

STATE OF COLORADO
SECRETARY OF STATE
1700 BROADWAY #550
DENVER, COLORADO 80290

BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE,
ADMINISTRATIVE HEARING OFFICER

AHO Case No. 2025 AHO 08 CPF

ED Case Nos. 2024-78, 2024-99

In the Matter of

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

COLORADO DAWN,

Respondent.

RESPONSE TO MOTION TO STAY

Pursuant to the Revised Scheduling Order dated April 18, 2025, the Elections Division of the Department of State files this Response to Respondent Colorado Dawn's Motion to Stay (April 10, 2025). For the reasons stated below, the Division opposes Respondent's Motion.

1. First, undersigned counsel acknowledges that this filing is out of time under the Revised Scheduling Order. Undersigned counsel apologizes for the error, which was his alone. Undersigned counsel misunderstood the Order. Specifically, Paragraph 13 of that Order noted that "Respondent may—but need not—file an amended Motion to Stay at the same time the Answer is filed." Undersigned counsel understood that Paragraph to mean that Respondent could elect to renew its Motion to Stay, or it could elect to proceed to the merits of the case. As a result, when Respondent did not file an amended Motion to Stay, undersigned counsel did not file a response to the Motion to Stay on May 23, 2025, as contemplated later in that same paragraph.

2. Upon reflection, counsel understands that the Court’s intent was to enable Respondent to rest on its original Motion to Stay should it choose to do so. Accordingly, counsel apologizes for his misunderstanding and files this Response as ordered.

3. This matter involves two claims. The first involves a series of text messages distributed by Respondent during the 2024 election cycle. The Division alleges that some, but not all, of those text messages did not include compliant disclaimer statements. The Division’s second claim alleges that Respondent failed to file three 48-hour reports related to electioneering communications.

4. The crux of the parties’ dispute lies with the first claim. Of the text messages at issue, the Division alleges that just one lacked a disclaimer altogether. Am. Compl. ¶ 46 (May 2, 2025). Eight of the text messages included a partial disclaimer that indicated the person paying for the text message, but did not identify the person’s registered agent. *Id.*; *see also* Ex. A to Am. Compl.

5. Respondent’s Motion to Stay is based on pending proceedings in *Beall v. No on EE*, No. 24SC540, in which a Petition for a Writ of Certiorari is currently pending before the Colorado Supreme Court.

6. At issue in *Beall* is whether the requirement that issue committees identify their registered agents in “paid for by” disclaimers is unconstitutional on its face. At most, the Supreme Court’s decision in *Beall*, if it chooses to take the case, will affect that analysis in this case only as to the eight text messages that included a “paid for by” disclaimer, but did not identify Respondent’s registered agent.

7. The Division does not believe *Beall* warrants a stay for three reasons.

8. First, the entity at issue in *Beall* is an issue committee, which is a type of campaign finance committee registered with the Secretary of State. Here, Respondent is not an issue committee. Instead, it is a nonprofit organization making independent expenditures in various issue and candidate elections. Although the Supreme Court’s analysis of *Beall* may be relevant to such

entities, it may not. It may be possible that the constitutional analysis as applied to issue committees is different than for entities that are not already registered with the Secretary's elections division.

9. Second, the Supreme Court's decision in *Beall* will only affect the analysis related to one of the Division's claims, and even then only related to eight of the nine text messages the Division alleges contain non-compliant disclaimers.

10. The Division acknowledges, however, that the penalty it seeks will be heavily influenced by the analysis related to those eight text messages. Under the relevant rules, those eight text messages will form the basis for a significant percentage of the total penalty the Division will seek. *See generally* 8 CCR 1505-6, Rule 23.4.2.¹

11. Finally, the Division opposes a stay because of the time that such a stay could encompass. Currently, the Petition for Certiorari in *Beall* is pending. If the Supreme Court grants certiorari, it is unlikely that case will be decided until sometime in 2026.

Accordingly, the Division opposes the Motion for a Stay.

Respectfully submitted this 2nd day of June, 2025

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

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¹ The Division represents—for purposes of this response only—that the eight text messages that included a disclaimer, but did not identify the registered agent, account for approximately 90% of the total cost of the text messages with allegedly noncompliant disclaimers. Thus, under the base penalties established by Rule 23.4.3(d), those text messages account for the vast majority of the base penalty applicable under the Secretary's rules (prior to application of aggravating or mitigating circumstances under Rule 23.4.5).

CERTIFICATE OF SERVICE

This is to certify that I will cause the foregoing to be served this 2nd day of June, 2025, by email and/or U.S. mail, addressed as follows:

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/s/ Peter G. Baumann