Exhibit A to the Complainant's Response to Partial Motion to Dismiss

Elections Division v. Weinberg et al., No. 2025 AHO 38 CPF,

April 1, 2026

2024 WL 4019096
Only the Westlaw citation is currently available.
NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Colorado Court of Appeals, Division I.

Suzanne TAHERI, Plaintiff-Appellant,
v.
Christopher BEALL, in his official capacity as Colorado Deputy Secretary of State and Jena Griswold, in her official capacity as Colorado Secretary of State, Defendants-Appellees.

Court of Appeals No. 23CA0501
|
Announced March 21, 2024

City and County of Denver District Court No. 21CV31235, Honorable Jill D. Dorancy, Judge

Attorneys and Law Firms

West Group Law and Policy, Suzanne M. Taheri, Denver, Colorado, for Plaintiff-Appellant

Philip J. Weiser, Attorney General, Natalie Hanlon Leh, Chief Deputy Attorney General, Emily Burke Buckley, Senior Assistant Attorney General, Peter G. Baumann, Senior Assistant Attorney General, Denver, Colorado, for Defendants-Appellees.

Opinion

Opinion by JUDGE HARRIS

***1** ¶ 1 Plaintiff, Suzanne Taheri, appeals the district court's judgment affirming an agency order finding that she violated a provision of Colorado's Fair Campaign Practices Act (FCPA), §§ 1-45-101 to -118, C.R.S. 2023. We affirm.

I. Background

¶ 2 Taheri was a candidate for the state senate in the 2020 election. Under the FCPA, every candidate for the General Assembly must file a statement "disclosing the information required by section 24-6-202(2)[, C.R.S. 2023,] ... on a form approved by the secretary of state." § 1-45-110(2)(a), C.R.S. 2023. The approved form is the personal financial disclosure statement (PFD), which is posted on the Secretary of State website. On August 9, 2019, instead of filing a PFD, Taheri submitted a copy of her 2018 federal tax return.

¶ 3 Approximately nine months later, on May 6, 2020, Dorota Wright-O'Neill (complainant) filed a complaint with the Elections Division of the Secretary of State's office (the Division). The complaint alleged that Taheri had failed to disclose the financial information required by section 1-45-110(2)(a).

¶ 4 The Division promptly provided Taheri with notice of the complaint and an opportunity to cure the alleged violation. *See* § 1-45-111.7(4), C.R.S. 2023. When Taheri failed to immediately cure, the Division initiated an investigation into the complaint's allegations. *See* § 1-45-111.7(5). Initially, the Division determined that the complaint, which was subject to a 180-day statute of limitations, was untimely and moved to dismiss it. But the Deputy Secretary of State remanded the case to the Division for further investigation regarding the statute of limitations' accrual date. In response, Taheri requested an administrative hearing, so the Division withdrew its motion to dismiss and filed an action with the Office of Administrative Courts. *See* § 1-45-111.7(5), (6).

 © 2026 Thomson Reuters. No claim to original U.S. Government Works.

¶ 5 After an evidentiary hearing, an administrative law judge (ALJ) issued an initial decision that included the following factual findings:

- Taheri filed her candidate affidavit on August 7, 2019, making her PFD due August 17, 2019. *See* § 1-45-110(2)(a).
- On August 9, 2019, Taheri filed a copy of her 2018 federal tax return instead of a PFD.
- On March 17, 2020, the complainant requested a copy of Taheri's PFD from the Secretary of State and received documents in response to the request.
- Complainant made her request, and later filed a complaint, at the behest of a third party, Christy Powell. The evidence did not establish when Powell spoke with the complainant about Taheri's possible violation.
- Complainant filed a complaint on May 6, 2020.
- Complainant did not "know about the issues in this case, and they were not on her radar, until Ms. Powell asked [the complainant] if she would be willing" to file a complaint.
- Complainant "was not asked [during the hearing] when she first learned of the 'alleged violation,' and she did not volunteer this information."

¶ 6 Based on these factual findings, the ALJ concluded that the complainant could not have reasonably discovered the violation before she spoke with Powell and requested a copy of Taheri's PFD, and, therefore, the complaint was timely. Then, after noting that Taheri had not "submitted argument or evidence" that she was entitled to file a tax return in lieu of a PFD, the ALJ concluded that Taheri had violated section 1-45-110(2)(a) by failing to file a PFD with the information required by section 24-6-202(2).

***2** ¶ 7 Both parties filed exceptions to the ALJ's decision. On review, the Deputy Secretary adopted the ALJ's factual findings as well as his conclusions that the complaint was timely and that Taheri had violated section 1-45-110.

