

<p>STATE OF COLORADO SECRETARY OF STATE ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290</p> <hr/> <p>BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, <i>in re</i> ED 2023-56</p> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>UNITE FOR COLORADO, d.b.a., ADVANCE COLORADO ACTION,</p> <p>Respondent.</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>CASE NUMBER</p> <p>2024 AHO _____</p>
<p>COMPLAINT</p>	

Pursuant to § 1-45-111.7, C.R.S. (2024), the Elections Division of the Secretary of State files this complaint against Unite for Colorado, d.b.a. Advance Colorado Action (“Unite”).

BACKGROUND

1) To foster transparency and assist voters in evaluating the arguments made in political communications, Colorado requires organizations with “a major purpose” of supporting or opposing a ballot measure to register as an “issue committee” with the Colorado Secretary of State and disclose their contributions and expenditures.

2) Unite contributed a total of \$1,780,667 to Colorado statewide issue committees and spent \$556,200 in direct ballot measure expenditures in 2023, but Unite neither registered as an issue committee with the Colorado Secretary of State nor disclosed its contributions and expenditures.

3) Unite also made contributions to Colorado issue committees and made direct ballot measure expenditures in 2021 and 2022. The Division has been unable to ascertain the extent of Unite’s ballot issue related contributions and expenditures for the relevant years of 2021, 2022, and 2023.

4) Unite’s failure to register and disclose as required by law deprived Colorado voters of critical information about the interests behind Unite’s spending in support of or opposition to one or more statewide ballot measures.

PARTIES

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

6) Respondent is Unite for Colorado, a nonprofit corporation registered with the Colorado Secretary of State. “Advance Colorado Action” is the registered trade name of Unite for Colorado.

JURISDICTION AND VENUE

7) The Division has jurisdiction under § 1-45-111.7, C.R.S.

8) The Division files this complaint with a hearing officer consistent with § 1-45-111.7(5)(a)(IV), C.R.S.

9) This complaint is timely filed within thirty days of Division’s May 24, 2024, Notice of Investigation, according to § 1-45-111.7(5)(a)(IV), C.R.S.

10) Venue is proper before the hearing officer under § 1-45-111.7(5), C.R.S.

ALLEGATIONS

11) Unite is a 501(c)(3) nonprofit organization that conducts activities under the trade name “Advance Colorado Action.” According to its website, Advance Colorado Action “is an issue advocacy organization that believes in a smaller, more accountable government.”

12) On October 24, 2023, the Colorado Ethics Institute filed a campaign finance complaint against Unite with the Elections Division. That complaint, 2023-56, included allegations that Unite had a major purpose of supporting or opposing one or more statewide ballot measures, including Proposition HH, which appeared on the November 7, 2023 ballot, but that Unite failed to register as an issue committee and report contributions and expenditures to the Secretary of State’s Office.

13) The Division completed its initial review of Complaint No. 2023-56 pursuant to C.R.S. § 1-45-111.7(3) on November 6, 2023. That same day, the Division sent a “Notice of Initial Review and Opportunity to Cure” to Unite’s registered agent, Katie Kennedy, stating that the Division “initially determines that the Complaint was timely filed, identifies one or more potential violations of Colorado campaign finance law, and alleges sufficient facts to support a legal and factual basis for the violations of law alleged in the complaint” including that Unite has “a major purpose of supporting or opposing any ballot measure requiring them to register and report as an issue committee, but failed to do so.”

14) On November 7, 2023, the Division sent Unite a “Request for Information,” (the “First Request for Information”) asking that Unite, among other things, answer the following questions:

- “Please identify and list all the statewide ballot measures in Colorado that Unite supported for the years 2021, 2022, and 2023.”
- “Related to the statewide ballot measures that were supported or opposed in 2021, 2022, and 2023, did Unite contribute to any Colorado issue committees?

(a) If yes, please list the committees and the corresponding ballot measure.”

- “Related to the statewide ballot measures that were supported or opposed in 2021, 2022, and 2023, did Unite make any direct ballot issue, or ballot measure expenditures?

(a) If yes, please provide details on the expenditures including the date, amount, and ballot measure and provide supporting documentation.”

- “Related to the statewide ballot measures that were supported or opposed in 2021, 2022, and 2023, did Unite act as a funding intermediary for any organization? If yes, please describe.”

15) On November 20, 2023, the Division received an email from Unite’s counsel in response to the First Request for Information. Unite’s counsel stated as follows:

“My clients have publicly reported all required information related to any support or opposition to any ballot issues. Your office is already in receipt of all that information. You are also in receipt of our total expenditures from years 2019, 2020 and 2021 from prior investigations. We do not intend to reassemble this information.

