<table>
<tr><td>STATE OF COLORADO
SECRETARY OF STATE
ADMINISTRATIVE HEARING OFFICER
1700 Broadway #550
Denver, CO 80290</td><td rowspan="2">▲ COURT USE ONLY ▲</td></tr>
<tr><td>BEFORE THE SECRETARY OF STATE,
COLORADO DEPARTMENT OF STATE,
in re ED 2024-55, ED 2024-56

ELECTIONS DIVISION OF THE SECRETARY OF STATE,
Complainant
v.

ARVIDSON FOR SENATE,

Respondent</td></tr>
<tr><td>Counsel for Arvidson for Senate:
Matthew T. Arnold, #60401
P.O. Box 372464
Denver, CO 80237
(303) 995-5533
arnoldm@clawllc.org</td><td>CASE NUMBER:

2024 AHO 0032</td></tr>
<tr><td colspan="2" align="center">MOTION TO DISMISS</td></tr>
</table>

Respondent Arvidson for Senate, by and through counsel, respectfully submits the following *Motion to Dismiss*, and as grounds therefor states as follows:

Certificate of Compliance

Undersigned counsel certifies conferral with opposing counsel per C.R.C.P. 121 regarding the requested relief. Counsel has been informed that Complainant is opposed to the relief requested.

BACKGROUND

1. Respondent disputes jurisdiction, venue, and authority of the Secretary of State to prosecute and/or adjudicate campaign finance violations, as contrary to express intent of the electorate removing such authority from the Secretary's office via constitutional amendment, specifically Colo. Const. Art. XXVIII §12, expressly repealing the Secretary's prior enforcement powers under C.R.S. 1-45-111. Subsequent statute purporting to restore such authority to the Secretary is contrary to both the Colorado and U.S. Constitution, and void ab initio.

2. Further, the statute on which the Secretary relies as the basis for Claim One (Failure to Include Disclaimer), C.R.S. 1-45-108.3, has been facially invalidated by the Colorado Court of Appeals in a ruling issued 1 August 2024 [*No on EE v. Beall*, 2024 COA 79] prior to all actions taken in these proceedings, including:

- Notice of Initial Review, Consolidation, and Opportunity to Cure (2 Aug 2024)
- Notice of Investigation (9 Sep 2024)
- Administrative Hearing Officer Complaint (9 Oct 2024)

3. The Secretary's Motion to Stay the mandate of the Court of Appeals ruling was rejected, as well.

4. Consequently, the Secretary knowingly attempted to apply a statute which has been held unconstitutional in investigating, filing, and prosecuting this claim.

5. Additionally, the initial legal pleadings in this proceeding (Notice of Initial Review, Notice of Investigation) were conducted by a person purporting to act for the Secretary of State in a representative capacity, Timothy J. Gebhardt, who is not a licensed attorney and is therefore engaged in the unauthorized practice of law (UPL). See e.g. C.R.C.P. 201.3, specifically 201.3(2)(b)(i) and (ii); 232.2(b) & (c). Proceedings tainted by persons committing UPL have been dismissed, and persons engaging in UPL held in contempt of court, under Colorado precedents.

COLORADO CAMPAIGN FINANCE LAW

6. As noted supra, the statute [C.R.S. 1-45-108.3] requiring disclosure of a committee's registered agent on signage promoting the committee has been facially invalidated by the Colorado Court of Appeals, in a ruling issued 1 August 2024 and (as of the date on which the Administrative Hearing Officer Complaint was filed) not stayed, despite the Secretary's request. [*No on EE v. Beall*, *supra*]

7. The Court of Appeals concluded that "the registered agent disclosure requirement does not withstand exacting scrutiny" and is thus unconstitutional.

8. Although the appellant in *No on EE* was an issue committee, distinguished from a candidate committee in the instant case, the Court of Appeals ruling granted a facial challenge to the statute, not merely as applied to issue committees. Further, the grounds for the facial invalidation of the statute imposing a compelled speech requirement (adding verbiage listing a committee's registered agent on signage) applies with greater force as applied to candidate committees.

9. There is no informational interest in requiring a candidate committee, where the registered agent for the committee IS the candidate, to redundantly add the name of the candidate as registered agent to signage already naming the candidate.

