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STATE OF COLORADO  
SECRETARY OF STATE  
Administrative Hearing Office  
1700 Broadway, Suite 550  
Denver, CO 80290

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Case number:

2025 AHO 38 CPF  
(in re ED 2025-33)

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IN THE MATTER OF:  
ELECTIONS DIVISION of the SECRETARY OF STATE

Complainant

v.

WEINBERG FOR COLORADO AND RON WEINBERG,

Respondent

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**ORDER DENYING PARTIAL MOTION TO DISMISS**

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Respondent Ron Weinberg is a member of the Colorado State House of Representatives. Compl. ¶ 11 (Dec. 19, 2025). He was appointed to the House in 2023 and ran for reelection in 2024. *Id.* Respondent Weinberg for Colorado (the Committee) is the candidate committee organized to support Weinberg’s candidacy. *Id.* Mr. Weinberg and the Committee will be referred to herein in the singular as “Respondent.”

On August 11, 2025, one of Weinberg’s colleagues, Representative Brandeis Bradley, filed a third party complaint, alleging that Weinberg used campaign funds for personal and other expenses prohibited by the Fair Campaign Practices Act (FCPA), C.R.S. 1-45-101, et seq. Compl. ¶ 13. The third-party complaint identified several such

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expenditures, some of which were made more than 180 days before it was filed with the Elections Division. *Id.* ¶ 14.

The complaint was investigated by the Elections Division of the Colorado Secretary of State. As a result, the Division filed an administrative complaint with the hearing officer pursuant to § 1-45-111.7(5)(a)(V) of the FCPA. The administrative complaint alleges that Respondent used campaign contributions to pay for prohibited expenses. These included not only expenditures identified by Bradley, but also others, many of which occurred more than 180 days before the Bradley complaint was filed.

Respondent has filed a Partial Motion for Summary Judgment which seeks to dismiss the complaint as to any alleged prohibited expenses that occurred more than 180 days prior to August 11, 2025—the date on which the Bradley’s third party complaint was filed with the Division. His contention is that the FCPA prohibits enforcement for any actions that he or the Committee made prior to February 12, 2025.

**COLO. CONST. ART. XVIII § 9(2)(A) DOES NOT REQUIRE THAT A COMPLAINT BE FILED WITHIN 180 DAYS OF THE VIOLATION BECAUSE THAT SECTION NO LONGER APPLIES**

Respondent argues that this 180 day statute of limitations is embedded in Colo. Const. art. XVIII § 9(2)(a) and therefore calls for dismissal of any alleged violations of the FCPA for expenses paid prior to that date. Section 9(2)(a) does indeed state that a complaint “shall be filed within one hundred eighty days after the date of the alleged violation.” *Id.* But that section was declared to be unconstitutional in *Holland v. Williams*,

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457 F. Supp. 3d 979, 998 (D. Colo. 2018)].<sup>1</sup> “[T]he Secretary is and has been prohibited from operating in accordance with section 9(2)(a) since 2018.” *Campaign Integrity Watchdog LLC v. Griswold*, 2025 COA 18, ¶124.

In the wake of *Holland*, Colorado was effectively left without an enforcement mechanism for its campaign finance law. As a result, the Secretary of State published and adopted interim rules that provided for enforcement of campaign finance violations but removed the private enforcement mechanism that was held to be unconstitutional. The current section 1-45-111.7 was adopted by the General Assembly in Senate Bill 19-232 (signed by the Governor May 29, 2019) “Concerning the Codification of the Rules of the Secretary of State Addressing the Procedures for Enforcement of State Laws Governing Campaign Finance.” The Bill was effective July 1, 2019.

Enforcement of Colorado campaign finance law thus no longer rests in section 9(2)(a) but rather in section 1-45-111.7. See, e.g., *People v. District Court*, 834 P.2d. 181, 184 (Colo. 1992) (finding statutes adopted by legislature to replace statutes declared unconstitutional are controlling). Accordingly, Respondent’s argument based on § 9(2)(a) that the Bradley third party complaint must have been filed within 180 days of any alleged

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<sup>1</sup> “On June 12, 2018, this Court entered an Opinion and Order granting plaintiff’s motion for summary judgment to the extent that plaintiff was entitled to a declaratory judgment that Article XXVIII, § 9(2)(a) of the Colorado Constitution and Colo. Rev. Stat. § 1-45-111.5(1.5)(a) are facially unconstitutional under the First and Fourteenth Amendments of the U.S. Constitution. *Holland v. Williams*, No. 1:16-cv-00138-RMMLC, Dkt. No. 167 – Order (D. Colo. June 29, 2018) 2018 U.S. Dist. LEXIS 245935, \*1, 2018 LX 25265, 2018 WL 11414904.

