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EXECUTIVE SUMMARY

This is the first annual report produced by Colorado Ethics Watch (“Ethics Watch”) chronicling the ethical transgressions of state and local public officials. Over the past few years, the issue of government ethics has taken on new resonance. In the 2006 mid-term elections, national exit polls showed that 42% of voters called corruption an extremely important issue in their choices at the polls, ahead of terrorism, the economy and the war in Iraq. In Colorado, voters overwhelmingly approved Amendment 41 to the state constitution, which sets some of the strictest government ethics rules in the country. Despite this mandate and increased media and public awareness of government ethics issues, many public officials continue to behave as if they are beyond reproach.

In the first section of this report, Ethics Watch documents the unethical and unlawful activities of ten public officials: four state elected officials and six local elected officials. Their ethical transgressions range from undisclosed conflicts of interest and public censure to campaign finance violations and assault with a deadly weapon.

In the second section of this report, Ethics Watch profiles one state elected official whose conduct appears patently unethical but is technically not illegal. This official, categorized as dishonorable mention, demonstrates the need for stricter ethics laws at the state and local level. Too often public officials are exonerated for unethical conduct because either no enforcement mechanism exists in state or local ethics rules or because the conduct in question technically does not rise to the level of a crime. Until public officials are held accountable for all of their ethical transgressions, corruption will continue to undermine the public good.

The purpose of this report is not just to bring attention to the unethical conduct of those named in the report but also to increase public awareness about the subject of government accountability generally. Although much of the information contained in this report is available from other sources, this is the first time it has been compiled in one place. While the allegations against some named officials have been well publicized, the activities of others have gone relatively unnoticed.

This report is by no means exhaustive and Ethics Watch is mindful that countless other public officials may have committed similar and perhaps more egregious acts. And since this report only names current public officials, many others demonstrating unethical and illegal behavior in the past year who have since resigned have been left out.

METHODOLOGY

To create this report, Ethics Watch reviewed news articles, Colorado Secretary of State campaign finance reports, state audits, emails, and personal financial and travel disclosure forms. Ethics Watch then analyzed that information to determine whether the information discovered suggested that a public official’s conduct violated any state laws, regulations or ethics rules.

MOST CORRUPT OFFICIALS

MIKE COFFMAN, COLORADO SECRETARY OF STATE

Mike Coffman (R) was elected to serve as Colorado Secretary of State in 2006. Sec. Coffman previously served in the legislature and as the Colorado State Treasurer. Sec. Coffman's ethics violations stem from his use of public office to benefit his own campaign activities.

Dan Kopelman and Political Live Wires

Dan Kopelman is the sole owner and operator of a political consulting business and website called Political Live Wires.¹ Since 2004, Mr. Kopelman, through Political Live Wires, has provided political consulting services to Republican candidates for elected office, including the sale of targeted voter lists and voter registration data.²

Sec. Coffman and Mr. Kopelman are long-time political allies.³ In 2006, while Sec. Coffman was serving as state treasurer and campaigning for secretary of state, his candidate committee paid Mr. Kopelman \$1,500 for campaign consulting services.⁴ In addition, his candidate committee reported two additional expenditures to Political Live Wires during the 2006 election cycle, and reported numerous expenditures to Mr. Kopelman personally.⁵

Promptly after taking office in January 2007, Sec. Coffman hired Mr. Kopelman as the state's Elections Technology Manager.⁶ Mr. Kopelman continued to own and operate Political Live Wires while serving as the elections technology manager for the secretary of state's office, often using state resources for his personal business-related activities.⁷ Mr. Kopelman regularly used the email address "info@politicallivewires.com" to correspond with Sec. Coffman, senior staff in his office and others, often with a signature block identifying his state position as "State

¹ "Summary – Political Live Wires," Colorado Sec. of State's website, January 1, 2004, <http://www.sos.state.co.us/pubs/business/main.htm> (Exhibit 1); Denver Post Editorial Board, Coffman draws clear line on partisanship, *Denver Post*, May 21, 2007 (Exhibit 2).

² Jennifer Brown, Secretary of state tightens rules on staffers' activities, *Denver Post*, May 18, 2007 (Exhibit 3).

³ Contribution Detail – Contributor: Daniel Kopelman, Colorado Sec. of State's website, January 8, 1996; May 23, 1996; September 29, 1997; January 4, 2006 (Exhibit 4); Expenditure Detail – Payee: Daniel Kopelman, Colorado Sec. of State's website, May 22, 1998; September 11, 1998; October 1, 1998; December 31, 1999; April 16, 2003; November 1, 2003; September 12, 2006; December 15, 2006; December 15, 2006 (Exhibit 5); April M. Washington, Coffman eyes rules for staff, *Rocky Mountain News*, May 12, 2007 (Exhibit 6); Lynn Bartels, Group, Coffman seek audit of election technology chief, *Rocky Mountain News*, May 9, 2007 (Exhibit 7).

⁴ Kevin Duggan, Coffman gets election primer, *Fort Collins Coloradoan*, November 15, 2006 (Exhibit 8); Dan Kopelman Employment Record, Colorado State Treasurer's Office, October 25, 2006 – November 7, 2006 (Exhibit 9); Coloradans for Coffman (Sec. of State Committee), Expenditure Detail – Payee: Political Live Wires, Colorado Sec. of State's website, April 15, 2005; August 9, 2005 (Exhibit 10).

⁵ Coloradans for Coffman (Sec. of State Committee), Expenditure Detail – Payee: Daniel Kopelman, Colorado Sec. of State's website, September 12, 2006; December 15, 2006; December 15, 2006 (Exhibit 11).

⁶ Lynn Bartels, Coffman demotes, reassigns elections division worker, *Rocky Mountain News*, May 10, 2007 (Exhibit 12).

⁷ See e.g., Emails from Dan Kopelman to Mike Coffman and Abby Thomas between January 31, 2007 and May 3, 2007 (Exhibit 13).

of Colorado, Elections Technology Manager.”⁸ Sec. Coffman and his executive assistant, Abby Thomas, received Political Live Wires’ email newsletter directly from Mr. Kopelman at their state email addresses at least twice a month between January and May 2007.⁹

In May 2007, an internet news source revealed that even after starting his position in the secretary of state’s office, Mr. Kopelman continued to operate Political Live Wires.¹⁰

On May 9, 2007, the state auditor’s office agreed to conduct a performance audit and investigate the allegations regarding Mr. Kopelman.¹¹

On December 3, 2007, the auditor’s office released the results of its performance audit in a comprehensive report to the legislative audit committee.¹² The audit concluded that Mr. Kopelman had violated state law and personnel rules by engaging in outside activities that were incompatible with the duties and responsibilities of his state position and failing to obtain required authorization to operate his outside business.¹³ More importantly, the audit concluded that Sec. Coffman “shares responsibility for these violations.”¹⁴

In fact, the audit concluded that Sec. Coffman was aware of at least two instances in which his employees were operating outside businesses without having obtained the required formal approval.¹⁵ While the audit did not identify the two employees, it is inconceivable that Sec. Coffman and his executive assistant could have received Mr. Kopelman’s Political Live Wires newsletter without realizing that Mr. Kopelman was continuing to operate Political Live Wires.¹⁶ The identity of the second employee that Sec. Coffman knew was operating an unauthorized outside business, and the nature of that business, remain undisclosed.¹⁷

⁸ See Emails between Dan Kopelman, John Gardner, Brian Anderson and Jacque Ponder dated January 17, 2007, February 27, 2007, March 1, 2007, March 4, 2007, and March 13, 2007 (Exhibit 14).

⁹ See Emails from Dan Kopelman to Mike Coffman and Abby Thomas, Jan. 31, 2007 - May 3, 2007 (Exhibit 13).

¹⁰ Todd Johnston, CO state worker sells voter data to GOP, Sec. of State investigating, *ePluribus Media*, May 4, 2007 (Exhibit 15); Todd Johnston, BREAKING: Colo. elections IT mgr. selling “voter data” to GOP candidates, *ePluribus Media*, May 3, 2007 (Exhibit 16).

¹¹ See Letter from Chantell Taylor, Director, Colorado Ethics Watch to Sally Symanski, State Auditor of Colorado, May 8, 2007 (Exhibit 17); Letter from Mike Coffman, Secretary of State of Colorado, to Sally Symanski, State Auditor of Colorado, May 8, 2007 (Exhibit 18); Letter from State Auditor’s office to Chantell Taylor, Director, Colorado Ethics Watch, May 9, 2007 (Exhibit 19).