With respect to our legal bills in *Ward v. State*, we do not believe those are relevant to any legitimate campaign finance investigation. That case related to the ballot title and single subject and did not advocate for or against any ballot issue. If this is to be considered ballot advocacy, then so too is your department’s defense of the case.

I have requested the public 990’s for the year 2022 from my client and will forward that upon receipt. We have obviously not filed for 2023 and I do not know the total expenditures for the year end, and likely won’t know until sometime early 2024.

With respect the opportunity to cure that you did forward, we do not intend to cure.”

16) On November 20, 2023, the Division responded to Unite’s counsel’s email, explaining the relevance of the information requested in the First Request for Information and explaining the Division needed additional information, not previously provided, to determine whether Unite had a “major purpose” of supporting or opposing a ballot issue or ballot question in the relevant time period.

17) On December 4, 2023, Unite sent the Division its 2022 IRS Form 990.

18) On April 8, 2024, the Division sent Unite a “Second Request for Information.” The Division explained that it had received information “concerning Unite’s spending in 2021 as a result of prior complaints filed against [Unite].” The Division further explained that it continued to seek information for the “years of 2022 and 2023,” which is “relevant to examine [Unite’s] ‘major purpose’ and ‘pattern of conduct’ as outlined in section 1-45-103(12)(b), C.R.S.”

19) In the Second Request for Information, the Division asked that Unite, among other things, provide:

- “A copy of Unite’s 2023 IRS Form 990 or a statement and documentation of the organization’s 2023 total spending.”

- “Itemization and documentation of any and all direct ballot issue or direct ballot question expenditures made by Unite in 2023.”
- “Itemization and documentation of any spending by Unite in 2023 done in support of or opposition to any ballot issue or ballot question not included in the organization’s response to [the request] above.”
- “Itemization and documentation of any and all direct ballot issue or direct ballot question expenditures made by Unite in 2022.”
- “Itemization and documentation of any spending by Unite in 2022 done in support of or opposition to any ballot issue or ballot question not included in the organization’s response to [the request] above.”
- “Information and documentation on any contributions by Unite in 2022 and 2023 to Colorado issue committees, not previously reported on TRACER.”
- “Please advise if Unite accepted funds by donors or contributors earmarked (containing a designation, instruction, or encumbrance directing the transmission or use by the recipient) for contributions to Colorado issue committees in 2021, 2022, and 2023.
 - (a) If yes, please detail these contributions.”
- “Related to the statewide ballot measures that were supported or opposed in 2021, 2022, and 2023, did Unite act as a funding intermediary for any organization? If yes, please describe.”

20) On May 24, 2024, having received no response to the Second Request for Information from Unite, the Division sent a letter to Unite explaining that it continued to seek information relevant to determining whether Unite constituted an “issue committee” within the meaning of § 1-45-103(12)(b), C.R.S. The Division explained that it “ha[d] not received substantial evidence to determine that Unite has not met the major purpose standard” and therefore was “renewing its request for such substantial evidence.”

21) On June 6, 2024, Unite, through counsel, responded as follows:

“On behalf of Advance Colorado Action, I am responding to your letter of May 24, 2024. With regard to [8 CCR 1505-6, Rule 4.3.3] cited in your letter, we believe this Rule exceeds the Department’s rulemaking authority and is an unconstitutional abridgement of our First Amendment right to freedom of speech and association and Fourteenth Amendment right to due process. My client does not intend to provide the Department with confidential, proprietary information every time a political enemy files a frivolous and vexatious complaint. . . .”

22) Counsel for Unite’s letter of June 6, 2024, did not provide substantial evidence to establish that Unite has not met the major purpose standard nor any additional information in response to the Division’s requests for information.

23) On June 14, 2024, the Division sent Unite a letter reiterating that it lacked “substantial evidence as defined in [8 CCR 1505-6, Rule 1.36] to establish that Unite has not met the major purpose standard.” The Division also summarized the information it had requested from Unite but had not received, including confirmation as to whether Unite made direct ballot issue or direct ballot question expenditures in support of or opposition to Colorado ballot issues or questions in 2021, 2022, and 2023, and if so to what extent.

24) As of June 24, 2024, Unite has provided the Division with one documentary piece of evidence, Unite’s 2022 IRS Form 990, in response to the Division’s two requests for information. Though the Division has been able to assess much of Unite’s 2021 activity based on prior campaign finance complaints filed, the Division does not have substantial evidence to determine that Unite has not met the major purpose standard. Unite has not provided information or affirmations concerning its expenditures or lack thereof in support of or opposition to Colorado ballot issues or questions for 2022 and 2023.

