

<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 2022-109, 2022-110, 2022-111, 2022-112, 2022-115, 2022-116, and 2022-117</p> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>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.</p> <p>Respondents.</p>	<p>▲ COURT USE ONLY ▲</p> <p>CASE NUMBER</p> <p>2023 AHO 0003</p>
<p>ELECTIONS DIVISION’S RESPONSE TO MOTION FOR ATTORNEYS’ FEES</p>	

This case involved allegations of improper coordination between the Colin for Colorado candidate committee and several independent expenditure committees, all through the use of a common consultant, Daniel Cole. The administrative complaint was initiated at the direction of the final agency decisionmaker in campaign finance matters, the Deputy Secretary of State, who—consistent with the General Assembly’s statutory requirements—ordered the Division to file its complaint in this matter.

Now, Colin Larson and Larson for Colorado (collectively, the “Larson Respondents”) move for an award of attorneys’ fees under section 1-45-111.5(2). Mot. for Attorney Fees (“Mot.”) (May 22, 2024). To prevail on that Motion as to the Division and its counsel, the Larson Respondents must show that the Division’s initiation of proceedings before the

hearing officer “lacked substantial justification,” i.e., it was “substantially frivolous, substantially groundless, or substantially vexatious.” § 1-45-111.5(2).

But the Division was specifically ordered to file its complaint with the Hearing Officer by the final agency decisionmaker, a procedure blessed by the General Assembly. That alone is sufficient to conclude that the Division’s initiation of this action was substantially justified. And even absent the Deputy’s Order, the Division’s Complaint and subsequent prosecution were well within the bounds of reasonableness.

As to the Division, the Motion should be denied.

BACKGROUND

This action arose out of a series of third-party campaign finance complaints filed by Marcie Little against several entities, including the Larson Respondents. *See generally* Order Granting in Part and Denying in Part Motion to Dismiss and Remanding for a Hearing (“Deputy’s Order”) at 3–4 (May 1, 2023) (attached as Exhibit 1). The core allegations, as least as are relevant here, were that the “various respondents engaged in illegal coordination with Rep. Larson and his own candidate committee,” *id.* at 3, specifically through the use of a common consultant, Daniel Cole, *id.* at 9.

After reviewing and investigating the complaints under section 1-45-111.7(3), (4), and (5), the Division filed a Motion to Dismiss the Complaints with the Deputy Secretary of State—the final agency decisionmaker in campaign finance matters—under section 1-45-111.7(5)(a)(IV). *Id.* at 7–8. The Deputy Secretary granted that Motion, in part, but denied it as to several of the Respondents, including the Larson Respondents. *Id.* at 9–10.

Specifically, the Deputy Secretary concluded that “Cole’s multiple involvements with [independent expenditure committees] as well as in direct consultation with Rep. Larson for his candidate campaign, creates a sufficient inference of illegal coordination to support a

plausible foundation for pursuing a hearing on the coordination charge.” *Id.* at 9. The Deputy also determined that Larson’s and Cole’s “paper pronouncements” of non-coordination “must be evaluated at a live formal hearing, . . . where the hearing officer can assess the demeanor, body language, and credibility of the witnesses, and where third parties who were not identified as respondents to the initial underlying complaints may be compelled by subpoena to provide relevant information.” *Id.* at 10.

Accordingly, the Deputy Secretary “directed [the Division] to file a Formal Complaint with a hearing officer within fourteen days of [his] Order.” *Id.* at 12; *see also id.* at 1 (“[T]he Deputy Secretary . . . directs the division to file a Formal Complaint under CPF Rule 24, 8 CCR 1505-6, before a hearing officer on the campaign finance violations identified herein[.]”). This followed the General Assembly’s directive, that “if the deputy secretary denies the motion [to dismiss filed under § 1-45-111.7(5)(a)(IV)], the division has fourteen business days to file a complaint with a hearing officer[.]” § 1-45-111.7(5)(a)(IV).

Complying with the Deputy’s Order and the statutory requirement, the Division initiated this action. It also engaged in discovery as contemplated by the Deputy’s Order, including obtaining documents and information from Axiom Strategies related to a disputed payment for a mailer. *See generally* Deputy’s Order at 11 (noting that a “formal hearing is also necessary to develop the facts and circumstances” relating to that mailer); *see also* Ex. 11 (introduced at hearing).

The case then proceeded to a hearing. Following the Hearing, the Hearing Officer issued an Initial Decision concluding, among other things, that the actions of the Respondents, and Cole, particularly during the Division’s investigation, “invite a conclusion of coordination and control.” Initial Decision (attached as Exhibit 2), ¶ 104. Ultimately, though, the Hearing Officer concluded that the Division had failed to prove, by a

preponderance of the evidence, the campaign violations alleged in the administrative complaint. *Id.* at 34.

LEGAL STANDARD

Under section 1-45-111.5(2), fees may be imposed only where the hearing officer determines that the action—in this case, the administrative complaint filed by the Division—“lacked substantial justification or . . . was commenced for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct.” In this context, “lacked substantial justification” means “substantially frivolous, substantially groundless, or substantially vexatious.” *Id.* “[A] claim is frivolous if its proponent can present no rational argument based on the evidence or the law to support it. *Colo. Ethics Watch v. Senate Majority Fund, LLC*, 275 P.3d 674, 686 (Colo. App. 2010). “A claim is vexatious if it is brought or maintained in bad faith to annoy or harass another.” *Id.*

ARGUMENT

As a threshold matter, it is unclear on what grounds the Larson Respondents ask this Court to impose fees. The Motion states that the “complaint filed by Little and the Division was vexatious, brought for the purpose of and harassment [sic] and repeatedly delayed.” Mot. ¶ 13. But it presents no evidence that the claim was “brought or maintained in bad faith,” as would be necessary to support a finding of vexatiousness or harassment, and “repeated[] delay[]” is not grounds for an award of attorneys’ fees unless the action was “commenced for delay,” which the Motion does not allege.

Instead, most of the Motion seems to argue that both the original complaint filed by Little and the Administrative Complaint filed by the Division were “frivolous.” *See, e.g.*, Mot. ¶ 4 (calling the Little Complaint “weak”); Mot. ¶ 11 (“At the hearing the Division

presented no credible evidence to support their allegations.”). But that word, “frivolous,” is conspicuously absent from the Motion.

Accordingly, the Hearing Officer may deny the Motion solely on the ground that the Larson Respondents moved on the basis of vexatiousness, but provided no evidence to support such a conclusion. But if the Hearing Officer does read the Motion broadly to encompass allegations of frivolousness, the Motion should still be denied, at least as to the Division.

I. Substantial justification for the Division’s Complaint came in the form of the Deputy Secretary’s Order.

In section 1-45-111.7(5)(a)(IV), the General Assembly contemplated scenarios in which the Elections Division would initially move to dismiss a complaint, and the final agency decisionmaker would deny that Motion. In such cases, the General Assembly concluded that the Division should be required “to file a complaint with a hearing officer.” § 1-45-111.7(5)(a)(IV). Consistent with this statutory requirement, when the Deputy Secretary denied the Division’s Motion to Dismiss, in part, he expressly ordered the Division “to file a Formal Complaint with a hearing officer within fourteen days[.]” Deputy’s Order at 12; *see also id.* at 1.

The final agency decisionmaker—the ultimate authority as to campaign finance violations in Colorado—ordered the Division to pursue a hearing before the hearing officer. This alone establishes substantial justification for the Division’s Complaint. It had no choice—it was statutorily and legally obligated to file the Complaint, which it did.

Under such circumstances, it would be an absurd result to enable Respondents to recover attorneys’ fees from the Division or its attorney. § 1-45-111.5(2). Where, as here, the Deputy Secretary concludes a hearing is warranted based on a sufficient inference of prohibited coordination, the General Assembly has not only authorized the Division to initiate

such a hearing, it requires the Division to do so. That requirement establishes the justification for the Division's complaint.

II. Even absent the Deputy's Order, the Administrative Complaint was not frivolous.

As the Hearing Officer observed, Respondents' actions in defending this suit and interacting with the Division during its investigation "invite a conclusion of coordination and conclusion." Initial Decision ¶ 104. The Deputy Secretary's Order also shows there was nothing frivolous about the Division's claims—those claims arose out of the reasonable inference that there was a "substantial probability that the use of a common consultant by the various IECs and political organizations, with no evidence of any firewall procedures or isolation of any personnel, led to precisely the kind of coordination that undermines that campaign contribution and spending limits that form the basis of the coordination prohibition." Deputy's Order at 10.

The Division knew, following the testimony at the hearing, that if the Hearing Officer credited Larson's and Cole's testimony, the Division's claims could be dismissed. It even invited such a conclusion during closing arguments, admitting that if the Hearing Officer found those witnesses credible, it should lose.

But as both the Deputy Secretary and the Hearing Officer noted, such credibility determinations were necessary in this instance because of the plausible allegations of coordination stemming from the close relationship between these candidates, committees, and consultants. "Meritorious actions that prove unsuccessful . . . are not frivolous." *In re Parental Responsibilities Concerning D.P.G.*, 2020 COA 115, ¶ 34 (interpreting attorneys' fees provision at § 13-17-102); *see also Colo. Ethics Watch*, 275 P.3d at 686 (relying on case law arising in the § 13-17-102 context to interpret § 1-45-111.5(2)). Here, the Division presented a meritorious case concerning plausible coordination between closely related

entities. That the Hearing Officer credited Respondents' testimony that such coordination did not occur does not render such allegations frivolous.

CONCLUSION

Because the Larson Respondents moved on the basis of vexatiousness and delay, but provided no evidence to support a conclusion of either, the Hearing Officer should deny the Motion without a hearing. Nor is a hearing necessary to conclude that, as a matter of law, the Deputy Secretary's Order directing the Division to file a complaint before the Hearing Officer constitutes a substantial justification for the ensuing complaint.

And even if not, the Division's Complaint had substantial justification on its face, and based on the testimony brought forth at the hearing. As to the Division, the Motion should be denied.¹

Respectfully submitted this 30th day of May, 2024.

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¹ The Division does not represent the original third-party complainant, Marcie Little, and makes no argument regarding the Motion's claims against Little except to emphasize that under the campaign finance enforcement statute, an original "complainant . . . is not a party to . . . any proceedings before a hearing officer." § 1-45-111.7(5)(b); *see also* § 1-45-111.5(2) (authorizing recovery of fees "from any attorney or party who has brought or defended" an action to enforce Colorado campaign finance law).

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served by email this 30th day of May, 2024, addressed as follows:

Colin Larson & Colin for Colorado
c/o counsel, Suzanne Taheri
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Respondents

/s/ Peter G. Baumann

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 COLIN LARSON, et al.	Election Division Case Nos.: 2022-109, 2022-110, 2022-111, 2022-112, 2022-113, 2022-114, 2022-115, 2022-116, & 2022-117
ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS, AND REMANDING FOR A HEARING	

This matter comes before Christopher P. Beall, Colorado Deputy Secretary of State (“Deputy Secretary”), upon a Motion filed by the Election Division (“Division”) to dismiss the underlying citizen complaints in this factually complex and interconnected, consolidated proceeding. Having reviewed and considered the Motion, the contents of the file in this matter, and the information that is judicially cognizable from the public TRACER filing system, the Deputy Secretary grants the Motion with regard to Frank McNulty and Square Strategy Group, LLC and dismisses Case Nos. 2022-113 and 2022-114, but denies the Motion with regard to Colin Larson, Colin for Colorado, Restore Colorado Leadership Fund IEC, Restore Colorado Leadership Fund 527, Daniel Cole, Cole Communications, LLC, and Victors Canvassing, LLC, and pursuant to the provisions of Section 111.7(5)(a)(IV) of the Fair Campaign Practices Act (“FCPA”) directs the Division to file a Formal Complaint under CPF Rule 24, 8 CCR 1505-6, before a hearing officer on the complaint finance violations identified herein, arising from the allegations in Case Nos. 2022-109, 2022-110, 2022-111, 2022-112, 2022-115, 2022-116, and 2022-117.

