative session and so hastily brought that lawmakers didn't have a copy of the measure before its first committee hearing began." (Colorado Sun)

"…National Bureau of Economic Research, tobacco tax increases only have a small impact on adult consumption. If you consider that the poor are more likely to smoke than middle-class or wealthy adults, Proposition EE is basically a tax increase on the poor…." Krista Kafer, DP 9/11/2020

ENDORSEMENT – Pagosa Daily Post

"Proposition EE: Vote "NO!". This proposition is a "sin tax" that increases taxes on tobacco, a product that is used significantly more by poor people in Colorado. Part of the tax money would be used to fund general education programs that lack funds because of the way that growth has been fueled and subsidized in Colorado. Literally, this tax would take money

from poor people addicted to tobacco and subsidize wealthy developers who aren't charged the cost of growth…." September 24, 2020

Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent
Contact: info@baddealforco.com

No on Proposition EE: A $294 million tax increase

- NO New Taxes – As our economy recovers from COVID-19, now is not the time to raise taxes on Colorado voters.

No Funding for Pre-School for at Least 2.5 years, and Maybe Ever

- There is nothing in Prop. EE that says the Legislature must spend funds collected from this tax on pre-school. In fact, all funds generated by EE will go directly into the state's General Fund and pre-school will not get ANY funding for at least 2.5 years, and there is no guarantee it will ever get money.

Proposition EE will Harm Small Retail Businesses

- Prop. EE will hurt small retailers by nearly doubling the price of discount cigarettes through an anti-competitive, anti-consumer, state minimum cigarette price scheme that is not used by any other state. EE will raise the price of discount cigarettes from about $4 a pack to $7 a pack, while so-called premium cigarettes will see only a small increase.

"...When bills are passed that only affect lower income classes of people, the American dream becomes the American nightmare!..."

– Bishop Jerry Demmer
Pastor of The Absolute Word Church
President of The Greater Metro Denver Ministerial Alliance

www.BadDealforCO.com

Paid for by No on EE: A Bad Deal for Colorado, Patrick MacDonald, Registered Agent.

No on EE: A Bad Deal for Colorado Case # 2020-71

Tv ad with Registered Agent Added https://www.youtube.com/watch?v=o0tLQLcZ2qw

Digital ad with Registered Agent https://youtu.be/wLSzcZdeCtQ?t=13

Submit complaint by mail or email to:
Colorado Secretary of State
Campaign Finance Enforcement
1700 Broadway, Suite 200
Denver, CO 80290
CPFcomplaints@sos.state.co.us

RECEIVED
10/08/2020
ELECTIONS DIVISION

EXHIBIT 1

OS 2020-0025

CAMPAIGN FINANCE COMPLAINT FORM

Any person may file a complaint up to 180 days after the date on which the Complainant either knew or should have known, by the exercise of reasonable diligence, of an alleged violation. A complainant must specifically identify one or more respondents, a violation of Colorado campaign finance rules and regulations (Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning Campaign and Political Finance), and allege specific facts to support a legal and factual basis for the complaint. (See section 1-45-111.7, C.R.S.) Please be advised, complaints are public information and the Respondent will be provided a copy of this Complaint.

***Denotes required field**

Your Information (Complainant)- Information about the person or entity filing the complaint:

*Full Name: Anna Jo Haynes

*Mailing Address: 3031 Dexter Street Denver

*Telephone Number: 303 917 5252 *Email Address: annajoh@milehighearlylearning.org

*Date Made Aware of Violation: Sept. 18, 2020

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

*Full Name: No on EE -- A Bad Deal for Colorado

*Mailing Address: P. O. Box 533 Indian Hills CO 80454

Telephone Number: 303.246.6496 *Email Address: yastremski67@gmail.com
partykasandy@comcast.net

Briefly summarize the allegations of your complaint including dates of the alleged violations and attach any supporting documents and materials.

Please see attached

By submitting this form and any supporting evidence or documentation, I hereby affirm that I have read and am familiar with the procedures set forth in section 1-45-111.7, of the Colorado Revised Statute (C.R.S.).

*Complainant's Signature: Anna Jo Haynes Date: 10-8-2020

Campaign Finance Complaint
Re: Incorrect Disclaimers and False Statements from "No on EE -- a Bad Deal for Colorado"
October 8th, 2020

Colorado campaign finance law requires that any:

> issue committee… or other person making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that… that supports or opposes a ballot issue or ballot question… shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.

C.R.S. §1-45-108.3(1). Such disclaimer is required for each and every such communication "that is broadcast, printed, mailed, delivered; [that is] placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed." *Id*. Further, such disclaimer must state:

> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

C.R.S. § 1-45-107.5(5)(a), incorporated as to issue committees by C.R.S. § 1-45-108.3(2).

"No on EE – A Bad Deal for Colorado" is a registered issue committee, opposing Proposition EE on the November statewide ballot. Based on its filing with the Secretary of State, the registered agent for No on EE is one Patrick MacDonald.

In all known communications with the public, No on EE has failed to include a legally compliant disclaimer. Specifically, the committee routinely fails to include the name of Mr. MacDonald as part of its disclaimer and likewise fails to state that he is the committee's registered agent. These communications include but are not limited to:

(1) Television advertisements;
(2) Radio advertisements;
(3) The campaign website – https://baddealforco.com/;
(4) Billboards; and
(5) Campaign literature.

Copies of all such communications have either been attached hereto as exhibits or saved at accessible websites set forth as follows:
https://drive.google.com/drive/folders/1motDnUpqtuqZhMizdkPPo6fH6Z-kWCPf?usp=sharing

Any violation of the statutory campaign finance provisions may be addressed by a complaint filed as provided by law. C.R.S. § 1-45-111.7(2)(a).

Further, given that Proposition EE was placed on the ballot by HB20-1427, signed into law on July 8, 2020, this complaint is timely filed as it must be – and has been – filed within 180 days of when the violations became known or should have been known. C.R.S. § 1-45-111.7(2)(b). None of the affected communications were or could have been distributed prior to July 8, given that No on EE was formed and filed with the Secretary of State on August 31, 2020 according to the committee's registration on the Secretary's website.

Fines to be imposed for failure to affix legally required disclaimers are "**at least 5% of the cost of the noncompliant communication** including cost to broadcast" if mitigated before an election. However, if the violation is not so mitigated, the mandated penalty is "**at least 10% of the cost of the noncompliant communication** including cost to broadcast." SOS Campaign Finance Rule 23.3.3(d) (emphasis added).

Based on reports filed to date, No on EE has spent approximately:
$2,228,090.00 on TV and radio advertisements, $1,000.00 on its campaign website, $1,069,011.25 on billboards, and $3,125.83 on campaign literature. Using these amounts from campaign finance disclosures, the fine on No on EE should be fined no less than $165,061.35 (5% of the total amount on spent on noncompliant communications) or $330,122.71 (10% of the total amount spent on noncompliant communications). Included with this complaint is an addendum drawing from No on EE's financial reports to substantiate these numbers.

Liggett Vector Brands, one of the country's largest cigarette companies and based in Morrisville, North Carolina, gave the campaign $3,438,223.95 based on the most recent Oct. 5 major donor report. To date, 99.8% of No on EE's contributions come from out of state cigarette companies.

On information and belief, No on EE spent additional funds on noncompliant communications that are not included in these subtotals but that should be reported in upcoming disclosures. Therefore, the fine imposed should be greater than the above amounts, given the additional spending that must be disclosed by No on EE in its future reports.

Further, because the Secretary's rules set these penalty percentages as minimums by using the phrase "at least," the State should seek higher penalties given that this is a committee that is anything but a citizens' committee that was unaware of the statute's requirements, given its:

(1) Substantial corporate funding (Liggett Vector Brands LLC);
(2) Professional campaign management (assorted Colorado and Connecticut firms); and
(3) Access to competent, experienced legal counsel.

In addition to the penalties imposed, No on EE should be ordered to use a legally compliant disclaimer on all future communications. SOS Rule 23.3.4(d).

The noncompliant communications at issue in this complaint are even more problematic because No on EE knows them to be false and thus violations of C.R.S. 1-13-109(2)(a) that prohibits the making of such recklessly false statements "on any issue submitted to the electors at any election." These false statements include but are not limited to:

> -Intentionally misleading voters by portraying statements from the Liggett Vector Brand's legal counsel as independent reporting from the Colorado Sun, as seen here (at :21 seconds). Initial quote can be found here.
> -Repeated false claims (such as here, here and here) that the funding included in Proposition EE would not be guaranteed to go to preschool education, despite the funding being specifically outlined in the legislative language of the HB20-1427, the enacted legislation that referred Proposition EE to the voters, and that funding further would be enshrined in state law were it to pass with voter approval and would be audited annually by the state.

The fact that the campaign has routinely neglected to disclose the name of its registered agent underscores its clear disregard for Colorado law and its refusal to take full responsibility for these communications, as required by law. As penalties may be imposed after considering *either* mitigating or *aggravating* circumstances, including "evidence of an intentional act or pattern or practice of misconduct," SOS Rule 23.3.5(d), the knowing falsehood of No on EE communications must be considered an aggravating circumstance that requires the maximum penalty outlined above.

Addendum
Evidence of Expenditures

Included below are excerpts from No on EE's standard financial disclosures from September 21st and October 5th, as well as an additional major contributor filing on October 5th.

Statewide Billboards

No on EE reported a single campaign expenditure on their September 21st campaign finance disclosure. This expenditure was for $1,069,011.25 on September 4th to Milk Sono LLC for media/advertising, provided via in-kind contribution from Liggett Vector Brands LLC. No on EE's billboards appeared statewide starting on September 18th. This is No on EE's only advertising purchase before the billboards appeared statewide, indicating that this initial $1,069,011.25 was used specifically for the purchase of the statewide billboards.

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/04/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,069,011.25	7.Description	MEDIA/ADVERTISING
3. Aggregate Amount*	8. Employer	
$1,069,011.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	MILK SONO LLC
09/04/2020	5. Address	11 DAY ST.
2. Fair Market Value	6. City/State/Zip	NORWALK CT 06854
$1,069,011.25	7.Purpose	Advertising
Electioneering Comm?		MEDIA/ADVERTISING
No	8. Coordinated?	No

TV and Radio Advertising

As reported on their October 5 financial disclosure, the No on EE campaign expended $1,808,280.00 in advertising to Hulsen Media Services LCC from an in-kind contribution from Liggett Vector Brands for the exact same amount on the same date. No on EE began their TV advertising four days later on September 28th.

On October 5th, No on EE also filed a major contributor report which revealed another in-kind contribution from Liggett Vector Brands LCC in the form of $419.810.00 in "media/advertising" from Hulsen Media Services LCC.

October 5th Routine Filing

Schedule E - Statement of Non-Monetary Contributions
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Provided	4. Name	LIGGETT VECTOR BRANDS LLC
09/24/2020	5. Address	3800 PARAMOUNT PARKWAY #250
2. Fair Market Value	6. City/State/Zip	MORRISVILLE NC 27560
$1,808,280.00	7.Description	ADVERTISING
3. Aggregate Amount*	8. Employer	
$2,877,291.25	9. Occupation	
Electioneering Comm?		
No	10. Coordinated?	No

Schedule E - Statement of Non-Monetary Expenditures
[Art. XXVIII, Sec. 2(5)(a)(II)(III) & C.R.S. 1-45-108(1)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended	4. Name	AFFORDABLEBUTTONS.COM
09/25/2020	5. Address	3269 19TH NW #6
2. Fair Market Value	6. City/State/Zip	ROCHESTER MN 55901
$4,872.70	7.Purpose	Advertising
Electioneering Comm?		
No	8. Coordinated?	No

1. Date Expended	4. Name	HULSEN MEDIA SERVICES LLC
09/24/2020	5. Address	2400 LARAMIE TRAIL
2. Fair Market Value	6. City/State/Zip	AUSTIN TX 78745
$1,808,280.00	7.Purpose	Advertising
Electioneering Comm?		ADVERTISING
No	8. Coordinated?	No

October 5th Major Contributor disclosure

Reporting Date:	10/05/2020		
Total Contributions:	$419810.00		
Registered Agent:	PATRICK MACDONALD	**Filed Date:**	10/06/2020

Itemized Contributions

1. Date Accepted	**Non-Monetary**		**LLC MEMBER**
10/05/2020	4. Name	LIGGETT VECTOR BRANDS LLC	LIGGETT VECTOR BRANDS LLC
2. Contribution Amount	5. Address	3800 PARAMOUNT PARKWAY #250	Total LLC Contribution: $419810.00
$419,810.00	6. City/State/Zip	MORRISVILLE NC 27560	
3. Aggregate Amount*	7.Description	MEDIA/ADVERTISING-HULSEN MEDIA SERVICES LLC	
$3,438,223.95	8. Employer		
Electioneering Comm?	9. Occupation		
No			

Campaign Literature

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to printing. This expenditure occurred on September 29th to Campaign Products of the Rockies for $3,125.83. Campaign literature began to appear in North Park Hill in Denver the following week.

Schedule B - Itemized Expenditures Statement ($20 or more)
[C.R.S. 1-45-108(1)(a)]

Full Name of Committee/Person: NO ON EE - - A BAD DEAL FOR COLORADO

1. Date Expended 09/29/2020	4. Name	CAMPAIGN PRODUCTS OF THE ROCKIES
2. Amount $3,125.83	5. Address	1900 GRANT ST. #1170
	6. City/State/Zip	DENVER CO 80301
Electioneering Comm? **No**	7.Purpose	PRINTING
	8. Type	Consultant & Professional Services

Campaign Website

There is only one expenditure listed in all of No on EE's currently available financial disclosures related to web design and development is $1,000.00 to Lombardi Design on No on EE's October 5th financial disclosure.

1. Date Expended 09/29/2020	4. Name	LOMBARDI DESIGN
2. Amount $1,000.00	5. Address	765 BARBERRY CIR.
	6. City/State/Zip	LAFAYETTE CO 80026
Electioneering Comm?	7.Purpose	GRAPHIC/WEB DESIGN

* * * * * * * * * COURTESY COPY * * * * * * * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, CO 80203	RECEIVED OFFICE OF ADMINISTRATIVE COURTS ✦ **COURT USE ONLY** ✦
Elections Division of the Secretary of State Petitioner vs No on EE- A Bad Deal for Colorado Respondent	**CASE NUMBER:** **OS 2020-0025**
Mail Item	

This document is for **INFORMATIONAL PURPOSES ONLY**.

Title:	Transcript
Type/Category:	Transcript
Description:	6-23-21 415am
Status:	Sent to File
Signer Name:	Jane Ford, Federal Reporting
Date of Service/Issuance:	06/23/2021

Generated Date: June 28, 2021

/s/ Katherine Singleton
Court Clerk

* * * * * * * * FOR INFORMATIONAL PURPOSES ONLY * * * * * * * * *

OFFICE OF ADMINISTRATIVE COURTS

STATE OF COLORADO

CASE NO. OS 2020-0025

ELECTIONS DIVISION OF THE SECRETARY OF STATE Complainant, vs. NO ON EE - A BAD DEAL FOR COLORADO Respondent.	)	TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing pursuant to notice on May 21, 2021, in the offices of the Division of Administrative Courts, 1525 Sherman Street, 4th Floor, Denver, Colorado, before:

MATTHEW E. NORWOOD, Administrative Law Judge

APPEARANCES:

For the Complainant: Peter Baumann, Esq.

For the Respondent: Pro Se

Proceedings recorded by electronic sound recording and transcript produced by transcription service.

I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE COMPLAINANT:				
John Molera	13	--	--	--
FOR THE RESPONDENT:				
Sheila MacDonald	21	--	--	--

E X H I B I T S

COMPLAINANT'S:	PAGE
1 through 3 (stip.)	10

G

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE NORWOOD: We are recording in Case No. OS-2020-0025. The case is captioned the Elections Division of the Secretary of State versus No On EE - A Bad Deal for Colorado. Today is Friday, May 21, 2021. It's a little after nine o'clock in the morning. My name is Administrative Law Judge Matthew Norwood. I'm conducting using Google Meet.

Let's have the parties identify themselves starting with the Division.

MR. BAUMANN: Good morning, Your Honor. Peter Baumann from the Colorado Department of Law on behalf of the Elections Division. I believe I'm joined this morning by John Molera from the Division, Emily Korash (phonetic) from the Division, and I think one of the phone numbers is Luis Lipchak, also from the Division.

JUDGE NORWOOD: Okay. Now, I did not see that we had an attorney for No On EE. Some of your material, Mr. Baumann, was mailed to Ms. MacDonald, and I see Ms. MacDonald there on the screen.

Ms. MacDonald, I guess, first of all, did you intend to represent No On EE in this case?

(Pause.)

You're muted right now.

(Pause.)

I see your lips moving, Ms. MacDonald, but you're muted.

(Pause.)

Still muted.

(Pause.)

MS. MACDONALD: There you go. Can you hear me now?

JUDGE NORWOOD: I can.

MS. MACDONALD: Hi, this is Sheila MacDonald. I'm the person that will be speaking (inaudible) No On EE campaign.

JUDGE NORWOOD: Are you an attorney?

MS. MACDONALD: I am not.

JUDGE NORWOOD: The charging document indicates that No On EE is an issue committee. Let me make sure that's right. Do you agree with that, that it's an issue committee?

MS. MACDONALD: Yes, correct.

JUDGE NORWOOD: And what is your relationship to the issue committee?

MS. MACDONALD: I was in charge of the issue committee. I'm a political consultant, and I was the general consultant for the No On EE campaign.

JUDGE NORWOOD: Are you--do you consider yourself an officer of the issue committee?

MS. MACDONALD: I do.

JUDGE NORWOOD: What makes you an officer?

MS. MACDONALD: I was in charge of the committee. I was in charge of the bank account. I signed all the checks. I made all the strategic decisions for the committee.

JUDGE NORWOOD: Well, has there been any meeting or organization that gave you a title as officer?

MS. MACDONALD: Well, they made me the chief consultant. I don't think they called me an officer, but I was hired as the chief consultant, and my--I formed the committee.

JUDGE NORWOOD: You formed the committee?

MS. MACDONALD: We formed--yes, we formed the committee, so the registered agent works for me. My group is the MIDG Group, and Patrick MacDonald works for the MIDG Group. He is the registered agent.

JUDGE NORWOOD: Okay, yes, Patrick MacDonald is the registered agent.

MS. MACDONALD: Right.

JUDGE NORWOOD: Talk to me about the formulation of the committee; how did that happen?

MS. MACDONALD: We were hired to run the No side of the campaign, and then we put together a committee. I hired Sandy Partyka, who is the filing agent, and

(inaudible) MacDonald is the registered agent, so I put those people together, and we formed the committee, the issue committee.

JUDGE NORWOOD: And you said you--

MS. MACDONALD: (Inaudible.)

JUDGE NORWOOD: Who hired you?

MS. MACDONALD: Liggett.

JUDGE NORWOOD: Liggett, the--

MS. MACDONALD: Right.

JUDGE NORWOOD: --cigarette manufacturer?

MS. MACDONALD: Correct.

JUDGE NORWOOD: Well, then, so who makes up the committee?

MS. MACDONALD: A good question. Me and--well, Sandy, Patrick, and myself are the committee.

JUDGE NORWOOD: And Sandy--who is Sandy again?

MS. MACDONALD: Sandy Partyka is our compliance officer, and she is the filing agent on the committee.

JUDGE NORWOOD: And the other two individuals are you and Mr. MacDonald; is that right?

MS. MACDONALD: Right, that's correct.

JUDGE NORWOOD: You're husband and wife?

MS. MACDONALD: No, he's my brother.

JUDGE NORWOOD: Okay.

MS. MACDONALD: My brother, not my husband

(inaudible) kill me.

JUDGE NORWOOD: Well, so let's see, I'm going to take some notes and think about this. It sounds like Sandy Partyka has this title of compliance officer; right?

MS. MACDONALD: Right, she's the filing agent, correct.

JUDGE NORWOOD: And were you given any title?

MS. MACDONALD: I'm the general consultant, and I'm in charge of the bank account, the signing of the checks, and the strategic decision making.

JUDGE NORWOOD: And your brother Patrick is--what's his role?

MS. MACDONALD: He's just a--he's the--we used him as the registered agent.

JUDGE NORWOOD: Let me look at the statute again.

(Pause.)

Well, let me just ask you straight out: Do you have authority to appear on behalf of No On EE in this case?

MS. MACDONALD: I do.

JUDGE NORWOOD: And how did you get--

MS. MACDONALD: I mean, everybody knows I'm here. The client knows I'm here. Patrick actually would have been on this call with me. He has a sick child today, but he knows I'm here. Sandy knows I'm here. Every--

JUDGE NORWOOD: I mean, how is it that you were given that authority?

MS. MACDONALD: I guess because I was in charge of the campaign.

JUDGE NORWOOD: All right.

MS. MACDONALD: And so we were here because of me, so--and I've been dealing--I think Mr. Baumann will tell you and anybody from the Secretary of State's Office will tell you that it is me that they've been directly working with the past several months and actually since the start of the campaign.

JUDGE NORWOOD: Well, what about that, Mr. Baumann? Do you regard Ms. MacDonald as an officer of the--of No On EE?

MR. BAUMANN: Your Honor, we do. We have been dealing with Ms. MacDonald since the beginning of this matter and I believe the Secretary's Office since before I became involved.

It's our understanding that she has general authority on behalf of the committee both to bind the committee in contract and, really, for our purposes, our understanding, and I'm sure that she can share more, that she was an embodiment of the committee during the 2020 election cycle and still to this day.

JUDGE NORWOOD: All right. Well, then, Ms.

MacDonald, I will allow you to speak on behalf of the issue committee.

MS. MACDONALD: Thank you.

JUDGE NORWOOD: I should point out that we have a--we're having a problem logging into our sales force where we keep all of our documents. Now, I'm not sure how much of a problem that's going to be, because I have--I have reviewed this case ahead of time, and I think I have most of this in my memory, and I think both of the documents are stipulated to.

But we will--I'm just throwing that out as an issue. We may--I may ask you or the parties to publish their documents on the screen if we need to do that, because I'm not going to be able to look at them until we get our connection back together.

Anyway, so I guess let's talk about are there any preliminary matters? I'll ask you first, Mr. Baumann.

MR. BAUMANN: I don't think so, Your Honor. We sent a set of factual stipulations, including three stipulated exhibits, in yesterday. I'm not sure if those were caught up in the sales force problems. But, beyond that, we have no other preliminary matters.

JUDGE NORWOOD: And I saw that--I thought I saw a stipulation to certain exhibits. What were those exhibits that you agreed were stipulated or you say were stipulated

to?

MR. BAUMANN: It would be Exhibits 1, 2, and 3--

JUDGE NORWOOD: 1, 2--

MR. BAUMANN: --1, 2, and 3, which I will proffer, Your Honor, the only three exhibits the Division intends to introduce today.

JUDGE NORWOOD: Is that right, Ms. MacDonald, no objections to 1 through 3.

MS. MACDONALD: No.

JUDGE NORWOOD: They are admitted.

(Division's Exhibits 1 through 3 were received in evidence by stipulation.)

Anything else of a preliminary nature, Mr. Baumann?

MR. BAUMANN: No, thank you, Your Honor.

JUDGE NORWOOD: How about you, Ms. MacDonald? Anything of a preliminary nature?

MS. MACDONALD: No.

JUDGE NORWOOD: Then, Mr. Baumann, did you want to make an opening statement?

MR. BAUMANN: Very briefly, thank you, Your Honor. I think I mentioned the parties have agreed to a robust set of factual stipulations here that I think are going to answer many of your questions.

And just briefly, those stipulations established

that No on EE was an issue committee and is an issue committee, but was an issue committee during the 2020 election. No On EE included disclaimers on all of their advertisements, but originally those disclaimers did not include the name of the committee's registered agent, as is required under Colorado law.

We know that there was a significant effort to cure that alleged or that violation once the complaint was filed, and we also know that millions of dollars were spent on ads that did not include the name of the registered agent and that were distributed without the name of the registered agent. And those included billboards, some door hangers, very few door hangers, and paid media, including TV ads, streaming ads, those sorts of things.

Today you'll hear very briefly from the Division about their interactions with the committee. I understand that you'll likely then hear from the committee itself.

But ultimately in the end, what we're going to ask is for Your Honor, after you've heard from the committee and after you've had a chance to consider the evidence, to determine what a fair and just penalty is in this case, recognizing both the mitigating factors that the Division believes exists here and that I think you'll hear a lot about today, but also the significant extent of the non-compliance with Colorado law.

JUDGE NORWOOD: All right. And, Ms. MacDonald, did you want to make an opening statement, understanding this is not evidence?

MS. MACDONALD: I do. I just have a statement to read; and if this is the time to read it, I'll read it.

JUDGE NORWOOD: Well, it's not the time to read it if you want me to consider it as evidence. If you want me to consider--

MS. MACDONALD: Okay, then I--

JUDGE NORWOOD: --it as evidence, you'll need to tell it to me under oath.

MS. MACDONALD: I will do it to you under oath then.

JUDGE NORWOOD: Okay. The opening statement is the opportunity to just give me a roadmap of what you intend to show if you want to. The important thing to know is that it's not testimony, so it is the pitfall that people make, tell me things in opening statements and don't tell it to me as testimony and think that I can consider it, but I can't.

Was there--

MS. MACDONALD: Right.

JUDGE NORWOOD: You don't have to make an opening statement by any means. Was there anything you wanted to say, though, as a preliminary matter?

MS. MACDONALD: No, I don't think so. I'll just wait.

JUDGE NORWOOD: Okay. Then, Mr. Baumann, call your first witness.

MR. BAUMANN: Thank you, Your Honor. The Division calls John Molera.

JUDGE NORWOOD: Mr. Molera, I see you. Let me swear you in. Would you raise your right hand?

(Whereupon, Mr. Molera was sworn.)

JUDGE NORWOOD: You may examine the witness, Mr. Baumann.

MR. BAUMANN: Thank you, Your Honor.

JOHN MOLERA

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAUMANN:

Q Good morning, Mr. Molera. Could you please state your name and spell your last name for the record?

A Yes. My name is John Molera, and my last name is M-O-L-E-R-A.

Q And what do you do for work, Mr. Molera?

A I am the campaign finance enforcement investigator for the Secretary of State's Office.

Q And what are your responsibilities in that role?

A As campaign finance investigator, I investigate and assist in processing complaints primarily.

Q And these are campaign finance complaints; is that right?

A Yes, campaign finance complaints.

Q Are you familiar with the campaign finance complaint filed last year against the No On EE issue committee?

A I am.

Q And we don't need to look at it, but have you had a chance to review what has been previously marked as Exhibit 1 in this matter?

A I have.

Q And is that the complaint that came in last year against the No On EE committee?

A Yes, that is the complaint.

Q So what did you do when that--when you received that complaint?

A So we received the complaint on October 8th and notified the respondent, No On EE, that day. We sent copies of the complaint to the designated filing agent and the registered agent.

Q And when you say you reviewed the complaint, what did you review in the complaint?

A So essentially we conducted an initial review of

the complaint to determine whether the complaint was timely filed, if it alleged violations of Colorado campaign finance law, and if the complaint alleged sufficient facts to support the alleged violation.

Q And did you review--were there any materials--visual materials incorporated in the complaint?

A Yes, there were.

Q And did you review those materials?

A We did. Yes, I did.

Q And I'm just going to pull something up on my screen if you'll give me one quick moment.

(Pause.)

Mr. Molera, let me know when you can see my screen.

A I can see your screen.

Q Do you recognize this image?

A I do, yes.

Q And what is it?

A This is a billboard, a picture of a billboard that was attached to the complaint (unintelligible) No On EE.

Q And was it attached to the complaint, or was it incorporated through a link to a drive?

A That's right. It was incorporated through a link to a Google drive.

Q And did anything, when you viewed this image, stand out to you about that, about this billboard?

A Yeah, the thing that immediately stood out is that there was no registered agent on their disclaimer, the (unintelligible) disclaimer.

MR. BAUMANN: Thank you. I'm going to pull this down.

Your Honor, we're not introducing this.

JUDGE NORWOOD: I thought you said it's Exhibit 1, though, that's stipulated to.

MR. BAUMANN: It is incorporated in Exhibit 1, Your Honor. We're not introducing the image alone, but it's incorporated in Exhibit 1.

Mr. Molera, I'm going to pull up another image if you'll give me just a second.

Q (by Mr. Baumann) Mr. Molera, are you able to see this?

A I am, yes.

Q And do you recognize this image?

A I do, yes.

Q And it appears to be a screenshot, but can you describe what this image is?

A Yes. This is a video advertisement that was also incorporated in the complaint on that Google drive for No on EE.

Q And did anything stand out to you about this?
A Yes, the same thing. For the disclaimer there was no registered agent with their disclaimer, just the "paid for by No on EE".
Q Thank you, Mr. Molera, I'm going to pull this one down. So after you had a chance to review the complaint, what happened next?
A Well, we determined that the complaint was timely filed, that it did allege violations of Colorado campaign finance law, and that it alleged sufficient facts to support that alleged violation.
At that point we sent a notice of--or I'm sorry--we sent a notice of initial review to the registered agent and designated filing agent. At that point we gave the respondents ten days to submit a Notice of Intent to Cure form, and they sent that Notice of Intent to--and that Notice of Intent to Cure form was sent by Ms. MacDonald on November 5th.
Q And we don't have to review it, but have you had a chance to review what's been previously marked as Exhibit 2 in this matter?
A I have, yes.
Q And is that the Notice of--is that the Notice of Intent to Cure that you received?
A That is the Notice of Intent to Cure that I

received, yes.

Q And so what did you do after you received the committee's cure submission?

A After we received the committee's cure submission, we took a look at what was sent along with the cure submission, which included expenditures for TV, digital, website, door hanger advertisements, and attempted to match those up with expenditures that were made on-- expenditures and contributions that were reported on TRACER.

Q And so it sounds like, as part of your investigation, you reviewed the committee's reports on TRACER; is that right?

A We did. That was part of the investigation, yes.

Q And did anything stand out about those reports?

A One thing that stood out particularly was that the contributions that the committee received were almost entirely in-kind contributions from Liggett Vector Brands, LLC.

Q Did you have any further correspondence with the committee, Mr. Molera?

A We did have further correspondence. After the initial review was sent, as I mentioned, we received a Notice of Intent to Cure from Ms. MacDonald on November 5th. After we reviewed the information that was sent by No

On EE and Ms. MacDonald, we sent a Notice of Investigation on November 18th. Shortly thereafter I personally sent a request for additional information on November 20th.

Q And did you receive a response to that request?

A I did receive a response. Initially, I gave a deadline of November 25th for the respondents to respond to our request for information. On November 23rd I actually followed up to see how it was going and putting that information together. The respondent communicated to me that they needed some additional time, and I was willing to extend the deadline for that request for information until November 30th. At that point they did follow up and submit information responding to our request for information.

Q And have you had a chance to review what's been previously marked as Exhibit 3 in this matter?

A I have, yes.

Q And what is Exhibit 3?

A Exhibit 3 is the response to our request for information that expands slightly on the Notice of Intent to Cure information that they had previously sent.

Q And when you say "expands slightly," what did the committee say in response?

A The committee again submitted some of the same information, including the total cost for many of their advertisements. In addition to what they had originally

sent, they also included for the door hanger designs and website development who is invoiced for those expenditures, and then they broke the expenditures down in a little bit more detail.

Q And in either--in any of your correspondence with the committee, did you ever get any information reflecting a cure effort on the committee's behalf?

A Yes, yes, we did get information, and that was essentially a cure effort.

MR. BAUMANN: Thank you, Your Honor. No further questions.

JUDGE NORWOOD: Ms. MacDonald, do you have any cross-examination questions for Mr. Molera?

MS. MACDONALD: I do not.

JUDGE NORWOOD: Mr. Baumann, you may--do you have any other witnesses?

MR. BAUMANN: No, Your Honor. The Division rests.

JUDGE NORWOOD: Ms. MacDonald, did you want to testify yourself or call any witnesses?

MS. MACDONALD: No, I just want to testify myself.

JUDGE NORWOOD: Okay, let me swear you in as a witness.)

(Whereupon, Ms. MacDonald was sworn.)

JUDGE NORWOOD: Tell me what you'd like me to know.

SHEILA MACDONALD

having been first duly sworn, offered direct testimony as follows:

DIRECT TESTIMONY

First of all, thank you for (inaudible) this morning. I appreciate it.

We have (inaudible) facts stipulated by Mr. Baumann (inaudible) thus far. The No On EE campaign filed a campaign committee with the Secretary of State's Office, which included Sandy Partyka as the campaign filing agent and Patrick MacDonald as the campaign's registered agent.

Patrick is an employee of MIDG Group, of which I am the founder and president.

(Inaudible) related as a material disclaimer paid for by No On EE - A Bad Deal for Colorado was used according to the guidelines set forward by state statute. However, the registered agent's name was inadvertently left off.

Once we were alerted to the error, we moved quickly to remedy the situation to the best of our ability and added Patrick MacDonald, the No On EE registered agent for materials and advertising.

As the campaign consultant, I take full

responsibility, realizing the new laws in effect for the 2020 election cycle. While we certainly were not the only campaign that was confused on this issue, it remains my responsibility to understand the rules and regulations of campaign finance.

(Inaudible) filed our campaign paperwork, our intention was to be as open and transparent as possible when it came to filing our campaign finance reports. Our (inaudible) agent, Sandy Partyka, is an experienced compliance officer who has worked with numerous campaigns in Colorado and is a Colorado resident.

This was a campaign with one donor. (Inaudible) that there would be many donations that would be done as in-kind, I asked Sandy to do the following to ensure we were in full compliance: first, to attend a Webinar hosted by the Colorado Secretary of State to ensure we are in full compliance and to see if there was any new information.

Sandy has no recollection of there being mention of the new law requiring the registered agent's name on the campaign collateral. I also asked her to arrange a phone call with the Campaign Finance Office or the Secretary of State's Office to walk through the in-kind donation rules and processes. (Inaudible) learned that there was no requirement for a campaign to identify how in-kind (inaudible) expense.

In an attempt to be transparent as possible, I made the decision that in our reporting we would not show only the in-kind donation and who it was from, but also how it was spent. It was our position that voters deserve to know how money is spent in the campaign even for in-kind donations. This is not required by Colorado law at this time, but it should be.

When we submitted our ads to the TV stations (inaudible) the majority of our money was spent on advertising, they also did not catch the disclaimer being incomplete. (Inaudible) the TV stations are strict regarding the disclaimer and will not run ads without the correct disclaimer on the ad.

We circled back with them after the campaign, and two stations told our buyer they did not know that the registered agent was now required. This in no way excuses my error, but it does illustrate the lack of knowledge that this new requirement was in place for the 2020 election.

