

OFFICE OF THE SECRETARY OF STATE, ELECTIONS DIVISION

STATE OF COLORADO

IN THE MATTER OF JARED POLIS

2022-41

MOTION TO DISMISS

The Elections Division of the Secretary of State’s Office (“Division”) moves the Deputy Secretary of State (“Deputy Secretary”) to dismiss the above-entitled Complaint pursuant to section 1-45-111.7(5)(a)(IV), C.R.S. on the basis that there is insufficient evidence to support a finding that Respondent violated Colorado campaign finance laws as alleged in the Complaint.

Procedural Background

Kristi Burton Brown (“Complainant”) filed Complaint 2022-41 on August 4, 2022, against “Jared Polis”, alleging campaign and political finance violations.¹ Based on the allegations in the Complaint, the Division construed the Complaint as against Jared Polis in his capacity as Governor (Respondent Governor Polis) and Polis for Colorado, the candidate for re-election (Respondent Candidate) as Respondents in this case.² The Division notified Respondent Candidate of the Complaint on August 4, 2022³ and on August 18, 2022 the Division sent both Respondents a Notice of Initial Review.⁴

Complainant alleges that a recent letter sent from Respondent Governor Polis, which accompanied refund checks distributed to state residents, was an electioneering communication because Respondent Governor Polis used “Colorado Cashback” language instead of “TABOR” or “Taxpayer Bill of Rights” in connection with the refund. Complainant alleges that “Colorado Cashback” is “campaign language” in support of Respondent Candidate’s campaign. Therefore, the Complaint alleges, the letter was a campaign mailing that violated campaign and political finance laws because it used state funds for campaign purposes, used state funds exceeding \$50, and was not reported or disclosed by Respondent Candidate.⁵

¹ See Exhibit A - Complaint 2022-41.

² See <https://www.colorado.gov/governor/> and <https://bit.ly/3UoCzB5>. See also, Exhibit A - Complaint 2022-41.

³ Exhibit B - Notice of Complaint.

⁴ Exhibit C - Notice of Initial Review. Respondent Governor Polis was notified of the Complaint through the Notice of Initial Review.

⁵ See Exhibit A - Complaint 2022-41.

In its Initial Review, the Division determined that the Complaint alleged facts that, if true, could support a factual and legal basis for violations of Colorado campaign finance law.⁶ The Division also determined that the alleged violations were not curable under section 1-45-111.7(4), C.R.S. and moved the Complaint into investigation under 1-45-111.7(5).⁷

On August 18th and 19th, the Division sent out requests for information to the Complainant, Respondents, and the four legislators who sponsored Senate Bill 22-233⁸, Senators Nick Hinrichsen and Robert Rodriguez and Representatives Lindsey Daugherty and Tony Exum.⁹

Complainant responded on August 24, 2022, providing additional information and documentation regarding use of the term “Colorado Cashback.”¹⁰

On August 25, 2022, Representatives Daugherty and Exum provided additional information and documentation on their use and understanding of the origin of the term, “Colorado Cashback” and their role in the legislation.¹¹

Senators Rodriguez and Hinrichsen responded on August 25th and 26th, respectively, and provided similar comments and documentation to each other and their legislative counterparts in the House indicating the origination of the term and their knowledge of the term’s use and their role in the legislation.¹²

On August 30, 2022, Respondent Governor Polis responded to the Division’s inquiry with additional information and documentation acknowledging their communication office coined the term as a brand for the refund mechanism and the term was first used in an April 25, 2022 press release.¹³

On September 12, 2022, Respondent Candidate responded that the term “Colorado Cashback” was not a term that coined by the campaign or being used as a campaign slogan.¹⁴

Based on the Division’s review of the Complaint and information received through the complaint process, the Division now moves the Deputy Secretary to dismiss the Complaint pursuant to

⁶ Exhibit C - Notice of Initial Review.

