

**STATE OF COLORADO
IN THE OFFICE OF THE SECRETARY OF STATE**

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

LindsayforDPSK12

Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State (“Division”), and Lindsay for DPSK12 (“Respondent” or “Committee”).

Recitals

- A. Respondent is a candidate committee formed to support the candidacy of Charmaine Lindsay for election to the DPS School Board in the November 7, 2023, election.
- B. On January 9, 2024, the Elections Division filed a division-initiated complaint against respondent alleging that the Committee had violated state campaign finance law by making a \$2,000 cash expenditure.
- C. Respondent was provided with notice of the complaint and an opportunity to cure the alleged violation on January 9, 2024.
- D. Based on the Division’s review Respondent’s TRACER filings and conversations with Respondent, the Division has determined that Respondent paid a campaign consultant \$2,000 in cash.
- E. Article XXVIII, Section 3(10) of the Colorado State Constitution forbids candidate committees from “mak[ing] an expenditure[] in currency or coin exceeding one hundred dollars.”

F. During the Division's review and investigation, Respondent fully cooperated with the Division, including by providing copies of the communications in questions and submitting detailed invoices.

H. Nothing in the Division's investigation suggested an intent to mislead the electorate.

I. The Division will be filing a complaint with the Administrative Hearing Officer (the "Administrative Proceedings"). The Administrative Hearing Officer complaint will be dismissed if the Settlement Agreement is adopted and approved.

J. The Division and Respondent desire to resolve this matter without the expense of continued litigation. Therefore, in consideration of the mutual covenants contained in this Agreement, the parties agree and covenant as follows:

Agreement

Section 1. Deputy Secretary of State Approval

This Settlement Agreement and all promises contained within are contingent upon approval of the Deputy Secretary of State, which approval will be demonstrated by the Deputy Secretary's signature to this agreement. In the event the Deputy Secretary does not approve this Settlement Agreement, neither the Recitals above nor the promises below shall be binding upon, or enforceable against, either the Division or Respondent.

Section 2. Payment of Stipulated Penalty

Within 14 days of the Committee's receipt of an invoice from the Division, **Respondent shall pay \$233 to the Division.**

This penalty reflects Rule 23.3.3(c)(1) of the Secretary's Rules on Campaign Finance. 8 CCR 1505-6.

Because the Committee exceeded the \$100 limit on cash expenditures, Rule 23.3.3 (c)(1) calls for a penalty of at least \$100 and 10% of the cost of the prohibited expenditure. The Committee made a cash expenditure that exceeded the limit on cash expenditures by \$1,900. Accordingly, Rule 23.3.3(c)(1) suggests a base penalty of \$290.00.

However, the Division finds mitigating factors. Respondent fully cooperated with the Division's investigation and immediately admitted to the violation. Respondent was unaware of the limit on cash expenditures and had no intent to mislead the electorate, as evidenced by the fact that the \$2,000 cash expenditure

was timely reported, specifically noted as a cash expenditure, and included a detailed explanation of what the expenditure was for.

Accordingly, the Division finds that a penalty of \$233, or \$100 plus 7% of the prohibited expenditure amount, is appropriate.

If Respondent fails to comply with the terms of the settlement agreement, the Division may pursue other remedies available at law.

Section 3. Compliance with Colorado Campaign Finance Law

Respondent agrees to comply with Colorado law relating to reporting contributions and expenditures and to otherwise comply with Colorado Campaign Finance Law, including Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, §§ 1-45-101, *et seq.*, and the rules of the Secretary of State concerning campaign and political finance.

Section 4. Dismissal of Administrative Proceedings

The Division will move to dismiss the Administrative Proceedings with prejudice within 7 days of when the Secretary of State sends a receipt to the Committee for the payment provided for in Section 2 of this Agreement.

Section 5. Admissions

Respondent admits that they exceeded the \$100 limit on cash expenditures by \$1,900.

Section 6. Release and Covenant Not to Sue

Respondent, for itself, its agents, assigns, representatives, attorneys, and subrogees, releases and forever discharges the Division, the Secretary of State, and the State of Colorado, and all of their former, current, and successor officers, employees, agents, and attorneys, from any and all claims, actions, causes of action, debts, demands, liabilities, losses, injuries, and/or damages arising from or relating to the Administrative Proceedings. Respondent further expressly agrees and covenants that he will not sue or assert any cause of action, at law or in equity and whether before a court of law or an administrative agency, against the Division, the Secretary of State, or the State of Colorado, or any of their former, current, and successor officers, employees, agents, and attorneys, for any claim arising from or related to the Administrative Proceedings.

Section 7. Waiver of Appeal Rights

Respondent expressly waives any right for further administrative or judicial review of any matter related to the Administrative Proceedings or this Agreement, including but not limited to any rights provided by §§ 24-4-105 and -106, C.R.S. (2022).

Section 8. Public Records

Respondent understands and agrees that this Agreement may be made available to the public on the Secretary of State's TRACER Campaign Finance reporting system and may also be made available to members of the public who serve a valid request under the Colorado Open Records Act, § 24-72-101, *et seq.*, C.R.S. (2021).

Section 9. Full and Complete Agreement

This Agreement, including any attachments referenced in the Agreement, constitutes the full and complete agreement of the parties and shall supersede any and all prior understandings, whether written or oral.

Section 10. Final Agency Action

This Settlement Agreement shall become final agency action under the State Administrative Procedures Act, §§ 24-4-101 *et seq.*, upon completion of all terms of compliance contained herein, including but not limited to dismissal of the Administrative Proceedings.

Section 11. Warranties

Respondent and the Division expressly warrant that they have carefully and completely read the terms of this Agreement. The parties expressly warrant that they have had the opportunity to consult with legal counsel before executing this Agreement, that they fully understand the terms of this Agreement, and that they enter into this Agreement knowingly and voluntarily, and without coercion, duress or undue influence. Each of the parties warrants that, in executing this Agreement, the parties have not relied upon any promise, warranty, or representation made by any other party, except as such promises, warranties, or representations are expressly stated in this Agreement. Finally, each of the signatories below warrants that they have authority to enter into the Agreement on behalf of the named parties.

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ELECTIONS DIVISION OF THE SECRETARY OF STATE

03/18/2024
DATE

Chance Cochran
By: Chance Cochran
Campaign Finance Enforcement Legal
Analyst

LINDSAYFORDPSK12

3/7/24
DATE

Susan Bernard
By: Susan Bernard
Registered Agent

ADOPTED AND APPROVED BY:

April 27, 2024
DATE

Christopher P. Beall
By: Christopher P. Beall
Deputy Secretary of State