It is also important to note that the penalties for this new law were only finalized in September of 2020 during the middle of an election cycle, meaning the campaigns in the same election cycle who may have committed the same violation may not be subjected to the same penalties.

(Inaudible) I have to ask myself, did my

inadvertent error in leaving off the registered agent's name in the campaign collateral in any way compromise the voters' ability to know who was running this campaign, how to contact the campaign, or how to contact the campaign registered agent or the campaign filing agent?

The answer is no. All of that information was available on the Secretary of State's website.

(Inaudible) campaign file the campaign committee with the filing agent and a registered agent as required by Colorado law. (Inaudible) information was included as required by law. This information is available to any voter at any time.

The most important voice in this conversation is the Colorado voter. New laws that are enacted should always ask the--should be able to answer the question of how this supports and protects the voters of Colorado. I believe this new law requiring the registered agent on all campaign collateral to be overly burdensome in light of actual benefit to the voter.

No contact information is required along with the name, so no matter what, the voter still must go to the SOS website and look up the registered agent's information.

Finally, Colorado voters were not impacted negatively by this error. They voted overwhelmingly to pass EE and increase the tobacco tax and to create a base

on cost for packs of cigarettes to support various needs of the State.

I would like to thank the people who work with the Campaign Finance Office of the Colorado Secretary of State. I work with them a lot, they are great, they are knowledgeable, and they're always helpful. And I have appreciated their effort even during this current exercise.

Thank you.

JUDGE NORWOOD: Mr. Baumann, do you have any cross-examination questions for Ms. MacDonald?

MR. BAUMANN: I do not, Your Honor.

JUDGE NORWOOD: Ms. MacDonald, do you rest?

MS. MACDONALD: Yes, I rest.

JUDGE NORWOOD: Did you want to make a closing statement, Mr. Baumann?

MR. BAUMANN: I would, Your Honor. Thank you.

I think the stipulations really tell the story here, and so I don't want to dwell overly so on that. We know that there was a campaign finance violation, and we know that it was significant in scope.

If you look at Exhibits 2 and 3, the committee, in response to Mr. Molera's inquiries, outlines roughly 4 million dollars in total spending on advertising, and the parties have stipulated that somewhere between 3 and 3-1/2 million dollars of advertising went out without the name of

the registered agent on it.

So there's no question that there was a violation and that it was significant. And, frankly, it's that significant scope that has prevented parties from being able to reach a resolution in this matter to this point.

There are no constitutional penalties for disclaimer violations. The only appropriate framework established in law comes from the Secretary's rules for campaign and political finance, which state that the following fine structure will be considered: The rules establish that for non-compliant communications not cured before the election, the fine should be at least ten percent of the relevant communication, including the cost to broadcast.

For communications that are cured before the election, the fine is at least five percent, including the cost to broadcast.

And here, as we heard from Ms. MacDonald, as Mr. Molera testified, we know that there was an effort to cure, and you heard from Ms. MacDonald that that effort was swift and significant. And so it is the Division's position that the fine should be more aligned with the five percent figure than the ten percent figure.

Now, the rules also establish a series of aggravating and mitigating factors, and the parties have

stipulated to the fact that there is no evidence that this was an intentional effort to mislead the electorate. That's a mitigating factor. And, in fact, I think it's important to--a key fact here is that No On EE did have a disclaimer on all of its ads. That too is a mitigating factor.

I agree with Ms. MacDonald that the key voice today is the Colorado voter, but the Colorado voter is represented through the General Assembly, and the General Assembly has passed this law. They've decided that the disclaimers need to include the name of the committee's registered agent. That's the law that is binding on all of us here today, and that's the law that was binding on No On EE during the 2020 election cycle.

And there's actually been a bill introduced this session that would eliminate this requirement, and it came before the House State Affairs Committee yesterday, I believe, where the committee voted unanimously to postpone consideration of the bill indefinitely. So there does not appear to be much urgency within the General Assembly to revisit this requirement.

Regardless, this is not an easy case, because the penalty must be two things. It must be both reasoned and reasonable. It needs to be reasoned in that it must fit within a replicable framework that is fair and can be

applied to all other cases and that recognizes the significant extent of the non-compliance here and also that dozens if not hundreds of other committees did comply with this new requirement.

But it also needs to be reasonable in that it recognizes the mitigating factors, and it recognizes the lack of an intent to mislead the electorate and that recognizes the committee's efforts to cure.

So the Division is here today asking Your Honor to establish a fair and just penalty on these facts that is both reasoned and reasonable. Thank you.

JUDGE NORWOOD: What do you suggest for a fine?

MR. BAUMANN: Your Honor, I think if we take the 3-to-3.5-million-dollar stipulation, I think the Division would say that a fine should approximate five percent of that under the rules. I mean, that's the rules that the Division believed were binding certainly on them in settlement and that states that they will be considered.

I think the key here, Your Honor, is the Division's position that ultimately this is--the final Agency decision here will be made by the Deputy Secretary of State, and he's perfectly capable of reading the rules.

But what will be most helpful to him and what is most helpful for us today is, you have your own independent judgment and independent authority. You've heard the

evidence. You've heard from Ms. MacDonald. And so I think that what would benefit the Deputy Secretary the most is, having heard that evidence, to offer your independent judgment of where that fine should lie.

JUDGE NORWOOD: So are you suggesting, what, $30,000?

MR. BAUMANN: Oh, man, I need to refresh my math, but I think at a 3-million-dollar fine, five percent--well, five percent would be much more than $30,000. But, again, we do believe there are mitigating factors here that would reduce that down.

JUDGE NORWOOD: Let's work it out on the calculator.

(Pause.)

I think that's, what, $150,000? Does that sound right?

MR. BAUMANN: I think that's the five percent figure. That sounds--that sounds right.

JUDGE NORWOOD: But do you think that that should be mitigated lower?

MR. BAUMANN: I think Your Honor could certainly find mitigating circumstances here. And in the Division's review of this, and I think stipulated to, are a few mitigating circumstances that could mitigate that lower.

Again, we think that the rule speaks for itself,

but it's Your Honor that's had the opportunity to hear directly from Ms. MacDonald and construe what the mitigating circumstances are in this case.

JUDGE NORWOOD: And, like I said, I don't have the stipulation in front of me, but what are those mitigating circumstances? I didn't hear any evidence, for example, that people put stickers on that had the registered agent or anything like that that we've had in other cases.

MR. BAUMANN: So I think there are--there are two, and I'll start with the biggest mitigating factor here in the Division's opinion is the lack of an intent to mislead the electorate and the fact that there were disclaimers on these advertisements.

I do think we heard some evidence to--

JUDGE NORWOOD: (Inaudible) interrupt you real quick. The disclaimer you're talking about is just who paid for it but not the registered agent; right?

MR. BAUMANN: That's correct, Your Honor. Thank you.

The evidence that we heard today--and I think this is reflected in the stipulations--is that there was a cure effort here, and that cure effort included submitting revised advertisements to--I'm pulling up our stipulations just to make sure I have this right--but that door hangers

were reprinted to include the name of the registered agent, that the committee worked to add the name of the registered agent to various billboards. Their website--the name of the registered agent was added to the website.

And then it's our understanding--again, reflected in the stipulation--that the committee worked to replace the ads, the TV ads, the digital ads, that they had already submitted to the stations with revised copies that included the name of the registered agent for any ads left in that run of advertisements.

JUDGE NORWOOD: Okay, thank you.

MR. BAUMANN: Thank you, Your Honor.

JUDGE NORWOOD: Ms. MacDonald, did you want to make a closing statement, understanding this is not evidence?

MS. MACDONALD: I do.

JUDGE NORWOOD: Go ahead.

MS. MACDONALD: Leaving the registered agent's name off a campaign flier was not part of some preconceived plan to keep information from voters. I have taken responsibility for it and reacted within hours to remedy the error.

The penalty (inaudible) finalized during September of 2020 are not violation-based, but based on the spending budget of a campaign. (Inaudible) will have a

different penalty for a campaign that spends 500 than for a campaign that spends 50,000.

This does not seem logical to me. I would equate it with, if I am driving a Lamborghini, and Mr. Baumann is driving a Jeep CJ, and we're both going 20 miles over the speed limit down Colfax and get pulled over for a speeding ticket, I don't get a $5,000 speeding ticket, and he gets a $50 speeding ticket based on the type of car we're driving. The violation remains the same.

While the General Assembly passed the legislation, the rules were developed by the Secretary of State's Office, and they weren't finalized until the middle of an election cycle. I am not asking for no fine, but I think this fine schedule is draconian, and I ask that it be taken into consideration.

JUDGE NORWOOD: Do you agree that there was a violation?

MS. MACDONALD: I'm sorry? Say that again?

JUDGE NORWOOD: Do you agree that there was a violation?

MS. MACDONALD: I do agree that there was a violation.

JUDGE NORWOOD: What are you thinking that the appropriate fine would be?

MS. MACDONALD: For the violation? I don't know,

a thousand dollars, five thousand dollars. I certainly don't think 150 thousand dollars. I mean, this isn't a cost I'm passing on to my client (inaudible) error, and I will take responsibility for it, but (inaudible) mortgage my house to do it.

JUDGE NORWOOD: Well, I'm not sure, why are you talking about you personally having to pay the fine?

MS. MACDONALD: Well, why would I pass this on to my client or to the committee? I mean, I pay the committee. I just don't--I just don't--I think it would malfeasance. It's my error. I have taken responsibility for it. I just don't--I think 150 thousand for leaving a name off, it's not like the name had the phone number next to it. The people would still go to the Secretary of State's website to get the information. The name brings nothing to the disclaimer.

JUDGE NORWOOD: And maybe you've answered this already, but I'm understanding that the--you know, the respondent is the issue committee.

MS. MACDONALD: The respondent is the issue committee. That's correct.

JUDGE NORWOOD: Any fine would be imposed on the issue committee. I'm not sure why you, the actual person, Sheila MacDonald, would have to pay the fine.

MS. MACDONALD: The fine will be imposed on the

issue committee. That is correct.

JUDGE NORWOOD: Right, right. And you're not--are you saying you're legally--you would be legally obligated to pay the fine?

MS. MACDONALD: I am not saying that. I am not saying that. The fine would be imposed on the issue committee.

JUDGE NORWOOD: Okay. Any rebuttal closing, Mr. Baumann?

MR. BAUMANN: Very briefly, just two points, Your Honor. I think the reason the rules wheel (phonetic) off of total spending is that that's a proxy for the content that is distributed to the electorate. If we're talking about a five-hundred-dollar--a single five-hundred-dollar yard sign, far fewer members of the electorate see that than 3 to 3.5 million dollars in television ads. And so it really is a proxy for the effect that a violation has on the electorate.

The other point that I'd just like to make is, Ms. MacDonald brings up that these rules were finalized in September. That is true. They were--the final rules were adopted on September 30th, but emergency rules with the effect of law were adopted and promulgated on August 10th of 2020, and so were in effect throughout the entire campaign season.

JUDGE NORWOOD: And let me--you've talked about how the rules anticipate--they link the amount spent to the violation, but we don't--we really don't have evidence of a figure that would link how much was spent on advertisements that failed to contain the registered agent, do we?

MR. BAUMANN: I actually think we do, Your Honor. The parties have stipulated that that figure is between 3 and 3.5 million dollars. And again--

JUDGE NORWOOD: (Inaudible.)

MR. BAUMANN: I apologize, Your Honor, I don't mean to interrupt.

JUDGE NORWOOD: No, go ahead, yes.

MR. BAUMANN: And that reflects that the total spending, again, as reflected in Exhibits 2 and 3, is closer to 4 million dollars. But, again, there were cure efforts here. And it's our understanding and it's the stipulation that those cure efforts resulted in advertisements going out that did have the registered agent after this complaint was received.

And so that's where the 3, 3-and-a-half-million-dollar figure comes in. That's the parties' best approximation of how many ads went out without the name of the registered agent.

JUDGE NORWOOD: Okay. I think those are my only questions. Thank you both for your presentations, and I'll

be issuing my decision.

MS. MACDONALD: Thank you.

MR. BAUMANN: Thank you, Your Honor.

JUDGE NORWOOD: Thank you. Goodbye.

(Whereupon, the proceedings were concluded.)

TRANSCRIBER'S CERTIFICATE

I, Sylvia Besel, hereby certify that the foregoing constitutes a true and accurate transcript of all audible proceedings of the prehearing conference regarding Case No. OS-2020-0025, before the Office of Administrative Courts, May 21, 2021, which said hearing was mechanically recorded by the Office of Administrative Courts and transcribed by me to the best of my ability.

Dated at Aurora, Colorado, this 14th day of June, 2021.

/s/Sylvia Besel

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STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State, Complainant vs. **No on EE – A Bad Deal for Colorado,** Respondent	**CASE NUMBER:** **OS 2020-0025**
DECISION (Amended Certificate of Service)	

This is a campaign finance case pursuant to Colo. Const. art. XXVIII and the Fair Campaign Practices Act described at Section 1-45-101, C.R.S. Hearing was held and recorded remotely May 21, 2021 before Administrative Law Judge ("ALJ") Matthew E. Norwood. Peter Baumann, Campaign Finance Fellow, appeared for the Complainant ("Division"). Sheila MacDonald spoke on behalf of the Respondent ("the Committee"). The Committee is an issue committee as defined at art. XXVIII, sec. 2(10). Ms. MacDonald is not an attorney. She was permitted to speak for the Committee per Section 13-1-127(2), C.R.S.

Summary

Proposition EE was a ballot question for the Colorado November 3, 2020 election. It proposed the raising of taxes on tobacco and e-cigarettes, and was approved by the voters. The Committee failed to identify its "registered agent" in communications opposing Proposition EE, as is required by law. The Committee spent $3 million to $3.5 million on such non-conforming communications. The ALJ therefore imposes a $10,000 fine on the Committee.

Findings of Fact

Based on the evidence presented at hearing, and the stipulation of the parties, the ALJ makes the following findings of fact:

1. The Division and the Committee have made a stipulation of facts. The ALJ adopts that stipulation as a finding of fact. That stipulation provides:

> 1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

> 9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.
>
> 10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.
>
> 11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.
>
> 12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.
>
> 13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

2. The exhibits 1, 2, and 3 referenced in the stipulation of facts have also been admitted as evidence in the hearing before the ALJ.

3. The ALJ also specifically finds that the Committee was an issue committee as defined at art. XXVIII, sec. 2(10). It made expenditures or spent more than one thousand dollars per calendar year on communications that opposed a ballot question on the November 3, 2020 ballot, Proposition EE, and that the communications were broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or were otherwise distributed.

4. The communications failed to contain a disclaimer statement in accordance with Section 1-45-108.3(2), C.R.S., in that they did not identify the registered agent as required by Section 1-45-107.5(5)(a)(II), C.R.S.

5. The Committee argues that the requirement to disclose the name of the registered agent is new. Section 1-45-108.3(2)'s link to Section 1-45-107.5(5), C.R.S., which contains the requirement for identifying the registered agent, was approved May 29, 2019, and became effective August 2, 2019. 2019 Colo. Sess. Laws pp. 3046-47.

6. The Committee asserts that a $1,000 to $5,000 fine is appropriate.

7. The Division asks for a fine in the range of $150,000 to $350,000. It arrives at the top of this range by multiplying the maximum $3.5 million stipulated to above by 10%. It arrives at the bottom of the range by multiplying the minimum $3.0 million

stipulated to by 5%. The 10% and 5% figures appear in the Secretary of State's rules at Rule 23.3.3 (d), 8 CCR 1505-6.

8. A fine in the range proposed by the Division is exorbitant. In addition, it would likely never be paid. As argued by the Committee, the electorate had other publically available means to identify the registered agent, Mr. MacDonald. Considering the nature of the violation, but also considering the great deal of money spent by the Committee on communications not conforming to the law, a $10,000 fine is the appropriate sanction.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. The Division's complaint alleges that the Committee failed to include the registered agent information as required by Section 1-45-108.3(1), C.R.S. That subsection and subsection 108.3(2) provide:

> (1) A[n] … issue committee … making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5 (5) for content, size, duration, and placement.

2. The pertinent requirements of Section 1-45-107.5(5) for "content, size, duration, and placement" are:

> (5)(a) … any communication … shall include in the communication a statement that:
>
> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
>
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

3. "Communications" that must be disclosed under article XXVIII or article 45 are "electioneering communications." Art. XXVIII, sec. 6; Section 1-45-108(1)(a)(III), C.R.S. Such communications relate to those on behalf of a "candidate." Art. XXVIII, sec. 2(7); Section 1-45-103(9), C.R.S.

4. There is no "candidate" in the case of a ballot question such as Proposition EE. As such, the "communications" in opposition to a ballot question described in Section 1-45-108.3(1), C.R.S. are "communications" as that term is understood by common usage. Section 2-4-101, C.R.S.

5. The ALJ has discretion as to sanction. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009). A $10,000 fine is the appropriate sanction for the Committee's violation.

Decision

The Committee has violated Sections 1-45-108.3(1) and (2), C.R.S. in that it failed to identify the registered agent in its communications opposing Proposition EE. It shall pay a $10,000 fine.

DONE AND SIGNED

May 26, 2021



MATTHEW E. NORWOOD
Administrative Law Judge

Certificate of Service

I certify that I have served a true and correct copy of the above **Decision** was served upon the parties listed below by email and U.S. mail to:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
1732 Wazee St., #201
Denver, CO 80202

Sheila@midggroup.com

Dated: 06/01/2021

\s\ Marc Marcel
Office of Administrative Courts

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State, Complainant vs. **No on EE – A Bad Deal for Colorado,** Respondent	**CASE NUMBER:** **OS 2020-0025**
DECISION	

This is a campaign finance case pursuant to Colo. Const. art. XXVIII and the Fair Campaign Practices Act described at Section 1-45-101, C.R.S. Hearing was held and recorded remotely May 21, 2021 before Administrative Law Judge ("ALJ") Matthew E. Norwood. Peter Baumann, Campaign Finance Fellow, appeared for the Complainant ("Division"). Sheila MacDonald spoke on behalf of the Respondent ("the Committee"). The Committee is an issue committee as defined at art. XXVIII, sec. 2(10). Ms. MacDonald is not an attorney. She was permitted to speak for the Committee per Section 13-1-127(2), C.R.S.

Summary

Proposition EE was a ballot question for the Colorado November 3, 2020 election. It proposed the raising of taxes on tobacco and e-cigarettes, and was approved by the voters. The Committee failed to identify its "registered agent" in communications opposing Proposition EE, as is required by law. The Committee spent $3 million to $3.5 million on such non-conforming communications. The ALJ therefore imposes a $10,000 fine on the Committee.

Findings of Fact

Based on the evidence presented at hearing, and the stipulation of the parties, the ALJ makes the following findings of fact:

1. The Division and the Committee have made a stipulation of facts. The ALJ adopts that stipulation as a finding of fact. That stipulation provides:

> 1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

> 9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.
>
> 10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.
>
> 11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.
>
> 12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.
>
> 13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

2. The exhibits 1, 2, and 3 referenced in the stipulation of facts have also been admitted as evidence in the hearing before the ALJ.

3. The ALJ also specifically finds that the Committee was an issue committee as defined at art. XXVIII, sec. 2(10). It made expenditures or spent more than one thousand dollars per calendar year on communications that opposed a ballot question on the November 3, 2020 ballot, Proposition EE, and that the communications were broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or were otherwise distributed.

4. The communications failed to contain a disclaimer statement in accordance with Section 1-45-108.3(2), C.R.S., in that they did not identify the registered agent as required by Section 1-45-107.5(5)(a)(II), C.R.S.

5. The Committee argues that the requirement to disclose the name of the registered agent is new. Section 1-45-108.3(2)'s link to Section 1-45-107.5(5), C.R.S., which contains the requirement for identifying the registered agent, was approved May 29, 2019, and became effective August 2, 2019. 2019 Colo. Sess. Laws pp. 3046-47.

6. The Committee asserts that a $1,000 to $5,000 fine is appropriate.

7. The Division asks for a fine in the range of $150,000 to $350,000. It arrives at the top of this range by multiplying the maximum $3.5 million stipulated to above by 10%. It arrives at the bottom of the range by multiplying the minimum $3.0 million

stipulated to by 5%. The 10% and 5% figures appear in the Secretary of State's rules at Rule 23.3.3 (d), 8 CCR 1505-6.

8. A fine in the range proposed by the Division is exorbitant. In addition, it would likely never be paid. As argued by the Committee, the electorate had other publically available means to identify the registered agent, Mr. MacDonald. Considering the nature of the violation, but also considering the great deal of money spent by the Committee on communications not conforming to the law, a $10,000 fine is the appropriate sanction.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. The Division's complaint alleges that the Committee failed to include the registered agent information as required by Section 1-45-108.3(1), C.R.S. That subsection and subsection 108.3(2) provide:

> (1) A[n] … issue committee … making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5 (5) for content, size, duration, and placement.

2. The pertinent requirements of Section 1-45-107.5(5) for "content, size, duration, and placement" are:

> (5)(a) … any communication … shall include in the communication a statement that:
>
> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
>
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

3. "Communications" that must be disclosed under article XXVIII or article 45 are "electioneering communications." Art. XXVIII, sec. 6; Section 1-45-108(1)(a)(III), C.R.S. Such communications relate to those on behalf of a "candidate." Art. XXVIII, sec. 2(7); Section 1-45-103(9), C.R.S.

4. There is no "candidate" in the case of a ballot question such as Proposition EE. As such, the "communications" in opposition to a ballot question described in Section 1-45-108.3(1), C.R.S. are "communications" as that term is understood by common usage. Section 2-4-101, C.R.S.

5. The ALJ has discretion as to sanction. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009). A $10,000 fine is the appropriate sanction for the Committee's violation.

Decision

The Committee has violated Sections 1-45-108.3(1) and (2), C.R.S. in that it failed to identify the registered agent in its communications opposing Proposition EE. It shall pay a $10,000 fine.

DONE AND SIGNED

May 26, 2021



MATTHEW E. NORWOOD
Administrative Law Judge

Certificate of Service

I certify that I have served a true and correct copy of the above **Decision** was served upon the parties listed below by email and U.S. mail to:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
1732 Wazee St., #201
Denver, CO 80202

Sheila@midggroup.com

Dated: ___05/26/2021_____

_____
Office of Administrative Courts

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

Case Number: OS-2020-0025 (Elec. Div. No. 2020-71)

IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO

PROCEDURAL ORDER REGARDING INITIAL DECISION

Attached is the Initial Decision dated May 26, 2021, by the hearing officer assigned by the Office of Administrative Courts in the above-referenced matter. The Colorado Deputy Secretary ("Deputy Secretary") hereby serves the Initial Decision and this Procedural Order Regarding Initial Decision ("Order") upon the parties by email, as previously consented to by the Parties. *See* attached Certificate of Service.

Your case remains open across the period of potential appeal and review by the Deputy Secretary. The Deputy Secretary is not bound by the Initial Decision's recommended ruling. If the Deputy Secretary takes up your case for review, the Deputy Secretary may issue a Final Order with a different result than that recommended in the Initial Decision.

In order to challenge the Initial Decision, a party must file exceptions with the Deputy Secretary pursuant to the procedures outlined in subsections 24-4-105(14), (15) and (16), C.R.S. and this Order.

I. Initiation of Review on Deputy Secretary's Own Motion

The Deputy Secretary hereby initiates review of the Initial Decision upon his own motion pursuant to sections 1-45-111.7(6)(b) and 24-4-105(14)(a)(II).

II. General Filing Requirements

All requests and pleadings must be filed in writing electronically with the Deputy Secretary and not with the OAC. The email address for filing exceptions and any other papers with the Deputy Secretary is: OACAppeals@sos.state.co.us.

Any party that files a pleading or related document with the Deputy Secretary must also serve a copy of such pleading or related document upon the opposing party.

III. Exceptions

Pursuant to section 24-4-105, a party may appeal the Initial Decision to the Deputy Secretary by means of the exceptions review process ("Exceptions"). In order to appeal the Initial Decision, a party must file "Exceptions to the Initial Decision" according to the deadlines and procedures outlined below:

A. Designation of Record

Any party who seeks to reverse or modify the Initial Decision shall file a Designation of Record within twenty (20) days from the date of this Order. Any party that wishes to challenge factual findings in the Initial Decision must also designate relevant transcript(s), or parts thereof, of the proceedings before the hearing officer in its Designation of Record. A transcript is not necessary if the requested review is limited to a pure question of law.

Within ten (10) days after service of the Designation of Record, any other party, including the Deputy Secretary, may file a "Supplemental Designation of Record" including any additional transcripts, or parts thereof, of the proceedings before the hearing officer. The Supplemental Designation of Record shall specify all or part of the Record to be additionally included in the appeal.

A party ordering transcript(s) is responsible for ordering and filing such transcripts with the Deputy Secretary. It is recommended that a party contact the OAC and a certified court reporter for information on how to order a transcript.

B. 30-Day Deadline for filing Exceptions

Exceptions are due within thirty (30) days after the date of this Order. A party may request an extension of time to file Exceptions prior to thirty (30) days after the date of this Order. An extension of time will be granted for good cause.

The parties should be aware that delays in receiving an ordered transcript will not result in an automatic extension of the deadline for filing Exceptions. Rather, a proper motion for such relief must be filed.

C. Deadlines for Responses, Replies, and Proposed Orders

Responses: Either party may file a response to the other party's Exceptions within fourteen (14) days from the date of the Exceptions filing.

Replies: Either party may file a reply to the other party's response to Exceptions within seven (7) days from the date of the responsive filing.

Proposed Orders: Either party may file a proposed final order. Such proposed order may be filed together with the party's Exceptions, response, or reply.

IV. Computation and Modification of Time

All time periods are calculated pursuant to Colorado Rules of Civil Procedure Rule 6.

V. Oral Arguments

The Deputy Secretary may permit oral argument upon request by either party. Such request must be filed with the exceptions, response, or reply. If permitted, each party will be allotted a defined time limit for oral argument. The requesting party will present first and may reserve time for rebuttal. The Deputy Secretary will be permitted to ask questions. Oral argument must be confined to the arguments and evidence presented during the hearing or in the exceptions and responses thereto. Evidence or arguments outside the record may not be presented during oral argument.

VI. Final Order

The Deputy Secretary may affirm, set aside, or modify the Initial Decision's Findings of Fact, Conclusions of Law, and recommended sanction within the Deputy Secretary's authority. Under most circumstances, the Deputy Secretary will issue a Final Order at the conclusion of his review. On occasion, however, the Deputy Secretary may conclude that either the factual basis or legal analysis, or both, in the Initial Decision are insufficient to complete an appropriate review of the Initial Decision. In such instance, the Deputy Secretary will remand the case back to the hearing officer with directions to issue a revised Initial Decision. The hearing officer will subsequently issue a Revised Initial Decision upon remand. The parties will have the same appeal rights with respect to the Revised Initial Decision as they had with the original Initial Decision.

The Final Order is subject to judicial review under section 24-4-106. However, where nether party has timely appealed the Initial Decision through Exceptions and the Deputy Secretary has chosen not to initiate review of the Initial Decision upon his own motion, the Initial Decision becomes a Final Order after thirty days of service of this Order, unless the deadline for Exceptions has been extended, by operation of law. Under these circumstances, neither party has the right to appeal the Initial Decision.

DONE and **ORDERED** this 27th day of May, 2021.

CHRISTOPHER P. BEALL

Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **PROCEDURAL ORDER REGARDING INITIAL DECISION** was served on the following parties via electronic mail on this 27th day of May 2021.

For the Complainant:
Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

For the Respondent:
Sheila MacDonald
Sheila@midggroup.com

Courtesy copy to Elections Division:
CPFComplaints@sos.state.co.us

/s/ Christopher P. Beall

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State, Complainant vs. **No on EE – A Bad Deal for Colorado,** Respondent	**CASE NUMBER:** **OS 2020-0025**
DECISION	

This is a campaign finance case pursuant to Colo. Const. art. XXVIII and the Fair Campaign Practices Act described at Section 1-45-101, C.R.S. Hearing was held and recorded remotely May 21, 2021 before Administrative Law Judge ("ALJ") Matthew E. Norwood. Peter Baumann, Campaign Finance Fellow, appeared for the Complainant ("Division"). Sheila MacDonald spoke on behalf of the Respondent ("the Committee"). The Committee is an issue committee as defined at art. XXVIII, sec. 2(10). Ms. MacDonald is not an attorney. She was permitted to speak for the Committee per Section 13-1-127(2), C.R.S.

Summary

Proposition EE was a ballot question for the Colorado November 3, 2020 election. It proposed the raising of taxes on tobacco and e-cigarettes, and was approved by the voters. The Committee failed to identify its "registered agent" in communications opposing Proposition EE, as is required by law. The Committee spent $3 million to $3.5 million on such non-conforming communications. The ALJ therefore imposes a $10,000 fine on the Committee.

Findings of Fact

Based on the evidence presented at hearing, and the stipulation of the parties, the ALJ makes the following findings of fact:

1. The Division and the Committee have made a stipulation of facts. The ALJ adopts that stipulation as a finding of fact. That stipulation provides:

> 1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.

10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.

11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.

12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.

13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

2. The exhibits 1, 2, and 3 referenced in the stipulation of facts have also been admitted as evidence in the hearing before the ALJ.

3. The ALJ also specifically finds that the Committee was an issue committee as defined at art. XXVIII, sec. 2(10). It made expenditures or spent more than one thousand dollars per calendar year on communications that opposed a ballot question on the November 3, 2020 ballot, Proposition EE, and that the communications were broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or were otherwise distributed.

4. The communications failed to contain a disclaimer statement in accordance with Section 1-45-108.3(2), C.R.S., in that they did not identify the registered agent as required by Section 1-45-107.5(5)(a)(II), C.R.S.

5. The Committee argues that the requirement to disclose the name of the registered agent is new. Section 1-45-108.3(2)'s link to Section 1-45-107.5(5), C.R.S., which contains the requirement for identifying the registered agent, was approved May 29, 2019, and became effective August 2, 2019. 2019 Colo. Sess. Laws pp. 3046-47.

6. The Committee asserts that a $1,000 to $5,000 fine is appropriate.

7. The Division asks for a fine in the range of $150,000 to $350,000. It arrives at the top of this range by multiplying the maximum $3.5 million stipulated to above by 10%. It arrives at the bottom of the range by multiplying the minimum $3.0 million

stipulated to by 5%. The 10% and 5% figures appear in the Secretary of State's rules at Rule 23.3.3 (d), 8 CCR 1505-6.

8. A fine in the range proposed by the Division is exorbitant. In addition, it would likely never be paid. As argued by the Committee, the electorate had other publically available means to identify the registered agent, Mr. MacDonald. Considering the nature of the violation, but also considering the great deal of money spent by the Committee on communications not conforming to the law, a $10,000 fine is the appropriate sanction.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. The Division's complaint alleges that the Committee failed to include the registered agent information as required by Section 1-45-108.3(1), C.R.S. That subsection and subsection 108.3(2) provide:

> (1) A[n] … issue committee … making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5 (5) for content, size, duration, and placement.

2. The pertinent requirements of Section 1-45-107.5(5) for "content, size, duration, and placement" are:

> (5)(a) … any communication … shall include in the communication a statement that:
>
> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
>
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

3. "Communications" that must be disclosed under article XXVIII or article 45 are "electioneering communications." Art. XXVIII, sec. 6; Section 1-45-108(1)(a)(III), C.R.S. Such communications relate to those on behalf of a "candidate." Art. XXVIII, sec. 2(7); Section 1-45-103(9), C.R.S.

4. There is no "candidate" in the case of a ballot question such as Proposition EE. As such, the "communications" in opposition to a ballot question described in Section 1-45-108.3(1), C.R.S. are "communications" as that term is understood by common usage. Section 2-4-101, C.R.S.

5. The ALJ has discretion as to sanction. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009). A $10,000 fine is the appropriate sanction for the Committee's violation.

Decision

The Committee has violated Sections 1-45-108.3(1) and (2), C.R.S. in that it failed to identify the registered agent in its communications opposing Proposition EE. It shall pay a $10,000 fine.

DONE AND SIGNED

May 26, 2021



MATTHEW E. NORWOOD
Administrative Law Judge

Certificate of Service

I certify that I have served a true and correct copy of the above **Decision** was served upon the parties listed below by email and U.S. mail to:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
1732 Wazee St., #201
Denver, CO 80202

Sheila@midggroup.com

Dated: ___05/26/2021_____

_____
Office of Administrative Courts

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State

Christopher P. Beall
Deputy Secretary of State

BEFORE THE COLORADO DEPUTY SECRETARY OF STATE 1700 Broadway, Suite 200 Denver, Colorado 80290 IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO	OAC CASE NUMBER: **OS 2020-25** (ED Case No. 2020-71)

FINAL AGENCY ORDER

This matter comes before Christopher P. Beall, Colorado Deputy Secretary of State ("Deputy Secretary"), under sections 1-45-111.7(6)(b) and 24-4-105, C.R.S., upon the Deputy Secretary's own motion to review the Initial Decision issued by the hearing officer, and duly served upon the Parties on May 27, 2021.[1] The Initial Decision is attached as Exhibit 1 and is incorporated as set forth herein except to the extent otherwise described in this Final Agency Order. As discussed below, the Deputy Secretary affirms the finding of a violation of the Fair Campaign Practices Act ("FCPA"), but the Deputy Secretary reduces the requested penalty assessment

[1] The Secretary of State recused herself from the deliberations on this Final Agency Order.

sought by the Elections Division, which sought a fine of between $150,000 to $350,000, to a penalty of $30,000.

I. BACKGROUND

Respondent No on EE – A Bad Deal for Colorado ("Respondent") is a registered issue committee that was formed to oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature (Proposition EE).[2] Initial Decision ("ID") at 1-2, ¶¶ 1.1, 1.2. On October 8, 2020, Anna Jo Haynes filed an initial complaint with the Colorado Secretary of State against Respondent. ID at 2, ¶ 1.4. The initial complaint alleged that Respondent had violated Colorado campaign finance law by failing to include the name of its registered agent in its "paid for by" disclaimer in its relevant communications during the campaign. *Id.* The initial complaint also alleged that certain of Respondent's advertisements violated section 1-13-109(2)(a) in that they allegedly included recklessly false statements in the content of the advertising. *See* Stipulated Exhibit 1, Initial Compl. at 4, filed Oct. 8, 2020.[3]

After completing its initial review and investigation, the Elections Division of the Secretary of State's Office ("Division") filed a formal complaint in this matter with the Office of Administrative Courts on December 18, 2020, pursuant to section 1-45-111.7(6). The Division's formal complaint argued that Respondent violated campaign

[2] Respondent was essentially a single-donor campaign and the donor in question was Liggett Vector Brands LLC. *See* TR 05/21/2021, pp 5-6, 18.