¹² See Voter Registration, Help America Vote Act, Department of State, Performance Audit, Office of the State Auditor Staff, November 2007 (the “Audit”) (Exhibit 20).

¹³ See id., p.45.

¹⁴ See id. (citing 4 CCR § 801, Rule 1-11) (providing that appointing authorities such as Sec. Coffman “are accountable for compliance with these rules”).

¹⁵ See id., p. 45.

¹⁶ See Emails from Dan Kopelman to Mike Coffman and Abby Thomas, Jan. 31, 2007- May 3, 2007 (Exhibit 13).

¹⁷ See Audit, p. 45.

Conflicts of Interest

It is unlawful for Colorado state employees to engage in any activity that creates a conflict of interest with their official duties.¹⁸ Colorado law provides that department heads such as the Secretary of State “shall be responsible and accountable for the actual operation and management of the state personnel system for their respective departments...”¹⁹ Similarly, state personnel board rules make department heads like Sec. Coffman, “accountable for compliance with [state personnel] rules and state and federal law...”²⁰

Sec. Coffman appears to have violated state personnel statutes and rules by knowingly permitting Mr. Kopelman to operate Political Live Wires while employed as election technologies manager for the State of Colorado. Serious questions remain as to whether Sec. Coffman violated these provisions with respect to the second employee that the state auditor found was operating an unauthorized side business with Sec. Coffman’s knowledge.

Official Misconduct

Colorado law declares that a public official who knowingly fails to perform a legal duty, or who violates statutes, rules or regulations pertaining to his or her office, is guilty of the crime of second degree official misconduct.²¹ If the public official also intended to obtain a benefit for him/herself or another person, the public official is guilty of first degree official misconduct.²²

By knowingly permitting Mr. Kopelman to operate a partisan political side business that was in conflict with his duties as a state employee, Sec. Coffman appears, at a minimum, to have committed second degree official misconduct. If Sec. Coffman ignored Mr. Kopelman’s conflict because Mr. Kopelman’s continued operation of Political Live Wires helped Sec. Coffman promote his congressional campaign, then Sec. Coffman would be guilty of first degree official misconduct.

Premier Voting System Certification

As the result of a lawsuit filed against his predecessor in 2006 regarding certification of electronic voting systems, Sec. Coffman was required to establish a rule containing minimum security standards for electronic voting systems and to “retest previously certified systems or any new systems . . . prior to the next primary, general or statewide ballot issue election following the November 7, 2006 general election, whichever comes first.”²³ To that end, in the spring of 2007 Sec. Coffman convened an independent panel of experts on electronic voting systems and accepted applications for certification of voting systems from four vendors. Diebold Election Systems, Inc., now known as Premier Election Systems, Inc. (“Premier”), was one of the applicants.

¹⁸ C.R.S. § 24-50-117.

¹⁹ C.R.S. § 24-50-101(d).

²⁰ 4 CCR § 801, Rule 1-11.

²¹ C.R.S. § 18-8-405.

²² C.R.S. § 18-4-404.

²³ See Findings of Fact and Conclusions of Law, Myriah Sullivan Conroy, et al. v. Ginette Dennis, Denver District Court Case No. 06CV6072, p. 8 (Exhibit 21).

In August 2007, Sec. Coffman consulted with Phase Line Strategies LLC (“Phase Line”) about hiring the company to run his campaign for the open congressional seat in the sixth district of Colorado.²⁴ Phase Line’s president, Sean Tonner, like Mr. Kopelman, is a political confidant of Sec. Coffman; Mr. Tonner told the *Rocky Mountain News* that he has had a working relationship with Sec. Coffman for more than ten years.²⁵

On September 17, 2007, Premier hired Phase Line as its lobbyist of record in the State of Colorado.²⁶ While Phase Line was lobbying on behalf of Premier, it was also working on Sec. Coffman’s congressional campaign.²⁷ Acting as Sec. Coffman’s spokesman, Mr. Tonner told a reporter on October 30, 2007 that Sec. Coffman “has every intention to run” for the open congressional seat in the sixth district of Colorado.²⁸ In November, Sec. Coffman filed his “Statement of Candidacy for Congress” and formally engaged Phase Line to manage his campaign.²⁹

In December 2007, Sec. Coffman admitted that he had known of the connection between Phase Line and Premier for a couple of months.³⁰ Sec. Coffman failed to disclose the existence of this conflict of interest and proceeded to rule on Premier’s application for certification of its voting systems.³¹

On December 17, 2007, Sec. Coffman decided to reject the advice of his own expert panel and certify the voting systems manufactured by only one vendor – Premier. As the rationale for his decision, Sec. Coffman claimed that Premier “substantially complie[d]” with legal requirements.³² Sec. Coffman decertified the systems of all the other vendors -- who had not hired Sec. Coffman’s campaign manager to lobby for them -- seeking certification of their electronic voting machines.³³

Sec. Coffman has contended that he instituted screening procedures within his office to address the conflict of interest arising from Phase Line’s joint representation of himself and

²⁴ See Myung Oak Kim and Lynn Bartels, Sec. of state’s campaign advisers also represent e-voting firm, *Rocky Mountain News*, December 20, 2007 (Exhibit 22).

²⁵ See Lynn Bartels, Boss denies e-vote conflict, *Rocky Mountain News*, December 21, 2007 (Exhibit 23).

²⁶ See Colorado Sec. of State Employer Results for Premier Election Solutions (Exhibit 24).

²⁷ See Anne C. Mulkern, Tancredo won’t seek re-election; candidates line up, *Denver Post*, October 30, 2007 (Exhibit 25).

²⁸ Id.

²⁹ See Coffman for Congress, FEC Form 2, November 5, 2007 (Exhibit 26); Kim and Bartels, *Rocky Mountain News*, Dec. 20, 2007 (Exhibit 22).

³⁰ See John Ingold, Critics question Coffman ties to lobbying firm, *Denver Post*, December 21, 2007 (Exhibit 27).

³¹ See id.

³² See Letter from Mike Coffman to Don Vopalensky, State Certification Manager of Premier, dated December 17, 2007 (Exhibit 28).

³³ See Letter from Mike Coffman to Steve M. Pearson, Vice President, Certification of ES&S, dated December 17, 2007 (Exhibit 29); Letter from Mike Coffman to David Hart, President of Hart, dated December 17, 2007 (Exhibit 30); Letter from Mike Coffman to Ed Smith, Compliance Manager of Sequoia, dated December 17, 2007 (Exhibit 31).

Premier.³⁴ Documents obtained by Ethics Watch pursuant to an open records request suggest that no such procedures existed.³⁵

Election Code

Sec. Coffman's responsibility to certify electronic voting systems is established in the Colorado Election Code.³⁶ Any person who engages in "corrupt conduct in the discharge" of any duty under the Election Code is guilty of a misdemeanor.³⁷

By authorizing the certification of Premier's voting system against the recommendations of the expert panel when a known conflict existed between Sec. Coffman and Premier's lobbying firm, Sec. Coffman appears to have engaged in "corrupt conduct in the discharge" of his duties under the Election Code.³⁸

Official Misconduct

Sec. Coffman appears to have violated Colorado law by making the discretionary determination to certify Premier's voting systems despite his known conflict of interest by way of their mutual engagement of Phase Line.³⁹ If so, his conduct constitutes second degree official misconduct. A public servant commits second degree official misconduct "if he knowingly, arbitrarily, and capriciously... [r]efrains from performing a duty imposed upon him by law; or... [v]iolates any statute or lawfully adopted rule or regulation relating to his office."⁴⁰

Conflicts of Interest

It is unlawful for Colorado state employees to engage in any activity that creates a conflict of interest with their official duties.⁴¹ Colorado law provides that department heads such as the Secretary of State "shall be responsible and accountable for the actual operation and management of the state personnel system for their respective departments..."⁴²

Secretary Coffman appears to have violated state personnel rules and state law by failing to disclose his conflict with Premier by way of their mutual engagement of Phase Line and then acting on Premier's application while the conflict existed.

³⁴ See John Ingold, [Watchdog group files complaint against Coffman](#), *Denver Post*, February 14, 2008 (Exhibit 32); Ingold, *Denver Post*, Dec. 21, 2007 (Exhibit 27).

³⁵ Letter from Luis Toro, Senior Counsel, Ethics Watch, to Mike Coffman, Secretary of State of Colorado, February 14, 2008 (Exhibit 33); Letter from Richard Coolidge, Communications Director, Colorado Department of State to Luis Toro, Ethics Watch, with associated documents, February 20, 2008 (Exhibit 34).

³⁶ C.R.S. § 1-5-614.

³⁷ C.R.S. § 1-13-107.

