

**BEFORE THE INDEPENDENT ETHICS COMMISSION
STATE OF COLORADO**

CASE NO. _____

**IN THE MATTER OF THE COMPLAINT FILED BY COLORADO ETHICS
WATCH REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE
VIOLATIONS BY SECRETARY OF STATE MIKE COFFMAN**

COMPLAINT

Petitioner Colorado Ethics Watch, by and through undersigned counsel, pursuant to Colo. Const. art. XXIX, § 5, submits the following Complaint against respondent, Secretary of State Mike Coffman, and in support thereof alleges as follows:

FACTUAL ALLEGATIONS

1. Colorado Ethics Watch (“Ethics Watch”) is a nonpartisan, nonprofit 501(c)(3) organization dedicated to ensuring government accountability and compliance with state laws. Ethics Watch is a “person” as that term is defined by Colo. Const. art. XXIX, § 5(3)(a) and is therefore authorized to file a Complaint under that section.

2. Colo. Const. art. XXIX, § 5(3) provides that the Independent Ethics Commission “shall conduct an investigation, hold a public hearing, and render findings on each non-frivolous complaint” regarding allegations that any “public officer, member of the general assembly, local government official, or government employee has failed to comply with [Article XXIX] or any other standards of conduct or reporting requirements as provided by law.”

3. Mike Coffman is the Secretary of State of the State of Colorado and is a public officer under Colo. Const. art. XXIX, § 5(3).

4. In January 2007 when Secretary Coffman took office, he hired Dan Kopelman as the elections technology manager for the secretary of state’s office.

5. Dan Kopelman is the sole owner and operator of a political consulting business and website called Political Live Wires. See Business Records, Colorado Secretary of State (attached as Exhibit 1); Denver Post Editorial Board, Coffman draws clear line on partisanship, The Denver Post (May 21, 2007) (attached as Exhibit 2). 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. See Jennifer Brown, Secretary of state tightens rules, The Denver Post (May 18, 2007) (attached as Exhibit 3).

6. Secretary Coffman and Mr. Kopelman have been political allies since approximately 1996. See e.g. Coffman Contribution and Expenditure Detail Reports (attached as Exhibit 4). While serving as Colorado’s state treasurer, Secretary Coffman

hired Mr. Kopelman as his systems analyst. See Kevin Duggan, Coffman gets election primer, Fort Collins Coloradoan (November 15, 2006) (attached as Exhibit 5). In the fall of 2006, Mr. Kopelman took approximately two weeks of paid leave from the treasurer's office to work on Secretary Coffman's campaign for secretary of state. See Dan Kopelman Employment Record, Colorado State Treasurer's Office, October 25, 2006 through November 7, 2006 (attached as Exhibit 6). Secretary Coffman's candidate committee reported paying Political Live Wires \$1,500 for consulting services provided during that time. See Coloradans for Coffman (Secretary of State Committee), Expenditure Detail Reports (attached as Exhibit 7). In addition, Secretary Coffman's candidate committee reported two additional expenditures to Political Live Wires during the 2006 election cycle and reported numerous expenditures to Mr. Kopelman personally. See id.

7. Mr. Kopelman continued to own and operate Political Live Wires while serving as the elections technology manager for the secretary of state's office.

8. Notwithstanding his extensive ties to Mr. Kopelman and Political Live Wires, Secretary Coffman claimed that he did not know about Mr. Kopelman's side business or the Political Live Wires website until May 2007 when the story was released by reporters. See John Ingold, Audit finds no evidence election worker wrongly accessed data, The Denver Post (December 4, 2007) (attached as Exhibit 8); Editorial Board, Second-job scandal, Rocky Mountain News (May 11, 2007) (attached as Exhibit 9).

9. Based on these facts, Ethics Watch submitted an open records request to the secretary of state's office pursuant to the Colorado Open Records Act (CORA) to determine whether Secretary Coffman was aware of Mr. Kopelman's side business and to what extent Secretary Coffman encouraged or benefited from Mr. Kopelman's political activities. See Letter from Colorado Ethics Watch to Secretary of State Mike Coffman (May 8, 2007) (attached as Exhibit 10).