⁷ *Id.*

⁸ SB 22-233 established the temporary refund mechanism which is the subject of the letter, *see* <https://leg.colorado.gov/bills/sb22-233>.

⁹ *See* Exhibit D – Complainant RFI and Response; Exhibit E – Respondent Candidate Polis RFI and Response; Exhibit F – Respondent Governor Polis RFI and Response; Exhibit G – Senator Hinrichsen RFI and Response; Exhibit H Senator Rodriguez RFI and Response; Exhibit I- Representative Daugherty RFI and Response; and Exhibit J - Representative Exum RFI and Response.

¹⁰ Exhibit D – Complainant RFI and Response.

¹¹ Exhibit I – Representative Daugherty RFI and Response and Exhibit J – Representative Exum RFI and Response.

¹² Exhibit G – Senator Hinrichsen RFI and Response and Exhibit H Senator Rodriguez RFI and Response.

¹³ Exhibit F – Respondent Governor Polis RFI and Response.

¹⁴ Exhibit E – Respondent Candidate Polis RFI and Response. Respondent’s responses were delayed due to the Division only sending notice to the designated filing agent and the campaign’s request for additional time to respond.

section 1-45-111.7(5)(a)(IV), C.R.S. because there is insufficient evidence to support a finding that Respondents violated Colorado campaign finance law as alleged in the Complaint.¹⁵

Factual Findings

The Division makes the following factual findings.

Respondent Governor Polis is the current Governor of Colorado.¹⁶ Respondent Candidate is the candidate and candidate committee running for re-election.¹⁷ Respondent Candidate filed his candidate affidavit for re-election on July 31, 2021.¹⁸

On April 25, 2022, Respondent Governor Polis and members of the legislature held a press conference announcing upcoming legislation that would create the mechanism to refund excess state revenue for the current fiscal year.¹⁹ At the same time, Respondent Governor Polis' office sent out a press release titled, "*For Immediate Release: Colorado Cashback: Governor Polis, Legislative Leaders Announce New \$400 Colorado Dividend for Every Hardworking Colorado Taxpayer.*"²⁰ Respondent Governor Polis' communication office had branded the bill and refund mechanism "Colorado Cashback," to assist Coloradans in understanding the refund. The term, or brand, was used first used in the April 25th press release.²¹

On April 27, 2022, Senate Bill 22-233 (SB 22-233), with the short title "TABOR Refund Mechanism for FY 2021-22 ONLY" was introduced in the Colorado Senate.²² The official title of the bill was "Concerning an additional mechanism to refund excess state revenues for state fiscal year 2021-22 only that provides a refund in identical amount to each qualified resident individual, and, in connection therewith, making an appropriation."²³ Neither the official title of the bill, nor the bill itself, contain the acronym "TABOR" or the words "Taxpayer's Bill of Rights."²⁴

The Senator sponsors of the bill were Senators Hinrichsen and Rodriguez and the House sponsors were Representatives Exum and Daugherty.²⁵ The bill passed out of the legislature on May 11, 2022, and was signed into law by Respondent Governor Polis on May 23, 2022.²⁶

¹⁵ Section 1-45-111.7(5)(a)(IV), C.R.S. states, in pertinent part: "If the division makes a determination that a complaint should not be filed with a hearing officer because there is not sufficient information to support the allegations contained in the complaint or for any other reason, it shall prepare and file with the deputy secretary a motion to dismiss the complaint."

¹⁶ See <https://www.colorado.gov/governor/>.

¹⁷ See <https://bit.ly/3UoCzB5>.

¹⁸ *Id.*

¹⁹ https://www.facebook.com/watch/live/?ref=watch_permalink&v=832100747746189.

²⁰ <https://bit.ly/3xawgqv>.

²¹ Exhibit F – Respondent Governor Polis RFI and Response.

²² <https://leg.colorado.gov/bills/sb22-233>.