[3] The hearing officer's Initial Decision does not mention the underlying complainant's allegation of reckless falsity in Respondent's advertising, presumably because the Elections Division did not raise that issue in its formal complaint before the Office of Administrative Courts.

finance law by failing to name its registered agent in its election advertising; the Division elected not to pursue the underlying complainant's assertion of violations of section 1-13-109(2)(a). On May 21, 2021, a hearing was held before the hearing officer assigned to the matter pursuant to section 1-45-111.7(6)(a), after which the hearing officer issued an Initial Decision. ID at 1.

The hearing officer concluded that Respondent violated section 1-45-108.3(1) & (2) when it distributed communications opposing a ballot initiative that did not include the name of its registered agent. *See* ID at 7-8. The hearing officer made what purported to be a factual finding concerning the Division's requested fine, stating that the Division's proposed amount "is exorbitant." ID at 4, ¶ 8. The Division's request of a fine of between $150,000 and $350,000 was based on Rule 23.3.3(d), 8 CCR 1505-6. ID at 3, ¶ 7. The hearing officer also included a factual finding that such a fine "would likely never be paid," although there is no testimony or evidence in the record to support this finding, nor any citation in the Initial Decision in support of the finding. ID at 4, ¶ 8. Ultimately, the hearing officer assessed a fine of $10,000. *Id.* at 8.

No party filed exceptions to the Initial Decision. However, the Deputy Secretary initiated review on his own motion. *See* Procedural Order Regarding Initial Decision (May 27, 2021). The Deputy Secretary adopts the Findings of Fact set forth in the Initial Decision except as set forth herein. The Deputy Secretary adopts the Conclusions of Law of the Initial Decision, except those provisions related to the recommended sanction. Pursuant to section 24-4-105(15)(b), and for the reasons

stated herein, the Deputy Secretary modifies the sanction to impose a $30,000 penalty.

II. STANDARDS OF REVIEW

A hearing officer's findings of evidentiary fact may be set aside by the Deputy Secretary on review of the initial decision only if they are contrary to the weight of the evidence. § 24-4-105(15)(b). Evidentiary facts are the detailed factual or historical findings upon which a legal determination rests. *State Bd. of Med. Exam'rs v. McCroskey*, 880 P.2d 1188, 1193 (Colo. 1994). By contrast, the Deputy Secretary may substitute his judgment for that of the hearing officer with respect to an ultimate conclusion of fact. *See* § 24-4-105(15)(b). Findings of ultimate fact involve a conclusion of law, or at least a mixed question of law and fact, and settle the rights and liabilities of the parties. *Reiff v. Colo. Dep't of Health Care Policy & Fin.*, 148 P.3d 355, 357 (Colo. App. 2006). Interpretation of a regulation by the agency charged with its enforcement is generally entitled to deference and must be accepted if it has a reasonable basis in law and is warranted by the record. *Id.* at 358. The Deputy Secretary may also modify the initial decision, or any sanction or relief entered therein, in conformity with the facts and the law. § 24-4-105(15)(b); *see also Colo. Real Estate Comm'n v. Hanegan*, 947 P.2d 933, 936 (Colo. 1997) (holding that an agency is afforded wide discretion to modify an initial decision's recommended sanction within the parameters of its authority). The Deputy Secretary reviews questions of law and the application of law to undisputed facts de novo. *See Winter v. Indus. Claim Appeals Office*, 2013 COA 126, ¶¶ 7-8, 321 P.3d 609, 612.

III. JURISDICTION

As a preliminary matter, the hearing officer issued the Initial Decision directly to the parties instead of filing it with the Deputy Secretary pursuant to section 24-4-105(14)(a). *See* Notice of Order Issuance, May 26, 2021. After the Deputy Secretary served the Procedural Order in this case, the Office of Administrative Courts issued an "Amended decision per art. xxviii, sec. 9" directly to the parties. *See* Notice of Order Issuance, June 1, 2021. This "Amended Decision" was identical to the Initial Decision, modifying only the certificate of service. *See id.* The Deputy Secretary concludes that the Amended Decision was a nullity, having been issued after the Initial Decision was served on the parties by the agency and after the agency had undertaken review on its own motion. *See* § 24-4-105(14)(a). Notwithstanding this improper procedure, the Deputy Secretary concludes jurisdiction is proper under section 1-45-111.7, and that any reliance on section 9(2)(a) was in error.

Prior to June 12, 2018, section 9(2)(a) "allowed any citizen to file a complaint alleging a campaign finance violation and required that the complaint be referred to an ALJ for a hearing and decision." *Day v. Chase for Colo.*, 2020 COA 84, ¶ 4, 479 P.3d 1. "'It also provided that the 'decision of the [ALJ] shall be final.'" *Id.* (quoting Colo. Const. art. XXVIII, § 9(2)(a)). However, on June 12, 2018, a federal court declared section 9(2)(a) facially unconstitutional. *Holland v. Williams*, 457 F. Supp. 3d 979, 996 (D. Colo. 2018); *see also Holland*, No. 1:16-cv-00138-RM-MLC, Dkt. No. 167 – Final Judgment (D. Colo. June 29, 2018) ("[I]t is hereby declared that Article XXVIII, § 9(2)(a) of the Colorado Constitution and Colo. Rev. Stat. § 1-45-111.5(1.5)(a)

are facially unconstitutional under the First and Fourteenth Amendments of the U.S. Constitution."). "*Holland* left Colorado's campaign finance laws without an enforcement mechanism." *Day*, ¶ 6. Therefore, days after *Holland* was issued, the Secretary of State ("Secretary") promulgated new rules—which ultimately became section 1-45-111.7[4]—that "did away with the requirement that complaints are automatically referred to an ALJ." *Id.* "Instead, the new rules provided that when a complaint is filed, the Elections Division reviews it and either (1) dismisses it; (2) provides the respondent an opportunity to cure the alleged violation; or (3) conducts additional review to determine whether to file a complaint with a hearing officer."[5] *Id.* Where the Division files a complaint with a hearing officer, the hearing officer holds a hearing and issues an initial decision, which is subject to review by the Deputy Secretary, who issues a final agency order. § 1-45-111.7(6)

In the *Holland* case, the Secretary was sued in his "official capacity" as the chief election officer of the State of Colorado, responsible for enforcement of all of Colorado's election laws. As such, the *Holland* case was brought against Colorado's

[4] Section 1-45-111.7 was adopted by the General Assembly in Senate Bill 19-232 – Concerning the Codification of the Rules of the Secretary of State Addressing the Procedures for Enforcement of State Laws Governing Campaign Finance, and went into effect on July 1, 2019. Prior to that, the new rules were codified in 8 CCR 1505-6.

[5] It was on the strength of these then-emergency rules, which now have become codified at section 1-45-111.7, that the federal court in *Holland* denied the plaintiff's motion for a permanent injunction. *Holland*, No. 1:16-cv-00138-RM-MLC, Dkt. No. 166 – Order (D. Colo. June 29, 2018) (denying plaintiff's request for a permanent injunction against the campaign finance enforcement regime established in section 9(2)(a) because "[i]n light of the new rules defendant has adopted, there is no danger of that violation recurring at this time," and retaining jurisdiction to enforce the court's declaration that section 9(2)(a) is facially unconstitutional).

election laws. The judgment of the federal court in *Holland* was a determination of the facial unconstitutionality of section 9(2)(a) *in toto*. The decision is binding on the Secretary in her official capacity, and through that office, the decision is binding on Colorado's election laws. Thus, enforcement of Colorado campaign finance law no longer rests in section 9(2)(a), but rather in section 1-45-111.7. *See, e.g.*, *People v. District Court*, 834 P.2d. 181, 184 (Colo. 1992) (finding statutes adopted by legislature to replace statutes declared unconstitutional controlling).

Because this matter proceeded under section 1-45-111.7, the ALJ was acting in this case as a hearing officer for the Secretary pursuant to section 1-45-111.7(6), and not as an ALJ under section 9(2)(a). *See* § 1-45-111.7(6); *see also In the Matter of Stop the Wolf*, Case No. ED 2020-01, Final Agency Order at 6 (February 5, 2021) (citing a "Memorandum of Understanding on Campaign Finance Hearing under § 1-45-111.7, C.R.S. (2019)" between the Secretary and the OAC, agreeing that ALJs are hearing officers as defined by and used in section 1-45-111.7). Under the statutory procedures applicable here, the hearing officer for the Secretary accepts complaints filed by the Division and presides over hearings consistent with sections 1-45-111.7 and 24-4-105. *See id.* Accordingly, the hearing officer's failure to file his "Initial Decision" with the Deputy Secretary was in error, as was the reliance on section 9(2)(a) in the Notice of Order Issuance.

IV. SANCTION

In the Initial Decision, the hearing officer recommended that Respondent pay a fine of $10,000. ID at 7-8. However, the Initial Decision provides no rationale nor any analysis on how the hearing officer reached the conclusion that $10,000—as opposed to some other amount—was an appropriate penalty, apparently picking that number out of the air without any evidence in the record or citation to rule or law. As explained below, and in conformity with the law and the facts, the Deputy Secretary concludes that the applicable mitigating circumstances warrant a reduction of the Elections Division's requested fine between $150,000 to $350,000 and imposes a $30,000 penalty.

A. Applicable Sanction Provisions

The governing constitutional and statutory provisions provide limited guidance regarding sanctions for violations such as Respondent's failure to identify its registered agent in its communications opposing Proposition EE as required by section 1-45-108.3. Because the legislature specifically subjected violations of the FCPA not listed in the constitution to the penalties in section 10 of article XXVIII of the state constitution ("section 10") or section 1-45-111.5, and because none of the penalties in those provisions directly address the violation at issue here, the Deputy Secretary concludes he has authority to impose a penalty based on the Secretary of State's rules that fill the gaps left by statute as to the proper penalty. Ultimately, the Deputy Secretary concludes that the mitigating circumstances present in this case warrant a reduction of the Division's requested fine down to $30,000.

1. Section 1-45-111.5(1.5)(b), C.R.S.

Unlike other provisions of the FCPA, section 1-45-108.3 itself does not specify a penalty for a person who violates it. However, section 1-45-111.5(1.5)(b) provides that "[a]ny person who commits a violation of either the secretary of state's rules concerning campaign and political finance or [the FCPA] that is not specifically listed in article XXVIII of the state constitution shall be subject to any of the sanctions specified in section 10 of article XXVIII of the state constitution or in [section 1-45-111.5]." Because a violation of section 1-45-108.3 is "not specifically listed in article XXVIII of the state constitution," section 1-45-111.5(1.5)(b) provides the basis for imposing a sanction here.

Section 1-45-111.5(1.5)(b) subjects a person who violates section 1-45-108.3 to any of the sanctions listed in either section 10 or section 1-45-111.5. By its plain language, however, section 10 specifies sanctions for only two categories of violations, neither of which apply here. *See* Colo. Const. art. XXVIII, § 10(1) (addressing sanctions for contribution and voluntary spending limit violations); *see also id.* at § 10(2)(a) (addressing sanctions for filing and reporting violations). The plain language of section 111.5 also fails to provide a penalty framework for violations of the disclaimer requirements. *See* § 1-45-111.5(1.5)(c) (addressing sanctions for

untimely reports, certain successive reporting violations, but no reference to disclaimer violations).[6]

The complication in this matter is that the violation at issue here does not neatly fit into the sanction provisions of either section 10 or section 111.5. The failure to comply with the requirement to name a registered agent in a "paid for by" disclaimer is simply not one of the violations identified in either section 10 or section 1-45-111.5. Rather than attempt to shoehorn the penalty amount into these constitutional and statutory provisions, the Deputy Secretary now turns to the Secretary of State's Rules regarding fine amounts, which are instructive toward reaching an appropriate penalty under the facts and circumstances of this case.

2. Rule 23.3

Section 1-45-111.5(1) provides the Secretary with rulemaking authority "as may be necessary to enforce and administer any provision of [the FCPA]." As applicable here, the Secretary has exercised this authority by promulgating Rule 23.3, "Settlement of complaints and fine structure for violations." 8 CCR 1505-6, Rule

[6] For the sake of reference, section 10(1) would authorize a penalty amount between $6 million and $17.5 million based on the range of doubling or up to five times the amount spent in violation of an applicable constitutional provision. In contrast, under section 10(2)(a) and section 1-45-111.5(1.5)(c), the penalty amount of at least $11,300 would be assessed based on a calculation of $50/day for each day of noncompliance, multiplied by 226 days for the number of days from the date of the initial violation to the date of the hearing. However, as stated above neither of these formulas are legally required because the violation in question does not fall within these penalty formulas.

23.3. Because Rule 23.3 speaks directly to the violation at issue here, the Deputy Secretary finds it persuasive in guiding his discretion as to the appropriate penalty.[7]

Pursuant to the specific fine formula outlined in Rule 23.3.3, if a person commits a disclaimer violation, an appropriate penalty may be reached by considering the amount spent on the noncompliant communications and whether the violation was mitigated prior to the election. Specifically:

> (1) If noncompliant communication is mitigated prior to the election: a fine of at least 5 percent cost of the noncompliant communication including cost to broadcast.

8 CCR 1505-6, Rule 23.3.3(d)(1).

Once the specific fine amount is calculated, the following mitigating or aggravating factors are also considered:

> (a) Nature and extent of the violation;
>
> (b) Timing of the violation (including proximity to the election);
>
> (c) Ability or effort to mitigate the violation;
>
> (d) Evidence of an intentional act or a pattern or practice of misconduct;
>
> (e) Extent to which the harm cause[d] by the violation or the value of the violation cannot be reasonably calculated.

[7] Because this matter proceeded to hearing, it is clear the parties were unable to reach a settlement. To the extent that inability was a result of the Division's belief that it could not accept a settlement amount below $150,000—the amount properly calculated under Rule 23.3.3(d)—the Deputy Secretary notes that Rule 23.3.5 provides the Division with specific authority to consider mitigating factors. Accordingly, the Division may also exercise discretion in reducing a fine amount from that which is listed in Rule 23.3.3 should the Division conclude mitigating factors support a reduction considering the circumstances as a whole. Such a settlement is subject to approval by the Deputy Secretary.

8 CCR 1505-6, Rule 23.3.5(a) – (e). The Rule further clarifies that "[o]ther aggravating or mitigating factors may be taken into consideration in reaching a just and equitable outcome." 8 CCR 1505-6, Rule 23.3.5(f).

B. Respondent shall pay a fine of $30,000.

Respondent spent between $3 and $3.5 million on noncompliant communications that were mitigated prior to the election. ID at 2-3. Looking to Rule 23.3.3(d)(1) as guidance, Respondent would be subject to a penalty of 5% of that amount: between $150,000 and $175,000. Although the hearing officer asserted that amount would have been "exorbitant," that finding is not supported by any evidence in the record. Moreover, the hearing officer's assertion amounts to a legal conclusion, rather than a factual finding, in light of the definition of "exorbitant" as "not coming within the scope of the law; exceeding the customary or appropriate limits in intensity, quality, amount, or size." *See* Merriam-Webster Dictionary (definition of "exorbitant"). The Division's requested penalty was quite plainly "within the scope of the law" as set forth in Rule 23.3.3(d)(1), and the hearing officer's assertion that the amount would be "exorbitant" is by definition legal error.

Additionally, Colorado law explicitly recognizes that

> [P]olitical contributions from corporate treasuries are not an indication of popular support for the corporation's political ideas and can unfairly influence the outcome of Colorado elections; and that the interests of the public are best served by . . . strong enforcement of campaign finance requirements.

Colo. Const. art. XXVIII, § 1. Strong enforcement of campaign finance law can often be achieved only by imposing fines that are significant enough to deter unlawful

behavior and compel compliance. Here, the hearing officer found that Respondent spent millions of dollars influencing Colorado's election without providing the electorate with the full disclaimer to which it is entitled. Consistent with this finding, the Deputy Secretary concludes that a penalty equivalent to 5% of the amount spent is within the scope of the law and therefore not "exorbitant," and the penalty recommended by the hearing officer is inadequate to reflect the extent of the violation, which involves millions of dollars spent.

Although the dollar volume of the advertising in violation of the FCPA was immense, the Deputy Secretary nevertheless concludes that mitigating factors support reducing the fine amount from 5% to 1% of the lower end of the range of Respondent's approximate spending on noncompliant communications. *See* 8 CCR 1505-6, Rule 23.3.5. The following factual findings, which are supported by the record before the Deputy Secretary, support this mitigation:

- **Ability or effort to mitigate the violation.** Immediately after receiving notice of the campaign finance complaint, Respondent worked to cure the alleged violation to the extent possible. ID at 2, ¶ 1.8. Respondent also significantly cooperated with the Division's review and investigation of the complaint. ID at 3, ¶1.11.
- **Evidence of an intentional act or pattern or practice of misconduct.** The Division did not uncover any evidence to suggest that Respondent was intentionally misleading the electorate by failing to include the name of Respondent's registered agent on its communications. ID at 3, ¶1.12.

- **Nature of the violation.** Although Respondent did not include the name of its registered agent in its disclaimer statement, it did disclose that the communications were "Paid for by No on EE – A Bad Deal for Colorado." ID at 2, ¶ 1.6. Respondent is a registered issue committee and thus its filings appear on TRACER. ID at 1, ¶ 1.1. In those filings, Respondent disclosed more than Colorado law required at least with regard to information about the payee to which in-kind contributions were made. ID at 3, ¶ 1.13. Accordingly, the electorate did have some information on who was funding the communications, which supports the purpose underlying the law's disclaimer requirements. *See* ID at 4, ¶ 8.

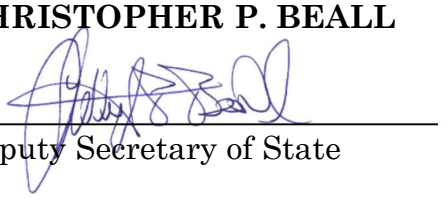
In sum, although the extent of Respondent's violation of section 1-45-108.3 was significant, the Deputy Secretary finds that the mitigating factors discussed above necessitate a reduction in the penalty amount suggested by Rule 23.3.3(d)(1). A reduction from 5% to 1% results in a penalty of $30,000, which the Deputy Secretary concludes is proper given the extent of the violation tempered by the mitigating factors discussed above. The Deputy Secretary further determines that a $30,000 fine as a penalty in this matter is sufficient to enforce the law under these circumstances, is proportional to the violations, and is not manifestly excessive in relation to the interests of the public in strong enforcement of campaign finance law.

V. CONCLUSION

For the reasons stated above, the Deputy Secretary enters this Final Agency Order adopting the Findings of Fact and Conclusions of Law set forth in the Initial Decision except as discussed above, and modifying the sanction. Applying the broad discretion afforded an agency, the Deputy Secretary orders Respondent to pay a fine in the amount of $30,000.

DONE and **ORDERED** this 2nd day of September, 2021.

CHRISTOPHER P. BEALL



Deputy Secretary of State

This decision becomes final upon electronic mailing. Pursuant to § 24-4-105(14)(c), C.R.S., the parties have waived their right to judicial review of the Final Agency Order except for those portions different from the content of the initial decision. Any party may appeal the modified portions of the Final Agency Order, specifically, all or part of the fine imposed, by commencing an action for judicial review before the District Court within thirty-five (35) days after the date of service of this Order. §§ 1-45-111.7(6)(b) and 24-4-106(4), C.R.S. A complainant may also seek judicial review by a state district court of a final agency action under section 24-4-106. § 1-45-111.7(5)(b), C.R.S.

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, Denver, Colorado 80203	
Elections Division of the Secretary of State, Complainant vs. **No on EE – A Bad Deal for Colorado,** Respondent	**CASE NUMBER:** **OS 2020-0025**
DECISION	

This is a campaign finance case pursuant to Colo. Const. art. XXVIII and the Fair Campaign Practices Act described at Section 1-45-101, C.R.S. Hearing was held and recorded remotely May 21, 2021 before Administrative Law Judge ("ALJ") Matthew E. Norwood. Peter Baumann, Campaign Finance Fellow, appeared for the Complainant ("Division"). Sheila MacDonald spoke on behalf of the Respondent ("the Committee"). The Committee is an issue committee as defined at art. XXVIII, sec. 2(10). Ms. MacDonald is not an attorney. She was permitted to speak for the Committee per Section 13-1-127(2), C.R.S.

Summary

Proposition EE was a ballot question for the Colorado November 3, 2020 election. It proposed the raising of taxes on tobacco and e-cigarettes, and was approved by the voters. The Committee failed to identify its "registered agent" in communications opposing Proposition EE, as is required by law. The Committee spent $3 million to $3.5 million on such non-conforming communications. The ALJ therefore imposes a $10,000 fine on the Committee.

Findings of Fact

Based on the evidence presented at hearing, and the stipulation of the parties, the ALJ makes the following findings of fact:

1. The Division and the Committee have made a stipulation of facts. The ALJ adopts that stipulation as a finding of fact. That stipulation provides:

> 1. Respondent No on EE – A Bad Deal for Colorado ("No on EE") is registered as an issue committee with the Colorado Secretary of State, Committee ID number 202005039613. No on EE is not a natural person.

2. According to No on EE, its purpose is to "oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature." That proposed tax appeared on the November 2020 ballot as Proposition EE.

3. No on EE's registered agent is Patrick MacDonald, a longtime resident of Colorado.

4. On October 8, 2020, Complainant the Elections Division of the Department of State (the "Division") received a campaign finance complaint from Anna Jo Hayes. A true and accurate copy of that complaint is attached as Exhibit 1. The Complaint alleged that No on EE had violated Colorado campaign finance law by not including the name of its registered agent on its relevant communications.

5. The Division reviewed and investigated the complaint pursuant to, and compliant with, § 1-45-111.7, C.R.S.

6. On all its relevant communications, No on EE included a disclaimer statement. Originally, that disclaimer statement read: "Paid for by No on EE: A Bad Deal for Colorado."

7. Originally, none of No on EE's electioneering communications or communications on which it spent more than $1,000 included the name of No on EE's registered agent.

8. Immediately after receiving notice of the campaign finance complaint, No on EE worked to cure the alleged violation. This included:

a. Reprinting door hangers to add the name of No on EE's registered agent, and adding stickers with the registered agent's information to the doorhangers that had already been printed. The Parties estimate that less than 100 doorhangers were distributed without the name of the registered agent.

b. Adding the name of the registered agent to 30% of the committee's billboards, and working to remove those to which it could not add the name of the registered agent.

c. Curing No on EE's website to add the name of the registered agent.

d. Replacing TV, Digital, and radio ads with updated advertisements which included the name of the registered agent. All of No on EE's TV, digital, and radio ads were updated to include the name of the registered agent within 36 hours.

9. The Parties estimate that between $3.0 million and $3.5 million worth of communications were distributed without the name of No on EE's registered agent.

10. The Parties agree that No on EE spent more than $1,000 on each of the individual communications included in this estimate.

11. In addition to working quickly to cure the alleged violations, No on EE significantly cooperated with the Division's review and investigation of the complaint. This included providing detailed evidence of its cure efforts both during the cure phase of the Division's review and in response to a request for information from the Division. True and accurate copies of these responses are attached as Exhibits 2 and 3 respectively.

12. The Division did not uncover any evidence to suggest that No on EE was intentionally misleading the electorate by failing to include the name of No on EE's registered agent on its communications.

13. No on EE provided on its reports of contributions and expenditures significantly more information about the payee to which in-kind contributions were made than is required under Colorado campaign finance law.

2. The exhibits 1, 2, and 3 referenced in the stipulation of facts have also been admitted as evidence in the hearing before the ALJ.

3. The ALJ also specifically finds that the Committee was an issue committee as defined at art. XXVIII, sec. 2(10). It made expenditures or spent more than one thousand dollars per calendar year on communications that opposed a ballot question on the November 3, 2020 ballot, Proposition EE, and that the communications were broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or were otherwise distributed.

4. The communications failed to contain a disclaimer statement in accordance with Section 1-45-108.3(2), C.R.S., in that they did not identify the registered agent as required by Section 1-45-107.5(5)(a)(II), C.R.S.

5. The Committee argues that the requirement to disclose the name of the registered agent is new. Section 1-45-108.3(2)'s link to Section 1-45-107.5(5), C.R.S., which contains the requirement for identifying the registered agent, was approved May 29, 2019, and became effective August 2, 2019. 2019 Colo. Sess. Laws pp. 3046-47.

6. The Committee asserts that a $1,000 to $5,000 fine is appropriate.

7. The Division asks for a fine in the range of $150,000 to $350,000. It arrives at the top of this range by multiplying the maximum $3.5 million stipulated to above by 10%. It arrives at the bottom of the range by multiplying the minimum $3.0 million

stipulated to by 5%. The 10% and 5% figures appear in the Secretary of State's rules at Rule 23.3.3 (d), 8 CCR 1505-6.

8. A fine in the range proposed by the Division is exorbitant. In addition, it would likely never be paid. As argued by the Committee, the electorate had other publically available means to identify the registered agent, Mr. MacDonald. Considering the nature of the violation, but also considering the great deal of money spent by the Committee on communications not conforming to the law, a $10,000 fine is the appropriate sanction.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. The Division's complaint alleges that the Committee failed to include the registered agent information as required by Section 1-45-108.3(1), C.R.S. That subsection and subsection 108.3(2) provide:

> (1) A[n] … issue committee … making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered, placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
>
> (2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5 (5) for content, size, duration, and placement.

2. The pertinent requirements of Section 1-45-107.5(5) for "content, size, duration, and placement" are:

> (5)(a) … any communication … shall include in the communication a statement that:
>
> (I) The communication has been "paid for by (full name of the person paying for the communication)"; and
>
> (II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

3. "Communications" that must be disclosed under article XXVIII or article 45 are "electioneering communications." Art. XXVIII, sec. 6; Section 1-45-108(1)(a)(III), C.R.S. Such communications relate to those on behalf of a "candidate." Art. XXVIII, sec. 2(7); Section 1-45-103(9), C.R.S.

4. There is no "candidate" in the case of a ballot question such as Proposition EE. As such, the "communications" in opposition to a ballot question described in Section 1-45-108.3(1), C.R.S. are "communications" as that term is understood by common usage. Section 2-4-101, C.R.S.

5. The ALJ has discretion as to sanction. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009). A $10,000 fine is the appropriate sanction for the Committee's violation.

Decision

The Committee has violated Sections 1-45-108.3(1) and (2), C.R.S. in that it failed to identify the registered agent in its communications opposing Proposition EE. It shall pay a $10,000 fine.

DONE AND SIGNED

May 26, 2021



MATTHEW E. NORWOOD
Administrative Law Judge

Certificate of Service

I certify that I have served a true and correct copy of the above **Decision** was served upon the parties listed below by email and U.S. mail to:

Peter Baumann, Campaign Finance Fellow
Department of Law
peter.baumann@coag.gov

Sheila MacDonald
1732 Wazee St., #201
Denver, CO 80202

Sheila@midggroup.com

Dated: ___05/26/2021_____

_____
Office of Administrative Courts

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **FINAL AGENCY ORDER** was served on the following parties on September 2, 2021.

Respondent – No on EE – A Bad Deal for Colorado
Sheila MacDonald
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Sheila@midggroup.com

Petitioner - Colorado Secretary of State, Elections Division
Peter Baumann, Campaign Finance Fellow
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Courtesy Copy: Complainant – Anna Jo Haynes
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/s/ *Christopher P. Beall*
Deputy Secretary of State

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
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Jena M. Griswold
Secretary of State
Melissa Belle Kessler
Legal & Policy Director

Memorandum to File
Re: Ethical Wall Law on OAC Case No. OS 2020-25, In the Matter of No on EE – A Bad Deal for Colorado

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Background

The instant case arose from a complaint filed with the Office of the Secretary of State on October 8, 2020, alleging violations of Colorado campaign finance law by No on EE – A Bad Deal for Colorado, a registered issue committee that was formed to oppose the tobacco and nicotine tax referred to the ballot by the Colorado state legislature (Proposition EE).

After completing its initial review and investigation, the Elections Division of the Secretary of State's Office filed a formal complaint in this matter with the Office of Administrative Courts on December 18, 2020, pursuant to section 1-45-111.7(6), CRS. On May 21, 2021, a hearing was held before the hearing officer assigned to the matter pursuant to section 1-45-111.7(6)(a), CRS after which the hearing officer issued an Initial Decision.

On May 27, 2021, Deputy Secretary Chris Beall, the Secretary's designee as the final agency decision maker, initiated review of the Initial Decision on his own motion. On September 2, 2021, Deputy Secretary Beall entered a Final Agency Order adopting in part and rejecting in part the Findings of Fact and Law set forth in the Initial Decision.

Notice of Ethical Wall

The Secretary of State's Office has in place both Confidentiality and Process walls with respect to the handling of campaign finance cases. In pertinent part, these guidelines define "Final Decision Makers" as the Secretary of State, Deputy Secretary of State, Chief of Staff, and Legal and Policy Director. The Final Decision Makers support and assist the designated final agency decision maker, in this case, the Deputy Secretary of State, in reaching a final decision. Other neutral staff may also be involved in the final decision process, so long as they are not members of the Campaign Finance Enforcement Team.

In the instant matter, OAC Case No. OS 2020-25, it has been determined that additional ethical walls are required to ensure the removal of any possible appearance of bias in the case. For that reason, Secretary of State Jena Griswold, Chief of Staff Michael Whitehorn, and Government and Public Affairs Director John Magnino, are all walled-off from any discussion of this case and had no involvement or input in any stage of this matter, including the issuance of the Final Agency Order.

OAC case: OS 2020-25
ED Case No. 2020-71

IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO

MOTION TO VACATE FINAL AGENCY ORDER

Suzanne Taheri, on behalf of Respondent, "No on EE-a bad deal for Colorado", requests the Department vacate the Final Agency Order. As grounds therefore, Respondent states the following:

1. On May 26, 2021 the Office of Administrative Court's Administrative Law Judge ("ALJ") as a hearing officer for the Department issued a decision in this matter, setting a fine in the amount of $10,000. No party filed exceptions to the decision.
2. The Deputy Secretary of State, acting on behalf of the final decision makers, initiated review on his own motion.
3. On September 2, 2021 the Deputy, again acting on behalf of the final decision makers assessed a fine of $30,000, triple the original fine.
4. "Final decision makers" of campaign finance matters include the Secretary of State, Deputy Secretary of State, Chief of Staff and Legal and Policy Director. *See att'd.*
5. The Secretary of State has a conflict of interest in that her brother, Chris Griswold, who also serves as manager and spokesperson of the Secretary's political campaign, consulted on the on Yes on EE campaign. https://hilltoppublicsolutions.com/team/chris-griswold/
6. Other senior staff appointees are deemed "neutral" in the process, but the current director of Government and Policy, John Magnino, is anything but neutral. He was, in fact, the campaign manager for the Yes on EE campaign.
7. The essential principles of due process apply to administrative hearings. *Electric Power v. Denver,* 737 P.2d 822 (Colo.1987). "The essence of due process is basic fairness in procedure. Administrative agencies have the obligation . . . to be fundamentally fair to the individual in the resolution of a legal dispute . . . ." *DeKoevend v. Bd. of Educ. of West End Sch. Dist. RE-2,* 688 P.2d 219, 227 (Colo. 1984) (citations omitted). At a minimum, the process must include "a neutral and detached decision maker." *Id.*
8. Here, the SOS has a conflict of interest and she is not just a member of the committee, she supervises the other committee members.
9. Such a process deprives Respondent of its due process rights.
10. The fine assessed in the matter is arbitrary and violates Respondent's First and Eighth Amendment rights.
11. For purposes of the Eighth Amendment, "[t]he notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law." *Austin v. United States,* 509 U.S. 602, 610, 113 S. Ct. 2801, 125 L. Ed. 2d 488

(1993) (quoting *United States v. Halper*, 490 U.S. 435, 447-48, 109 S. Ct. 1892, 104 L. Ed. 2d 487 (1989)).

12. Statutory penalties are subject to the constitutional prohibition against excessive fines. *See Associated Bus. Prods.*, 126 P.3d at 326; *Wolford v. Pinnacol Assurance*, 81 P.3d 1079, 1084 (Colo. App. 2003), *rev'd on other grounds*, 107 P.3d 947 (Colo. 2005). The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."
13. The Supreme Court has held that a civil fine is excessive "if it is grossly disproportional to the gravity of a defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). Likewise, a division of this court has said that a penalty" is excessive if the amount is so disproportionate to a defendants circumstances that there can be no realistic expectation that the defendant will be able to pay it." *Boulder Cty. Apartment Ass'n*, 97 P.3d at 338.
14. In *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575, 580, 583, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996), the Supreme Court articulated factors that should be considered when weighing the "reasonableness of a punitive damages award." In deciding whether the constitutional line for an excessive fine "has been crossed," the Court later condensed these factors by instructing lower courts to "focus on the same three criteria: (1) the degree of the defendant's reprehensibility or culpability; (2) the relationship between the penalty and the harm to the victim caused by the defendant's actions; and (3) the sanctions imposed in other cases for comparable misconduct." *Cooper Industries v. Leatherman Tool Group*, 532 U.S. 424 (2001).
15. As is the case here, a statutory damage award can be "devastatingly large . . . out of all reasonable proportion to the actual harm suffered," which could be a "sufficiently serious case [that] the due process clause might be invoked." *Parker v. Time Warner Entm't Co.*, 331 F.3d 13, 22 (2d Cir. 2003); *see also St. Louis, Iron Mountain & S. Ry. Co. v. Williams*, 251 U.S. 63, 66-67, 40 S. Ct. 71, 64 L. Ed. 139 (1919) (Although states have wide latitude in setting penalties for statutory violations, states cannot impose penalties "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.").
16. Disclaimer requirements are subject to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Buckley v. Valeo*, 424 U.S. 1, 64, 66, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)); *see also Citizens United v. Gessler*, 773 F.3d 200, 209 (10th Cir. 2014).
17. Not only must a disclosure requirement be substantially related to a sufficiently important government interest, but the disclosure requirement must also be narrowly tailored to the government's interest. *Americans for Prosperity Foundation v. Bonta,*, U.S. 141 S. Ct.2373 (2021). "While exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest." *Id.* "[A] substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored." *Id.* at 2384.
18. In order to pass exacting scrutiny, disclosure and disclaimer requirements must be substantially related and narrowly tailored to a sufficiently important government interest. *AFP*, 141 S. Ct. 2373.