10. Quoting the *No on EE* ruling, "[t]here can be no serious argument that requiring a [candidate] committee to disclose the name of its registered agent [particularly where the registered agent IS the candidate] serves the governmental interest in informing the public about … sources of funding." *No on EE* at ¶27

11. Similarly, there is no informational interest in redundantly providing the same name of the person speaking, twice on the same signage. *No on EE* at ¶28

12. There is no "substantial relation" between the registered agent disclosure requirement and ***any*** governmental informational interest. *No on EE* at ¶29, 32

13. The Colo. Const. Art. XXVIII §6(1) requirement to additionally submit reports of electioneering communications is triggered after a person expends one thousand dollars or more per calendar year, not prior.

ARGUMENT

A. Claim One Failure to Include Disclaimer per C.R.S. 1-45-108.3 is legally and factually deficient, and must be dismissed for failure to state a claim

14. All preceding paragraphs are incorporated.

15. As noted *supra*, C.R.S. 1-45-108.3 was facially invalidated by a Court of Appeals ruling issued 1 August 2024, prior to any pleadings in these proceedings and thus cannot form the basis of any cognizable legal claim.

16. The Complaint's allegation that the Arvidson for Senate committee "purchased over $3,000 worth of mailers that qualified as electioneering communications under Colorado law" on May 25, 2024 is factually inaccurate.

17. As explained in the Committee's *Notice of Intent to Cure* filed 14 August 2024 [**Exhibit A**], which the Secretary's office improperly excluded from the record in this case and from the TRACER record (contrary to established agency practice), the "costs associated with the mailer were originally reported in the committee's 3 June 2024 report as a lump-sum payment for 'consulting and professional services' to 5411 LLC in the amount of $3,500 paid on 5/25/2024" when the committee was verbally informed of the pending obligation.

18. The committee timely disclosed the obligation, consistent with guidance published in the Secretary's *Campaign and Political Finance Manual* (revised December 2023), specifying that

> "An expenditure occurs when it is made, when funds are obligated, or when a contract is established, whichever occurs first." CPF rev 12/23, p.15

19. At the time funds were obligated, and the contract established, the nature of the expenditure as (partly) qualifying as an electioneering communication was not clear to the committee, but appeared to be for general campaign consulting, and was timely reported as to date, amount, and known purpose "at the time funds were obligated, or when a contract was established." The committee had no knowledge at that time that some of the funds would later be expended for mailers qualifying as electioneering communications.

20. The committee's purchase of yard signs on 5/28/2024 for $647.50 was made prior to the committee consultant later subcontracting the purchase and distribution of the mailers out of the $3,500 consulting fee obligated on 5/25/2024.

21. The mailer purchase/distribution actually occurred on 6/6/2024, and was not invoiced directly to the Arvidson committee, but rather to the campaign consultant, and paid out of the previously obligated $3,500 campaign consulting lump sum fee (see attached **Exhibit B**, *A4SD2 Mailer Invoice* dated 6/6/2024). The Arvidson committee only received a copy of the invoice *after* the ED 2024-56 Complaint was filed; once known, it expeditiously amended its prior report and notified the Secretary of intent to cure (**Exhibit A**, *supra*) per C.R.S. 1-45-111.7(4).

22. Consequently, because the committee had not yet surpassed the $1,000 per calendar year threshold of expenditures for electioneering communications with the purchase of the yard signs, no additional electioneering disclaimer statement or additional electioneering report was legally required for the yard signs.

23. The Secretary's CLAIM ONE is therefore exposed as legally deficient, as the Arvidson committee was under no legitimate requirement to include a "paid for by" disclaimer statement on the yard signs under applicable Colorado law.

24. The Secretary's CLAIM ONE is therefore exposed as factually deficient, as the yard sign purchase did not yet exceed the $1,000/year reporting threshold which triggers additional electioneering disclaimer or reporting requirements.

B. Claim Two Failure to Report Electioneering Communication per Colo. Const. Art. XXVIII §6 is legally and factually deficient, and must be dismissed for failure to state a legally cognizable claim

25. All preceding paragraphs are incorporated.

26. As noted above, the Arvidson committee did not actually purchase mailers that qualified as electioneering communications on May 25, 2024, but later made the purchase through subcontractors on 6 June 2024 (when the mailers were sent to voters). **Exhibit B**, *A4SD2 Mailer Invoice*.

27. The Secretary admits that the mailers included all disclaimer statements then required by law, including "paid for by" and registered agent disclosures.

28.The Arvidson committee does not dispute purchasing yard signs for $647.50 on 5/28/2024, or that the yard signs were distributed to members of the Republican primary electorate for Senate District 2 during the electioneering window. The yard sign purchase was timely reported and disclosed, but not additionally tagged as an electioneering communication because the committee had not yet surpassed the $1,000/year electioneering expenditure threshold, on information known to the committee at the time of purchase and subsequent reporting.