CAMPAIGN FINANCE COMPLAINT PROCEDURES

Campaign finance in Colorado is governed by Article XXVIII of the Colorado Constitution¹, Article 45 of Title 1 of the Colorado Revised Statutes, and the Secretary of State's Campaign & Political Finance ("CPF") Rules, 8 CCR 1505-6. These laws address contribution and spending limits, electioneering communications, various campaign finance registration, disclosure and disclaimer requirements, and prohibitions on certain kinds of campaign finance activities. Section 111.7 of the FCPA sets forth Colorado's campaign finance complaint process. See § 1-45-111.7. As required by the federal court in *Holland v. Williams*, Case No. 16-cv-00138-RM-MLC, 2018 WL 11414904, at *3 (D. Colo. June 29, 2018), no underlying citizen complaint alleging a violation of Colorado's campaign finance law may proceed without first undergoing the administrative review that is now specified in section 111.7 of the FCPA.

Under section 111.7, the Division independently reviews citizen complaints and then determines whether to pursue its own charges before a hearing officer. If the Division makes an initial determination that an underlying complaint alleges any violations that are curable, the Division is required to notify the respondent and provide an opportunity to cure. See § 1-45-111.7(3)(b)(II). If the Division determines that there is insufficient evidence to support the alleged campaign finance violation, the Division must file a motion to dismiss the underlying complaint with the Deputy Secretary. See § 1-45-111.7(5)(a)(IV). The Division has no authority to dismiss an underlying complaint without approval from the Deputy Secretary.

In this consolidated proceeding, following the Division's initial review of the underlying citizen complaints under section 1-45-111.7(3)(a), and then an investigation by the Division under section 1-45-111.7(5)(a)(I), the Division has now filed a Motion to Dismiss all of the underlying complaints under section 1-45-111.7(5)(a)(IV).

In this procedural posture, the Deputy Secretary must make a determination on the motion to dismiss. If the Deputy Secretary denies the motion, the Division has fourteen business days to file a Formal Complaint before a hearing officer, § 1-45-111.7(5)(a)(IV) and thereafter litigate the claims set out in the Division-filed litigation. With regard to any portion of a motion to dismiss that is granted by the Deputy

¹ Certain provisions of Article XXVIII were held unconstitutional under the First and Fourteenth Amendments of the U.S. Constitution in *Holland v. Williams*, 457 F. Supp. 3d 979 (D. Colo. 2018) in a final judgment that is binding on the State of Colorado. Those provisions are not at issue here in light of the subsequent enactment of amendments to the Fair Campaign Practices Act, §§ 1-45-111.7, *et seq.*, C.R.S., which cured the unconstitutionality identified in *Holland*.

Secretary, that dismissal constitutes “final agency action and is subject to judicial review by a state district court under section 24-4-106.” See § 1-45-111.7(4)(e)(II).

PROCEDURAL HISTORY AND FACTUAL FINDINGS

On November 7, 2022, the underlying complainant Marci Little filed nine citizen complaints under Section 111.7(2)(a) of the FCPA against nine different respondents, all of whom Ms. Little alleged were interconnected around a common enterprise allegedly consisting of coordinated support for then-Representative Colin Larson and his candidate committee. In addition to the complaints against Rep. Larson and his candidate committee, the seven other complaints were filed against an independent expenditure committee established and controlled by the Colorado Republican Party, its corresponding 527 political organization, and two consultants and their business entities that provided services to Rep. Larson and the IEC and the 527 organization, both of which Rep. Larson was the leader of. Ex. A to Mot. The underlying complaints alleged that each of various respondents engaged in illegal coordination with Rep. Larson and his own candidate committee. *Id.*

The five groups of respondents are:

Colin Larson and Colin for Colorado (“Rep. Larson”) – Rep. Larson was the incumbent [State Representative](#) for Colorado House District 22. After the most recent legislative redistricting, Rep. Larson’s new district was House District 25, where he was a candidate for Colorado House of Representatives in the November 2022 general election.² [TRACER - Detail](#). “Colin for Colorado” was his candidate committee. *Id.*

Restore Colorado Leadership Fund 527 (“Respondent 527”) – Respondent 527 is the House GOP’s “leadership” fund, an arm of the House GOP’s leadership organized to raise money from donors as a 527 political organization registered with the Secretary of State with a stated purpose “To Educate and Inform Colorado Voters Regarding Candidates for the Colorado House of Representatives, Primarily Supporting Republicans and Opposing Democrats.” [TRACER – Detail](#).

² Rep. Larson’s opponent in the House District 25 race was now-Representative Tammy Story, who won the General Election contest. Because the events described in the complaints and this Order pertain to the time when Rep. Larson was then in office, this Order refers to him as “Rep. Larson” even though he is no longer a sitting member of the State House. See [Colo. Election Results, Nov. 8, 2022, General Election](#).

Restore Colorado Leadership Fund IEC (“Respondent IEC”) – Respondent IEC is the spending arm of the House GOP’s leadership effort, receiving a substantial portion of its funds from the Respondent 527, and it remains an active independent expenditure committee registered with the Secretary of State with a stated purpose “To Support Republican Candidates for the Colorado House of Representatives.” [TRACER – Detail](#).

Frank McNulty and Square State Strategy Group, LLC (“Respondent McNulty”) – Frank McNulty is the former Speaker of the Colorado House of Representatives for the 68th General Assembly (2011-2013). He is the current owner and registered agent of Square State Strategy Group, LLC – a limited liability company [registered](#) with the Secretary of State. According to the company’s [website](#), it is “a full service corporate and campaign firm.”

Daniel Cole, Cole Communications, and Victors Canvassing (“Respondent Cole”) – Daniel Cole is the owner and registered agent of Cole Communications, LLC and Victors Canvassing, LLC, both limited liability companies registered with the Secretary of State. See [Summary](#); [Summary](#). Respondent Cole’s companies provide “consultant and professional services” to candidates and committees.

The Division notified all of the respondents of the underlying complaints on November 7, 2022. Ex. B to Mot. After completing its initial review, on November 22, 2022, the Division sent Respondents a Notice of Initial Review and Opportunity to Cure. Ex. C to Mot. In its Initial Review, the Division determined that the underlying complaints were timely filed, identified one or more potential violations of Colorado campaign finance law, and asserted facts that, if true, could support a factual and legal basis for violations of Colorado campaign finance law. *Id.* The Division also determined that one or more of the alleged violations may be curable under section 1-45-111.7(4). *Id.* Rep. Larson and Respondents Cole and McNulty submitted responses to the Division’s requests for information on December 16, 2022, and Respondents IEC and 527 submitted responses on January 6, 2023. Ex. E-H to Mot.

Because none of the respondents sought to cure the alleged violations, on March 24, 2023, the Division proceeded with its investigation of the underlying complaints under Section 111.7(5). See Mot. at 3. The Division consolidated the citizen complaints under CPF Rule 23.1.3 because they arise from a common set of operative facts and raise identical allegations against interrelated respondents. *Id.*

The Division's admirable and detailed investigation of the complex, interrelated circumstances in this matter revealed the following additional information:

Respondent IEC's independent expenditures during the 2022 election cycle totaled \$1,605,515. Respondent IEC received a total of \$803,700.06 from Respondent 527 during the 2022 election cycle, with \$732,089.06 of that amount having been donated by Respondent 527 to Respondent IEC for the specific purpose of making independent expenditures by Respondent IEC itself.

Rep. Larson took over as head of Respondent IEC in November 2022 due to House Minority Leader Hugh McKean's sudden death on October 30, 2022. Ex. E to Mot. In that role, Rep. Larson's responsibilities included raising funds for Respondent 527 and deciding which house candidates to provide financial support to in the 2022 general election. Exs. E & H to Mot. These and other independent expenditures made by Respondent IEC during the 2022 election cycle were directed by Rep. Larson while Rep. Larson held multiple roles both as an active candidate for election and as the leader of the so-called "soft side" of the House GOP's leadership fund.

Rep. Larson's decisions as the leader of Respondent IEC were conducted in consultation with Respondent Cole, who was paid \$140,000 by Respondent IEC for Respondent Cole's services to Respondent IEC. Exs. H & N to Mot. Respondent Cole also provided consulting to Respondent 527 during the 2022 election cycle, for which he was paid \$89,276.20. Ex. P to Mot.

In addition to his work for the two House GOP leadership entities, Respondent Cole provided services during the 2022 election cycle to:

- Rep. Larson for his primary campaign, including at least one set of "Get out the vote" text messages for which he was paid \$726.10, Exs. E & F to Mot.;
- Unite for Colorado Action IEC ("Unite IEC") in support of independent expenditure efforts by Unite, which included, among other expenditures, door-to-door canvassing in support of candidates for the Colorado House of Representatives, including Rep. Larson, all of which resulted in payments from Unite IEC to Respondent Cole totalling \$773,475.09. Ex. F to Mot.; TRACER - [7/13/22](#); [8/18/22](#); [9/12/22](#); [9/29/22](#); [10/12/22](#).
- Ready Colorado Action Fund in support of independent expenditure efforts that the independent expenditure committee pursues under its purpose of "Supporting

Conservative Candidates Working to Improve Education in Colorado,” Ex. F to Mot.; see also [TRACER Detail](#).

Ready Colorado Action Fund made two independent expenditures totaling \$16,343 to Axiom Strategies for mailers in June 2022 that supported Rep. Larson by encouraging voters to vote for Rep. Larson in his race for House District 25 , as well as another \$25,075 to Axiom Strategies for three more mailers in October 2022 in opposition to Rep. Larson’s opponent, Ms. Story. Ex. R to Mot.; [TRACER Report, Oct. 31, 2022](#).

On October 26, 2022, Axiom Strategies sent an invoice to Respondent IEC that included a charge of \$8,882 for one of these October mailers with anti-Story advertising in opposition of Rep. Larson’s opponent, Ms. Story. Ex. H to Mot. The registered agent for Respondent IEC, Katie Kennedy, paid the invoice from Respondent IEC’s funds, and reported the expenditure in TRACER as being an electioneering independent expenditure by Respondent IEC. Exs. H & S to Mot. The next day, a consultant for Respondent IEC notified Ms. Kennedy and Axiom that the invoice should not have been sent to, or paid by, Respondent IEC, but instead should have been handled by Ready Colorado Action Fund so as to avoid any impropriety in having Respondent IEC fund electioneering communications that supported Rep. Larson:

This invoice is incorrect. It lists a mailer - Larson G03 - that is supposed to be charged to Ready Colorado Action Fund IEC, not Restore Colorado Leadership Fund (RCLF).

That’s an issue because Rep. Larson oversees RCLF and thus the IE cannot be spending on his race.

Can you send back a corrected invoice?

