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MEMORANDUM

TO: Town of Monument, Town Council
FROM: Grant Van Der Jagt, Special Investigator
DATE: December 28th, 2022
RE: Report of Investigation Findings
Privileged & Confidential Attorney-Client Communications

DO NOT PUBLISH OR DISSEMINATE PUBLICLY

The Town Council of Monument, Colorado (“Monument”) retained Starzynski Van Der Jagt P.C. to conduct an impartial and independent investigation regarding “some issues for the Board”. This was a broad mandate given very little time. During the December 16th, 2022 Special Meeting, the Lead Investigator Grant Van Der Jagt, Esq. made the urgency of responses clear and material to the ability to conduct the investigation and addressed any possibility of conflicts of interests and the effect of the limitations of time to conclude the report to the satisfaction of the Town Council before accepting the appointment.¹

¹Engagement Agreement authorized by the Town Council on Friday, December 19, 2022 in Resolution 95-2022, [signed by Mayor Pro Tem Kelly Elliott](#) on Sunday December 18, 2022 after she and the Lead Investigator had prodded Town Manager Mike Foreman on December 16th, 2022 without response until December 19, 2022, in which response, the Town Manager stated he needed an “original copy”. After receiving another copy by email as an attachment, said the Town Manager sent it to “Joe to review” and 3 hours later followed up after prodding that Joe is reviewing it. (Email from Town Manager to Lead Investigator December 19th, 2022 9:04 am. & from Investigator to Town Manager prodding for a return signature 12:05 PM & 4:44PM). After reading Joe was reviewing, I wrote Joe to ask. No response was received. Eventually, an email was received from Mike saying Joe declined to review the agreement. Despite assurances from the Town Manager that he would cause no delay or obstruction, he has only caused delay and obstruction, having been one of the only persons to fail to provide any answers to any questions after the first full day of investigating. His obstructive conduct persisted throughout the investigation. I conclude that his conduct was more likely than not designed to obstruct my investigation. Finally, the Engagement Agreement was signed by Mike Foreman 12/21/22 just 4 full business days before the report was due. I recommend the Town Council hold the Town Manager in Contempt.

As an independent special investigator, I made it clear that I am not political in my findings. All of my findings are conclusions based on objective information and are not pre-designed to result in any particular outcome. The allegations given the Investigator primarily focused on lay terms of “Electioneering,” “Misappropriation of Funds”, “Failure to Supervise”, “Conflicts of Interest” and “Gerrymandering”, leaving the door open to anything else the investigator finds noteworthy or concerning, with a primary focus on education rather than penalty.² These allegations were all exclusively brought to the Lead Investigator by members of the Town Council pursuant to the Resolution. The scope was not limited to an internal investigation, allowing for the interview and investigation of private citizens and including other legal issues the Investigator discovers during the course of the investigation.

During the investigation, everyone interviewed expressed support for a Home Rule Charter as a concept, however, the focus of the investigation was on whether the Home Rule Charter and election were legally fair in procedure and substance. Nothing in this investigation should be understood as an affront against the concept of Home Rule Charter, or an effort by establishment versus grassroots. To the contrary, it is not a political piece. It is in essence a Constitutional audit of the Charter, the election and the internal workings of the Town of Monument related thereto.

The primary reason an attorney was required for a Special Investigation was that much of the information requested was expected to be confidential and not for public consumption, including attorney-client privileged information and executive session privileged information. Therefore, information gleaned from privileged sources, has all referenced material logged on a privileged log, while generic conclusions about the data are contained directly in this report. Because of the potential for conflicts of interest with the town attorney, each person asked to provide documents was additionally asked whether they had been represented by the town attorney, and if so, were provided a privilege folder to sort information they subjectively thought was privileged. Access to this data is controlled exclusively by the investigator and its employees or contractors as authorized by the engagement agreement and subject to its independent duty to protect confidential information.

All self-sorted data is secured and marked appropriately to reflect the type of privilege asserted. Should the Town Council decide to publish any or all of this investigation to the public, it should be made known in advance that anything based on privileged or confidential information should first be redacted to protect all privileged data and confidential data sources. The investigator wrote the report presuming it would be published, and therefore drafted the document carefully not to reveal such information.

Some information was gathered, which the investigator did not use in the report. No decision of the Town Council can overturn my own independent decision to keep certain information confidential, which includes all information provided by the Town’s former Attorney, who claimed

² During the December 16th, 2022 Special Meeting, the Lead Investigator explained that certain observations could trigger an affirmative duty to report violations of laws, particularly to the Attorney Regulation Counsel should the Town’s attorney be implicated, and therefore could not limit the review to education only.

her privilege at the time of publishing continues unwaived. If the Town Council authorizes that information to be released, the Town can obtain that information from other sources.

The format of my report blends the Issues, Rules, Analysis and Conclusions into a simple to read memorandum. You will find important rules and analysis with reference material in the footnotes, leaving the majority of the body of my report for the summary.

Town's Questions [list of the issues]

1. Distribution of Public Funds for Promotional Material
 - a. Did the Town Manager himself, or through others at his direction, authorize the marketing and/or funding of promotional materials?
 - i. Use of the Town Seal
 - ii. Absence of required language
 - iii. Clerk Reporting Issues
 - iv. Common Art
 - v. Conflict of Interest
 - vi. Attempt to Conceal or Obstruct Investigations
 - vii. Cure
 - b. Did the Town attorney herself, or through others at her direction, authorize the marketing and/or funding of promotional materials?
 - i. Use of the Town Seal
 - ii. Absence of required language
 - iii. Tracer Reporting Issues
 - iv. Common Art
 - v. Conflict of Interest
 - vi. Attempt to Conceal or Obstruct Investigations
 - vii. Cure
 - c. Did the Town Attorney herself, or through others at her direction, authorize the Charter language and certify that no laws were violated therein, while acting as Counsel for the Charter, particularly Gerrymandering? And are there such legal issues?³

Summary of Findings

The Town has requested a report of the findings of the investigation. These findings are based only on the documentary and recorded evidence collected or reviewed and the witness interviews

³ There were additional areas of concern identified that should be addressed. First, during the course of my investigation, I was told in person that there had been regular violations of the open meetings laws. Second, I observed what can only be viewed as a hostile work environment and later uncovered evidence of several severe instances of sexual harassment. Third, meetings appear to have been run afoul of Robert's Rules for so long that no one actually knew or respected proper procedure. I recommend education to be provided on each of these topics to facilitate better conduct for the public. Also, the Charter Commission was subjected to the open meetings laws, but did not audio/video record its meetings like all of the other town business had required, leaving gaps in the record of what and how the Charter was developed. Finally, several reports were made that the Town Manager and a person in HR are in a relationship, which would explain some of the above, as there is no record of any action taken to curb misconduct by those who supported the Charter against those who did not, and which resulted in elected officials resigning to avoid further sexual harassment. Removing political adversaries by allowing a hostile work environment is unprofessional and should never be tolerated.

conducted in the course of this rapid investigation by end of business on December 26th.⁴ Although I consider the investigation sufficient for making the conclusions herein, it is by no means comprehensive. As stated at the onset of this investigation, more time and resources are needed to fully investigate what happened and how, as well as the legal ramifications and damages caused, as well as how to best address the educational aspects so that the same mistakes are not repeated in the future. I was allowed a tight budget and less than 7 business days (From December 19-December 28th) to complete this investigation. All fact gathering concluded at midnight on December 26th, allowing just 2 days to draft the final report.

The Town requested that this investigation answer three categories of specific questions drafted by the Town Council. Therefore, the findings are presented below, organized according to the overarching subject and then by specific sub-questions asked by the Town.

