STATE OF COLORADO SECRETARY OF STATE BEFORE THE ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290	
ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. COLIN LARSON; COLIN FOR COLORADO; RESTORE COLORADO LEADERSHIP FUND IEC, RESTORE COLORADO LEADERSHIP FUND 527; DANIEL COLE, COLE COMMUNICATIONS, LLC; and VICTOR'S CANVASSING, LLC, Respondents.	▲ COURT USE ONLY ▲ Case Number: 2023 AHO 0003
ORDER DENYING SECOND MOTION TO DISMISS	

1. The Elections Division of the Colorado Secretary of State filed an administrative complaint on May 19, 2023 alleging improper coordination by House of Representatives candidate Colin Larson and his candidate committee Colin for Colorado ("Larson Respondents") during the 2022 election cycle. The administrative complaint alleges that improper coordination with other entities through third parties resulted in two violations of Colorado's campaign finance laws:

Count 1: Failure to report contributions and expenditures of Colin Larson and Colin for Colorado in violation of § 1-45-108(1)(a)(I), C.R.S., and;
Count 2: Receipt of excessive contributions by Colin Larson and Colin for Colorado in violation of Colo. Const. art. XXVIII, § 3.

2. On May 22, 2023, the Larson Respondents filed a Motion to Dismiss the Division's administrative complaint, asserting that it was untimely because it was filed more than "125 days past the notice of Initial Review and Opportunity to Cure," Motion, ¶10, and therefore deprives the

agency of jurisdiction to hear the complaint. That Motion was denied in an Order dated November 21, 2023, that also directed counsel to confer about prehearing issues, deadlines, the filing of prehearing statements, etc. in aid of setting a date for a hearing on the administrative complaint. The parties did so, advised the Hearing Officer in a Joint Proposed Schedule and on December 13, 2023, the hearing was set for January 19, 2024.

3. The November 21, 2023 Order Denying Motion to Dismiss noted that the Campaign Finance Practices Act requires a hearing on the administrative complaint "within thirty days of the date that the administrative complaint was filed." § 1-45-111.7(6)(a), C.R.S.

> "Any hearing conducted by a hearing officer under this section must be in accordance with section 24-4-105; except that a hearing officer shall schedule a hearing within thirty days of the filing of the complaint, which hearing may be continued upon the motion of any party for up to thirty days or a longer extension of time upon a showing of good cause." *Id.*

4. On November 28, 2023, the Larson Respondents filed a second Motion to Dismiss, resting it squarely on the command in § 1-45-111.7(6)(a). Respondents argue that setting a hearing 245 days after the administrative complaint was filed should lead to a dismissal of the case. The Motion does not assert that the delay strips the agency of subject matter jurisdiction, or that laches is a reason for dismissal or that Respondents were prejudiced by the delay. In ¶ 14 of the Motion, counsel cites "Rule 25.5.1 (8 CCR 105-6)" [sic] as a reason to dismiss the administrative complaint. Rule 25 expired May 15, 1998 and it was part of 8 CCR 1505-6, not 105-6). A search for the text string quoted by counsel in ¶ 14 led to Rule 24.5.1 8 CCR 1505-6.

> 24.5.1 Within 30 days of the filing of an administrative complaint, a hearing officer will set a date for hearing unless a stay is entered, the matter is continued, or the hearing officer finds good cause for an enlargement of time.

Rule 24.5.1 does not intimate, much less require, dismissal of an administrative complaint where setting the hearing date is delayed.

5. The Division counters the Motion to Dismiss by arguing that the thirty day mandate in § 1-45-111.7(6)(a) is directory, even though it reads "that a hearing officer *shall schedule* a hearing within thirty days of the filing of the complaint. *Id.* [Emphasis supplied.] In *Protest of McKenna v. Witt*e, 2015 CO 23 346 P.3d 35, McKenna's three water rights were adjudicated to be abandoned by the water court after they were included on an abandonment list prepared by the Division Engineer. McKenna challenged the adjudication because the abandonment list had been created later than the statute required. *McKenna* is similar to the instant case in three important respects: a) the statutory language is imperative: "the Division Engineer 'shall' prepare an abandonment list 'no later than July 1;'" b) there was noncompliance with the command; and c) the statute is silent as to the consequence of non-compliance. *Id.* at ¶ 18. The Colorado Supreme Court affirmed the trial court's decree of abandonment of McKenna's water rights notwithstanding the fact that that the abandonment list on which the decree was based was late filed. The court held "that the deadline to prepare the abandonment list under section 37–92–401(1)(a) is directional and is not a jurisdictional mandate." *Id.* at ¶ 22. The court emphasized that it is legislative intent that directs the outcome in these cases. In *McKenna*, the statute gave "wide discretion" to the water court, so long as the owner's rights were protected. *Id.* at 19.