¶ 8 Taheri appealed the Deputy Secretary's final agency order to the district court under section 24-4-106, C.R.S. 2023. The district court affirmed the order.

¶ 9 On appeal, Taheri challenges the district court's judgment, arguing that (1) the complaint was untimely; (2) in any event, she did not violate section 1-45-110(2)(a); and (3) her due process rights were violated.

II. Standard of Review

¶ 10 In appeals of agency action, we sit in the same position as the district court and review the agency's decision for an abuse of discretion. *Farmer v. Colo. Parks & Wildlife Comm'n*, 2016 COA 120, ¶ 12. Under this standard of review, we must affirm the agency's decision unless it was arbitrary and capricious, based on erroneous findings of fact, unsupported by substantial evidence, or otherwise contrary to law. *See* § 24-4-106(7); *Farmer*, ¶ 13.

¶ 11 However, we review the interpretation of a statute de novo. *Welch v. Colo. State Plumbing Bd.*, 2020 COA 130, ¶ 16. Thus, while we may defer to the agency's interpretation of its governing statutes, we are not bound by an interpretation that violates the statute's plain language or the General Assembly's intent. *Williams v. Dep't of Pub. Safety*, 2015 COA 180, ¶ 17.

¶ 12 In interpreting a statute, our primary task is to ascertain and give effect to the legislature's intent. *Daniel v. City of Colorado Springs*, 2014 CO 34, ¶ 11. To determine legislative intent, we look first to the plain language of the statute, *see Welch*, ¶ 17, and we construe the statute as a whole, giving sensible effect to all of its parts, *Daniel*, ¶ 11. When the plain language is unambiguous, we apply the statute as written. *Nieto v. Clark's Mkt., Inc.*, 2021 CO 48, ¶ 12.

III. Discussion

A. Timeliness of the Complaint

¶ 13 Under section 1-45-111.7(2)(b), which applies the discovery rule for accrual of claims, a complaint must be filed no later than 180 days after "the date on which the complainant either knew or should have known, by the exercise of reasonable diligence, of the alleged violation." When the statute of limitations begins to run under the discovery rule standard is "highly fact- and case-specific." *McIntyre v. United States*, 367 F.3d 38, 52 (1st Cir. 2004); *see also* *Morrison v. Goff*, 91 P.3d 1050, 1056-57 (Colo. 2004) (the determination of when a claim accrues must be evaluated on a "case-by-case basis" by examining the "underlying facts").

¶ 14 The argument that a claim or action is barred by a statute of limitations is an affirmative defense on which the defendant bears the burden of proof. *Crosby v. Am. Fam. Mut. Ins. Co.*, 251 P.3d 1279, 1283 (Colo. App. 2010).

¶ 15 Taheri first contends that the statute of limitations began to run on August 9, 2019 — the date she filed her tax return with the Secretary of State.

¶ 16 A claim does not accrue until a person has "knowledge of the facts essential to the cause of action" — that is, "information as would lead a reasonable person to inquire further." *Murry v. GuideOne Specialty Mut. Ins. Co.*, 194 P.3d 489, 492-93 (Colo. App. 2008) (quoting Black's Law Dictionary 888 (8th ed. 2004)). Thus, under the discovery rule, the statute of limitations is triggered when a person is "on notice" of the "general nature of damage," *Morris v. Geer*, 720 P.2d 994, 997 (Colo. App. 1986), meaning, in this context, that a complainant has some reason to investigate a possible violation.

***3** ¶ 17 According to Taheri, the complainant could have discovered the violation within 180 days of August 9, 2019, by making an open records request. But that argument presupposes that the complainant had some reason to think that Taheri had violated a provision of the FCPA. The ALJ found to the contrary, though — that the complainant had no reason to suspect that a violation had occurred until she spoke with Powell, which then prompted her to request Taheri's PFD.

¶ 18 Under Taheri's theory, in order to file a complaint, a citizen would have the obligation to continuously research candidate filings and make open records requests even without any notice or information concerning a possible violation. We agree with the ALJ and the district court that such an undertaking goes beyond what section 1-45-111.7(2)(b)'s discovery rule requires.

¶ 19 The "exercise of reasonable diligence" standard for purposes of the discovery rule requires that the complaining party "act with some promptness where the facts and circumstances ... [would] place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." *Abrasives-South, Inc. v. Korte*, 226 F. Supp. 3d 584, 587 (D.S.C. 2016) (citation omitted), *aff'd per curiam sub nom.* *Abrasives-South Inc. v. Awuko Abrasives Wandmacher GMBH & Co KG*, 696 F. App'x 624 (4th Cir. 2017); *see also* *Litif v. United States*, 670 F.3d 39, 44 (1st Cir. 2012) (reasonable diligence standard turns on what a reasonable person, "once fairly prompted to investigate, would have discovered by diligent investigation").