Ex. H to Mot. This exchange showed clear awareness by the parties of the need to avoid the appearance of coordination between Respondent IEC and Rep. Larson. *Id.* In response, Axiom refunded the payment to Respondent IEC and sent the invoice to Ready Colorado Action Fund. *Id.* Ms. Kennedy corrected the entries on TRACER, which showed an “offset” of the payment. *Id.*; Ex. T to Mot.

Unite IEC is a separate independent expenditure committee that was registered with the Secretary of State’s Office on Aug. 5, 2020, and was terminated three weeks after the Division filed its motion in this case. See [TRACER – Detail](#). Both Unite IEC and Respondent IEC share the same registered agent, Ms. Kennedy. See *id.* Unite IEC’s stated purpose was to “To Support Candidates for State and Judicial District Office Who Support Public Safety and Eliminating Barriers to Opportunity and Job Creation Through Free

Markets, Low Taxes, and Limited Government, Regardless of Party Affiliation.” See *id.* Despite its disclaimer of party affiliation, the large majority of Unite IEC’s spending during the 2022 General Election was in support of Republican candidates and in opposition to Democratic candidates. See, e.g., [Nov. 5, 2022, Major Expenditure Report, Oct. 31, 2022, Report of Donations and Expenditures, Oct. 17, 2022, Report of Donations and Expenditures](#). The overwhelming majority of Unite IEC’s donations came from Advance Colorado Action, an entity whose parent corporation is Unite for Colorado, which itself is also the parent organization for Unite IEC. In other words, the parent corporation known as Unite for Colorado, which is not registered with the Secretary of State’s TRACER system, is listed as the parent organization for both Advance Colorado Action and Unite IEC in Unite IEC’s disclosure reports. See, e.g., [Oct. 31, 2022, Report of Donations and Expenditures](#). These various entities all share common legal counsel with the Maven Law Group, which has been representing both Respondent Cole and Rep. Larson in this proceeding. Exs. E & F to Mot. In addition, Unite IEC paid Respondent Cole’s canvassing firm, Victors Canvassing, at least \$350,000 for canvassing work in support of various Republican candidates, including Rep. Larson. See, e.g., [Oct. 17, 2022, Report of Donations and Expenditures](#).

Respondent McNulty counseled Representative McKean regarding policy and leadership for Representative McKean’s role as head of Respondent 527 during the 2022 election cycle; he was paid \$25,000 for those services. Exs. G & Q to Mot. Respondent McNulty also provided graphic design and vendor coordination services to Rep. Larson for a total fee of \$2,000 (four expenditures of \$500 between July 19 and November 5, 2022). Exs. E & J to Mot. Respondent McNulty was present at a November 1, 2022, Zoom meeting hosted by Rep. Larson and attended by candidates for the Colorado House of Representatives. Mot. at 8. The main topic of discussion was who may be elected as leader of the Republican House following Minority Leader McKean’s death. *Id.* Attendees reported that general activity was discussed but no specifics about strategies, expenditures, or non-public candidate information. *Id.*

The Division filed the instant motion to dismiss pursuant to sections 1-45-111.7(5)(a)(IV) on the ground that there is insufficient evidence to support a finding that any of the nine respondents violated Colorado campaign finance laws. For the reasons stated below, the Deputy Secretary grants the Division’s Motion to Dismiss with regard to Frank McNulty and Square Strategy Group, LLC, and denies the motion

with regard to Colin Larson, Colin for Colorado, Restore Colorado Leadership Fund IEC, Restore Colorado Leadership Fund 527, Daniel Cole, Cole Communications, LLC, and Victors Canvassing, LLC.

ANALYSIS

The underlying complaints allege that all of the respondents engaged in illegal coordination. The Secretary's CPF Rules prohibit candidates, their candidate committees, and IECs from coordinating campaign-related expenditures. CPF Rule 5.2, 8 Code Colo. Regs. 1505-6. An "expenditure" is "any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question." COLO. CONST. art. XXVIII, § 2(8)(a).

Under CPF Rule 21.1, expenditures or spending are "coordinated" with a candidate committee (or political party) if:

21.1.1 A person makes an expenditure or engages in spending at the request, suggestion, or direction of, in consultation with, or under the control of that candidate committee or political party; or

21.1.2 An independent expenditure or electioneering communication is created, produced, or distributed:

(a) After one or more substantial discussion(s) between the candidate or political party and the person making the expenditure or engaging in the spending,

(1) In which the person making the expenditure or engaging in the spending received non-public information about the candidate or political party's plans, projects, activities, or needs; and

(2) The information is material to the creation, production, or dissemination of an independent expenditure or electioneering communication; or

(b) By a common consultant who provides, or has provided during the election cycle, professional services to the candidate committee or political party as well as to the person making the expenditure or engaging in the spending; and

(1) In which the person making the expenditure or engaging in the spending received non-public information about the candidate or political party's plans, projects, activities, or needs; and

- (2) The information is material to the creation, production, or dissemination of an independent expenditure or electioneering communication.

CPF Rule 21.1, 8 Code Colo. Regs. 1505-6.

An independent expenditure is “an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate.” COLO. CONST. art. XXVIII, § 2(9). An “electioneering communication” is a communication broadcasted by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences, or otherwise distributed, within thirty days before a primary election through the general election to an audience that includes members of the electorate and unambiguously refers to any candidate. COLO. CONST. art. XXVIII, § 2(7)(a); § 1-45-103(9).

Here, while noting the various dealings and overlapping relationships amongst the respondents, the Division nevertheless argues that there is insufficient evidence to support a finding of illegal coordination between the various parties. The Deputy Secretary disagrees, except as to Respondent McNulty.

Mr. Cole, as an individual and through his business entities, consulted for both Respondent IEC—directing its independent expenditures with Rep. Larson—and Respondent 527, while also providing consulting services to Ready Colorado Action Fund—which spent \$41,416 on mailers in support of Rep. Larson or in opposition to his opponent Ms. Story, as well as consulting and canvassing services to Unite IEC in support of Rep. Larson—totaling \$773,475.09—after providing campaigning services to Rep. Larson in support of his primary election. In addition, while Respondent Cole was working with Rep. Larson to coordinate Respondent IEC’s spending, Respondent Cole also was taking money from Unite IEC—at least \$350,000—to fund canvassing efforts that supported Rep. Larson among other candidates. Respondent Cole’s multiple involvements with Respondent IEC, Ready Colorado Action Fund, and Unite IEC, as well as in direct consultation with Rep. Larson for his candidate campaign, creates a sufficient inference of illegal coordination to support a plausible foundation for pursuing a hearing on the coordination charge. Indeed, in light of the lack of subpoena power for the Division to compel live testimony during its investigation phase of a case prior to a formal hearing, the Division necessarily must rely on, and is certainly permitted to pursue a Formal Complaint based on, information and belief arising from the reasonable inferences available from the evidence collected during its investigation.

In contrast to such inferences of illegal coordination, though, the Division points to Respondent Cole's responses to the Division's information request, in which Mr. Cole's counsel stated that Mr. Cole and his businesses did not receive non-public, material information about Rep. Larson's plans, projects, activities, or needs.³ See Mot. at 18. This lawyer-composed announcement of a lack of coordination, however, is not sufficient; in bald, undetailed and un-cross-examined pronouncements, it fails to refute the substantial probability that the use of a common consultant by the various IECs and political organizations, with no evidence of any firewall procedures or isolation of personnel, led to precisely the kind of coordination that undermines the campaign contribution and spending limits that form the basis of the coordination prohibition. In this context, the paper pronouncements from the various respondents that no coordination occurred in this matter must be evaluated at a live formal hearing with live witnesses who can be cross-examined, where the hearing officer can assess the demeanor, body language, and credibility of the witnesses, and where third parties who were not identified as respondents to the initial underlying complaints may be compelled by subpoena to provide relevant evidence that bears on the question of whether illegal coordination occurred. The bottom line is that a formal hearing is required to ascertain whether, when Rep. Larson took over the leadership of Respondent IEC upon Rep. McKean's unexpected death, working closely with Respondent Cole who had integral involvement with multiple interrelated committees, there was a degree of coordination that occurred that is prohibited. The Deputy Secretary observes that neither Rep. Larson's nor Respondent Cole's responses can be given evidentiary weight because they were not signed by the individual respondents. See Exs. E & F to Mot. Furthermore, whether a common consultant *uses* the non-public material information that has been made available to him is not dispositive; instead, it is *receipt* of the information that is at issue. See CPF Rule 21.1.2(b)(1) (using "received"); *cf.* CPF Rule 21.1.4 (discussing use of barriers or firewalls to prevent *transmission* of

³ The Division characterizes both Respondent Cole and Rep. Larson's responses to the Division's information requests as "declarations," but neither document was signed by the putative declarants, and indeed, Rep. Larson's response is not even in his own words, referring to himself in the third-person. See Exs. E & F to Mot. Rather, they were written and signed by Suzanne Taheri, with Maven Law Group. See *id.* Although both responses contain an averment that they are being provided under penalty of perjury, they cannot be treated as the legally admissible declarations of either Colin Larson or Daniel Cole because neither person signed their responses. Rather, they are nothing more than proffers from their attorney of what Rep. Larson and Respondent Cole's eventual testimony might be.

information).⁴ And in this matter, the record supports a strong inference that there was non-public, material information that was shared by and between the various IECs, Respondent Cole, and Rep. Larson.

A formal hearing is also necessary to develop the facts and circumstances under which Axiom sent the invoice referenced in the underlying complaints to Respondent IEC, only rerouting it to Ready Colorado Action Fund after Axiom was notified by a consultant working for Ready Colorado Action Fund that it needed to be sent to Ready Colorado Action Fund, rather than Respondent IEC, so as to avoid the appearance of illegal coordination between Respondent IEC and Rep. Larson. The post-hoc effort to correct the record of this payment, switching it from Respondent IEC to Ready Colorado Action Fund, may be an instance of a campaign finance violation that was cured after the fact with an updated TRACER filing, but such a cure does not answer the question of substantial compliance, particularly if there was an intention by the interconnected parties to conceal illegal coordination between the multiple nominally “independent” IECs and Rep. Larson. See, e.g., § 1-45-111.7(4)(f)(III) (requiring evaluation of “Whether the noncompliance may properly be viewed as an intentional attempt to mislead the electorate or election officials”).

The Deputy Secretary agrees that there is insufficient evidence of coordination with regard to Respondent McNulty. Respondent McNulty counseled Representative McKean regarding policy and leadership for Representative McKean’s role in Respondent 527, but he did not provide any consulting services regarding independent expenditures. Therefore, unlike Respondent Cole, no inference of coordination arises from the services (graphic design and vendor coordination) Respondent McNulty also provided to Rep. Larson. Nor did Respondent McNulty’s presence at the November 1, 2022, meeting suggest any coordination: the purpose of the meeting was to discuss the future leadership of the Colorado House Republicans and no strategies, independent expenditures, or non-public information about the candidates was discussed.

⁴ CPF Rule 21.1.4, concerning “firewall” procedures to avoid an inference of illegal coordination, states that “Physical or technological barriers include appropriate security measures, and must be set forth in a written policy that is distributed to all affected agents, employees, board members, directors, officers, and consultants. A firewall is not effective if non-public material information is nonetheless directly or indirectly transmitted to the person making an expenditure or engaging in spending.” None of the respondents have come forward with any written documentation that would support a finding that there existed adequate firewalls to prevent the receipt of non-public information by Mr. Cole as a result of his multiple roles with Rep. Larson and the various IECs involved in this case.