³⁸ See *id.*

³⁹ See C.R.S. § 24-50-117.

⁴⁰ C.R.S. § 18-8-405.

⁴¹ C.R.S. § 24-50-117.

⁴² C.R.S. § 24-50-101(d).

ANDY McELHANY, SENATE MINORITY LEADER

Andy McElhany (R-SD12) has served in the Colorado Senate representing Colorado Springs since 2000. Sen. McElhany's ethics issues stem from his unlawful use of a political donation to pay for official functions, failure to file proper disclosures, illegal use of the state seal and improper use of state resources for partisan activities.

Colorado Senate News Website

On January 29, 2007, Sen. McElhany unveiled a new website for all official communications of the Senate Minority Office, www.ColoradoSenateNews.com.⁴³ Sen. McElhany hired Brad Jones, of Brad Jones, LLC, to design and host the site.⁴⁴ Mr. Jones is a Republican political consultant and owner/operator of a conservative website called FacetheState.com.⁴⁵ According to Sen. McElhany, the site was paid for in whole or in part by a \$2,700 "gift" from the Senate Majority Fund ("SMF"), a state registered Republican political committee.⁴⁶ Neither Sen. McElhany nor any other members of the Senate Minority Office reported receiving a gift from the SMF in their 2007 disclosure reports.⁴⁷

State employees working for the Senate Minority Office operate and maintain the site.⁴⁸ These employees use government-issued e-mail addresses to send daily electronic alerts about matters involving the minority office and its members.⁴⁹ Each alert directs readers to the official ColoradoSenateNews.com website where a full story is posted.⁵⁰ The website lists the Senate Minority Office address at the state capitol as contact information.⁵¹

⁴³ Press Release, McElhany announces: 'My last press release ever', Colorado Senate News website, January 29, 2007, <http://www.coloradosenatenews.com/content/view/17/26/> (Exhibit 35).

⁴⁴ Id.; E-mail from Renee White, Assistant to the Senate Minority Leader, January 30, 2007 (Exhibit 36); April M. Washington and Alan Gathright, Dems ask if state resources used to expose 'place in hell' e-mail, *Rocky Mountain News*, April 5, 2007 (Exhibit 37); April M. Washington and Alan Gathright, Senate Republicans pull state seal from Web site, *Rocky Mountain News*, April 11, 2007 (Exhibit 38).

⁴⁵ Washington and Gathright, *Rocky Mountain News*, April 5, 2007 (Exhibit 37); Washington and Gathright, *Rocky Mountain News*, April 11, 2007 (Exhibit 38).

⁴⁶ Id.; Senate Majority Fund Committee Detail, Colorado Sec. of State's website, January 14, 2003 (Exhibit 39).

⁴⁷ Reports of Gifts, Honoraria and Other Benefits, Friends of Andy McElhany, Citizens for Greg Brophy, Committee to Elect Ted Harvey SD 30, Committee to Elect Steve Johnson, Committee to Elect Ken Kester, Mike Kopp for Colorado, Ron May for Senate, Friends of Shawn Mitchell, Friends of Josh Penry (SD #7), Scott Renfroe for Senate, Schultheis for Senate District 9, Nancy Spence for State Senate, Taylor, Jack for Senate, Steve Ward for Colorado Senate, Tom Wiens for State Senate, Colorado Sec. of State's website, 2007, <http://www.elections.colorado.gov/DDefault.aspx?tid=85>.

⁴⁸ Press Release, Colorado Senate News website, Jan. 29, 2007 (Exhibit 35); E-mail from Renee White, Jan. 30, 2007 (Exhibit 36); Washington and Gathright, *Rocky Mountain News*, April 5, 2007 (Exhibit 37); Washington and Gathright, *Rocky Mountain News*, April 11, 2007 (Exhibit 38).

⁴⁹ Press Releases from Joseph Megyesy, Legislative Receptionist, April 9-12, 2007 (Exhibit 40); Press Release from Steve Grazier, Senate Minority Press Secretary, Democrat Iraq resolution called part of 'divisive' national campaign, February 20, 2007 (Exhibit 41).

⁵⁰ Press Releases from Joseph Megyesy, April 9-12, 2007 (Exhibit 40); Press Release from Steve Grazier, Feb. 20, 2007 (Exhibit 41).

⁵¹ Colorado Senate News website, Contact Page, http://www.coloradosenatenews.com/component/option,com_contact/Itemid,3/ (Exhibit 42).

Use of private funds for public functions

Sen. McElhany appears to have violated state law by using private funds to defray expenses for official duties. According to state statute:

Each incumbent in or candidate elected to statewide elected office is prohibited from knowingly receiving or accepting from any other person, in connection with the public service of the incumbent or elected candidate... gift of any money, including but not limited to a loan, pledge, or advance of money, a guarantee of a loan of money, or any monetary payment given, directly or indirectly, for the purpose of defraying any expenses related to the official duties undertaken by the incumbent or elected candidate; or ... an in-kind gift.⁵²

As used in this section, "statewide elected office" includes members of the general assembly.⁵³ Violations of this provision are misdemeanors, punishable by fines of up to \$1,000.⁵⁴

Sen. McElhany admits that he used a \$2,700 gift from SMF, a private, partisan political committee, to pay for the cost of the website, which now acts as the official "communications arm" of the minority office.⁵⁵ Therefore, Sen. McElhany appears to have violated state law by using the SMF gift to defray costs for official duties.

Failure to report gift

Even if the gift were legal, Sen. McElhany was required to report the gift to the secretary of state. State law requires every incumbent in or candidate elected to public office who receives from any other person a monetary gift exceeding \$25 or a gift of personal property with a value exceeding \$50 in connection with their public service to file quarterly reports containing, at a minimum, the name of the person from whom the item was received, the amount or value of the gift and the date it was received.⁵⁶ Violations of this provision are misdemeanors, punishable by fines up to \$1,000.⁵⁷

To date, neither Sen. McElhany nor any other members of the Senate Minority Office has reported a gift from the SMF in their 2007 reports.⁵⁸

⁵² C.R.S. § 24-6-203(3.5).

⁵³ C.R.S. § 24-6-203(1)(b)(III).

⁵⁴ C.R.S. § 24-6-203(7).

⁵⁵ Washington and Gathright, *Rocky Mountain News*, April 11, 2007 (Exhibit 38); Press Release, Left-leaning ethics 'watchdog' refuses to reveal funding sources, Colorado Senate News website, April 11, 2007, <http://www.coloradosenatenews.com/content/view/388/26/> (Exhibit 43).

⁵⁶ C.R.S. §§ 24-6-203(2), (3).

⁵⁷ C.R.S. § 24-6-203(7).

⁵⁸ Reports of Gifts, Honoraria and Other Benefits, Colorado Sec. of State's website, <http://www.elections.colorado.gov/DDefault.aspx?tid=85>.

Use of state seal

Any person who illegally uses or affixes the Colorado state seal to any written or printed document commits a class 5 felony.⁵⁹ For the first three months after ColoradoSenateNews.com launched, a copy of the state seal was prominently displayed at the top of the home page and in the body of all electronic notices.⁶⁰ Only after lawmakers and reporters began questioning the propriety of using the seal did Sen. McElhany have the seal removed.⁶¹

This is not the first time Sen. McElhany has participated in the felonious use of the state seal. In 2003, when Sen. McElhany was serving in the Colorado Senate, then District Attorney Bill Ritter conducted an inquiry into the possible misuse of the state seal on a website operated by Senate Republican Majority Fund, Inc.⁶² Then-Senate President John Andrews defended the use of the seal on the site, <http://www.ColoradoSenate.com>, which he described as a place for Republican senators to comment on policy, ballot issues and candidates for office.⁶³ But the site also provided a link allowing readers to make contributions to a Republican group and to Republican lawmakers.⁶⁴ Senator Andrews removed the seal from the site before the criminal investigation was complete.⁶⁵

Based on these facts, Sen. McElhany knew that use of the state seal in this context without permission was improper, thereby committing a class 5 felony.

The Denver District Attorney is currently investigating whether Sen. McElhany is criminally liable for the foregoing conduct.

Use of State Resources for Partisan Activities

Under Sen. McElhany's supervision, minority office employees have used ColoradoSenateNews.com to engage in partisan activities. For example, on April 11, 2007, the day after Ethics Watch publicly questioned Sen. McElhany's use of a political donation to fund the website, the Minority Office Legislative Initiatives Director contacted Ethics Watch and its affiliate, Citizens for Responsibility and Ethics in Washington ("CREW"), during normal business hours, apparently using his office telephone. This employee said he was calling on behalf of the minority office and asked a series of questions about how Ethics Watch and CREW are funded, including specifically whether they are funded by certain named Democratic donors; whether Ethics Watch's director ever worked for organized labor; whether Ethics Watch's director is a licensed attorney and other questions regarding her legal background; as well as whether either group has targeted any Democrats. This employee did not ask a single question relating to official actions of the minority office.