¶ 20 True, the record does not disclose when the complainant first learned from Powell of a possible violation. But it was Taheri's burden to show that this occurred more than six months before the complainant filed the complaint, and she failed to meet this burden. As result, the record shows only that in March 2020, after her conversation with Powell, the complainant requested documents from the Secretary of State and then filed the complaint less than two months later, on May 6. Given the state of the record, the Deputy Secretary did not err by concluding that the complainant exercised reasonable diligence in discovering the violation and that she timely filed the complaint.

¶ 21 Alternatively, Taheri contends that even if the complainant did not have reason to know of an alleged violation within the 180 days after the tax return was filed, Powell did, and the timing of her knowledge of the violation controls because the complainant was her agent. We are not persuaded.

¶ 22 For starters, Taheri did not raise this argument before the ALJ. In fact, at the hearing, Taheri's counsel insisted that Powell "[wa]s not part of this episode," she "ha[d] nothing to do with any of this," and she was "irrelevant to any issues before" the ALJ. Thus, the ALJ addressed only Taheri's argument that the statute of limitations began to run on the date she filed her tax return.

¶ 23 Ordinarily, unless an ALJ has no authority to address it, an issue not raised before the ALJ is waived. *See Campaign Integrity Watchdog v. Colo. Republican Comm.*, 2017 COA 126, ¶ 40. Because Taheri raised this alternative theory for the first time in her exceptions to the ALJ's decision, it is arguably waived.

¶ 24 But even assuming it is properly before us, her alternative argument fails on the merits.

¶ 25 The cases Taheri cites to support her position stand for the proposition that knowledge of an agent acting within the scope of the agency relationship is imputed to the principal. That is an accurate statement of the law. *See Liggett v. People*, 2023 CO 22, ¶ 57. But Taheri does not argue that Powell (the one with prior knowledge) was the complainant's agent; she appears to argue the opposite — that the complainant was Powell's agent. That theory does not work either.

***4** ¶ 26 "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." Restatement (Second) of Agency § 1 (Am. L. Inst. 1958). The complainant testified that she has "no relationship" with Powell and has never met her. Powell obtained the complainant's name from a mutual acquaintance and asked the complainant if she "would be willing" to file the complaint. According to the complainant, Powell, who was a board member of a "progressive organization," thought the complaint should be filed by someone who was not "associated with any specific groups." The complainant had "plenty of opportunity to say no," but ultimately agreed.

¶ 27 The evidence does not establish that the complainant acted on Powell's behalf or that she was subject to Powell's control. Instead, the record demonstrates that, at Powell's invitation and with Powell's assistance, the complainant investigated a possible violation and then filed a complaint under her own name.

¶ 28 Nothing in the statute precludes a citizen from filing a complaint if she obtains information about a possible violation from another citizen. The statute requires only that the complainant file a complaint promptly — within 180 days — once she knows or reasonably should know that a violation has occurred.

¶ 29 Taheri's theory that the limitations period started on the date she filed her tax return essentially converts section 1-45-111.7's discovery-based statute of limitations into a 180-day statute of repose. If that were the legislature's intent, though, it certainly could have imposed a limitations period triggered by a candidate's filing of a disclosure statement. Indeed, before the legislature added section 1-45-111.7 to the FCPA in 2019, the applicable statute of limitations required a complainant to file a complaint "no later than one hundred eighty days after the date of the alleged violation." Colo. Const. art. XXVIII, § 9(2)(a); *see* Ch. 330, sec. 1, § 1-45-111.7, 2019 Colo. Sess. Laws 3059. The change to a "knew or should have known" standard necessarily means that the limitations period does not automatically start to run on the PFD filing date.

¶ 30 We are not unsympathetic to Taheri's argument that applying a discovery rule in this context could lead to some anomalous results. But we may only disregard section 1-45-111.7(2)(b)'s plain language when it results in "absurdity [that] is 'so gross as to shock the general moral or common sense.' " *Rudnicki v. Bianco*, 2023 COA 103, ¶ 34 (quoting *Dep't of Transp. v. City of Idaho Springs*, 192 P.3d 490, 494 (Colo. App. 2008)). "Short of that, it is the legislature's responsibility to address unintended consequences and undesirable results." *Id.*

 © 2026 Thomson Reuters. No claim to original U.S. Government Works.

