STATE OF COLORADO
SECRETARY OF STATE
1700 BROADWAY #550
DENVER, COLORADO 80290

BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, ADMINISTRATIVE HEARING OFFICER

AHO Case No. 2025 AHO 38 (CPF)

ED Case No. 2025-33

In the Matter of

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

WEINBERG FOR COLORADO, and RON WEINBERG

Respondents.

RESPONDENTS' REPLY IN SUPPORT OF PARTIAL MOTION TO DISMISS

COME NOW the Respondents, RON WEINBERG and WEINBERG FOR COLORADO, and hereby submit this *Reply in Support of Partial Motion to Dismiss* pursuant to C.R.C.P. Rule 12(b)(5),[1] and in support thereof, state and allege as follows:

I. SUMMARY OF REPLY

The central point of contention between the parties is the 180-day limitation stated in Colo. Const. art. XXVIII, C.R.S. § 1-45-108, and the implementing state rule (8 Colo. Code Regs. 1505-6,

[1] Respondents' Motion for Partial Summary Judgment misstated in the pleading title that the Motion was brought under C.R.C.P. Rule 12(b)(6) but should have cited 12(b)(5).

Rule 10). Complainant mischaracterizes the applicable 180-day limitation as merely a "discovery rule" despite that the limitation appears first in the Colorado constitution, and the Colorado revised statutes. The 180-day period invoked in Respondents' Motion is a limitation of action at the outset, not an after-the-fact restriction on discovery. If it were merely a discovery rule, it wouldn't appear in the constitution or a specific statute.[2]

Complainants' reliance on *Taheri v. Beall*, *infra*, is misplaced. *Taheri*, an unpublished opinion, is factually too dissimilar to be persuasive in this matter. Thus, the holding in Taheri is inapplicable in this matter. Similarly, the limitations defense raised by Respondents is not premature because the specific limitation appears in the body of the statute, compared to a general limitation of actions that is time-based (i.e., two years) that would require discovery to establish the application of the limitation to the facts of a case.

II. STANDARD OF REVIEW

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*, 382 P.3d 1263 (Colo.App. 2016). On appeal, a court 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*, *Farmer*, at 1267; C.R.S. § 24-4-106(7).

The appellate court reviews the interpretation of a statute de novo. *Welch v. Colo. State Plumbing Bd*., 474 P.3d 236, 240 (Colo.App. 2020). Thus, while an appeals court may defer to the agency's interpretation of its governing statutes, it is 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*, 369 P.3d 760 (Colo.App. 2015). In interpreting a statute, an appellate court's primary task is to ascertain and give effect to the legislature's intent. *Daniel v. City of Colorado Springs*, 327 P.3d 891 (Colo.App. 2014). To determine legislative intent, an appellate court looks first to the plain language of the statute, *see*, *Welch*, at 240-241, and construes the statute as a whole, giving sensible effect to all of its parts. *Id*. When the plain language is unambiguous, an appeals court applies the statute as written. *Nieto v. Clark's Mkt., Inc*., 488 P.3d 1140 (Colo. 2021).

[2] *See*, *e.g*., the numeric cap (20) for requests for admission under C.R.C.P. 36. The limitation derives from the Rules of Civil Procedure. No statute is referenced as the source of this cap in the provided text. This is the complete reverse of what the Complainant suggests.

III. ARGUMENT

a. *The 180-day period is a limitations bar, not merely a "discovery rule."*

The Elections Division's response mischaracterizes the governing 180-day period as a mere discovery rule. However, the limitation appears in the Colorado Constitution, the campaign-finance statute, and the implementing rule, and therefore operates as a substantive bar on stale claims—not as a case-management rule governing post-filing investigation or discovery. Colorado law requires that unambiguous text be applied as written. *Welch v. Colo. State Plumbing Bd*., 474 P.3d 236, 240 (Colo. App. 2020). Courts construe statutes as a whole, give sensible effect to all parts, and refuse to add language the legislature did not enact. *Nieto v. Clark's Mkt., Inc.*, 488 P.3d 1140 (Colo. 2021) ; *Turbyne v. People*, 151 P.3d 563 (Colo. 2007) .

The unambiguous statute, when plainly read, is fatal to the Division's theory. Nothing in the constitutional or statutory text creates a carveout permitting the State, once a complaint is filed, to pursue otherwise time-barred expenditure claims indefinitely. To imply such an exception would rewrite the law. And Colorado appellate decisions firmly reject such an approach. *See*, *Welcome to Realty v. Wilson*, 564 P.3d 658 (Colo. App. 2024) ; *Carousel Farms Metro. Dist. v. Woodcrest Homes, Inc*., 442 P.3d 402 (Colo. 2019) ; *Turbyne*, 151 P.3d 563.

b. *Colorado law does not permit the tribunal or the Division to enlarge the limitations period by implication.*

In Colorado, it is well-settled that when the General Assembly specifies particular conditions, methods, or procedures, omitted alternatives are excluded absent contrary language. That canon is established in *Coffman v. Colo. Common Cause*, *supra*, 102 P.3d 999; *Walcott v. Dist. Court*, *supra*, 924 P.2d 163; *Lunsford v. W. States Life Ins.*, 908 P.2d 79 (Colo. 1995). Here, the law specifies a 180-day period. It does not create a separate enforcement window that revives stale allegations once the Division becomes involved.

c. *The complaint is facially untimely as to expenditures predating the 180-day cutoff.*

The Rule 12(b)(5) issue is narrow. Respondents seek dismissal only of "claims based on alleged campaign expenditures reported on January 15, 2025 or earlier." Respondents' Motion expressly states that "Colorado law bars campaign-finance claims based on expenditures occurring more than 180 days before the complaint was filed" and that "[t]he Complaint is facially untimely as to expenditures predating the 180-day cutoff."