²³ https://leg.colorado.gov/sites/default/files/2022a_233_signed.pdf.

²⁴ *Id.* The short title and the unofficial "Bill Summary" do use the acronym "TABOR".

²⁵ <https://leg.colorado.gov/bills/sb22-233>.

²⁶ *Id.*

In their responses to the Division, all four legislative sponsors reported that the origination of the term “Colorado Cashback” was the April 25, 2022, joint press release between the Governor’s Office and the legislature.²⁷ The sponsors all reported using the term on social media and/or personal remarks and that the term was often used in social media, press releases, or in new articles associated with the bill or the issuance of the refund checks.²⁸ An example of the social media posts from the sponsors includes²⁹:



Respondent Governor Polis and the sponsors also reported use of the term, “Colorado Cashback” in numerous press releases related to the progress of the bill through the legislature, once the bill was signed, and around the mailing of the refund checks:

- April 28, 2022: Joint House/Senate Majority release regarding introduction of SB22-233.

²⁷ See Exhibit G – Senator Hinrichsen RFI and Response; Exhibit H -Senator Rodriguez RFI and Response; Exhibit I- Representative Daugherty RFI and Response and Exhibit J- Representative Exum RFI and Response.

²⁸ *Id.*

²⁹ See <https://twitter.com/LindseyForCO/status/1522295644655955969>; <https://twitter.com/TonyExum/status/1524216590727716864?s=20&t=TkIGTzdt4dU5DYjpDvBUNg>; <https://twitter.com/SenRobRodriguez/status/1554179178475335680>; <https://twitter.com/NickForCO/status/1555665657475125248>

- April 29, 2022: Senate Majority Office release regarding passing Senate Finance Committee
- May 3, 2022: Senate Majority Office release upon Senate passage of SB22-233.
- May 5, 2022: House Majority Office release regarding the bill passing House Finance Committee
- May 10, 2022: House Majority Office RE the passage by the House
- May 23, 2022: Governor Polis press release regarding bill being signed into law
- May 23, 2022: Colorado Senate Democrats press release regarding the bill being signed into law.
- June 21, 2022: Governor Polis press released regarding announcement on the rebate checks
- June 21, 2022: Colorado Senate Democrats press release regarding increased refund³⁰

Respondent Governor Polis also used the term “Colorado Cashback” on social media:³¹



Various newspapers and press reported on the legislation and refund checks and noted, sometimes critically, of Respondent Governor Polis’ use of the term “Colorado Cashback” in association with the refund checks.³² In his response to the Division, Respondent Governor Polis listed numerous

³⁰ See Exhibit F – Respondent Governor Polis RFI and Response, and by example, see Exhibit I - Representative Daugherty RFI and Response.

³¹ <https://twitter.com/GovofCO/status/1529145286152667136>

³² See <https://www.denverpost.com/2022/04/25/tabor-refunds-400-jared-polis-colorado-legislature/>; <https://www.denverpost.com/2022/04/28/colorado-tabor-refunds-checks-democrats> and <https://www.cbsnews.com/colorado/news/jared-polis-renames-tabor-refunds-colorado-governor-race-election-year-maneuver>.

press articles that used the branding “Colorado Cashback” in reference to the legislation and refund.³³

After SB 22-233 was signed into law, the Colorado Department of Revenue created the “Colorado Cash Back” website (<https://tax.colorado.gov/cash-back>) and “Colorado Cash Back Call Center” to provide information and answer questions about the tax rebates.³⁴

On August 1, 2022, the domain name “Coloradocashback.com” was created and registered.³⁵ The domain “Coloradocashback.com” directs to the Colorado Department of Revenue webpage with information regarding the tax rebates.³⁶ At the beginning of August, the Department of Revenue started the mailing of refund checks.³⁷ The letter, dated July 7, 2022, from the Governor that is the subject of this Complaint, accompanied the checks.³⁸

Analysis

The Division moves the Deputy Secretary to dismiss the above-entitled Complaint on the grounds that there is insufficient evidence to support a finding that Respondents violated Colorado campaign finance law as alleged in the Complaint.