19. "The *Buckley* Court identified important government interests that could meet the [exacting scrutiny] burden, including 'provid[ing] the electorate with information,' 'deter[ring] actual corruption and avoid[ing] the appearance of corruption,' and 'gathering the data necessary to detect violations of' other election laws." *Indep. Inst. v. Williams*, 812 F.3d 787, 792 (10th Cir. 2016) (quoting *Buckley*, 424 U.S. at 66-68). However, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Id.* (quoting *Doe v. Reed*, 561 U.S. 186, 196, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010)).
20. The statute or rule must have a substantial relationship and be narrowly tailored to the informational interest to survive exacting scrutiny. *See APF*, 141 S. Ct. at 2383.
21. In this case, Respondent was found to have violated the disclaimer laws. There is no dispute that Respondent did in fact properly name the committee on the disclaimer. Respondent only failed to name the registered agent, Patrick McDonald.
22. This requirement to provide the name of the registered agent provides no substantive information to the electorate. The voter registration records published by the Secretary show 19 Patrick McDonald's in Colorado. There is no address, phone number, website or other contact information on the disclaimer. To discover this information a voter must access Committee registration. When the voter does this, they will also find the registered agent. The requirement is duplicative.
23. The final agency order also identifies no governmental interest to be achieved through the disclosure. The only mention of the electorate interest is that it did not receive the, "full disclaimer to which it is entitled." (Order, p.13) Entitled for what reason? For what benefit to the electorate? The order is silent on this interest.
24. In light of the fact that the committee's name was on the disclaimer, the failure to list the agent's name is a de minimis violation at best. For this reason, the fine assessed is far in excess of the harm.
25. In the Final Order, the final decision makers, stated, "the Initial Decision provides no rationale nor any analysis on how the hearing officer reached the conclusion that $10,000—as opposed to some other amount—was an appropriate penalty, apparently picking that number out of the air without any evidence in the record or citation to rule or law."
26. Yet, the ALJ Decision contained more relevant analysis then the order of the final decision makers. The ALJ found the fine, "exorbitant". *Decision*, p.4 A review of similar offenses would support that conclusion. Prior to this fine the highest assessment for failure to comply with disclaimers was $500. *See att'd*. This assessment is 60x times. This certainly fits within "exorbitant". The ALJ also found the electorate had other publicly available means to identify the registered agent. *Decision*, p.4. These are relevant factors.
27. In contrast, the final decision makers in their order found "Respondent significantly cooperated with the Division's review and investigation of the complaint" and "Respondent disclosed more than Colorado law required at least with regard to information about the payee in which in-kind contributions." *Decision*, pp. 13-14. These are not relevant factors.
28. The First Amendment, which applies against Respondent by operation of the Fourteenth Amendment, guarantees the right to free speech. The Eighth Amendment protects Respondent from excessive fines.

29. By enforcing these provisions, the Department, under color of law, deprives Respondent, its donors, and their audience, of the right of free speech in violation of the First, Eighth and Fourteenth Amendments to the United States Constitution.

Wherefore, Respondent requests that the Final Agency Order be vacated, and the Decision entered as the final agency action.

Submitted this 1st day of October 2021.

/s/ Suzanne Taheri
Maven Law Group
staheri@mavenlawgroup.com
Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that the filing has been served by email this 1st day of October 2021, addressed as follows:

Peter.baumann@coag.gov

OACAppeals@coloradosos.gov

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
1/12/2019	AARON WILLIAM NOVY	COMMITTEE TO ELECT CALANDRA VARGAS, CALANDRA R VARGAS	ED2019-01	FALSIFIED REPORTING, ALLEGED ILLEGAL TERMINATION OF COMMITTEE ALLEGED	Closed	R	2/27/2019	ED Dismissed	THE ELECTIONS DIVISION FOUND THAT IT HAS INSUFFICIENT INFORMATION TO DETERMINE THAT RESPONDENT VIOLATED COLORADO CAMPAIGN FINANCE LAWS. THE COMPLAINT WAS DISMISSED.
1/23/2019	CHARLES L. HEATHERLY	JASON SALZMAN	ED2019-02	FAILURE TO REGISTER AS A POLITICAL COMMITTEE AND REPORT CONTRIBUTIONS...	Closed	NP	3/8/2019	ED Dismissed	Complaint alleged that ColoradoPols.com should have registered as a committee. THE ELECTIONS DIVISION FOUND THAT THE COMPLAINT DID NOT PROVIDE SUFFICIENT FACTS TO SUPPORT A VIOLATION OF COLORADO CAMPAIGN FINANCE LAW BY RESPONDENT.
1/23/2019	CHARLES HEATHERLY	COLORADO RISING FOR HEALTH AND SAFETY, PROGRESSNOW COLORADO	ED2019-03	FAILURE TO REGISTER AS AN ISSUE COMMITTEE AND FAILURE TO ACCURATELY DISCLOSE CONTRIBUTIONS ALLEGED	Closed	Issue (D)	3/9/2019	ED Dismissed	THE ELECTIONS DIVISION FOUND THAT RESPONDENT COLORADO RISING CURED THE DEFICIENCIES ALLEGED IN THE COMPLAINT AND SUBSTANTIALLY COMPLIED WITH COLORADO CAMPAIGN FINANCE LAW. THE ELECTIONS DIVISION ALSO FOUND THAT RESPONDENT PROGRESSNOW COLORADO WAS NOT REQUIRED TO REGISTER AN ISSUE COMMITTEE.
2/11/2019	DENNIS J. SIMPSON	GREG CATON, CITY OF GRAND JUNCTION, PHYLLIS NORRIS, DUKE WORTMANN	ED2019-04	PROHIBITED MUNICIPAL EXPENDITURES IN SUPPORT OF BALLOT MEASURE ALLEGE...	Closed	NP	5/7/2020	Settled	ED forwarded to OAC, settlement was reached. $313 fine.
3/5/2019	CAMPAIGN INTEGRITY WATCHDOG	COLORADO REPUBLICAN COMMITTEE INDEPENDENT EXPENDITURE COMMITTEE	ED2019-05	FAILURE TO REPORT CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING COM...	Closed	R	4/18/2019	ED Dismissed	THE ELECTIONS DIVISION DISMISSED THE COMPLAINT.
3/25/2019	DENNIS J. JONES	WILLIAM ARRICK, GREG BRAZILL, PATRICIA H. WADDLE	ED2019-06	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	NP	5/3/2019	Cured	Issue was a school board recall attempt. RESPONDENTS CURED THE DEFICIENCIES ALLEGED IN THE COMPLAINT.
4/10/2019	CAMPAIGN INTEGRITY WATCHDOG	COLORADO REPUBLICAN COMMITTEE INDEPENDENT EXPENDITURE COMMITTEE	ED2019-07	FAILURE TO REPORT DONATIONS, CONTRIBUTIONS, EXPENDITURES, AND ELECTIONEERING COMMUNICATIONS ALLEGED	Closed	R	4/24/2019	ED Dismissed	THE ELECTIONS DIVISION DISMISSED THE COMPLAINT AS OUTSIDE THE APPLICABLE STATUTE OF LIMITATIONS.
6/12/2019	DONNA MARIE GINES	OFFICIAL RECALL COLORADO GOVERNOR JARED POLIS	ED2019-08	FAILURE TO FULLY DISCLOSE ALL REQUIRED INFORMATION FOR RECEIVED CONTR...	Closed	Issue (R)	6/24/2019	ED Dismissed	THE ELECTIONS DIVISION DISMISSED THE COMPLAINT BECAUSE THE COMPLAINT FAILS TO ALLEGE A VIOLATION OF COLORADO CAMPAIGN FINANCE LAW AND FAILS TO ALLEGE SUFFICIENT FACTS TO SUPPORT A LEGAL AND FACTUAL BASIS FOR THE COMPLAINT.
6/18/2019	DESTINY ROMPELLA	RESIST POLIS PAC	ED2019-09	ILLEGAL EXPENDITURE ALLEGED	Closed	Issue (R)	6/29/2019	ED Dismissed	THE ELECTIONS DIVISION DISMISSED THE COMPLAINT BECAUSE THE COMPLAINT FAILS TO ALLEGE A VIOLATION OF COLORADO CAMPAIGN FINANCE LAW.
7/24/2019	CAMPAIGN INTEGRITY WATCHDOG	COLORADO PIONEER ACTION	ED2019-10	FAILURE TO REGISTER AS A POLITICAL COMMITTEE, ILLEGAL TERMINATION OF A COMMITTEE, FAILURE TO REPORT CONTRIBUTIONS, DISBURSEMENTS, AND ELECTIONEERING COMMUNICATIONS ALLEGED	Closed	Political (R)	11/14/2020	ED Dismissed	
8/7/2019	JAMIE L SARCHE	RECALL TOM SULLIVAN	ED2019-11	FAILURE TO PROPERLY DISCLOSE CONTRIBUTIONS, EXPENDITURES AND IN-KIND DONATIONS ALLEGED	Closed	Issue (R)	1/9/2020	Settled	$4,100 fine, updated filings

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
8/7/2019	JAMIE L SARCHE	RESIST POLIS PAC, DISMISS POLIS	ED2019-12	DELIBERATE CIRCUMVENTION OF REPORTING REQUIREMENTS BY PROVIDING CONTRIBUTORS WITH A "POLIS PENNY" ALLEGED	Closed	Issue (R)	1/10/2020	Settled	$2,300 fine, no more anonymous contributions.
8/12/2019	STARLA BRETHAUER	OFFICIAL RECALL COLORADO GOVERNOR JARED POLIS	ED2019-13	DECEPTION BY AN ISSUE COMMITTEE TO COLLECT CONTRIBUTIONS ALLEGED	Closed	Issue (R)	9/3/2019	Dismissed by SoS	Dismissed by Deputy SoS upon request of ED Staff
8/16/2019	NANCY PALLOZZI	DEMOCRACY FIRST COLORADO AKA DEMOCRACY FOR COLORADO	ED2019-14	DISTRIBUTION OF COMMUNICATIONS BY UNREGISTERED ISSUE COMMITTEE ALLEGED	Closed	Issue (D)	12/20/2019	Settled	$250 fine as the result of a printing error (wrong paid for name on materials)
8/23/2019	CAMPAIGN INTEGRITY WATCHDOG	ALLIANCE FOR A SAFE AND INDEPENDENT WOODMEN HILLS	ED2019-15	VIOLATION OF CONTRIBUTION LIMITS, FAILURE TO TIMELY AND ACCURATELY DISCLOSE CONTRIBUTIONS ALLEGED	Closed	Political	11/12/2019	Dismissed by SoS	Dismissed by Deputy SoS upon request of ED Staff
9/3/2019	SCOTT SAUNDERS	LEWIS PALMER SCHOOL DISTRICT 38, STRONG D38 COMMUNITY	ED2019-16	FAILURE TO REPORT IN-KIND DONATIONS ALLEGED	Closed	Issue	11/21/2019	Dismissed	Dismissed by Deputy SoS upon request of ED Staff
9/3/2019	T CRAIG WALLER	CRAIG BAKER	ED2019-17	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed ELIGIBLE ELECTORS SPEAKING TRUTH TO POWER, regarding Arabian Acres MD
9/3/2019	T CRAIG WALLER	BETTY WILLIAMS	ED2019-18	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	T CRAIG WALLER	ALAN BROWN	ED2019-19	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	T CRAIG WALLER	DENNIS WILKINSON	ED2019-20	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	EDITH COFFMAN	BETTY WILLIAMS	ED2019-21	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	EDITH COFFMAN	DENNIS WILKINSON	ED2019-22	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/6/2019	EDITH COFFMAN	CRAIG BAKER	ED2019-23	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/9/2019	COMMITTEE TO RECALL BRIGHTON MAYOR KEN KREUTZER, JEREMY TORGERSON	KEN KREUTZER	ED2019-24	FAILURE TO REGISTER AS AN ISSUE COMMITTEE OR SMALL-SCALE ISSUE COMMITTEE	Closed	Issue (NP)	9/26/2019	Dismissed by SoS	Municipal matter. Finding of no jurisdiction. Dismissed by Deputy SoS Flanagan upon request of ED Staff

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
9/13/2019	MARILYN CALLAN	CRAIG BAKER	ED2019-25	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/13/2019	MARILYN CALLAN	BETTY WILLIAMS	ED2019-26	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Political	2/4/2020	Settled	ED Moved to dismiss; deputy Flanagan denied. ALJ accepted settlement offer. $300 fine, closed. Same issue as ED2019-17
9/27/2019	DOUGLAS BRUCE	COLORADANS FOR PROSPERITY AKA YES ON PROP CC	ED2019-27	FAILURE TO REPORT DONATIONS AS AGGREGATE ALLEGED	Closed	Issue	12/13/2019	Dismissed by SoS	Dismissed by Deputy SoS upon request of ED Staff; violations were cured
10/7/2019	WILLIAM ARRICK	CHARLES MICHAEL SOLOMONE	ED2019-28	FAILURE TO FILE CANDIDATE AFFIDAVIT ALLEGED	Closed	NP	12/23/2019	Settled	Dismissed by ALJ; $50 fine, updated filings. School District Candidate
10/15/2019	CINDRA BARNARD	KORY NELSON	ED2019-29	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	NP	2/12/2020	Settled	Dismissed by ALJ; $100 fine. School district candidate
10/15/2019	CINDRA BARNARD	ANDY JONES	ED2019-30	DISCLAIMER STATEMENT VIOLATIONS ALLEGED	Closed	NP	1/13/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/17/2019	CINDRA BARNARD	ANDY JONES	ED2019-31	DISCLAIMER STATEMENT VIOLATIONS ALLEGED	Closed	NP	1/13/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/18/2019	ARLAN KLUTH	SUSAN MEEK FOR DCSD (DOUGLAS COUNTY SCHOOL DISTRICT)	ED2019-34	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	NP	1/7/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/18/2019	ARLAN KLUTH	DOUGLAS COUNTY PARENTS	ED2019-32	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	Political	3/5/2020	Settled	Settled with $100 fine. Dismissed by ALJ upon settlement.
10/18/2019	ARLAN KLUTH	DOUGLAS COUNTY PARENTS	ED2019-33	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	Political	11/6/2019	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/18/2019	ARLAN KLUTH	HANSON FOR DCSD (DOUGLAS COUNTY SCHOOL DISTRICT)	ED2019-35	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	NP	1/7/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/18/2019	ARLAN KLUTH	DAVID RAY FOR BOE (BOARD OF EDUCATION)	ED2019-36	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	NP	1/7/2020	Dismissed by SoS	ED moved to dismiss; deputy Flanagan approved. Finding of no violation.
10/25/2019	KATHERINE M. LEE	ANTHONY ROSSO	ED2019-37	ILLEGALLY OBTAINING PERSONAL INFORMATION OF ELECTORS IN THE FORM OF AN EMAIL LIST ALLEGED	Closed	NP	2/25/2020	Settled	Settled with $50 fine after being referred to OAC by Department. (School Board)
11/4/2019	DALE G. NICHOLS	BETTER JOBS COALITION	ED2019-38	FAILURE TO REPORT EXPENDITURES ALLEGED	Closed	IEC	2/20/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.
11/19/2019	JON F. G. GINSBERG	ROBERT A LEMBKE	ED2019-39	HAVA VIOLATION ALLEGED	Closed	NP	12/12/2019	Dismissed by SoS	ED moved to dismiss; Deputy Flanagan approved. Complaint was untimely and failed to allege any actual violation of CPF law. [Based upon the information provided, this appears to be a complainant who may have mental health issues.]
12/6/2019	DAVID J. CHANDLER	MARC WILLIAMS FOR MAYOR	ED2019-41	VIOLATION OF AGGREGATE CONTRIBUTION LIMIT ALLEGED	Closed	NP	12/20/2019	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.
12/3/2019	CLIFFORD G. FLEETWOOD	JOHN HICKENLOOPER	ED2019-40	THEFT OF PUBLISHING ASSETS ALLEGED	Closed	D	12/23/2019	Dismissed by SoS	Untimely complaint; ED moved to dismiss; Deputy Flanagan approved.
12/19/2019	LAURA RICHARDS	JENNIFER BACON	ED2019-42	FAILURE TO FILE CANDIDATE AFFIDAVIT ALLEGED	Closed	D	3/3/2020	Dismissed by SoS	Failure to file candidate affidavit was cured. Dismissed without fine or penalty.

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
1/24/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COLORADO STOP THE WOLF COALITION	ED2020-01	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Issue	2/5/2021	Fined	Agency-initiated action. ALJ recommended $1k fine, Deputy Secretary Raider increased fine to $22k. Final agency action complete.
2/4/2020	KATHERINE COLLINS DAVIS	MARIA FOR COLORADO	ED2020-02	FAILURE TO REPORT EXPENDITURE ALLEGED	Closed	D	5/11/2020	Dismissed by SoS	Division's Motion to Dismiss was granted by Deputy Rayder. Finding of no violation.
3/2/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COLORADO DEMOCRATIC PARTY	ED2020-03	CONTRIBUTION LIMIT VIOLATION ALLEGED	Closed	D	5/24/2020	Dismissed by SoS	Violation was cured; Division's motion to dismiss was granted by Deputy Rayder.
3/3/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	BERNARD FOR HD 7	ED2020-04	FAILURE TO DISCLOSE CONTRIBUTOR INFORMATION ALLEGED	Closed	D	6/13/2020	Dismissed by SoS	Violations 1 and 2 were dismissed outright. Violation 3 was cured. Division's motion to dismiss was granted by Deputy Rayder.
3/3/2020	MICHAEL PAGE	JOHN MICHAEL KELLY	ED2020-05	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	5/27/2020	Dismissed by SoS	Finding of no violation.
3/5/2020	CAMPAIGN INTEGRITY WATCHDOG	ELECTCLINT.COM	ED2020-06	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	R	5/27/2020	Dismissed by SoS	Finding of no violation.
3/11/2020	JOSHUA A. CLUPNY	FRIENDS OF MISSY, MISSY WARD	ED2020-07	FAILURE TO FILE REPORT ALLEGED	Closed	R	4/1/2020	Dismissed by SoS	Waiver requested; dismissed by Deputy Rayder at request of ED. Waiver was eventually granted.
3/23/2020	GRADY NOUIS	VAN BEBER FOR STATE HOUSE	ED2020-08	ERRONEOUS FILING BY COMMITTEE ALLEGED	Closed	R	9/2/2020	Settled	$200 fine.
3/26/2020	DAVID ALTMAN	NORA ENID GOOD, LAURA PALMER, PETER SIMMONS	ED2020-09	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	NP	5/24/2020	Dismissed by SoS	Dismissed - finding of no violation; Complaint was about an HOA election.
3/27/2020	KENNETH DANTI	PUEBLOCARES	ED2020-10	CREATION OF TWO ENTITIES CALLED "PUEBLOCARES" WITH THE PURPOSE OF AVOIDING FULL FINANCIAL DISCLOSURES AS REQUIRED BY LAW ALLEGED	Closed	Issue	4/15/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.
3/27/2020	CAMPAIGN INTEGRITY WATCHDOG	ELECTCLINT.COM	ED2020-11	FAILURE TO INCLUDE DISCLAIMER STATEMENT ON CAMPAIGN COMMUNICATIONS AL...	Closed	R	8/3/2020	Settled	$240 fine. Dismissed by ALJ upon settlement.
3/30/2020	THOMAS A. BLOMSTER	PUEBLOCARES	ED2020-12	FAILURE TO REGISTER AS AN ISSUE COMMITTEE ALLEGED	Closed	Issue	4/15/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.
3/30/2020	PETER SIMMONS	ARLETA JOY DEMOTS	ED2020-13	HOA FUNDS USED TO PROMOTE CONSERVATORY METRO BOARD CANDIDATES ALLEGED	Closed	NP	7/8/2020	Dismissed by SoS	No evidence found to sustain the complaint; dismissed by Deputy Rayder on request of ED. Complaints 2020-13, 2020-14, and 2020-15 joined together.
3/30/2020	PETER SIMMONS	DAVID E. ALTMAN	ED2020-14	HOA FUNDS USED TO PROMOTE CONSERVATORY METRO BOARD CANDIDATES ALLEGED	Closed	NP	7/8/2020	Dismissed by SoS	No evidence found to sustain the complaint; dismissed by Deputy Rayder on request of ED. Complaints 2020-13, 2020-14, and 2020-15 joined together.
3/30/2020	PETER SIMMONS	ROBERT C. GILES	ED2020-15	HOA FUNDS USED TO PROMOTE CONSERVATORY METRO BOARD CANDIDATES ALLEGED	Closed	NP	7/8/2020	Dismissed by SoS	No evidence found to sustain the complaint; dismissed by Deputy Rayder on request of ED. Complaints 2020-13, 2020-14, and 2020-15 joined together.
4/2/2020	PAMELA A. KUHRT	PUEBLO CARES	ED2020-16	ISSUE COMMITTEE NOT REPORTING CONTRIBUTIONS ALLEGED	Closed	Issue	4/15/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed.

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4/7/2020	BRIAN MATER	ABEL J TAPIA	ED2020-17	FAILURE TO REGISTER AS A CANDIDATE ALLEGED	Closed	D	6/13/2020	Dismissed by SoS	Cured by filing affidavit; ED moved to dismiss because the complaint lacked severity. Deputy Rayder apporved dismissal.
4/13/2020	PETER SIMMONS	DAVID E. ALTMAN	ED2020-18	ILLEGAL CONTRIBUTION RECEIVED BY RESPONDENT ALLEGED	Closed	NP	5/4/2020	Dismissed by SoS	ED moved to dismiss. No factual or legal basis found for complaint. Deputy Rayder dismissed. Consolidaded complaints ED2020-18, ED2020-19, ED2020-20
4/13/2020	PETER SIMMONS	ARLETA JOY DEMOTS	ED2020-19	ILLEGAL CONTRIBUTION RECEIVED BY RESPONDENT ALLEGED	Closed	NP	5/4/2020	Dismissed by SoS	ED moved to dismiss. No factual or legal basis found for complaint. Deputy Rayder dismissed. Consolidaded complaints ED2020-18, ED2020-19, ED2020-20
4/13/2020	PETER SIMMONS	JANINE SCHILLING	ED2020-20	ILLEGAL CONTRIBUTION RECEIVED BY RESPONDENT ALLEGED	Closed	NP	5/4/2020	Dismissed by SoS	ED moved to dismiss. No factual or legal basis found for complaint. Deputy Rayder dismissed. Consolidaded complaints ED2020-18, ED2020-19, ED2020-20, ED2020-21
4/13/2020	PETER SIMMONS	ROBERT C. GILES	ED2020-21	ILLEGAL CONTRIBUTION RECEIVED BY RESPONDENT ALLEGED	Closed	NP	5/4/2020	Dismissed by SoS	ED moved to dismiss. No factual or legal basis found for complaint. Deputy Rayder dismissed. Consolidaded complaints ED2020-18, ED2020-19, ED2020-20, ED2020-21
4/13/2020	CAMPAIGN INTEGRITY WATCHDOG	COLORADO PIONEER ACTION	ED2020-22	ILLEGAL COMMITTEE TERMINATION, FAILURE TO ACCURATELY FILE REPORTS, VIOLATION OF CONTRIBUTION LIMITS ALLEGED	Closed	Political (R)	8/4/2020	Dismissed by SoS	Dismissed by Deputy Rayder at request of ED. NOTE: PARTIAL REPEAT ALLEGATIONS FROM 2019 COMPLAINT AND FAILURE TO ALLEGE VIOLATION(S) OF LAW.
4/15/2020	BRIAN TIMOTHY FENWICK	CODY J DAVIS	ED2020-23	PROHIBITED CONTRIBUTION ACCEPTED BY RESPONDENT ALLEGED	Closed	R	5/5/2020	Dismissed by SoS	ED moved to dismiss. Complaint fails to specifically identify one or more violations of Colorado campaign finance law by Respondent. Deputy Rayder dismissed.
4/15/2020	BRIAN TIMOTHY FENWICK	MESA COUNTY	ED2020-24	PROHIBITED CONTRIBUTION MADE TO CANDIDATE ALLEGED	Closed	R	7/1/2020	Dismissed by SoS	ED moved to dismiss. Motion granted by Deputy Rayder. APPEARANCE OF OFFICIALS ON FACEBOOK LIVE DOES NOT MEET THE CRITERIA OF WHEN DEFINES A CONTRIBUTION.
4/20/2020	GRADY NOUIS	VAN BEBER FOR STATE HOUSE	ED2020-26	INACCURATE DISCLOSURE FILINGS ALLEGED	Closed	R	9/2/2020	Settled	Settled for $200. Deputy Rayder approved settlement. Committee amended its reports to add over $2,000 in previously unnoted contributions.
4/20/2020	STEPHEN JACOBS	PARK FOREST WATER DISTRICT	ED2020-25	ILLEGAL USE OF STATE FUNDS ALLEGED	Closed	NP	7/6/2020	Dismissed by SoS	ED moved to dismiss; Motion granted by Deputy Rayder. INSUFFICIENT EVIDENCE TO SUPPORT CLAIMS; ACTIONS TAKEN BY RESPONDENT DO NOT QUALIFY AS A CONTRIBUTION AS DEFINED BY LAW.
4/23/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COLORADO REPUBLICAN COMMITTEE	ED2020-27	CONTRIBUTION ACCEPTED OVER THE LEGAL AGGREGATE AMOUNT ALLOWED BY LAW ...	Closed	Political Party (R)	8/3/2020	Dismissed by SoS	Issue was cured; ED moved to dismiss. Deputy Rayder granted motion to dismiss. NONCOMPLIANCE WAS MINIMAL; VIOLATION WAS CURED BY RESPONDENT.
4/28/2020	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	FRIENDS OF ROBERT PRESCOTT	ED2020-28	CONTRIBUTIONS OVER THE LEGAL AGGREGATE AMOUNT ALLEGEDLY ACCEPTED	Closed	R	4/29/2020	Withdrawn	Statute was not in effect at the time the offense occurred.
5/6/2020	ALEXANDER CHRISTIAN NEUBAUER	MARIA FOR COLORADO	ED2020-29	INACCURATE TRACER FILING ALLEGED	Closed	D	7/23/2020	Dismissed by SoS	First Motion to Dismiss was denied. Subsequent investigation resulted in a new Motion to Dismiss. Motion to Dismiss granted by Deputy Rayder. FACTS DO NOT SUPPORT A LEGAL BASIS FOR COMPLAINT.
5/7/2020	TIM DICKSON	MARIA FOR COLORADO	ED2020-31	INACCURATE TRACER FILING ALLEGED	Closed	D	7/9/2020	Dismissed by SoS	RESPONDENT CURED AND SUBSTANTIALLY COMPLIED; SECOND CLAIM LACKS EVIDENCE TO SUPPORT LEGAL BASIS FOR CLAIM

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
5/6/2020	DOROTA WRIGHT-O'NEILL	SUZANNE STAIERT	ED2020-30	FAILURE TO FULLY DISCLOSE FINANCIAL RECORDS ALLEGED	Closed	R	3/18/2021	Fined	$850 fine issued by Deputy Beall as final agency decision.
5/11/2020	WILLIAM RAY	SENSIBLE GROWTH	ED2020-32	FAILURE TO FILE FINANCIAL DISCLOSURE ALLEGED	Closed	Issue	8/24/2020	Dismissed by SoS	Dismissed by Deputy Rayder. MOTION TO DISMISS FILED 7/20/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 8/24/2020. MOTION TO DISMISS GRANTED 8/24/2020. RESPONDENT CURED VIOLATION AND SUBSTANTIALLY COMPLIED WITH THE LAW
5/27/2020	H. B. MENDENHALL	FY HAUCK HOSE COMPANY	ED2020-33	FAILURE TO ACCURATELY FILE REPORT ALLEGED	Closed	Issue	1/14/2021	Settled	$430 fine
5/28/2020	DONNA LYNN WINDHOLZ	LESLEY ANNE SCHOONMAKER TAYLOR	ED2020-34	ERRONEOUS DONOR INFORMATION ON CONTRIBUTION ALLEGED	Closed	R	6/16/2020	Dismissed by SoS	Complaint did not allege an offense. ED moved to dismiss, Deputy Rayder approved. Donation was to committee to elect Rupert Parchment SD 23
5/28/2020	DONNA LYNN WINDHOLZ	RUPERT PARCHMENT	ED2020-35	CONTRIBUTION ACCEPTED WITH ERRONEOUS DONOR INFORMATION ALLEGED	Closed	R	9/14/2020	Dismissed by SoS	Cured / finding of no intent. MOTION TO DISMISS FILED 8/10/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 9/14/2020. MOTION TO DISMISS GRANTED BY DEPUTY SECRETARY ON 9/14/2020.
5/28/2020	DONNA LYNN WINDHOLZ	KERSEY AREA RESIDENTS AGAINST TAXATION KARAT, TIMOTHY JOHN PHIPPARD	ED2020-36	USE OF COMMITTEE FUNDS OTHER THAN RESPONDENT'S COMMITTEE ALLEGED	Closed	Issue	6/13/2020	Dismissed by SoS	Failed to assert a violation of law; ED moved to dismiss. Motion granted by Deputy Rayder.
6/8/2020	DONNA LYNN WINDHOLZ	LESLEY ANNE SCHOONMAKER TAYLOR	ED2020-37	ERRONEOUS INFORMATION SUBMITTED WITH CONTRIBUTION ALLEGED	Closed		6/16/2020	Dismissed by SoS	Complaint did not allege an offense. ED moved to dismiss, Deputy Rayder approved.
6/8/2020	KYLE ALEXANDER FEUER	KARL HANLON	ED2020-38	FAILURE TO REPORT EXPENDITURES & DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	10/7/2020	Settled	$300 fine, dismissed by OAC.
6/9/2020	DONNA LYNN WINDHOLZ	SHERYL FERNANDEZ	ED2020-39	FAILURE TO REPORT EXPENDITURES ALLEGED	Closed	R	8/25/2020	Dismissed by SoS	Someone sent email purportedly from respondent, but email was subsequently proven not to have originated from respondent. Marble for HD 49 (primary) MOTION TO DISMISS FILED 7/27/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 8/31/2020. MOTION TO DISMISS GRANTED 8/25/2020. INSUFFICIENT EVIDENCE TO SUPPORT ALLEGATIONS.
6/9/2020	DONNA LYNN WINDHOLZ	MARBLE FOR HD49	ED2020-40	FAILURE TO REPORT EXPENDITURES ALLEGED	Closed	R	8/25/2020	Dismissed by SoS	Respondent was the victim of fraud. See ED2020-39 MOTION TO DISMISS FILED 7/27/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 8/31/2020. MOTION TO DISMISS GRANTED 8/25/2020. INSUFFICIENT EVIDENCE TO SUPPORT ALLEGATIONS.
6/10/2020	KRISTEN HIRSCH	STEVEN ANDREW PALETZ	ED2020-41	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	8/25/2020	Settled	$250 fine
6/10/2020	GIL SELINGER	STEVEN L WOODROW	ED2020-42	PROHIBITED CONTRIBUTION ACCEPTED AND FAILURE TO DISCLOSE EXPENDITURES...	Closed	D	10/1/2020	Cured	Contribution over the limit was refunded; violation cured. MOTION TO DISMISS FILED 8/28/2020. DETERMINATION ON MOTION TO DISMISS REQUESTED BY 10/2/2020. MOTION TO DISMISS GRANTED 10/01/2020.

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6/11/2020	DUSTI GURULE	COALITION FOR WOMEN AND CHILDREN	ED2020-43	FAILURE TO FILE REPORTS ALLEGED	Closed	Issue (R)	8/17/2020	Cured	Cured. ED Motion to Dismiss granted by Deputy Rayder
6/19/2020	TINA M PETERS	MESA COUNTY, TEAK SIMONTON	ED2020-46	ILLEGAL CONTRIBUTION ALLEGED	Closed	D	8/27/2020	Cured	MOTION TO DISMISS FILED 7/23/2020. DETERMINATION ON MOTION TO DISMISS REQUESTED FROM DEPUTY SECRETARY 8/27/2020. MOTION TO DISMISS GRANTED 8/27/2020. RESPONDENT CURED POTENTIAL VIOLATION.
6/18/2020	JENNIFER ENGEL	GARRISON PAUL GENSCHORCK	ED2020-44	FAILURE TO REGISTER CANDIDATE COMMITTEE, FAILURE TO ACCURATELY DISCLOSE EXPENDITURES ALLEGED	Closed	R	12/16/2020	Settled	$300 fine
6/18/2020	WILLIAM J RUSSELL	ARN MENCONI, VOTE ARN 2020	ED2020-45	FAILURE TO REPORT EXPENDITURE, DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	9/11/2020	Cured	MOTION TO DISMISS FILED 8/7/2020. DETERMINATION ON MOTION TO DISMISS REQUESTED FROM DEPUTY SECRETARY 9/11/2020. MOTION TO DISMISS GRANTED BY DEPUTY RAYDER 9/11/2020.
6/22/2020	CAMPAIGN INTEGRITY WATCHDOG	ELECTCLINT.COM	ED2020-47	FAILURE TO ACCURATELY DISCLOSE CONTRIBUTIONS AND EXPENDITURES, ILLEGAL USE OF CAMPAIGN CONTRIBUTIONS ALLEGED	Closed	R	11/25/2020	Settled	$100 fine.
6/22/2020	MICHAEL PRUZNICK	KRISTIN FOR LARIMER	ED2020-48	PROHIBITED CONTRIBUTION AND ERRONEOUS FILING ALLEGED	Closed	D	11/5/2020	Cured	Violations 1 and 3 were cured. Finding of no violation on #2. Dismissed by Deputy Rayder 11/5/2020
6/24/2020	MICHAEL PRUZNICK	KRISTIN FOR LARIMER	ED2020-49	TRANSFERRING OF FUNDS FROM ONE COMMITTEE TO ANOTHER ALLEGED.	Closed	D	11/5/2020	Cured	Violations 1 and 3 were cured. Finding of no violation on #2. Dismissed by Deputy Rayder 11/5/2020
6/29/2020	LLOYD COVENS	GARRISON ORTIZ FOR PUEBLO COUNTY, GARRISON ORTIZ	ED2020-50	FAILURE TO REPORT ELECTIONEERING COMMUNICATIONS AND ACCURATELY FILE REPORTS ALLEGED	Closed	D	7/8/2020	Withdrawn	Allegation was withdrawn.
7/6/2020	HEATHER PREWITT	COMMITTEE TO ELECT RICHIE FRANGIOSA	ED2020-51	INCOMPLETE TRACER FILINGS ALLEGED	Closed	L	10/9/2020	Cured	Violations were cured; Motion to dismiss granted by Deputy Rayder
7/29/2020	MARY RAY WHITE	ARICA ANDREATTA	ED2020-52	FAILURE TO INCLUDE THE REQUIRED "PAID FOR BY" DISCLAIMER STATEMENT ON SIGNAGE ALLEGED	Closed	D	8/19/2020	Dismissed by SoS	Finding of no violation; Motion to Dismiss granted by Deputy Rayder MOTION TO DISMISS FILED 8/12/2020. DETERMINATION ON MOTION TO DISMISS REQUIRED FROM DEPUTY SECRETARY 8/19/2020. DISMISSED 8/19/2020 DUE TO LACK OF SPECIFIC FACTS ALLEGED IN COMPLAINT TO SUPPORT ALLEGATIONS.
8/11/2020	ALLAN I. KROLL	TAY ANDERSON FOR DENVER SCHOOL BOARD	ED2020-53	INACCURATE TRACER FILINGS ALLEGED	Closed	D	12/14/2020	Dismissed by SoS	Some violations were cured; the rest were finding of no violation. ED Motion to Dismiss granted by Deputy Rayder.
8/26/2020	AUDREY M. COLE	COMMITTEE TO ELECT RICHIE FRANGIOSA	ED2020-54	INACCURATE TRACER FILING ALLEGED	Closed	L	10/9/2020	Cured	See also: ED-2020-51 Cured; Motion to Dismiss granted by Deputy Rayder.
8/26/2020	AUDREY M. COLE	COMMITTEE TO ELECT RICHIE FRANGIOSA	ED2020-55	INACCURATE TRACER FILING ALLEGED	Closed	L	10/9/2020	Cured	See also: ED-2020-51 Cured; Motion to Dismiss granted by Deputy Rayder.
8/26/2020	AUDREY M. COLE	COMMITTEE TO ELECT RICHIE FRANGIOSA	ED2020-56	INCOMPLETE TRACER FILING ALLEGED	Closed	L	10/9/2020	Cured	See also: ED-2020-51 Cured; Motion to Dismiss granted by Deputy Rayder.
8/27/2020	KATHERINE DORMAN, SCOTT WASSERMAN	UNITE FOR COLORADO	ED2020-57	FAILURE TO REGISTER AN ISSUE COMMITTEE, FAILURE TO REPORT CONTRIBUTIONS ALLEGED	Open				ED Motion to Dismiss was denied by Deputy Rayder. Sent to OAC.

