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 **ELECTIONS DIVISION of the SECRETARY OF STATE**, Complainant, vs. **COLIN LARSON**, and **COLIN FOR COLORADO** Respondents.	**AHO Case No. 2023-003** (Elec. Div'n Case Nos: 2022-109, -110, -111, -112, -113, -114, -115, -116, & -117)

PROCEDURAL ORDER REGARDING AHO'S ORDER DENYING MOTION FOR ATTORNEY FEES (with attached copy of same)

Pursuant to section 24-4-105(16)(a), C.R.S., of the Colorado Administrative Procedures Act ("APA"), section 1-45-111.7(6)(b), C.R.S., of the Colorado Fair Campaign Practices Act ("FCPA"), and Rule 24.18 of the Secretary of State's Rules Concerning Campaign and Political Finance, 8 CCR 1505-6, service is hereby effected of the attached copy of the Order Denying Motion For Attorney Fees issued on today's date by the Secretary of State's Administrative Hearing Officer ("AHO") in the above-referenced matter.

The Colorado Deputy Secretary ("Deputy Secretary") hereby serves this Procedural Order Regarding AHO's Order Denying Motion For Attorney Fees ("Procedural Order") upon the parties to notify all concerned of their rights, responsibilities, and deadlines should any party seek review by the Deputy Secretary of this order under the APA.

The underlying case was resolved by the issuance of the Final Agency Order ("FAO") on May 1, 2024. Despite the termination of this case at that time, Respondents Colin Larson and Colin for Colorado,

through their counsel, filed a post-FAO motion for recovery of $24,200 in attorney's fees allegedly incurred by their counsel. Thus, while the underlying merits of the prior FAO are final and not open to further review in light of the failure of any party to seek judicial review of the May 1, 2024, FAO, the proceedings in this case were effectively reopened for the purpose of adjudicating the moving respondents' motion for an award of attorney's fees when they filed their motion seeking payment of $24,200 from either the Election Division or the underlying citizen complainant. In no way was the finality of the original FAO affected or suspended by the motion for attorney's fees.

In this posture, the facts, issues, and determinations that are to be resolved by the motion for attorney's fees remains open as the Deputy Secretary takes under consideration the AHO's recommendation that the motion be denied. The Deputy Secretary is not bound by the AHO's recommended ruling. If the Deputy Secretary takes up this case for review, the Deputy Secretary may issue a further Final Agency Order on the attorney's fees questions with a different result than that recommended by the AHO, or the Deputy Secretary may remand the matter to the AHO for further consideration.

In order to challenge AHO's recommendation to that no attorney's fees should be awarded to the moving respondents, formal Exceptions musted be filed with the Deputy Secretary pursuant to the procedures outlined in subsections 24-4-105(14), (15) and (16), C.R.S. and this Order.

I. General Filing Requirements

All requests and pleadings must be filed in writing electronically with the Deputy Secretary and not with the AHO. The email address for filing exceptions is: OACAppeals@ColoradoSoS.gov.

Any party that files a pleading or related document with the Deputy Secretary must also serve a copy of such pleading or related document upon the opposing party.

II. Exceptions

Pursuant to section 24-4-105, a party may appeal to the Deputy Secretary concerning the AHO's order recommending denial of the motion for attorney's fees and must do so through the mechanism of the exceptions review process ("Exceptions"). In order to appeal the dismissal, a party must file "Exceptions to the Initial Decision" according to the deadlines and procedures outlined below:

A. Designation of Record

Any party who seeks to reverse or modify the AHO's order shall file a Designation of Record within twenty (20) days from the date of this Order.

Within ten (10) days after service of the Designation of Record, any other party, including the Deputy Secretary, may file a "Supplemental Designation of Record" of the proceedings before the AHO. The Supplemental Designation of Record shall specify all or part of the Record to be additionally included in the appeal.

B. 30-Day Deadline for filing Exceptions

Exceptions are due within thirty (30) days after the date of this Procedural Order. A party may request an extension of time to file Exceptions prior to thirty (30) days after the date of this Procedural Order. An extension of time will be granted for good cause.

C. Deadlines for Responses, Replies, and Proposed Orders

Responses: Either party may file a response to the other party's Exceptions within fourteen (14) days from the date of the Exceptions filing.