¶ 31 And we agree with the district court that the statute's other provisions reduce the likelihood of anomalous results. For example, if a candidate violates the disclosure provision and fails to cure, she must be disqualified as a candidate. *See* § 1-45-110(3). And once a person is disqualified, withdraws her candidacy, or is defeated, she has no obligation to comply with the statute's disclosure provisions. *See* § 1-45-110(5). These provisions would moot most of the "forty-year-old" complaints Taheri envisions.

¶ 32 But otherwise, the legislature chose to enact a statute of limitations triggered not by the date of the violation but by the date a citizen reasonably discovered it. That is the legislature's prerogative, *see Dove v. Delgado*, 808 P.2d 1270, 1274 (Colo. 1991), and the mere fact that certain older claims might fall within the limitations period does not create an absurdity that shocks the general moral or common sense.

B. Violation of Section 1-45-110

***5** ¶ 33 Next, Taheri argues that even if the complaint was timely, the Deputy Secretary and the district court erred by determining that she violated section 1-45-110(2)(a).

¶ 34 At the hearing, Taheri expressly declined to present any evidence or argument contesting the violation; instead, she argued only that the complaint was untimely. Her argument that she did not violate section 1-45-110(2)(a) was raised for the first time in her exceptions.

¶ 35 By failing to contest or dispute the violation at the administrative hearing, Taheri waived the right to challenge it on appeal. *See Campaign Integrity Watchdog*, ¶ 40; *cf. In re Fisher Island Invs., Inc.*, 778 F.3d 1172, 1195 (11th Cir. 2015) (a party may not refuse to dispute facts in the trial court and then later claim on appeal that the facts were disputed).

¶ 36 Regardless, the argument lacks merit.

¶ 37 As we have noted, section 1-45-110(2)(a) requires candidates to file a statement "disclosing the information required by section 24-6-202(2)." Section 24-6-202(2), in turn, lists the specific financial information to be disclosed. *See* § 24-6-202(2)(a)-(i). Under section 24-6-202(6), "[a]ny person subject to the provisions of this section" may file a copy of her federal tax return in lieu of filing a disclosure statement required by section 24-6-202.

¶ 38 Taheri contends that because section 1-45-110(2)(a) cross-references section 24-6-202(2), she is a "person subject to the provisions of" section 24-6-202, and she can therefore file a tax return instead of a PFD. [1] We disagree.

¶ 39 As a candidate, Taheri was subject to section 1-45-110, which is part of the FCPA, not section 24-6-202, which is part of the Public Official Disclosure Law and applies to enumerated public officials serving a term of office. *See* § 24-6-202(1)(a)-(g). Contrary to Taheri's reading, section 1-45-110(2)(a)'s reference to section 24-6-202(2) does not mean that she was "subject to" section 24-6-202(2). The cross-reference simply means that in order to comply with section 1-45-110(2)(a), she had to file a form that included the information listed in section 24-6-202(2). In any event, only those persons subject to the "provisions" — plural — of section 24-6-202 can file a tax return in lieu of a disclosure statement, and Taheri's argument is that she was subject to a single provision of section 24-6-202 — subsection (2).

¶ 40 We reject Taheri's argument that this interpretation of the relevant statutes raises an equal protection concern. "Equal protection of the laws guarantees that persons who are similarly situated will receive like treatment by the law." *Harris v. Ark*, 810 P.2d 226, 229 (Colo. 1991). A statute violates equal protection when the classification arbitrarily treats a group of people differently from other people who are similarly situated. *Salazar v. Indus. Claim Appeals Off.*, 2022 COA 13, ¶ 34.

¶ 41 Taheri says that the statutes treat "incumbent legislators and their non-incumbent challengers" differently because only the former can file a tax return in lieu of a PFD. We agree that there would be no legitimate reason to treat incumbents and non-incumbents differently in this regard. But we conclude that neither an incumbent nor a non-incumbent can file a tax return as a substitute for the PFD. This interpretation gives effect to the statute's plain language and comports with the principle that we should construe statutes in a manner that avoids constitutional infirmities. *See People v. Iannicelli*, 2019 CO 80, ¶¶ 19, 22.