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8/31/2020	MARK S. GRIFFITH	MATT ARNOLD, CAMPAIGN INTEGRITY WATCHDOG, GEORGE FOR DOUGCO, GEORGE PATRICK TEAL	ED2020-58	FAILURE TO REGISTER A COMMITTEE AND/OR REPORT IN-KIND DONATIONS	Closed	R	9/22/2020	Dismissed by SoS	ED Motion to Dismiss granted by Deputy Rayder
8/31/2020	RICHARD L. STELTER	DELTA COUNTY SHERIFF'S DEPARTMENT	ED2020-59	PROHIBITED IN-KIND CONTRIBUTIONS ALLEGED	Closed	Issue	11/13/2020	Settled	$500 fine.
9/4/2020	CAROLYN BOLLER	KARL STECHER	ED2020-60	FAILURE TO REGISTER A CANDIDATE COMMITTEE ALLEGED	Open	R			No update since initial filing.
9/10/2020	LAWRENCE TURNER	LINDA STANLEY, VOTE STANLEY DA11	ED2020-61	ILLEGAL CAMPAIGNING, PROHIBITED CONTRIBUTION, AND FAILURE TO REPORT E...	Closed	R	2/17/2021	Settled	$360 fine
9/11/2020	KATHERINE LEAF	SAMANTHA KOCH	ED2020-62	FAILURE TO FULLY DISCLOSE CONTRIBUTIONS AND EXPENDITURES ALLEGED	Closed	R	12/1/2020	Cured	Cured; Motion to Dismiss granted by Deputy Rayder.
9/16/2020	LESLEY THOMPSON	LARRY G. LISTON	ED2020-63	FAILURE TO PROPERLY INCLUDE DISCLAIMER STATEMENTS ON CAMPAIGN SIGNAGE...	Closed	R	4/12/2021	Fined	$250 fine, final agency decision isued by Deputy Beall
9/17/2020	ROBERT A. DEWEY	KAITLIN TURNER	ED2020-64	ILLEGAL USE OF LOGO IN CAMPAIGN ADVERTISEMENT ALLEGED	Closed	D	10/9/2020	Dismissed by SoS	Dismissed by Deputy Rayder; finding of no violation of CPF regulations.
9/23/2020	TINA WOODMAN	CLIFFORD LUCERO	ED2020-65	FAILURE TO INCLUDE DISCLAIMER STATEMENTS ON ELECTIONEERING COMMUNICAT...	Closed	D	9/28/2020	Withdrawn	Complaint was withdrawn
9/23/2020	LISA PASCOE	KAITLIN TURNER FOR DISTRICT ATTORNEY	ED2020-66	INFRINGEMENT OF FIRST AMENDMENT RIGHTS ALLEGED	Closed	D	10/15/2020	Dismissed by SoS	ED Motion to Dismiss granted by Deputy Rayder; finding of no CPF violation
10/2/2020	ANDREW SCHAFER	LARRY G. LISTON	ED2020-67	FAILURE TO INCLUDE DISCLAIMER STATEMENTS ON CAMPAIGN COMMUNICATIONS A...	Closed	R	4/12/2021	Fined	See also ED 2020-63 $250 fine.
10/6/2020	RONALD E. LEE	DENVER PUBLIC SCHOOLS, STEPHANIE F. DONNER	ED2020-68	CAMPAIGNING AT MANDATORY SCHOOL STAFF MEETING ALLEGED	Closed	NP	12/12/2020	Dismissed by SoS	ED Motion to Dismiss granted by Deputy Rayder; The meetings were apolitical in nature and that Respondents took steps to ensure that the meetings were not held for the purpose of promoting any person's candidacy for public office.
10/6/2020	RONALD E. LEE	KEO FRAZIER	ED2020-69	CAMPAIGNING AT MANDATORY SCHOOL STAFF MEETINGS ALLEGED	Closed	NP	12/12/2020	Dismissed by SoS	ED Motion to Dismiss granted by Deputy Rayder; The meetings were apolitical in nature and that Respondents took steps to ensure that the meetings were not held for the purpose of promoting any person's candidacy for public office.
10/8/2020	JEFFERSON COUNTY DEMOCRATIC PARTY	LIBBY SZABO FOR JEFFCO	ED2020-70	DISCLAIMER STATEMENT VIOLATIONS ALLEGED	Closed	R	6/9/2021	Fined	$500 fine.
10/8/2020	ANNA JO HAYNES	NO ON EE - - A BAD DEAL FOR COLORADO	ED2020-71	DISCLAIMER STATEMENT VIOLATION AND FALSE STATEMENTS ALLEGED	Open	Issue			OAC issued decision; no indication on the current record whether that decision was accepted or challenged.
10/9/2020	KENNETH D. CARDWELL	TOWN OF KIOWA, TOWN MANAGER, CLERK, AND MAYOR	ED2020-72	UNCLEAR ALLEGATIONS LISTED	Closed	NP	10/30/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed by Deputy Rayder
10/14/2020	PAUL VRANAS	QUINN PIGOTT, REPLACE DENVER BSL LLC	ED2020-73	FAILURE TO REGISTER AN ISSUE COMMITTEE ALLEGED	Closed	Issue	11/4/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed by Deputy Rayder

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10/15/2020	YVETTE PROCTOR	ROCKY FORD VOTE YES COMMITTEE	ED2020-74	ILLEGAL USE OF FUNDS FOR CAMPAIGNING ALLEGED	Closed	Issue	11/5/2020	Dismissed by SoS	Deputy Rayder dismissed with order to open a new investigation into a different respondent, Foundation for Rocky Ford Schools. The Division does not appear to have heeded this order.
10/15/2020	LORI GOLDSTEIN	DEBORAH TETER	ED2020-75	FAILURE TO REGISTER AN ISSUE COMMITTEE ALLEGED	Closed	Issue	11/5/2020	Dismissed by SoS	Municipal CPF Complaint; no jurisdiction. Dismissed by Deputy Rayder
10/21/2020	THERESA WATSON	BOULDER COUNTY DEMOCRATIC PARTY	ED2020-76	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	D	12/15/2020	Settled	$50 fine
10/21/2020	DEBORA FISK	WENDELL A. KOONTZ	ED2020-77	FAILURE TO REGISTER A COMMITTEE ALLEGED	Closed	R	2/19/2021	Settled	$700 fine; failure to form candidate committee.
10/22/2020	F GUTHRIE CASTLE JR	OURAY COUNTY INTEGRITY PROJECT	ED2020-78	INCORRECT REGISTRATION AS INDEPENDENT EXPENDITURE COMMITTEE ALLEGED	Closed	Issue	11/13/2020	Dismissed by SoS	ED moved to dismiss; Deputy Rayder approved; complaint does not show sufficient facts.
10/27/2020	MATTHEW MENZA	BOULDER COUNTY DEMOCRATIC PARTY	ED2020-79	DISCLAIMER STATEMENT VIOLATION ALLEGED	Closed	Political (D)	12/15/2020	Settled	$50 fine
10/23/2020	HARRY BARTON MENDENHALL II	VJ PROCTOR, YVETTE PROCTOR	ED2020-80	FAILURE TO FILE AND DISCLAIMER STAEMENT VIOLATIONS ALLEGED	Closed	Issue	11/16./2020	Dismissed by SoS	ED moved to dismiss; Deptuy Rayder granted.
10/30/2020	JESSIE VANCE	DAVID BLACH	ED2020-81	FAILURE TO FILE REPORTS ALLEGED	Closed	D	2/16/2021	Settled	$400 fine
10/30/2020	CAMPAIGN INTEGRITY WATCHDOG	JENNIFER FOR HD43	ED2020-82	ACCEPTED CONTRIBUTIONS OVER THE LEGAL LIMIT ALLEGED	Closed	D	3/30/2021	Settled	$300 fine, cured. Approved by M. Kessler.
10/30/2020	JESSIE VANCE	DAVID BLACH	ED2020-83	DISCLAIMER STATEMENT VIOLATIONS ALLEGED	Open	D	2/1/2021	Settled	$400 fine. Approved by Deputy Rayder.
11/2/2020	JERE LOWE	WENDELL A. KOONTZ	ED2020-84	MISINFORMATION ALLEGATION	Closed	R	2/19/2021	Settled	See Also ED2020-77 $700 fine. Approved by Deputy Rayder.
11/13/2020	CAMPAIGN INTEGRITY WATCHDOG	ELECTCLINT.COM	ED2020-85	FAILURE TO ACCURATELY FILE REPORTS AND FAILURE TO OBTAIN WRITTEN AFFIRMATION STATEMENT PRIOR TO ACCEPTING DONATIONS FROM AN LLC ALLEGED	Closed	R	2/27/2021	Dismissed by SoS	Finding of no violation. ED Motion to Dismiss granted by Melissa Kessler.
11/18/2020	IDRIS KEITH	JEFFREY BERNARD BAKER	ED2020-86	ETHICS COMPLAINT	Closed	R	12/10/2020	Dismissed by SoS	ED Moved to dismiss. Granted by Deputy Rayder.
12/3/2020	CAMPAIGN INTEGRITY WATCHDOG	3WEE TECHNOLOGIES LLC	ED2020-87	FAILURE TO DISCLOSE CONTRIBUTIONS AND EXPENDITURES; FAILURE TO OBTAIN WRITTEN AFFIRMATION PRIOR TO ACCEPTING A CONTRIBUTION FROM AN LLC; FAILURE TO FILE REPORTS RELATING TO ELECTIONEERING COMMUNICATION	Closed	R	2/27/2021	Dismissed by SoS	Finding of no violation; Motion to Dismiss granted by Melissa Kessler.
1/26/2021	LYNDA HOSKINSON	TOWN OF OAK CREEK	ED2021-01	UNCLEAR ALLEGATIONS	Closed	NP	2/15/2021	Dismissed by SoS	Complaint not timely filed; ED Motion to Dismiss granted by Melissa Kessler.
2/19/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	SULLIVAN FOR COLORADO	ED2021-02	CONTRIBUTION OVER AGGREGATE AMOUNT ALLOWED BY LAW ALLEGED	Closed	D	5/18/2021	Cured	Violation was cured; Motion to Dismiss granted by Deputy Beall

SOS Filing Date	Complainant	Respondent	Case Number	Subject	Status	Party	Close Date	Outcome	Notes
2/19/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	FROELICH FOR COLORADO	ED2021-03	CONTRIBUTION ACCEPTED OVER THE AGGREGATE AMOUNT ALLOWED BY LAW ALLEGE...	Open	D			
2/19/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	BRIANNA FOR COLORADO	ED2021-04	CONTRIBUTION ACCEPTED OVER THE LEGAL AGGREGATE AMOUNT ALLEGED	Open	D			
2/19/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	ESGAR LEADERSHIP FUND	ED2021-05	CONTRIBUTION ACCEPTED OVER THE LEGAL AGGREGATE AMOUNT & INCOMPLETE TRACER FILINGS ALLEGED	Closed	Political (D)	4/20/2021	Cured	Violations were cured; ED Motion to Dismiss granted by Deputy Beall.
3/11/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	CITIZENS FOR CHERRY CREEK SCHOOLS	ED2021-06	FAILURE TO FULLY DOSCLOSE REQUIRED CONTRIBUTOR INFORMATION ALLEGED	Open	NP			
3/11/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COMMITTEE TO ELECT DANEYA ESGAR	ED2021-07	INCOMPLETE CONTRIBUTOR INFORMATION REPORTED TO TRACER ALLEGED	Closed	D	4/20/2021	Cured	Vilations were cured; ED Motion to Dismiss granted by Deputy Beall.
3/23/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	PROGRESSIVE VOTERS GUIDE BALLOT INDEPENDENT EXPENDITURE COMMITTEE	ED2021-08	INDEPENDENT EXPENDITURES WITH NO ASSOCIATED CANDIDATES ALLEGED	Open	IEC			
3/23/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	DELTA COUNTY REPUBLICAN CENTRAL COMMITTEE	ED2021-09	ELECTIONEERING COMMUNICATION EXPENDITURE WITH NO ASSOCIATED CANDIDATES ALLEGED	Open	R			
4/15/2021	PATRICIA CALDERON	SHANNON BUSS, MARVIN CARDENAS	ED2021-11	TOWN RESOURCES TO PROMOTE AND CAMPAIGN FOR MAYOR CARDENAS ALLEGED	Closed	NP	5/5/2021	Dismissed by SoS	Municipal matter; finding of no jurisdiction. ED Motion to Dismiss granted by Deputy Beall.
4/15/2021	CAMPAIGN INTEGRITY WATCHDOG	TAY ANDERSON	ED2021-10	FAILURE TO FILE REQUIRED DISCLOSURES OF MONETARY GIFTS AND HONORARIA ALLEGED	Closed	D	5/6/2021	Dismissed by SoS	Finding of no violation; ED Motion to Dismiss granted by Deputy Beall.
4/20/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	ANGELA GARLAND FOR CHERRY CREEK SCHOOL DISTRICT BOARD OF EDUCATION	ED2021-12	INCOMPLETE CONTRIBUTOR INFORMATION IN TRACER ALLEGED	Open	NP			
4/20/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	GREG LOPEZ FOR GOVERNOR	ED2021-13	INCOMPLETE CONTRIBUTOR INFORMATION REPORTED TO TRACER ALLEGED	Open	R			
4/27/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	MESA COUNTY REPUBLICAN PARTY	ED2021-14	INCOMPLETE CONTRIBUTOR INFORMATION LISTED IN TRACER ALLEGED	Open	R			
5/4/2021	ELECTIONS DIVISION, COLORADO SECRETARY OF STATE	COMMITTEE TO ELECT LORA THOMAS	ED2021-15	INCOMPLETE INFORMATION REPORTED TO TRACER REGARDING ELECTIONEERING CO...	Open	R			

STATE OF COLORADO
Department of State

1700 Broadway
Suite 250
Denver, CO 80290

Jena Griswold
Secretary of State

Ian Rayder
Deputy Secretary of State

MEMORANDUM

To: **All Elections and Administrative Staff**
From: Jena Griswold, Secretary of State
Date: December 2020
Re: Confidentiality and Process Walls Around Campaign Finance

The process walls created by this memorandum concern: (1) inquiries on campaign finance compliance directed to the Elections Division (Division), and (2) pending campaign finance complaints that are being reviewed, investigated, and/or prosecuted by the Division. These process walls do not apply to internal discussions on campaign finance rulemakings, legislation, guidance documents, or policy making.

The public may file a campaign and political finance (CPF) complaint with the Division under newly enacted section 1-45-111.7, C.R.S. A CPF Enforcement Team within the Division will handle all CPF complaints filed under the new law. The CPF Enforcement Team also has the authority, pursuant to section 111.7, to initiate investigations and file CPF complaints on its own. At the same time, a separate CPF Compliance Team within the Division operates to respond to questions from members of the public about complying with the CPF laws. In order to allow filers to contact the Division with questions, and to simultaneously ensure an objective enforcement process, process walls are necessary.

First, the Division will maintain a process wall between inquiries and discussions related to compliance and providing guidance, handled by the CPF Compliance Team, and the CPF Enforcement Team. This process wall is designed to ensure that the public can freely communicate with the Division to seek guidance on how to comply with CPF statutes and regulations (e.g., if they should register, how to file disclosure reports, etc.) without any concern that their questions could form the basis for a CPF investigation or complaint.

Second, the Division will also maintain a process wall between the Final Decision Makers and the CPF Enforcement Team. The CPF Enforcement Team reviews, investigates, and (if appropriate) prosecutes complaints, and the Deputy, or their designee, is responsible for making the final agency decision with respect to these complaints. This process wall is designed to ensure objectivity in the Division's processing of complaints, from intake through the final agency decision. Finally, to help ensure these walls are maintained the Division created the

following guidelines and processes. The last page of this memorandum identifies the positions affected by the process walls.

1) The Elections Division shall provide all affected personnel with copies of and guidance on the process walls.

    a. The Legal and Internal Operations Manager must provide this memorandum to all Elections Division, Final Decision Makers, and neutral staff.

    b. The Legal and Internal Operations Manager must provide ongoing guidance to relevant personnel on the process walls as appropriate.

2) The CPF Enforcement Team shall maintain separate email, phone, and electronic folders.

    a. All complaints will be directed to CPFcomplaints@sos.state.us.co and (303) 894-2200, ext. 6338; only the CPF Enforcement Team will have access to this inbox and phone line.

    b. All complaints[1] and related documents will be in the "CPF Complaints Folder" on the T drive; only the CPF Enforcement Team will have access to this folder. (T:/Elections/CPFComplaints).

    c. All questions on guidance and compliance will be directed to CPFhelp@sos.state.us.co and 303-894-2200 & press 3; the CPF Enforcement Team will not have access to this inbox or phone line.

    d. The Final Decision Makers and neutral staff will not have access to either email address (complaints or CPF Help), or to the CPF Complaints folder on the T drive.

    e. Both the CPF Compliance Team and the CPF Enforcement Team will have administrative access to TRACER. Some filers upload documents and save as drafts within the TRACER system in advance of filing their reports. The Enforcement Team can only review documents filed within the system, and not documents or information that are entered or drafts but not yet filed.

    f. The Final Decision Makers and neutral staff will not have administrative access to TRACER.

    g. When a complainant or respondent communicates with the Division regarding a CPF complaint, they will be immediately forwarded directly to CPF Enforcement Team without review of materials or any substantive discussion (except for

[1] For the purpose of this memorandum, unless otherwise indicated, "complaint" shall refer to complaints filed by a third party, complaints and investigations initiated by the CPF Enforcement Team, and complaints filed with the OAC.

conversations regarding curing and compliance, as provided elsewhere in this memorandum).

h. All documents put on TRACER are generally public and available to all teams. These include the initial complaint, Notice of Initial Review, motions to dismiss, orders from the Deputy Secretary of State, Office of Administrative Courts (OAC) Complaints, OAC orders, final agency decisions, documents filed with the OAC related to the Complaint, and documents related to the appeals. Some documents may not be made publicly available due to policy or legal concerns.

3) The **CPF Compliance Team** must adhere to the following procedures regarding compliance inquiries and guidance.

a. The CPF Compliance Team may not share or disclose to the CPF Enforcement Team identifying information about a member of the public who has posed a question at any time before a complaint has been filed.

b. The CPF Compliance Team may respond to a question asked by the CPF Enforcement Team about general guidance or technical compliance. The CPF Compliance Team may also respond to a question asked by the CPF Enforcement Team about a pending complaint, especially during the cure process, so long as no investigatory or confidential information regarding litigation strategy or settlement discussions about the complaint is discussed.

c. The CPF Compliance Team may work with the CPF Enforcement Team in drafting a response to a request for an advisory opinion, but may not disclose any identifying details of the party requesting the advisory opinion beyond those details necessary to be able to provide effective assistance in the drafting of the advisory opinion.

4) The **CPF Enforcement Team** must adhere to the following procedures regarding campaign finance complaints.

a. Once on TRACER, the complaint is public but the process walls detailed in this memorandum remain in place.

b. The CPF Enforcement Team may seek guidance from the CPF Compliance Team on pending complaints, especially during the cure process, so long as no investigatory or confidential information regarding litigation strategy, prosecutorial decisions, or settlement discussions about the complaint is discussed. Additionally, the CPF Enforcement Team may refer respondents to the CPF Compliance Team regarding technical questions on how to cure or comply with the law.

c. Other than as provided in 4(b), the CPF Enforcement Team will not discuss the complaint with the CPF Compliance Team other than to discuss the general

guidance or technical compliance the Compliance Team provides to members of the public.

d. At all times during the complaint and enforcement process, the CPF Enforcement Team will not discuss or disclose litigation strategy or prosecutorial decisions of the complaint with the Final Decision Makers, other than through motions to dismiss, proposed settlement agreements, or other documents necessary to the enforcement process.

e. At all times during the complaint and enforcement process, the CPF Enforcement Team may communicate with Prosecutorial Counsel from the Office of the Colorado Attorney General. The Enforcement Team may also communicate with respondents and complainants as well as their counsel, and outside third parties as needed for the purpose of assisting with the review and potential prosecution of the complaint.

5) The **Final Decision Makers** must adhere to the following procedures regarding campaign finance complaints.

a. The Final Decision Makers may not obtain non-public litigation strategy or prosecutorial decisions regarding a pending complaint from the CPF Enforcement Team; only information that is needed to adequately respond to press and outside inquiries.

b. The Final Decision Makers will have access to all public documents filed on TRACER and materials filed by the CPF Enforcement Team for adjudication, including motions to dismiss, along with any documents attached, and proposed settlement agreements.

c. The Final Decision Makers may seek guidance from the CPF Compliance Team on general compliance and technical questions.

d. The Final Decision Makers shall not disclose or discuss with other teams, non-public information, litigation strategy, or prosecutorial decisions on pending motions to dismiss and settlement agreements filed by the CPF Enforcement Team until a decision on the motion and settlement agreement has been made.

e. The Final Decision Makers do not direct or control the CPF Enforcement Team regarding investigation or charging decisions, and the CPF Enforcement Team shall retain independence in its investigation and charging decisions.

f. At all times during the complaint and enforcement process, Final Decision Makers may communicate with Adjudicative Counsel from the Office of the Colorado Attorney General.

6) **Neutral staff** from the Secretary of State's office.

   a. Neutral staff, including the Communications Director and Assistant Director, may discuss CPF compliance issues with CPF Compliance Team. This staff may also inquire about pending complaints with the CPF Enforcement Team but will not disclose non-public or confidential information obtained during those discussions to those on the other side of the process wall, with the press, or third parties.

7) Miscellaneous.

   a. Once a final agency decision has been made on a complaint, the process walls established by this memorandum are lifted. This includes an order from the Deputy dismissing the complaint and a final settlement agreement that has been signed by the parties and approved by the Deputy or her designee.

   b. If an agency decision is remanded by a District Court, the process walls will once again be in effect.

   c. This memorandum supersedes and replaces any and all prior guidance, whether formal or informal, concerning process walls established within the Division and/or the Administration related to CPF matters.

Jena Griswold
Colorado Secretary of State

Ian Rayder
Deputy Secretary of State

Administration and Elections Division Process walls

Final Decision Makers	**CPF Enforcement Team**	**CPF Compliance & Guidance Team**
Secretary of State Deputy Secretary of State Chief of Staff Legal and Policy Director	Legal & Internal Operations Manager CPF Enforcement Manager CPF Legal analyst CPF Investigator CPF Administrative Assistant Legal Team Admin Assistant	Campaign Finance Director CPF trainer CPF customer support staff Legal Analyst, Elections Division Assigned to CPF Compliance
All other Secretary of State staff are neutral (including the Communications Director/PIO and Assistant Communications Director/PIO)		

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State

Christopher P. Beall
Deputy Secretary of State

BEFORE THE COLORADO DEPUTY SECRETARY OF STATE 1700 Broadway, Suite 550 Denver, Colorado 80290 IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO	OAC CASE NUMBER: **OS 2020-25** (ED Case No. 2020-71)

ORDER DENYING MOTION TO VACATE FINAL AGENCY ORDER

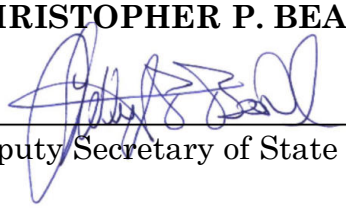
This matter comes before Christopher P. Beall, Colorado Deputy Secretary of State ("Deputy Secretary"), upon the motion filed on October 1, 2021, by No on EE – A Bad Deal for Colorado ("Respondent") to vacate the Final Agency Order that was issued by this office on September 2, 2021. The Deputy Secretary concludes he lacks jurisdiction and therefore denies the Motion.

Administrative agencies generally have no jurisdiction to modify or set aside a final agency order once the aggrieved party has either appealed that decision or the time to appeal has passed. *Murr v. Civil Serv. Comm'n of City & Cnty. of Denver*, 2019 COA 51M, ¶ 43, 459 P.3d 699, 707; *see also id.* ¶ 46, 459 P.3d at 708 ("[T]e power to reopen a matter is lost when 'judicial review is initiated.'" (quoting *Citizens for Responsible Growth v. RCI Dev. Partners, Inc.*, 252 P.3d 1104, 1107 (Colo. 2011))). Here, the Deputy Secretary issued the Final Agency Order on September 2, 2021.

Any aggrieved party had 35 days from September 2, 2021, or until October 7, 2021, to seek judicial review of that decision. *See* §§ 1-45-111.7(6)(b), 24-4-106(4), C.R.S. On October 7, 2021, Respondent filed just such a petition for judicial review under § 24-4-106(4), C.R.S., in the Denver District Court. *See No on EE – A Bad Deal for Colorado Issue Comm. v. Beall*, Colo. Dist. Ct.-Denver No. 2021CV033166 (Compl. for Judicial Review of Agency Action, Oct. 7, 2021). Although that complaint has not yet been served on the Deputy Secretary, its filing divests the Deputy Secretary of jurisdiction to address Respondent's Motion. The Motion is accordingly denied for lack of jurisdiction. In light of this lack of jurisdiction, the Deputy Secretary's resolution here is without prejudice to, and without comment on, the substance of the contentions asserted in the Motion.

DONE and **ORDERED** this 12th day of October 2021.

CHRISTOPHER P. BEALL



Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **ORDER DENYING MOTION TO VACATE FINAL AGENCY ORDER** was served on the following parties via electronic mail on October 12, 2021.

Respondent – No on EE – A Bad Deal for Colorado
Suzanne Taheri
Maven Law Group
staheri@mavenlawgroup.com

Petitioner – Colorado Secretary of State, Elections Division
Peter Baumann, Assistant Attorney General
Department of Law
Peter.baumann@coag.gov

/s/ Christopher P. Beall
Deputy Secretary of State

OAC cases: OS 2020-25
ED Case No. 2020-71

IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO

REQUEST FOR STAY ON AGENCY ACTION

Suzanne Taheri, on behalf of Respondent, "No on EE-a bad deal for Colorado", requests the Department postpone the effective date of the agency action pending judicial review. As grounds therefore, Respondent states the following:

1. On May 26, 2021 the Office of Administrative Court's Administrative Law Judge ("ALJ") as a hearing officer for the Department issued a decision in this matter, setting a fine in the amount of $10,000. No party filed exceptions to the decision.
2. The Deputy Secretary of State, acting on behalf of the final decision makers of the Agency, initiated review on his own motion.
3. On September 2, 2021 the Deputy, again acting on behalf of the final decision makers of the agency, assessed a fine of $30,000, triple the original fine.
4. Respondent has filed an appeal of the order.
5. C.R.S. 24-4-106 allows for a stay of agency action upon a showing of irreparable injury. The Department has taken a position that any fines remitted during an agency review are "voluntary" and nonrefundable. The inability of a party to recoup their fine upon a favorable judgment is irreparable injury.

Wherefore, Respondent requests that the effective date of the Final Agency Order be postponed until final review.

Submitted this 12th day of October 2021.

/s/ Suzanne Taheri
Maven Law Group
staheri@mavenlawgroup.com
Attorney for Respondent

STATE OF COLORADO
Department of State
1700 Broadway, Suite 550
Denver, CO 80290

Jena M. Griswold
Secretary of State

Christopher P. Beall
Deputy Secretary of State

BEFORE THE COLORADO DEPUTY SECRETARY OF STATE 1700 Broadway, Suite 200 Denver, Colorado 80290 IN THE MATTER OF NO ON EE – A BAD DEAL FOR COLORADO	OAC CASE NUMBER: OS 2020-25 (ED Case No. 2020-71)

ORDER DENYING WITHOUT PREJUDICE
REQUEST FOR STAY ON AGENCY ACTION

This matter comes before Christopher P. Beall, Colorado Deputy Secretary of State ("Deputy Secretary"), upon the Request for Stay on Agency Action filed by No on EE – A Bad Deal for Colorado ("Respondent"), seeking postponement of the effective date of the Final Agency Order pending judicial review.

Pursuant to section 24-4-106(5), an agency may postpone the effective date of agency action pending judicial review upon a finding that "irreparable injury" would otherwise result from enforcement of the agency action prior to judicial review. In an effort to show such irreparable injury, Respondent asserts in its Request that "[t]he Department has taken a position that any fines remitted during an agency review are 'voluntary' and nonrefundable." Respondent's statement is incorrect in its premise and its application.

First, the voluntary payment rule bars recovery of a paid fine, even if there is no legal liability to pay in the first place, where one makes a voluntary payment with knowledge of all relevant facts, and then sues to recover that payment. *Skyland Metro. Dist. v. Mountain W. Enter., LLC*, 184 P.3d 106, 127 (Colo. App. 2007). However, the rule does not apply where the payor can show that payment was made under protest or duress or a mistake as to all relevant facts. *Id.* The Department has taken no position in this case that the voluntary payment rule would apply if the Respondent were to pay the assessed fine under protest. Moreover, Respondent has already manifested its clear protest to the Final Agency Order, specifically as to its $30,000 fine, by seeking judicial review under section 24-4-106(4). Accordingly, any payment made by Respondent at this time would not be voluntary, and the voluntary payment rule could not be asserted as a defense against a request for a refund. In this context where the voluntary payment rule does not and would not apply, Respondent's effort to rely on that rule as the basis for its assertion of irreparable injury is to no avail.

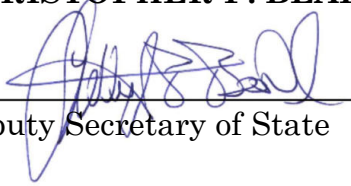
Next, while the Deputy Secretary does not object as a practical matter to postponing the effective date of the Final Agency Order pending judicial review, he is unable to do so here under section 24-4-106(5) because Respondent has failed to establish the necessary condition precedent of a finding that irreparable injury would otherwise result from enforcement of the agency action. Respondent sets forth no other bases apart from the voluntary payment rule upon which a finding of irreparable injury might be made. As a result, the Request lacks a sufficient basis

under section 24-4-106(5), and the Deputy Secretary must therefore deny Respondent's Request for Stay on Agency Action without prejudice for failing to demonstrate irreparable injury. Respondent may renew its request if it can articulate a valid basis for a finding of irreparable injury.

WHEREFORE, Respondent's Request for Stay on Agency Action is denied without prejudice.

DONE and **ORDERED** this 21st day of October 2021.

CHRISTOPHER P. BEALL



Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **ORDER DENYING WITHOUT PREJUDICE REQUEST FOR STAY ON AGENCY ACTION** was served on the following parties via electronic mail on October 21, 2021.

Suzanne Taheri
Attorney for Respondent
Maven Law Group
staheri@mavenlawgroup.com

Peter Baumann, Assistant Attorney General
Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Peter.Baumann@coag.gov

/s/ Christopher P. Beall
Deputy Secretary of State

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1427 Bannock Street Denver, Colorado 80202	DATE FILED: January 11, 2022 CASE NUMBER: 2021CV33166
Plaintiff: **No On EE—A Bad Deal for Colorado,** **Issue Committee** **v.** **Defendant:** **Christopher Beall, in his official capacity as Colorado Deputy Secretary of State and,** **Jena Griswold, in her official capacity as Colorado Secretary of State**	**▲ COURT USE ONLY ▲**
Attorney for Plaintiff: Suzanne M. Taheri, #23411 MAVEN LAW GROUP 1600 Broadway, Suite 1600 Denver, CO 80202 Phone Number: (303) 263-0844 Email: staheri@mavenlawgroup.com	Case Number: 2021CV033166 Div.: 409 Crtm.:

PLAINTIFF'S OPENING BRIEF

INTRODUCTION

Plaintiff, No on EE - - A Bad Deal for Colorado, is an issue committee that was properly registered on August 31, 2020 for the purpose of opposing Proposition EE appeared on the November 2020 ballot. Proposition EE, referred to the ballot by the state legislature, proposed a new tax on tobacco and nicotine products.

Over the course of the campaign, Plaintiff spent over $3 million in advertising in opposition to the passage of EE. Plaintiff properly reported these expenditures along with the contributions that were used to fund them.

On October 8, 2020, the Secretary of State's Campaign Finance Enforcement Team received a complaint alleging a disclaimer violation in the Plaintiff's advertising. Generally, Colorado law requires that issue committees print both the name of the registered committee along with the name on the registered agent on advertisements supporting or opposing ballot issues. Plaintiff listed the name of the properly registered issue committee, but failed to note the registered agent. Colo. Rev. Stat. § 1-45-108.3(1). While the complaint also alleged false statements, that allegation was not ultimately sustained.

