
State of Colorado
SECRETARY OF STATE
Administrative Hearing Office
1700 Broadway, Suite 550
Denver, CO 80290

Case number:

2025 AHO 23 CPF
(*in re* ED 2024-107)

In the Matter Of:

ELECTIONS DIVISION of the SECRETARY OF STATE

Complainant

v.

CITIZENS FOR NO NEW DEBT,

Respondent

ORDER DENYING MOTION TO DISMISS

The Complaint alleges violations of § 1-45-108(3.3) [failure to register an issue committee], § 1-45-108(1)(a)(I) [failure to report contributions and expenditures], and § 1-45-108(1) [failure to identify registered agent in disclaimers], C.R.S. of the Fair Campaign Practices Act (FCPA) in the 2024 election cycle.

Respondent answered the Complaint with a hybrid pleading on the Elections Division July 14, 2025. The pleading was informal—partly an Answer to the Complaint, partly a Motion to Dismiss for failure to state a claim, partly a motion for judgment on the pleadings (in which both the Complaint and the Answer are considered). This Order construes the July 14th pleading as both a Motion to Dismiss the Complaint and a Motion for Judgment on the pleadings. Construed either way, the deference that a court must have for the allegations in the Complaint are essentially the same. From this point forward in this Order, I will refer to Respondent’s motions only as a Motion to Dismiss.

There are several legal bases for motions to dismiss. C.R.C.P. Rule 12(b).

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- (1) lack of jurisdiction over the subject matter;
 - (2) lack of jurisdiction over the person;
 - (3) insufficiency of process;
 - (4) insufficiency of service of process;
 - (5) failure to state a claim upon which relief can be granted; or
 - (6) failure to join a party under C.R.C.P. 19.

It is clear from reading Respondent's motion to dismiss that it asserts the Complaint should be dismissed for failure to state a claim upon which relief can be granted. C.R.C.P. Rule 12(b)(5). The Motion sets forth these bases for a dismissal: 1) the administrative complaint was not timely filed within 30 days of the completion of an investigation, and; 2) Respondent is not an issue committee whose major purpose is to support or oppose ballot issues. I will address each in turn.

Standard of Review. In considering a motion to dismiss, the trial court or hearing officer in an administrative proceeding must determine if under any theory of law plaintiff would be entitled to relief. If relief could be granted under such circumstances, then the complaint is sufficient. *Denver & R. G. W. R. R. v. Wood*, 28 Colo. App. 534, 476 P.2d 299 (1970). A trial court is *not* required to make findings of fact or conclusions of law when ruling on a motion to dismiss. *Jamison v. People*, 988 P.2d 177, 179 (Colo. App. 1999). Instead, the focus is on the sufficiency of the Complaint.

"Motions to dismiss for failure to state a claim under C.R.C.P. 12(b)(5) are viewed with disfavor." *Begley v. Ireson*, 2017 COA 3, ¶ 7. "In reviewing a motion to dismiss, [the Court] accept[s] all matters of material fact in the petition as true and view[s] the allegations in the light most favorable to the plaintiff." *Abu-Nantambu-El v. State*, 2018 COA 30, ¶ 8. "Under this standard . . . a party must plead sufficient facts that, if taken as true, suggest plausible grounds to support a claim for relief." *Id.* (citing *Warne v. Hall*, 2016 CO 50, ¶ 24). "A claim has facial plausibility when the plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Was the Complaint Timely Filed?

1. The Division issued a Notice of Investigation pursuant to § 1-45-111.7(5)(a)(IV) May 16, 2025. Complaint, ¶ 10. It filed the administrative Complaint June 16, 2025. Respondent alleges that the Complaint must be dismissed as it was filed 31 days, Mot. Dismiss, ¶ 10, or 32 days, Reply, p. 6, after the Notice of Investigation.

2. A challenge that the complaint was not timely filed is not jurisdictional, but rather it is an affirmative defense on which Respondent has the burden of proof *at trial*. *Martinez v. Nash Finch Co.*, 2013 U.S. Dist. LEXIS 138351, at *14 [2013 WL 5400413] (D. Colo. Sept. 26, 2013) (“The Defendant argues that the Plaintiffs’ . . . claims are time-barred, and therefore judgment must enter in its favor on these claims. On this affirmative defense, the Defendant has the burden of proof.”).