Complainant alleges that the July 6th letter sent from Respondent Governor Polis, which accompanied refund checks distributed to state residents, was an electioneering communication because Respondent Governor Polis used “Colorado Cashback” language instead of “TABOR” in reference to the refund.³⁹ Complainant alleges that “Colorado Cashback” is “campaign language” or a “campaign slogan” in support of Respondent Candidate’s campaign. Therefore, the Complaint alleges, the letter was a campaign mailing that violated state law because it used state funds for campaign purposes and expended state funds greater than \$50 in violation of state law, and neither the expenditure nor the electioneering communication was reported or disclosed by Respondent Candidate, as required by law.⁴⁰

First, an electioneering communication is any communication that is broadcasted or distributed on television, radio, newspaper, billboard, mailed or hand-delivered or otherwise distributed, to an audience that includes members of the electorate for such public office, within thirty days before a primary election through a general election, and unambiguously refers to any candidate.⁴¹ There

³³ Exhibit F – Respondent Governor Polis RFI and Responses.

³⁴ <https://tax.colorado.gov/cash-back>.

³⁵ Exhibit D – Complainant RFI and Response and <https://lookup.icann.org/en/lookup>.

³⁶ <https://tax.colorado.gov/cash-back>.

³⁷ *Id.*, see Frequently Asked Questions and “The Department of Revenue will begin mailing checks at the beginning of August but recommend Coloradans wait until at least September 30 to allow time for processing and mailing before checking on their payment status.”

³⁸ See Exhibit A - Complaint 2022-41. The letter appears to be dated earlier than when the checks were mailed.

³⁹ See Exhibit A - Complaint 2022-41.

⁴⁰ *Id.*

⁴¹ See COLO. CONST. art. XXVIII, § 2(7)(a) and 1-45-103(9), C.R.S.

are a number of exemptions; including communications made by a person in their regular course and scope of business.⁴²

Second, all candidate committees must report contributions received and expenditures made.⁴³

A contribution is:

- (I) The payment, loan, pledge, gift, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, small donor committee, or political party;
- (II) Any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party;
- (III) The fair market value of any gift or loan of property made to any candidate committee, issue committee, political committee, small donor committee or political party;
- (IV) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate's nomination, retention, recall, or election.⁴⁴

Expenditure means:

any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question. An expenditure is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined.⁴⁵

Third, under Colorado law, “[n]o agency, department, board, division, bureau, commission, or council of the state or any political subdivision of the state shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office” or expend money from any public source to urge electors to vote in support or opposition to a statewide ballot issue, a local ballot issue, a referred measure, or for a recall of an elected official.⁴⁶ However, a member or employee of any such entity may expend up to fifty dollars of public moneys “in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described.”⁴⁷

⁴² See COLO. CONST. art. XXVIII, § 2(7)(b)(III).

⁴³ Section 1-45-108(1)(a)(I), C.R.S.

⁴⁴ COLO. CONST. art. XXVIII, § 2(5)(a).

⁴⁵ COLO. CONST. art. XXVIII, § 2(8)(a).

⁴⁶ Section 1-45-117(1)(a)(I), C.R.S.

⁴⁷ Section 1-45-117(1)(a)(II), C.R.S.