Replies: Either party may file a reply to the other party's response to Exceptions within seven (7) days from the date of the responsive filing.

Proposed Orders: Either party may file a proposed final agency order. Such proposed order may be filed together with the party's Exceptions, response, or reply.

III. Computation and Modification of Time

All time periods are calculated pursuant to Colorado Rules of Civil Procedure Rule 6.

IV. Oral Arguments

The Deputy Secretary may permit oral argument upon request by either party. Such request must be filed with the exceptions, response, or reply. If permitted, each party will be allotted a defined time limit for oral argument. The requesting party will present first and may reserve time for rebuttal. The Deputy Secretary will be permitted to ask questions. Oral argument must be confined to the arguments and evidence presented during the hearing or in the exceptions and responses thereto. Evidence or arguments outside the record may not be presented during oral argument.

V. Final Order

The Deputy Secretary may affirm, set aside, or modify any, all, some, or no parts of the AHO's Order Denying Motion for Attorney Fees. Under most circumstances, the Deputy Secretary will issue a Final Agency Order at the conclusion of his review. On occasion, however, the Deputy Secretary may conclude that either the factual basis or legal analysis, or both, in the underlying decision by the AHO are insufficient to complete an appropriate review. In such instance, the Deputy Secretary will remand the case back to the AHO with instructions. The AHO may thereafter conduct further proceedings and ultimately issue a subsequent recommendation upon remand. The parties will have the same appeal rights with respect to any subsequent initial decision as they had with the original Initial Decision.

The ultimate Final Agency Order on the moving respondents' request for an award of attorney's fees is subject to judicial review under section 24-4-106. However, when neither party has timely appealed the underlying decision from the AHO through Exceptions, and the Deputy Secretary has chosen not to initiate review of the underlying decision on his own motion, the AHO's initial recommendation in his Order Denying Motion For Attorney's Fees becomes a Final Agency Order after thirty days of service of this Order by operation of law. *See* § 24-4-105(14)(b)(III), C.R.S. Under these circumstances, neither party has a right to seek judicial review of the underlying decision in the District Court. *See* § 24-4-105(14)(c), C.R.S.

IT IS SO ORDERED.

DONE and **ORDERED** this 24th day of June 2024.

CHRISTOPHER P. BEALL

Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **PROCEDURAL ORDER REGARDING AHO'S ORDER DENYING MOTION FOR ATTORNEY FEES** along with the accompanying **ORDER DENYING MOTION FOR ATTORNEY FEES** by Administrative Hearing Officer Macon Cowles was served on the following parties via electronic mail on June 24, 2024:

Complainant –
Mike Kotlarczyk, Senior Assistant Attorney General
Peter Baumann, Senior Assistant Attorney General
Colorado Department of Law
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Respondent –
Suzanne Taheri, Esq.
Counsel for Colin Larson; Colin for Colorado
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Underlying Citizen Complainant
Marcie Little
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Administrative Hearing Officer Macon Cowles –
AdministrativeHearingOfficer@ColoradoSOS.gov

Elections Division –
Colorado Secretary of State, Elections Division
cpfcomplaints@coloradosos.gov

/s/ Christopher P. Beall
Deputy Secretary of State

STATE OF COLORADO SECRETARY OF STATE BEFORE THE ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290	
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

ORDER DENYING MOTION FOR ATTORNEY FEES

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

2. The Administrative Hearing Officer's Initial Decision on the merits was entered March 1, 2024 and it was attached to a Procedural Order of the Deputy Secretary of State on the same day. The parties are those listed in the caption and none other. No party filed exceptions or objections to the Initial Decision. Accordingly, as noted in the Final Agency Order dated May 1, 2024, by operation of section 24-4-105(14)(b)(III), C.R.S., of the Colorado Administrative Procedures Act, the Initial Decision has "become the decision of the agency."

3. Respondents Colin Larson and Colin for Colorado filed a Motion for Attorney Fees and costs seeking $24,200 from Marcie Little, the resident who filed the initial complaint, and from

the Division. The Motion cites no caselaw that is relevant to the main contention of the Motion, mainly, that the filing of an Administrative Complaint and the evidence at trial showed that the action lacked "substantial justification," Mot. ¶¶1, 3 and 13, entitling Respondents to an award of fees and costs.

