

Settlement Agreement
Elections Division v. Foothills Fire Protection District et al.

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

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

FOOTHILLS FIRE PROTECTION DISTRICT
DUEY FREEMAN
PAUL DEETH
SCOTT FERGUSON
STEVE BECK
TJ CARNEY and
ALAN ANDERSON

Respondents.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State (“Division”) and Respondents.

Recitals

A. Foothills Fire Protection District is a special district in Jefferson County, CO, and a political subdivision of Colorado. Duey Freeman, Paul Deeth, Scott Ferguson, Steve Beck, and TJ Carney are former Board Members of the District. Freeman, Deeth, Ferguson, Beck, and Carney constituted the District’s Board in 2022. Alan Anderson is the former Fire Chief for the District. Anderson was the District’s Fire Chief in 2022.

B. During the November 2022 general election, voters in the Foothills Fire Protection District were presented with two ballot measures. Together, the measures sought to raise over \$12.8 million for the District through a combination of a mill levy increase and new bonds.

C. In October 2022, the District published a newsletter called “the Firefly.” The newsletter was entirely devoted to the two ballot measures. It included letters from the Board President, Duey Freeman, and the Fire Chief, Alan

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Anderson. The letters explained the reasons the District had placed the measures before the voters.

D. The letters advocated for the measures, and the newsletter concluded: “We ask for your support.” According to minutes from a District Board Meeting, the newsletter cost the District approximately \$2,000.

E. After the Division provided the District with notice of campaign finance complaints filed against the District, the District prepared additional arguments for and against the ballot measures in a revised version of the Firefly pamphlet, and placed the revised document on its website a few days before the November 2022 election.

F. Voters soundly defeated both of the ballot measures, and the Board of Directors either resigned or was replaced shortly after the election. None of the current members of the Board of Directors were members of the Board during the November 2022 election.

G. The District also has a new Fire Chief. Anderson is no longer the Fire Chief in the District.

H. Last year, the Division initiated proceedings against Respondents with an Administrative Hearing Officer titled *Elections Division of the Secretary of State v. Foothills Fire Protection District et al.* (the “Administrative Proceedings”). The matter number before the Administrative Hearing Officer is 2023 AHO 0009.

I. The Division and Respondents 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 Respondents.

Section 2. Payment of Stipulated Penalty

In determining the appropriate penalty in this matter, the Division is guided by section 1-45-117(4)(a), Section 10(1) of Article XXVIII of the Colorado Constitution, and the Secretary’s rules governing campaign and political finance.

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The Division is also guided by the interests of the electors and the taxpayers in the Foothills Fire Protection District. The Division is cognizant that any penalty levied on the District will cause even greater harm to the taxpayers in the District, who have already suffered from the District having spent approximately \$2,000 on illegal expenditures related to the November 2022 election. The Division is also cognizant that the voters soundly rejected those measures, and the individuals responsible for the violation no longer serve as part of the District's leadership.

Accordingly, the Division has worked to craft a penalty consistent with Colorado law that serves both deterrent and retributive purposes, and is in the best interests of the District's taxpayers.

Section 2.1 - The District:

Within 14 days of the District's receipt of an invoice from the Division, **the District shall pay \$4,000** to the Division.

This penalty reflects § 1-45-117(4)(a). Under that subsection, violations of § 1-45-117 are subject to the provisions of section 10(1) of article XXVIII of the state constitution. Section 10(1) outlines civil penalties of "at least double and up to five times the amount contributed . . . or spent in violation of" Colorado law. Here, double the amount spent would be \$4,000.¹

The Division finds that a greater sum would not further the purposes of Colorado campaign finance law. The District's leadership has entirely turned over, and additional penalties would only further harm district taxpayers.

Section 2.2 - The Board Respondents (Freeman, Deeth, Ferguson, Beck, and Carney):

Within 14 days of the District's receipt of an invoice from the Division, **each of Freeman, Deeth, Ferguson, Beck, and Carney shall pay a total of \$800 each** to the District.