***6** ¶ 42 Every candidate must file a PFD within ten days of filing a candidate affidavit. If the candidate wins election and becomes a "public official" serving a term of office, she must comply with section 24-6-202, which is part of the Public Official Disclosure Law. *See* § 24-6-202(1)(a)-(g). Under that statute, the public official must file a disclosure statement "not later than January 10 following his or her election" that lists the information contained in subsection (2) "for the previous calendar year." § 24-6-202(1), (2). Then, by January 10 of her successive years in office, the public official must file "an amended statement" or state in writing that she "has had no change of condition since the previous filing of a disclosure statement." § 24-6-202(4)(a). As a general matter, a public official can comply with the annual requirement by filing "with the secretary of state annually a copy of h[er] federal income tax return" together with an investment statement. § 24-6-202(6).

¶ 43 An incumbent seeking reelection is not required to file a separate disclosure statement under section 1-45-110, but only if the incumbent has already filed a disclosure statement "as required by subsection (4)(a)" of section 24-6-202. § 24-6-202(4)(b). As noted, subsection (4)(a) requires the public official to file an amended disclosure statement or a "no change" statement. Because section 24-6-202(4)(b) references only subsection (4)(a), and not subsection (6), incumbents cannot satisfy their obligation under subsection (4)(b) by filing a tax return. In other words, an incumbent who is a candidate can file an alternative to the PFD, but the alternative is not a tax return; it is the disclosure statement required by section 24-6-202(1) and any amendment or update to that statement. In this way, all candidates must file a disclosure statement that comports with section 1-45-110 because the statement is either a PFD or a statement under section 24-6-202 that lists the information in section 24-6-202(2) or is an amendment or update to that statement.

¶ 44 Accordingly, the Deputy Secretary did not err by concluding that Taheri violated section 1-45-110(2)(a) by failing to file a PFD.

C. Due Process

¶ 45 Lastly, Taheri argues that the proceedings were fundamentally unfair and violated her due process rights.

¶ 46 Administrative agencies must be "fundamentally fair to the individual" in resolving disputes. *Venard v. Dep't of Corr.*, 72 P.3d 446, 449 (Colo. App. 2003) (quoting *deKoevend v. Bd. of Educ.*, 688 P.2d 219, 227 (Colo. 1984)). This obligation requires the decisionmaker to be neutral and detached. *Id.* A policy that allows the same person to initiate a proceeding and to make the final decision violates an individual's procedural due process rights. *Saxe v. Bd. of Trs. of Metro. State Coll. of Denver*, 179 P.3d 67, 80 (Colo. App. 2007).

¶ 47 Taheri contends that when the Deputy Secretary denied the Division's motion to dismiss, he became the initiator of the action as well as the final decisionmaker. That argument is unsupported by the record.

¶ 48 The complainant initiated the action by filing a complaint. *See* § 1-45-111.7(2)(a). Thereafter, the Division's campaign finance enforcement team investigated the complaint. *See* § 1-45-111.7(3), (5). The Deputy Secretary adjudicated the motion to dismiss and later issued a final decision. *See* § 1-45-111.7(3)(b)(I), (6)(b). The Deputy Secretary neither initiated nor investigated the complaint. At the hearing, the Division's representative explained that Division members do not have contact with the Deputy Secretary concerning pending matters so as to maintain separation between the investigators and the decisionmaker. *Cf. Withrow v. Larkin*, 421 U.S. 35, 52 (1975) (The "combination [of] judging [and] investigating functions" is not "a denial of due process.") (citation omitted).

 © 2026 Thomson Reuters. No claim to original U.S. Government Works.

¶ 49 To the extent Taheri advances some other theory of a due process violation, her argument is too undeveloped to warrant review. *See People v. Cuellar*, 2023 COA 20, ¶ 44.

IV. Disposition

***7** ¶ 50 The judgment is affirmed.

JUDGE GOMEZ concurs.

JUDGE J. JONES specially concurs.

JUDGE J. JONES, specially concurring.

¶ 51 I concur in the judgment. But I would not address the merits of Taheri's arguments that Powell's knowledge of the alleged violation should be imputed to Wright-O'Neill and that she didn't violate section 1-45-110(2)(a), C.R.S. 2023. Her counsel expressly took those arguments off the table at the hearing before the ALJ. Thus, in my view, she waived those arguments because she didn't make them to the hearing officer, but could have. *See Campaign Integrity Watchdog v. Colo. Republican Comm.*, 2017 COA 126, ¶ 40.

All Citations

Not Reported in Pac. Rptr., 2024 WL 4019096

Footnotes

1 Taheri does not dispute that the information listed in section 24-6-202(2), C.R.S. 2023, and required to be disclosed in the PFD, is more comprehensive than the information that is disclosed in a tax return.

End of Document © 2026 Thomson Reuters. No claim to original U.S. Government Works.