

**STATE OF COLORADO
IN THE OFFICE OF THE SECRETARY OF STATE**

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

COLORADO SPRINGS FORWARD

Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State (“Division”) and Colorado Springs Forward (“Respondent” or “the Nonprofit”).

Recitals

A. Earlier this year, the Division received a campaign finance complaint (2022-08) against the Colorado Springs Forward State Political Funding Committee (“the Political Committee”), registered as a political committee with the Secretary of State.

B. That complaint was ultimately dismissed. But during the review of that complaint, the Division became aware of a potential violation by the Nonprofit.

C. Accordingly, on June 13, 2022, the Division initiated a complaint against the Nonprofit under § 1-45-111.7(7), C.R.S. The Division also offered the Nonprofit an opportunity to cure the alleged violation.

D. The alleged violation involved the Nonprofit’s contributions to two candidate committees, to which corporations are prohibited from contributing. Specifically:

1. The Committee to Elect Holly Williams, a candidate committee, reported receiving a \$5,000 contribution from the Nonprofit on October 10, 2021.

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2. The Committee to Elect Cami Bremer, a candidate committee, reported receiving a \$5,000 contribution from the Nonprofit on October 25, 2021.

E. During its review of the complaint (2022-08) against the Political Committee, the Division was informed that the Nonprofit's registered agent, Phil Lane, was receiving treatment for a significant health issue.

F. In light of this treatment, the Board Chair for the Nonprofit asked the Division to communicate with Katie Kennedy, who was retained by Colorado Springs Forward regarding the campaign finance complaints. Kennedy is the registered agent for the Political Committee, and the Colorado Springs Forward IEC ("the IEC"), which is registered as an Independent Expenditure Committee with the Secretary of State.

G. Kennedy responded to the complaint and opportunity to cure on behalf of the Nonprofit on June 28, 2022. Kennedy indicated that when the Nonprofit became aware of the prohibited contributions—during the Division's investigation of the prior complaint against the Political Committee—it had asked for, and received, refunds from each of the two candidate committees.

H. Kennedy included copies of the two refund checks, both dated February 28, 2022, and corresponding deposit slips from the Nonprofit's account. Kennedy also included copies of the checks in which the prohibited contributions themselves were made.

I. On September 1, 2022, the Division filed a complaint at the Office of Administrative Courts, titled Elections Division of the Secretary of State v. Colorado Springs Forward (the "Administrative Proceedings"). The case number at OAC is OS 2022-0022.

J. The Division and the Respondent desire to resolve this matter without the expense of continued litigation. Therefore, in consideration of the mutual covenants contained in this Agreement, the parties agree and covenant as follows:

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Agreement

Section 1. Deputy Secretary of State Approval

This Settlement Agreement and all promises contained within are contingent upon approval of the Deputy Secretary of State, which approval will be demonstrated by the Deputy Secretary's signature to this agreement. In the event the Deputy Secretary does not approve this Settlement Agreement, neither the Recitals above nor the promises below shall be binding upon, or enforceable against, either the Division or Respondent.

Section 2. Payment of Stipulated Penalty

Within 14 days of the Nonprofit's receipt of an invoice from the Division, **the Nonprofit shall pay \$1,000** to the Division.

This penalty reflects Rule 23.3.3 of the Secretary's Rules on Campaign Finance. 8 CCR 1505-6.

- For making prohibited expenditures, Rule 23.3.3(c) calls for a fine of at least \$100 and 10% of the prohibited activity. Here, the Administrative Proceedings identify \$10,000 in prohibited contributions. This would result in a starting penalty amount recommended by rule of no less than \$1,100.

The Division finds that this fine amount is sufficient to further the purposes of Colorado campaign finance law. Respondent has been responsive to the complaint, providing numerous detailed responses to the various complaints involving Colorado Springs Forward entities along with related copies of the checks at issue and taking efforts to cure. Although the committees had use of the prohibited contributions for several months, they were returned prior to the primary election. Finally, any concerns raised by the failure of the Nonprofit's registered agent to respond to the complaint, have been alleviated by the information regarding the unavailability of the Nonprofit's registered agent.