⁵⁹ C.R.S. § 24-80-902.

⁶⁰ Press Release, School-construction wish list slips through committee, Colorado Senate News website, March 30, 2007, <http://www.coloradosenatenews.com> (Exhibit 44).

⁶¹ Washington and Gathright, *Rocky Mountain News*, April 11, 2007 (Exhibit 38).

⁶² Julia C. Martinez, Republican group's use of state seal under scrutiny, *Denver Post*, July 4, 2003 (Exhibit 45).

⁶³ Id.

⁶⁴ Id.

⁶⁵ Julia C. Martinez, State seal pulled from GOP Senate website in wake of probe, *Denver Post*, July 9, 2003 (Exhibit 46).

Later that same day, the minority office press secretary released an e-mail alert on his state-issued e-mail account that read: “Left-leaning ethics watchdog refuses to reveal funding sources.”⁶⁶ The email directed readers to the official minority office website for a full article attacking Ethics Watch as a “left-leaning” organization.⁶⁷ The partisan political piece -- not written by any member of the news media -- discussed no official state business, policy issue or the work of state legislators.⁶⁸ Senate minority office employees operate and maintain the site using state-issued e-mail accounts during state-paid time.⁶⁹

State Personnel Rules and Colorado State Senate Employee Handbook

According to the Colorado State Senate Employee Handbook, “[u]nder no circumstances shall any equipment, supplies, and similar items, including internet access accounts, owned by the General Assembly be used for... political purposes of a partisan nature.”⁷⁰ Similarly, the Board Rules of the Department of Personnel state that employees “may participate in political activities subject to state and federal laws” but that “[n]o state time or property may be used for this purpose.”⁷¹

⁶⁶ Press Release, Colorado Senate News website, April 11, 2007 (Exhibit 43).

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Press Releases from Joseph Megyesy, April 9-12, 2007 (Exhibit 40); Press Release from Steve Grazier, Feb. 20, 2007 (Exhibit 41).

⁷⁰ Colorado State Senate, Employee Handbook 2007, p. 14 (Exhibit 47).

⁷¹ 4 CCR § 801, Rule 1-17.

DOUGLAS BRUCE, STATE REPRESENTATIVE

In December 2007, Douglas Bruce (R-HD15) was appointed by his party's vacancy committee to fill an open seat in the Colorado House of Representatives representing Colorado Springs. Rep. Bruce is the first legislator in recorded history to be formally censured by the House of Representatives for inappropriate conduct. Rep. Bruce's ethical lapses also include his egregious disregard of local housing ordinances as a landlord and property owner.

Censure by the House of Representatives

On January 14th, 2008, the day he was sworn into office, Rep. Bruce kicked a *Rocky Mountain News* photographer for taking his picture during the House prayer.⁷² The Speaker of the House of Representatives promptly established a special committee to investigate the circumstances surrounding the incident.⁷³

According to the special committee, Rep. Bruce "failed to acknowledge any wrongdoing or accept full responsibility for his behavior,"⁷⁴ instead publicly proclaiming that his conduct was warranted.⁷⁵ Referring to the photographer who took the picture, Rep. Bruce stated: "In 21 years, I don't think there has ever been an instance where I had to do something to stop somebody from behaving in such a coarse and disgusting way."⁷⁶

After completing its investigation, the special committee concluded that Rep. Bruce's use of physical force "to prevent unwanted public attention is inconsistent not only with the standards of order and decorum for the House chambers, but with the ordinary standards of decency..."⁷⁷ Accordingly, on January 24, 2008, by a vote of 62-1, the House of Representatives adopted a resolution formally censuring Rep. Bruce "for just cause."⁷⁸ Rep. Bruce is the first legislator in the recorded history of the state House to be formally censured.⁷⁹

Violations of Local Housing Codes

Before his appointment to the legislature, Rep. Bruce served as an elected county commissioner in El Paso County. While serving as commissioner, he committed repeated violations of city maintenance ordinances at his investment properties.⁸⁰ Comm. Bruce was

⁷² Chris Barge, Bruce alive and kicking in House, *Rocky Mountain News*, January 14, 2008 (Exhibit 48); Jennifer Brown, Kick helps get Bruce off on wrong foot with colleagues, *Denver Post*, January 15, 2008 (Exhibit 49).

⁷³ House Resolution 08-1005, Concerning the Censure of Representative Douglas Bruce, January 24, 2008 (Exhibit 50).

⁷⁴ Id.

⁷⁵ Barge, *Rocky Mountain News*, Jan. 14, 2008 (Exhibit 48).

⁷⁶ Id.

⁷⁷ House Resolution 08-1005, Jan. 24, 2008 (Exhibit 50).

⁷⁸ Id.

⁷⁹ Dan Frosch, Colorado Lawmaker Censured for Kicking, *New York Times*, January 25, 2008 (Exhibit 51).

⁸⁰ See e.g., Erin Emery, Bruce rips Springs order, *Denver Post*, August 1, 2007 (Exhibit 52).

publicly labeled as a “slumlord,” and several of his properties have been found in violation of regulations in Denver, Pueblo and El Paso counties.⁸¹

On June 14, 2007, Comm. Bruce was ordered by Colorado Springs Police Department Code Enforcement to fix two four-plexes he owned that had been boarded up since 2003, in violation of a city ordinance prohibiting the ownership or occupation of dilapidated buildings.⁸²

In response to the city’s order, Comm. Bruce vowed not to pay any fines and stated: “You may consider my having the buildings for sale... as my submission of a compliance plan.”⁸³

Threatening and Erratic Behavior

Rep. Bruce is also well known for insulting both co-workers and his own constituents. While serving as a county commissioner, he and Senior City Attorney Shane White had an altercation in September 2006 regarding the wording of two ballot measures. For the four weeks following the altercation, a court order was in place requiring Comm. Bruce to be accompanied by security guards if he entered city buildings. City employees who witnessed the altercation alleged that Comm. Bruce insulted Mr. White with profanities and raised his middle finger in a vulgar gesture as he was leaving. When asked about the appropriateness of the escort order, Councilman Jerry Heimlicher said: “I think [Comm. Bruce is] a threat to the city and the residents.” Also in response to this incident, Vice Mayor Larry Small said: “Doug Bruce is a bully and a tyrant.”⁸⁴

Rep. Bruce has become infamous in his behavior and actions. He has called the Colorado Springs City Council “swindlers, crooks, pond scum” and publicly charged that they “should be arrested and should be put in jail...”⁸⁵ El Paso County Attorney Bill Louis – who was appointed by the five-member board of commissioners that included Comm. Bruce – called him a “narcissist,” a “sociopath,” a “bully” and a “crackpot enabler” whose “guerilla tactics threatened democracy.”⁸⁶

⁸¹ Id.

⁸² Colorado Springs Mun. Code., ch.6, art.12, § 606.

⁸³ Emery, *Denver Post*, Aug. 1, 2007 (Exhibit 52); Bill Vogrin, Owners of dilapidated buildings get final notice, *Colorado Springs Gazette*, August 5, 2007 (Exhibit 53).

⁸⁴ Ed Sealover, No guard escorting Bruce in city buildings, *Colorado Springs Gazette*, October 24, 2006 (Exhibit 54).

⁸⁵ Cara DeGette, Toppling King Kong, *Colorado Springs Independent*, November 30, 2006 (Exhibit 55).

⁸⁶ Id.

WESLEY MCKINLEY, STATE REPRESENTATIVE

Wesley McKinley (D-HD64) is a third-term member of the Colorado House of Representatives from southeastern Colorado. Rep. McKinley's ethics issues arise from his candidate committee's repeated failure to comply with Colorado campaign finance disclosure laws.