In reaching these findings, I have applied a “preponderance of the evidence” standard, rather than the higher standard of “beyond a reasonable doubt” applicable in criminal investigations and the “clear and convincing evidence” standard imposed on some civil claims by statute. A preponderance of the evidence standard requires a finding that something is more likely than not, or that 50.01% of the evidence weighs in favor of a finding. A preponderance of the evidence standard is the most common governing standard in civil claims and, relevant here, is the standard that would govern many claims implicated by the Town’s questions. My selection of this standard is not a statement about whether I believe there is any criminal guilt based on the standard “beyond a reasonable doubt”, or civil liability based on “clear and convincing evidence”. In fact, in many of the instances of misconduct identified, I do believe there is criminal culpability for certain staff and recommend that the Town Council pursue such additional investigation and prosecution as it deems necessary or appropriate.

On the issue of Using Public Funds, I found that the Town Attorney is more likely than not culpable, whether by gross negligence or failure to supervise because she reportedly authorized the payment without knowing the content of the invoice at hand. While she insists she did not have mal intent, the Rules and Statutes dictating how attorneys handle money for others are based on “Strict Liability”. That is to say, if the money was improperly applied, culpability follows regardless of intent. The amount of public money spent was substantial enough to impact the election outcome. The money spent by the Town of Monument (“TOM”) was the “only” money spent on the Home Rule ballot question. Equally concerning was the manner in which the issue was “cured”.⁵ One can not embezzle funds from a trust account for one’s self-interest and then take funds from another source not available previously to cure the mistake, and then doctor the required Clerk filings to cover up the mistake after the error was caught, and avoid culpability entirely. Although the Town Attorney is culpable, she is not alone. The Town Manager has failed to set up proper accounting procedures to prevent this type of mistake from happening, and thus

⁴ My first interview began just after the hearing on Friday December 16th, when I met with Darcy Schoening to discuss her witness testimony over dinner. Once finished, I interviewed Mayor Pro Tem Kelly Elliott at the same restaurant. My last interview ended at 11 PM on December 26th, 2022. Some individuals were given the opportunity to provide information, but refused.

⁵To say that a violation of trust was cured by replenishing the funds with other funds and updating reports, is to ignore the fundamental breach of trust. This “curing” occurred only after public scrutiny, not born of honesty or the desire to do the right thing. And raising the first 98% of money needed for any ballot measure is difficult because that is where the risk lies. Offsetting stolen money after the measure gains momentum is not as difficult as raising the seed money to start the venture.

I find the Town Manager also culpable for failing to properly supervise. Ultimately, the efforts of the 2A Charter, Town Attorney, and others to cure the misappropriation of funds do not satisfy either the FCPA (Fair Campaign Practices Act) or SOS (Secretary of State) rules for curing a reporting or spending transgression. While a fine would potentially be in order for a non-attorney-represented organization, the issues in total created by the sequence of capricious errors and omissions ultimately undermined the procedural integrity of the entire 2A election as further demonstrated by the other issues identified.

On the issue of Conflicts of Interest,⁶ I find that the Town Attorney has entered into too many roles as an attorney to avoid the conflicts of interest and failed to obtain sufficient written informed consent from each of the parties she advised.⁷ I heard from staff that she had represented them in personal capacities, official titles, as a quorum, as Town Council, as the Board, as Town Manager, as the Town of Monument, as a Charter Committee⁸, as a Charter Commission, and more, all without a written engagement or disclaimer of conflicts of interest. In my estimation, it is impossible to sufficiently disclaim the conflicts of interest in advising a Home Rule Committee on the legality of the Charter, the funding of that Charter, the Advertising of that Charter, and also upon its passage be the attorney who is to be retained through that charter by the new government. One can only conclude that her misappropriation of funds and failure to advise on material substantive or procedural legal matters related to the Charter was caused by her blinding self-interest, rather than her mistake or omission. Education being the primary motivation of this investigation, I recommend that the Town seriously consider hiring several different law firms to represent the town's various entities, rather than lumping them all into one person or one firm.⁹

On the issue of using the Seal, failing to provide required payor information on promotional materials, and failure to properly report expenditures to the Town of Monument, I conclude that the Charter Committee, including the Town Attorney, are more likely culpable than not. Campaign

⁶ [A conflict of interest may arise when representation of a client affects a lawyer's loyalty and independent judgment in the lawyer's representation of another client, former client, or third person \[C.R.P.C. 1.7 n1\]. If the lawyer identifies a conflict, the lawyer must either decline the representation or obtain informed consent. See § 1.03\[4\], \[5\], below. Conduct violating C.R.P.C. 1.7 in conjunction with other disciplinary provisions has been held sufficient to justify disbarment \[People v. Calvert, 280 P.3d 1269, 1290 \(Colo. O.P.D.J. 2011\)\].](#)

⁷ The Town Attorney regularly [advises individuals](#) in Monument government but the contract with the town does not provide for that service. Instead, she is to [represent the Town](#). Because of the conflict, the advice often serves her self interest in conflict with what other [disinterested attorneys recommend](#) based on the same facts. On her application to be Town Attorney, she touts the expertise her firm has on many of the issues raised by this investigation, including open meetings laws.

⁸ The Charter Committee is an Issue Committee as defined in [Colo. Const. Art. XXVIII, Section 2:](#)

“(10)

(a) “Issue committee” means any person, other than a natural person, or any group of two or more persons, including natural persons:

(I) That has a major purpose of supporting or opposing any ballot issue or ballot question; or

(II) That has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.

(b) “Issue committee” does not include political parties, political committees, small donor committees, or candidate committees as otherwise defined in this section.

(c) An issue committee shall be considered open and active until affirmatively closed by such committee or by action of the appropriate authority.”

⁹ Other communities recognize the inherent conflict between their duties to the public and their role to the town. Larimer County, Colo., Code § 2-71 requires members of the Larimer County Board of Commissioners to represent unconflicted loyalty to the interests of the citizens of the entire county and states that this accountability supersedes any conflicting loyalty such as that to any advocacy or interest groups, or membership on other boards or staffs and the personal interest of any board member acting as an individual consumer of the county government's services. § 2-71(1). [No Laporte Gravel Corp. v. Bd. of Cty. Comm'rs, 2022 COA 6M, P1](#)

Finance Laws on reporting use “Strict Liability” as the test for culpability for improper filings.¹⁰ The town attorney has presented no valid excuse for these errors and omissions, and in the case of Clerk filings, none is available. The appearance of a town seal on an issue committee’s private promotional material is an “endorsement” by Colorado Law.¹¹ The fact that it was intentionally, by mistake, or otherwise improperly authorized, renders the document void as a materially fraudulent misrepresentation to the public.¹² The placement of the seal was in my opinion either wantonly intended to misrepresent a Town endorsement to the voting public, or at a minimum the drafters callously disregarded the misrepresentation of the town’s endorsement on the matter at hand in violation of electioneering communications [Colo. Const. art. XXVIII, § 6](#).¹³ This error on the Town attorney’s part, ultimately corrupted the procedural legitimacy of the entire 2A election and led to one of the most scandalous elections in Monument history. Many members of the public attested that they voted for 2A in part because they incorrectly understood 2A to be “endorsed” by the Town Council.¹⁴

The [first meeting](#) of the HRCC was November 29th, 2021, held in the TOM boardroom. All HRCC members were present. Town Manager Mike Foreman was present. Mayor Don Wilson was present. TOM Attorney Joe Rivera was present. Town Clerk Laura Hogan was present. Very curiously, none of the Town Council was present because they were expressly told they were not allowed to observe or participate in any way.¹⁵ Also, I found it curious that no developers or owners

¹⁰ See Colo. Rev. Stat. § 1-45-108 for TRACER reporting laws and definitions.