10. At the same time, Ethics Watch called for the Office of the Colorado State Auditor to conduct a comprehensive audit of the secretary of state's office. See Letter from Colorado Ethics Watch to Colorado State Auditor Sally Symanski (May 5, 2007) (attached as Exhibit 11).¹ 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. See Voter Registration, Help America Vote Act, Department of State, Performance Audit, Office of the State Auditor Staff (November 2007) (the "Audit") (attached in relevant part as Exhibit 13). The audit affirmed Ethics Watch's allegations that Mr. Kopelman

¹ Later that same day, Secretary Coffman submitted his own request for an audit that was limited in scope to solely the allegations of Mr. Kopelman's wrongdoing. See Letter from Secretary of State Mike Coffman to State Auditor (May 5, 2007) (attached as Exhibit 12).

violated state personnel rules and state statute and that Secretary Coffman shared responsibility for those violations. See Audit, p. 44-45.

12. Specifically, the audit concluded that Mr. Kopelman violated C.R.S. § 24-50-177 and State Personnel Board Rules 1-13 and 1-14 by owning and operating a partisan political business -- while employed with the secretary of state's office -- that was directly incompatible with the duties of his state position and without prior written authorization. See Audit, p. 44.

13. With respect to Secretary Coffman, the audit concluded that he "shares responsibility for these violations" pursuant to the state personnel rules. See Audit, p. 45 (citing 4 CCR § 801, Rule 1-11) (providing that appointing authorities such as Secretary Coffman "are accountable for compliance with these rules").

14. The audit also concluded that at least four other employees in the secretary of state's office had not obtained the requisite prior authorization to engage in outside employment. See Audit, p. 44.

15. Significantly, the audit reported that Secretary Coffman "**was aware, in at least two of the five instances... that the employees had outside businesses.**" Id. (emphasis added). Although the audit did not identify the names of the two employees, the Commission has the authority, pursuant to Colo. Const. art. XXIX, § 5(4), to subpoena documents and witnesses in order to determine the identity of the employees who Secretary Coffman knew were operating outside businesses.

16. Documents obtained by Ethics Watch through its CORA request strongly suggest that Mr. Kopelman was one of the two employees. Secretary 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. See Emails from Dan Kopelman to Mike Coffman and Abby Thomas between January 31, 2007 and May 3, 2007 (attached as Exhibit 14).

17. The documents also show that Mr. Kopelman regularly used the email address "info@politicallivewires.com" to correspond with Secretary Coffman, senior staff in his office and others, often with a signature block identifying his state position as "State of Colorado, Elections Technology Manager." 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 (attached as Exhibit 15).

18. If, as these documents and the audit suggest, Secretary Coffman was aware of Mr. Kopelman's partisan side business then he deliberately misled the public and should be held accountable for allowing his employees to engage in partisan conflicts of interest, failing to perform the duties of his office and violating the public trust. See C.R.S. § 24-50-101(d) ("heads of principal departments... shall be responsible and

accountable for the actual operation and management of the state personnel system for their respective departments.”)

19. Similarly, Secretary Coffman is accountable for his own conflicts of interest. As the result of a lawsuit filed against his predecessor in 2006 regarding certification of voting systems (*Myriah Sullivan Conroy, et al. v. Ginette Dennis*, Denver District Court Case No. 06CV6072, henceforth the “*Conroy case*”), Secretary 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.” See Findings of Fact and Conclusions of Law in the *Conroy case*, p. 8 (attached as Exhibit 16).

20. Accordingly, in April 2007 the secretary of state’s office accepted applications for certification of voting systems from four vendors: Diebold Election Systems, Inc., now known as Premier Election Systems, Inc. (“Premier”), Election Systems & Software, Inc. (“ES&S”), Hart Intercivic (“Hart”), and Sequoia Voting Systems (“Sequoia”).

21. In addition, Secretary Coffman engaged a panel of voting machine testing experts to advise him in connection with the retesting procedure. See Myung Oak Kim, *Lawsuit looms as Coffman tries to quiet election worries*, Rocky Mountain News (Dec. 18, 2007) (attached as Exhibit 17).