PART I—AS TO MARCIE LITTLE

4. Before addressing the issue of "substantial justification," I examine the contention of Respondents in the Motion that Marcie Little can be liable for fees and costs.

5. Ms. Little filed the informal complaint pursuant to §1-45-111.7(2) with the Secretary of State that began the whole process of investigation, discovery, motion practice and ultimately the filing of a hearing officer complaint pursuant to §1-45-111.7(5). The Fair Campaign Practices Act (FCPA) makes it very clear, however, that the person who files the informal complaint is NOT a party to the case.

> A complainant or any other nonrespondent is not a party to the division's initial review, cure proceedings, investigation, or any proceedings before a hearing officer as described in this section.
>
> §1-45-111.7(5)(a)(V)(b).

6. In 2018, the federal district court in *Holland v. Williams*, 457 F. Supp. 3d 979, 996 (D. Colo. 2018) declared Colo. Const. art. xxviii §9(2) to be unconstitutional. That section of Colorado's campaign finance law stated "if *any person* believes that a violation of Colorado's campaign and political finance rules . . . has occurred, that person may file a written complaint with Colorado's Secretary of State, which the Secretary of State *must* refer to an administrative law judge within three days." *Id.* at 988. [Emphasis in original.] This mandatory process gave untrained persons, often political operatives and opponents of the target of the complaint, the power to regulate core political

speech by filing a complaint and prosecuting the case in an administrative court. This forced the respondent to answer "any person's" complaint, likely incurring the considerable expense of hiring a lawyer to defend the case. *Holland*, *id.*

7. The district court, following *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218, 2227, 192 L. Ed. 2d 236 (2015), found that Colo. Const. art. xxviii §9(2) regulated core political speech and was therefore content based, *Holland* at 989 and thus subject to strict scrutiny. *Holland* at 989, citing *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345-347, 115 S.Ct. 1511, 131 L. Ed. 2d 426 (1995). Content-based laws "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Holland* at 987-988 quoting *Reed* at 2226.

8. The enforcement mechanism required by §9(2) was not narrowly tailored. Defendant Secretary of State in *Holland* was not able to explain to Judge Moore, if campaign finance rules were a compelling interest to Colorado, why the state was not the enforcer rather than leaving enforcement in the hands of "any person." The problem that did not withstand strict scrutiny was "allowing ***any*** person to enforce the enforcement provisions" of campaign finance laws. *Holland* at 991 (emphasis supplied). The fix for "the problem" was to take the prosecution of campaign finance complaints out of the hands of untrained persons or persons who may bring FCPA complaints merely to chill political speech to settle a score or for other improper purposes.

9. As a consequence of the *Holland* case, the Secretary of State implemented emergency rules, later codified in section 111.7 of the FCPA, to ensure that no complaint filed by "any person" alleging a violation of Colorado's campaign finance laws can proceed without first undergoing the administrative review that is now specified in that section. If an administrative complaint is filed, it is

the Elections Division of the Secretary of State that makes that decision and prosecutes the case in the administrative court on behalf of the Office of the Secretary of State.

10. The effect of the FCPA post *Holland* was to remove complainants such as Marcie Little—people with no knowledge, training or experience—from the investigation and enforcement of campaign finance violations. For the conduct that is regulated almost always involve political speech and therefore implicates important First Amendment rights.

11. This case was brought in 2023 against Respondents under §1-45-111.7 of the FCPA, effective July 1, 2019. Under that section, one who believes that an FCPA violation may have occurred can file a complaint, but once filed, the complainant has no further role in the investigation, analysis or enforcement of campaign finance laws and rules.[1]

12. That is the case here. Once Marcie Little filed a complaint with the Secretary of State, the role she had as a complainant was complete. She had no control of the case. She is not a party to the case and is therefore not liable for attorney fees and costs even if the Division's case, in whole or in part, "lacked substantial justification." §1-45-111.5(2), C.R.S.