¹¹ Colorado law defines the mere presence of a corporate seal as an endorsement. “Similarly, the authorized affixing of a corporate seal bearing the corporate name to a contractual writing purporting to be made by the corporation may have effect as a signature without any reference to the law of sealed instruments.” [C.R.S. 4-2-203](#)
In [Hayden v. Aurora, 57 Colo. 389, 393](#), the seal was concluded to be a necessary part of a government endorsement. “The bonds were signed by the mayor, attested by the town recorder under the corporate seal, and countersigned by the town treasurer.”

¹² A town seal is a corporate seal. In cases of unauthorized use of corporate seals, the document is rendered void, so no benefit is realized by the fraud. If a person has been fraudulently deceived about the nature of a document, so that he or she is excusably ignorant about what has been signed, courts recognize “fraud in the factum.” See *Meyers v. Johannmeier*, 735 P.2d 206, 207 (Colo. App. 1987) (explaining relationship between statutory defense against holders in due course of negotiable instruments and the common law defense of fraud in the factum). Unlike other types of fraud, fraud in the factum yields an instrument that is void, and not merely voidable. [Svanidze v. Kirkendall, 169 P.3d 262, 266](#) Therefore, the 2A issue committee, which resorted to misuse of the corporate seal of the Town should be disallowed any benefit therefrom.

¹³“Callous Disregard” is a concept applied sparingly in law as an aggravating factor when considering the severity or reprehensibility of a wrongdoer’s conduct. Some courts have found that an individual acted with callous disregard when the individual knew or should have known the conduct was wrong. See, e.g., *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 640-43 (1976) (upholding sanction under rule requiring “willfulness, bad faith or fault” where trial court found the party’s violation of the rule showed “flagrant bad faith” and “callous disregard” for the party’s duties under the rule) (quotations omitted); *Ramsden v. United States*, 2 F.3d 322, 325 (9th Cir. 1993) (finding callous disregard for criminal defendant’s constitutional rights where the government admitted not obtaining a warrant before conducting a search, the government had the opportunity to obtain a warrant, and the government chose not to obtain a search warrant); *People v. Tucker*, 755 P.2d 452, 452-53 (Colo. 1988) (finding “callous disregard for the integrity of the judicial process and for the substantive laws of this state” when defendant married his second wife knowing that the divorce from his first marriage was incomplete). Courts also have found callous disregard when an individual was cruelly reckless and indifferent to whether his or her actions would cause harm or would cause a particular type of harm or harm to a particular individual. E.g., *People v. Fei Qin*, 470 P.3d 863, 871 (Colo. O.P.D.J. 2016) (severity of assault revealed perpetrator’s callous disregard for the victim’s welfare and “indifference” to whether the assault would harm a child held by the victim); *Pettit v. Namie*, 931 A.2d 790 (Pa. Commw. Ct. 2007) (distinguishing between willfulness and callous disregard). Courts consider whether a defendant exhibited callous disregard only after finding particular wrongdoing giving rise to legal liability. As discussed elsewhere in this report, I find it more likely than not that the Town Attorney did engage in conduct that would give rise to legal liability. Because that prerequisite to finding callous disregard is present, I find it more likely than not that the facts do support a finding that the Town Attorney’s conduct with respect to the Gerrymandering and Misrepresentation of the Endorsement and Seal of the Town to the Public was aggravated by callous disregard.

¹⁴ The Investigator collected Affidavits from citizens attesting to being confused by the endorsement of the ballot measure, lack of attribution and being disenfranchised by unfairly being excluded from the redistricting process of the Charter. These Affidavits are available for inspection in the evidence folder.

¹⁵ Link to [Affidavit](#) by Kelly Elliott

of water rights were in attendance.¹⁶ Attorney Corey Hoffman with Hoffman, Parker, Wilson, & Carberry gave a presentation to the HRCC. The presentation identified what should and should not be included in a Home Rule Charter. He mentioned topics such as minimum age for an elected official, establishing meeting procedures, wards/districts, and conduct of executive sessions. At that meeting, Commissioner Joel Lusby asked for better publicity and campaigning to pass the charter. Hoffman stated, “real world constraint, once ballot issue is set, town cannot spend any money for or against.”

A little over three months later, at the [March 3rd](#), 2022 HRCC meeting, Mike Foreman informed the HRCC on the role of the town once the charter is brought to the Board of Trustees and placed on the ballot. He stated, “any printing must be completed by May 18th. [Foreman] discussed the need for an issue committee. Someone outside the Charter Commission should be the Chairperson. Laura Kronick may be able to take on this role.” Foreman’s statement in this March 3rd HRCC meeting clarifies that he is aware of electioneering laws for municipalities. Kronick did, indeed, assume the role of registered agent for Citizens for Home Rule.

On [March 20th, 2022](#), Mike Foreman emailed a link to a [Canva account](#), which is still active and shared by both [Foreman and Sana Abbott](#). The link contains a mailer and a door hanger, which clearly states vote “YES on Home Rule.” The [hanger created](#) within the Canva account is the exact same [door hanger that appeared on Schoening’s door](#) on October 8th that she later flagged as electioneering with the town seal. Brandy Turner forwarded Foreman’s email with the Canva link he shares with Sana Abbott to Ashley Watts on March 29th for ongoing edits, which lasted until April 4th. On April 4th, Brandy Turner sent the revised artwork to Mike Foreman and Laura Hogan and asked, “Can you please forward this to the HRCC fir [sic] review. I dud [sic] already now [sic] that we need to name and add the name of the Facebook page.” Mike Foreman was not only aware of the artwork in question; he was actively creating it and dispersing it to the HRCC. Since Mike Foreman directly benefited from the Charter, his ongoing help with artwork approval combined with the misuse of taxpayer funds to pass the Charter further corrupted the November 2022 TOM election.

Artwork was forwarded by Mike Foreman to the HRCC on April 4th because the HRCC was set to meet April 6th to approve the artwork contained in the April 4th email. A public agenda for the [April 6th HRCC meeting](#) exists on the TOM website. The agenda states “Review graphics for the information mailer, approve or send back for edits.” However, minutes for the April 6th HRCC meeting are not available on the TOM website. There is no record of the artwork discussion on electioneering materials. TOM Clerk Laura Hogan states [she did not receive minutes](#) for the last two HRCC meetings, including April 6th. The HRCC did not record meetings.

HRC Commissioner Sana Abbott emailed and created artwork for electioneering materials such as door hangers and signs [with Mike Foreman](#) and directed the final materials to be printed at Tri-Lakes Printing. Sana Abbott gave Kathy at Tri-Lakes Printing the final approval for artwork clearly stating “YES on 2A Home Rule” on April 15th, 2022. Sana Abbott emailed the invoice for \$2512.50

¹⁶ Developers and owners of water rights explained to me that they were not afforded an opportunity to be heard in relation to their opinions on district lines. They did not receive any notice of meetings.

from Tri-Lakes Printing to Brandy Turner, Home Rule Commissioner, and Mike Foreman at 3:14 PM on April 18th, 2022. The [Board of Trustees met](#) April 18th, 2022 at 6:30 PM. At that meeting, Kathryn Sellars of Hoffman, Parker, Wilson, & Carberry presented the Home Rule Charter to the Board of Trustees (“BOT”). Steve King presented the bulk of the more detailed information, and the BOT voted to place the Home Rule ballot question onto the November 8th, 2022 ballot. The April 18th BOT meeting adjourned at 8:12 PM. Mike Foreman forwarded the Tri-Lakes Printing invoice (dated April 15th) from Sana Abbott to the TOM Finance department and stated “approved to pay” at 9:21 PM on April 18th, 2022, little over one hour after the BOT concluded their meeting and voted to place the Home Rule Charter onto the ballot. The timing of Foreman and Abbott’s actions, combined with Corey Hoffman’s clear instructions to be wary of accidentally electioneering, point to a clear scheme to deceive the BOT and the voters.