CONCLUSION

In light of the foregoing, because there is insufficient evidence to support a finding that Frank McNulty and Square Strategy Group, LLC violated Colorado campaign finance laws, the underlying complaints against them are dismissed. This determination constitutes final agency action on Case Nos. 2022-113 and 2022-114. With regard to Colin Larson, Colin for Colorado, Restore Colorado Leadership Fund IEC, Restore Colorado Leadership Fund 527, Daniel Cole, Cole Communications, LLC, and Victors Canvassing, LLC, the Motion to Dismiss is denied, and the Division is directed to file a Formal Complaint with a hearing officer within fourteen days of this Order. This denial of the Division’s motion is interlocutory and not a final action, and is not subject to judicial review until such time as a later final agency order is issued.

IT IS SO ORDERED.

DONE and **ORDERED** this 1st day of May 2023.

CHRISTOPHER P. BEALL



Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS, AND REMANDING FOR A HEARING** was served on the following parties via electronic mail on May 1, 2023:

Complainant –

Marcie Little
marcielittle@proton.me

Respondents –

Colin Larson & Colin for Colorado
Counsel, Suzanne Taheri
st@westqlp.com
staheri@mavenlawgroup.com

Restore Colorado Leadership Fund IEC
Registered Agent, Katie Kennedy
katie@strategiccompliancellc.com

Restore Colorado Leadership Fund 527
Registered Agent, Katie Kennedy
katie@strategiccompliancellc.com

Frank McNulty & Square State Strategy Group, LLC
frank@squarestatellc.com

Daniel Cole, Cole Communications, & Victors Canvassing
Counsel, Suzanne Taheri
st@westqlp.com
staheri@mavenlawgroup.com

Elections Division –

Colorado Secretary of State, Elections Division
Timothy.Gebhardt@coloradosos.gov
CPFComplaints@coloradosos.gov

/s/ Christopher P. Beall
Deputy Secretary of State

ADMINISTRATIVE RECORD AND EXHIBITS

1. The Administrative Record consists of the pleadings in nine related Tracer files under cases numbered ED2022-109, ED2022-110, ED2022-111, ED2022-112, ED2022-113, ED2022-114, ED2022-115, ED2022-116, and ED2022-117 as well as those in the Administrative Hearing Officer Docket for 2023 AHO 0003 on or before February 16, 2024. The Record also includes the Division’s Exs. 1 through 17, all admitted into evidence, and the 8 page pdf file not admitted in evidence containing the Division’s demonstrative exhibits referred to in closing argument. Finally, the Record includes the video recording of the hearing. The recording is 3:03:23 in length. From time to time, the summary of evidence includes time markers in the format h:mm:ss indicating where that testimony occurred in the recording.

2. Without objection, the exhibits in the table below were admitted at the beginning of the hearing. Exs. 1-17 are in a single pdf file of 73 pages. In the body of this Initial Decision, I will refer to exhibit numbers and give the page number of the 73 page exhibit packet when referring to exhibits.

Exhibit No.	Item
DIVISION’S EXHIBITS	
1	Campaign Finance Complaint filed by Marcie Little
2	Letter dated December 16, 2022, from Suzanne Taheri to Tim Gebhardt on behalf of Rep. Colin Larson and Colin for Colorado3
3	Letter dated December 16, 2022, from Suzanne Taheri to Tim Gebhardt on behalf of Cole Communications and Victor’s Canvassing
4	Letter dated January 6, 2023, from Katie Kennedy to Tim Gebhardt on behalf of Restore Colorado Leadership Fund, including attachments.
5	Report from TRACER reflecting expenditures made by Restore Colorado Leadership Fund IEC to Victor’s Canvassing
6	Report from TRACER reflecting expenditures made by Restore Colorado Leadership Fund 527 to Cole Communications

Exhibit No.	Item
7	Deputy Secretary's Order in this matter dated May 1, 2023.
8	Cole Communications, LLC's Information Sharing Directive.
9	Victor's Canvassing, LLC's Information Sharing Directive.
10	Colin Larson's Discovery Responses
11	Mailer in opposition to Tammy Story
12	Record of Expenditures by Ready Colorado Action Fund to Victor's Canvassing in October 2022.
13	Record of Expenditure by Unite for Colorado Action IEC to Victor's Canvassing in July 2022.
14	Record of Expenditure for Unite for Colorado Action IEC to Victor's Canvassing in October 2022.
15	Record of Expenditure supporting Colin Larson by Ready Colorado Action Fund in June 2022.
16	Record of Expenditure supporting Colin Larson by Ready Colorado Action Fund in October 2022.
17	Record of Expenditure opposing Tammy Story by Ready Colorado Action Fund in October 2022.

APPLICABLE LAW

3. This hearing was conducted in accordance with section 24-4-105 and section 1-45-111.7 6(a) and (b) of the Colorado Revised Statutes.

4. Pursuant to § 1-45-111.7(6)(a), C.R.S., this initial determination is subject to review by the Deputy Secretary of State for issuance of a final agency decision.

5. Campaign finance in Colorado is governed by Colo. Const. art. xxviii, the Fair Campaign Practices Act (FCPA) in Article 45 of Title 1 of the Colorado Revised Statutes, and the Secretary of State's Campaign & Political Finance ("CPF") Rules, 8 CCR 1505-6. These laws address contribution and spending limits, electioneering communications, various campaign finance registration, disclosure and disclaimer requirements, and prohibitions on certain kinds of campaign finance activities.

6. Candidate committees like Colin for Colorado are prohibited from receiving contributions in excess of the legal limit from any one contributor. Colo. Const. art. XXVIII, §

3(1). The limit is adjusted every four years and published by the Secretary of State. Colo. Const. art. XXVIII, § 13. For state house races in 2022, that limit was \$200 for the primary and general elections, for a total of \$400.

7. Colorado law requires all candidate committees to “report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; [and] expenditures made[.]” § 1-45-108(1)(a)(I), C.R.S. (2022).

8. Expenditures that are not controlled by or coordinated with any candidate or an agent of a candidate are “independent expenditures,” and are not considered contributions to the candidate they support. However, “[e]xpenditures that are controlled by or coordinated with a candidate or candidate’s agent are deemed to be both contributions by the maker of the expenditures, and expenditures by the candidate committee.” Colo. Const. art. XXVIII, § 2 (9).

9. “Any expenditure or spending on a covered communication that is controlled by or coordinated with a candidate or candidate's agent or a political party is considered both a contribution by the maker of the expenditure or spending, and an expenditure by the candidate committee.” § 1-45-108(8)(a), C.R.S. (2022).

10. CFP Rule 21 defines “coordination” as follows:

Expenditures or spending are coordinated with a candidate committee or political party if:

21.1.1 A person makes an expenditure or engages in spending at the request, suggestion, or direction of, in consultation with, or under the control of that candidate committee or political party; or

21.1.2 An independent expenditure or electioneering communication is created, produced, or distributed:

-
- (a) After one or more substantial discussion(s) between the candidate or political party and the person making the expenditure or engaging in the spending,
 - (1) In which the person making the expenditure or engaging in the spending received non-public information about the candidate or political party's plans, projects, activities, or needs; and
 - (2) The information is material to the creation, production, or dissemination of an independent expenditure or electioneering communication; or
 - (b) By a common consultant who provides, or has provided during the election cycle, professional services to the candidate committee or political party as well as to the person making the expenditure or engaging in the spending; and
 - (1) In which the person making the expenditure or engaging in the spending received non-public information about the candidate or political party's plans, projects, activities, or needs; and
 - (2) The information is material to the creation, production, or dissemination of an independent expenditure or electioneering communication.

SUMMARY OF TESTIMONY

Timothy Gebhardt

Timothy Gebhardt gave the following testimony after first being duly sworn.

11. Mr. Gebhardt is the Campaign and Political Enforcement Manager in the Elections Division of the Colorado Secretary of State. He manages a team of legal analysts who review and investigate complaints of violations of the Fair Campaign Practices Act. He explained in detail the process for investigating such complaints. The initial review is completed within ten days of receiving a citizen complaint. They investigate whether the complaint was timely, whether it alleges violations of the Act and whether it alleges sufficient facts to support an inquiry about whether campaign finance violations have occurred.

12. If the team concludes that there has been a violation, they give the respondent an opportunity to cure. If the violation is not cured, then there is a further investigation phase that lasts

30 days during which the investigators decide whether to move to dismiss the complaint or file a hearing officer complaint.

13. In this case, there were nine complaints against various respondents that were part of Marci Little's complaint this is Ex. 1, received November 7, 2022.

14. Exhibit 2 is a response to the Division's request for information to: Larson and the Colin for Colorado candidate committee. The written response through counsel in Exhibit 2 to question number one was as follows:

“Mr. Larson provided high-level direction on which Colorado State House races, Restore Leadership Fund, IEC (RCLF IEC) would make expenditures. Mr. Larson worked with Daniel Cole in Mr. Cole's capacity as general consultant for RCLF IEC to direct expenditures.”

15. Daniel Cole was named as a respondent in the citizen complaint. Larson was in a competitive race. Daniel Cole worked for Colin for Colorado.

16. Exhibit 3 is the response, through his counsel, of Daniel Cole's two entities, Cole Communications and Victor's Canvassing to questions submitted by the Division. The Division asked in question 8 whether these entities had any barriers in place to prevent the sharing of nonpublic information with other entities. In response to that question, no information was provided to show that any barriers or firewalls existed. Ex. 3 pp. 27-28/73.

17. The Division concluded, after investigation, that there was no direct evidence of coordination, but there was substantial circumstantial evidence due to the interconnectedness of the parties. They were concerned about those relationships and the lack of documentation of a firewall in place concerning the potential sharing or receipt of nonpublic information. They also looked into Ready Colorado IEC and Unite for Colorado IEC, each of which contributed to the Larson campaign.

18. It appeared initially that Restore Colorado IEC did make an independent expenditure in Colin Larson's race in 2022. That was in the form of the payment for about \$8,882 to Axiom Strategies, a large communications firm, for an opposition mailer about Mr. Larson's opponent in the campaign. Exhibit 4 is the response of the Restore Colorado Leadership Fund (RCLF) IEC to an inquiry about that payment. Ex. 4 is authored by Katie Kennedy, who is Restore's designated Tracer filing agent. In the answer, she explains that she originally reported the Axiom invoice as having been paid by Restore Colorado. The very next day after recording the expenditure on Tracer, however, she learned that that invoice from Axiom actually should have gone to Ready Colorado. She was informed of the error in an email from Tyler Sandberg, a consultant to RCLF IEC. That email is in Exhibit 4, p. 32/73, in which Tyler Sandberg says:

“This invoice is incorrect. It lists a mailer - Larson G03 - that is supposed to be charged to Ready Colorado Action Fund IEC, not Restore Colorado Leadership Fund (RCLF).

“That's an issue because Rep. Larson oversees RCLF and thus the IE cannot be spending on his race.”

19. Ex. 11 is the mailer that was sent by Axiom and which resulted in the \$8,882 charge. That mailer was received during the investigation, and it shows that the mailer was paid for by Ready Colorado Action Fund IEC. Daniel Cole was a consultant to Ready Colorado.

20. During the investigation phase, the Division lacks subpoena power, and Respondents provided no documents that supported the existence of the appropriate firewalls within any of the interconnected entities.