3. It would be plain error for me to dismiss the case based on the timeliness of the Complaint at this stage of the proceeding. However, I will make a note of the math and rules used to count days in this proceeding. Friday May 16 (when the investigation began) is the Day 136 in the 2025 calendar. Monday June 16 (when the Complaint was filed) is Day 167. “[T]he day of the act, event, or default from which the designated period of time begins to run shall not be included [in computing time].” C.R.C.P. 6(a)(1). The 30th day following the initiation of investigation on May 16, therefore, was June 15, as Respondent pointed out in the Motion to Dismiss. However, when the last day of a window of time falls on a Sunday as it did in this case, the time is extended “until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.” C.R.C.P. 6.¹

4. Unless Respondent has additional evidence which it can provide at the upcoming hearing, the allegations in the Complaint show that it was timely filed within the 30 days referenced in § 1-45-111.7(5)(a)(IV).

¹ There is no provision in the Secretary of State’s General Policies and Administration Rules, 8 CCR 1505-3, that cover this situation. However, when GPAR Rule 3 does not otherwise provide, the Colorado Rules of Civil Procedure set forth the applicable rules. GPAR 3.12.1, 8 CCR 1505-3.

Is Respondent an issue committee whose major purpose is to support or oppose ballot issues?

5. Respondent asserts repeatedly in the Motion that the major purpose of Citizens for No New Debt is NOT to support or oppose ballot issues. See Motion at ¶¶ 1, 3, 23, 31, and 36. Respondent also flatly denies being an “issue committee.” ¶¶ 27, 28, 32 and 37. But whether Respondent is or is not an issue committee and whether it had or did not have “a major purpose” of supporting or opposing any ballot issue or ballot measure are both issues of fact that must be determined at trial. In ruling on a motion for judgment on the pleadings, the court must construe the allegations of the pleadings strictly against the moving party and must consider the allegations of the opposing party’s pleadings as true. *Abts v. Bd. of Educ.*, 622 P.2d 518 (Colo. 1980); *Strout Realty, Inc. v. Snead*, 35 Colo. App. 204, 530 P.2d 969 (1975).

6. The Complaint here is detailed and thoroughly descriptive. It is what lawyers describe as a “well pleaded” complaint. As such, in ruling on a motion to dismiss, the court can consider only those matters stated in the complaint. *Abts, id.* at 522 n.5. The Complaint acknowledges that Citizens for No New Debt was not exclusively established to oppose any ballot issue or ballot measure, ¶ 23, but that nonetheless Respondent had “a major purpose” of opposing Denver Ballot Issue 4A. ¶¶ 3, 29-31. Respondent denies this. Because there is a conflict over the facts, the decision must follow presentation of the facts at trial.

7. When reviewing a motion to dismiss, a court must accept the material allegations of the complaint as true and the complaint cannot be dismissed unless it appears that the non-moving party is entitled to no relief under any statement of facts which may be proved in support of the claims. *Douglas County Nat. Bank v. Pfeiff*, 809 P.2d 1100 (Colo. App. 1991).

8. For the reasons set forth above, Respondent’s Motion To Dismiss is DENIED.

9. **The June 20, 2025 Scheduling Order is amended as follows.**

10. **Prehearing Statements** are due August 12, 2025 and shall comply with GPAR Rule 3.11.3. Include an estimate of time needed for direct examination of each

witness in each parties' case in chief, as well as the amount of time required to try the case.

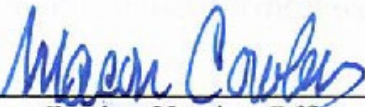
11. Exchange of exhibits and exhibit format.

- a. Exhibits of the parties are to be exchanged and provided to the hearing officer on August 12, 2025.
- b. Each party shall put its exhibits in a single bookmarked pdf file, with each exhibit labeled (with the Division using numbers and the Respondent using letters) and bookmarked within the pdf file. The exhibit "labels" must contain the exhibit number or letter, the hearing date and the case number.
- c. Each party shall also file an exhibit list in the form of a Microsoft Word document, or some other commonly used word processing application.

12. Service of prehearing statements and exhibits. All pleadings shall be served on the hearing officer at administrativehearingofficer@coloradosos.gov and on the other persons using the coordinates shown for them in the Certificate of Service below.

13. Hearing in this matter, pursuant to §1-45-111.7(6)(a) and §24-4-105, C.R.S. will proceed as scheduled on Tuesday, August 19, 2025 at 2:00 PM in the hearing room of the Secretary of State at 1700 Broadway, Suite 550, Denver, Co 80290.

SO ORDERED this 4th day of August 2025.



Macon Cowles, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one true copy of this Order Denying Motion to Dismiss was sent via email on August 5, 2025 to the following:

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/s/ Nathan B. Porte

Nathan Borochoff-Porte, Administrative Court Clerk