

<p>STATE OF COLORADO SECRETARY OF STATE ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290</p> <hr/> <p>BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, <i>in re</i> ED 2023-40, 2023-62</p> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>BENNETT AUSLAENDER a.k.a. CONCERNED CITIZENS OF CONIFER,</p> <p>Respondent.</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>CASE NUMBER</p> <p>2024 AHO _____</p>
<p>COMPLAINT</p>	

Pursuant to § 1-45-111.7, C.R.S. and Rule 24 of the Secretary’s Rules on Campaign and Political Finance, 8 CCR 1505-6, the Elections Division of the Secretary of State files this Complaint against Bennett Auslaender, also known as Concerned Citizens of Conifer (“Respondent”).

BACKGROUND

1. To foster transparency and assist voters in assessing the sources of direct ballot issue or ballot question expenditures, Colorado law requires persons making a direct ballot issue or ballot question expenditure to include a “paid for by” disclaimer on their electioneering communications. If the committee is not a natural person, the disclaimer must identify a natural person who is the person’s registered agent.

2. Here, Respondent distributed \$1,625 worth of newspaper advertisements urging voters to “VOTE NO” on a ballot measure in the 2023 election. These advertisements included the disclaimer: “PAID FOR BY CONCERNED CITIZENS OF CONIFER,” but did not identify Bennett Auslaender as the person who paid for the advertisements.

3. Accordingly, the Division brings this complaint for appropriate relief.

PARTIES

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

5. Respondent is Bennett Auslaender, a resident of Conifer, Colorado who occasionally identifies himself as Concerned Citizens of Conifer.

JURISDICTION AND VENUE

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

7. The Division files this complaint with a hearing officer consistent with § 1-45-111.7(5)(a)(IV), (6).

8. This complaint is timely filed within 30 days of the Division’s January 30, 2024, Notice of Investigation according to § 1-45-111.7(5)(a)(IV).

9. Venue is proper before the hearing officer under § 1-45-111.7(5).

ALLEGATIONS

10. In 2023, voters in the Elk Creek Fire Protection District considered a ballot measure about whether the District should be consolidated with two nearby Fire Protection Districts.

11. On October 5, 2023, two newspapers in the area published full-page ads that urged readers to “VOTE NO” on the proposed consolidation.



12. The advertisements included the disclaimer: “PAID FOR BY CONCERNED CITIZENS OF CONIFER.”

13. On October 19, 2023, the same two newspapers published half-page ads, each paid for by Respondent, again encouraging voters to “VOTE NO” on the consolidation.

14. On October 7, 2023, the Division received a campaign finance complaint against Respondent filed by Melissa Winefeldt. The Winefeldt Complaint alleged that Respondent was an unregistered issue committee and had failed to identify a registered agent in its disclaimers.

15. On October 27, 2023, the Division received a second campaign finance complaint against Respondent, this time filed by Alfred I Leo, Jr. The Leo Complaint alleged that Respondent was operating as an unregistered issue committee and had failed to identify a registered agent in its disclaimers.

16. The Division consolidated the Complaints. During its investigation, the Division determined that Respondent spent \$1,625 on the advertisements.

17. The Division’s investigation also uncovered that Respondent was only one natural person, Bennett Auslaender, who occasionally identified himself as “Concerned Citizens of Conifer.” Because an issue committee encompasses only non-natural persons or groups of two or more natural persons, the Division determined that Respondent was not required to register as an issue committee. Colo. Const. art. XXVIII, § 2(10)(a)

COLORADO CAMPAIGN FINANCE LAW

18. Under Colorado law, any person “that makes a direct ballot issue or ballot question expenditure shall, pursuant to section 1-45-107.5(5), state their name in any communication that is . . . distributed to persons who are eligible to vote on the ballot issue or ballot question and is produced or funded, either in whole or in part, by the person who made the direct ballot issue or ballot question expenditure.” § 1-45-108.3(4).

19. Under section 1-45-107.5(5), that disclaimer must include the name of the person making the expenditure and, if that person is a non-natural person, the name of the person’s registered agent.

CLAIM ONE

Failure to Include Compliant Disclaimer (§§ 1-45-108.3(4) and 1-45-107.5(5), C.R.S.)

20. All preceding allegations are incorporated.

21. Respondent spent \$1,625 on two newspaper advertisements. These advertisements urged voters to “VOTE NO” on a ballot issue in the 2023 election.

22. These advertisements included the disclaimer: “Paid for by Concerned Citizens for Conifer,” but failed to identify the person paying for the advertisements: Bennett Auslaender.

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

Respectfully submitted this 29th day of February, 2024.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

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CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served by mail and/or email this 29th day of February 2024, addressed as follows:

Concerned Citizens of Conifer
C/O Bennett Auslaender
10524 US 285
Conifer, CO 80433¹
Respondent

Melissa Winefeldt
41 Sunlight Ln.
Bailey, CO 80421
Mfrazier_healthfitness@yahoo.com
Third Party Complainant

Alfred I Leo, Jr.
19293 Silver Ranch Rd.
Conifer, CO 80433
Al.leo2012@gmail.com
Third Party Complainant

/s/ Kerry Wade and Kyle Holter

¹ Mr. Auslaender only corresponds by letter. Mr. Auslaender does not use electronic mail.