

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 23 CPF

ED Case No. 2024-107

In the Matter of

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

CITIZENS FOR NO NEW DEBT,

Respondent.

OPPOSITION TO MOTION TO DISMISS

Respondent, Citizens for No New Debt, moves to dismiss the Complaint on the grounds that the Complaint was untimely filed and because it is “riddled with inaccuracies.” Mot. to Dismiss at 1 (July 14, 2025). However, the Division’s Complaint was timely filed within thirty days of the Notice of Investigation in this matter, taking into account that the deadline fell on a Sunday. Respondent’s other contentions are factual attacks on the Complaint best resolved at a hearing. The Motion should be denied.

FACTUAL BACKGROUND

On May 16, 2025, the Elections Division of the Department of State served a Notice of Investigation on Citizens for No New Debt. Compl. ¶ 10 (June 16, 2025). Under section 1-45-111.7(5)(a)(IV), C.R.S. (2024), “the Division shall determine whether it will file a

complaint with a hearing officer within thirty days after initiating an investigation.” Here, that date was Sunday, June 15, 2025.

The Division’s complaint, filed the following Monday, June 16, 2025, alleged that Citizens for No New Debt qualified as an issue committee under Colorado law, but had failed to register (Claim 1) or report its contributions and expenditures (Claim 2). The complaint also alleged that Citizens for No New Debt had failed to include compliant disclaimers on its electioneering communications (Claim 3).

LEGAL STANDARD

To survive a Motion to Dismiss, a complaint must state a plausible claim for relief. *Cnty. Comm’rs of Boulder Cnty. v. Suncor Energy USA, Inc.*, 2025 CO 21, ¶ 25. As part of this review, the court must “accept all allegations of material fact in the complaint as true,” and “view the complaint’s allegations in the light most favorable to the plaintiff.” *Id.*

ARGUMENT

I. Because thirty days from May 16 fell on a Sunday, the Division’s deadline for filing a complaint fell to the following Monday.

In this forum, the Colorado Rules of Civil Procedure apply “unless inconsistent with these rules and the applicable statute.” 8 CCR 1505-3, Rule 3.12.1. Relevant here, Rule 6(a)(1) states that when the last day of any period of time is a “Saturday, a Sunday, or a legal holiday, . . . the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.” Colo. R. of Civ. P. 6(a)(1). *See also Austin v. Weld Cnty.*, 702 P.2d 293, 295 (Colo. App. 1985) (rejecting argument that statutory deadline was not subject to Rule 6’s “roll forward” provision)

Here, the thirty-day window during which the Division needed to decide whether to file a complaint with the hearing officer expired on Sunday, June 15, 2025. Under Rule 6, that deadline fell forward to Monday, June 16, 2025. Because the Division filed on Monday, June 16, 2025, the Complaint was timely filed.

Moreover, even if the Division had not filed within thirty days, the Complaint would still not be subject to dismissal. As a general rule, statutory “provisions that prescribe the time within which an agency must act are presumed to be directory unless the statute suggests a contrary intent.” *In re Protest of McKenna*, 2015 CO 23, ¶ 20; *see also DiMarco v. Dept. of Rev., Motor Vehicle Div.*, 857 P.2d 1349, 1352 (Colo. 1993) (“[O]ur appellate courts have generally construed time limitations imposed on public bodies as being directory rather than mandatory, unless the General Assembly has clearly evidenced a contrary intent.”). Because the statute is directory, not mandatory, failure to file within the prescribed thirty days would not be a jurisdictional defect. *See generally DiMarco*, 857 P.2d at 1352.

II. Respondent’s alleged “inaccuracies” are factual matters suitable for a hearing.

Next, Respondent alleges a series of factual “inaccuracies” it claims entitle it to dismissal. The Hearing Officer should decline to adjudicate these factual disputes at the Motion to Dismiss stage.

At this stage, the Hearing Officer “accept[s] all factual allegations in the complaint as true, viewing them in the light most favorable to the [Division].” *Norton v. Rocky Mountain Planned Parenthood, Inc.*, 2018 CO 3, ¶ 7. In its Motion, Respondent argues that many of the factual allegations made by the Division are not true. For example, Respondent argues it did not have “a major purpose” of supporting or opposing any ballot measure in 2024, and therefore did not qualify as an issue committee. Respondent does not argue that the Division has failed to allege a cause of action or that the Division failed to allege the requisite elements of a claim, including a claim based on Respondent having a major purpose of supporting or opposing a ballot measure. Instead, Respondent elects in its Motion to contest factually what its major purpose was.

The Complaint alleges sufficient facts to establish a plausible claim that Citizens for No New Debt qualified as an issue committee under Colorado law in 2024. *See Warne v. Hall*, 2016 CO 50, ¶ 30. According to the Complaint, “virtually all” of the organization’s spending in 2024, and “a significant number of the organization’s publications” in 2024 related to opposing a ballot measure. Under *Cerbo v. Protect Colo. Jobs*, 240 P.3d 495, 501-02 (Colo. App. 2010) and the Secretary’s Rules, 8 CCR 1505-6, Rule 4.4.1, these are factors that reflect a major purpose of ballot issue advocacy.¹

Respondent argues that these calculations are inaccurate because of personal expenses made by Respondent’s registered agent that should nonetheless be imputed to Respondent. Perhaps. But that factual dispute is outside the scope of the Complaint.

Respondent’s argument that its major purposes may evolve in the future also does not entitle it to dismissal. *See generally* Mot. to Dismiss at 6 (discussing sample sizes). Under Colorado law, an entity’s major purposes—at least for local ballot measures—are determined in part based on “the amount of money the organization had spent on the issue in question in relation to its *annual* budget.” 8 CCR 1505-6, Rule 4.4.1(b)(6) (emphasis added); *see also Cerbo*, 240 P.3d at 501-02 (expressing factors including an organization’s “*annual* expenditures” and “the amount of money it had spent on the issue in question in relation to its *annual* budget”) (emphases added). That the organization’s major purposes might evolve in

¹ In 2022, the General Assembly amended the definition of an issue committee, but only as applied to issue committees addressing *statewide* ballot measures. *See* Laws 2022, Ch. 400 (S.B. 22-237). “For an organization supporting or opposing a non-statewide ballot measure [like Respondent], a major purpose . . . is determined based on the consideration of” several factors, including “the organization’s demonstrated pattern of conduct, as reflected through . . . (1) the scope of the issues addressed in the organization’s print and electronic publications; (2) the length of time the organization had existed; . . . (6) the amount of money the organization had spent on the issue in question in relation to its annual budget.” 8 CCR 1505-6, Rule 4.4.1.

the future does not absolve Respondent of the requirement to register and report during the period it qualifies as an issue committee.

Finally, as to Claim 3, Respondent admits that some of its communications did not identify its registered agent but argues that others did. Mot. at 10. Again, the scope of Respondent's non-compliance on this point is not suitable for resolution at the Motion to Dismiss stage.

CONCLUSION

The Motion to Dismiss should be denied.

Respectfully submitted this 28th day of July, 2025

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Senior Assistant Attorney General, No 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I will cause the foregoing to be served this 28th day of July, 2025, by email and/or U.S. mail, addressed as follows:

Citizens for No New Debt
C/O Registered Agent J Robert Bailey
1410 Grant St.
C-205
Denver, CO 80203
Bailey@citizensfornonewdebt.org
Respondent

/s/ Peter G. Baumann