25) As of June 24, 2024, Unite has failed to provide substantial evidence, as defined by 8 CCR 1505-6, Rule 1.36, that Unite has not met the major purpose standard in § 1-45-103(12)(b), C.R.S.

COLORADO CAMPAIGN FINANCE LAW

26) An issue committee is any person “that has a major purpose of supporting or opposing any ballot issue or ballot question” and “has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.” Colo. Const. art. XXVIII, § 2(10)(a).

27) “Major purpose” means the support or opposition to a statewide ballot issue or question that may be reflected by, among other things, an organization’s demonstrated pattern of conduct based upon the organization:

During the combined period of the current calendar year and the preceding two calendar years, making either contributions to one or more statewide Colorado issue committees or direct ballot issue or ballot question expenditures, in either support of or opposition to one or more statewide Colorado ballot issues or ballot questions, that exceeded thirty percent of the total dollar amount of all funds spent by the organization for any purpose and in any location during the entire preceding and current calendar years;

[or]

During the combined period of the current calendar year and the preceding two calendar years, making either contributions to a single statewide Colorado issue committee or direct ballot issue or ballot question expenditures, in either support of or opposition to a single statewide Colorado ballot issue or ballot question, that exceeded twenty percent of the total dollar amount of all funds spent by the organization for any purpose and in any location[.]

§ 1-45-103(12)(b)(II)(C), (D), C.R.S.

28) An issue committee must register with the Secretary of State “within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.” § 1-45-108(3.3), C.R.S.

29) An issue committee must report to the Secretary of State its “contributions received . . . , expenditures made, and obligations entered into.” § 1-45-108(1)(a)(I), C.R.S.

30) “For campaign and political finance complaints involving whether the respondent is an organization that has a major purpose of supporting or opposing one or more ballot measures, a rebuttable presumption that the organization met the standard for having a major purpose under section 1-45-103(12)(b), C.R.S., is created if:

(a) A campaign and political finance complaint has been filed and the division initially determines that the complaint alleges a potential violation in which the respondent may have a major purpose of supporting or opposing one or more ballot measures; and

(b) The respondent fails to provide substantial evidence, as defined in Rule 1.36, that they have not met the major purpose standard.”

8 CCR 1505-6, Rule 4.3.3.

31) “Substantial evidence,” means “evidence that is probative, credible, and competent and of such weight as to be adequate for the division to accept a fact as true.” 8 CCR 1505-6, Rule 1.36. The “substantial evidence” standard “requires a greater weight of evidence than that which is required for finding ‘probable cause.’” *Id.*

32) The presumption created by 8 CCR 1505-6, Rule 4.3.3 “will be considered sufficient information to support the filing of an administrative complaint with a hearing officer under section 1-45-111.7(5), C.R.S.

CLAIM ONE
Failure to Register as an Issue Committee
(§ 1-45-108(3.3), C.R.S.)

33) All preceding allegations are incorporated.

34) Campaign and political finance complaint No. 2023-56 was filed against Unite on October 24, 2023.

35) The Division initially determined that Complaint No. 2023-56 alleges a potential violation in which Unite may have a major purpose of supporting or opposing one or more ballot measures.

36) Unite failed to provide substantial evidence, as defined in 8 CCR 1505-6, Rule 1.36, that Unite has not met the major purpose standard.

37) A presumption exists, pursuant to 8 CCR 1505-6, Rule 4.3.3, that Unite has a major purpose of supporting or opposing one or more ballot measures in 2023.

38) Unite has accepted or made contributions and expenditures, as those terms are defined in Article XXVIII of the Colorado Constitution, in excess of two hundred dollars to support or oppose one or more ballot issues or ballot questions.

39) Unite has not registered as an issue committee with the Secretary of State.

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

CLAIM TWO
Failure to Report Contributions and Expenditures
(§ 1-45-108(1), C.R.S.)

41) All preceding allegations are incorporated.

42) Unite is an issue committee as defined by the Colorado Constitution.

43) As an issue committee, Unite is required to report to the Secretary of State its contributions received, expenditures made, and obligations entered into.

44) Unite has made expenditures in support of or opposition to one or more ballot issues or ballot questions.

45) Unite has not filed a report with the Secretary of State disclosing its contributions, expenditures, and obligations.

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

PRAYER FOR RELIEF

WHEREFORE, the Elections Division prays for judgment and relief as follows:

- (a) Penalties to include appropriate fines; and
- (b) Such other relief as is warranted by the facts and the law.

Respectfully submitted this 24th day of June, 2024.

PHILIP J. WEISER
Attorney General

/s/ Kyle M. Holter

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CERTIFICATE OF SERVICE

This is to certify that I will cause the foregoing to be served this 24th day of June 2024, by email, addressed as follows:

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