STATE OF COLORADO SECRETARY OF STATE ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290	
BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, in re ED 2022-109, 2022-110, 2022-111, 2022-112, 2022-115, 2022-116, and 2022-117 ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. COLIN LARSON; COLIN FOR COLORADO; RESTORE COLORADO LEADERSHIP FUND IEC, RESTORE COLORADO LEADERSHIP FUND 527; DANIEL COLE, COLE COMMUNICATIONS, LLC; and VICTOR'S CANVASSING, LLC. Respondents.	**▲ COURT USE ONLY ▲** CASE NUMBER 2023 AHO 0003
Attorney for Respondents: Suzanne M. Taheri, #23411 WEST GROUP LAW & POLICY 6501 E. Belleview Ave, Suite 375 Englewood, CO 80111 Phone Number: (303) 263-0844 Email: st@westglp.com	

REPLY IN SUPPORT OF MOTION FOR ATTORNEY FEES

Respondents Colin Larson and Colin for Colorado, through the undersigned counsel, hereby submit the Reply in support of its motion for attorney's fees.

Complainant Election's Division first argues the Motion is not adequate to properly assert the proceeding "lacked substantial justification"defined as substantially frivolous, substantially groundless or substantially vexatious. C.R.S. 1-45-111.5(2) However, the motion clearly argues

that the Division never had a credible legal theory of the case and had no evidence to support a finding against the Respondents.

"Frivolous" is defined as a claim where the proponent can present no rational argument based on the evidence or law in support of the claim. *Merrill Chadwick Co. V. October Oil Co.,* 725 P.2d 17 (Colo.App.1986). "Groundless" is defined as a claim where the allegations of the complaint, while sufficient to survive a motion to dismiss for failure to state a claim, are not supported by any credible evidence at trial. *Id.* "Vexatious" is defined as a claim brought or maintained in bad bath to annoy or harass. *Mitchell v. Ryder*, 104 P. 3d 316 (Colo.App.2004).

As argued in the original motion and confessed in the Division's response, the Division never had anything more than an "inference". An inference that was rebutted by evidence the Division received prior to the hearing. Maintaining an action under these circumstances fits squarely within the definitions of frivolous and groundless. There was no credible evidence on the Division's side necessary to file a complaint in good faith and certainly nothing to justify maintaining the proceedings after exculpatory the material was provided in discovery.

Next the Division argues that because the filing was mandatory, by statute and order of the Deputy, this should excuse their conduct. It urges that with a mandatory act there can be no assessment of attorney's fees against them. However, they provide no legal basis for this argument. The statute related to attorney's fees contains no exception for purported mandatory acts. The analysis required is whether the action, or any part thereof, lacked substantial justification. C.R.S. 1-45-111.5(2). The only exceptions provided in C.R.S. 13-17-102(5) and (6) relate to voluntary dismissal or parties appearing without an attorney where the matter is not substantially frivolous, substantially groundless, or substantially vexatious. Neither applies here.

Moreover, their statement that it was a mandatory filing is clearly contradicted by the Division's own conduct in this case. The Order of the Deputy denied the motion to Dismiss against seven parties: Colin Larson, Colin for Colorado, Restore Colorado Leadership Fund IEC, Restore Colorado Leadership Fund 527, Daniel Cole, Cole Communications, LLC, and Victors Canvassing, LLC.

Yet despite the order, only Colin Larson and Colin for Colorado were arbitrarily singled out. This completely negates the Division's argument. Concerningly, their attempt to conceal this fact in their response further suggests there was a different motivation for the filing. Perhaps the Division recognized they had no basis for the filing but knew that an individual candidate (especially one that did not win their election) would be less likely to have resources to engage in a protracted legal battle. Or, the Division may have considered that even if they were to lose the case, saddling such a candidate with significant legal fees would certainly discourage the candidate from running for office in the future. Taken in conjunction with the facts that the Respondent candidate is from a political party adverse to the Secretary and other "Final Decision Makers", and that the Secretary herself escaped liability by arguing an inapposite legal position to defend against her own complaint, it is difficult to draw any conclusion other than that these claims were brought and maintained in bad faith.

Next, the Division argues that the claim arose out of a reasonable interference there was a probability that use of the common consultant led to coordination. If this were true then why not file against the groups that purportedly engaged in the other side of the coordination? It should go without saying that it takes two to coordinate. And if the common consultant was the key, then why was the common consultant left out of the filing? The Division must either admit this was arbitrary and vexatious or explain the discrepancy.

Substantively, the Division admits they never had anything beyond an inference. In other words, they had no direct evidence on their side. They admitted as much in discovery. This begs the question, even if the hearing officer were to have found the testimony of Larson and Cole to be not credible, then what? There was no other evidence to weigh in favor of the Division that could have provided a basis for a finding of liability. There were not two sides to the story and at no time was there a witness that could testify to coordination. The fact that the Division persisted even after obtaining the flyer in question demonstrates the matter was both brought *and* maintained without substantial justification.

Complainant Little filed her response replete with untested factual assertions. She claims, without any attestation, that she has been self-represented throughout this proceeding. *Marcie Little Response to Motion for Attorney's Fees, p.3.* That seems unlikely given the sophistication and complexity of the complaint and her seven-page response to this motion.

Complainant Little also claims to have had a genuine interest in campaign finance enforcement. *Id.,p.5.* Again, she states this without any attestation and no factual history before or after the complaint to show such interest. This is a particularly questionable assertion when considering the candidate in question lives far outside her district. Complainant Little should be required to appear and testify under oath, subject to cross-examination, as to these matters. The statute provides for attorney fees for any party that brought or maintained a complaint without substantial justification. Complainant Little did more than just alert the Secretary to the issue. *Id.,p.6.* She brought and signed the complaint.

Wherefore, Respondents request a hearing on the matter. The Respondents further request both Complainants appear at the hearing to provide testimony on any factual matters in dispute related to this motion.

Dated this 5th day of June 2024.

/s/ Suzanne Taheri
Suzanne Taheri
WEST GROUP
6501 E Belleview, Ste 375
Denver, CO 80111
Tel.: 303-263-0844
st@westglp.com

Attorney for Respondents Colin Larson and Colin for Colorado

CERTIFICATE OF SERVICE

I hereby certify that this Reply in Support of Motion for Attorney Fees dated this 5th day of June, 2024, was served via email to peter.baumann@coag.gov and marcielittleCO@proton.me

/s/ Suzanne Taheri
Suzanne Taheri

Duly signed original on file at West Group