13. For the reasons set forth above, Respondent's Motion to recover fees and costs from Marcie Little is DENIED.

PART II—AS TO THE ELECTIONS DIVISION

14. The Initial Decision, confirmed in the Agency's Final Order, found that the Division did not prove the violations alleged in the Administrative Complaint by a preponderance of the

[1] A party filing an informal complaint has two residual rights in the matter. They "may seek permission from the hearing officer to file a brief as an amicus curiae." §1-45-111.7(5)(a)(V)(b). They "may also seek judicial review by a state district court of a final agency action under section 24-4-106." *Ibid.* But they are emphatically not a party and their limited role as complainant, per se, does not elevate their status to one who is "affected or aggrieved by the secretary's action on the complaint." *Ibid.*

evidence. This is very far from Respondent's assertion in the Motion for Attorney Fees that the Division's case lacked substantial justification.

15. The facts of the case and the applicable law are fully set forth in the Initial Decision, and I will not repeat them here. Pertinent to the Motion for Attorney Fees, however, there are two counts in the Administrative Complaint. Both counts allege improper coordination between soft side political entities, Ready Colorado and Unite IEC, and the Colin Larson campaign for House District 25. Both counts alleged that Ready and Unite spent money to support the Larson campaign, but reported them as independent expenditures which they were not allowed to do because they were coordinated through Daniel Cole. Count 1 alleged that money spent to support the Larson campaign by Ready and Unite should have been reported as contributions to the Larson campaign—and not as independent expenditures—because of the coordination through Cole. Count 2 alleged that the Larson campaign accepted contributions from Ready and Unite in excess of the $400 contribution limit. The gravamen of each count was coordination through Daniel Cole.

16. Daniel Cole is a highly compensated, articulate political consultant in great demand by a number of entities in this case, both on the soft side and the hard side of political advocacy. Init. Dec. ¶¶91-92. Mr. Cole did not give a complete client list, but at trial he was able to remember nine for whom he worked in 2022. These included Colin Larson's campaign committee as well as Restore Colorado Leadership Fund (RCLF), Ready Colorado Action Fund, and Unite IEC, that spent several hundreds of thousands of dollars on campaign related advocacy, GOTV and electioneering communications that benefitted a variety of campaigns, including Larson's.

17. I found it to be odd and out of character that Mr. Cole could not remember whether he did work for Ready Colorado that benefitted Colin Larson's race. This was a key fact that would bear on an essential issue in the case: was the payment of $8,882 to Axiom Strategies by Ready

Colorado for an opposition mailer, Ex. 11, supporting Larson's campaign coordinated by Daniel Cole?

18. In not recalling whether he worked for Ready Colorado, Mr. Cole cited the many clients that employ him during election season.

> 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.
>
> Init. Dec. ¶62.

19. He did not deny working for Ready, but he did not confirm it, either. Init. Dec. ¶64. Cole did work for Restore Colorado Leadership Fund (RCLF) which, beginning in August 2022, was directed by Colin Larson.[2] Since RCLF was directed by Larson, RCLF was disqualified from making an independent expenditure in support of Larson's campaign. That is why the Tracer filing that showed RCLF paying the Axiom invoice was promptly reversed and then was paid by Ready Colorado, which is not directed by Colin Larson. If paid by RCLF, it goes far in proving both counts 1 and 2 of the Administrative Complaint. If paid by Ready Colorado, there is still circumstantial evidence that could support a finding of coordination, but Mr. Cole's not remembering at trial whether he worked for Ready at that time put a hole in the Division's proof.

20. Whether or not there was unlawful coordination between one or more soft side entities and the Colin Larson campaign was an open question at trial. The appearance of coordination was greatly enhanced by the fact that Respondent's counsel coordinated discovery responses of four respondents. She did not allow her clients to answer the Division's discovery,

[2] Larson described his oversight of RCLF as "provid[ing] high level guidance about where to spend money on Colorado House races. Decisions were made in consultation with ten other consultants, including Daniel Cole. Init. Dec. ¶37.

choosing instead to answer it herself. She answered the discovery that was propounded by the Division to Colin Larson and Larson for Colorado in Ex. 2, and to Daniel Cole and his two companies in Ex. 3. The discovery answers each contain a highly unusual jurat that only undermines the assertion of the facts being "true and correct."

> "These declarations are made under penalty of perjury under the law of Colorado and are true and correct *to the best of our knowledge*." [Emphasis supplied.]