The misappropriation of funds and town assets scheme continued into the Spring and Fall of 2022, and Mike Foreman covered it up. On May 11th, [Sana Abbott emailed Mike Foreman](#) and Laura Hogan and asked them to inform the rest of the HRCC, “I have finally picked up the door hangers, as well as the yard signs today from Kathy. I need to know how you want them dispersed, we need to discuss this. I am proposing a dinner meeting at [La] Casa Fiesta for the board, as well as Mike and Laura if you are able to join us.” It is clear the Home Rule Commission had the strong support of TOM staff. Later on in the same email to Mike Foreman and Laura Hogan, as Abbott proposed further use of taxpayer dollars to help pass a ballot issue, she directly used said language, “Also, we need to get dates to support the passing of the HRC and speak to the public/answer questions etc...I am proposing 2 dates each for the months of August, September, October.” Those signs were likely stored at Abbott’s home until they were dispersed with the other electioneering materials in early October, 2022.

On October 8th, 2022, the first known “YES for Home Rule” door hangers began arriving on Monument doorsteps. On that day, Councilwoman [Schoening emailed requests](#) for a cease and desist to Mike Foreman and Joe Rivera due to the town seal being used in electioneering. The Attorney and Town Manager did not respond to Schoening’s complaints, so she again demanded this electioneering with the town seal be investigated and/or stopped in a [second email](#) on the morning of October 11th. On October 11th, Both Joe Rivera and Mike Foreman called Schoening in separate calls in the afternoon to inform her the town seal is neither copyrighted nor protected. Schoening asked the Town Manager if he approved the use of the town seal, to which he said that he did not. On October 11th, Mike Foreman and Joe Rivera were properly alerted to the improper use of the town seal. At no time during these phone conversations did Rivera or Foreman inform Schoening that the materials in question were illegally paid for by the Town of Monument, a fact that was known to the Town Manager at the time of the calls since he directly and indirectly created the electioneering materials Schoening was calling about. Schoening states that at the time of the calls, she assumed the Citizens for Home Rule Committee had improperly used the town seal; she didn’t know at the time that the TOM had used the seal on materials it illegally donated to an issue committee. Foreman made no mention to Schoening of any involvement on his behalf in the door hangers in question. This lack of transparency leads the investigator to believe that the facts were purposefully hidden from the Town Council. It was not until Mayor Pro Tem Elliott [filed a complaint](#) on October 21st against the Citizens for Home Rule

Committee that the Council was made aware that the marketing materials in question were purchased by the Town of Monument.

Laura Kronick “cured” Elliott’s complaint on November 20th by [amending her original filing](#) to state that Citizens for Home Rule received an in-kind contribution of \$2500 on May 6th of 2022, which included “door hangers, signs...” from the Town of Monument. Several council members raised issues with this contribution, as municipalities are explicitly prohibited from contributing to issue committees. The TOM paid invoice A-82975 from Tri-Lakes printing dated April 15th, 2022 [with a check](#) on April 29th, 2022. At the December 13th Council meeting, Citizens for Home Rule registered agent Laura Kronick stated in [public comments](#) (55:00) that the late filing was an “innocent mistake.” Kronick also stated the SOS had investigated this case and dismissed it. The SOS does not investigate such matters, but [this lie was also predicated](#) by [Steve King](#) (53:00) and used by several of the HRC Commissioners in their public comments or social media posts to negate the need for an investigation of misappropriation and the issues stemming from it. The disclosure of the in-kind donation of electioneering materials to Citizens for Home rule by the TOM, equating to misappropriation of funds and violation of state statute by the TOM, was not disclosed until a complaint was “cured” by Laura Kronick, filing agent, on November 20th, 2022. The invoice date and amount are still filed incorrectly; the date of the in-kind donation occurred on April 15th, and the filing states May 6th as reported by Kronick, and the total of the invoice is \$2512.50. Kronick’s filing states the in-kind value of \$2500.00 on her filing. The actual total invoice amount, \$2512.50, comprises 99.8% of the total amount reportedly spent by Citizens for Home Rule to convince voters to vote YES on Ballot Issue 2A. This illegal contribution undoubtedly had a direct impact on the outcome of the Home Rule Charter ballot question in the November 8th, 2022 election.

On December 5th, the Town Council discussed the contribution at length in the [Executive Session](#). According to witness statements from Darcy Schoening, Schoening asked Sellers “Why did you not tell them [CHARTER COMMISSION] these signs were illegal?” Sellers replied, “my only job was to oversee the charter. I didn’t notice signs or invoices.” Sellers said, “the BOT approved the expenditure April 18th.” Sellers’ statement was immediately disproven. Schoening said, “I checked the minutes on my phone. No, we did not. We would never approve misappropriation.” When Schoening asked who approved this, Mike Foreman said he did not know. Only educational materials were approved, according to Mike Foreman. This was clearly a lie, as Foreman helped create the electioneering materials in question per emails, Canva links, and testimony obtained during this investigation. Schoening told Sellers she is incompetent, and this happened under her watch. Sellers replied, “My only job is to help write the charter.”

According to statements from Mayor Pro Tem Kelly Elliot, Kathryn Sellars alleged during the Executive Session that the Council approved the misappropriation of funds on April 18th, 2022. When Schoening looked at the minutes for that meeting and proved that statement to be untrue, Sellars looked at Mike Foreman and said “You told me they did...” At that point, Foreman shrugged in alleged confusion. During the executive session, Councilman Ramos demonstrated extreme aggression and hostility, and Councilman LaKind repeatedly tried to stall the investigation by making assertions that the investigation could be completed by the future Council, which

assumed office January 3rd. Nothing was resolved during the Executive Session, aside from the fact that Kathryn Sellars recused herself from future meetings regarding the electioneering. The exact statements made by Sellars, Foreman, and Councilmembers during the December 5th Executive Session are unavailable because the TOM has not complied with C.R.S. Section 24-6-401 and 24-6-402; Kathryn Sellars stopped recording at the beginning of the December 5th Executive Session. Furthermore, any Executive Session not recorded (except for attorney client privileged information) by the TOM violates OML, and the number of violations should also be investigated.

The Town Council met again on [December 13th](#) and again discussed the same issues that were previously discussed in Executive Session. Ramos was extremely aggressive in his stance against an investigation. He was combative and rude throughout the meeting and alleged that an investigation was only occurring out of “spite.” LaKind raised the issue with the appointment of Gesler as Special Attorney, which was likely a delay tactic.

Concerning the issue of misappropriation of funds in the purchase of electioneering materials by the TOM, an overwhelming amount of evidence and statements support that there was a deliberate attempt to purchase the materials in question with TOM funds, and then to hide that purchase from the public and the BOT. Sana Abbott and Mike Foreman at the head of the conspiracy created a Canva account to direct the artwork collusion and created the electioneering materials for Ballot Issue 2A and then regularly corresponded about electioneering with taxpayer dollars and placement of said electioneering materials throughout town. The actions of Sana Abbott, Brandy Turner, and Mike Foreman equated to a misuse of funds in that the signs clearly stated “YES” on Ballot Issue 2A. Corey Hoffman warned the TOM in a public meeting about the difference between educational materials and electioneering on November 29th, 2021, yet everything that transpired since that HRCC meeting went directly against his advice. The actions of Mike Foreman, Sana Abbott, Brandy Turner, and the HRCC as a whole are a clear misappropriation of funds, and they covered up their actions throughout March-November of 2022.