29. The Arvidson committee does not dispute that neither the mailer nor the yard signs were originally reported as electioneering communications, for reasons recounted above.

30. The Arvidson committee timely amended reports to reflect the nature of both expenditures as electioneering communications consistent with the Notice of Intent to Cure timely filed in response to the Secretary's Notice of Opportunity to Cure, in August 2024. The Secretary improperly omitted the Committee's Notice of Intent to Cure [**Exhibit A**] from the record, and misleads the Hearing Officer by omitting both Notice and context of the amendment in the instant Complaint.

31. The Secretary's Notice of Investigation, drafted and disseminated by non-

lawyer Timothy J. Gebhardt in a representative capacity for the Elections Division, an action constituting the unauthorized practice of law, fails to provide any legal analysis or grounds for the conclusory statement that "Respondent did not cure and substantially comply with its legal obligations." *Notice of Investigation* at 1, ¶3

32. The Secretary's non-attorney representative's conclusory statement is not consistent with the law or established agency practice.

33. The Secretary admits that both the yard sign and mailer expenditures were amended to characterize each as "electioneering communications" within the 'cure' period noticed in the *Notice of Initial Review and Opportunity to Cure* issued by non-attorney Gebhardt on 2 August 2024. These amendments unambiguously put the committee's reports in substantial compliance with the law.

34. The Complaint is therefore inconsistent with established agency practice to dismiss complaints against committees which timely act to "cure" deficiencies that are identified in filed disclosures.

35. The Complaint's claims against the Arvidson committee are thus devoid of legal merit, as well as arbitrary, capricious, frivolous, groundless, and vexatious.

REQUEST FOR ATTORNEY FEES

36. All preceding paragraphs are incorporated.

37. Respondent Arvidson for Senate requests attorney fees under C.R.S. §§ 1-45-111.5(2) and 24-4-105(4), and C.R.C.P. 11. The Secretary's *Complaint* lacked substantial justification while subjecting Arvidson to ongoing litigation, overbroad discovery requests, and continued costs.

38. As discussed above, the Secretary's *Complaint* lacked basis in fact or law. Because the litigation instituted by the Secretary was frivolous, groundless, and vexatious, this Court should grant Arvidson's request for attorney fees.

39. Arvidson for Senate requests a hearing on the amount of attorney fees to be awarded.

Legal Standard:

40. Under C.R.S. § 24-4-105(4), a Court may "award attorney fees for abuses of discovery procedures or as otherwise provided under the Colorado Rules of Civil Procedure." Consequently, it may award fees under both C.R.S. § 1-45-111.5 and C.R.C.P. 11.

41. Under C.R.S. §§ 1-45-111.5(2) a respondent in an administrative action shall recover attorney fees for defending any claim that is "substantially frivolous, substantially groundless, or substantially vexatious." Specifically:

> A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article 45 is entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the hearing officer that the action, or any part thereof, lacked substantial justification. … For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

42. Under well-established law, "[a] claim is frivolous if the proponent can present no rational argument based on the evidence or law in support of the claim. A claim is groundless if the allegations in the complaint, while sufficient to survive a motion to dismiss for failure to state a claim, are not supported by any credible evidence."[1] Finally, a vexatious claim "is one brought or maintained in bad faith to annoy or harass, and may include conduct that is arbitrary, abusive, stubbornly litigious, or disrespectful of truth."[2]

43. The standards for C.R.C.P. 11 ("Rule 11") are similar. Rule 11 imposes four independent duties upon signing a pleading:

---

[1] *Remote Switch Systems, Inc. v. Delangis*, 126 P.3d 269, 275 (Colo. App. 2005), *cert. denied*, 2006 WL 380434; *see also Schmidt Const. Co. v. Becker-Johnson Corp.*, 817 P.2d 233, 235 (Colo. App. 1994).

[2] *Engel v. Engel*, 902 P.2d 442, 446 (Colo. App. 1995); *see also Bd. of Comm'rs of Boulder v. Eason*, 976 P.2d 271, 273-72 (Colo. App. 1998); *Bockar v. Patterson*, 899 P.2d 233, 235 (Colo. App. 1994).