21. There is no evidence that Mr. Larson was using Ready Colorado or Unite Colorado or Cole as his consultant in August.

22. Ex. 7 is the May 1, 2023 Order of the Deputy Secretary granting in part, and denying in part, the divisions motion to dismiss the complaint. The order directed the division to file a

hearing officer complaint within 14 days against 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.

23. Responding to Ms. Taheri's questions, Mr. Gebhardt says that Cole Communication sent out a single text for Colin Larson in June – a GOTV text. None of the groups supported Colin Larson's campaign in the primary. They did support him in the general election.

24. Which voters are Republicans is publicly available information; and Colin Larson's candidacy was public information. The Division performed a detailed investigation at the end of which it filed a Motion to Dismiss the complaint. But the enforcement team got subpoena power only after the Hearing Officer Complaint was filed.

25. Mr. Larson was not on the email chain that is included in Katie Kennedy's submission for Restore in Ex. 4.

26. He has no information indicating that Colin Larson knew about the Tammy Story mailer. He has no evidence that there was coordination in August. And there is no evidence that Larson did any business with Daniel Cole's companies after the text message in June. No evidence that Ready or Restore or Unite were spending on Mr. Larson's race in June. No evidence of coordination in June. No evidence of coordination with Mr. Larson's campaign in August. No evidence that Mr. Larson was using Ready, Restore, Unite or Cole Communications for his race.

27. The investigation revealed that Mr. Larson was providing high level advice and raising money for RCLF. The only evidence they have of RCLF spending money on Mr. Larson's race is the Tracer filing, quickly withdrawn, saying that RCLF paid for the mailer. RCLF's originally paid the invoice to Axiom for Ex. 11, an opposition piece benefitting Mr. Larson's race. Larson G-03 is the reference for the ad. The ad has the disclaimer that the flyer was paid for by Ready

Colorado Action Fund IEC. The disclaimer could be inaccurate as to who paid for it. But there is no evidence for that other than the initial payment, that was changed.

28. It is not unusual to amend a filing; it happens regularly.

29. He does not recall speaking to the complainant, Marcie Little. She was upset that some members were not invited to a meeting. She lives in Colorado Springs. She never said why she was interested in Mr. Larson's race.

30. Redirect by Mr. Baumann. Ex. 2, p. 24. Colin Colorado paid Cole Communications \$726.10 on July 1, 2022 for the text message. Ex. 13, p. 68 is an Expenditure Detail that shows Unite for Colorado paying Victor's Canvassing July 15-August 30 for canvassing for many House and Senate candidates including Colin Larson. So, July is when Unite Colorado began to support his campaign.

31. On redirect by Mr. Baumann, the witness said that Colin Larson paid Cole Communications \$726.10 on July 1, 2022 for the GOTV text.

32. July is when Unite for Colorado began to support the Colin Larson campaign, as shown by Ex. 13 which shows a payment of \$110,476.16 by Unite on July 13, 2022 for "door hangers and canvassing" for many Colorado House candidate, including Colin Larson.

33. And Ready Colorado Action Fund did support Mr. Larson during the primary, as can be seen from the payment by Ready to Axiom on June 1, 2022 of \$8,934 for a mailer in support. Ex. 4. And Colin Larson did work with Restore Colorado and Cole to elect other Republicans to the House.

34. Mr. Gebhardt doesn't know what GOTV stands for. In Colorado, unaffiliated voters can vote in primary elections. Entities like Restore Colorado don't often pay \$8,000 invoices by mistake.

Colin Larson

Colin Larson gave the following testimony after first being duly sworn.

35. Mr. Larson now works for the Colorado Restaurant Association. Before the election in 2022, he represented a different district in the Colorado House of Representatives than the one for which he ran in 2022. Redistricting changed the boundaries and number of the district in which he lived. He had won the primary easily, with a vote tally that ran 2:1 in his favor. In the general election when he ran against Tammy Story (D), it was considered a contested seat. The vote difference in the general election was 1-2%; he lost the election by fewer than 1,000 votes.

36. He explains that there is the Restore Colorado Leadership Fund 527 and also a Restore Colorado Leadership Fund IEC. It is the IEC that spends money that is raised by the 527. Like every other Republican Colorado House member, he did raise money for the 527. This is done by attending fundraisers and asking for donations. There is not a quota or an established amount that each member is expected to raise for the 527.

37. In August, Mr. Larson was asked by Representative Hugh McKean to take oversight responsibility for the Restore 527—to provide high level guidance about where to spend money on Colorado House races. He believes that Rep. McKean asked him to do this because they were friends and they had mutual trust and because it was believed that Mr. Larson would likely defeat Tammy Story for his own House race. Mr. Larson agreed to do this. Decisions were made in the consult with about ten consultants, including Daniel Cole. Mr. Larson continued in this role until the general election; but all decisions were made by one to two weeks before the election.

38. There was no conflict of interest for him to have that role, because he made it clear to Restore that he would not discuss his seat nor would Restore spend any money on his race. No one objected to his serving in this oversight role. Hugh McKean did not stay involved in Restore after August, so far as Mr. Larson knows, though Larson did not attend every meeting.

39. Tyler Sandberg was one of the consultants to Restore. And in 2022, Sandberg also worked as a consultant for Ready Colorado. Colin Larson is not included anywhere in the email chain, Ex. 4, pp. 32-33, where Sandberg advises that Restore should *not* have been invoiced for the \$8,934 mailer, Ex. 11, that was sent to voters in HD 25.

Tyler Sandberg <tyler.sandberg@gmail.com> Thu, Oct 27, 2022 at 12:14 AM
 To: "cfehr@garrisonmanagementgroup.com" <cfehr@garrisonmanagementgroup.com>, Chris D'Aniello <cdaniello@axiomstrategies.com>
 Cc: "katie@strategiccompliancellc.com" <katie@strategiccompliancellc.com>

This invoice is incorrect. It lists a mailer - Larson G03 - that is supposed to be charged to Ready Colorado Action Fund IEC, not Restore Colorado Leadership Fund (RCLF).

That's an issue because Rep. Larson oversees RCLF and thus the IE cannot be spending on his race.

Can you send back a corrected invoice?

40. Mr. Larson was overseeing Restore at the time the Sandberg email about the Axiom invoice was sent on October 27. At that point, Mr. Larson expected to win his seat. He was confident about that up until the first returns came in, at which point he realized he would probably lose. Ex. 5 shows payments of the Restore IEC to Victor's Canvassing on October 26 and 31, 2022. Mr. Larson was still overseeing Restore at that time.

Payee ▲	City, State	Expenditure Type	Amount	Date	Candidate/Committee Name	Ind.	Elec.	
VICTOR'S CANVASSING	COLORADO SPRINGS, CO	Advertising	\$35,000.00	10/26/2022	RESTORE COLORADO LEADERSHIP FUND IEC	Yes	Yes	View
VICTOR'S CANVASSING	COLORADO SPRINGS, CO	Advertising	\$35,000.00	10/26/2022	RESTORE COLORADO LEADERSHIP FUND IEC	Yes	Yes	View
VICTOR'S CANVASSING	COLORADO SPRINGS, CO	Advertising	\$35,000.00	10/31/2022	RESTORE COLORADO LEADERSHIP FUND IEC	Yes	Yes	View
VICTOR'S CANVASSING	COLORADO SPRINGS, CO	Advertising	\$35,000.00	10/31/2022	RESTORE COLORADO LEADERSHIP FUND IEC	Yes	Yes	View

Detail from Ex. 5

41. With Restore, he gave attention to mail and to polling. Restore did polling, and they did test messaging; but they did not use focus groups. Restore polled in eight or ten districts. Asked about messages that tested well, he said that it was different in different districts.

42. Ex. 6 shows the Restore IED expenditures to Cole Communications from February 22 to November 29, 2022. As part of Restore IEC, he discussed individual races with Cole and message strategy. He did not know if Cole worked for other IECs. After Mr. Larson took over Restore, he did not at all discuss his campaign with Cole.

43. The primary was in June, probably June 28. Cole's company did send a text message for the primary. The message was sent to likely Republican voters and would have urged people to vote for Colin Larson on election day. He is aware of the vote propensity score: mainly, the propensity of a voter to vote along party lines in an election. The reason he used Cole to send a text message is that the vendor that Colin Larson usually used was unavailable. So, he asked Cole to do it. At that time, he didn't know that Cole was a consultant for the 527. He did not discuss his House race with Cole after July 1, 2022.

44. Rep. Hugh McKean died October 30, 2022. Mr. Larson continued his role with Restore right up to the election. He does not know what was happening in the 527 before he took oversight of it in August.

45. Responding to Ms. Taheri's questions, Mr. Larson believes that the vote propensity score is partly based on how often people vote and partly on some consumer data, but he is not super familiar with the methodology. He does not recall asking Cole for data used or developed in connection with the text message they sent in his primary.

46. Restore Leadership Fund did no polling in his race or district, to his knowledge. They spent no money in his district, for or against him.

47. Mr. Larson had his own consultant for his race: Frank McNulty and Square Street Strategic and Margot Radich. He never discussed his race with Tyler Sandberg or Daniel Cole after July 1. When he took oversight of Restore, he would speak to Daniel Cole about every two weeks, about how much money was available and where it should be spent.

48. As for Ex. 11, the opposition flyer, he did not know that that was going out. He first saw it when a constituent showed it to him while he was door knocking. He saw that Ready Colorado paid for it. He had no knowledge about the mistaken invoice and payment for the piece. He first learned about it from the Tracer amendment. But no one ever talked to him about it or emailed him about it. He was never informed about what Ready Colorado, Victor's Canvassing or Unite for Colorado were spending on his race.

49. On Redirect, Mr. Larson described District 25 as being suburban with some rural areas. Restore and Ready did spend money in suburban areas.

Daniel Cole

Daniel Cole gave the following testimony after first being duly sworn.

50. Daniel Cole is a political consultant and he is appearing under subpoena. He has two companies through which he does his work: Cole Communications and Victor's Canvassing. All of his employees, technically, are employees of Victor's Canvassing. Cole Communications leases employees from Victor's Canvassing.

51. Victor's sometimes does data management, to determine who should receive communications, to look at potential voters. In determining how to decide who gets a text message, he generally passes that task off to someone like Daniel Fenlason, the former data director for the Colorado Republican Party, or to another vendor. Either someone from his company pulls a list of

voters or sometimes they turn to a text message vendor and offload the entire project to that vendor. He personally does not even have a log-in to extract that data from a database.

52. Victor's does do paid canvassing. They obtain the people they need to do the canvassing either from people who have worked for them before, or they use Indeed to get temporary employees—independent contractors. Only sometimes do they track which employees are working on which projects. He has three full time employees and one part time employee currently.

53. With his attention drawn to Ex. 3, a letter written by the Suzanne Taheri on behalf of the Maven Law Group and dated December 16, 2022, at first he says he has not seen it before, but when directed to the assertion in the first paragraph that it is a letter sent on behalf of Cole Communications and Victor's Canvassing, he says he "probably did review this." He is the chief decision-maker of Cole communications. The title he typically uses is "owner" and sometimes "CEO" or "owner" of Victor's. He is an officer of both.

54. His attention is drawn to Ex. 3 and the response in ¶ 8 on the second page. Cole Communications and Victor's currently have barriers to prevent the sharing of nonpublic information between committees, organizations, and candidate committees.