On the issue of intimidation and the creation of a hostile work environment, several members of the Town Council, staff and even citizens indicated to me that they felt uncomfortable answering my questions because they feared retribution.¹⁷ During the investigation, Town Councilman Ramos has been [cyber-bullying](#) the Investigator and witnesses with a chilling effect on social media, which may have been criminal in nature.¹⁸ A close associate of Mith LaKind, Ryan Levier, whom LaKind recommended for [appointment to the Home Rule Charter Commission on January](#)

¹⁷ Whether a potential witness has been subpoenaed at the time of defendant's intimidating contact is irrelevant. The witness intimidation statute, Colo. Rev. Stat. § 18-8-604, expressly forbids intimidation, not only of a witness, but also of one whom the accused believes is to be called as a witness in the future. All that is necessary to complete this crime is to presently attempt, by threat of harm or injury, to influence someone to withhold testimony at a future time. It is clear that "unlawfully" refers to the time when the testimony is to be actually withheld, not to the time of the contact. [People v. Proctor, 194 Colo. 172, 173](#) Several witnesses had committed to providing affidavits of their testimony and after seeing rants by Town Councilman Ramos on social media decided not to provide those affidavits to me.

¹⁸The Investigator Recommends Sanctions of Town Councilman Ramos for [intimidating witnesses and the investigator](#) during the investigation using a public rant against the investigation, witnesses, council people and the investigator. The Town Council should additionally consider referring the matter for criminal prosecution or publicly censuring his conduct as unbecoming of a sitting councilman.

[3rd](#), but was not appointed, [attacked and spread outright lies](#) about several Councilmembers between October and December of 2022 on social media and within his Substack account, which he emailed to Monument residents. [Several false claims](#) repeated by Levier, such as [Schoening](#) being a felon and the current Council not being a valid and elected body, also point to criminal behavior by Levier. This repeated, chilling intimidation by LaKind's close friend Levier created a [hostile environment for voters/residents](#) and elected officials. Many residents told me they feared retaliation by LaKind and Levier in the form of [social media posts](#) or [Substack articles](#) and were consequently afraid to speak on the record. [Steve King](#) participated in ongoing cyber-bullying, posting on facebook "we are waiting" amongst a dozen other [threatening posts](#). [Sana Abbott](#) also participated in the ongoing cyber-bullying, adding to the hesitance of residents to speak in this investigation.

Witnesses said they observed backroom dealings and violations of open meetings laws, where the Town Council was meeting without public access. A few women reported sexually motivated intimidation over the course of past years.¹⁹ Some of the witnesses admitted to participating in such conspiracies and backroom dealings themselves, confirming the allegations. While violations of the open meetings laws were not the primary mission of this investigation, it is an aggravating circumstance because it demonstrates the ability of certain members to co-conspire against others in secret. In my judgment, these bad actors should not be afforded the benefits of their tainted actions, and I recommend that the Town seriously address the culture among the staff and Town Council with educational materials, so as not to continue running afoul of the Open Meetings Law (CRS 24-6-4). And when the conduct results in misogyny or a hostile work environment, the TOM should refer it for criminal prosecution.

On the third issue of the Kathryn Sellars' supervision over the Commission and the Charter's legality, and the broader question of whether the Charter and the election was legal, I outline the legal standard and apply the facts as follows:

- i. Evidence of Addressing whether Attorney Kathryn Sellars certified the legality of the Charter: Despite my best efforts to obtain the information necessary from the Home Rule Commission, the Home Rule Commission's Attorney (now also known as the "Former Town Attorney" and Kathryn Sellars),²⁰ and the Home Rule Committee,²¹ no evidence was gathered directly from Kathryn Sellars before her resignation, which could support or defend whether she herself addressed or certified the legality of the Charter.²² All members of the

¹⁹ After a citizen made an inappropriate comment about sex and a councilwoman, Councilman Mitch LaKind responded with a sexually offensive statement on the dais about that councilwoman. After [receiving a complaint](#), the Town Manager did nothing to stop the sexual harassment of a Councilwoman and allowed the hostile work environment to continue, suggesting the councilwoman report it to police instead.

²⁰ Normally an investigator would use titles as a courtesy to refer to individuals in government, however due to the resignation of the Town Attorney, I determined it was safer to address her by name than to risk confusion with other former Town Attorneys.

²¹ The Charter Commission consisted of Chair Steve King, Vice Chair Matt Brunk, Treasurer Joel Lusby, Secretary Brandy Turner, Secretary Janet A. Ladowski, Sana Abbott, Jennifer Coopman, Wayne Laugesen, Shannon Clark. The Charter Commission crafted the language of the Charter and is a different entity from the Charter Committee, which was the issue Committee responsible for the promotional materials that contained fraud, excluded attribution and failed to properly report campaign contributions.

²² Email sent to Steven King requesting all communications between the Home Rule Committee and the Attorney Kathryn Sellars was sent on 12/19/2022. At the time of publishing, no response was received. It is recommended Steven King be publicly censured for obstructing an official governmental investigation. An email for information was sent to Attorney Kathryn Sellars, the "Town Attorney," requesting information on 12/20/2022. At the time of publishing this report, no information was received. I recommend

Commission who were asked for information did not provide any information. However, others familiar with the process, including Mike Foreman, did provide affidavits that the attorney provided some legal oversight but declined to say whether she certified the Charter's legal compliance. After inspecting the minutes of the Commission, it is clear in 8.2 that the attorney discussed her own role as future counsel, and offers a clear statement that the language of the Charter is approved, "as is". In response to my inquiry for more details about the meeting, the Town Clerk explained that unlike other town public meetings subject to sunshine laws, no complete video or audio recordings were made of the Commission meetings, nor are they required.²³ This is the only known anomaly to the Town's standard procedure of recording public meetings.

- ii. I find by the preponderance of the evidence that the Town Attorney Kathryn Sellars did certify the language as being legal, but did so without doing sufficient research to make such a conclusion. Since several people had raised concerns about gerrymandering, Kathryn Sellars knew gerrymandering was an outstanding issue and was therefore at least negligent in failing to address the concern.
- iii. Does the Home Rule Charter violate Gerrymandering Laws?
 1. The US Constitution requires that a court consider any election process involving redistricting to be "fair and effective."
 2. In Article XX of the Colorado Constitution, home rule gives local municipal governments the power to make legislation relevant to their areas, exercising control over issues of "local concern" while minimizing state intervention in municipal affairs. The municipality can make stricter rules, for example by imposing a 3% deviations instead of 5%, however, it can not allow for redistricting in violation of US or State Constitutional limitations on Gerrymandering which are broader, for example 16% instead of 5%.
 3. [Colo. Rev. Stat. § 2-1-102](#) (2011) defines the Colorado standard for "fair and effective" redistricting of congressional districts.
 4. [Hall v. Moreno, 2012 CO 14](#) sets forth a 6 part test for the Colorado standard:

In determining whether the process passed or failed, I again used the preponderance of the evidence standard, though I would have the same conclusion using the clear and convincing evidence standard as well.

- a. Does the Charter "maximize fair and effective representation for all citizens?" FAILED. There is no redeeming reason to pass the effort, which substantially failed the other five tests²⁴

publicly censuring her for obstructing an official government investigation. Sana Abbot also has not responded to the document request, thus I suggest publicly censuring her for obstructing an official government investigation.

²³ The repetitive feeling of having private meetings that are not recorded continually gave me the impression that everyone is involved with backroom dealings within the town. From the instant I stepped forward to be interviewed for the job until my last communication, I witnessed shady conduct and bizarre body language, including rooms that go silent when I enter and pupils that contract to extremes upon sight of me. In light of this and other findings, I can not in good faith claim the process was fair. It is more likely than not that a small to medium sized group of people in the public and in Town Hall manipulated and conspired within the Charter process to make it as unfair as possible with the hopes of benefiting personally and not getting caught. Reports of terrible behavior going unchecked and staff resigning due to intimidation simply highlighted my own intuitive and observed suspicions of malicious collusion.

²⁴ Worthy of additional note are the resulting substantial disparities in water & development rights created by the redistricting, which was raised to me by several citizens concerned about the unfair election process. They claim they were never given the opportunity to be heard prior to the Home Rule Charter being approved to be placed on the ballot. I interviewed several developers who said they had a substantial interest in the issue, but were never afforded a fair opportunity to participate or be heard prior to districts being formed and the language being approved for the ballot.