This penalty is consistent with § 1-45-117.4(b), which states that "[i]f a board . . . is found to have made a contribution or expenditure in violation of this section,

¹ Under the current version of Rule 23.3.3(e) of the Secretary's rules on campaign and political finance, violations of section 1-45-117 are subject to a fine of "at least three times the amount of the improperly used funds." However, this subsection was not added until after the violation in this case had occurred. *See, e.g., Gasper v. Gunter*, 851 P.2d 912, 916 (Colo. 1993) ("The constitutional proscription against ex post facto legislation prohibits . . . the states from enacting laws which . . . impose additional punishment" to the punishment prescribed at the time the act was committed) (quotations omitted). Because the fine mandated in the new Rule 23.3.3(e) falls within the range permitted by Section 10(1) of Article XXVIII of the Colorado Constitution, the Division considers the new Rule 23.3.3(e) to be persuasive and advisory, but not mandatory.

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any individual members of the board . . . who voted in favor of or otherwise authorized the contribution or expenditure may be ordered to reimburse an amount pursuant to subsection (4)(a) of this section as long as the amount does not exceed the amount ordered to be reimbursed by any other individual of the board.”

This reimbursement ensures that the District does not suffer double loss as a result of the campaign finance violation made in 2022.

The Former Fire Chief (Anderson):

The Division is not requiring contribution to the penalty or reimbursement amounts from the former Fire Chief. The Division included the Former Fire Chief in the Administrative Proceedings because the Division’s investigation suggested that Anderson played an active role in the decision to spend money advocating for the two ballot measures.

Nonetheless, there is significant legal uncertainty about whether Anderson, who was not a member of the Board, can be held liable under § 1-45-117. Specially, section 1-45-117(4)(b) speaks only of reimbursement from individual members of a “board, commission, or council.” Although the Division believes that it can prove its case against Anderson both legally and factually, such proceedings would entail a significant cost to both the District and the Division. And recovery would be uncertain. As such, the Division has determined that the interests of the electors and taxpayers in the Foothill Fire Protection District are best served by entering into this global settlement that will resolve this matter in full, and ensure the District is fully reimbursed for the penalties assessed under section 1-45-117(4)(a).

Section 3. Compliance with Colorado Campaign Finance Law

Respondents agree to comply with Colorado law relating to the use of public funds for election-related purposes, 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 and Assignment of Claims

The Division will move to dismiss the Administrative Proceedings with prejudice after the Deputy Secretary of State approves this Settlement Agreement. The Division also assigns any claims it may have against the Respondent Board Members for judicial enforcement under section 24.4-106(3), C.R.S., of the reimbursements provided for in Section 2.2 of this Agreement to the Foothills Fire Protection District.

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Section 5. Admissions

Respondents admit that the Foothills Fire Protection District spent money from its operating budget to urge voters to support two ballot measures on the November 2022 ballot.

Section 6. Release and Covenant Not to Sue

Respondents, for themselves, their agents, assigns, representatives, attorneys, and subrogees, release and forever discharge 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. Respondents further expressly agree and covenant that it 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

Respondents expressly waive 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. (2023).

Section 8. Public Records

Respondents understand and agree that this Agreement may be made available to the public on the Secretary of State's TRACER Campaign Finance 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. (2022).

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. The parties agree that this agreement may be executed in counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed an original but all such counterparts together shall constitute one and the same instrument.

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Section 10. Final Agency Action

Upon approval by the Deputy Secretary of State, this Settlement Agreement shall become final agency action under the Colorado Administrative Procedure Act, §§ 24-4-101 *et seq.*

Section 11. Warranties

Respondents 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.

ELECTIONS DIVISION OF THE SECRETARY OF STATE

05/21/2024

DATE

Timothy Gebhardt

By: Timothy Gebhardt
Campaign Finance Enforcement Manager

DUEY FREEMAN

5-17-2024
DATE

Duey Freeman

By: Duey Freeman

ADOPTED AND APPROVED BY:

May 22, 2024

DATE

Christopher P. Beall

By: Christopher P. Beall
Deputy Secretary of State