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violation must fail. Respondent’s reliance on *Lambert v. Ritter Inaugural Comm., Inc.*, 218 P.3d 1115, 1118–19 (Colo. App. 2009) and *Alliance for a Safe & Indep. Woodmen Hills v. Campaign Integrity Watchdog, LLC*, 2019 CO 76, ¶ 22, 450 P.3d 282, 287 (alleging violations that occurred in 2014) is misplaced. Both of those cases rest on an analysis of the FCPA as it existed *before* Holland, i.e., *before* § 9(2)(a) was held to be unconstitutional.

**NOR DOES FCPA § 1-45-111.7(2)(b) REQUIRE THAT A COMPLAINT BE FILED WITHIN 180 DAYS OF THE VIOLATION BECAUSE DISCOVERY IS NOW THE TRIGGERING EVENT**

The Bradley third party complaint was filed pursuant to § 1-45-111.7(2)(b) of the FCPA. Respondent argues that that section of the Act, like Colo. Const. art. xxviii, § 9(2)(a), requires that any complaint must be filed within 180 days of any of alleged violation. But that is not at all the case. Section 145-111.7(2)(b)—the law that applies to this action—permits filing a third party complaint not just “within one hundred eighty days after the date of the alleged violation” § 9(2)(a), but within 180 days of the date complainant *discovers* the alleged violation.

“A complaint must be filed no later than one hundred eighty days after the date on which the complainant either *knew or should have known, by the exercise of reasonable diligence, of the alleged violation.*”

§ 1-45-111.7(2)(b) [emphasis supplied].

It is the date on which the complainant discovered, or “by the exercise of reasonable diligence, [should have discovered] the alleged violation” that triggers the running of the 180 day statute of limitations on the filing of third party complaints. This administrative statute of limitation follows Colorado’s civil discovery rule as to when a cause of action accrues. See C.R.S. § 13-80-108(1). The constitutional statute of

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limitations in § 9(2)(a) contained an injury rule standard that rigidly focused on the date that an alleged violation actually occurred. In contrast, the General Assembly adopted the discovery rule in the 2019 legislation, establishing a “knew or should have known” standard under section 1-45-111.7(2)(b). This is clear from the plain meaning of the section. A court should never “interpret a statute in such a manner as to frustrate the intent of the legislature.” *Reynolds v. Great Northern Ins. Co.*, 2023 COA 77, ¶ 18, 539 P.3d 930, 933.

The purpose of a statute of limitations is to promote justice, avoid unnecessary delay, and prevent the litigation of stale claims. *Murry v. GuideOne Specialty Mut. Ins. Co.*, 194 P.3d 489, 491 (Colo. App. 2008). The point at which the statute of limitations starts to run “requires knowledge of the facts essential to the cause of action, not knowledge of the legal theory supporting the cause of action.” *Crosby v. Am. Family Mut. Ins. Co.*, 251 P.3d 1279, 1285 (Colo. App. 2010) (citing *Murry*, 194 P.3d at 492).

Establishing the date on which a complainant “knew or should have known” of a violation requires a fact-intensive analysis of the particular circumstances applicable to a particular complainant. See *Morris v. Goff*, 91 P.3d 1050, 1056-57 (Colo. 2004) (holding that application of Colorado’s discovery rule accrual standard for a statute of limitations is a fact-based inquiry). In assessing a complainant’s knowledge, “[a]ctual knowledge’ is knowledge ‘of such information as would lead a reasonable person to inquire further.’” *Murry*, 194 P.3d at 492 (quoting Black’s Law Dictionary 888 (8th ed. 2004)). Additionally, complainants must exercise reasonable diligence in discovering the “triggering event or circumstance” of their campaign finance complaints. § 1-45-111.7(2)(b); *Sulca v. Allstate*

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*Ins. Co.*, 77 P.3d 897, 900 (Colo. App. 2003). The reasonable diligence requirement “imposes an objective standard and does not reward denial or self-induced ignorance.” *Id.*

**THE STATUTE OF LIMITATIONS IS AN AFFIRMATIVE DEFENSE, SUBJECT TO PROOF, AND IS NOT GROUNDS FOR A 12(b)(5) MOTION**

The Partial Motion to Dismiss is brought pursuant to C.R.C.P. 12(b)(5).<sup>2</sup> The statute of limitations is not grounds for a 12(b)(5) motion to dismiss for failure to state a claim upon which relief can be granted. *McPherson v. McPherson*, 145 Colo. 170, 172, 358 P.2d 478 (1960). It is a defense which must be set forth affirmatively by answer. C.R.C.P. 8(c).