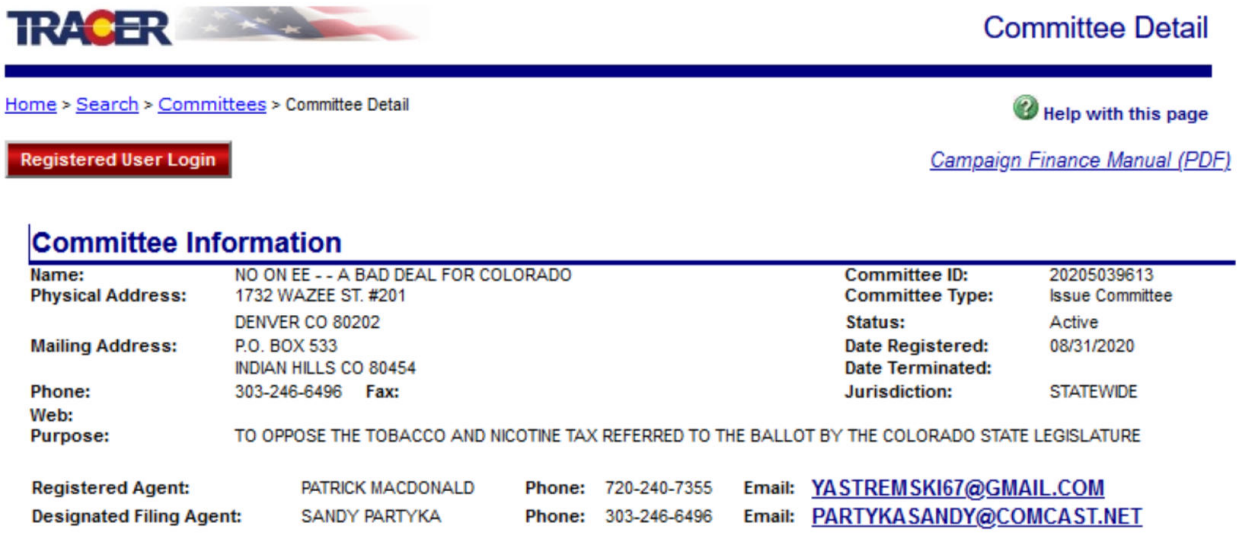
Plaintiff attempted to cure the disclaimer violation and cooperated with the Secretary of State's investigation. Despite Plaintiff's attempt to cure, the Secretary of State referred the matter to the Office of Administrative Courts and subsequent to a hearing, an administrative law judge fined Plaintiff $10,000 for failure to list the name of the committee's registered agent on its advertising. The Deputy Secretary of State elected to review the Initial Decision upon his own motion and ultimately overruled the administrative law judge, increasing the assessed penalty from $10,000 to $30,000.

Plaintiff appeals this decision on the grounds that the fine assessed is arbitrary and violates Plaintiff's First and Eighth Amendment rights. Plaintiff further challenges the necessity and thus the constitutionality, as applied to its committee, of the requirement to list the registered agent in campaign materials.

ARGUMENT

A. The requirement to disclose the registered agent on advertising violates the Plaintiff's First Amendment rights.

There is inarguably a compelling government interest in requiring the parties who pay for political advertising to identify themselves. This information allows voters to know who is advocating for or against candidates and ballot issues and to research what other causes those groups or individuals may support. The Secretary of State's Office built its campaign finance disclosure system (TRACER) to enable these disclosures. When a committee is formed in TRACER, the committee must designate a natural person who acts as the committee's registered agent. The registered agent is listed whenever the committee's information is looked up in TRACER. An example appears in screen shot from Plaintiff's committee registration below (https://tracer.sos.colorado.gov/PublicSite/SearchPages/CommitteeDetail.aspx?OrgID=39613):



TRACER

Committee Detail

Home > Search > Committees > Committee Detail

Help with this page

Registered User Login

Campaign Finance Manual (PDF)

Committee Information

Name:	NO ON EE - - A BAD DEAL FOR COLORADO	**Committee ID:**	20205039613
Physical Address:	1732 WAZEE ST. #201	**Committee Type:**	Issue Committee
	DENVER CO 80202	**Status:**	Active
Mailing Address:	P.O. BOX 533	**Date Registered:**	08/31/2020
	INDIAN HILLS CO 80454	**Date Terminated:**	
Phone:	303-246-6496 **Fax:**	**Jurisdiction:**	STATEWIDE
Web:			
Purpose:	TO OPPOSE THE TOBACCO AND NICOTINE TAX REFERRED TO THE BALLOT BY THE COLORADO STATE LEGISLATURE		

Registered Agent:	PATRICK MACDONALD	**Phone:**	720-240-7355	**Email:**	YASTREMSKI67@GMAIL.COM
Designated Filing Agent:	SANDY PARTYKA	**Phone:**	303-246-6496	**Email:**	PARTYKASANDY@COMCAST.NET

"Disclaimer requirements are subject to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important'governmental interest."

Buckley v. Valeo, 424 U.S. 1, 64, 66, 96 S. Ct. 612, 46 L. Ed.2d 659 (1976)); *see also Citizens United v. Gessler*, 773 F.3d 200, 209 (10th Cir. 2014).

Not only must a disclosure requirement be substantially related to a sufficiently important government interest, but the disclosure requirement must also be narrowly tailored to the government's interest. *Americans for Prosperity Foundation v. Bonta*, U.S. 141 S. Ct.2373 (2021). "While exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest." Id. "[A] substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored." Id. at 2384

"The Buckley Court identified important government interests that could meet the [exacting scrutiny] burden, including 'provid[ing] the electorate with information,' 'deter[ring] actual corruption and avoid[ing] the appearance of corruption,' and 'gathering the data necessary to detect violations of' other election laws." *Indep. Inst.v. Williams*, 812 F.3d 787, 792 (10th Cir. 2016) (quoting Buckley, 424 U.S. at 66- 68). However, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." Id. (quoting Doe v. Reed, 561 U.S. 186, 196, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010)).

There are also important distinctions between issue committee disclosures and candidates. The Tenth Circuit has held that the public's "informational interest" is the only a sufficiently important government interest that could justify the Colorado's issue committee disclosure and reporting laws. *Sampson v. Buescher*, 625 F.3d 1247, 1256 (10th Cir. 2010). And, "[i]t is not obvious that there is such a public interest." *Id.* Contrary to candidate elections,

"when a ballot issue is before the voter, the choice is whether to approve or disapprove of discrete governmental action"—not the evaluation of a person. *Id.* at 1257.

This "informational interest" justifying the state's requirement of disclosure is "limited." "They reveal only one dimension of the support for a ballot measure. Their purpose is not to inform the electorate about all who believe that a particular result is in the public interest…. Rather, their only purpose is to identify those who (presumably) have a financial interest in the outcome of the election." *Sampson*, 625 F.3d at 1259.

In this case, Plaintiff was an issue committee found to have violated only a portion of the disclaimer laws. There is no dispute that Plaintiff did in fact properly name the committee on the disclaimer. Plaintiff only failed to name the registered agent, Patrick McDonald. This requirement to provide the name of the registered agent provides no substantive information to the electorate. The voter registration records published by the Secretary show 19 people named Patrick McDonald in Colorado. There is no address, phone number, website or other contact information on the disclaimer. To discover this information a voter must access Committee registration. When the voter does this, they will also find the registered agent. The requirement is duplicative.

The final agency order also identifies no governmental interest to be achieved through the disclosure. The only mention of the electorate interest is that it did not receive the, "full disclaimer to which it is entitled." (Agency Record, SOS0174) Entitled for what reason? For what benefit to the electorate? The order is silent on this interest.

The requirement to list the registered agent on all of the committee's advertising is also unduly burdensome because campaign finance laws and rules allow the registered agent to

change through the course of a campaign. In a case where the committee changed its registered agent because the registered agent became incapacitated or died, the committee would be burdened with the necessity to reprint and edit advertising to satisfy a requirement that was unnecessary in the first place because the only thing a voter needs to know in order to determine who is responsible for an electioneering communication is the name of the committee that paid for the communication.

Because there is no compelling governmental interest established for the requirement to disclose both the committee name and the name of the registered agent in these circumstances and the requirement to list the committee's registered agent is both unduly burdensome and redundant, the requirement and subsequent penalty violates the Plaintiff's rights under the First Amendment.

B. The excessive penalty assessed violates the Plaintiff's rights under the Eighth Amendment.

Even if the Secretary of State could establish a compelling governmental interest in disclosure of the registered agent on all election-related advertising, the penalties assessed in this case are arbitrary and so excessive as to constitute a violation of Plaintiff's Eighth Amendment rights. In the agency's final decision, Deputy Secretary of State Christopher Beall acknowledged that, "the Initial Decision provides no rationale nor any analysis on how the hearing officer reached the conclusion that $10,000—as opposed to some other amount—was an appropriate penalty, apparently picking that number out of the air without any evidence in the record or citation to rule or law." (Record, SOS0169)

Ironically, the Final Agency Action then goes on to establish a different – but greater – penalty of $30,000 while simultaneously noting mitigating factors similar to those that were noted on the order from the Office of Administrative Courts. The Final Agency Action goes on to note that the penalty chosen is, "sufficient to enforce the law…" and argues that the penalty, "is not manifestly excessive in relation to the interests of the public in strong enforcement of campaign finance law." (Record, SOS0175) Again, strong for what purpose? Is there any member of the public that is going to make their decision based on the name of the registered agent? Will members of the public be given important information to then access the committee? The answer to both is no. A member of the public would still have to go to the committee page to find out an address, contact information or a list of donors.

The undisputed facts establish that *both* the order issued by the Office of Administrative Courts *and* the Final Agency Order issued by Deputy Beall relied on arbitrary and unknowable standards to establish the chosen monetary fine.

In ruling on the fine request from the department, the ALJ found the fine, "exorbitant". (Record, SOS0142) A review of similar offenses would support that conclusion. Prior to this fine the highest assessment for failure to comply with disclaimers was $500. (Record, SOS0189 – SOS0198) This assessment is 60 times the previous highest fine for disclaimer violation. This certainly fits within "exorbitant". The ALJ also found the electorate had other publicly available means to identify the registered agent. (Record, SOS0159). These are relevant factors.

In contrast, the final decision makers in their order used irrelevant factors to provide mitigation from what they believed would be an even higher fine. The final decision found "Respondent significantly cooperated with the Division's review and investigation of the

complaint" and "Respondent disclosed more than Colorado law required at least with regard to information about the payee in which in-kind contributions." (Record, SOS0174-SOS0175). Bowing to the will of the agency is not a mitigating factor, nor is providing more information than required by law on a filing disconnected from the facts of the complaint. These standards are entirely arbitrary.

For purposes of the Eighth Amendment, "[t]he notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law." *Austin v. United States*, 509 U.S. 602, 610, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) (quoting *United States v. Halper*, 490 U.S. 435, 447-48, 109 S. Ct. 1892, 104 L. Ed. 2d 487 (1989)).

Statutory penalties are subject to the constitutional prohibition against excessive fines. See *Associated Bus. Prods*., 126 P.3d at 326; *Wolford v. Pinnacol Assurance*, 81 P.3d 1079, 1084 (Colo. App. 2003), rev'd on other grounds, 107 P.3d 947 (Colo. 2005). The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

The Supreme Court has held that a civil fine is excessive "if it is grossly disproportional to the gravity of a defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). Likewise, a division of this court has said that a penalty, "is excessive if the amount is so disproportionate to a defendants circumstances that there can be no realistic expectation that the defendant will be able to pay it." *Boulder Cty. Apartment Ass'n,* 97 P.3d at 338.

Here, there is no question that the civil fine of $30,000 is grossly disproportional to the gravity of the offense. This provision of the law has turned into an expensive gotcha game to

play against political enemies. It provides no information to the voter. Here, the only basis for the penalty is the failure to follow the letter of a regulation that was so new that not even the television stations that aired Plaintiff's commercials knew of the requirement. The electorate was not deprived of any information simply because the name of the registered agent was not included in the initial advertising. The name of the committee was disclosed in all advertising, and any member of the public who wanted to know the name of the registered agent could easily find that information on the committee's registration. Despite the needlessness of the requirement, the Plaintiff took extra steps to correct the disclosure in response to the complaint.

At best, this was a deminimis violation which warrants a corresponding deminimis fine.

CONCLUSION

There is no compelling governmental interest to justify disclosure of the registered agent on the face of Plaintiff's advertisements. Any interested member of the public can locate the registered agent information for a committee by looking up the committee on the Secretary of State's website. Such a search will likely yield the same result that it does for Plaintiff's committee – the name of a person who shares the same name with multiple registered voters in Colorado. As such, the information is of minimal value and is clearly not significant enough to warrant placement on all advertising materials.

The fine assessed by the agency were excessive and arbitrary. Acting as the final decision maker, and citing irrelevant criteria, the Deputy Secretary on his own motion tripled an already excessive fine. This violated Plaintiff's rights under the First Amendment by chilling free speech and discouraging future political activity and also under the Eighth Amendment by imposing a fine that far exceeded what could be justified by the deminimis disclaimer violation.

Based on the foregoing, Plaintiff respectfully requests this Court:

1. Vacate the Final Agency Action and the associated fine.
2. Find that the provisions of §1-45-108.3, C.R.S. which require disclosure of a committee's registered agent on all advertising violated the First and Eighth Amendment rights of the committee.

Respectfully submitted this 11th day of January 2022.

/s/ Suzanne Taheri
Maven Law Group
staheri@mavenlawgroup.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that the filing has been served by the Colorado Courts e-filing system this 11th day of January, 2022, addressed as follows:

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DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80203 **Plaintiff:** NO ON EE—A BAD DEAL FOR COLORADO, **v.** **Defendants:** CHRISTOPHER BEALL, in his official capacity as Colorado Deputy Secretary of State, and JENA GRISWOLD, in her official capacity as Colorado Secretary of State.	DATE FILED: February 8, 2022 CASE NUMBER: 2021CV33166 **COURT USE ONLY** Case No. 2021CV33166 Ctrm./Div.: 409
Attorneys for Defendants: PHILIP J. WEISER Attorney General JESSICA ROSS, #44927* Assistant Attorney General PETER G. BAUMANN, #51620* Assistant Attorney General State Services Section Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, Colorado 80203 Telephone: (720) 508-6152 Email: jessica.ross@coag.gov peter.baumann@coag.gov *Counsel of Record	

DEFENDANTS' UNOPPOSED MOTION FOR AN EXTENSION OF TIME

Defendants, Christopher Beall in his official capacity as Colorado Deputy Secretary of State, and Jena Griswold in her official capacity as Colorado Secretary of State, respectfully request a two-week extension of time to respond to Plaintiff's opening brief in this matter. As grounds, Defendants state:

1. This case is a judicial review of final agency action under § 24-4-106(4).

2. Plaintiff, No on EE—A Bad Deal for Colorado, filed its opening brief on January 11, 2022.

3. Under the terms of the briefing schedule entered by the Court on November 9, 2021, Defendants' response brief is due on February 15, 2022.

4. Due to the press of other business, Defendants require additional time to fully develop the arguments that will be presented in their response. Accordingly, Defendants respectfully request a two-week extension of time to file their response, to and including March 1, 2022.

5. Undersigned counsel has conferred with Plaintiff's counsel, and Plaintiff does not oppose the requested relief.

6. No party, or the public, will be harmed by the extension. The penalty imposed on Plaintiff through the administrative process has been stayed pending this action. Order Granting Unopposed Motion to Stay Sentence (Nov. 17, 2021).

WHEREFORE, Defendants respectfully request an extension of time to file their response brief in this action, up to and including March 1, 2022.

Respectfully submitted this 8th day of February, 2022.

PHILIP J. WEISER
Attorney General

s/ Peter G. Baumann
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Senior Assistant Attorney General
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*Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2022, a true and correct copy of the foregoing **DEFENDANTS' UNOPPOSED MOTION FOR AN EXTENSION OF TIME** was duly filed and electronically served upon all counsel of record for the parties who have entered their appearances in this matter to date through the Colorado Courts E-Filing System.

s/ Xan Serocki
Xan Serocki

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	DATE FILED: February 9, 2022 CASE NUMBER: 2021CV33166
Plaintiff(s) NO ON EE A BAD DEAL FOR COLO ISSUE COMMI v. **Defendant(s)** CHRISTOPHER BEALL et al.	⚠ **COURT USE ONLY** ⚠ Case Number: 2021CV33166 Division: 409 Courtroom:

ORDER GRANTING DEFENDANTS UNOPPOSED MOTION FOR AN EXTENSION OF TIME

The motion/proposed order attached hereto: GRANTED.

THIS MATTER comes before the Court upon Defendants' Unopposed Motion for an Extension of Time, filed herein on February 8, 2022. The Court, upon review of the Motion, the file and being fully advised in the premises;

HEREBY ORDERS that the Motion is GRANTED. Defendants' Answer Brief shall be filed on or before March 1, 2022.

Issue Date: 2/9/2022



MARIE AVERY MOSES
District Court Judge

DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80203 **Plaintiff:** NO ON EE—A BAD DEAL FOR COLORADO, **v.** **Defendants:** CHRISTOPHER BEALL, in his official capacity as Colorado Deputy Secretary of State, and JENA GRISWOLD, in her official capacity as Colorado Secretary of State.	**COURT USE ONLY** Case No. 2021CV33166 Ctrm./Div.: 409
Attorneys for Defendants: PHILIP J. WEISER Attorney General JESSICA ROSS, #44927* Assistant Attorney General PETER G. BAUMANN, #51620* Assistant Attorney General State Services Section Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway, 6th Floor Denver, Colorado 80203 Telephone: (720) 508-6152 Email: jessica.ross@coag.gov peter.baumann@coag.gov *Counsel of Record	
DEFENDANTS' UNOPPOSED MOTION FOR AN EXTENSION OF TIME	

Attachment to Order - 2021CV33166

Defendants, Christopher Beall in his official capacity as Colorado Deputy Secretary of State, and Jena Griswold in her official capacity as Colorado Secretary of State, respectfully request a two-week extension of time to respond to Plaintiff's opening brief in this matter. As grounds, Defendants state:

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3. Under the terms of the briefing schedule entered by the Court on November 9, 2021, Defendants' response brief is due on February 15, 2022.

4. Due to the press of other business, Defendants require additional time to fully develop the arguments that will be presented in their response. Accordingly, Defendants respectfully request a two-week extension of time to file their response, to and including March 1, 2022.

5. Undersigned counsel has conferred with Plaintiff's counsel, and Plaintiff does not oppose the requested relief.

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WHEREFORE, Defendants respectfully request an extension of time to file their response brief in this action, up to and including March 1, 2022.

Attachment to Order - 2021CV33166

Respectfully submitted this 8th day of February, 2022.

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Attorney General

s/ Peter G. Baumann
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Attachment to Order - 2021CV33166

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2022, a true and correct copy of the foregoing **DEFENDANTS' UNOPPOSED MOTION FOR AN EXTENSION OF TIME** was duly filed and electronically served upon all counsel of record for the parties who have entered their appearances in this matter to date through the Colorado Courts E-Filing System.

s/ Xan Serocki
Xan Serocki

Attachment to Order - 2021CV33106

DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO
1437 Bannock Street
Denver, CO 80203

DATE FILED: March 1, 2022
CASE NUMBER: 2021CV33166

Plaintiff:

NO ON EE—A BAD DEAL FOR COLORADO,

v.

Defendants:

CHRISTOPHER BEALL, in his official capacity as Colorado Deputy Secretary of State, and JENA GRISWOLD, in her official capacity as Colorado Secretary of State.

□COURT USE ONLY□

Case No. 2021CV33166

Ctrm./Div.: 409

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ANSWER BRIEF

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INTRODUCTION

Under Colorado law, certain entities that communicate about political issues during a campaign must include "paid for by" disclaimers on those communications. These disclaimers must identify the name of the person paying for the communication, and, if that entity is a non-natural person, the name of the entity's registered agent. In other words, all communications subject to this requirement must identify the name of a natural person associated with the entity running the advertisement.

During the 2020 election cycle, Plaintiff No on EE—A Bad Deal for Colorado distributed between $3 and $3.5 million worth of communications that lacked a compliant disclaimer statement. A member of the public filed a complaint against No on EE, and after an administrative process—including a hearing before a hearing officer—the Department of State issued a Final Agency Order imposing a $30,000 fine, roughly 1% of the total $3 million cost of the noncompliant communications.

Both this fine, and the statutory provisions under which it was imposed, comply with the Colorado and U.S. constitutions. The Court should affirm the Final Agency Order.

BACKGROUND

This case arises out of an administrative enforcement proceeding against No on EE. On October 8, 2020, Anna Jo Haynes filed a campaign finance complaint

with the Elections Division of the Department of State under Colorado's campaign finance enforcement statute, § 1-45-111.7, C.R.S. (2020). R. SOS0001–23. The complaint alleged that No on EE had failed to comply with Colorado's disclaimer statute by not identifying its registered agent on a substantial amount of campaign communications. *Id.* at 11.

Colorado's disclaimer provision requires an issue committee "making an expenditure in excess of . . . one thousand dollars per calendar year on a communication that . . . supports or opposes a ballot issue or ballot question, and that is broadcast, printed, . . . or . . . otherwise distributed shall include in the communication a disclaimer statement[.]" § 1-45-108.3(1). That disclaimer statement "must conform to the requirements specified in section 1-45-107.5(5) for content, size, duration, and placement." § 1-45-108.3(2). Those requirements, in turn, are that the disclaimer statement must state that: "(I) The communication has been 'paid for by (full name of the person paying for the communication)'; and (II) Identifies a natural person who is the registered agent if the person identified in subsection [(I)] . . . is not a natural person." § 1-45-107.5(5)(a)(I)–(II).

No on EE is an issue committee under Colorado law. *Id.* at 78. An issue committee is a "person, other than a natural person," that (a) has "a major purpose of supporting or opposing any ballot issue or ballot question" and "has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question." Colo. Const. art. XXVIII, § 2(10)(a); 8

CCR 1505-6, Rule 1.9. In No on EE's case, it was formed to oppose Proposition EE, a proposed nicotine tax that appeared on the November 2020 ballot. R. at 78. Its efforts were almost entirely funded by in-kind contributions from a cigarette manufacturer, Liggett Vector Brands, LLC. *Id.* at 120, 108. In total, it spent well over $4 million on communications in opposition to Proposition EE. R. at 88.

After receiving the third-party complaint against No on EE, the Elections Division processed the complaint against No on EE consistent with § 1-45-111.7, and the matter ultimately proceeded to a hearing before an Administrative Law Judge serving as a hearing officer under § 1-45-111.7(5). The facts before the hearing officer were largely stipulated in advance. *See* R. at 78–80.

The ALJ issued an initial decision on May 26, 2021. *Id.* at 139–43. The ALJ adopted the parties' stipulations, including, as relevant here:

- Initially, No on EE's communications included a disclaimer that read: "Paid for by No on EE: A Bad Deal for Colorado." *Id.* at 140.
- None of those initial disclaimers included the name of No on EE's registered agent. *Id.*
- Between $3 and $3.5 million worth of communications were distributed without identifying No on EE's registered agent. *Id.* at 141.

- Each of the individual communications included in this estimate cost more than $1,000 to produce and distribute. *Id.*; *see also* § 1-45-108.3(1) (requiring a compliant disclaimer statement on communications costing over $1,000).

Based on this information, the hearing officer concluded that No on EE had "violated Section 1-45-108.3(1)," and imposed a fine of $10,000. R. at 143.

Neither party filed exceptions to the Initial Decision, but the Deputy Secretary of State—the final agency decisionmaker in campaign finance matters—initiated review on his own motion under §§ 1-45-111.7(6)(b) and 24-4-105(14)(a)(II). R. at 151, 164. On September 2, 2021, the Deputy Secretary issued the Final Agency Order at issue in this action. R. at 162–76. The Final Agency Order adopted the ALJ's findings of fact and conclusions of law with one exception: modification of the appropriate penalty.

Under Colorado law, a "person who commits a violation of either the secretary of state's rules concerning campaign and political finance or [the Fair Campaign Practices Act ("FCPA")] that is not specifically listed in article XXVIII of the state constitution shall be subject to any of the sanctions specified in section 10 of article XXVIII of the state constitution or in [section 1-45-111.5]." § 1-45-111.5(1.5)(b). However, neither article XXVIII nor § 1-45-111.5 specifies sanctions for failure to include compliant disclaimers on communications.

Section 1-45-111.5(1) does provide the Secretary with authority to "promulgate such rules . . . as may be necessary to enforce and administer any provision of [the FCPA]." The Secretary has exercised such authority to promulgate Rule 23.3, "Settlement of complaints and fine structure for violations." 8 CCR 1505-6, Rule 23.3. With regards to noncompliant disclaimer statements that are mitigated before an election, Rule 23.3 establishes a fine of "at least 5 percent cost of the noncompliant communication including cost to broadcast." *Id.* Rule 23.3.3(d)(1). If the noncompliant communications are not mitigated prior to the election, the fine rises to "at least 10 percent." *Id.* Rule 23.3.3(d)(2).

Once that amount is established, the Rule next sets out aggravating and mitigating factors to be considered: (a) the "nature and extent of the violation;" (b) the "timing of the violation (including proximity to the election);" (c) the "ability or effort to mitigate the violation;" (d) whether there is any "evidence of an intentional act or a pattern or practice of misconduct;" and (e) the "extent to which the harm caused by the violation or the value of the violation cannot be reasonably calculated." *Id.* Rule 23.3.5(a)–(e). Finally, the rule permits "other aggravating or mitigating factors" to be considered "in reaching a just and equitable outcome." *Id.* Rule 23.3.5(f).

In considering the appropriate penalty for No on EE's violation, the Deputy Secretary looked to these rules for guidance. R. at 171–72. Because No on EE had taken steps to mitigate the noncompliant communications, R. at 157, the Deputy

looked to Rule 23.3.3(d)(1), which provides for "a fine of at least 5% cost of the noncompliant communication including cost to broadcast," *id.* at 172; 8 CCR 1505-6, Rule 23.3.3(d)(1). Applied to No on EE, that would result in a fine of between $150,000 and $175,000. R. at 173.

However, the Deputy Secretary also considered the mitigating and aggravating factors found at Rule 23.3.5. R. at 172. Applying those factors, the Deputy Secretary reduced the penalty from 5% of the cost of the communications to 1% and imposed a fine of $30,000. *Id.* at 175.

STANDARD OF REVIEW

Under the State Administrative Procedure Act ("APA"), "any person adversely affected or aggrieved by any agency action may commence an action for judicial review in the district court." § 24-4-106(4). "If the court finds no error, it shall affirm the agency action." § 24-4-106(7)(a). The court shall "set aside the agency action . . . if the court finds that the agency action is" "arbitrary or capricious"; "contrary to constitutional right"; "in excess of statutory . . . authority"; "an abuse . . . of discretion"; "unsupported by substantial evidence when the record is considered as a whole"; or "otherwise contrary to law." § 24-4-106(7)(b). "In making these determinations, the court shall 'review the whole record or such portions thereof as may be cited by any party' and 'determine all questions of law and interpret the statutory and constitutional provisions involved[.]'" *Black Diamond Fund, LLLP v. Joseph*, 211 P.3d 727, 730 (Colo. App. 2009) (quoting § 24-

4-106(7)). Courts also accept the agency's factual findings unless they are clearly erroneous or unsupported by evidence in the record. *See, e.g.*, *Colo. Educ. Ass'n v. Rutt*, 194 P.3d 65, 77 (Colo. 2008).

Courts must "presume the validity and regularity of the administrative proceedings and resolve all reasonable doubts as to the correctness of the administrative ruling in favor of the agency." *Romero v. Colo. Dep't of Human Servs.*, 2018 COA 2, ¶ 25, 417 P.3d 914, 920. In addition, a court "may consider and defer to an agency's interpretation of its own enabling statute and regulations," though the court is "not bound by the agency's interpretation." *Bd. of Cty Comm'rs of San Miguel Cty. v. Colo. Pub. Utils. Comm'n*, 157 P.3d 1083, 1088 (Colo. 2007).

ARGUMENT

In this judicial review of agency action, No on EE concedes that its disclaimer statements did not comply with Colorado law. Pl.'s Br. at 2; *see also* § 1-45-108.3 (requiring disclaimer statements on certain communications and that those disclaimer statements conform to the requirements of § 1-45-107.5(5)); § 1-45-107.5(5) (requiring disclaimer statements to identify a natural person who is the registered agent of a non-natural person who pays for a communication). Nonetheless, it asks this Court to vacate the fine imposed on that violation, first on the grounds that the registered agent requirement is unconstitutional as applied to No on EE, and second because it violates No on EE's rights under the Eighth Amendment to the U.S. Constitution.

But courts up to and including the U.S. Supreme Court have routinely upheld disclaimer requirements, and the fine imposed on No on EE was already mitigated down to just 20% of the recommended penalty under Colorado law. The Court should affirm the Final Agency Order.

I. No on EE's as applied First Amendment challenge should be rejected.

No on EE contends that the Final Agency Order should be set aside because applying Colorado's disclaimer requirements to it violates its First Amendment rights. For two reasons, this Court should reject this argument. First, No on EE failed to raise this as applied challenge before the hearing officer in the administrative proceedings, and thus has waived it for judicial review. Second, even if this Court addresses the issue, Colorado's disclaimer requirements are constitutional as applied to No on EE.

A. By failing to raise its as applied constitutional challenge during the administrative proceedings, No on EE has waived the issue for judicial review.

"Ordinarily, an issue not raised before a hearing officer is waived." *Farmer v. Colo. Parks & Wildlife Comm'n*, 2016 COA 120, ¶ 16. A narrow exception exists for issues that an administrative agency has no authority to decide. *See, e.g.*, *Cerbo v. Protect Colo. Jobs, Inc.*, 240 P.3d 495, 540 (Colo. App. 2010). Facial constitutional challenges are one such issue. *See id.* (noting administrative agencies have no authority to decide whether statutes are unconstitutional on their face). There is a distinction, however, between facial constitutional challenges and as applied

constitutional challenges. *See, e.g.*, *Horrell v. Dep't of Admin.*, 861 P.2d 1194, 1198 & n.4 (Colo. 1993). Although administrative agencies have no power to adjudicate the former, they may "evaluate whether an otherwise constitutional statute has been unconstitutionally applied" in a given case. *Id.* at 1198 n.4. Because administrative agencies can address as applied challenges, the failure to raise the issue below should constitute a waiver. *See Williams v. ICOA*, 128 P.3d 335, 339 (Colo. App. 2006), *rev'd on other grounds by Williams v. Kunau*, 147 P.3d 33 (Colo. 2006) (refusing to consider as applied challenge not raised during administrative proceedings); *but cf. United Airlines v. ICAO*, 2013 COA 48, ¶ 29 (declining to follow *Williams* and considering unpreserved as applied challenge for the first time on judicial review).

Here, No on EE presents an as applied constitutional challenge to the statutory requirement that it list its registered agent on its paid for by disclaimer. *See* Opening Br. at 2 ("Plaintiff challenges . . . the constitutionality, as applied to its committee, of the requirement to list the registered agent in campaign materials."). No on EE did not raise this issue with the hearing officer during the administrative proceedings. Because this issue was not, but could have been, raised during the administrative proceedings, this Court should refuse to consider it for the first time on judicial review.[1]

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[1] No on EE also failed to file exceptions to the hearing officer's initial decision as permitted by section 24-4-105(14). R at 164. Accordingly, No on EE has waived its

B. Colorado's disclaimer law is constitutional as applied to No on EE.

Even if this Court agrees to consider No on EE's constitutional challenge, that challenge fails on the merits. Case law consistently recognizes the existence of a sufficient state interest in disclaimer laws like the one applied to No on EE, and nothing in the record indicates that applying those laws here unduly burdens No on EE's First Amendment rights.

In *Citizens United v. F.E.C.*, 558 U.S. 310, 366–71 (2010), the Supreme Court voted 8-1 to uphold the federal disclaimer laws. In doing so, the Court noted that "[d]isclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities, and do not prevent anyone from speaking." *Id.* at 366 (quotations omitted). For this reason, disclaimer laws are subject to "exacting scrutiny," *id.*, which requires "a substantial relation between the disclosure requirement and a sufficiently important government interest." *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021). Although the government need not choose the least restrictive means of achieving its objective, exacting scrutiny requires the law to be narrowly tailored to achieve the government's interest. *Id.* at 2384.

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right to judicial review of the Final Agency Order concluding that it was subject to the disclaimer law. § 24-4-105(14)(c). No on EE cannot circumvent this clear bar by raising an as applied challenge to that application for the first time on judicial review.

Under Colorado law, certain political entities, including issue committees, must include disclaimer statements on electioneering communications on which they spend more than $1,000 per calendar year. § 1-45-108.3(1).[2] This advances Colorado's informational interest in ensuring that voters know who is seeking to influence their vote. *See, e.g.*, *Citizens United*, 558 U.S. at 368 (upholding federal disclaimer law and finding that disclaimers "provide the electorate with information," and "insure that the voters are fully informed about the person or group speaking") (quotations omitted); *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978) ("Identification of the source of advertising may be required as a means of disclosure, so that people will be able to evaluate the arguments to which they are being subjected."); *Gaspee Proj. v. Mederos*, 13 F.4th 79, 86 (1st Cir. 2021) ("The case law makes pellucid that [the state's] interest in an informed electorate vis-à-vis the source of election-related spending is sufficiently important to support reasonable disclosure and disclaimer regulations.").

There is no dispute that Colorado may require issue committees to include "paid for by" disclaimers on their communications. *See* Opening Br. at 3. The only question is whether Colorado's decision to require non-natural persons to also

[2] By exempting small-dollar expenditures, Colorado's disclaimer requirement is narrowly tailored to only reach entities that are spending substantial sums to influence the electorate. Regardless, in light of the millions of dollars spent by No on EE, the $1,000-requirement is not at issue in this appeal.

identify the natural person who has chosen to be the legal face of the organization somehow changes the calculation. It does not.

The registered agent requirement has existed in Colorado since 2010. In the wake of the *Citizens United* decision, the General Assembly enacted two relevant bills. The first, S.B. 10-203, required independent expenditures to include a disclaimer—including the registered agent if the entity making the expenditure was a non-natural person—on certain communications. 2010 Colo. Sess. Laws 1233–34, § 4, available at https://tinyurl.com/3tnmpy2r. In passing S.B. 10-203, the General Assembly noted that *Citizens United* did "not limit the plenary power of the general assembly . . . to require disclaimers on advertisements, as the purpose of . . . disclaimer requirements is to allow the public to know who is attempting to influence their vote."