55. Both Cole Communications and Victor's canvassing have barriers or firewalls to prevent coordination where that is required. The policy existed in 2022, but the written policy was put in place after 2022. 1:50:00

56. Ex. 8, as to Cole Consulting and Ex. 9 as to Victor's, are the written firewall policies. Exs. 8 and 9 are identical. The policy that was in place in 2022 was that team members could not work on both the hard side and the soft side of a campaign in any given cycle.

57. He communicated that policy to employees in 2022, but the primary way it was observed is that his employees work in the lanes that he assigns to them. Everyone in his shop is aware of the prohibition on coordination. Asked how the policy was communicated to independent contractors, he says that it may have been part of the written engagement. However, Daniel Fenlason is the COO of Victor's and in charge of on boarding so Mr. Larson is not aware of what precautions might have been taken. He doubts that they asked potential independent contractors if they had previously worked for committees. That would never be a problem, because professional canvassers don't typically work for candidate campaign committees. 1:57:30. If someone canvassed on behalf of a candidate committee that canvasser could not also work for an IEC. That would have violated Mr. Cole's policy in effect in 2022 and violate the written policy. But when they hired independent contractors, they did not screen potential contractors for that.

58. If he provided services to a campaign committee, it would violate the policy if he were also to provide services to an independent expenditure committee.

59. Cole Communications did work for Colin Larson in the primary election of 2022 in sending the GOTV text message. 2:01:00 The purpose of the GOTV text message is to get people to vote. Its purpose is not persuasion. Persuasion messages are targeted to people who are persuadable. GOTV text messages are targeted to people who are likely to vote for the candidates you represent. He cannot recall his involvement in sending out a primary text message for Colin for Colorado. If he were involved, it would have been only to pass along the need for the service to someone else who would perform it. Sometimes he is involved in the messaging and in the choice of targets. But he doesn't claim special skill in the area of text messages.

60. His companies did work for Unite for Colorado in 2022. He doesn't recall whether they worked for Ready Colorado. With his memory refreshed by Ex. 3, the witness says that he did

work for the candidate committees of Hugh McKean, Steven Durham, and Holly Williams in 2022. Someone in Mr. Cole's office spoke to Colin Larson about the text message during the primary, but Mr. Cole has no recollection of being involved.

61. In response to a question from the Hearing Officer, Mr. Cole explained his use of the terms "soft" and "hard" sides of campaigns. Colin for Colorado is an example of the hard side of a campaign, where there are spending and contribution limits. The IEC and 527 are on the soft side, where there are no such limits. 2:11:25 An independent expenditure in support of that campaign would be on the soft side.

62. He did work for a couple of organizations that worked to elect Colin Larson in 2022. He worked for Unite for Colorado Action and doesn't specifically recall working for Ready Colorado. The reason he doesn't recall is that during an election cycle, they are working for so many different entities—and sometimes they are not working *for* such entities, but *with* them. He is sure that the Tracer records are correct about which entities his two companies were working for. 2:08:00

63. He is careful to make sure that no one who is working on the soft side is also working on the hard side. 2:08:08 The overwhelming majority of the work that they do—98%—is working on the independent expenditure side of campaigns. He doesn't recall what work they did for Hugh McKean's candidate committee in 2022. He is sure they worked for Steven Durham's committee but doesn't remember what he did. But he does remember that for Holly Williams committee, they collected some signatures. He was careful to see that no one who worked for any of those candidate committees did any work on the soft side. He comments, however, that there was no soft side money spent on Steve Durham's campaign.

64. Referring to Ex. 12, he does not recall whether either of his two companies did work for Ready Colorado that benefitted Colin Larson's campaign. Ex. 12 reflects a payment to Victor's

Canvassing in support of two candidates, but not Colin Larson. He does not recall if either of his companies did any work for Ready Colorado Action Fund related to Colin Carson's race.

65. Referring to Ex. 13, his company Victor's Canvassing did door to door canvassing paid for by Unite for Colorado IEC. Ex. 13 lists a lot of candidates who were supported, one of whom was Colin for Colorado. This canvassing effort involved sending canvassers to the doors of voters that they wanted to target for persuasion of get out the vote. The canvasser is given a script and literature like door hangers, palm cards, etc. Canvassers working on different campaigns likely did not use the same script. There would be variations, depending on the segments of voters they were working on. Targets of persuasion would receive a different message than voters you are just trying to nudge into voting. Scripts can vary with the particularities of the district. Scripts are definitely different in different districts.

66. Was there a Colin Larson script? The House districts overlapped with Senate districts. The literature would have been appropriate to both. And the script would have communicated that the canvasser was supporting two candidates.

67. He has three FTEs and one PTE. Asked about file sharing on computers: the witness says that employees cannot open shared files. If an employee is working for one organization and another employee is working for another, there is no way for the one employee to see what the other employee is working on. They don't have a file sharing arrangement like that.

68. He also worked for Restore Colorado Leadership Fund 527. His work for the 527 and IEC is distinguished purely because of campaign finance rules. He thinks of them as a single entity.

69. Ex. 5 shows payments from the Restore Colorado IEC to Victor's Canvassing. He thinks those may have been for door to door canvassing.

70. Ex. 6 shows the Restore Colorado IEC payments to Cole Communications starting in February 2022. He recalls most of those payments.

71. The witness was asked about his work on behalf of Restore Colorado Leadership Fund—both of them. He was the general consultant in charge of providing overall guidance to the operation. He worked with many different people, including Colin Larson, to decide on which races money should be spent. He recalls no specific instance of working with Mr. Larson on content or messaging; if he did do that, it would have been “minimal.” 2:24:14 He probably reviewed polling that the entities did, but he remembers receiving that information only orally. He did not use that polling information in working for other clients. It was not relevant to others of his clients. Both Restore Colorado Leadership Fund and Unite for Colorado were spending money in targeted and contested House races in 2022.

72. Colin Larson’s race was not considered contested until “after the fact.” Unite for Colorado was canvassing in his district as early as July 2022. Daniel Cole was also the general consultant for the Senate Majority Fund, the IEC to elect Senate Republicans. So, he had an interest to make sure that targeted Senate candidates won. 2:26:08 Unite’s primary interest was the state Senate. Since they were already canvassing to support state Senate candidates, it was easy to “tack on” House Republican candidates as well. They canvassed for every House candidate whose district overlapped with Senate districts whose Republican candidate they had targeted for support.

73. He never shared information that he learned through Restore Colorado Leadership Fund with Unite for Colorado Action Fund. 2:27:15 Information was not shared; they cooperated on tasks. He was a consultant to Restore, but only a vendor to Unite. He never shared information that he learned through Restore Colorado Leadership Fund with Ready Colorado.

74. If Unite for Colorado and Restore had messages that were at odds with each other, what would you do in that situation? [Objection overruled.] That hasn't arisen. His assumption would be that there would be no problem because they are both soft side entities and there is no prohibition on coordination—he would then ask his attorney for advice to confirm that.

75. He received no non-public information about Colin Larson's plans, projects, activities, or needs while working for his candidate committee. He recalls no conversation with Colin Larson or anyone else about any of these. If he talked to anyone, it would only have been about sending the text message. He received no non-public information about Colin for Colorado's plans, projects, activities, or needs while working for Restore Colorado. And he shared no non-public information about Colin for Colorado's plans, projects, activities, or needs with Ready Colorado. And he shared no non-public information about Colin for Colorado's plans, projects, activities, or needs with Unite for Colorado. 2:30:45

76. Responding to Ms. Taheri's questions, the witness testified that at the time the text message was sent, he probably did know about Colin Larson's involvement with Restore Colorado Leadership Fund, but Hugh McKean was in charge of RCLF at that time. Mr. Larson took on RCLF some months before the election. He learned from this hearing that it was in August. To his knowledge, RCLF spent no money on Colin Larson's case.

77. He gets personally involved for large clients in sending text messages when they are sending tens of thousands or hundreds of thousands of messages. If he had talked to Colin Larson about the text message in June 2022, where they sent out relatively few, he would just have connected the Larson campaign with the right person or vendor to do that.

78. The longest text that could be sent through any vendor in 2022 was 320 characters. The content of the message in the Colin Larson text would likely have been to mention the candidates name, and to vote by a certain date. There is no persuasion attempted in a GOTV text.

79. Regarding putting his employees in a lane, there are some employees who are on the soft side and others on the hard side, though some employees could be on the hard side of one campaign and the soft side of a different campaign—but never working the soft and hard side for the same candidate. In 2022, he knew that he was on the soft side of campaigns for the Senate and the House, and so he “absolutely” stayed away from the hard side for any of those candidates.

2:35:40

80. The canvassing he did for Unite for Colorado was targeted in support of Senate candidates. His canvassing for Larson would have been “tacked on” to the canvassing for Senate candidates. Representative Larson was not considered to be a targeted race in 2022, so there was less spending on his race.

81. Responding to Mr. Baumann’s questions, one of his companies was paid by RCLF as far back as June 2022. 2:38:00 His memory refreshed by looking at Ex. 6, Cole Communications was paid by RCLF starting February 22, 2022. He did not consider his company Cole Communications to be on the soft side of RCLF; but he personally was on the soft side with RCLF.

FINDINGS OF FACT

82. The Initial Complaint of Marcie Little, Ex. 1, was the source of nine complaints of FCPA violations asserted against nine respondents.

- 1) Colin Larson
- 2) Colin for Colorado
- 3) Restore Colorado Leadership Fund 527
- 4) Restore Colorado Leadership Fund IEC
- 5) Daniel Cole

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- 6) Colorado Communications, LLC
 - 7) Victor's Canvassing, LLC
 - 8) Frank McNulty
 - 9) Square Strategy Group, LLC

83. After investigation, the enforcement staff moved to dismiss all the underlying complaints under section 1-45-111.7(5)(a)(IV), but the Deputy Secretary denied the motion as to 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. Ex. 7, p. 54/73. In due course, the Division filed the Administrative Complaint in this matter on May 19, 2024.

84. Campaign finance laws to counteract the corrosive influence of money in politics have been enacted and changed over decades in Colorado in response to the demand of voters and in respect to the constitutional rights at stake: freedom of speech, freedom of association and equal protection of the law. The FCPA and the two major constitutional amendments adopted by Colorado voters in 1996 (Amendment 15) and 2023 (Amendment 27) all call for "strong enforcement of campaign finance requirements." Colo. Const. art. xxviii, § 1; Fair Campaign Practice Act at § 1-45-102.

85. The "strong enforcement" of campaign finance requirements is directed at making transparent the sources and placement of money by powerful interests to influence the outcome of elections. The call for strong enforcement is in reaction to the fact "that large campaign contributions to political candidates create the potential for corruption and the appearance of corruption; that large campaign contributions made to influence election outcomes allow wealthy individuals, corporations, and special interest groups to exercise a disproportionate level of influence over the political process." Colo. Const. art. xxviii, §1. It is in recognition "that the interests of the public are best served by limiting campaign contributions, establishing campaign spending limits, full

and timely disclosure of campaign contributions, and strong enforcement of campaign laws.” *Ibid.* Enforcement occurs within the constraints on transparency that have been imposed by judicial decisions interpreting important constitutional rights—freedom of speech, freedom of association and equal protection of the laws.