21. Looking at Ex. 3, his lawyer's discovery answers, Daniel Cole testified at trial that he had never seen them before until his attention was directed to the assertion in the first paragraph that it is a letter sent on behalf of his two companies Cole Communications and Victor's Canvassing. He then recanted and said he "probably did review this." Init. Dec. ¶53.

22. Having the lawyer answer discovery in this way—for Mr. Cole and his two companies and for Mr. Larson and his campaign committee—severely impairs the credibility of the answers. It almost cries out for a hearing so that witnesses can be placed under oath and observed while answering questions rather than standing behind the lawyer's coordinated response.

23. As stated in Init. Dec. ¶104, "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."

24. Mr. Cole worked for Colin Larson and Colin for Colorado as well as Restore Colorado IEC that was precluded by the FCPA from from making independent expenditures coordinated with the Larson campaign. In discovery, Mr. Cole's two companies were asked to "describe any barriers in place" that would prevent unlawful coordination between the soft side of his work and the hard side. Answers provided by Respondents' counsel failed to mention any barrier at all, leading the Division to the reasonable inference that there were none in Mr. Cole's two

companies during the 2022 election season. Gebhardt, Init. Dec. ¶16. Ex. 3 pp. 27-28/73.[3] Trial testimony established that a written policy was not put in place until after Marcie Little filed her complaint. *See*, Ex. 1; Init. Dec. ¶55. Trial testimony also revealed that there was an unwritten policy in the two companies to prevent unlawful coordination during the 2022 election cycle, Init. Dec. ¶¶54-56, but there was no mention of such a policy in companies' discovery responses.

25. There are other facts that, occurring during the pertinent time in the election cycle, constitute circumstantial evidence that support an inference of coordination:

a. Unite made two large payments benefitting the Colin Larson's campaign, among others: $110,476.16 to Victor's Canvassing (a Cole company) in July 2022, Ex. 13, and $200,000 paid to Victor's Canvassing in October 2022, Ex. 14. Daniel Cole was a consultant to Unite in 2022.

b. 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. Ex. 7, p. 47/73.

c. Colin Larson took "oversight" of Restore in August 2022, providing "high level guidance about where to spend money on Colorado House races." Init. Dec. ¶37. He spoke "to Daniel Cole about every two weeks, about how much money was available and where it should be spent." Init. Dec. ¶47. "Decisions were made in [consultation] with about ten consultants, including Daniel Cole." *Id.* ¶37.

[3] 17 exhibits were in a single .pdf file of 73 pages. This citation refers to the part of Ex. 3 that is found on pp. 27-28 of the 73 page .pdf.

26. Mr. Cole's multiple involvements with RCLF IEC (directed for three months by candidate Larson), Ready Colorado Action Fund, and Unite IEC, and his frequent work with Colin Larson as well as ten other consultants in RCLF is all circumstantial evidence supporting the allegation of coordination in both counts of the complaint.

27. As stated in the Initial Decision, there is more than plausibility from the set of facts presented in this case. 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.[4] 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.

28. There was much circumstantial evidence of coordination, even though, weighing all the evidence and testimony, I concluded that the Division had not met its burden of proof. Init. Dec. ¶114. I find, however, that the Administrative Complaint did not lack substantial justification, nor was it commenced for delay or harassment nor was the case unnecessarily expanded by improper conduct.

29. There is no evidence of bad faith on the part of the Division. On the contrary, the Division appeared to act in good faith, with no hint of animus, forthrightly acknowledging in opening and closing statements that the Division's case rested primarily on circumstantial evidence.

[4] Not only was Cole a consultant to RCLF. But so too was Tyler Sandberg—the man who, seeing the $8,882 payment to Axiom by RCLF, reacted as though he had touched a hot stove. He ordered a reversal of the entry and in a few keystrokes assigned the payment to Ready instead. "That's an issue because Rep. Larson oversees RCLF and thus the IE cannot be spending on his race," he wrote in an email to a colleague. Init. Dec. ¶39; Ex. 4, p. 32/73.

30. Just because a claim may ultimately lack merit or fail does not necessarily mean it lacks substantial justification. *Munoz v. Measner*, 247 P.3d 1031, 1035-36 (Colo. 2011). Respondent's Motion for Attorney Fees is DENIED.

SO ORDERED this 24th day of June, 2024.

Macon Cowles, Hearing Officer