Where untimeliness appears on the face of the pleading under the governing substantive limitation, dismissal is proper. This is not a case requiring factual development to determine whether a general statute of limitations may apply. As Respondents have already argued, the limitations issue is presented by the text of the governing law itself and by the complaint's own timing allegations.

d. *The limitations issue is properly resolved now; it is not merely an affirmative defense to be deferred*.

The Division argues, in substance, that the tribunal should postpone consideration of the 180-day bar. But Respondents' draft correctly explains why that is wrong: the defense is not premature because the limitation here is embedded in the operative constitutional and statutory scheme, unlike a generalized time bar that depends on later factual development. Respondents have also expressly framed the point as follows: "The Limitations Period is Grounds for Dismissal, Not an Affirmative Defense."

That is the proper way to analyze the issue. When the law itself restricts claims to a defined time window and the pleading shows certain claims fall outside it, those stale allegations should be dismissed now. Allowing them to survive would subject Respondents to discovery and adjudication on claims the law no longer permits.

e. *Taheri is not relevant nor is it applicable*.

The Division's principal cited case, *Taheri v. Beall*, 23CA0501, does not carry the day here: *Taheri*, an unpublished opinion, is factually too dissimilar to be persuasive in this matter. The *Taheri*

case involved the respondent's filing of tax returns rather than the Secretary of State's form, a failure to cure, and an absence of evidence about when the "complainant knew or should have known." Thus, the holding in *Taheri* is inapplicable in this matter. Nor is it persuasive. Whatever the precise facts of *Taheri*, an unpublished and factually distinct opinion cannot override the plain language of the constitutional and statutory 180-day limitation that governs this proceeding.

f. *Partial dismissal is the proper remedy*.

The stale claims should be dismissed. Respondents request an order dismissing with prejudice all claims based on alleged campaign expenditures reported on January 15, 2025 or earlier and striking or limiting any request for relief based on those time-barred expenditures as well as granting further appropriate relief. Partial dismissal is thus the proper mechanism because it enforces the time bar without disturbing any claims that are not challenged as untimely.

g. *Allowing stale claims to proceed would nullify the statutory limit and invite abuse*.

Colorado courts avoid interpretations that render statutory language meaningless or superfluous. *Welcome to Realty*, *supra*; *People ex rel. J.W.T.*, 93 P.3d 580 (Colo. App. 2004) ; *Colo. Ground Water Comm'n v. Eagle Peak Farms, Ltd*., 919 P.2d 212 (Colo. 1996). Respondents advance this practical point in the context of campaign-finance enforcement: if stale claims may proceed despite the constitutional and statutory time limitation, the Division will be able to pursue claims "notwithstanding the legal time limitations under Colorado law." Such a ruling would create precisely the sort of undesirable precedent the tribunal should avoid.

h. *The Elections Division is not exempt from the 180-day time limit*.

Finally, the Division identifies no text exempting it from the same limitations period that governs the complaint. The Ethics Division is not exempted from the time limitations and its position that it, "is not bound by any limitations period after a complaint is filed and the State seeks to investigate the case" is contrary to the unambiguous language of the statute and the Colorado

constitution. No constitutional, statutory, or regulatory text identified by the Division creates such an exemption, and Colorado law does not permit the tribunal to invent one by implication.

VI. CONCLUSION

For those reasons, the tribunal should dismiss with prejudice all claims based on alleged campaign expenditures reported on January 15, 2025 or earlier and strike any request for relief predicated on those time-barred allegations.

Upon the foregoing reasoning and authorities, Respondents respectfully request that the tribunal enter an order:

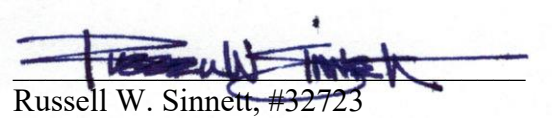
1. Dismissing with prejudice all claims based on alleged campaign expenditures reported on January 15, 2025 or earlier;

2. Striking or limiting any request for relief based on those time-barred expenditures; and

3. Granting such other and further relief as the tribunal deems lawful, equitable, proper, and just.

DATED this 15th day of April, 2026.

SINNETT LAW OFFICE, L.L.C.
By:



Russell W. Sinnett, #32723
Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2026, a true and correct copy of the above and foregoing **REPLY IN SUPPORT OF RESPONDENTS' PARTIAL MOTION TO DISMISS** was electronically filed with the Court and served upon all counsel via ICCES or addressed to:

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