> (1) before a pleading is filed there must be a reasonable inquiry into the facts and the law;
>
> (2) based on this investigation, the signer must reasonably believe the pleading is well grounded in fact;
>
> (3) the legal theory asserted in the pleading must be based on existing legal principles or a good faith argument for the modification of existing law; and
>
> (4) the pleading must not be filed for the purpose of causing delay, harassment, or an increase in the cost of litigation.[3]

44. Vexations claims subject to an award of attorney fees under Rule 11 include a wide array of potential behavior. While no single standard exists, Colorado courts have stated that "[a] vexatious claim is one brought or maintained in bad faith."[4] The courts have further elaborated that such bad faith claims may include, but are not limited to, "conduct that is arbitrary, vexatious, abusive … or disrespectful of truth or accuracy."[5]

The Secretary's Claims are both Frivolous and Groundless

45. As discussed above, the Secretary's *Complaint* is both legally and factually unsustainable. The statute on which the Secretary relies as a legal basis for the Complaint's CLAIM ONE had been facially invalidated by the Colorado Court of Appeals [issued 1 August 2024] prior to any pleading issued or filed by persons representing the Secretary in this matter; prosecuting the Arvidson committee for alleged violation of an invalidated statute is legally frivolous and groundless.

---

[3] *Stearns Mgmt. Co. v. Missouri River Servs. Inc.*, 70 P.3d 629, 632 (Colo. App. 2003) citing *Maul v. Shaw*, 843 P.2d 139, 141-42 (Colo. App. 1992).
[4] *Mitchell v. Ryder*, 104 P.3d 316, 321 (Colo. App. 2004); citing *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo. 1984).
[5] *Mitchell v. Ryder*, 104 P.3d 316, 321 (Colo. App. 2004); citing *City of Holyoke v. Schlachter Farms R.L.L.P.*, 22 P.3d 960 (Colo. App. 2001).

46. Because the Arvidson committee's amended reports contained all the information the Secretary alleged Arvidson failed to report, and because the reports were amended expeditiously and well within the period specified in the Secretary's notice giving the committee opportunity to cure, there is no legal basis for alleging the committee was no longer in substantial compliance with its legal obligations as of the Complaint being filed.

47. The Secretary has provided no analysis or justification for its conclusory finding that the committee was no longer in substantial compliance with its legal obligations as of the Complaint being filed, rendering the Complaint frivolous and legally groundless.

The Secretary's Claims are Vexatious

48. This matter represents yet another example of the Secretary abusing the campaign finance enforcement process in an arbitrary and capricious manner to target committees based on viewpoint, affiliation, or membership. The Secretary has repeatedly engaged in impermissible "conduct that is arbitrary, abusive, or … disrespectful of truth"[6] through engaging in the unauthorized practice of law and omitting exculpatory documents (e.g. Arvidson's *Notice of Intent to Cure*, **Ex. B**). Consequently, the Hearing Officer should sanction the Secretary's behavior by awarding attorney fees and costs for this vexatious behavior.

49. Additionally, because the underlying pleadings (*Notice of Initial Review and Opportunity to Cure*, *Notice of Investigation*) were drafted, disseminated, and filed by non-attorney Timothy J. Gebhardt in a representative capacity on behalf of the Secretary of State, the officers of this Court should refer Timothy Gebhardt to the Office of Attorney Regulation Counsel (OARC) for investigation of engaging in the unauthorized practice of law, per Colo. R. Prof. Conduct Rule 8.3.

---

[6] *Engel v. Engel*, 902 P.2d 442, 446 (Colo. App. 1995); *see also Bd. of Comm'rs of Boulder v. Eason*, 976 P.2d 271, 273-72 (Colo. App. 1998); *Bockar v. Patterson*, 899 P.2d 233, 235 (Colo. App. 1994).

CONCLUSION

WHEREFORE, for the above reasons, argument, and citations to authority, Respondent Arvidson for Senate respectfully requests the Hearing Officer grant the committee's Motion to Dismiss, for lack of jurisdiction under C.R.C.P. 12(b)(1); failure to state a legally cognizable claim for both CLAIM ONE and CLAIM TWO per C.R.C.P. 12(b)(5); grant the Arvidson committee's request for attorney fees; set a hearing to determine the amount of attorney fees and costs to be awarded; and directing other such further relief as deemed appropriate.

Respectfully submitted this 15th day of November, 2024.

___/signed/ *Matthew Arnold*__________
MATTHEW ARNOLD, #60401

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **MOTION TO DISMISS** was sent to the following persons via E- mail at the address(es) listed below, on the 15th day of November 2024 as indicated:

Administrative Hearing Officer Macon Cowles
Administrative Staff
Colorado Secretary of State
AdministrativeHearingOfficer@ColoradoSOS.gov

Peter G. Baumann, Esq.
Assistant Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
peter.baumann@coag.gov
Elections Division Counsel

__/signed/ *Matthew Arnold*_
MATTHEW ARNOLD, #60401