86. In the case at hand, the Administrative Complaint alleges two violations.
- a. Claim One alleges that the expenditures by Ready Colorado and Unite IEC in ¶¶ 87(b) and (c) were in support of Colin Larson’s campaign for the House should have been reported as contributions by his candidate committee because there was coordination between the IECs and Colin Larson. Admin. Compl. ¶¶ 47-51.
 - b. Claim Two alleges that the expenditures, properly viewed as contributions to Colin for Colorado, violated the FCPA because they exceeded \$400, which is the maximum contribution to a House race that is permitted by Colo. Const. art. xxviii §3. Admin. Compl. ¶¶ 52-55.

The expenditures under scrutiny

87. Testimony at trial focused on two expenditures that specifically supported Colin Larson’s campaign, as well as non-specific canvassing expenditures that benefitted the Larson campaign, among others. The central issue in the case is whether any of expenditures were a result of prohibited coordination between Larson and his candidate committee, on the one hand, and the soft side entities, on the other: Restore IEC, Restore 527, Ready Colorado or Unite for Colorado.

- a. The first specific expenditure was a July 1, 2022 expenditure of \$726.10. paid to Daniel Cole’s company Victor’s Canvassing to distribute a Get Out the Vote (GOTV) text message to voters in the primary. Ex. 3, p. 27/73, ¶ 8. The gist of the Division’s case was that communication and discussion surrounding the text message project may have provided the first occasion for Daniel Cole to receive non-public information about Mr. Larson’s campaign.
- b. The second specific expenditure was an October 26, 2022 payment to distribute by mail an opposition piece, Ex. 11, to voters in the general election. The gist of the Division’s case was that this expenditure of \$8,934.00 may have been the result of prohibited coordination. Ex. 15, p. 70/73.
- c. The non-specific expenditures benefitting the Colin Larson campaign were the \$110,476.16 to Victor’s Canvassing in July 2022, Ex. 13, and the \$200,000 paid to

Victor's Canvassing in October 2022, Ex. 14. Unite for Colorado paid for both of those.

The GOTV primary election text message

88. The Division first presented evidence on the GOTV text sent out in Colin Larson's Republican primary race, and the communications that may have occurred in connection with that transaction. That is the \$726.10 expenditure referenced in ¶ 87(a).

89. Before running against Tammy Story in the general election, Mr. Larson first had to win the Republican primary for District 25 in the Spring of 2022. As an incumbent, he handily beat the primary opponent nearly 2:1. While not mentioned at the hearing, it is a matter of common knowledge that there is lower turnout in primary elections than in the general. To secure the election of his party in the primary, Mr. Larson sent a GOTV text message to likely primary voters. The firm that he had used in the past to send such text messages was not available, and that is why he asked Daniel Cole or one of his companies to send out the text.

90. Mr. Cole remembers nothing of the transaction that led Cole Consulting to send out the GOTV text in the Colin for Colorado primary election. It is not known how many voters received the text. But text messaging is not a skill that Mr. Cole claims for himself, so his role in this was likely simply to pass along the request for texting services to an employee to accomplish.

91. Daniel Cole is an articulate political consultant who is in high demand by entities in this case that are aligned with a single political party, mainly, the Republican party. The evidence did not reveal a complete client list, but his testimony and the documents reveal that in the 2022 election he and/or his two companies worked for:

- a. The Senate Majority Fund
- b. Restore Colorado Leadership Fund 527, an "arm of the House GOP leadership," Ex. 7, p. 45/73

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- a. Restore Colorado Leadership IEC, “the spending arm of the House GOP’s leadership,” *ibid.*
 - b. Unite for Colorado
 - c. Ready Colorado
 - d. Hugh McKean, minority leader of the Republicans in the House of Representatives
 - e. Steven Durham
 - f. Holly Williams
 - g. Colin Larson and the Colin for Colorado candidate committee

92. Daniel Cole was paid \$229,276.20 for his consulting services for only two of the entities above, Restore 527 and Restore IEC—the “arms” of House Republican leadership. *Id.* at 47/73. There is no evidence about what he was paid by others of his clients. The inference is that his services are highly valued.

93. Colin Larson is an articulate witness and experienced politician, attractive to voters, a fact that can be seen by his success in being twice elected to represent House District 22 in Jefferson County. House districts were reapportioned and remapped as a result of the 2020 census. The House District for which Mr. Larson ran in 2022 was House District 25. His Democratic opponent was Tammy Story. Mr. Larson was widely expected to win that race, and he believed he would win the race—until the early voting returns were disclosed the night of the election. At that point, he was pretty sure that he would lose.

94. The expense for distribution of the GOTV text message was small--\$716.10—and it was done in the context of a race that the incumbent handily won. The expense was reported July 1, 2022. Ex. 2, p. 24, ¶ 7a, for a primary that concluded a few days earlier. The transaction was quick, with a simple message aimed at the single goal of getting people to vote, it was easily accomplished, it was inexpensive, it was the type of task that would require no discussion of strategy, candidate

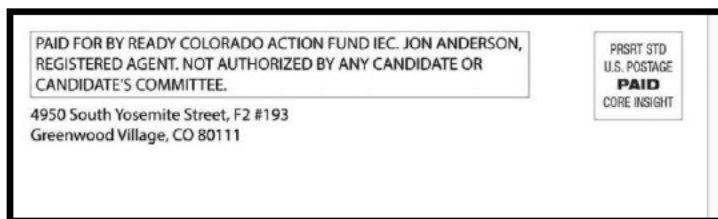
strength or vulnerability. The expenditure was also not at the scale that it would draw the attention of a highly skilled, well-connected and highly compensated political consultant like Mr. Cole.

95. Based on the evidence surrounding the GOTV text message, and particularly the details set out in ¶¶ 88-94, I conclude that there is no evidence to support an inference, much less a conclusion, that this transaction a) was the result of prohibited coordination, nor b) involved the exchange of any information between Larson and Colin for Colorado and the soft side entities, Restore IEC, Restore 527, Ready Colorado or Unite for Colorado that might later be used to coordinate expenditures in support of the Larson campaign.

96. I turn now to the evidence on coordination between Colin Larson’s campaign and the IECs’ expenditures in support of his campaign detailed in ¶ 87(b) (the opposition mailer sent the last week in October) and ¶ 87(c) (\$310,476.16 spent on canvassing in six Senate and thirteen House races, including Colin Larson’s).

The opposition mailer October 25, 2022

97. Coming to a similar conclusion—mainly no coordination—is harder with respect to



Detail from Ex. 11, p. 66/73

the opposition mailer targeting Colin Larson’s opponent Tammy Story. Mr. Larson was widely expected to win his race against her, even though she was an

incumbent too. Why send this late-in-the-race mailer for nearly \$9,000? Who directed this? It was produced by Axiom Communications and perhaps mailed by them, but the bulk mail stamp is oddly incomplete because it does not have a permit number or city associated with the permit. Ex. 11, p. 66/73.

98. The red flag went up when the Restore IEC, *which Colin Larson had been overseeing for three months*, paid for it. But that transaction was corrected the next day in Tracer, Ex. 4, p. 32/73, when Tyler Sandberg, political consultant both to Restore and to Ready, informed Axiom, Restore, and Garrison Management Group emphatically that Restore could not pay for the Axiom invoice because Colin Larson was in charge of Restore. The transaction was reversed. Restore received a credit and the invoice was paid instead by Ready Colorado.

The non-specific expenditures for canvassing.

99. The evidence disclosed that \$310,476.16 was spent on canvassing for various House and Senate Districts. Unite for Colorado paid Victor's Canvassing \$110,476.16 for door hangers and canvassing in July 2022. Ex. 13. And Unite paid Victor's Canvassing another \$200,000 for more canvassing in October. Ex. 14.

100. Each of those canvassing efforts benefitted the same six Republican Senate and thirteen Republican House races, among them Colin Larson's. Daniel Cole explained that the impetus for this effort was electing Republican Senate candidates, and that House Republican candidates whose districts overlapped with the targeted Senate races were merely "tacked on." That explanation makes sense, as far as it goes. But it begs the question: how was this decision made, to elevate the importance of Senate races over House races, and by whom? The object is to reclaim control of the General Assembly. The money is channeled from the 527 to the IECs. Is the Republican Party calling the shots? The IECs? The consultants? How is this mix of interests coordinated so as to advance in the same direction?

CONCLUSIONS

101. A hearing officer, charged with ascertaining the facts and whether those facts establish FCPA violations has many questions. The direct evidence from documents and testimony

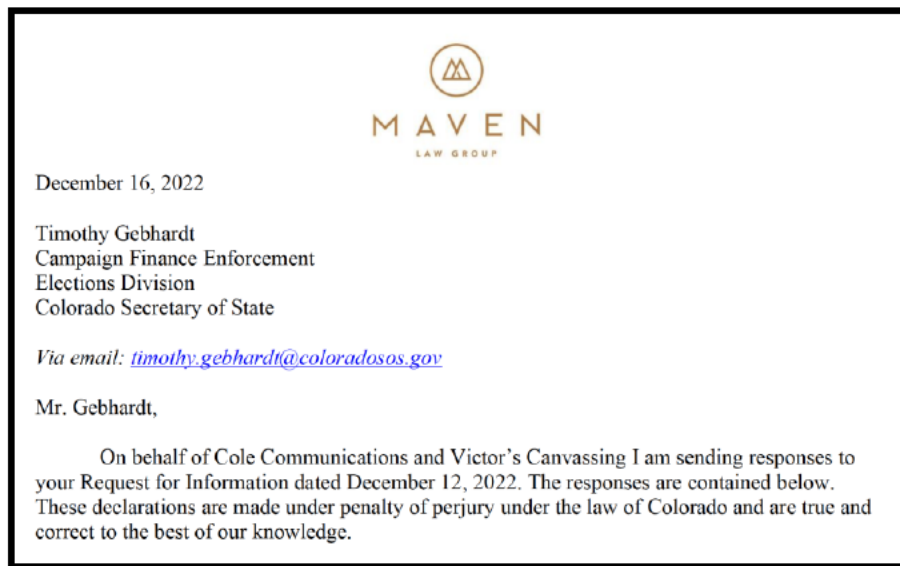
indicates no improper coordination—except for the red flag signaling questions about the initial payment of the Axiom invoice by Restore. Does this reveal coordination between Restore, with Colin Larson in charge, and Colin for Colorado? Or is there nothing to see here; it was just a mistake? Though it was corrected quickly—everyone knows the rules—the fact that there was a misdirection of an invoice by Axiom to Restore raises questions about what is going on behind the scene, who is in charge of planning and who is calling the shots. Who, in the language of Rule 21.1.1, is requesting, directing and consulting about these expenditures in ¶¶ 87(b) and (c)?

102. Counsel for the Larson Respondents discounted the case of the Division, saying there is no evidence here; that more than plausibility is required. As to that last point, of course she is right: more is required at a trial of the matter. Preponderance of the evidence describes the required burden of proof. § 24-4-105(7), C.R.S.; Campaign & Political Finance Rule 24.10.3, 8 Code Colo. Regs. 1505-6. *Renteria v. State Dep't of Personnel*, 811 P.2d 797, 803 (Colo. 1991).

103. But there is more than plausibility from this set of facts. There is motivation: the desire to win, to regain control or to hold a party majority that can control the General Assembly. There are conduits: sophisticated, experienced, knowledgeable “common consultants” moving between entities whose boundaries and management are porous. There is opportunity: meetings, fundraisers, discussions of polling, media buzz and issues, cooperative management, friendships. And there is a lot of money flowing through the entities and being placed in support of campaign committees to accomplish shared goals.