Delinquent Filing of Contribution and Expenditure Reports

On December 26, 2006, the Colorado Secretary of State's office notified Rep. McKinley's candidate committee that it had failed to file its post-election contribution and expenditure report, which was due no later than 30 days after the 2006 election, or December 7, 2006.⁸⁷ Neither Rep. McKinley nor a representative from his committee responded to the delinquency notice until almost two months later when the committee requested a waiver of late fees.⁸⁸

A campaign finance complaint was filed against Rep. McKinley's candidate committee on February 17, 2007, alleging that he had violated the Fair Campaign Practices Act ("FCPA") by failing to file the post-election report.⁸⁹ A hearing on the complaint was set for March 2, but neither Rep. McKinley nor a representative from his committee appeared to defend against the claim.⁹⁰ Rep. McKinley's candidate committee eventually filed the post-election report on February 26, 80 days after it was due.⁹¹ Accordingly, the administrative law judge imposed a fine of \$4,000 on Rep. McKinley's candidate committee, one of the largest fines ever imposed for a delinquent filing under Colorado campaign finance disclosure laws.⁹²

Later that same year, Rep. McKinley's candidate committee committed a second violation of the FCPA for delinquent filings. On July 20, 2007, the secretary of state's office notified Rep. McKinley's candidate committee that it was delinquent for failing to file its second quarter report by the July 16, 2007 deadline.⁹³ The committee did not file that report until August 16, 2007.⁹⁴ Finding no good cause for the delinquency, the secretary of state's office

⁸⁷ Letter from Juan Melendez, Colorado Department of State Elections Division, to Dana Christie, McKinley Wesley for State Representative Dist. 64 Committee, December 26, 2006 (Exhibit 56); C.R.S. § 1-45-108.

⁸⁸ Letter from Dana Christie, Registered Agent, Wesley McKinley for State Representative Dist. 64, to Mike Coffman, Secretary of State, February 26, 2007 (Exhibit 57). Under the state constitution, the penalty for a late filing is fifty dollars per day, subject to waiver upon a showing of good cause to the secretary of state. Colo. Const., art. XXVIII, § 10(2)(a).

⁸⁹ Agency Decision, In the Matter of the Complaint Filed By C.A. MacMillan Regarding Alleged Campaign and Political Finance Violations By McKinley Wesley, for State Representative Dist. 64 Candidate Committee, Secretary of State, State of Colorado Case No. OS 2007-0002, p. 1 (March 30, 2007) (Exhibit 58).

⁹⁰ Id.

⁹¹ Id., p. 2.

⁹² Id., p. 5.

⁹³ Letter from Alyssa Prohaska, Colorado Department of State Elections Division, to Dana Christie, McKinley Wesley for State Representative Dist. 64 Committee, July 20, 2007 (Exhibit 59).

⁹⁴ Letter from Dana Christie, Registered Agent, Wesley McKinley for State Representative Dist. 64, to Mike Coffman, Secretary of State, August 15, 2007 (Exhibit 60).

denied Rep. McKinley's waiver request and imposed a \$2,200 fine for the late filing.⁹⁵ The \$6,200 combined total in fines imposed on Rep. McKinley's candidate committee in 2007 was substantially higher than the amount of fines imposed on any other candidate committee in Colorado for campaign finance disclosure violations.

Rep. McKinley's repeated violation of campaign finance disclosure laws reflects a pattern of disregard for basic requirements of Colorado's system for transparency in campaign finance and spending.

⁹⁵ Letter from Holly Z. Lowder, Director of Elections, Department of State, to Dana Christie, Wesley McKinley for State Representative Dist. 64, September 5, 2007 (Exhibit 61).

DARIUS ALLEN, ALAMOSA COUNTY COMMISSIONER

Darius Allen (R-D1) was elected to serve as Alamosa County Commissioner in 2004. Comm. Allen's ethics issues arise from his physically assaulting a county citizen at a public commissioners meeting.

Assaulting a Constituent

During a meeting of the Alamosa County Board of Commissioners on August 15, 2007, Comm. Allen physically attacked a citizen, Leon Moyer, who called Comm. Allen a "liar" during a dispute over the official time at which citizen testimony began.⁹⁶

The Alamosa County Sheriff received a call from Comm. Allen requesting that Mr. Moyer be removed from the meeting.⁹⁷ According to the police report, by the time the Alamosa County Sheriff arrived at the scene, the altercation had already ended and Mr. Moyer was "lying on the floor on his right side in a semi fetal position. Next to him was an overturned office chair. Mr. Moyer was holding his lower right side just above the belt line."⁹⁸ Mr. Moyer explained to the officer that "Commissioner Darius Allen had attacked him, knocked him to the ground, and subsequently kicked him after he was down on the ground."⁹⁹

Mr. Moyer alleges that when he called Comm. Allen a liar, he "got up from the chair and he came almost running" toward him from 30 to 50 feet away, and hit him in the head and kicked him on the right side of his body.¹⁰⁰ The police report states that the physical assault would have continued but two bystanders "were subsequently holding Comm. Allen back while he urged them to let him at Mr. Moyer."¹⁰¹

Misdemeanor Disorderly Conduct

Colorado law prohibits fights with another in a public place except in an amateur or professional contest of athletic skill.¹⁰²

As a result of the altercation, Comm. Allen was formally charged with misdemeanor third-degree assault and disorderly conduct-fighting in public.¹⁰³ On November 9th, 2007, Comm. Allen entered into a plea agreement whereby he pleaded guilty to misdemeanor disorderly conduct, and the misdemeanor assault charge was dismissed. Under the agreement,

⁹⁶ Ruth Heide, Allen, Moyer attend first meeting together since altercation, *Alamosa Valley Courier*, September 12, 2007 (Exhibit 62).

⁹⁷ Incident Narrative 2000007403, Alamosa County Sheriff's Office, August 15, 2007 (Exhibit 63).

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Rosa Ramirez, Altercation during county meeting was a matter of time, *Rocky Mountain News*, August 17, 2007 (Exhibit 64).

¹⁰¹ Incident Narrative, Alamosa County Sheriff's Office, Aug. 15, 2007 (Exhibit 63).

¹⁰² C.R.S. § 18-9-106(1)(d).

¹⁰³ Ruth Heide, *Alamosa Valley Courier*, Sept. 12, 2007 (Exhibit 62).

¹⁰⁴ Matt Hildner, Alamosa commissioner pleads guilty in scuffle, *Pueblo Chieftain*, November 9, 2007 (Exhibit 65).

Comm. Allen is required to take 12 hours of anger management classes and perform 24 hours of community service.¹⁰⁴

CAROL CHAMBERS, DISTRICT ATTORNEY

Carol Chambers (R) has served as District Attorney for the 18th Judicial District, which includes Arapahoe, Douglas, Elbert and Lincoln counties, since 2004. Her ethics issues stem from her misuse of her office to threaten attorneys and judges.

Intervention in Laurrett Ballantine Civil Litigation

In 2006, Ms. Chambers became the first district attorney in the state since 1985 to be the subject of a complaint filed by the Colorado Supreme Court Attorney Regulation Counsel (“ARC”).¹⁰⁵ The ARC’s complaint resulted in a hearing before an attorney disciplinary panel established by the Colorado Supreme Court.¹⁰⁶ On December 26, 2006, the panel issued its opinion and order, publicly censuring Ms. Chambers for engaging in conduct prejudicial to the administration of justice.¹⁰⁷

The panel found that Ms. Chambers involved herself in a collection lawsuit filed against Laurrett Barrentine, a member of the Englewood City Council who was an acquaintance of Ms. Chambers.¹⁰⁸ Ms. Barrentine told Ms. Chambers that Ms. Barrentine was being sued for two bad checks that Ms. Barrentine had not written, and that the plaintiff and its attorney knew Ms. Barrentine had not written the checks.¹⁰⁹ After speaking with Ms. Barrentine, Ms. Chambers left a voice mail message with the plaintiff’s attorney, Jonathan Steiner, stating in part:

Mr. Steiner, this is Carol Chambers, the District Attorney for Arapahoe Douglas Elbert and Lincoln counties, and I am calling you because we are getting a lot of complaints from victims of identity theft that you are pressuring them shall I say, to pay on checks that they did not write, that their bank knew that they did not write, that should be obvious to you that they did not write. And I am looking at investigating this with the grand jury, and I would like to hear your input first, if you would like to make it. . . .¹¹⁰

Ms. Chambers also directed her chief investigator to investigate whether Mr. Steiner was coercing Ms. Barrentine to pay a debt she did not owe.¹¹¹ Two days before the collection case was scheduled to go to trial, Ms. Chambers contacted Mr. Steiner a second time, advising him that she was conducting an investigation of collection agency abuses and that although he was not a target, he could not be excluded from the investigation.¹¹² Mr. Steiner asked Ms. Chambers if her earlier voicemail concerned the case against Ms. Ballantine, and Ms. Chambers acknowledged that it did.¹¹³ Mr. Steiner and Ms. Chambers discussed the merits of the case

¹⁰⁵ Rocky Mountain News Editorial Board, DA’s phone call beyond the pale, *Rocky Mountain News*, October 26, 2006 (Exhibit 66).