- b. Was it subjected to an open and fair process? FAILED.²⁵
 - c. Did the Charter Committee abuse its discretion? YES. FAILED.²⁶
 - d. Was the Charter Committee reasonable in placing its concern for present communities of interest above a mechanistic attempt to minimize the disruption of existing district boundaries? No. FAILED.²⁷
 - e. How many Coloradoans in Monument were moved from their existing districts? More than 5%? Yes. FAILED. By the Calculation of Experts interviewed and the 2020 census 16% of Monument voters were moved from their existing districts.
 - f. Was the redistricting Arbitrary or Capricious? BOTH. FAILED.
5. Although the Municipal Code is silent on the subject of Gerrymandering standards, the Home Rules for County issues have adopted the state rules and the Municipality can only create rules which are more strict than the State's. See Recommendations.

My research of the substance and the procedure of the 2A ballot measure led me to conclude it was substantially corrupted by the omissions of Kathryn Sellars and the conspiracies hatched during the illegal meetings held outside of public meetings. The Charter election process and substance appears to be patently in violation of the US and Colorado Constitution because it arbitrarily and capriciously violates the notion of "fair and effective" representation and the Gerrymandering laws in the State of Colorado. There was no record of any discussion of other methodologies for dissecting the voting district from public or private meetings. A whopping 16% voter disparity was created between one side of the district and the other, while wildly changing existing voting districts, and the incoming authorities. Members of the public, Town Council and persons with substantial interests in the process and outcomes were denied access and opportunity for input.

TOM Home Rule Charter Section 7.1 addresses Qualifications and Appointment of the Town Manager. TOM Mike Foreman had a vested interest in the Charter Commission creating Section 7, which would benefit him personally. Rather than requesting an unbiased third party to advise the HRCC on this section, Foreman alone guided the HRCC on section 7.2 of the Charter. The HRCC should have requested an unbiased third party to advise the writing of this section of the

²⁵ Members of Town Council most familiar with the issues of the town were told by their attorney they can not participate at all in the Commission's formation of language. Public meetings were held by the commission but not well attended, suggesting there was little to no attempt to include the public. No recording of the meetings was made, the only known anomaly in the Town of Monument's standard procedure, giving rise to suspicion of improper process. Witnesses reported seeing members of the Commission meeting together without a public meeting. Evidence of collusion and conspiracy has been presented. Affidavits regarding misappropriation of funds, town assets, misrepresentations and electioneering all strongly support my finding that there was an illegal, corrupt and unfair election process to determine the new voting districts, which seemingly served the self interest of those on and near to the Commission.

²⁶ In my research, as flushed out in more detail throughout this report, I conclude based on objective evidence both the Charter Commission and Committee abused their discretion by violating several laws, defrauding the public and electioneering so that both the substance and process of the 2A election were entirely corrupted.

²⁷ My investigation turned up no evidence of any attempt to honor existing boundaries. I find it more likely than not that the boundaries were decided at best arbitrarily or capriciously, but unfortunately, at worst, which is most likely, based on the self-interest of the members of the Commission, who reportedly immediately started discussing how they would financially benefit during the first set of meetings. No recording of the meetings was made and I therefore can not prove beyond a reasonable doubt, but I do conclude this by the preponderance of the evidence.

Charter. Any legal actions taken within Section 7.2 should have been taken without the presence of Mike Foreman. The near impossibility of firing the Manager, according to witness statements, was added at the behest of the Town Manager himself.

Those in favor of 2A who participated in the transgressions reportedly all stand to gain power as a result of their failure to collaborate on fair election redistricting. For example, under the statutory form of government, the Town Manager could be removed by majority vote. After the passage of the Home Rule Charter, termination of the Town Manager requires 5 votes, regardless of how many Councilmembers are present. The Town Manager now finds himself in the midst of at least two investigations. Due to the Charter that he helped pass, both directly and indirectly, he would now be almost impossible to terminate. I find all of this highly suspicious and riddled with proof of an unfair election process.

The HRCC formed on November 29th, 2022. On December 9th, 2021, at the first HRCC meeting, Steve King asked for a population map and discussed dividing the Town of Monument into districts. He discussed this same issue at length at the HRCC December 9th and December 16th meetings of 2021. Redistricting was discussed, and votes were taken on Monument districts at the December 9th, 16th, and 21st HRCC meetings. HRCC attorney Kathryn Sellars was hired on December 16th, 2021 but did not attend an HRCC meeting until January 20th, 2022. At the March 15th, 2022 HRCC meeting, “public comments”, where only a select few were noticed of the meeting or allowed to be present, expressed concerns about public boundaries in HRC Section 2.2. Sellars did ultimately review and approve the Home Rule Charter and present it as a legal ballot document on April 18th, 2022 to the Board of Trustees. Over the span of the eighteen HRCC meetings Sellars attended, over eighty (80) requests exist in the available minutes that instruct Sellars to reword, provide opinion, give advice, or review the completed charter. No proof of such edits being completed were provided to the Investigator at the time of publishing these findings.

Steve King presented the contents of the Home Rule Charter on April 18th, 2022 to the Board of Trustees. King stated “We define residential districts. We break Monument into two residential districts so that each district could have its own councilmember. And two council members come from each district. We felt that the West and East part of town are different in character. We tried to balance how the population bases out. We incorporated the Village North of Higby as part of the Western Zone, and then the entire Western Zone is one district. And then South of Higby is the other district, which gets the population fairly close. And that can be adjusted as populations change.”

When Councilman Stephens asked Kathryn Sellars how the redistricting could legally have a 16% disparity on October 21st, she emailed back, “I do want to add a couple of clarifications. It is population which is a factor, not registered voters. I ***don’t know how much that makes a difference in Monument.*** There are a variety of other factors that go into drawing districts than just population. The article I will forward to you will discuss those other factors.”

The attorney for the Charter, Kathryn Sellars, was hired to be the attorney for the Home Rule Government. When I asked Sellars on December 20th how that transpired, within 90 minutes, she

turned in her resignation, citing that my questions escaped the scope of the investigation as her reason. Combining her refusal to answer basic questions about her role and the crafting of the Charter language and testimony by witnesses who raised the issue of Gerrymandering without a response from Kathryn, the end result has become an unshakable aura of unfair election processes, disparity of power in the community and unfair representation in government. For these reasons, I find that the Town Attorney acted with self-interested callous disregard for the illegality of the issues discovered in the substantive development and procedural supervision of the passage of the Town Charter, rendering the town Charter VOID as against the US Constitution, Colorado Constitution, State Statute, and all notions of fairness.²⁸

Recommendations to Town Council

1. Publicly Censure:²⁹
 - a. Steven King- for obstructing an official investigation³⁰
 - b. Kathryn Sellars- for obstructing an official investigation³¹
 - c. Sana Abbott- for obstructing an official investigation³²
 - d. Mike Foreman- for obstructing an official investigation and failing to completely address misogyny and the hostile work environment³³
 - e. Redmond Ramos- publicly intimidating witnesses, ridiculing the investigation and the investigator during the investigation³⁴

²⁸ I did consider the alternative of reforming the Charter, as most of the folks I interviewed, even those who testified against the Charter as written, support the move toward Home Rule, however, I do not see authority for any reformation of the Charter in the Home Rule Statute.