The foundational issue in this Complaint is whether the July 7th letter was an electioneering or campaign related communication that falls under campaign and political finance rules and regulations. Complainant alleges that the letter was an electioneering communication because Respondent Governor Polis used the term “Colorado Cashback” and not “TABOR” or a “TABOR refund” in reference to the refund checks. More specifically,

Due to the Governor’s use of campaign language, this letter is a campaign mailing and not an official “instructional letter” as he told the media. The Governor’s refusal to call the refund a TABOR refund, after he campaigned against TABOR refunds in 2019, demonstrates that he is promoting his own campaign instead of being honest with voters and informing them of the true sources of the refund: TABOR, not his campaign term “Colorado Cashback.”⁴⁸

In support of her allegations, Complainant attached the July 7th letter and a portion of the fiscal note for SB 22-233 referencing the state expenditures related to the refund mechanism.⁴⁹ Complainant did not explain why she believed the term “Colorado Cashback” was associated with Respondent Candidate’s campaign nor did she provide any evidence of the campaign using the term in the Complaint or in response to the Division’s request for information.

The Division had requested additional information from Complainant; specifically seeking information related to evidence that “Colorado Cashback” was coined by, and associated with, the campaign. Complainant replied with additional information, specifically:

- Screenshot from ICANN lookup website⁵⁰ that shows the domain name “Colorado Cashback” was created on August 1, 2022.
- August 3, 2022 CBS News story by Shaun Boyd, “*Governor Polis renames TABOR refunds in election year maneuver: 'A rose is a rose'*” which echoes the allegations in the Complaint.
- A link to SB 22-233.
- A link to an August 1, 2022, twitter post by Brittany Pettersen, a candidate for Congress, and undated email from Representative Brianna Titone both of which use the term “Colorado Cashback”.
- Finally, an undated screenshot of a text from Respondent Candidate indicating he is running for re-election based on his accomplishments, including:

We’ve cut property taxes, made it just \$1 to start a new business, stopped taxing seniors’ Social Security benefits and sent every taxpayer a \$750 rebate this summer – providing important relief from rising costs.⁵¹

⁴⁸ Exhibit A - Complaint 2022-41.

⁴⁹ *Id.*

⁵⁰ Exhibit D – Complainant RFI and Response and <https://lookup.icann.org/en>.

⁵¹ Exhibit D – Complainant RFI and Response.

Complainant illustrated how Respondent Governor Polis did not embrace or use the term TABOR in association with SB 22-233 or the refund checks but presented no evidence that “Colorado Cashback” is campaign language, a campaign slogan, or a term that was coined by Respondent Candidate during his campaign, as alleged in the Complaint.

Instead, Respondent Governor Polis demonstrated that the term “Colorado Cashback” was a state brand, and his July 7th letter was sent within his regular course and scope of his governmental business to implement this refund mechanism and program.⁵²

Respondent Governor Polis first used the term, “Colorado Cashback”, in a press release on April 25, 2022 that coincided with a joint press conference with Respondent Governor Polis and the legislative sponsors announcing the legislation that would become SB 22-233.⁵³ Respondent Governor Polis indicated the term was coined by his Communication’s Office as a brand and way to distinguish this specific refund mechanism and program.

... the state-created brand “Colorado Cashback” is solely a Colorado government-created program, used to assist taxpayers in understanding this was an official tax refund, meaning it is separate and different from previous state and federal stimulus checks and other Colorado refund checks taxpayers may have received. There is no evidence that Polis for Colorado, the Governor’s re-election campaign, created or adopted it as its slogan.

Like past TABOR refunds, SB233 identified certain qualifications and filing deadlines for taxpayers. By uniquely branding this year’s refund, the State enabled Coloradans to access information about the deadline and other important information. For instance, unlike past refunds, taxpayers who hadn’t filed or didn’t plan to file could do so by October 17, 2022 and still get the refund. The unique branding and programmatic needs were also important to identify and clarify for state agencies implementing the program. In short, the branding aspect helped effectively communicate to the public what the refund is and how to access it. It also enhanced participating agencies’ internal controls and communication.⁵⁴

Later, when the checks were being mailed, Respondent Governor Polis issued the July 7th letter on official state letterhead which provides:

My Fellow Coloradan:

On behalf of the State of Colorado, it is a true pleasure to send you this enclosed ‘Colorado Cashback’ refund check. This Spring, I signed Senate Bill 22-233, which directed the Colorado Department of Revenue (CDOR) to refund \$750 to each individual resident taxpayer and \$1,500 to resident joint tax filers. This refund is being paid to you because you are a Colorado resident taxpayer. Colorado law

⁵² See Exhibit F – Respondent Governor Polis RFI and Responses.