¹⁰⁶ People v. Chambers, 154 P.3d 419 (Colo. 2006) (Opinion and Order Imposing Sanctions from the Office of the Presiding Disciplinary Judge) (“Sanctions Order”) (Exhibit 67).

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id., p. 4.

¹¹⁰ Id., pp. 4-5.

¹¹¹ Id., pp. 5-6.

¹¹² Id., p. 7.

¹¹³ Id.

against Ms. Barrentine, and Mr. Steiner was left with the impression that Ms. Chambers might investigate him for having filed suit against Ms. Barrentine.¹¹⁴ Shortly after that conversation, Mr. Steiner's client agreed to dismiss its suit against Ms. Barrentine and pay her costs.¹¹⁵

Duties of a District Attorney

An attorney violates the Colorado Rules of Professional Conduct when she "engages in conduct prejudicial to the administration of justice."¹¹⁶ The hearing board in Ms. Chambers' case interpreted this rule as requiring a district attorney to act exclusively as a "minister of justice" on behalf of the public, and therefore, to avoid using the power of her office to advance the cause of an individual in a civil matter.¹¹⁷

The hearing board found that Ms. Chambers' intervention in the Barrentine case violated the Rules of Professional Conduct because the district attorney "effectively placed her finger on the scales of justice on behalf of one party to a civil case."¹¹⁸ The panel publicly censured Ms. Chambers for her misconduct.¹¹⁹ Ms. Chambers was also ordered to pay to pay \$1,629.31 in court costs and fees.¹²⁰

Threatening E-mail to the Chief Judge of the Arapahoe County District Court

Ms. Chambers was later investigated by the ARC regarding an allegation that she sent a threatening e-mail to the Chief Judge of the Arapahoe County District Court.¹²¹ In the e-mail, Ms. Chambers stated that if any judge "shows overt hostility" to prosecutors from Ms. Chambers' office, "there absolutely will be docket control problems in that division."¹²² Ms. Chambers sent the e-mail after one of the judges on that court had ruled against her office on a discovery issue.¹²³

Improper Communication with Judges

The Colorado Rules of Professional Conduct prevent attorneys from seeking to influence judges by illegal means,¹²⁴ from engaging in ex parte communications with judges regarding

¹¹⁴ Id., pp. 7-8.

¹¹⁵ Id., p.8.

¹¹⁶ Colo. R.P.C. 8.4(d).

¹¹⁷ Sanctions Order, pp. 12-13 (citing American Bar Association Standards for Prosecution and Defense, Commentary to Standard 3-1.2 (1993) and In the Matter of Robert T. Miller, 677 N.E. 2d 505, 508 (Ind. 1997)) (Exhibit 67).

¹¹⁸ Id., p. 11.

¹¹⁹ Id., p. 15.

¹²⁰ Ivan Moreno, Chambers found guilty of misusing power of her office, *Rocky Mountain News*, February 6, 2007 (Exhibit 68).

¹²¹ Rocky Mountain News Editorial Board, A volatile DA, *Rocky Mountain News*, May 7, 2007 (Exhibit 69); Denver Post Editorial Board, DA out of order again with memo on judges, *Denver Post*, May 8, 2007 (Exhibit 70).

¹²² Rocky Mountain News Editorial Board, *Rocky Mountain News*, May 7, 2007 (Exhibit 69).

¹²³ Ivan Moreno, DA accused of trying to intimidate judge, *Rocky Mountain News*, May 3, 2007 (Exhibit 71).

¹²⁴ Colo. R.P.C. 3.5(a).

pending matters,¹²⁵ and from engaging in conduct “intended to disrupt a tribunal.”¹²⁶ Ms. Chambers’ e-mail could reasonably be interpreted as a threat to use the power of the district attorney to reject plea bargains to retaliate against a judge by increasing the judge’s workload. Although the ARC did not file a complaint against Ms. Chambers following this incident, Ms. Chambers has refused to make public the ARC’s letter to her regarding its investigation of the matter.¹²⁷

¹²⁵ Colo. R.P.C. 3.5(b).

¹²⁶ Colo. R.P.C. 3.5(d).

¹²⁷ Carlos Illescas, State drops DA probe, *Denver Post*, October 5, 2007 (Exhibit 72).

RYAN FRAZIER, AURORA CITY COUNCILMAN

Ryan Frazier (R-At large) was elected to serve as an at-large member of the Aurora City Council in November 2003. Councilman Frazier's ethics issues stem from his receipt of campaign contributions from partners at a corporation at the same time he voted in favor of a lucrative municipal contract for the corporation.

Questionable Campaign Contributions

On April 9, 2007, Councilman Frazier's campaign committee accepted 15 separate contributions of \$99 each from individual partners of Carollo Engineers, P.C. ("Carollo").¹²⁸ At a study session of the Aurora City Council that same day, Carollo was recommended by the council's water committee for a \$9,602,207 contract "for construction management services."¹²⁹ The full council, including Councilman Frazier, voted in favor of awarding the \$9,602,207 contract to Carollo at its regular meeting on May 7, 2007.¹³⁰

Shortly after voting in favor of the Carollo contract, on May 14, 2007, Councilman Frazier's campaign committee received five additional \$99 contributions from individual partners of Carollo.¹³¹ Councilman Frazier appears to be the only councilmember who received contributions from Carollo partners at the time of the vote.

Based on these facts, Foster Hines, a citizen of Aurora, submitted an open records request to Councilman Frazier seeking to inspect records relating to Carollo.¹³² Mr. Hines' original request was submitted on February 7, 2008.¹³³ Councilman Frazier declined to respond.¹³⁴ Mr. Hines re-submitted his request on February 28 and again on March 13.¹³⁵ Councilman Frazier's alleged refusal to respond to Mr. Hines' open records request is now the subject of a lawsuit.¹³⁶

Bribery

Specifically, a public servant commits the crime of bribery if "he solicits, accepts, or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced."¹³⁷ Bribery is a class 3 felony.¹³⁸

¹²⁸ See Campaign Statement Report of Contributions and Expenditures, Ryan Frazier for Aurora, November 6, 2007 (Exhibit 73); Carollo Website, <http://www.carollo.com/about-carollo/partners.aspx>.

¹²⁹ See AGENDA, City of Aurora, Colorado, Monday, Study Session, April 9, 2007 (attached as Exhibit 74).

¹³⁰ See MINUTES, Regular Meeting – Aurora City Council, Monday, May 7, 2007 (attached as Exhibit 75).

¹³¹ See Campaign Statement Report of Contributions and Expenditures, Ryan Frazier for Aurora, November 6, 2007 (Exhibit 76).

¹³² See Complaint and Application Under the Colorado Open Records Act, Foster Hines v. Ryan Frazier, Arapahoe County District Court Case No. 2008 CV 615, ¶ 5 (March 19, 2008) ("Hines Complaint") (Exhibit 77).

¹³³ Id.

¹³⁴ Id. at ¶¶ 7-11; April M. Washington, Scrutiny fixes on Aurora official, *Rocky Mountain News*, March 16, 2008 (Exhibit 78).

¹³⁵ Id.

¹³⁶ See Hines Complaint (Exhibit 77).

¹³⁷ C.R.S. § 18-8-302(1)(b).

¹³⁸ C.R.S. § 18-8-302(3).

Councilman Frazier may have committed bribery by accepting the contributions in proximity to his vote in favor of the Carrollo contract.

Official Misconduct

A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another he knowingly commits an act relating to his office but constituting an unauthorized exercise of his official function.¹³⁹ A public servant commits second degree official misconduct “if he knowingly, arbitrarily, and capriciously... [r]efrains from performing a duty imposed upon him by law; or... [v]iolates any statute or lawfully adopted rule or regulation relating to his office.”¹⁴⁰ A “public servant” includes elected officials of municipal governments.¹⁴¹ A benefit can include “any gain or advantage to the beneficiary including any gain or advantage to another person pursuant to the desire or consent of the beneficiary.”¹⁴²

Councilman Frazier may have committed official misconduct by accepting the contributions in proximity to discretionary, official duties of his office.

Colorado Open Records Act

According to the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.* (“CORA”), all public records shall be open for inspection within three working days of the request.¹⁴³ If the public agency of official receiving the request denies access to any of the public records, a written statement must be provided stating the grounds for the denial and citing the law or regulation under which access is denied.¹⁴⁴ If these records are not in the custody or control of the agency or official receiving the request, a written statement must be provided stating in detail the reason for the absence of the records, their location, and what person or persons has custody or control of the records.¹⁴⁵

It appears that Councilman Frazier violated the CORA by failing to provide any response to Mr. Hines.