The second bill, H.B. 10-1370, extended the disclaimer requirement to issue committees like No on EE. 2010 Colo. Sess. Laws 1239, available at https://tinyurl.com/y6wv7jnj. H.B. 10-1370 included an extensive legislative declaration, and noted that its purpose was to provide voters with "information on the sources of election-related spending." *Id.* at 1240, § 1(f).

In 2019, the General Assembly built on the success of the disclaimer requirement, expanding it to cover a broader range of organizations and modes of communication. 2019 Colo. Sess. Laws 3040. Relevant here, that legislation expanded the registered agent requirement to cover not only independent

expenditures, but communications funded by issue committees like No on EE. *See* § 1-45-108.3(1)–(2); § 1-45-107.5(5). It also expanded the types of communications subject to the disclaimer requirement. § 1-45-108.3(1).

The General Assembly concluded in 2010, and again in 2019, that the registered agent requirement promotes the state's informational interest by further illuminating the sources of election-related advocacy. As the U.S. Supreme Court has observed, disclaimers help the electorate sift through the "dubious and misleading names" election-related groups often use to fund election-related communications. *Citizens United*, 588 U.S. at 367 (quoting *McConnell v. F.E.C.*, 540 U.S. 93, 197 (2003)). "Paid for By No on EE—A Bad Deal for Colorado" tells voters little about the source of a communication. By requiring issue committees to identify a natural person, Colorado ensures its voters know the name of a natural person associated with the organization paying for the communication.

Courts have consistently upheld such laws. The *Gaspee* case is instructive. 13 F.4th at 91. There, respondents challenged a law requiring their "paid issue-advocacy communications regarding the impact of local referenda" to include disclaimer statements that identified the speaker's top five donors. *Id.* at 83. There, like here, the respondent argued that the donor information did not further the state's informational interest because it was "redundant" with information the speaker was required to publish online. *Id.* at 91; *see also* Opening Br. at 5 (calling the registered agent requirement "duplicative"). The First Circuit rejected that

argument, holding that on-ad information is "a more efficient tool" than that same information being available online, and that on-ad disclosure of a natural person's name "provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names." *Gaspee Proj.*, 13 F.4th at 91.

To be sure, the statute at issue in *Gaspee* mandated the disclosure of an organization's donors, not the entity's registered agent. *See* 17 R.I. Gen. Laws Ann. § 17-25.3-3. But that is a difference in kind, not degree. There, as here, the legislature sought to cut through the "dubious and misleading names" election-related groups often use to fund election-related communications, *see Citizens United*, 588 U.S. at 367, by requiring the disclaimers to identify relevant natural persons. There, the legislature chose the donors, and in Colorado the general assembly chose the individual who agreed to serve as the speaker's legal representative. Both provide relevant information to voters.

With the government's interest established, the burden the registered agent requirement imposed on No on EE is negligible. No on EE's only argument for why the requirement was unduly burdensome to it involves a hypothetical case in which an organization's registered agent changes during the course of a campaign. Opening Br. at 5–6. But No on EE mounts an as applied challenge, *id.* at 2, and there is no evidence in the record that No on EE's registered agent changed during the campaign. Thus, there is no evidence, or allegation, of undue burden stemming from the registered agent requirement.

In fact, upon notice of the complaint, No on EE was able to quickly add the name of its registered agent to many of its campaign materials. R. at 146. The record shows that No on EE was able to add the name of its registered agent to its TV, digital, and radio advertisements within 36 hours. *Id.* And when No on EE did add its registered agent to its communications, it had no effect on the size or content of its message. *Compare* R. at 19 (showing image of door hanger from original complaint without registered agent) *with* R. at 91 (showing image of door hanger after No on EE had added the registered agent). As this case shows, the registered agent requirement is not unduly burdensome.

As applied to No on EE—and indeed, on its face—Colorado's disclaimer law is constitutional. It satisfies exacting scrutiny, and the Court should affirm the Final Agency Order.

II. The mitigated fine imposed on No on EE satisfies the Eighth Amendment.

No on EE next challenges the fine imposed for its violation, alleging that it is "so excessive as to constitute a violation of Plaintiff's Eighth Amendment rights." Opening Br. at 6. But the fine represented less than 1% of the total amount spent on noncompliant advertisements, and reflected the considered regulatory framework established by the Secretary.

Whether a civil fine transgresses the Eighth Amendment's prohibition is a question of proportionality. *See, e.g.*, *People ex rel. Rein v. Jacobs*, 2020 CO 50, ¶ 60

(citing *Colo. Dep't of Labor & Emp't v. Dami Hosp., LLC*, 2019 CO 47M, ¶ 29). In making this assessment, courts consider the fine in light of the underlying offense and will only invalidate the fine if it is "grossly disproportionate" to the violation for which it was imposed. *Id.* Courts also consider whether the fine is aligned with fines for "comparable offenses," as well as the "regulated . . . entity's ability to pay." *Id.*

In imposing the fine here, the Deputy Secretary of State was guided by the Secretary's rules, which themselves impose proportionate penalties. Specifically, the suggested penalty under the Rules ebbs and flows depending on the gravity of the underlying offense. *See* 8 CCR 1505-6, Rule 23.3.3(d)(1) (suggesting a fine of 5% of the cost of the communication for noncompliant communications mitigated prior to an election). The more money spent on a noncompliant communication—which itself is a reasonable proxy for the number of voters subjected to the noncompliant communication—the greater the fine. This proportionate enforcement scheme ensures that fines, including the one here, are directly responsive to scope of the noncompliance.

No on EE's arguments otherwise are unavailing, and, in fact, demonstrate the sensibility of this scheme. According to No on EE, the fine is grossly disproportionate because "prior to this fine the highest assessment for failure to comply with disclaimers was $500." Opening Br. at 7 (citing R. at 196). But that fine was imposed based on distribution of just $6,000 of noncompliant communications. *See In re Libby Szabo for Jeffco*, Procedural Order Regarding Initial Decision (Mar.

15, 2021), *available* at https://tinyurl.com/mts932hk. Here, No on EE distributed over $3 million in noncompliant communications. R. at 141. A proportionate fine should be far greater than $500.

Moreover, the penalty ultimately imposed on No on EE reflected significant mitigation from the suggested sum. First, the Deputy Secretary started from a baseline of 5% of the cost of the communication, even though not all of the communications were cured. *See, e.g.*, R. at 88 (noting that 30% of the Committee's billboards were ultimately cured); *see also* 8 CCR 1505-6, Rule 23.3.3(d) (imposing 5% penalty for noncompliant communications cured prior to the election, and 10% penalty for communications that were not cured before the election).

Starting from this low baseline, the Deputy Secretary then proceeded to apply the mitigating factors at Rule 23.3.5, finding: (1) that No on EE made a significant effort to mitigate the violation, (2) no evidence of an intentional act or pattern or practice of misconduct, and (3) that the nature of the violation warranted mitigation, because the ads in question contained a partial disclaimer. R. at 174–75. Accordingly, the Deputy Secretary mitigated the penalty down "from 5% to 1% of the lower end of the range of Respondent's approximate spending on noncompliant communications." *Id.* at 174.

No on EE spent millions of dollars in 2020 on advertisements encouraging voters to reject Proposition EE. Those advertisements lacked a compliant disclaimer statement, thereby depriving voters of information they—through their elected

representatives—have requested. A fine of 1% of the cost of the noncompliant communications is appropriate, and more than sufficient to comply with the Eighth Amendment's ban on excessive fines.

CONCLUSION

Defendants respectfully request that the Court affirm the Final Agency Order.

Respectfully submitted this 1st day of March, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March, 2022, a true and correct copy of the foregoing **ANSWER BRIEF** was duly filed and electronically served upon all counsel of record for the parties who have entered their appearances in this matter to date through the Colorado Courts E-Filing System.

s/ Xan Serocki
Xan Serocki

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1427 Bannock Street Denver, Colorado 80202	DATE FILED: March 22, 2022 CASE NUMBER: 2021CV33166
Plaintiff: **No On EE—A Bad Deal for Colorado,** **Issue Committee** **v.** **Defendant:** **Christopher Beall, in his official capacity as Colorado Deputy Secretary of State and,** **Jena Griswold, in her official capacity as Colorado Secretary of State**	**▲ COURT USE ONLY ▲**
Attorney for Plaintiff: Suzanne M. Taheri, #23411 MAVEN LAW GROUP 1600 Broadway, Suite 1600 Denver, CO 80202 Phone Number: (303) 263-0844 Email: staheri@mavenlawgroup.com	Case Number: 2021CV033166 Div.: 409 Crtm.:

PLAINTIFF'S REPLY BRIEF

INTRODUCTION

Defendant asserts that this Court should not protect Plaintiff's constitutional rights for three reasons. First, Defendant suggests that because No on EE did not raise its First or Eighth Amendment objections before the hearing officer in the administrative proceedings, the objection was waived for judicial review. Second, Defendant asserts that the disclaimer law does not unduly burden No on EE's First Amendment rights and is constitutional as it applies to this

action. Lastly, Defendant claims that the Deputy Secretary of State's acted appropriately when he unilaterally tripled the fine imposed by the administrative law judge. None of these actions withstand scrutiny, and each of them points to a violation of Plaintiff's constitutional rights.

CONSTITUTIONAL OBJECTIONS AND JURISDICTION

No on EE did not raise constitutional objections during the administrative hearing because an administrative law judge is not entitled to rule on constitutional matters during an administrative hearing. That responsibility first arises at this court.

Plaintiffs did not file exceptions to the $10,000 fine imposed by the administrative law judge. However, after the Deputy Secretary took the matter up on his own accord and tripled the fine. It is from this increased penalty that Plaintiff appeals. It is the severity of the Deputy Secretary's punitive action - a sudden and unexpected tripling of the fine – that triggered No on EE's eighth amendment objection which it otherwise may not have sought relief.

1. The $30,000 fine imposed by the Deputy Secretary of State is arbitrary and capricious.

Defendants have offered no substantial rebuttal for how either the $10,000 fine leveled by the ALJ or the $30,000 fine assessed by the Deputy Secretary of State fits the legal standard which would guard it from challenge. Specifically, Plaintiff has established that the fine is arbitrary or capricious, contrary to constitutional right, and an abuse of discretion.

The fine imposed is arbitrary or capricious because there is no fine established in statute. The legislature did not establish a fine for this particular omission. Instead, the Secretary of State adopted rules establishing a fine that is based upon a percentage of the amount spent and varies depending on whether the Deputy Secretary finds himself satisfied with any of the specified mitigating factors. One of the mitigating factors cited by the Deputy Secretary of State in his

final agency order was cooperation with the investigation. Clearly, the consideration of this as mitigating shows arbitrary intent. The Secretary of State is thus empowered to heap heavier punishment upon those who choose not to cooperate with an investigation – an action that flies in the face of numerous well-established constitutional rights.

2. The Deputy Secretary of State abused his discretion when he tripled the fine imposed on his own motion.

The fine imposed is an abuse of discretion for the aforementioned reasons. Additionally, neither the Department nor the Plaintiff filed exceptions to the ALJ's ruling. Instead, the Deputy Secretary of State took it up on his own. While Plaintiffs acknowledge that it is within the Deputy's authority to do so, this Court stands as a check on that authority. Increasing a fine from $10,000 to $30,000 on his own motion is an abuse of discretion and forced No on EE to request judicial review of the action.

3. There is no compelling governmental interest to justify the disclosure of the designated agent's name on every communication.

Finally, Defendant asserts that the requirement to provide the name of the committee's designated agent on the disclaimer satisfies a compelling government interest, citing *Gaspee Project* v. *Mederos*, 13 F.4th 79 (1st Cir. 2021) as justification. The facts in *Gaspee* are different. The State of Rhode Island's requirement was to list contributors, among other requirements. In the instant case, there is no substantive information to be derived from the name of the registered agent. When the registered agent could be any one of 19 people named Patrick McDonald, viewers of a committee's advertising do not derive any benefit from seeing his name on the committee's advertising.

In fact, the requirement to list the registered agent's name simply stands as an excuse for those opposed to a committee's action to harass or punish the committee for its political activity by wielding the government as a bludgeon against it through the campaign finance complaint process both during and after the election. With each new granular detail added to the disclosure requirement comes another opportunity for political opponents to initiate action against an individual or committee that spends money on speech. This is one of the many reasons why there must be a compelling government interest in enforcing a regulation – something that simply does not exist here.

CONCLUSION

The State has not established a compelling government interest in disclosure of the designated agent's name on electioneering communications. Therefore, the requirement does not pass the First Amendment test. The Deputy Secretary of State used his discretion to triple the fine leveled by the administrative law judge, thus bringing the fine to a level that violates No on EE's eighth amendment rights. The legislature did not establish a fine for this violation. The Secretary's enforcement action cites a rule that applies to disclaimers generally. It does not address the circumstance where only the registered agent is left of the disclaimer. The fine established by the Deputy was in all respects arbitrary, capricious and unconstitutional.

In order to protect the constitution speech rights of No on EE, the Court must vacate the Deputy Secretary of State's final agency action and the associated fine.

Respectfully submitted this 22nd day of March 2022.

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CERTIFICATE OF SERVICE

This is to certify that the filing has been served by the Colorado Courts e-filing system this 22nd day of March, 2022, addressed as follows:

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DISTRICT COURT, CITY & COUNTY OF DENVER, STATE OF COLORADO **1437 Bannock Street** **Denver, Colorado 80202**	DATE FILED: November 8, 2022 CASE NUMBER: 2021CV33166
Plaintiff/Appellant: No On EE—A Bad Deal for Colorado, Issue Committee **v.** **Defendants/Appellees:** Christopher Beall, in his official capacity as Colorado Deputy Secretary of State and, Jena Griswold, in her official capacity as Colorado Secretary of State.	▲ **COURT USE ONLY** ▲ **Case No: 21CV33166** **Courtroom: 409**

ORDER REGARDING COMPLAINT FOR JUDICIAL REVIEW OF AGENCY ACTION

THIS MATTER comes before the Court upon the *Complaint for Judicial Review of Agency Action*, filed herein on October 7, 2021. Briefing of the issues was completed on March 23, 2022. The Court, upon review of the Complaint, Defendants' Answer, all briefings, the agency record, and all relevant authorities, FINDS and ORDERS the following:

BACKGROUND

Under Colorado's Fair Campaign Practices Act (C.R.S. §1-45-101 et seq.) ("FCPA"), certain entities that communicate about political issues during a campaign must include "paid for by" disclaimer statements on those communications. These disclaimer statements must identify the name of the person or entity paying for the communication, and, if the entity is a non-natural person, the name of the entity's registered agent. C.R.S. §1-45-108.3(1) & (2) and §1-45-107.5(5).

Appellant, No on EE—A Bad Deal for Colorado ("No on EE"), is a registered issue committee that was created for the purpose of opposing Proposition EE on the November 2020 ballot. R. at 78. Proposition EE was a ballot question proposing a new tax on tobacco and nicotine products. In preparing for its campaign, No on EE hired a campaign consultant and worked with an experienced compliance officer. R. at 124.

During the 2020 election cycle, No on EE paid for billboards, television advertisements, streaming ads and a few door hangers. R. at 84-85. The parties stipulated that No on EE paid between $3 and $3.5 million for these communications, none of which contained the name of No on EE's registered agent. R. at 79. On October 8, 2020, a third-party complaint was filed against No on EE for the noncompliant communications pursuant to the FCPA. R. at 78. Immediately after receiving notice of the complaint, No on EE took significant actions to cure the noncompliant disclaimers. R. at 140. Specifically, No on EE reprinted door hangers to add the name of the registered agent, added the registered agent's name to 30% of the committee's billboards and took down the billboards that could not be corrected, cured No on EE's website to include the registered agent's name, and within 36 hours of the complaint, replaced all of the committee's television, digital and radio advertisements to include the name of the registered agent. R. at 140.

On May 21, 2021, an Administrative Law Judge ("ALJ") held a hearing to address No on EE's noncompliant disclaimers and to determine what, if any, sanctions should be imposed. R. at 103-38. At the hearing, the Elections Division of the Secretary of State ("the Division") requested a $150,000 to $350,000 fine based on Secretary of State's Rule 23.3.3(d) (hereinafter "SOS Rule 23.3.3"). R. at 131, 141.

At the hearing, No on EE acknowledged the government's interests that voters deserve to know how money is spent in the campaign and that enacted laws should address how they support and protect the voters of Colorado. R. at 125-26. However, in opposition to the Secretary of State's request for sanctions, the representative for No on EE argued,

> I believe this new law requiring the registered agent on all campaign collateral to be overly burdensome in light of [the] actual benefit to the voter. No contact information is required along with the name, so no matter what, the voter must still go to the [Secretary of State] website and look up the registered agent's information. R. at 126.

On May 26, 2021, the ALJ issued an Initial Decision, finding that No on EE violated Colorado campaign finance law. R. at 139-43. The Initial Decision addressed No on EE's overly burdensome argument and rejected the Division's fine request:

> A fine in the range proposed by the Division is exorbitant. In addition, it would likely never be paid. As argued by the Committee, the electorate had other [publicly] available means to identify the registered agent[.] Considering the nature of the violation, but also considering the great deal of money spent by the Committee on communications not conforming to the law, a $10,000 fine is the appropriate sanction.

R. at 142. Neither No on EE nor the Elections Division of the Secretary of State's Office filed exceptions to, or appealed, the Initial Decision. *See* R. at 152.

On May 27, 2021, the Deputy Secretary of State, Christopher Beall (hereinafter "the Deputy"), initiated review of the Initial Decision on his own motion as permitted by C.R.S. § 1-45-111.7(6)(b).

On September 2, 2021, the Deputy issued a Final Agency Order. R. at 162-76. The Final Agency Order reviewed the applicable sanction provisions, the Initial Decision, the facts on the record, and all mitigating factors. The Final Agency Order concluded that (1) a penalty

equivalent to 5% of the amount spent on improper communications was within the scope of the law as set forth in SOS Rule 23.3.3, and therefore was not exorbitant; (2) the Initial Decision's $10,000 penalty was inadequate to reflect the extent of No on EE's noncompliant communications; and (3) mitigating factors required a reduction in the 5% penalty imposed by SOS Rule 23.3.3(d)(1). *Id.* The Deputy imposed a fine of $30,000, roughly 1% of the total $3 million cost of the noncompliant communications. R. at 175.

On October 7, 2021, No on EE filed this appeal to challenge the Final Agency Order on the grounds that the Final Agency Order violates No on EE's First and Eighth Amendment rights; and that the Final Agency Order is arbitrary and capricious.

The Court takes each argument in turn.

STANDARD OF REVIEW

The Colorado Administrative Procedure Act ("APA"), C.R.S. § 24-4-106 sets forth the standard of review for agency actions. In deciding whether to set aside or uphold an agency decision, a court shall review the agency record, determine all questions of law, and interpret the statutory and constitutional provisions involved. C.R.S. § 24-4-106(7). Administrative agency decisions generally are presumptively valid, *Colo. Div. of Ins. v. Auto-Owner's Ins. Co.*, 219 P.3d 371, 376 (Colo. App. 2009), and all reasonable doubts as to the correctness of agency rulings are resolved in favor of the agency. *Gessler v. Grossman*, 2015 COA 62, ¶ 11, 488 P.3d 53, 58. Upon a court's review of an administrative agency decision, the "court must give deference to the reasonable interpretations of the administrative agency that is authorized to administer and enforce the statute at issue." *Gessler*, 2015 COA at ¶ 12; *see also Morris-Schindler*, 251 P.3d 1076, 1081 (Colo. App. 2010) (holding that a reviewing court may

only determine whether the record supports the agency's decision, not whether it would arrive at a different decision). However, a court will set aside an agency action concerning a factual issue if there is no competent evidence in the record to support the agency's determination. *AutoOwner's*, 219 P.3d at 376.

Deference to an agency's interpretations is not warranted when the interpretation is contrary to the statute. *AutoOwner's*, 219 P.3d at 376. A court may reverse an agency decision if it finds that the agency action is (1) arbitrary or capricious; (2) an abuse or clearly unwarranted exercise of discretion; (3) unsupported by substantial evidence when the record is considered as a whole; or (4) otherwise contrary to law. C.R.S. § 24-4-106(7)(b); *Idowu v. Nesbitt*, 338 P.3d 1078, 1082 (Colo. App. 2014). An agency decision is arbitrary and capricious if a "reasonable person, considering all of the evidence in the record, would fairly and honestly be compelled to reach a different decision." *McPeck v. Colo. Dep't of Soc. Servs.*, 919 P.2d 942, 947 (Colo. App. 1996). The party challenging the agency action carries the burden to overcome the presumption that the agency's acts were proper. *Chostner v. Colo. Water Quality Control Comm'n*, 2013 COA 111, ¶ 25, 327 P.3d 290, 296.

ANALYSIS

I. The FCPA's disclaimer statement requirement

The FCPA's disclaimer provision requires an issue committee "making an expenditure in excess of . . . one thousand dollars per calendar year on a communication that . . . supports or opposes a ballot issue or ballot question, and that is broadcast, printed, . . . or . . . otherwise distributed [to] include in the communication a disclaimer statement[.]" C.R.S. § 1-45-108.3(1). That disclaimer statement "must conform to the requirements specified in section

1-45-107.5(5) for content, size, duration, and placement." C.R.S. § 1-45-108.3(2). Those requirements, in turn, are that the disclaimer statement must include the following: "(I) The communication has been 'paid for by (full name of the person paying for the communication)'; and (II) *Identifies a natural person who is the registered agent if the person identified in subsection [(I)] . . . is not a natural person*." C.R.S. §1-45-107.5(5)(a)(I)–(II) (emphasis added).

The FCPA's disclaimer provision is silent on appropriate penalties for noncompliant disclaimers. *See* C.R.S. § 1-45-108.3. Additionally, C.R.S. § 1-45-111.5(1.5)(b) does not provide any guidance as to appropriate sanctions or penalties, and section 10 of the Colorado Constitution article XXVIII[1] does not apply to noncompliant disclaimer communications.

C.R.S. § 1-45-111.5(1) authorizes the Secretary of State to promulgate laws for the enforcement and administration of the FCPA. In 2020, the Secretary of State promulgated SOS Rule 23.3 to enforce campaign and political finance laws and to establish penalties for violations of those laws. The current version of SOS Rule 23.3 was effective as of September 30, 2020. 8 Colo. Code Regs. 1505-6:23.3. Under SOS Rule 23.3.3(d), noncompliant disclaimer communications which were mitigated prior to the election are subject to a fine of at least 5% of the cost of the communication. 8 Colo. Code Regs. § 1505-6:23.3.3(d)(1). Noncompliant communications not mitigated prior to the election are subject to a fine of at least 10% of the cost of the communication. 8 Colo. Code Regs. § 1505-6:23.3.3(d)(2). SOS

[1] *See* Colo. Const. art. XXVIII, § 10(1) (authorizing sanctions for contribution and voluntary spending limit violations); and Colo. Const. art. XXVIII, § 10(2)(a) (authorizing sanctions for filing and reporting violations).

Rule 23.3.5 permits the elections division to consider mitigating and aggravating factors in determining a civil fine. 8 Colo. Code Regs. § 1505-6:23.3.5(a)-(f).

II. No on EE's First Amendment challenge fails as applied and on its face.

No on EE contends that the registered agent disclaimer requirement of C.R.S. § 1-45-107.5(5)(a)(II) unconstitutionally violates No on EE's First Amendment rights because (1) the Final Agency Order failed to identify the government's compelling government interest to disclose the registered agent's name, and (2) the requirement is unduly burdensome and redundant. The Deputy and Secretary of State contend that No on EE's First Amendment challenge is waived because No on EE failed to raise the constitutionality of the registered agent disclaimer requirement, as applied to No on EE, with the ALJ during the administrative proceeding.

Because it is unclear to the Court whether No on EE is making an as applied[2] or facial[3] First Amendment challenge to the disclaimer requirement, the Court will consider both arguments. *See Horrell v. Dep't of Administration*, 861 P.2d 1194, 1202 (Colo. 1993) (Mullarkey, J., dissenting).

a. <u>No on EE's "as applied" challenge to the disclaimer requirement fails because the compelling government interest argument was not introduced before the ALJ, and No on EE failed to demonstrate that the disclaimer requirement is unconstitutional as applied to No on EE beyond a reasonable doubt.</u>

[2] No on EE's Opening Brief challenges "the necessity and thus the constitutionality, as applied to [No on EE], of the requirement to list the registered agent in campaign materials." Such an argument suggests an "as applied" challenge to the constitutionality of the statute. Opening Br. at 2.
[3] No on EE's Complaint alleges that the disclaimer statute is not narrowly tailored. Compl. ¶ 24. Such an argument suggests a facial challenge to the constitutionality of the statute.

Challenges to the constitutionality of a statute as applied to parties may be addressed by the administrative agency. *Horrell*, 861 P.2d at 1198 n.4 (Colo. 1993). Issues not raised before a hearing officer, or an ALJ, are waived. *Campaign Integrity Watchdog v. Colo. Republican Comm.*, 2017 COA 126, ¶ 40, 488 P.3d 284, 290 (citing *Chostner v. Colo. Water Quality Control Comm'n*, 2013 COA 111, ¶ 39, 327 P.3d 290, 298); *see also Independence Institute v. Coffman*, 209 P.3d 1130, 1141 (Colo. App. 2008) (concluding that the appellant's "as applied" argument could not be raised for the first time on appeal); *Wolf Creek Ski Corp. v. Bd. of Cnty. Comm'rs of Mineral Cnty*, 170 P.3d 821, 831 (Colo. App. 2007) ("Generally we address only arguments that were raised in the administrative proceedings under review."). In election divisions cases, any party seeking to reverse or modify an ALJ's decision may file exceptions with the Deputy. R. at 152-53; C.R.S. §24-4-105.

No on EE waived its as applied compelling government interest challenge because the argument was not raised in the administrative proceeding and No on EE failed to file exceptions to the Initial Decision. *See Campaign Integrity Watchdog*, ¶ 40. In its briefing before this Court, No on EE contends that "*the final agency order* identifies no governmental interest to be achieved through the disclosure." Opening Br. at 5 (emphasis added). However, there was no reason for either the ALJ or the Deputy to address the issue of "compelling governmental interest" because that issue was never presented to the ALJ or the Deputy. Rather, during the hearing, No on EE's campaign consultant acknowledged the government's interests that (1) voters deserve to know how money is spent in the campaign and (2) enacted laws should address how they support and protect the voters of Colorado. R. at 125-126. The ALJ reviewed this testimony in formulating the Initial Decision. The Initial Decision

makes no mention of government interest, compelling or otherwise, and No on EE filed no exceptions to the Initial Decision's silence on a compelling government interest. Therefore, No on EE waived its initial "as applied" First Amendment challenge regarding a compelling governmental interest to the disclaimer requirement.

With respect to No on EE's as applied unduly burdensome argument, No on EE preserved this argument for appeal. *See Campaign Integrity Watchdog*, ¶ 40. The record establishes that No on EE's campaign consultant testified before the ALJ that (1) the disclaimer requirement was overly burdensome and (2) even if voters were provided with the name of the registered agent, voters would still be required to access the Secretary of State website to look up No on EE's registered agent's information. R. at 126. The Initial Decision briefly acknowledged No on EE's argument that the electorate had other publicly available means to identify the registered agent. Therefore, because the issue of whether the disclaimer requirement was unduly burdensome was raised before the ALJ, No on EE preserved this First Amendment challenge to the registered agent disclaimer requirement as applied to it. However, this Court does not find that the registered agent disclaimer requirement is unduly burdensome or unconstitutional as applied to No on EE.

A party asserting an as applied challenge "contends that the statute would be unconstitutional under the circumstances in which the [party] has acted or proposes to act." *Sanger v. Dennis*, 148 P.3d 404, 410 (Colo. App. 2006). Courts presume statutes are constitutional. *No Laporte Gravel Corp. v. Bd. of Cty. Comm'rs of Larimer Cty*, 2022 COA 6M, ¶ 40, 507 P.3d 1053, 1062. Therefore, a party making an as applied challenge "must establish the unconstitutionality of the statute, as applied to [it], beyond a reasonable doubt." *Id*. No

on EE has failed to establish the unconstitutionality, or burden, of the disclaimer requirement as applied to No on EE beyond a reasonable doubt.

"[D]isclosure requirements in the electoral context" may be upheld if they survive "exacting scrutiny." *Sampson v. Buescher*, 625 F.3d 1247, 1255 (10th Cir. 2010), *citing Doe v. Reed*, 561 U.S. 186, 196, 130 S.Ct. 2811, 2818, 177 L.Ed.2d 493 (2010). "That standard requires a substantial relation between the disclosure requirement and a sufficiently important governmental interest. To withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Id*. (citation and internal quotation marks omitted). "In determining whether these [governmental] interests are sufficient to justify the requirements we must look to the extent of the burden that they place on individual rights." *Id.*, *citing Buckley v. Valeo*, 424 U.S. 1, 68, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

In *Sampson*, the plaintiffs spent $782.02 on nonmonetary contributions before they were cited for failure to comply with the Colorado issue committee reporting requirements. *Sampson*, 625 F.3d at 1251-52. The *Sampson* plaintiffs were subject to a civil penalty that approached or exceeded the value of their contributions. *Id.* at 1250, 1261. The *Sampson* plaintiffs were required to interpret complex campaign financial-disclosure requirements, later retained counsel, were subject to a subpoena to produce, and each plaintiff took off work to attend the hearing. *Id.* at 1251-53. The *Sampson* court held that the burdens placed on plaintiffs by the campaign disclosure statutes were substantial: The plaintiffs, ordinary citizens, were required to master Colorado campaign financial-disclosure laws, leading them to hire counsel; the plaintiffs' attorneys fees would exceed the $782.02 contributions; the

plaintiffs were burdened by spending time, energy, and money to review the law and attend the hearing; and finally, the expenditures were "sufficiently small that they [said] little about the contributors' views of their financial interest." *Id.* at 1259-60.

In *Sampson*, the court recognized the need to balance governmental interest behind the statutory disclosure requirements and the burdens placed on the issue committees.

> We do not attempt to draw a bright line below which a ballot-issue committee cannot be required to report contributions and expenditures. The case before us is quite unlike ones involving the expenditure of tens of millions of dollars on ballot issues presenting "complex policy proposals." *Cal. Pro–Life Council, Inc. v. Getman*, 328 F.3d 1088, 1105 (9th Cir. 2003). We say only that Plaintiffs' contributions and expenditures are well below the line.

Sampson, 625 F.3d at 1261.

In contrast to the factual circumstances presented by the *Sampson* case, this Court finds the disclaimer requirements and associated fines are not unduly burdensome because No on EE's expenditures were tremendous ($3 to $3.5 million); including the proper disclaimer in the first instance would not have required any additional effort on the part of No on EE; and the efforts ultimately required to mitigate the noncompliant communications were modest. Indeed, No on EE was able to correct their television and media advertisements within 36 hours of being informed of the violation. Moreover, No on EE did not present any information to the ALJ or this Court as to the financial costs associated with remedying the noncompliant disclosures.

Therefore, No on EE has failed to demonstrate beyond a reasonable doubt that the registered agent disclaimer requirement and $30,000 fine is unconstitutionally burdensome

as applied to No on EE. Accordingly, No on EE's as applied First Amendment challenge is DENIED

b. No on EE's facial challenge to the disclaimer requirement meets exacting scrutiny.

Administrative agencies lack jurisdiction to rule on facial challenges to the constitutionality of a statute. *Arapahoe Roofing and Sheet Metal, Inc. v. City and Cty. of Denver*, 831 P.2d 451, 454 (Colo. 1992); *see also Horrell v. Dep't of Admin.*, 861 P.2d 1194, 1198-99 (Colo. 1993) (holding that the State Personnel Board had no authority to determine whether acts of the legislature were constitutional on their face because none of the constitutional or statutory provisions delineating authority to the Board permitted the Board to enter an order declaring that a statute facially violated constitutional provisions). Instead, the proper forum for facial constitutional challenges is the district court. *Arapahoe Roofing*, 861 P.2d at 454; § 24-4-106(7)(d). "The . . . application of a constitutional standard [is a] question[ ] of law subject to *de novo* review." *Cerbo v. Protect Colo. Jobs, Inc.*, 240 P.3d 495, 500 (Colo. App. 2010).

"Requiring reporting and disclosure for campaign activities burdens the First Amendment freedom of association and, to a lesser degree, the freedom of speech." *Campaign Integrity Watchdog v. All. for a Safe & Indep. Woodmen Hills*, 2018 CO 7, ¶ 38, 409 P.3d 357, 364. (citing *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L.Ed. 2d 659 (1976)). However, "[t]he burden on speech is limited because reporting and disclosure requirements 'impose no ceiling on campaign-related activities,' . . . and 'do not prevent anyone from speaking.'" *Id.* (citing *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 366, 130 S. Ct.

876, 914, 175 L.Ed. 2d 753 (2010) and *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 201, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003), *overruled on other grounds by Citizens United*)). Due to the burden on constitutional freedoms, campaign disclosure requirements must survive an exacting scrutiny standard. *Id.* ¶ 39.

Under the exacting scrutiny standard, the challenged requirement must be substantially related and narrowly tailored to serve a sufficiently important government interest. *Ams. For Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383, 210 L.Ed.2d 716 (2021). Providing the electorate with information is a sufficiently important governmental interest. *Independence Inst. v. Williams*, 812 F.3d 787, 792 (10th Cir. 2016) (citing *Buckley*, 424 U.S. at 66-68, 96 S.Ct. 612); *Citizens United v. Gessler*, 773 F.3d 200, 210 (10th Cir. 2014). Additionally, the US Supreme Court has recognized that "disclosure serves informational functions, as well as the prevention of corruption and the enforcement of the contribution limitations." *Buckley v. Valeo*, 424 U.S. 1, 83, 96 S. Ct. 612, 665, 46 L. Ed. 2d 659 (1976).

"To withstand [exacting] scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Ams. For Prosperity Found.*, 141 S.Ct. at 2383 (citing *Doe v. Reed*, 561 U.S. 186, 196, 130 S.Ct. 2811, 177 L.ed.2d 493(2010)). Although the government need not choose the least restrictive means of achieving its objective, exacting scrutiny requires the law to be narrowly tailored to achieve the government's interest. *Ams. For Prosperity Found.*, 141 S.Ct. at 2384. This "require[s] a fit that is not necessarily perfect, but reasonable." *Id.* Thus, the questions here are (1) whether the Secretary of State's informational interest is sufficiently important to support the registered agent disclaimer requirement, and (2) whether the registered agent

disclaimer requirement is substantially related and narrowly tailored to serve a sufficiently important government interest.

i. Providing the electorate with information about the source of election-related spending is a sufficiently important government interest.