6. Similarly, in the context of driver's license revocation hearings, mandatory language in a statute has been considered only "directory." In *DiMarco v. Dep't of Revenue, Motor Vehicle Div.*, 857 P.2d 1349 (Colo.App. 1993), the court found that legislative intent was the key to discerning whether the language of mandate was merely "directory."

> Whether the General Assembly intends a statutory provision to be directory [*1352] or jurisdictional requires consideration of "the legislative history, the language of the statute, its subject matter, the importance of its provisions, their relation to the general object intended to be accomplished by the act, and, finally, whether or not there is a public or private right involved."
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> *DiMarco*, 857 P.2d at 1351-52 (Colo. App. 1993)

In *DeMarco*, the statute at issue required that where a licensee demanded a hearing on license revocation on account of an accumulation of points, "such hearing *shall* be held within sixty days after application is made." *Id.* at 1351. [Emphasis in original.] The court concluded that the failure of the Department of Revenue to comply with the mandatory language of the statute did not deprive it of jurisdiction. *Id.* Colorado appellate courts have generally "construed time limitations imposed on public bodies as being directory rather than mandatory." *Id.*

7. The administrative complaint in this case asserts the violation of public rights whose importance has both a constitutional and a statutory basis. Both the electors in Colorado and the General Assembly have enacted law that channels the public's concern that the influence of money in politics creates "the potential for corruption and the appearance of corruption" and "that large campaign contributions… allow wealthy individuals, corporations, and special interest groups to exercise a disproportionate level of influence over the political process." Colo. Const. art. xxviii, § 1 and § 1-45-102, C.R.S. Addressing those concerns, voters in Colorado adopted a constitutional amendment in 1996 that calls for "strong enforcement of campaign laws." That declaration has been part of the Campaign Finance Practices Act ever since. § 1-45-102, C.R.S.

> **1-45-102. Legislative declaration**
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> The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws.
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> Section 1-45-102, C.R.S. (1997)

8. In construing the Campaign Finance Practices Act and citizen initiatives like Colo. Const. art. xxviii, the Colorado Supreme Court gives effect to the intentions of the General Assembly and the electorate, both of which have called for the strong enforcement of campaign laws. *Campaign Integrity Watchdog v. All. for a Safe & Indep. Woodmen Hills*, 2018 CO 7, ¶ 20, 409 P.3d 357, 361.

9. The doctrine of Nullum tempus (*quod nullum tempus occurrit regi*—time does not run against the king) has long been used to void procedural obstacles such as statutes of limitations and notices of claim from being asserted against a governmental entity. *Shootman v. DOT*, 926 P.2d 1200 (Colo.1996). While concluding that the doctrine no longer protects the state from the bar of the statute of limitations as to late filed complaints, *Shootman* at 1207, the court pointed to the public policy basis for the doctrine.

> That public policy was expressed by Justice Story in 1821 as the "great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers." *Hoar*, 26 F. Cas. at 329. This is the policy basis that courts have relied upon to apply the rule in more modern times. [Citations omitted.]
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> *Shootman* at 1203.

10. In the instant case, the delay in setting the hearing after the administrative complaint was filed May 19, 2023 is attributable to the administrative hearing officer—not to the parties. But any argument that the delay should prompt a dismissal of the well pleaded administrative complaint must fall, given the importance that both the electors in Colorado and the General Assembly have attached to compliance with campaign finance and disclosure regulations and their stated intention that there be strong enforcement of the campaign laws.

11. No argument has been made that would strip the agency of jurisdiction, no prejudice to Respondents is claimed and the elements of laches are neither set forth nor argued. Contrarywise, the importance to Colorado voters of compliance with campaign finance regulations is embodied in

amendments to the Colorado Constitution as well as a statutory framework adopted and amended from time to time by the General Assembly. It would disserve these constitutional and statutory goals to dismiss the administrative complaint based on setting the hearing later than the requirement in § 1-45-111.7(6)(a). I find that the mandate to set a hearing within thirty days, under the circumstances of this case, is directory only.

12. For the reasons stated above, Respondents' second Motion to Dismiss is DENIED.

SO ORDERED this 27th day of December 2023.

Macon Cowles

Macon Cowles, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby states and certifies that one true copy of the Order herein was sent via email on December 27, 2023 to the following:

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/s/ N. B. Porte

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