¹³⁹ C.R.S. § 18-8-404(1)(a).

¹⁴⁰ C.R.S. § 18-8-405.

¹⁴¹ C.R.S. §§ 18-1-901(3)(i),(o).

¹⁴² C.R.S. § 18-1-901(3)(b).

¹⁴³ C.R.S. § 24-72-203(3).

¹⁴⁴ C.R.S. § 24-72-204(4).

¹⁴⁵ C.R.S. § 24-72-203(2).

DENNIS GALLAGHER, DENVER CITY AUDITOR

Dennis Gallagher (D) was elected Denver auditor in 2003 and was re-elected in 2007. Auditor Gallagher previously served in the state legislature and the Denver City Council. Auditor Gallagher's ethics issues stem from hiring one of his appointees to work on his re-election campaign without proper disclosure or approval.

Denis Berckefeldt and Prairie Fire Communications

Denis Berckefeldt founded Prairie Fire Communications, LLC, a media consulting firm, in 2000.¹⁴⁶ In 2003, while still running the firm, Mr. Berckefeldt became an employee of the City and County of Denver, appointed by Auditor Gallagher as the communications director of the auditor's office.¹⁴⁷ Campaign finance reports filed with the Denver city clerk show that while Mr. Berckefeldt was working in the auditor's office, Auditor Gallagher's campaign committee paid Prairie Fire Communications \$51,242.54 for media consulting, media expenses and telephone contact during the 2007 municipal election cycle.¹⁴⁸

Based on these facts, a Denver resident filed a letter of inquiry with the Denver ethics board against Auditor Gallagher and Mr. Berckefeldt, questioning whether it was ethical for Auditor Gallagher to pay campaign consulting fees to Mr. Berckefeldt's company while Mr. Berckefeldt was employed in the auditor's office.¹⁴⁹ In a letter to the ethics board, Auditor Gallagher claimed to be unaware of the legal requirement that city employees file annual reports and obtain annual approval of outside business activities.¹⁵⁰

On June 7, 2007, only after the conflict of interest was made public, Auditor Gallagher completed the approval process, granting Mr. Berckefeldt's request to engage in outside employment and business activities.¹⁵¹ Auditor Gallagher's approval of Mr. Berckefeldt's work on Auditor Gallagher's own re-election campaign came more than a month after the election.¹⁵²

¹⁴⁶ Articles of Organization, Prairie Fire Communications, LLC, October 3, 2000 (Exhibit 79); Letter from Denis Berckefeldt to Denver Board of Ethics, May 1, 2007 (Exhibit 80).

¹⁴⁷ Rocky Mountain News Staff, Gallagher Names Staff, *Rocky Mountain News*, July 24, 2003 (Exhibit 81), p. 15A; City and County of Denver, Auditor Dennis J. Gallagher Appointees, <http://www.denvergov.org/Auditor/Appointees/tabid/378262/Default.aspx> (Exhibit 82).

¹⁴⁸ Gallagher for Auditor, Campaign Finance Report Form B, Jan. 24, 2007, p. 3; Gallagher for Auditor, Campaign Finance Report Form B, Feb. 5, 2007, p. 1; Gallagher for Auditor, Campaign Finance Report Form B, April 3, 2007, pp. 1-2; Gallagher for Auditor, Campaign Finance Report Form B, April 27, 2007, p. 1 (Exhibit 83).

¹⁴⁹ Inquiry Form, Board of Ethics, City and County of Denver, April 12, 2007 (Exhibit 84).

¹⁵⁰ Letter from Dennis J. Gallagher to Denver Board of Ethics, June 18, 2007, p. 2 (Exhibit 85).

¹⁵¹ Report/Request/Description of Outside Employment and Outside Business Activities, approved by Auditor Gallagher on June 11, 2007 (Exhibit 86).

¹⁵² Denver Election Commission, General Municipal Election Results, May 1, 2007, <http://www.denvergov.org/Portals/567/documents/Elections/Results/May12007ElectionResults.htm> (Exhibit 87).

Denver Ethics Code Rule Requiring Approval of Outside Business Activity

The Denver Ethics Code, part of the Denver Revised Municipal Code, requires city employees to file annual reports of their outside business activities and obtain approval of such activities from their appointing authority.¹⁵³ The ethics board ruled that Auditor Gallagher violated the ethics code by failing to “request or require” auditor’s office employees to file outside business reports on an annual basis.¹⁵⁴

Denver Charter and Ethics Code Conflict of Interest Prohibitions

The Denver Charter prohibits city officers from having “any interest arising by contract or other relationship that creates a substantial conflict of interest with respect to his or her duties, unless the conflict can be avoided by abstention or disqualification from participating in a transaction without adversely affecting the interests of the City.”¹⁵⁵

Similarly, the Denver Code of Ethics provides that absent certain unusual circumstances, “an officer, official, or employee shall not take direct official action on a matter before the city if he or she or a member of the immediate family, a business associate or an employer other than the city of the officer, official or employee has any substantial employment, contractual, or financial interest in that matter.”¹⁵⁶ A city officer is deemed to have a “substantial interest” in a matter if the other party to the matter is a “business associate” of the officer.¹⁵⁷

Auditor Gallagher’s approval of his campaign consultant’s request for approval of outside business activities appears to have violated the Denver Charter and Code of Ethics. Auditor Gallagher’s hiring of a city employee to work on his own re-election campaign made it impossible for the auditor to make a conflict-free determination with respect to Mr. Berckefeldt’s request, as a Denver employee, for permission to engage in that outside activity.

¹⁵³ Denver Rev. Mun. Code § 2-63(a).

¹⁵⁴ Letter from Lori Mack, Chair, Denver Board of Ethics, to Lisa Jones, July 3, 2007 at p. 3 (Exhibit 88).

¹⁵⁵ Denver Charter, § 1.2.9.

¹⁵⁶ Denver Rev. Mun. Code, § 2-61(a).

¹⁵⁷ Id., § 6-61(a)(1).

DAVID SPELLMAN, MAYOR OF BLACK HAWK

David Spellman (U) was appointed by the Black Hawk City Council to fill the vacant mayoral seat in Black Hawk in 2006 and was elected Mayor in April 2008. Mayor Spellman's ethics issues stem from assaulting his wife, the city manager of Central City, Colorado.

Assault

In 2005, while serving as a Black Hawk City Councilman, David Spellman was charged with repeatedly hitting his wife, Lynnette Haley, in the head with a .380 caliber handgun and firing at least three "errant rounds."¹⁵⁸ Mayor Spellman was charged with second-degree assault, domestic violence, felony menacing with a weapon, using a gun while drunk and recklessness with a gun.¹⁵⁹

Felony Menacing and Third-Degree Assault

Under Colorado law a person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury.¹⁶⁰ Menacing is a class 3 misdemeanor, but, it is a class 5 felony if committed by the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that¹⁶¹ the article is a deadly weapon.

Under Colorado law, a person commits the crime of assault in the third degree if the person knowingly or recklessly causes bodily injury to another person or with criminal negligence the person causes bodily injury to another person by means of a deadly weapon.¹⁶²

Mayor Spellman pleaded guilty to felony menacing and third degree assault and received a deferred sentence that requires him to complete four years of probation.¹⁶³ If Mayor Spellman had been sent to prison, he would have lost his right to vote and therefore would have been ineligible to serve as mayor.¹⁶⁴

Colorado's deferred sentencing statute permits a court that accepts a guilty plea in a felony case to delay sentencing and judgment for up to four years and place the defendant on probation.¹⁶⁵ Upon full compliance with the terms of the deferred sentence by the defendant, the guilty plea will be withdrawn and the charges dismissed.¹⁶⁶

¹⁵⁸ Bill Johnson, Johnson: For mayor, Black Hawk residents forgive, forget, *Rocky Mountain News*, July 15, 2006 (Exhibit 89).

¹⁵⁹ Deborah Frazier, Probationer named as mayor, *Rocky Mountain News*, July 12, 2006 (Exhibit 90).

¹⁶⁰ C.R.S. § 18-3-206.

¹⁶¹ Id.

¹⁶² C.R.S. § 18-30-204.

¹⁶³ Frazier, *Rocky Mountain News*, July 12, 2006 (Exhibit 90).

¹⁶⁴ Home Rule Charter for the City of Black Hawk, art. II, § 4; Colo. Const., art. VII, § 10; C.R.S. § 1-2-103(4).

¹⁶⁵ C.R.S. § 18-1.3-102.