There is a sufficiently important government interest in including the registered agent disclaimer. *See Independence Inst.*, 812 F.3d at 792; *Gaspee Project v. Mederos*, 13 F.4th 79, 86 (1st Cir. 2021) ("The case law makes pellucid that [the government] interest in an informed electorate vis-à-vis the source of election-related spending is sufficiently important to support reasonable disclosure and disclaimer regulations.").

In determining whether a governmental interest is "sufficient to justify the requirements, [the court] must look to the extent of the burden that [the requirement] place[s] on individual rights." *Sampson v. Buescher*, 625 F.3d 1247, 1255 (10th Cir. 2010) (citing *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S.Ct. 612, 46 L.d.2d 659 (1976)). Here, the extent of the burden on individual rights is minimal: as part of a required disclaimer statement which already requires identification of the person or entity paying for the communication, an issue committee also must include the name of its registered agent if the "paid for by" individual is not a natural person. C.R.S. §1-45-107.5(5)(a)(I)-(II). This disclaimer obligation does not prevent anyone from speaking. *Campaign Integrity Watchdog*, 2018 CO at ¶ 38.

Providing the Colorado voters with additional information regarding the source of election-related spending is sufficient to meet the requirements of exacting scrutiny. Identifying an individual that is associated with the issue committee provides useful information to voters that helps voters to identify actual individuals that are associated with

the issue committee and naming an individual reduces the appearance of corruption associated with a face-less entity.

ii. The disclaimer requirement is substantially related and narrowly tailored to serve a sufficiently important government interest.

The FCPA's disclaimer requirement is substantially related to providing the electorate with information regarding the person or group speaking. *See, e.g.*, *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 368, 130 S. Ct. 876, 915, 175 L.Ed. 2d 753 (2010)(upholding federal disclaimer law and finding that disclaimers "provide the electorate with information," and "insure that the voters are fully informed about the person or group speaking") (quotations omitted); *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32, 98 S. Ct. 1407, 1424, 55 L.Ed.2d 707 (1978) ("Identification of the source of advertising may be required as a means of disclosure, so that people will be able to evaluate the arguments to which they are being subjected."). If the "paid for by" disclaimer lists a non-natural person, the registered agent requirement provides voters with more information about the person speaking by identifying at least one person associated with the issue committee.

The registered agent disclaimer requirement is narrowly tailored. Under the FCPA, issue committees must include disclaimer statements on electioneering communications on which they spend more than $1,000 per calendar year. C.R.S. § 1-45-108.3(1). The registered agent's name is only necessary where the "paid for by" individual is a non-natural person. First, targeting high-dollar expenditures narrowly tailors the disclosure requirement to only reach entities spending substantial sums who may influence the electorate. Second, requiring the identification of the registered agent where an issue committee is not a natural

person is narrowly tailored because it does not require disclosure of all contributors to the issue committee, but rather provides some information regarding a natural person that is associated with the issue committee so an interested voter has some information from which the voter can learn about the backers of the issue committee. In other words, identifying the registered agent helps "put a face to the name"—thereby providing voters with important information.

Thus, the registered agent disclaimer requirement is substantially related and narrowly tailored to provide the electorate with information regarding the entities or individuals supporting high dollar communications on a particular political issue. Accordingly, the registered agent disclaimer requirement satisfies exacting scrutiny, and No on EE's facial First Amendment challenge is DENIED.

III. The $30,000 fine assessed by the Deputy against No on EE does not constitute a violation of No on EE's Eighth Amendment rights.

No on EE argues that the $30,000 fine constitutes an excessive penalty in violation of the Eighth Amendment of United States Constitution and the Colorado Constitution. No on EE further contends that the Deputy relied on arbitrary and unknowable standards to establish the chosen monetary fine and reviewed irrelevant factors in making his determination of an appropriate fine. The Court concludes that the $30,000 fine is not excessive, that the Deputy relied on known and relevant standards, and that Deputy did not abuse his discretion.

Generally, statutorily-authorized agency-imposed sanctions may not be overturn by the courts. *Patterson Recall Committee, Inc. v. Patterson*, 209 P.3d 1210, 1217 (Colo. App.

2009). "A reviewing court may not substitute its judgment for that of the agency, but must uphold the agency [fine] unless it (1) bears no relation to the conduct, (2) is manifestly excessive in relation to the needs of the public, or (3) is otherwise a gross abuse of discretion." *Id.* (internal quotations omitted).

a. The $30,000 fine bears relation to the noncompliant communications.

As discussed *supra*, SOS Rule 23.3.3(d) authorizes the Deputy to impose a fine of 5% to 10% of the cost of the noncompliant disclaimer communications, depending on whether the issue committee took steps to mitigate the noncompliant communications. Here, the Deputy's $30,000 fine was calculated based on the tremendous scope of No on EE's noncompliant communications and No on EE's mitigation conduct. Thus, the fine bears relation to the magnitude of the noncompliant conduct and the mitigation conduct.

b. The $30,000 fine is not manifestly excessive in relation to the needs of the public for information.

The Eighth Amendment provides protection from the imposition of excessive fines. U.S. Const. Amend. VIII; Colo. Const. art. ii, § 20; *see also Timbs v. Indiana*, 139 S. Ct. 682, 687, 203 L.Ed. 2d 11 (2019) (finding that the Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States by the Due Process Clause of the Fourteenth Amendment).

In Colorado, a regulatory penalty "is constitutionally excessive if it is grossly disproportionate to the gravity of the underlying offense." *People ex rel. Rein v. Jacobs*, 2020 CO 50, ¶ 60, 465 P.3d 1, 14 (citing *Colo. Dep't of Labor & Emp't v. Dami Hospitality, LLC*, 2019 CO 47M, ¶ 29, 44 P.3d 94, 101). In considering the proportionality of the penalty to the

conduct, "a court should consider whether the gravity of the offense is proportional to the severity of the penalty, . . . whether the fine is harsher than fines for comparable offenses in this jurisdiction or than fines of the same offense in other jurisdictions," and whether the entity has the ability to pay. *Id*. This Court concludes that No on EE's $30,000 fine is not grossly disproportionate to the gravity of the underlying offense.

i. Under SOS Rule 23.3.3, the gravity of No on EE's offense is proportional to the severity of the penalty.

No on EE spent between $3 to $3.5 million on noncompliant communications that cost at least $1,000 each and likely influenced a substantial number of Colorado voters before the election and before the proper disclaimer was made. The Final Agency Order considered (1) the fine amount pursuant to the formula articulated in SOS Rule 23.3.3, (2) the amount spent on the noncompliant communications, (3) mitigating factors pursuant to SOS Rule 23.3.5, and (4) the interests of the public are best served by Colorado's strong enforcement of campaign finance law. Once all of those factors were considered, the Deputy determined that it was appropriate to reduce the potential penalty of 5% of the committees spending as permitted under SOS Rule 23.3.3 to only 1% of the amount spent on noncompliant communications. Therefore, the gravity of No on EE's $3 to $3.5 million offense is proportional to the minimal 1% fine of $30,000.

ii. The Final Agency Order's $30,000 fine is not harsher than fines for comparable offenses.

No on EE argues that the $30,000 fine is exorbitant because similar offenses resulted in much lower fines. Specifically, No on EE points to evidence in the record which demonstrates that prior to the No on EE fine, the highest fine imposed on a respondent for a

disclaimer statement violation was $500. R. 189-198. However, there is no information in the underlying record which provides this Court with sufficient information to determine the magnitude of any other alleged disclaimer statement violations.[4] Additionally, No on EE does not provide this Court with any information to suggest that the fine imposed on Non on EE was proportionately higher than fines imposed on other disclaimer statement violations. Here, No on EE distributed over $3 million in noncompliant communications and the $30,000 fine amounts to 1% of the expenditures. Therefore, there is no information before this Court from which the Court could conclude that the Final Agency Order's fine of $30,000 is any harsher than fines for comparable offenses.

iii. Ability to pay not determinative of excessive penalty.

There is scarce evidence in the record about No on EE's ability to pay the $30,000. Presumably, this is why the Final Agency Order did not consider No on EE's ability to pay the fine. However, the evaluation of an entity's ability to pay is only one aspect of the proportionality analysis, and alone does not determine an excessive penalty. *People ex rel. Rein*, 2020 CO, ¶ 60. Here, there is evidence that No on EE was able to spend between $3 million and $4 million in communications. There is no suggestion that the issue committee would have any trouble paying the $30,000 fine. No on EE has failed to carry its burden to establish that the Deputy failed to consider its ability to pay. Indeed, given the magnitude of the committee's spending, there is evidence in the record to support the Deputy's concern that a $10,000 fine would not serve as a deterrent for future non-compliant conduct.

[4] Appellees asserts that the $500 fine was imposed based on distribution of just $6,000 of noncompliant communications—amounting to a penalty of approximately 8.33%. No on EE does not provide this Court with any information to suggest that this information is inaccurate.

c. The Final Agency Order relied on defined standards to establish the chosen monetary fine.

Appellant contends that the Final Agency Order relied on arbitrary and unknowable standards to establish the chosen monetary fine. Opening Br. at 7. The Court disagrees.

SOS Rule 23.3.3 imposes a fine of at least 5% of the cost of the noncompliant communications which were mitigated prior to the election, and up to 10% of the cost of the noncompliant communications left unmitigated. 8 C.C.R. 1505-6:23.3.3(d). No on EE mitigated its noncompliant communications. The parties stipulated that No on EE spent between $3 to $3.5 million on those noncompliant communications. Therefore, its violations were subject to the knowable fine of at least 5% of the $3 to $3.5 million spent on the noncompliant communications. SOS Rule 23.3.5 sets forth mitigating and aggravating factors that the election division *may* also consider, such as the nature and extent of the violation, the ability or effort to mitigate the violation, the extent to which the harm caused by the violation or the value of the violation cannot be reasonably calculated, and evidence of an intentional act or pattern or practice of misconduct. Both the Initial Decision and the Final Agency Order considered and referenced both the mitigating and the aggravating factors.

Therefore, the Court concludes that the Final Agency Order did not rely on an arbitrary and unknowable standard to establish the $30,000 fine.

d. The Deputy did not abuse his discretion.

Through judicial review, a reviewing court shall hold unlawful and set aside the agency action and restrain the enforcement of an agency order if it finds that the agency action is an abuse of discretion. C.R.S. § 24-4-106(7)(b)(VI). "An agency's interpretation of

its own regulation is generally entitled to great deference and will be accepted if it has reasonable basis in law and is warranted by the record." *Colo. Dept. of Pub. Health and Env't v. Bethell*, 60 P.3d 779, 783 (Colo. App. 2002).

Appellant asserts that the Deputy abused his discretion because he increased the $10,000 fine to $30,000 on his own motion. Reply Br. at 3. No on EE's interpretation of the basis of the $30,000 fine is misplaced.

The Final Agency Order has a reasonable basis in law. The Final Agency Order laid out its analysis for the applicable sanction provisions resulting from the FCPA violations. The Final Agency Order reviewed C.R.S. § 1-45-108.3, section 10 of article XXVIII of the Colorado Constitution, and C.R.S. § 1-45-115 to determine that the penalties described in those provisions were inapplicable to the violation at issue here which was a failure to include the registered agent on advertisements.

The Final Agency Order is supported by the record and consistent with the law. The Deputy conducted a review of the facts in the record to determine that the Initial Order's $10,000 penalty was not in conformity with the facts and the law. *See* C.R.S. §24-4-105(15)(b)("The agency may . . . modify the order or any sanction or relief entered therein, in conformity with the facts and the law."). The Deputy properly interpreted SOS Rule 23.3 and applied the facts surrounding No on EE's violation to the penalties established by SOS Rule 23.3. Importantly, the Deputy determined that a strict application of SOS Rule 23.3.3's penalty provision would result in a fine of between $150,000 and $175,000. After considering the magnitude of the violations (an aggravating factor) and considering three mitigating factors (efforts to mitigate violation, unintentional conduct and partial disclosure

of issue committee identity), the Deputy determined that a 1% fine, or $30,000, was an appropriate fine.

Because the Deputy properly considered all relevant facts and law, the Court FINDS that the Deputy did not abuse his discretion in increasing the fine from $10,000 to $30,000.

CONCLUSION

The Court HEREBY AFFIRMS the Final Agency Order issued by the Deputy.

SO ORDERED, this 8th day of November 2022.

BY THE COURT:



Honorable Marie Avery Moses
District Court Judge

COLORADO COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED: December 26, 2022 CASE NUMBER: 2021CV33166
Plaintiff / Appellant: **No On EE – A Bad Deal for Colorado, Issue Committee** **v.** **Defendant / Appellee:** **Christopher Beall, in his official capacity as Colorado Deputy Secretary of State and,** **Jena Griswold, in her official capacity as Colorado Secretary of State**	**▲ COURT USE ONLY ▲** Court of Appeals Case Number: _____
Attorney for Appellant: Suzanne M. Taheri, #23411 WEST GROUP LAW & POLICY 6501 E. Belleview Ave, Suite 375 Denver, CO 80111 Phone Number: (303) 263-0844 Email: st@westglp.com	District Court Case Number: 2021CV033166 County: Denver

NOTICE OF APPEAL

No on EE – A Bad Deal for Colorado, Issue Committee (No on EE), through undersigned counsel, respectfully submits this notice to seek review of the order issued on November 8, 2022, by the Denver District Court with respect to case

number 20021CV033166. There are no post-trial motions filed by either party in this matter.

A. Nature of the case

No on EE was the subject of a campaign finance complaint alleging disclaimer statement violations for advertising that was purchased by No on EE. The complaint was adjudicated, and the Office of Administrative Courts issued a decision assessing a $10,000.00 fine for the disclaimer violations. Neither party filed exceptions to the decision made by the Office of Administrative Courts.

On May 27, 2021, Deputy Secretary of State Christopher Beall, on his own motion, initiated a review of the Initial Decision. Beall subsequently issued a final agency order on September 2, 2021. The final agency order increased the fine from $10,000 to $30,000. No on EE filed a motion to vacate the Final Agency Order. Deputy Secretary Beall denied the motion to vacate, and No on EE appealed the Final Agency Order to Denver District Court.

On November 8, 2022, the Denver District Court issued an Order affirming Deputy Secretary Beall's Final Agency Order which is the subject of this appeal.

B. Jurisdiction

Appellant No on EE is requesting a review of the Denver District Court's Order affirming the Final Agency Order, pursuant to § 24-64-106, C.R.S. and C.A.R. Rule 3.

C. Issues on Appeal

1. Dismissal of the First Amendment as applied challenge for failure to preserve the argument violates No on EE's right to due process.

To support dismissal of No on EE's as applied challenge, The Denver District Court cites No on EE's failure to file exceptions to the ALJ's decision. However, circumstances changed when the Deputy Secretary of State tripled the fine against No on EE. While No on EE disagreed with the ALJ's initial decision, it also determined that the expense of litigating the constitutional issues would have exceeded the fine amount.

No on EE could not anticipate the Deputy's use of agency discretion to significantly increase the consequences of the ALJ's decision in this matter. Subsequent to the Deputy's final agency action, No on EE had no reason to file exceptions to the action.

To allow an agency to move the ball while the accused must remain frozen is a clear violation of due process. It forces the accused to make plays when the rules of the game are unknown. The Deputy's action here constitutes sufficient

grounds to activate a constitutional challenge which No on EE would otherwise have chosen not to adjudicate. To protect its right to due process, No on EE must be allowed to argue and be heard on the question of whether the disclosure requirement and any ensuing consequences constitute a violation of No on EE's First Amendment rights.

2. The registered agent disclosure requirement violates the First Amendment.

The Denver District Court erred when it found that the requirement to disclose the committee's registered agent in addition to the committee name on every political advertisement is not unduly burdensome. The District Court incorrectly concluded that the disclosure requirement serves a compelling governmental interest and thus survives exacting scrutiny.

3. The fine assessed by the Deputy violates No on EE's Eighth Amendment Rights.

Contrary to The Denver District Court's determination, the Deputy's fine increase from $10,000 determined by the ALJ to $30,000 violated No on EE's Eighth Amendment rights because it relied on arbitrary and unknowable standards and constituted an abuse of discretion.

Neither party filed exceptions to the ALJ's determination that a $10,000 fine was appropriate for the disclosure error. Despite the lack of objection from either the Elections Division or No on EE, the Deputy Secretary of State took it upon himself to alter the outcome of the matter on his own motion, tripling the consequence to No on EE.

Additionally, a fine of $30,000 for the alleged violation is excessive.

D. Posttrial Motions

There are no posttrial motions pending in this matter.

E. Counsel for the Christopher Beall and Jena Griswold

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F. Transcripts

A transcript is necessary to review the Issues on Appeal. Appellant will file a Designation of Transcripts within 7 days of this Notice of Appeal.

G. Appendix

A copy of the Denver District Court's Order in 2021CV33166 is attached.

PRAYER FOR RELIEF

Appellant No on EE respectfully requests that this Court determine that this Court review the Denver District Court Order affirming the Final Agency Order issued by Deputy Secretary of State Christopher Beall.

Respectfully submitted this 26th day of December, 2022.

/s/ *Suzanne Taheri*

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CERTIFICATE OF SERVICE/MAILING

I hereby certify that on 26th day of December, 2022 a true and correct copy of the **NOTICE OF APPEAL (WITH ATTACHMENT)** was filed through the Courts e-filing system to the following:

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Duly signed original on file at West Group Law & Policy

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: December 27, 2022 CASE NUMBER: 2021CV33166
Denver District Court 2021CV33166	
Plaintiff-Appellant: No On EE- A Bad Deal For Colorado Issue Committee, **v.** **Defendants-Appellees:** Christopher Beall, in his official capacity as Colorado Deputy Secretary of State and Jena Griswold, in her official capacity as Colorado Secretary of State.	Court of Appeals Case Number: 2022CA2245
ADVISEMENT OF FILING NOTICE OF APPEAL	

A Notice of Appeal was filed on 12/26/22 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:

The clerk of the trial court will transmit the record to the Court of Appeals. If appellant intends to include transcripts of any hearings or trial included in the record on appeal, the appellant must file a **designation of**

transcripts with the trial court and an advisory copy with the appellate court within 7 days of the date of filing the appellant's notice of appeal. The record will be transmitted without transcripts unless appellant complies with C.A.R. 10(d).

The record on appeal is due 02/27/23.

POLLY BROCK
CLERK OF THE COURT OF APPEALS
DATE: 12/27/22

STATE OF COLORADO
DENVER DISTRICT COURT CLERK'S OFFICE
1437 Bannock Street, Room 256
Denver, CO 80202
Civil / Domestic Appeals 303-606-2353

DATE FILED: December 27, 2022
CASE NUMBER: 2021CV33166

Dear Appellant/Cross-Appellant:

We have been notified that you have initiated an appeal with the Colorado Court of Appeals or Colorado Supreme Court. Our Appeals Team will be preparing the record to certify to the appellate court based on your Notice of Appeal and Designation of Transcripts (if transcripts are required). We will assemble the required filings and certify the record by the due date which is currently set for 02/27/2023.

As the appellant or appellant's counsel it is your responsibility to:

- Know and comply with ALL the Colorado Appellate Rules.
- Serve an advisory copy of the Notice of Appeal and file a completed Designation of Transcripts (CAR form 8, if needed) with the Denver District Court **pursuant to C.A.R. Rule 3(a) and 10(d).**
- If you have designated transcripts **you are responsible** for requesting them, paying for them, and arranging for the transcriptionist to send the certified transcripts directly to the Appeals Clerks at the Denver District Court, in advance of the due date. To help in the timely processing of your appeal, please make sure the transcripts are sent at least 1 week prior to the due date for the Certified Record. If the transcripts are not in our possession timely, an affidavit explaining we do not have the transcripts will be sent to the appellate court on the due date, along with the Certified Record. The information for requesting transcripts from the court (if necessary) is provided below*.
- If you wish to have trial exhibits included in the record, you are responsible for ensuring they are properly identified and filed into the Denver District Court case prior to the due date for the Certified Record. Attorneys will need to file these via Colorado Courts E-Filing (CCE). If trial exhibits are not part of the district court record by the due date, the Certified Record will be sent to the appellate court without them.

If you are not represented by an attorney (Pro Se), you may seek additional help with your appeal by contacting Ty Khiem, Self-Represented Litigant Coordinator for the Colorado Court of Appeals and the Colorado Supreme Court by calling 720-625-5150 (or 720-625-5107 to leave a voicemail) or by email at: Appeals.SelfHelp@judicial.state.co.us

*If your trial or hearing was recorded and you need the transcripts for the record on appeal, they must be listed on the Designation of Transcripts. The Designation of Transcripts form can be found at the web address provided at the bottom of this letter**. Transcripts may be ordered by contacting the FTR Office. The number for the FTR Office is 303-606-2368. You can also email a completed Transcript Request Form to 02FTRTRANSCRIPTS@judicial.state.co.us. The form itself is on the Denver District Court Website at: https://www.courts.state.co.us/Courts/District/Index.cfm?District_ID=2. The FTR Transcript Request Form is located near the bottom of the web page under "Records Requests."

If a private court reporter was hired for the hearing/trial, you must request the transcript from that person directly. Once the transcript is completed, the reporter/transcriber must burn it onto a CD and mail it to the Appeals Clerks for the Denver District Court, 1437 Bannock St. Rm. 256, Denver, CO 80202 Attn: Appeals Clerk.

If you have questions about the preparation of your appeal you may contact an Appeals Clerk at 303-606-2300.

Sincerely,
Clerk of Court, Denver District Court

**The Designation of Transcripts CAR Form 8 can be found on the Judicial Branch Website at: https://www.courts.state.co.us/Courts/Court_Of_Appeals/Forms_Policies.cfm

COLORADO COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED: December 28, 2022 CASE NUMBER: 2021CV33166
Plaintiff / Appellant: **No On EE – A Bad Deal for Colorado, Issue Committee** **v.** **Defendant / Appellee:** **Christopher Beall, in his official capacity as Colorado Deputy Secretary of State and,** **Jena Griswold, in her official capacity as Colorado Secretary of State**	**▲ COURT USE ONLY ▲** Court of Appeals Case Number: 22CA2245
Attorney for Appellant: Suzanne M. Taheri, #23411 WEST GROUP LAW & POLICY 6501 E. Belleview Ave, Suite 375 Denver, CO 80111 Phone Number: (303) 263-0844 Email: st@westglp.com	District Court Case Number: 2021CV033166 County: Denver

NOTICE REGARDING TRANSCRIPTS

Plaintiff/Appellant No on EE – A Bad Deal For Colorado, Issue Committee (No on EE) respectfully submits this notice regarding transcripts for the above-captioned matter. Because there were no hearings or conferences with the Court on the matter, the record on appeal will not include any transcripts.

Respectfully submitted this 28th Day of December, 2022

/s/ *Suzanne Taheri*

SUZANNE TAHERI, # 23411
WEST GROUP LAW & POLICY
6501 E. Belleview Ave, Suite 375
Denver, CO 80111
Phone Number: (303) 263-0844
Email: st@westglp.com
Attorney for No on EE

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 2022, a true and correct copy of the **NOTICE REGARDING TRANSCRIPTS** was served via the Colorado Court's E-Filing System to the following:

JESSICA E. ROSS, #44927*
Assistant Attorney General
PETER G. BAUMANN, #51620*
Assistant Attorney General
State Services Section
Colorado Department of Law, Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: (720) 508-6152
Email: jessica.ross@coag.gov
peter.baumann@coag.gov
*Counsel of Record

Denver District Court
1437 Bannock Street
Denver, CO 80202

/s/ Suzanne Taheri
Suzanne Taheri

Duly signed original on file at West Group

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO **COURT ADDRESS: 1437 BANNOCK, ROOM 256 DENVER, CO 80202**	
PLAINTIFF-APPELLEE No On EE-A Bad Deal For Colorado Issue Committee **V.** **DEFENDANT-APPELLANT** Christopher Beall, in his official capacity as Colorado Deputy Secretary of State and Jena Griswold, in her official capacity as Colorado Secretary of State	**CASE NUMBER:** 2021CV33166 **APPEAL NUMBER:** 2022CA2245 **COURTROOM:** 409

NOTICE OF ELECTRONIC RECORD CERTIFIED TO THE COLORADO COURT OF APPEALS

Notice is given that the Trial Court Record on Appeal in the above-titled action has been certified to Pauline Brock, Clerk of the Court of Appeals, and the Trial Court Record on Appeal has been uploaded to the Court of Appeals Appellate Records Submission folder on this 21st day of February, 2023.

Witness my hand and seal of the Court at my office in the City and County of Denver, Colorado on this 21st day of February, 2023.



CLERK OF THE DISTRICT COURT

By: *Sharie Martinez*

DEPUTY CLERK – CIVIL/DOMESTIC APPEALS

CC: Via Email to the Colorado Court of Appeals at AppellateRecord@judicial.state.co.us

☐: Via jPOD E-Service to Appellant Counsel (*check box if applicable*)

I N T E G R A T E D C O L O R A D O O N L I N E N E T W O R K (I C O N)

Status: CLSD District Court, Denver County
Case #: 2021 CV 033166 Div/Room: 409 Type: Review-Oth Local Govt/Pers
NO ON EE A BAD DEAL FOR COLO ISSUE COMMI vs. BEALL, CHRISTOPHER et al

DV STATUS:
Case File Date: 10/07/2021 Case Close Date: 11/08/2022 Appealed: Y
Confidential Intermediary.....:

	Bar #	Name
Judicial Off...:	025945	MARIE AVERY MOSES
Alt Jud Officer:	000000	

	Description	Stat Date	Time	Appear Rm/
Trial.....:			0:00	
Next Schd Event:			0:00	
Last Schd Event:	Review	VACT 11/16/2022	6:00 A	
Last Event.....:	Filing Other	n/a 12/28/2022		

Attorney(s)....: Y +

Judgements.....:N
Motions Filed.....:Y

Amount Prayed for.....: .00

Jury Fee Paid.....:N

----- PARTIES -----

PARTY	ROL	STS	NAME	ATTORNEY	ROL
DEF	1		BEALL, CHRISTOPHER	BAUMANN, PETER G et al	ATG
DEF	2		GRISWOLD, JENA	BAUMANN, PETER G et al	ATG
PTF	1		NO ON EE A BAD DEAL FOR COLO	TAHERI, SUZANNE M	PRV

FILE DATE	EVENT DESCRIPTION		
10/07/2021	Complaint	Event ID: 000001	E-Filed: J
	PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE		
Complaint for judicial review of agency action 52D8688A17C4F			
10/07/2021	Civil Case Cover Sheet	Event ID: 000002	E-Filed: J
	PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE		
District Court Civil Case Cover Sheet 52D8688A17C4F			
10/08/2021	Order	Event ID: 000003	E-Filed: J
ORDER RE: DISCOVERY PROTOCOL Judge Marie Avery Moses			
10/08/2021	Order	Event ID: 000004	E-Filed: J
DELAY REDUCTION ORDER Judge Marie Avery Moses			
10/08/2021	Order	Event ID: 000005	E-Filed: J
PRE-TRIAL ORDER Judge Marie Avery Moses			
10/14/2021	Waiver of Service	Event ID: 000006	E-Filed: J
	PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE		
Waiver and Acceptance of Service 232B067089654			
10/14/2021	Waiver of Service	Event ID: 000007	E-Filed: J
	PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE		
Waiver and Acceptance of Service 232B067089654			
10/14/2021	Summons	Event ID: 000008	E-Filed: J
	PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE		
District Court Civil Summons 232B067089654			
10/14/2021	Summons	Event ID: 000009	E-Filed: J

FILE DATE EVENT DESCRIPTION
PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE
District Court Civil Summons 232B067089654
11/03/2021 PROPOSED CASE MANAGEMENT ORDER Event ID: 000010 E-Filed: J
DEF/ GRISWOLD, JENA
DEF/ BEALL, CHRISTOPHER
Proposed Stipulated Case Management Order (Also filed on behalf of Plaintiff)
412AF26468922
11/03/2021 Answer Event ID: 000011 E-Filed: J
DEF/ BEALL, CHRISTOPHER
DEF/ GRISWOLD, JENA
Defendant's Answer to Complaint for Judicial Review of Agency Action
1092C9AD7B3B3

FILE DATE	SCHEDULED EVENT DESCRIPTION	SCHD DATE	TIME	ROOM	APPEAR
11/04/2021	Review	12/13/2021	07:00 AM	409	N
	Officer: MARIE AVERY MOSES		Length: 1.00 Hour(s)		
	Status.: VACT-Vacated				
11/04/2021	Review	11/04/2021	07:00 AM	409	
	Officer: MARIE AVERY MOSES		Length: 1.00 Hour(s)		
	Status.: VACT-Vacated		Note..: ANS D1,2		
11/05/2021	Review	11/18/2021	07:00 AM	409	
	Officer: MARIE AVERY MOSES		Length: 1.00 Hour(s)		
	Status.: VACT-Vacated		Note..: NTC TO SET		
11/05/2021	Review	12/22/2021	07:00 AM	409	
	Officer: MARIE AVERY MOSES		Length: 1.00 Hour(s)		
	Status.: VACT-Vacated		Note..: CMCF BY		
11/05/2021	Review	12/13/2021	07:00 AM	409	
	Officer: MARIE AVERY MOSES		Length: 1.00 Hour(s)		
	Status.: VACT-Vacated		Note..: RET OF SERV?		

11/09/2021 Order Event ID: 000012 E-Filed: J
Ruling: SO ORDERED, Document Title: Order Re: Briefing Schedule Judge Marie Avery Moses The Court issues a briefing schedule for parties pursuant to 24-4-106.
11/12/2021 Proposed Order Event ID: 000013 E-Filed: J
PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE
Proposed ORDER RE UNOPPOSED MOTION TO STAY 8A7815A731855
11/12/2021 Motion Event ID: 000014 E-Filed: J
PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE
UNOPPOSED MOTION TO STAY SENTENCE 8A7815A731855
Related Event ORDR Order 11/17/2021
11/17/2021 Order Event ID: 000015 E-Filed: J
Ruling: GRANTED, Document Title: ORDER GRANTING UNOPPOSED MOTION TO STAY SENTENCE Judge Marie Avery Moses
Related Event MOTN Motion 11/12/2021
11/30/2021 Exhibit-Attach to Pleading/Doc Event ID: 000016 E-Filed: J
DEF/ BEALL, CHRISTOPHER
DEF/ GRISWOLD, JENA
Exhibit A to Notice of Submission of Agency Record - Final Record (Suppressed, Transcript) 2B40D04EBBAB7
11/30/2021 Notice Filed Event ID: 000017 E-Filed: J
DEF/ BEALL, CHRISTOPHER
DEF/ GRISWOLD, JENA
Notice of Submission of Agency Record (w/attach) 2B40D04EBBAB7
Related Event EXHB Exhibit-Attach to Pleading/Doc 12/02/2021
12/01/2021 Review 12/01/2021 06:00 AM 409

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: CERT RECORD?
12/02/2021 Exhibit-Attach to Pleading/Doc Event ID: 000018 E-Filed: J
DEF/ GRISWOLD, JENA
DEF/ BEALL, CHRISTOPHER
Amended Ex. A to Notice of Submission of Agency Record (with attach to doc) 713E7AEDC586F
Related Event NOTC Notice Filed 11/30/2021
1/11/2022 Brief Filed Event ID: 000019 E-Filed: J
PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE
Plaintiff's Opening Brief 9CD43829F9ECD
Related Event ORDR Order 11/08/2022
1/12/2022 Review 1/12/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: O.B. DUE
2/08/2022 Proposed Order Event ID: 000020 E-Filed: J
DEF/ GRISWOLD, JENA
DEF/ BEALL, CHRISTOPHER
Proposed Order Granting Defendants' Unopposed Motion for an Extension of Time FD2212BE84ACD
Related Event MOTN Motion 2/08/2022
2/08/2022 Motion Event ID: 000021 E-Filed: J
DEF/ GRISWOLD, JENA
DEF/ BEALL, CHRISTOPHER
DEFENDANTS UNOPPOSED MOTION FOR AN EXTENSION OF TIME FD2212BE84ACD
Related Event ORDR Order 2/09/2022
2/09/2022 Order Event ID: 000022 E-Filed: J
Ruling: GRANTED, Document Title: ORDER GRANTING DEFENDANTS UNOPPOSED MOTION FOR AN EXTENSION OF TIME Judge Marie Avery Moses The Court grants Defendant's request for extension to file response brief.
Related Event MOTN Motion 2/08/2022
2/09/2022 Review 2/16/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: VACT-Vacated Note..: A.B. DUE
3/01/2022 Brief Filed Event ID: 000023 E-Filed: J
DEF/ BEALL, CHRISTOPHER
DEF/ GRISWOLD, JENA
Answer Brief 9E2108C1EDB06
3/02/2022 Review 3/02/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: A.B. DUE
3/22/2022 Brief Filed Event ID: 000024 E-Filed: J
PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE
Plaintiff's Reply Brief 3BA3000C79A54
3/23/2022 Review 3/24/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: VACT-Vacated Note..: RPLY BRIEF
4/28/2022 Review 4/27/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: RLG?
5/31/2022 Review 5/31/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: RLG?
7/15/2022 Review 7/15/2022 06:00 AM 409

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR

Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: RLG

8/31/2022 Review 8/05/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: ORDER

9/30/2022 Review 9/30/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: RLG

10/31/2022 Review 10/11/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: RLG

11/08/2022 Review 11/16/2022 06:00 AM 409
Officer: MARIE AVERY MOSES Length: 1.00 Hour(s)
Status.: VACT-Vacated Note..: RLG

11/08/2022 Order Event ID: 000025 E-Filed: J
Ruling: SEE ATTACHED ORDER, Document Title: Order Regarding Complaint for Judicial Review of Agency Action Judge Marie Avery Moses The Court affirms the Final Agency Order issued by the Deputy.
Related Event BREF Brief Filed 1/11/2022

11/08/2022 Case Closed Event ID: 000026 E-Filed: N

12/26/2022 Notice of Appeal Filed Event ID: 000029 E-Filed: J
PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE
Copy of Notice of Appeal (Court of Appeals) DDD6CA4FB2BD8

12/27/2022 Advisory Notc of filing NAPF Event ID: 000027 E-Filed: J
IMP/ NON-PARTY
ADVISEMENT OF FILING NOTICE OF APPEAL (22CA2245)

12/27/2022 Letter Event ID: 000028 E-Filed: J
Appeal Requirement Letter (22CA2245)

12/28/2022 Filing Other Event ID: 000030 E-Filed: J
PTF/ NO ON EE A BAD DEAL FOR COLO ISSUE
Copy of Notice Regarding Transcripts (Colorado Court of Appeals Filing) FDA4677D6A696

End of Case: 2021 CV 033166