⁵³ *Id.*

⁵⁴ *Id.*

limits how much the state can spend each year, and thanks to Colorado’s strong economic growth and our successful work to close special interest tax loopholes, we are able to put even more of your hard-earned money back in your pocket, and we’re doing it well ahead of schedule.

At a time when inflation is causing increases in the cost of everyday items, we are committed to getting this money to you as quickly as possible.

For questions about your Colorado Cashback payment, visit our website at tax.colorado.gov/cash-back or call 303-951-4996.

Governor Jared Polis⁵⁵

In implementing this program, Respondent Governor Polis provided information to Coloradans in several ways, including creating a call center, an informational website hosted by the Department of Revenue, and the July 7th letter which accompanied the checks.⁵⁶ The letter was simply part of the implementation plan.⁵⁷

The legislative sponsors of the bill echoed this origination story, indicating the April 25th press release was the first time the term was used and the used as a “brand” or a way to reference the legislation, for ease and convenience.⁵⁸ Specifically, Senators Hinrichsen and Rodriguez, both responded:

A key component of successful legislation is simplicity and branding. Government programs are often opaque and confusing; quality, easy-to-understand branding serves to help our constituents navigate and remember the often complex programs their tax dollars pay for. Naming programs is a common and legitimate legislative function, which is why when we created a brand new TABOR refund mechanism established by SB22-233, we named it the Colorado Cashback. This is no different than naming other TABOR refund mechanisms, such as the Senior Homestead Exemption.⁵⁹

The legislative sponsors all reported using the term either in social media or in remarks in support of the legislation, including largely when the bill was signed, and when the checks were about to be issued.⁶⁰

⁵⁵ Exhibit A - Complaint 2022-41

⁵⁶ See Exhibit F – Respondent Governor Polis RFI and Responses.

⁵⁷ *Id.*

⁵⁸ See Exhibit G – Senator Hinrichsen RFI and Response; Exhibit H -Senator Rodriguez RFI and Response; Exhibit I- Representative Daugherty RFI and Response; and Exhibit J- Representative Exum RFI and Response.

⁵⁹ See Exhibit G – Senator Hinrichsen RFI and Response and Exhibit H -Senator Rodriguez RFI and Response.

⁶⁰ See *Id.* and see also Exhibit I- Representative Daugherty RFI and Response and Exhibit J- Representative Exum RFI and Response.

Similarly, Respondent Candidate indicates the campaign did not coin or originate the term “Colorado Cashback”, believe it was first used in association with SB 22-233.⁶¹ He was not involved in the drafting or passage of SB 22-233, and “did not affirmatively use the term ‘Colorado Cashback’ in any campaign communications or materials.”⁶² Respondent Candidate only shared social media posts in which the term had already been used.⁶³

Here, the July 7th letter unambiguously refers to “Jared Polis”, an active candidate for Governor,⁶⁴ and was sent within the electioneering window – between May 29, 2022, and the November 8, 2022, general election.⁶⁵ However, under Colorado law, electioneering communications do not include communications made by a person made in the regular course and scope of their business.⁶⁶

The Division views the creation of the state brand, “Colorado Cashback”, the support of the legislation to create the refund mechanism, the press and outreach about the program, the call center, and the July 7th mailing were all done within the regular course and scope of Respondent Governor Polis’ government business to implement a government program.⁶⁷