²⁹ Public Censure is a civil remedy. The Town Council may generally discipline its Members for violations of law, including crimes; for violations of internal rules; or for any conduct which the Town Council finds has reflected discredit upon the institution, or which is found to breach its privileges, demonstrate contempt for the institution, or reflect discredit on the Town. When the most severe sanction of expulsion has been employed, the underlying conduct deemed to have merited removal from office has historically involved either disloyalty to the United States, or the violation of a criminal law involving the abuse of one's official position, such as bribery. The House of Representatives for example has actually expelled only five Members in its history, but a number of Members, facing likely congressional discipline for misconduct, have resigned from Congress or have been defeated in an election prior to any formal House action. A "censure" is a formal, majority vote on a resolution disapproving a Member's conduct, generally with the additional requirement that the Member stand at the "well" of the House chamber to receive a verbal rebuke and reading of the resolution by the Speaker. Twenty-three Members of the House have been censured for various forms of misconduct, including (in the 19th century) insulting or other unparliamentary language on the floor or assaults on other Members, as well as, more recently, financial improprieties. A "reprimand" involves a lesser level of disapproval of the conduct of a Member than that of a "censure," but also involves a formal vote by the Town Council. Historically, Members are "reprimanded" for a range of misconduct, including failure to disclose personal interests in official matters; misrepresentations to investigating committees; failure to report campaign contributions; conversion of campaign contributions to personal use; ghost voting and payroll improprieties; the misuse of one's political influence in administrative matters to help a personal associate; providing inaccurate, incomplete, and unreliable information to the investigating committee; for a breach of decorum in a joint session; and the misuse of official resources by compelling congressional staff to work on political campaigns.

³⁰ Refused to answer any questions about the investigation.

³¹ Refused to answer any questions about the investigation.

³² Refused to answer any questions about the investigation.

³³ Initially refused to answer any questions about the investigation by making excuses, only answered questions after threat of contempt, and even then, answered in a manner which provided no useful information. Mitigating circumstances include the Town's right to an attorney, but he never raised his right to an attorney, and the technology excuse Drew claimed was a true problem, which could have been avoided by sending pdf's of the emails requested rather than the computer code of those emails. In my opinion, these were intentional obstruction techniques deployed by the manager who has a tattered past of being terminated for similar conduct. In the end, the limited evidence and testimony provided supported my findings in this report.

³⁴ A video of Redmond Ramos is in the evidence file. He publicly made statements designed to intimidate and ridicule the investigator, investigation and witnesses.

- f. Mitch LaKind- For obstruction of an official investigation and for directing a disgusting misogynist comment to a Councilwoman while at the Dias³⁵
 - g. Drew Anderson³⁶ For aiding in the obstruction of the investigation
 2. Hold in Civil Contempt of Town Council:
 - a. Mike Foreman- for unjustifiably delaying or refusing to carry out the orders of Resolution 95-2022, for obstructing an official investigation and failing to completely address misogyny and the hostile work environment³⁷
 - b. Steven King- for obstructing an official investigation³⁸
 - c. Sana Abbott- for obstructing an official investigation³⁹
 - d. Redmond Ramos- publicly intimidating witnesses, ridiculing the investigation and the investigator during the investigation⁴⁰
 - e. Mitch LaKind- For obstruction of an official investigation and for directing a disgusting misogynist comment to a Councilwoman while at the Dias⁴¹
 3. Terminate the employ of
 - a. Mike Foreman
 - b. Kathryn Sellars⁴² - Accept the Resignation “Under Investigation”
 4. Formally accept the finding that Kathryn Sellars committed the following under aggravating circumstances and file an ethics complaint with the Supreme Court Attorney Regulation Counsel against Kathryn Sellars for further investigation:⁴³

³⁵ Refused to answer any questions about the investigation and on 12//22/2022 the investigator was told to direct all questions to his attorney who would answer by the 27th, which would be too late for inclusion in this report, which was known by LaKind to be after the deadline set for evidence gathering by the investigator, and just before the scheduled release of the report. The attorney acknowledged the deadline set in writing, and refused to meet it in writing. Mitch LaKind did not assert or invoke his 5th Amendment Right against civil liability, which is described more fully in footnote 43.

³⁶ The conduct of Drew Anderson during the Investigation was less than expected particularly when contrasted with Town Clerk Laura Hogan’s professionalism. I suspect he was either voluntarily or in collusion and conspiracy with others intentionally obstructing the investigation. However, once he was directed by Mike Foreman to do something, he did exactly as told. My concern is that he knowingly participated in actions designed to obstruct the investigation, undermining the intent of the Town in identifying wrongful or incriminating conduct by employees, something no citizen should tolerate.

³⁷ Initially Mike Foreman refused to sign the Investigator’s engagement letter as ordered by the Town Council and refused to answer any questions about the investigation by making excuses. He only signed and answered questions after threat of contempt, and even then, answered in a manner which he thought provided no useful information. Mitigating circumstances include the Town’s right to an attorney, but Mike Foreman never asserted his personal Rights, and the technology excuse Drew claimed on Mike’s behalf was a true problem, which could have been avoided by sending pdf’s of the emails requested rather than the computer code of those emails. In my opinion, these were intentional obstruction techniques deployed by the Town Manager to escape culpability. He has a tattered past of being terminated for similar conduct. In the end, the limited evidence and testimony provided became a major support for my findings in this report.

³⁸ Refused to answer any questions about the investigation.

³⁹ Refused to answer any questions about the investigation.

⁴⁰ A video of Redmond Ramos is in the evidence file. He publicly made statements designed to intimidate and ridicule the investigator, investigation and witnesses.

⁴¹ Refused to answer any questions about the investigation.

⁴² In light of her resignation, officially accept her resignation and document that she would have been fired with cause. Although she could be fired after resignation, this does not likely work to the advantage of the Town. Seek the legal advice of an HR attorney for advice on firing her. No additional advice is needed for accepting her resignation “under investigation”.

⁴³ “Colorado cases involving the type of rule violations before us support a period of suspension. Cases in which a lawyer converts funds and engages in dishonest conduct point toward a term of suspension that lasts longer than one year. In *In re Fischer*, for instance, the Colorado Supreme Court reversed an order of disbarment and suspended a lawyer for one year and one day based on the lawyer’s misappropriation of funds from marital assets while representing a client in a dissolution proceeding.²² The lawyer sold marital property pursuant to the parties’ settlement agreement, which the court had approved as an order.²³ The lawyer knowingly disbursed the proceeds from the sale and paid himself for attorney’s fees, even though the disbursements were not authorized under the settlement agreement and order.²⁴ The Colorado Supreme Court determined that the lawyer’s misappropriation of the third-party funds entrusted to him warranted a suspension in light of the mitigating factors, including that the lawyer conducted the unauthorized transactions in the open, paid restitution to address the injuries from his misconduct, and expressed remorse.²⁵ The

- a. Obstruction of an official government investigation⁴⁴
- b. Acting on conflicts of interest
- c. Malpractice, error or omission, resulting in deception of the public⁴⁵

Fischer court noted three aggravating factors: a remote letter of admonition, the lawyer's substantial experience in the practice of law, and the lawyer's dishonest or selfish motive.²⁶ But the factors added little aggravation under the facts of the case, as the lawyer did not take payment beyond his earned fees and in part had acted out of concern for his client's welfare.²⁷ Though the lawyer admitted that he violated Colo. RPC 3.4(c), the admission did not factor heavily in the Colorado Supreme Court's decision, as the lawyer's admission was inconsistent with his assertion that he was not aware he violated a court order when he disbursed the funds.²⁸ Kathryn Sellars conduct is similar in that she presents her extensive experience in these subjects on her application for employment, acted in self interest and in conflict of interests, oversaw the misappropriation of funds and assets (seal) in furtherance of her interest and that of the Issue Committee's interest and attempted to fix the issues by seeking another party to pay back the funds to the town, who in fact did pay it all back. Although it is claimed to have been a mistake, it is my conclusion it was by design or at least out of callous disregard.