“The statute of limitations is not ground for motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b), Colorado Rules of Civil Procedure, since under Rule 8(c) that is a defense which must be set forth affirmatively by answer....Furthermore, even if pleaded, the running of the statute may have been tolled, and plaintiff in his complaint is not required to anticipate the defense.”

*Smith v. Kent Oil Co.*, 128 Colo. 80, 81, 261 P.2d 149 (1953).

**THE FILING OF A REPORT REQUIRED BY THE FCPA DOES NOT TRIGGER THE STATUTE OF LIMITATIONS**

Respondent argues that any alleged violation based on an expenditure disclosed in one of his reports “dated January 15, 2025 or earlier is untimely” and must be dismissed. Part. Mot., p. 5. As pointed out in discussion of the discovery rule above, however, there is nothing in the text of section 1-45-111.7(2)(b) that supports that conclusion. Furthermore,

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<sup>2</sup> The title of the pleading in the caption is “RESPONDENTS’ PARTIAL MOTION TO DISMISS PURSUANT TO C.R.C.P. Rule 12(b)(6),” but Respondent asserts in the text of the pleading on pp. 1, 2 and 4 that it is brought pursuant to Rule 12(b)(5).

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there is an unpublished court of appeals decision as well as a prior agency interpretation of this section that leads to the same conclusion.

In *Taheri v. Beall*, No. 23CA0501, 2024 WL 4019096, ¶¶ 13-14, 29 (Colo. App. March 21, 2024) (unpublished), a complaint was filed against state senate candidate Suzanne Taheri on May 6, 2020 based on what she filed with the Secretary of State on August 9, 2019. *Id.* at ¶ 15. Ms. Taheri argued that the 180 day statute of limitations for filing third party complaints in § 1-45-111.7(2)(b) started to run on the date of her earlier filing, and that the complaint was therefore untimely and ought to be dismissed. The court of appeals disagreed, concluding that the 180 days does not begin to run on the date a candidate files a report that is in violation of the FCPA. Rather, the 180 days begins to run when the complainant “knows or reasonably should know that a violation has occurred.” *Id.* ¶ 28.

“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<sup>3</sup> filing date [the date Ms. Taheri filed her tax return in lieu of a PFD].”

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<sup>3</sup> PFD is an acronym used by the court to mean the disclosure statement required by C.R.S. § 1-45-110. The candidate claimed that under C.R.S. § 24-6-202 she was authorized to file a tax return in lieu of a disclosure statement. The court of appeals disagrees. *Taheri v. Beall*, ¶ 39.

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*Id.* ¶129.

An unpublished court of appeals decision has no value as precedent. *In re Ballot Title 2005-06 No. 55*, 138 P.3d 273 (Colo. 2006). Courts may, however, consider unpublished opinions for their persuasive value. *Patterson v. James*, 2018 COA 173, 454 P.3d 345.<sup>4</sup> I do find the court of appeals decision to be directly on point and to refute Respondent’s contention that a complaint based on any alleged violation disclosed in a report dated January 15, 2025 or earlier is untimely.

**HEARING OFFICERS MUST FOLLOW THE AGENCY ON MATTERS OF LAW**

Furthermore, I am bound by the agency’s interpretation of § 1-45-111.7(2)(b). A hearing officer is barred from imposing a decision that conflicts with the referring agency’s own regulations or policies. *See, e.g., State Dep’t of Social Servs. v. Hillhaven Corp.*, 923 P.2d 129, 132 (Colo. App. 1995) (holding that an ALJ’s failure to comply with the agency’s rule on appraisal methodology meant that the ALJ exceeded his jurisdiction, reversing a district court’s affirmance the ALJ’s ruling); *Miller v. Colo. Dep’t of Health Care Policy & Financing*, 75 P.3d 1167, 1169-70 (Colo. App. 2003) (affirming a district court’s decision to

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<sup>4</sup> The court in *Patterson* said that “Should a party wish the court to consider an unpublished opinion, or should a court on its own discover such an opinion it finds persuasive, all parties should be provided with similar notice and an opportunity to be heard.” *Patterson*, 2018 COA 173, ¶ 43. The unpublished opinion in *Taheri v. Beall* was appended to the Division’s Response to Partial Motion to Dismiss, giving Respondent a chance to argue the case in its Reply. Respondent did not address the logic of the case, but dismissed it as “inapplicable,” not persuasive and “factually too dissimilar to be persuasive in this matter.” Reply, pp. 4-5.