The plain language of the letter indicates the letter is being sent “on behalf of the State of Colorado”, included the Governor seal, and is signed as Governor. The letter references SB 22-233 and directs readers to the informational website and call center number. The Division finds that this communication falls within the exception to the electioneering communication definition and is a communication that was sent in the regular course and scope of Respondent Governor’s business. Respondent Governor Polis articulated the purpose and need for having a specific brand related to this specific iteration of a TABOR refund. State legislation was required to create the refund mechanism, it included specific timelines and requirements, and is separate and distinct from other prior, and future, refunds under TABOR. While Respondent Governor Polis could have used the term “TABOR”, the Division finds no legal authority requiring him to do so. In fact, the plain language of SB 22-233 does not include the acronym “TABOR” or “Taxpayers Bill of Rights.” Additionally, the Division finds no campaign and political finance violation for Respondent Governor Polis’ decision to create a brand for this refund and to use that brand in communication to Coloradans.

Further, through its request for information and own research, the Division was unable to find a social media posting or evidence use of the term “Colorado Cashback” prior to the April 25th press release by Respondent Candidate or anyone else.

⁶¹ Exhibit E – Respondent Candidate Polis RFI and Response.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ <https://bit.ly/3UoCzB5>.

⁶⁵ See COLO. CONST. art. XXVIII, § 2(7)(a) and 1-45-103(9), C.R.S.

⁶⁶ COLO. CONST. art. XXVIII, § 7(b)(III).

⁶⁷ See Exhibit F – Respondent Governor Polis RFI and responses.

As this communication was not a campaign mailer, the allegations that the expenditure not reported or disclosed by Respondent Candidate fall short – there was no expenditure to report.

Complainant also alleges that if the letter was a campaign mailer, it was paid for with state funds, in violation of section 1-45-117(1), C.R.S. This section prohibits a state agency from using state funds to support a candidate’s election into office and prohibits the spending of “public moneys from any sources” to urge voters to support or oppose a ballot measure.⁶⁸ There are a number of exemptions, including allowing an employee to spend up to fifty dollars of public moneys “in the form of letters or other activities incidental to expressing his or her opinion on any such issue described.”⁶⁹

None of the attributes of a 117 violation are present. Here, the plain language of the letter does not concern the nomination, retention, or election of any person to any public office, nor does it reference, let alone support or oppose, any state or local ballot measure.⁷⁰ While Complainant alleges that letter supports the (re)election of Respondent Candidate to office, Complainant has failed to provide evidence that the letter is an electioneering communication not subject to the normal course and scope of business exemption.

Ultimately, the Division concludes that there is insufficient evidence to support a finding that Respondents violated Colorado campaign finance law as alleged in the Complaint.

Conclusion

For the reasons stated above, the Division moves to dismiss the Complaint on the basis that there is insufficient evidence to support a finding that Respondents violated Colorado campaign finance law as alleged in the Complaint.

Dated this 16th day of September 2022.

/s/ Theresa M. Conley
Theresa M. Conley
Campaign and Political Finance Enforcement
Elections Division

⁶⁸ Section 1-45-117(1)(a)(I), C.R.S.

⁶⁹ Section 1-45-117(1)(a)(II), C.R.S.

⁷⁰ See Coffman v. Colo. Common Cause, 102 P.3d 999, the former Colorado State Treasurer, Mike Coffman, violated section 1-45-117(1)(a)(II) when he used public monies, including staff time, issuing three press releases that opposed a pending ballot measure, Amendment 23.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion to Dismiss was served by electronic transmission to:

Deputy Secretary of State – Christopher P. Beall
chris.beall@coloradosos.gov

Complainant – Kristi Burton Brown
kristi@cologop.org

Respondents – Governor Jared Polis and Polis for Colorado
Polis for Colorado, Tracie Moore, Registered Agent –TMOORECOMPLIANCE@GMAIL.COM
Governor Jared Polis, William V. Allen, Senior Assistant Attorney General –
Will.Allen@coag.gov

Dated this 16th day of September 2022.

/s/ Theresa M. Conley
Elections Division