"In *People v. McGrath*, the Colorado Supreme Court approved a stipulation to suspend a lawyer for one year and one day after the lawyer misappropriated garnished payments that he had received in satisfaction of a judgment he obtained for his client.²⁹ The lawyer deposited some of the garnished funds into his operating account while misrepresenting to his client that he had deposited all of the funds into his trust account.³⁰ The lawyer later made the same misrepresentation to disciplinary authorities.³¹ Though the lawyer's misconduct included his neglect of his client's matter, the *McGrath* court relied on ABA *Standard* 4.12 to suspend the lawyer for one year and one day, stating that suspension was the appropriate sanction when a lawyer knows or should know that the lawyer is mishandling client property, thereby potentially causing the client harm.³² The *McGrath* court also found that the lawyer's dishonesty aggravated his misconduct.³³" Kathryn Sellars similarly attempted to cover up the mistake. Whether or not she was responsible for the errors in the Clerk reporting to cure her mistake, she certainly had influence over the decision, which resulted in false reporting. I conclude these are additionally aggravating circumstances.

"Last, the Colorado Supreme Court imposed a significant period of suspension when, among other misconduct, a lawyer knowingly engaged in a conflict of interest without disclosing the conflict to his client, injuring his client.³⁴ In that case, *People v. Schmad*, the lawyer attempted to settle a personal injury case with an insurer under terms similar to those that the lawyer's client had already rejected.³⁵ The lawyer's client had an immediate need for funds to pay for therapy and rehabilitation and thus did not want to receive future settlement payments. Even so, the lawyer pressed his client to agree to a lump-sum payment of \$25,000.00." Kathryn Sellars' conduct was in furtherance of her self-interest by among other logic, further securing her position as Town Attorney, and she failed to obtain written informed consent on these conflicts. Several staff members reported feeling like Sellars represented them, which raised additional concern that in my investigation, no evidence of an attempt to describe or delineate her role as Town Attorney had been made by her. Her resignation and refusal to answer questions made it impossible for me to disprove this point. I recommend that the Attorney Regulation Counsel look closer at the emails if time permits, which my investigation did not have. I do suspect there was collusion and a broader conspiracy related to the misrepresentations and electioneering, as I believe the evidence has proven.

Complainant: the People of Colo. Respondent: Brenda L. Storey, 2022 Colo. Discipl. LEXIS 56, *16-19

⁴⁴ An email was sent to Kathryn Sellars in the early hours of the investigation on Tuesday the 19th, and approximately 3 hours later, the Town received her resignation. No assertion of her 4th, 5th, or 6th amendment rights were made. The resignation and refusal to provide the information demanded under official government investigation resulted in a substantial obstruction in the investigation of not only her conduct but that of other individuals in the Town of Monument's staff, and the potential conspiracy to electioneer and misrepresent the Charter to the public. When a criminal defendant pleads the Fifth, jurors and in this matter an investigator and the Town Council are not allowed to take the refusal into consideration when deciding whether a defendant is guilty. In the 2001 case *Ohio v. Reiner*, the U.S. Supreme Court held that "a witness may have reasonable fear of prosecution and yet be innocent of any wrong doing. The [Fifth Amendment right against self-incrimination] serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances." Defendants may assert their Fifth Amendment rights during civil trials, too, if testimony would open them up to criminal charges. But defendants in civil trials do not enjoy the same protections against bias with respect to liability. This means that an investigator, jury or Town Council is free to make inferences when a defendant chooses not to testify in a civil trial for fear of self incrimination. And, merely refusing to answer or stating that questions are to be directed to an attorney, or that a person is represented by counsel, or that one will answer questions much later is not an assertion of this privilege. Several witnesses decided not to answer any questions or to do so with extreme delay or to answer questions with technology the investigator could not decipher even with technology support, or to direct questions to attorneys, all of which failed to assert a 5th Amendment right, and the investigator and Town Council are therefore free to read into these actions in determining civil liability.

⁴⁵ Throughout the investigation, I immediately concluded that any attorney would have and should have known about Clerk reports, the duties associated with campaign finance laws, the US Constitution and related Gerrymandering laws and applied these laws to any analysis on the Charter language before allowing it to proceed to the voters. I asked several witnesses with personal eye-witness knowledge of the Commission meetings whether any legal advice was given on the substance of the Charter. At least one witness signed an affidavit stating no advice was ever given. It is my conclusion that the failure to advise the stated client the Commission about gerrymandering was either an innocent omission, or in light of how the failure served her self interest was more likely than not done in callous disregard to secure her promised Town Council position. During the investigation, I came across testimony that during the Commission's initial meeting, the members began immediately discussing how they would design the Charter to maximize their personal gain, including discussions of salaries and who would be the Town Attorney. This was the strongest evidence of collusion and conspiracy, a conclusion I did not find enough information to support as a finding because meetings were not recorded and I don't know who all was involved in what became electioneering, misappropriations and misrepresentations.

- d. Misappropriation of public funds and assets⁴⁶
 - e. Misrepresent the Charter to the Public⁴⁷
 - f. Electioneering
5. File a claim against Kathryn Sellars for damages caused by failure to correct the unconstitutional nature of the Charter before it was placed on the ballot.
 6. Formally waive governmental immunity for everyone named in the above recommendations.
 7. Create an anonymous reporting method for staff and the public to disclose their concerns to management and Town Council, log those concerns and address them completely. I recommend a “suggestion” box.
 8. Conduct a processes audit for Accounts Payable to identify how anyone could have processed a check without knowing precisely what it was for.
 9. Monitor the intimidation tactics of Councilman Ramos and Mike Foreman and refer any future complaints to a criminal prosecutor.
 10. Require Robert’s Rules of Order training, particularly on how to deal with unruly individuals both at the dias and in the audience.
 11. Formally adopt the State Standard for Gerrymandering and apply it to the Home Rule Charter, and thereby acknowledge and adopt my finding that the Charter as presented to and passed by the voters under unfair and illegal election practices and with unconstitutional language is VOID.

The findings in this report are both reasonable and necessary. They support my sworn oath of admission as an attorney to “*support the Constitution of the United States and the Constitution of the State of Colorado*”. The US and Colorado Constitution operate to invalidate any law that violates its terms. Any law that is written which denies your authority or duty to refuse to enact or enforce an unconstitutional law, is itself void, for violating the Constitution. The mere fact that the Statute giving rise to home rule is silent on whether you can refuse to enact or enforce the Charter or accept its election process for violating the Constitution, does not negate your duty to do so. In fact, if you fail to acknowledge the illegality of the Charter after reading this official finding, and instead authorize the Charter for enforcement as written, you could face legal liability both as a Town and personally as an ultra vires act. Town Council expressly has the power to legislate, adjudicate and execute laws. State statute clearly supports the Town Council in this self-governance. Implied in that is always the duty to remove any law deemed Unconstitutional.

It is not you who voids the law, by my analysis, the Constitution of the United States and the Constitution of Colorado both voided it already. It is your duty by your oath to acknowledge that the Constitution voided the Charter. If the next Town Council decides to ignore this recommendation, a court would likely issue an emergency injunction preventing it from being enacted pending ratification of this report.

⁴⁶ It is important to note that the element of misappropriation does not require intent. It is a strict liability standard. During my investigation, I did find mitigating circumstances to show it could have been a mistake, however, in light of all of the conflict of interest, I find it was more likely than not based in callous disregard.

⁴⁷ The evidence strongly supports the conclusion that Kathryn Sellars authorized the use of the Town Seal on marketing materials, which resulted in misrepresenting the Charter as having the Town’s endorsement.

The law clearly states that you can not reform the Charter after it is passed by the Commission but must put it to the people for a vote in its flawed form. Therefore, the only remedy is to acknowledge it was void when presented to the public, and the Charter process must start over. This entire investigation is about Due Process, and how a few isolated violations led to one massive violation of Rights. Have faith in the process and justice will prevail. As the interim Town Council, your authority continues until the next elected Town Council is sworn in.

In unbiased Truth,

Grant Van Der Jagt, Esq.