

**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 23 CPF

ED Case No. 2024-107

---

In the Matter of

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

CITIZENS FOR NO NEW DEBT,

Respondent.

---

**OPPOSITION TO MOTION TO DISMISS**

---

Respondent's Second Motion to Dismiss should be denied. First because the filing of multiple Rule 12 motions is improper, and second because the allegations contained in Respondent's Second Motion to Dismiss do not entitle Respondent to judgment as a matter of law.

**ARGUMENT**

**I. The Court should evaluate the Second Motion to Dismiss as a Motion for Judgment on the pleadings.**

The Colorado Rules of Civil Procedure prohibit a party from filing successive Rule 12 motions to dismiss. Colo. R. Civ. P. 12(g) ("If a party makes a motion under this Rule but omits therefrom any defense or objection then available to that party which this Rule permits to be raised by motion, that party shall not thereafter make a motion based on the defense or

objection so omitted[.]”). This rule “requires consolidation of all C.R.C.P. 12 motions.”

*Barnes v. State Farm Mutual Auto. Ins. Co.*, 2021 COA 89, ¶ 17.

When a defendant files a motion styled as a Motion to Dismiss after it has filed an Answer, the proper procedure is to “treat the motion as a C.R.C.P. 12(c) motion for judgment on the pleadings.” *Id.* ¶ 19. And in considering such a motion involving matters outside the pleadings, courts should treat the motion “as one for summary judgment.” Colo. R. Civ. P. 12(c).

**II. Whether the expenditure referenced in the third-party complaint was a personal expenditure by Jason Bailey or made by Respondent is a disputed material fact.**

Respondent seeks judgment on the pleadings because “the \$300 ad . . . from the complaint filed by Carrie Olson, was paid for with a personal credit card.” Second Mot. to Dismiss at 1 (Aug. 10, 2025). But the Division’s Complaint includes a picture of that advertisement, which clearly states that it was “Paid for by Citizens for NO new debt.” Compl. ¶ 20 (June 16, 2025).

As it applies to this Motion, this raises a disputed issue of material fact as to who actually paid for the advertisement. Moreover, the fact that the expenditure came from Respondent’s Registered Agent’s personal account is irrelevant: if the expenditure was intended to be made by Citizens for No New Debt, as the disclaimer suggests, then the payment from Jason Bailey for the advertisement is an in-kind contribution to Citizens for No New Debt. It is the *use* of the funds, not their source, that matters.

The source of confusion here is the Division’s comment, in responding to Respondent’s first Motion, that Bailey’s personal expenditures are “outside the scope of the Complaint.” Opp. to Mot. to Dismiss at 4 (July 28, 2025). That comment referred to the *factual* dispute of whether Bailey’s personal expenditures on office space and furniture were in-kind contributions to (and therefore the equivalent of expenditures by) Citizens for No New Debt, or whether they were used by Mr. Bailey in his personal capacity. That dispute

may, depending on the evidence presented, be relevant to Citizens for No New Debt's major purposes.

If Jason Bailey is using personal funds for activities unrelated to Citizens for No New Debt, then those expenditures are irrelevant to the question of Citizens for No New Debt's major purpose. But if Jason Bailey is making in-kind contributions to Citizens for No New Debt in the form of expenditures on advertisements—again, as suggested by the disclaimer—then those expenditures are relevant to Citizens for No New Debt's major purpose.

Finally, the Division comments that if Bailey made the expenditure, and not Citizens for No New Debt, then the disclaimer included in the advertisement is inaccurate and therefore likely still violates Colorado law.

**III. The Division's decision to rely on Bailey's assertions instead of obtaining the Denver Post insert does not warrant dismissal.**

Next, Respondent faults the Division for not obtaining a copy of the Denver Post insert referenced in the Complaint during its investigation. *See* Second Mot. to Dismiss at 2-3; Compl. ¶ 16. But that strategic choice was informed by Bailey's comment to the Division that his advertisements all looked the same as the one included in the original third-party complaint. *See* Compl. ¶ 20. As Respondent's Motion notes, once it became clear as a result of Respondent's Answer that the Denver Post insert was not identical to the other advertisements, the Division obtained a copy in discovery and will present that copy as evidence during the hearing. Second Mot. to Dismiss at 3.

**IV. The Complaint included no political commentary, and even if it did that is not grounds for dismissal.**

Finally, Respondent alleges that the Division "took a political position" in its Complaint, and that doing so "is illegal." Second Mot. to Dismiss at 3-4.

First, saying that the proposed ballot measure would issue new debt to "support capital improvements" is not a political position. The text of the measure itself asked whether

debt should be increased to “finance capital improvements.” In this context, “support” and “finance” are synonyms.

Second, Respondent cites no law—and the Division is aware of none—supporting dismissal for such comments in an administrative complaint.

### **CONCLUSION**

The Second Motion to Dismiss should be treated as a Motion for Judgment on the Pleadings and denied.

Respectfully submitted this 12th day of August, 2025

PHILIP J. WEISER  
Attorney General

/s/ Peter G. Baumann

---

PETER G. BAUMANN\*  
Senior Assistant Attorney General, No 51620  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 6<sup>th</sup> Floor  
Denver, Colorado 80203  
Telephone: 720-508-6152  
Fax: 720-508-6041  
[peter.baumann@coag.gov](mailto:peter.baumann@coag.gov)  
\*Counsel of Record

**CERTIFICATE OF SERVICE**

This is to certify that I will cause the foregoing to be served this 12<sup>th</sup> day of August, 2025, by email and/or U.S. mail, addressed as follows:

Citizens for No New Debt  
C/O Registered Agent J Robert Bailey  
1410 Grant St.  
C-205  
Denver, CO 80203  
Bailey@citizensfornonewdebt.org  
*Respondent*

/s/ Peter G. Baumann