¹⁶⁶ Id.

TERRY WOMBLE, WHEAT RIDGE CITY COUNCILMAN

Terry Womble (U-District 1) was elected to serve on the Wheat Ridge City Council in 2005. Councilman Womble's ethics issues stem from his use of a false identity to disparage a fellow council member.

Harassing Colleague

On May 1, 2007, Councilman Womble used a false name to place a harassing phone call to two of fellow Councilwoman Berry's superiors at the Colorado Department of Natural Resources where she works as an engineering geologist.¹⁶⁷ Under the pseudonym "Tom Baldy," Councilman Womble claimed that Councilwoman Berry was not at her desk and did not return phone calls.¹⁶⁸ When Councilwoman Berry recognized Councilman Womble's voice on her superior's voice mail, she turned the matter over to Wheat Ridge police.¹⁶⁹

In response, Councilman Womble has publicly stated, "I let my emotions get the better of me," and, "I made a huge mistake." Their political differences had been "simmering for a year and a half."¹⁷⁰ Councilwoman Berry said that she and Councilman Womble had clashed at an April 2007 council meeting over a pedestrian bridge and marketplace as part of the redevelopment of Wadsworth Boulevard.¹⁷¹

Seven members of the city council issued a letter to Councilman Womble suggesting that he "strongly consider" resigning his seat.¹⁷² The letter stated: "The mayor and city council are in agreement that given your recent unremorseful actions and lack of accountability, you cannot effectively advocate for the citizens of District I or the community. Unfortunately, we do not foresee the situation improving in the near future or after the November 2007 election."¹⁷³ Councilman Womble has refused to resign.¹⁷⁴

Misdemeanor Harassment

Colorado law prohibits harassment with intent to harass, annoy or alarm another person by initiating communication with a person anonymously or otherwise by telephone, computer network, or computer system in a manner intended to harass or threaten bodily injury.¹⁷⁵

¹⁶⁷ Jefferson County District Attorney Summons and Complaint – Womble, Terry Don, May 2, 2007 (Exhibit 91).

¹⁶⁸ Id.

¹⁶⁹ Id.

¹⁷⁰ Ann Schrader, Official's resignation sought, *Denver Post*, August 22, 2007 (Exhibit 92).

¹⁷¹ Deborah Frazier, Wheat Ridge councilman accused of making harassing phone call, *Rocky Mountain News*, May 12, 2007 (Exhibit 93).

¹⁷² Jerry DiTullo and Wheat Ridge City Council, Wheat Ridge City Council calls for resignation, *YourHub.com*, August 15, 2007, <http://denver.yourhub.com/WheatRidge/Stories/Sound-Off/Politics/Story~348292.aspx> (Exhibit 94).

¹⁷³ Id.

¹⁷⁴ Schrader, *Denver Post*, Aug. 22, 2007 (Exhibit 92).

¹⁷⁵ C.R.S. § 18-9-111(1)(e).

On October 22, 2007, Councilman Womble pleaded guilty to misdemeanor harassment in Jefferson County Court.¹⁷⁶ He initially faced a fine of up to \$750 and six months in jail, but was sentenced to a one-year deferred judgment and ordered to pay \$181 in court costs.¹⁷⁷ If Councilman Womble does not have any criminal charges filed against him over the next year, the harassment charges will be expunged from his record, but he still faces possible civil liability for his actions.¹⁷⁸

¹⁷⁶ Jeff Tejeck, Womble takes deal, pleads guilty, *Mile High Newspapers*, October 25, 2007 (Exhibit 95).

¹⁷⁷ Id.

¹⁷⁸ Id.

DISHONORABLE MENTION

BOB SCHAFFER, STATE BOARD OF EDUCATION

Bob Schaffer (R) was appointed to the Colorado State Board of Education (“CSBE”) for Congressional District 4 in December 2005, and elected to the same position in 2006. Mr. Schaffer previously represented the Fourth District in the U.S. Congress. Mr. Schaffer’s ethics issues stem from his failure to recuse himself from votes in which he had a conflict of interest.

Conflicts of Interest

Mr. Schaffer accepted contributions to his 2004 and 2008 U.S. Senate campaigns from David Brennan,¹⁷⁹ the Chairman of White Hat Management,¹⁸⁰ and Mr. Brennan’s wife.¹⁸¹ White Hat provides materials and staff to Denver’s Life Skills Center, a charter school located in Denver.¹⁸² Denver Public Schools (“DPS”) decided in February 2007 to close the school.¹⁸³ Life Skills appealed to the CSBE and CSBE voted on the appeal on May 9, 2007, just weeks before the Brennans’ June 2007 contributions.¹⁸⁴ The CSBE granted Life Skills’ appeal on a 4-3 vote with Mr. Schaffer in the majority.¹⁸⁵ As a result of the CSBE’s vote, DPS was forced to reconsider the closure of Life Skills.¹⁸⁶ Accordingly, on June 7, 2007, DPS granted Life Skills a one-year probationary contract extension.¹⁸⁷ Based on these facts, it appears that Mr. Schaffer’s vote benefited one of his donors.

In another apparent conflict, on May 10, 2007, the CSBE voted 5-1 to deny the Poudre School District’s (“PSD”) request for exclusive chartering authority.¹⁸⁸ The motion to deny PSD’s request was made by Mr. Schaffer.¹⁸⁹ As a result of the vote, charter school applicants could continue bypassing the PSD Board of Education and apply through the state’s Charter School Institute instead.¹⁹⁰ At the time of the vote, Mr. Schaffer’s son attended Ridgeview High School, a PSD charter school.¹⁹¹ In addition, Mr. Schaffer’s wife was the chairman of Liberty

¹⁷⁹ Bob Schaffer for U.S. Senate, FEC Schedule A – Itemized Receipts, June 15, 2004, p. 20; June 18, 2007, p. 53 (Exhibit 96).

¹⁸⁰ White Hat Management website, David L. Brennan, <http://www.whitehatmgmt.com/about/leadership/brennan/> (Exhibit 97).

¹⁸¹ Bob Schaffer for U.S. Senate, FEC Schedule A – Itemized Receipts, June 1, 2007, p. 75 (Exhibit 98).

¹⁸² Life Skills Centers, White Hat Management website, <http://www.whitehatmgmt.com/ventures/lifeskills/> (Exhibit 99).

¹⁸³ Rocky Mountain News Staff, Denver charter school gets 2nd chance, *Rocky Mountain News*, June 8, 2007 (Exhibit 100).

¹⁸⁴ Id.

¹⁸⁵ Colorado State Board of Education, Work Session Minutes, May 9, 2007 (Exhibit 101).

¹⁸⁶ Rocky Mountain News Staff, *Rocky Mountain News*, June 8, 2007 (Exhibit 100).

¹⁸⁷ Id.

¹⁸⁸ JP Eichmiller, Exclusive charter authority denied, *Fort Collins Coloradoan*, May 12, 2007 (Exhibit 102).

¹⁸⁹ Id.

¹⁹⁰ Id.

¹⁹¹ Id.

Common School, also a charter school within PSD.¹⁹² Mr. Schaffer had previously recused himself from a vote related to Ridgeview due to his conflict of interest, but failed to do so in this instance.¹⁹³

Although Mr. Schaffer's votes appear facially improper, neither state law nor CSBE governing rules precluded him from voting despite his obvious conflicts of interest.¹⁹⁴ To its credit, the CSBE subsequently adopted its own ethics code.¹⁹⁵ The new code, however, is so weak that Mr. Schaffer still would have been allowed to vote as he did. The code prohibits board members from acting under a conflict of interest *unless* that conflict is disclosed in writing and the board member's participation is "necessary to achieve a quorum or otherwise enable the body to act"¹⁹⁶ – an exception that may swallow the rule.

¹⁹² Liberty Common School, Bylaws, November 18, 2004, p. 11 (Exhibit 103).

¹⁹³ Jason Kosena, School, PSD told to keep talking, *Fort Collins Coloradoan*, September 14, 2006 (Exhibit 9); Eichmiller, *Fort Collins Coloradoan*, May 12, 2007 (Exhibit 104).

¹⁹⁴ Jennifer Brown, Education board weighs Schaffer vote, *Denver Post*, August 21, 2007 (Exhibit 105).

¹⁹⁵ Id.

¹⁹⁶ Colorado State Board of Education Code of Ethics, § 6 (emphasis added), http://www.cde.state.co.us/cdeboard/download/SBE_CodeofEthics.pdf.

**Due to the voluminous nature of the exhibits,
all exhibits are posted for public view at:
www.ColoradoforEthics.org**