22. Meanwhile, on or about August 2007 Secretary 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. See Myung Oak Kim and Lynn Bartels, *Sec. of state’s campaign advisers also represent e-voting firm*, Rocky Mountain News (Dec. 20, 2007) (attached as Exhibit 18). Phase Line’s president, Sean Tonner, has had a working relationship with Secretary Coffman for more than ten years. See Lynn Bartels, *Boss denies e-vote conflict*, Rocky Mountain News (Dec. 21, 2007) (attached as Exhibit 19); Colorado Secretary of State Contribution Report for Sean Tonner dated July 25, 2006 (attached as Exhibit 20).

23. On September 17, 2007, Premier hired Phase Line as its lobbyist of record in the State of Colorado. See Colorado Secretary of State Employer Results for Premier Election Solutions (attached as Exhibit 21).

24. On October 30, 2007, Mr. Tonner, acting as Coffman’s spokesman, announced that Secretary Coffman “has every intention to run” for the open congressional seat in the sixth district of Colorado. See Anne C. Mulkern, *Tancredo won’t seek re-election; candidates line up*, The Denver Post (Oct. 30, 2007) (attached as Exhibit 22). Secretary Coffman filed his “Statement of Candidacy” with the Federal Election Commission on November 5, 2007. See FEC Form 2 for Mike Coffman dated November 5, 2007 (attached as Exhibit 23). Shortly thereafter, Secretary Coffman formally engaged Phase Line to run his campaign. See Exhibit 18.

25. Secretary Coffman was aware at the time he engaged Phase Line to run his congressional campaign that Phase Line represented Premier. In fact, in December 2007 Secretary Coffman admitted that he had known of the connection between Phase Line and Premier for a couple of months. See John Ingold, Critics question Coffman ties to lobbying firm, The Denver Post (Dec. 21, 2007) (attached as Exhibit 24).

26. The panel of experts convened by Secretary Coffman recommended that *none* of the electronic voting systems be recertified, including Premier. See id. Going against the experts' recommendations, Secretary Coffman certified the voting systems manufactured by only one vendor – Premier. As a rationale for his decision, Coffman claimed that Premier “substantially complie[d]” with legal requirements. See Letter from Mike Coffman to Don Vopalensky, State Certification Manager of Premier, dated December 17, 2007 (attached as Exhibit 25).

27. Secretary Coffman decertified some or all of the voting systems manufactured by the remaining three vendors that were not represented by Phase Line. See letter from Mike Coffman to Steve M. Pearson, Vice President, Certification of ES&S (attached as Exhibit 26); letter from Mike Coffman to David Hart, President of Hart dated December 17, 2007 (attached as Exhibit 27); letter from Mike Coffman to Ed Smith, Compliance Manager of Sequoia dated December 17, 2007 (attached as Exhibit 28).

28. When the conflict of interest involving Secretary Coffman, Phase Line and Premier became public, Premier promptly terminated its relationship with Phase Line. See Exhibit 24. Apparently unconcerned about appearances of impropriety, Secretary Coffman continues his engagement with Phase Line to date despite public outcry that he gave favor to Premier based on his allegiances to Phase Line. See Coffman for Congress, Inc. Schedule B, Itemized Disbursements, filed with the Federal Election Commission on January 31, 2008 (attached as Exhibit 29); Exhibit 24.

29. On information and belief, Secretary Coffman and/or his allies, Mr. Kopelman and Phase Line, personally benefited from Secretary Coffman's failure to perform the duties required of his office. Nevertheless, as set forth in the claims below, personal gain is not a necessary element in order for the Commission to initiate an investigation, impose penalties or issue a public censure. Pursuant to Colo. Const. art. XXIX, § 9, the Commission is authorized to hear complaints, issue findings and assess penalties on ethics issues arising under *any standards of conduct* as provided by law. The Commission's constitutionally mandated authority may not be restricted by statute and, therefore, C.R.S. § 24-18.5-101, which purports to restrict the Commission's authority to hear complaints that do not allege personal gain, cannot prevent the Commission from investigating and making findings regarding the allegations contained herein.