Given Respondent's efforts to cure and responsiveness to the Division, despite the absence of any record testimony under oath demonstrating a lack of intent to mislead and that Respondent's conduct was an intentional attempt to conceal improper conduct, the Division finds that a \$1,000 penalty is consistent with rule.

Accordingly, the Division finds that a penalty of \$1,000 is sufficient to further the purposes of Colorado campaign finance law.

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Section 3. Compliance with Colorado Campaign Finance Law

Respondent agrees to comply with Colorado law relating to campaign contributions, and to otherwise comply with Colorado Campaign Finance Law, including Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, §§ 1-45-101, *et seq.*, and the rules of the Secretary of State concerning campaign and political finance.

Section 4. Dismissal of Administrative Proceedings

The Division will move to dismiss the Administrative Proceedings with prejudice within 7 days of when the Secretary of State sends a receipt to the Committee for the payment provided for in Section 2 of this Agreement.

Section 5. Admissions

Respondent admits that it made prohibited contributions to candidate committees.

Section 6. Release and Covenant Not to Sue

Respondent, for itself, its agents, assigns, representatives, attorneys, and subrogees, releases and forever discharges the Division, the Secretary of State, and the State of Colorado, and all of their former, current, and successor officers, employees, agents, and attorneys, from any and all claims, actions, causes of action, debts, demands, liabilities, losses, injuries, and/or damages arising from or relating to the Administrative Proceedings. Respondent further expressly agrees and covenants that it will not sue or assert any cause of action, at law or in equity and whether before a court of law or an administrative agency, against the Division, the Secretary of State, or the State of Colorado, or any of their former, current, and successor officers, employees, agents, and attorneys, for any claim arising from or related to the Administrative Proceedings.

Section 7. Waiver of Appeal Rights

Respondent expressly waives any right for further administrative or judicial review of any matter related to the Administrative Proceedings or this Agreement, including but not limited to any rights provided by §§ 24-4-105 and -106, C.R.S. (2022).

Section 8. Public Records

Respondent understands and agrees that this Agreement may be made available to the public on the Secretary of State's TRACER Campaign Finance system, and may also be made available to members of the public who serve a valid request under the Colorado Open Records Act, § 24-72-101, *et seq.*, C.R.S. (2022).

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Section 9. Full and Complete Agreement

This Agreement, including any attachments referenced in the Agreement, constitutes the full and complete agreement of the parties and shall supersede any and all prior understandings, whether written or oral.

Section 10. Final Agency Action

This Settlement Agreement shall become final agency action under the State Administrative Procedures Act, §§ 24-4-101 *et seq.*, upon completion of all terms of compliance contained herein, including but not limited to dismissal of the Administrative Proceedings.

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Section 11. Warranties

Respondent and the Division expressly warrant that they have carefully and completely read the terms of this Agreement. The parties expressly warrant that they have had the opportunity to consult with legal counsel before executing this Agreement, that they fully understand the terms of this Agreement, and that they enter into this Agreement knowingly and voluntarily, and without coercion, duress or undue influence. Each of the parties warrants that, in executing this Agreement, the parties have not relied upon any promise, warranty, or representation made by any other party, except as such promises, warranties, or representations are expressly stated in this Agreement.

ELECTIONS DIVISION OF THE SECRETARY OF STATE

9/29/2022
DATE

/s/ Theresa M. Conley
By: Theresa Conley
Strategic Legal and Policy
Manager

COLORADO SPRINGS FORWARD

9/29/2022
DATE

Suzanne Taheri
By: Suzanne Taheri
Counsel and Authorized Representative

ADOPTED AND APPROVED BY:

Oct. 4, 2022
DATE

Christopher P. Beall
By: Christopher P. Beall
Deputy Secretary of State