

Settlement Agreement
Elections Division v. Kwame Spearman for DPS
STATE OF COLORADO
IN THE OFFICE OF THE SECRETARY OF STATE

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

KWAME SPEARMAN FOR DPS

Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State (“Division”) and Kwame Spearman for DPS (“Respondent” or “the Committee”).

Recitals

A. Kwame Spearman was a candidate for school board in Denver in 2023. Kwame Spearman for DPS was the candidate committee organized to support Mr. Spearman’s school board candidacy.

B. During the 2023 election, the Committee distributed electioneering communications that did not include compliant disclaimer statements. These included communications with disclaimers erroneously identifying a committee from a previous campaign run by Mr. Spearman, communications with disclaimers that failed to identify the Committee’s registered agent, and communications that did not include a disclaimer at all.

C. In total, the Division alleges that the Committee spent \$52,805 on communications that did not include a compliant disclaimer statement.

- a. This includes \$47,124 on a mailer and a video, both of which included a “paid for by” disclaimer, but did not accurately identify the Committee’s Registered Agent. These communications were not cured before the relevant election.
- b. It also includes \$5,681 on yardsigns and a website that did not include a “paid for by” disclaimer at all, or on which the “paid for by”

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disclaimer did not accurately identify the name of the Committee. Some of these communications were cured before the relevant election.

D. The Division received two campaign finance complaints against the Committee, both filed by Catherine McCall.

E. Upon receiving notice of potential disclaimer violations, beginning on October 30, 2023, the Committee cured some of the violations. It placed compliant disclaimer stickers on at least some of its yard signs. It revised the disclaimer on its website. And it revised the disclaimer on two mailers prior to their distribution in the last weeks of the election.¹

F. The Division initiated proceedings against Respondents with an Administrative Hearing Officer titled *Elections Division of the Secretary of State v. Kwame Spearman for DPS* (the “Administrative Proceedings”). The matter number before the Administrative Hearing Officer is 2024 AHO 0011.

G. The Division and Respondent desire to resolve this matter without the expense of continued litigation. Therefore, in consideration of the mutual covenants contained in this Agreement, the parties agree and covenant as follows:

Agreement

Section 1. Deputy Secretary of State Approval

This Settlement Agreement and all promises contained within are contingent upon approval of the Deputy Secretary of State, which approval will be demonstrated by the Deputy Secretary’s signature to this agreement. In the event the Deputy Secretary does not approve this Settlement Agreement, neither the Recitals above nor the promises below shall be binding upon, or enforceable against, either the Division or Respondent.

Section 2. Payment of Stipulated Penalty

The Committee **shall pay a penalty of \$642.**

This penalty reflects Rule 23.3.3(d) of the Secretary’s Rules Concerning Campaign and Political Finance. 8 CCR 1505-6.

Under that Rule, the recommended penalty is 5% of the cost of all noncompliant communications that are mitigated prior to the election, and 10% of the cost of all noncompliant communications that are not mitigated prior to the election.

¹ The cost for these two mailers is not included in the \$52,805 amount in Recital C.

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As for the \$5,681 in communications that were cured, the recommended penalty would be 5%, or \$284. However, the Division finds mitigating circumstances. Namely, most of the communications included a disclaimer statement, but only misidentified the name of the Committee (instead naming Kwame Spearman's previous candidate committee organized to support his run for Denver Mayor). Accordingly, the Division believes a 3% penalty, or \$171 is appropriate.

As for the remaining \$47,124 in communications that were not cured, a 10% penalty would be \$4,7124. However, the Division believes there are significant mitigating circumstances. Most importantly, these communications correctly identified the name of the Committee paying for the communications, but did not accurately identify the Committee's registered agent. As it has in past cases, the Division considers that worth a significant reduction in the penalty amount.

Moreover, the parties recognize and acknowledge legal uncertainty related to the registered agent requirement. To mitigate that uncertainty on both sides, the parties agree that a reduction, but not elimination, of the penalty related to these communications is appropriate.

Accordingly, the Division believes a penalty of 1% of the cost of the communications, or \$471, is appropriate.

Section 3. Compliance with Colorado Campaign Finance Law

Respondent agrees to comply with Colorado law relating disclaimer statements and to otherwise comply with Colorado Campaign Finance Law, including Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, §§ 1-45-101, *et seq.*, and the rules of the Secretary of State concerning campaign and political finance.

Section 4. Dismissal of Administrative Proceedings

The Division will move to dismiss the Administrative Proceedings with prejudice after the Deputy Secretary of State approves this Settlement Agreement.

Section 5. Admissions

Respondent admits that it distributed at least some electioneering communications in 2023 that did not include compliant disclaimer statements, but disputes the total amount alleged by the Division.

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Section 6. Release and Covenant Not to Sue

Respondent, for itself, its agents, assigns, representatives, attorneys, and subrogees, releases and forever discharges the Division, the Secretary of State, and the State of Colorado, and all of their former, current, and successor officers, employees, agents, and attorneys, from any and all claims, actions, causes of action, debts, demands, liabilities, losses, injuries, and/or damages arising from or relating to the Administrative Proceedings. Respondent further expressly agrees and covenants that it will not sue or assert any cause of action, at law or in equity and whether before a court of law or an administrative agency, against the Division, the Secretary of State, or the State of Colorado, or any of their former, current, and successor officers, employees, agents, and attorneys, for any claim arising from or related to the Administrative Proceedings.

Section 7. Waiver of Appeal Rights

Respondent expressly waives any right for further administrative or judicial review of any matter related to the Administrative Proceedings or this Agreement, including but not limited to any rights provided by §§ 24-4-105 and -106, C.R.S. (2023).

Section 8. Public Records

Respondent understands and agrees that this Agreement may be made available to the public on the Secretary of State's TRACER Campaign Finance system, and may also be made available to members of the public who serve a valid request under the Colorado Open Records Act, § 24-72-101, *et seq.*, C.R.S. (2022).

Section 9. Full and Complete Agreement

This Agreement, including any attachments referenced in the Agreement, constitutes the full and complete agreement of the parties and shall supersede any and all prior understandings, whether written or oral. The parties agree that this agreement may be executed in counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed an original but all such counterparts together shall constitute one and the same instrument.

Section 10. Final Agency Action

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

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Section 11. Warranties

Respondents and the Division expressly warrant that they have carefully and completely read the terms of this Agreement. The parties expressly warrant that they have had the opportunity to consult with legal counsel before executing this Agreement, that they fully understand the terms of this Agreement, and that they enter into this Agreement knowingly and voluntarily, and without coercion, duress or undue influence. Each of the parties warrants that, in executing this Agreement, the parties have not relied upon any promise, warranty, or representation made by any other party, except as such promises, warranties, or representations are expressly stated in this Agreement. Finally, each of the signatories below warrants that they have authority to enter into the Agreement on behalf of the named parties.

ELECTIONS DIVISION OF THE SECRETARY OF STATE

08.29/2024

DATE

Timothy Gebhardt

By: Timothy Gebhardt
Campaign Finance Enforcement Manager

KWAME SPEARMAN FOR DPS

08/29/2024

DATE


Kwame Spearman

By: Kwame Spearman
Registered Agent

ADOPTED AND APPROVED BY:

August 30, 2024

DATE


By: Christopher P. Beall
Deputy Secretary of State