FIRST CLAIM FOR RELIEF
(Violation of C.R.S. § 24-50-101(3)(d) and 4 CCR § 801, Rule 1-11)

30. Ethics Watch incorporates by reference paragraphs 1 through 29 as if fully set forth herein.

31. Pursuant to C.R.S. § 24-50-101(d), the heads of principal departments “shall be responsible and accountable for the actual operation and management of the state personnel system for their respective departments...” Similarly, the State Personnel Board Rule 1-11 provides that, “[a]ll appointing authorities... are accountable for compliance with [state personnel] rules and state and federal law...” 4 CCR § 801.

32. On information and belief, Secretary Coffman knew or should have known that Mr. Kopelman was operating a partisan political business while employed as the state’s elections technology manager in violation of state personnel rules and state law.

33. On information and belief, Secretary Coffman personally benefited from his transgressions. Allowing Mr. Kopelman to continue operating Political Live Wires while employed in the secretary of state’s office, and therefore, using state time and resources, presumably helped Secretary Coffman maintain and enhance his political network and position himself to pursue his bid for Congress.

34. Based on the foregoing, the Commission should investigate and make findings as to whether Secretary Coffman knowingly allowed or encouraged Mr. Kopelman (and at least one other employee) to engage in conflicting outside business activities without proper disclosure or authorization, and impose an appropriate penalty on, and/or publicly censure Secretary Coffman based on its findings. Colo. Const. art. XXIX, § 5(3)(a).

**SECOND CLAIM FOR RELIEF
(Violation of C.R.S. §§ 18-8-404 and/or 405)**

35. Ethics Watch incorporates by reference paragraphs 1 through 34 as if fully set forth herein.

36. According to state law, “[a] public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another... he or she knowingly... [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.” C.R.S. § 18-8-404 (first degree official misconduct).

37. Based on the facts as set forth above, there is reason to believe that Secretary Coffman committed first degree official misconduct. The attached documents and the audit suggest that: (1) Secretary Coffman was aware that Mr. Kopelman was engaged in a partisan side business and did nothing to stop it; and (2) Secretary Coffman and/or Dan Kopelman benefited from Mr. Kopelman’s continued operation of Political Live Wires.

38. Additionally, Secretary Coffman violated state personnel rules and state law by failing to disclose his conflict with Premier by way of their mutual engagement of Phase Line. See C.R.S. § 24-50-117. On information and belief, Secretary Coffman’s nondisclosure advantaged all parties involved – Premier had its voting systems certified, Phase Line delivered on its contract with Premier and Secretary Coffman assisted his long-time political allies and current campaign consultants.

39. At a minimum, Secretary Coffman’s 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.” C.R.S. § 18-8-405.

40. Based on the foregoing, the Commission should investigate and make findings regarding whether Secretary Coffman committed official misconduct and impose an appropriate penalty on and/or publicly censure Secretary Coffman based on its findings. Colo. Const. art. XXIX, § 5(3)(a).

**THIRD CLAIM FOR RELIEF
(Violation of C.R.S. § 1-13-107)**

41. Ethics Watch incorporates by reference paragraphs 1 through 40 as if fully set forth herein.

42. C.R.S. § 1-5-614, a provision of the Uniform Election Code of 1992 (“Election Code”), provides that “[t]he Secretary of State shall certify electronic and electromechanical voting systems and approve the purchase, installation and use of such systems by political subdivisions and establish standards for certification.”

43. C.R.S. § 1-13-107 further provides that any person who “is guilty of corrupt conduct in the discharge” of any duty under the Election Code is guilty of a misdemeanor.

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

45. Pursuant to Colo. Const. art. XXIX, § 5(3)(a), the Commission should investigate and make findings regarding Secretary Coffman’s retention of Phase Line and his certification of the electronic voting machines manufactured by Premier, and impose an appropriate penalty or public censure of Secretary Coffman based on its findings.

REQUESTED RELIEF

Colorado Ethics Watch respectfully requests that the Commission investigate whether Secretary Coffman violated standards of conduct as set forth herein and impose an appropriate penalty on and/or publicly censure Secretary Coffman, and grant any other relief as the Commission deems appropriate and just.

Respectfully submitted this 13th day of February, 2008.

COLORADO ETHICS WATCH

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