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affirm a final agency decision reversing an ALJ’s initial decision because it failed to apply the “appropriate categorical grant standard” required by agency’s controlling administrative regulations).

In this case, the agency’s interpretation of § 1-45-111.7(2)(b) in its Final Agency Action (available online here: <https://tracer.sos.colorado.gov/PublicSite/SearchPages/ComplaintDetail.aspx?ID=547>) was the very one embraced by the court of appeals in *Taheri. Id.* at 2024 WL 4019096 ¶¶ 5-9.<sup>5</sup> It rejected Respondent’s claim that the injury rule should be applied.

“The Deputy Secretary determines that, applying the plain language of section 1-45-111.7(2)(b), the start date for purposes of the statute of limitations is based on the date that a given complainant *knew or should have known* of the factual basis for a campaign finance complaint. *Crosby*, 251 P.3d at 1285.”

*Id.* at pp. 10-11. [Emphasis supplied.]

ALJs and hearing officers ‘are entirely subject to the agency on matters of law.’”) *Iran Air v. Kugelman*, 996 F.2d 1253, 1260 (D.C. Cir. 1993) (quoting Antonin Scalia, “The ALJ Fiasco--A Reprise,” 47 U. Chi. L. Rev. 57, 62 (1979)). “Once the agency has ruled on a given matter, it is not open to reargument by the administrative law judge.” Joseph Zwerdling, “Reflections on the Role of an Administrative Law Judge,” 25 Admin. L. Rev. 9, 12-13 (1973).

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<sup>5</sup> Before *Taheri v. Beall* reached the the Denver District Court and then the court of appeals, it was known by the caption *In re Suzanne Staiert* (ED 2020-30) (OAC Case No 2020-0014).

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I am thus persuaded by the reasoning of *Taheri v. Beall, supra*, and I am bound by the Final Agency Order *In re Suzanne Staiert*. Section 1-45-111.7(2)(b) of the FCPA contains a statute of limitations that is triggered by the discovery of the violation by the complainant. In this case, Respondent Weinberg must plead and prove the affirmative defense of statute of limitations in an answer to the complaint and with evidence at the trial of the matter.

**DIVISION’S COMPLAINT IS FILED UNDER § 1-45-111.7(5)(A)(V)**

Respondent argues that the administrative complaint is subject to the same 180 day statute of limitations as the third party complaint. Part. Mot., p. 9. That is not the law, however, after Colo. Const. art. XXVIII, § 9(2)(a) was declared unconstitutional and the current FCPA was enacted in 2019.

When the Division proceeds to prosecute a case, its administrative complaint is filed under FCPA § 1-45-111.7(5)(a)(V). That section does not impose a burden on the Division to plead or prove the timeliness of the underlying third party complaint as an element of the Division’s case-in-chief. Instead, the FCPA only requires that the Division file “a complaint with a hearing officer within thirty days after initiating an investigation,” § 1-45-111.7(5)(a)(IV), something it did in this case. Compl. ¶ 9.

Furthermore, the Division is not limited only to violations alleged in the third party complaint.

“If the division files a complaint with a hearing officer under this subsection (5), it is responsible for conducting such discovery as may be necessary for effectively prosecuting the complaint, *supplementing or amending the*

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*complaint with such additional or alternative claims or allegations as may be supported by the division's investigation, amending the complaint to strike allegations or claims that are not supported by the division's investigation, and in all other respects prosecuting the complaint.*

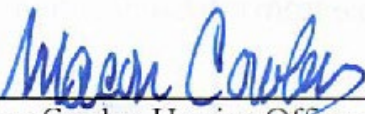
§ 1-45-111.7(5)(a)(V) [emphasis supplied].

Having investigated a third party complaint that was timely filed and that identified one or more campaign finance violations, the Division is authorized to supplement, amend and add additional or alternative claims to those alleged in the third party complaint.

**CONCLUSION**

For the reasons stated above, Respondent's Partial Motion to Dismiss is DENIED.

SO ORDERED this 4<sup>th</sup> day of May 2026.



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Macon Cowles, Hearing Officer

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one true copy of this Order Denying Partial Motion to Dismiss was sent via email on May 5, 2026 to the following:

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*/s/ N. B. Porte*

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Nathan Borochoff-Porte, Administrative Court Clerk