

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 20080025

**IN THE MATTER OF THE COMPLAINT FILED BY COLORADO ETHICS
WATCH REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE
VIOLATIONS BY SENATE MAJORITY FUND, LLC**

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Claimant Colorado Ethics Watch (“Ethics Watch”), by and through undersigned counsel, pursuant to C.R.C.P. 56 and 121, § 1-15(1) and Rule 10.A of the General Rules of Procedure of the Office of Administrative Courts, respectfully submits this brief in support of its motion (the “Motion”), filed contemporaneously herewith, for entry of summary judgment against Respondent, Senate Majority Fund, LLC (“SMF”) on all claims for relief in this case.

I. STATEMENT OF UNDISPUTED FACTS

1. On or about October 10, 2007, SMF registered as a 527 Political Organization with the Colorado Secretary of State. See Certified copy of October 15, 2007 letter from Alyssa Prohaska, Elections Division, Colorado Secretary of State, to Senate Majority Fund, LLC (attached as **Exhibit 1**).
2. SMF is also a Colorado limited liability company with its principal office at 12237 E. Amherst Circle, Aurora, Colorado 80014. See Certified copy of SMF Annual Report (September 20, 2007) (attached as **Exhibit 2**).
3. SMF’s stated purpose is supporting candidates for the state senate. See Certified copy of Senate Majority Fund, LLC Political Organization Detail, filed October 10, 2007 (attached as **Exhibit 3**).

4. On or about June 23, 2008, SMF, through its agent Rock Chalk Media, LLC (“Rock Chalk”), contracted to purchase television air time from Comcast Spotlight for a television advertisement “educating the public about Libby Szabo,” a candidate for the Colorado State Senate in District 19. See SMF Record of Request for Purchase of Political Time and Agreement to Purchase Political Advertising Availabilities (June 23, 2008) (attached as **Exhibit 4**); see also Affidavit of Carolyn Petersen (“Petersen Aff.,” filed contemporaneously herewith) at ¶ 3.

5. On or about June 23, 2008, Rock Chalk, acting as disclosed principal for SMF, entered into an Agreement to Purchase Political Advertising Availabilities with Comcast (Bresnan) Grand Junction, a copy of which is attached as **Exhibit 5**. See Peterson Aff. at ¶ 3.

6. SMF purchased a total of 1956 television spots for the Szabo ad, which aired from June 25, 2008 to July 13, 2008. See Contract Data Report (attached as **Exhibit 6**). See Peterson Aff. at ¶ 4.

7. SMF was invoiced \$25,647.90 as a “Net Advertising Fee” for June 2008. See Invoice (attached as **Exhibit 7**); Peterson Aff. at ¶ 5.

8. A certified copy of SMF’s initial Report of Contributions and Expenditures for the period May 27 through July 2, 2008, filed July 7, 2008, is attached as **Exhibit 8**. That report did not include a disclosure of the Szabo ad purchases. See **Exhibit 8**.

9. A certified copy of SMF’s initial Report of Contributions and Expenditures for the period July 3 through 16, 2008, filed July 21, 2008, is attached as

Exhibit 9. That report did not include a disclosure of the Szabo ad purchases. See Exhibit 9.

10. SMF filed several adjustments to their disclosures during July and August 2008. See Certified copies of Senate Majority Fund LLC Reports and Adjustments dated August 12, 2008 (attached as **Exhibit 10**).

11. On August 1, 2008, SMF filed Spending Adjustments to disclose the Szabo ad purchase through Rock Chalk, and also to disclose \$21,307.00 in previously undisclosed expenses for production and postage paid to Targeted Creative Communications Inc. See Senate Majority Fund Spending Adjustments dated August 12, 2008 (attached as **Exhibit 11** and **Exhibit 12**).

II. ARGUMENT

A. The Summary Judgment Standard.

Under C.R.C.P. 56(c) Ethics Watch is entitled to summary judgment if it demonstrates the absence of genuine issues of material fact and is entitled to judgment as a matter of law. See Peterson v. Halsted, 829 P.2d 373, 375 (Colo. 1992). If there is no genuine issue of any material fact necessary for determination of the question of law, the court may enter an order deciding the question. See id. Ethics Watch may meet its initial summary judgment burden by pointing to affidavits and evidence in the record that establishes the existence of undisputed facts upon which it is entitled to judgment as a matter of law. Continental Airlines, Inc. v. Keenan, 731 P.2d, 708, 712 (Colo. 1987). When this showing is made, the burden shifts to SMF to demonstrate, by affidavits or other admissible evidence, a *genuine* dispute concerning material facts. Merkley v. Pittsburgh Corning Corp., 910 P.2d 58, 59 (Colo. App. 1995). If SMF fails to present

admissible evidence demonstrating such a material dispute, summary judgment is proper. People v. Cobb, 944 P.2d 574, 576 (Colo. App. 1996), cert. denied (1997).

B. SMF Violated C.R.S. § 1-45-108.5(b) By Untimely Disclosing Its Spending On The Szabo Ads.

According to C.R.S. § 1-45-103(14.5), a “political organization” is defined as: “a political organization defined in section 527 (e) (1) of the federal ‘Internal Revenue Code of 1986’, as amended, that is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code.” State law further provides that any political organization shall report to the appropriate officer, in this case the Secretary of State, in accordance with the requirements of C.R.S. §§ 1-45-108 and 1-45-109. C.R.S. § 1-45-108.5(1); see also, 8 CCR 1505-6, § 4.20. As relevant here, political organizations are required to report “[a]ny spending... that exceeds twenty dollars in any one reporting period.” C.R.S. § 1-45-108.5(b).

The undisputed facts demonstrate that SMF is a political organization under Colorado law and therefore bound by the disclosure requirements set forth in C.R.S. §§ 1-45-108, 1-45-108.5 and 1-45-109. See Exhibits 1, 3. Pursuant to C.R.S. § 1-45-108 (2)(a)(I), SMF needed to file a report on July 7, 2008 detailing all spending over twenty dollars during the previous reporting period. Here, it is irrefutable that although SMF timely filed a report on July 7, 2008, that report did not disclose SMF’s spending on the Szabo ad, which far exceeded twenty dollars. See Exhibits 4-11. That spending was not

disclosed until August 1, 2008, the day after the present complaint was filed. See Exhibit 12.

Any person, including a political organization, that commits a violation of the aforementioned reporting requirements shall be subject to the \$50 per day fine set forth in Article XXVIII, § 10 of the State Constitution. C.R.S. § 1-45-111.5. In this case, the undisputed facts show that SMF's disclosure was twenty five days late, making SMF liable to pay a fine of \$1,250.00. The Motion should be granted and SMF should be ordered to pay a fine of \$1,250.00, with costs to Ethics Watch.

III. CONCLUSION

Claimant Colorado Ethics Watch respectfully requests that the Court grant its motion for summary judgment.

DATED: September 5, 2008.

Luis Toro, # 22093
Colorado Ethics Watch
1630 Welton Street, Suite 415
Denver, CO 80202

Certificate of Service

I hereby certify that on September 5, 2008 a true copy of the foregoing BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was placed in the United States mail, postage prepaid and addressed as follows:

Scott Gessler, Esq.
Mario Nicolais, Esq.
Hackstaff Gessler LLC
1601 Blake Street, Suite 310
Denver, CO 80202

Luis Toro