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104. The responses of counsel to discovery on behalf of Mr. Larson, Mr. Cole and RCLF, Ex. 2, Ex. 3 and Ex. 4, invite a conclusion of coordination and control. The issue in the case is coordination *in making expenditures*. That discovery responses are orchestrated by counsel filtered through her knowledge of the FCPA, is the very metaphor for the coordination at the center of the Division’s claims. Here is the one that Ms. Taheri sent answering the Division’s request for information from Mr. Cole in Ex. 3:



105. That these “responses to your Request for Information” are the studied work of counsel was very apparent when Mr. Cole, asked about the letter above, said that he had never seen it before! Cole, ¶ 53. Affidavits are common practice in state court for presenting sworn testimony not subject to cross examination. At least when a witness raises his hand before a notary and swears that what is in the affidavit is true, the witness may remember it. Testimony in this form—Exs. 2, 3 and 4, are reporting positions filtered through counsel and raise more questions than they answer. They inspire hastening along the path to the Administrative Complaint so that real discovery tools can be employed that get answers more directly from pertinent witnesses without the shaping intervention of counsel.

106. There was a dearth of evidence in the Division’s case, however, that would connect the dots in such a way as to demonstrate coordination. Here are the questions that a trier of fact has during and after presentation of the evidence at trial.

- a. What was the overall pattern of spending and the strategy by this constellation of entities? Who developed that strategy? *How did the expenditure to Axiom for Ex. 11 map onto that overall pattern and strategy?* What was the temporal relationship among strategy and policy decisions, infusions of money into the 527, downloads of money from the 527 to the several IECs?
- b. Coordination is permitted on the soft side. So, with what other entities did RCLF coordinate in the 2022 election? RCLF was spending on other House races—not Colin Larson’s. Was there another 527 and IEC that was raising and spending money on campaigns that included Colin Larson’s campaign?
- c. In agreeing to take oversight of RCLF which supported other Republican House candidates, Mr. Larson took one for the team—because RCLF was spending hundreds of thousands of dollars on various campaigns, but they would be spending nothing on Colin Larson’s campaign with him in charge of RCLF.
 - i. Why would Mr. Larson agree to “oversee” spending a lot of money on other people’s campaigns unless there was some benefit elsewhere received? Is there evidence that tends to support the opposition mailer as a kind of “thank you” to Colin Larson?
 - ii. Is oversight of the 527 and IEC a paid position? Who does get paid for rendering services to the 527 and the IEC? How much do they get paid? Is compensation based in any part on results obtained? What is done with the money that remained in the IEC at the end of the election cycle? Are any bonuses paid?
- d. Who at Ready made the decision to support Colin Larson’s race—whose race was thought to be in the bag—by sending an opposition mailer at the very end of the campaign? Why wasn’t that mailer sent out *before* the ballots were mailed? Why was it sent at all?
- e. Who at Axiom received the work order for the mailer, Ex. 11? What were the instructions to Axiom about the audience, the message and the timing? Who sends out invoices from Axiom? Why did they invoice RCLF?
- f. What other consultants were acting in this space during the 2022 general election? There was a Senate Majority Fund. Was there a House Majority Fund? Or was RCLF performing that function? Was the Republican Party mapping out strategy and circulating that strategy to soft side and hard side entities. Campaigns are dynamic, changing with news cycles. What consultants and entities are processing the changes and altering strategy as a result?

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- g. What was Daniel Cole’s relationship to the Republican Party, as IECs not only cannot coordinate with candidates and their committees; they are also prohibited from coordinating with political parties.

An independent expenditure committee may not coordinate its campaign-related expenditures with a candidate, candidate committee, or political party.¹

Rule 5.2.

- h. Daniel Cole was paid \$229,276.20 for two Restore Colorado entities that were the Republican arms of House GOP leadership. Ex. 7, p. 47/73. How much was he paid by the [Republican] Senate Majority Fund? Mr. Cole testified that it was the getting Republicans elected to the Senate that drove the canvassing targets, and dropping literature for House candidates was just “tacked on” to the Senate canvassing where House and Senate districts overlapped. Who made that decision?
- i. Daniel Fenlason, the former data director for the Colorado Republican Party, is now the COO of Victor’s Canvassing. That he held that position for the Party suggests that Mr. Fenlason is a data miner and analyst and that his sense of the politics would have a huge impact on how money is spent for all Republican races involved in restoring the majority. How many 527s did he “for and with” (to use Mr. Cole’s terminology, ¶ 62) during the general election of 2022? How many IECs did he work for? How many candidate committees? All of the employees of Cole’s two businesses actually are the employees of Victor’s, working under its COO. Two of the FTEs at Victor’s are, based on experience and earnings, movers and shakers among Republican strategists and donors? Who is the third FTE, and who is the PTE?
- j. When did Daniel Cole or the COO of Victor’s Canvassing have discussions with the Party, with other consultants for RCLF and were there documents exchanged? Were there “one or more substantial discussions,” Rule 21.1.2(a) and when did those discussions occur in relation to Restore’s expenditure in support Colin Larson’s candidacy in late October?
- k. What fundraisers did Colin for Colorado have? Who organized them? What industry or trade groups actually sponsored the fundraisers? Did anyone from Ready, Unite Restore or Republican Party leadership attend?
- l. The opposition mailer, Ex. 11, focuses on taxes. What were the issues that Colin Larson was best known for during his career as a representative? Was opposing taxes one of them?
- m. Colin Larson’s race was not targeted for spending a lot of money, as it was assumed he would win. So why did this mailer go out in late October, two weeks *after* ballots were mailed? Did the data analysts in one of the entities come upon information that

¹ “Political party” is a defined term in Colo. Const., art. xxviii, § 2(13). The two parties that most voters are familiar with are the Republican Party and the Democratic Party.

undercut the assumption that Mr. Larson would easily win his seat? Who besides Hugh McKean was in Republican leadership in the General Assembly? Did they also have positions in the Republican Party?

- n. How did Colin Larson's race figure into the overall Republican strategy of retaking the majority? Who developed the overall strategy? Did the consultants ever use white boards to discuss numbers and races? What did they use them for? Did they take any pictures of the white boards on their phones?
- o. What fundraisers did Colin Larson attend for RCLF? When and where were those fundraisers? Who from Unite, Ready, Restore and Republican leadership were present? What was the venue? Was alcohol served?
- p. Tyler Sandberg, with a few keystrokes, moves a \$9,000 debit from Restore to Ready. And he is a consultant to both of them. Who determines how the various entities direct and move money to accomplish a result, from the 527 to the IEC to Ready Colorado and Unite. If one follows the money as it is moved from source through entity conduits, where are the pulses of donations? Where is the battle plan? When, and in accordance with what plan, is money moved and spent?
- q. What about joint meetings and interconnected directorates of the various entities? RCLF, for example, had ten consultants working together. Larson, ¶ 37. Who were those consultants? Were they friends? Where did they meet? At whose office? Or at which restaurant or bar? At which gym or rec center?
- r. Larson said that he did not attend all of the RCLF management and consultant meetings. How was he apprised of what went on in the meetings he missed? Who prepared the agendas? How did the ten or so consultants who collaborated on RCLF decisions communicate about what was happening in the various races and what topics were reported in the press? Did they participate in a Slack channel? What platforms did they use?
- s. Polling: Who actually polled and when? Who paid for polling? How were decisions made about the races and issues that would be the subject of polling. What company was used? Were there meetings to discuss polling? Who attended? What was the temporal relationship between polling and expenditures, and in particular between polling and the expenditure on Colin Larson's race for the late October mailer? Under what circumstances were the results of polling disclosed or published, how and to whom?
- t. Hugh McKean and Colin Larson were friends. Who else were friends of Daniel Cole that were also political consultants for other campaigns in 2022?
- u. Daniel Cole described working for "so many entities" during the election season that it is hard to keep track. Who are all those entities, in addition to the ones listed in ¶ 91, and what relationships are there between them?

107. There is only so much that the Division can do without subpoena power and other available discovery tools provided by the C.R.C.P. during the investigations that precede the filing of an Administrative Complaint. The Administrative Complaint opens the door to a more searching inquiry where the money and intention can be followed.

108. Evidence on some of these questions would have provided context and understanding about where the ¶ 87 expenditures fit into the accomplishment of goals widely shared among the political players including Restore, Ready, Unite and the Republican party. Such evidence would likely shed light one way or the other on whether there was coordination such that they should properly have been reported as contributions to Colin for Colorado.

109. Without more, however, I must look at the expenditures in isolation, as they were presented at trial.

110. Mr. Gebhardt has no information indicating that Colin Larson knew about the Tammy Story mailer. Gebhardt, ¶ 26. He has no evidence that there was coordination in August. And there is no evidence that Larson did any business with Daniel Cole's companies after the text message in June. *Ibid.* The only evidence that the Division has of RCLF spending money on Mr. Larson's race is the Tracer filing, quickly withdrawn, saying that RCLF paid for the mailer. *Id.*, ¶ 27.

111. Colin for Colorado used Cole Communications to send the GOTV text message during the primary for one reason only: the vendor he had used for this in the past was unavailable. He did not discuss his House race with Daniel Cole or Tyler Sandberg after July 1, 2022. *Id.*, ¶¶ 43 and 47. Mr. Larson made it clear when he took over leadership of RCLF in August that he would not discuss his House race nor would Restore spend any money on his race. *Id.*, ¶ 38. He did not know about the opposition piece created by Axiom in October until a constituent showed it to him while he was knocking on doors. *Id.*, ¶ 48. He did not know that Restore was invoiced by Axiom for

the piece of it that was shortly cancelled and sent to Ready for Colorado instead. He was not included in the email discussing the invoice, its cancellation or its reissuance to, and payment by, Ready. *Id.*, ¶ 39. After he took over the leadership of Restore, he did not discuss his campaign with Cole. *Id.*, ¶ 42. He spoke to Daniel Cole about every two weeks, and only about how much money was available and where it should be spent. *Id.*, ¶ 47. He was never informed about what Ready Colorado, Victor's Canvassing or Unite for Colorado were doing for, or spending on, his race. *Id.*, ¶ 47.

112. Daniel Cole cannot recall his involvement in sending out a primary text message for Colin for Colorado. If he were involved, it would have been only to pass along the need for the service to someone else who would perform it. Cole, ¶ 59. The only reason that Unite spent money canvassing in Colin Larson's district in support of his House race is because it overlapped with a targeted Senate race where the Republicans had prioritized. Colin's House race was tacked on to a target Senate race. *Id.*, ¶¶ 72 and 80. He never shared any information that he learned through Restore Colorado Leadership Fund with Unite for Colorado Action Fund or Ready Colorado. *Id.*, ¶ 73. And he received no non-public information about Colin Larson's plans, projects, activities, or needs while working for his candidate committee. *Id.*, ¶ 75.

113. For Daniel Cole and other consultants effectively to place the money involved in 98% of their work, in order to achieve shared goals, they would have to learn a lot about how individual races for the General Assembly are going. There was no evidence, however, about how that was accomplished. Answers to some of the questions posed in ¶ 106(a) through (u) might have given rise to a different set of inferences than I can draw from the evidence before me.

114. Based on all the evidence and testimony presented at the hearing, I find that the Division has not proved the elements of the campaign violations it has alleged in the Administrative Complaint by a preponderance of the evidence.

Having failed to meet the burden of proof, the Complaint must be, and the same hereby is, DISMISSED.

DONE this 1st day of March 2024.



Macon Cowles, Hearing Officer