

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 08-01

MOTION FOR DETERMINATION OF EVIDENTIARY STANDARD

In the Matter

Of

Michael Coffman

Respondent, Michael Coffman, by and through his attorneys, respectfully seeks the determination of a higher evidentiary standard. In support of this, Mr. Coffman states the following.

Amendment 41 provides that the Commission, following a filed complaint and its own investigation, may “assess penalties for violations as prescribed by this article and provided by law,” based upon findings by “a preponderance of evidence unless the commission determines that the circumstances warrant a heightened standard.” COLO. CONST. arts. XXIX(3)(d) and (e) (emphasis added).

Colorado Ethics Watch filed a complaint in this matter against Secretary of State Mike Coffman. The allegations are not based upon the substantive provisions of Amendment 41 (i.e., gift ban violation), but rather upon alleged criminal misconduct. As Mr. Coffman argued in his motion to dismiss, the Commission does not have jurisdiction to consider a criminal matter, let alone based upon conduct that occurred prior to September 1, 2008.¹ Assuming that the Commission rules that it does, however, Mr. Coffman moves the Commission to utilize the heightened criminal standard of “beyond a reasonable doubt.”

Colorado statute provides that “no person shall be convicted of any offense unless his guilt thereof is proved beyond a reasonable doubt.” COLO. REV. STAT. § 18-1-402. Due process of law requires the prosecution to establish all essential elements of a crime beyond a reasonable doubt. *People v. Ledman*, 622 P.2d 534 (Colo. 1981).

Indeed, the United States Supreme Court long ago held that states must utilize the heightened “beyond-a-reasonable-doubt” standard in criminal proceedings. *Addington v. Texas*,

¹ For a complete background on this matter -- including on Amendment 41, the Colorado Independent Ethics Commission, Colorado Ethics Watch’s complaint against Mr. Coffman, the procedural history of this matter before the Commission, and Mr. Coffman’s legal arguments (including his opposition to this Commission asserting criminal jurisdiction) -- please see Mr. Coffman’s Motion to Dismiss, filed simultaneously with this motion.

441 U.S. 418, 423-24 (1979) (citing *In re Winship*, 397 U.S. 358 (1970)). This is so, because “[i]n a criminal case . . . , the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment.” *Id.* The Court continues: “In the administration of criminal justice, our society imposes almost the entire risk of error upon itself. This is accomplished by requiring under the Due Process Clause that the state prove the guilt of an accused beyond a reasonable doubt.” *Id.* (emphasis added).

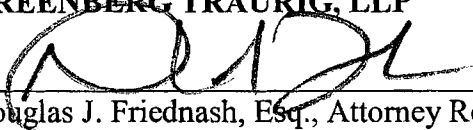
In *Apprendi v. New Jersey*, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment and the Speedy Jury Trial Clause of the Sixth Amendment “indisputably entitle a criminal defendant to a jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.” 530 U.S. 466, 476-77 (2000). Since *Apprendi*, the Supreme Court, in its series of sentencing cases, has strongly reaffirmed the notion that states must utilize the heightened standard of “beyond a reasonable doubt” in criminal proceedings. *United States v. Hill*, 539 F.3d 1213, 1215 (10th Cir. 2008) (internal citations omitted) (“On June 26, 2000, the United States Supreme Court held that any fact increasing the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490. . . . Since *Apprendi*, the Supreme Court has repeatedly held that under the Sixth Amendment, any fact that exposes a defendant to a sentence greater than the statutory maximum must be found by a jury, not a judge, and be proved beyond a reasonable doubt, not by a preponderance of the evidence. *Ring v. Arizona*, 536 U.S. 584, 602, 609 (2002); *Blakely v. Washington*, 542 U.S. 296, 304-05 (2004); *United States v. Booker*, 543 U.S. 220, 243-44 (2005); *Cunningham v. California*, 549 U.S. 270 (2007).”).

CEW is clearly required to prove its allegations against Mr. Coffman based upon the “beyond a reasonable doubt” criminal standard.

WHEREFORE, if the Commission decides it has jurisdiction to consider a criminal complaint, which Mr. Coffman opposes in its motion to dismiss, Mr. Coffman respectfully moves the Commission to utilize the heightened standard of “beyond a reasonable doubt” in making any findings in Mr. Coffman’s criminal matter.

Respectfully submitted this 17th day of December, 2008.

GREENBERG TRAURIG, LLP



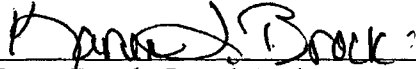
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December 2008, a true and correct copy of the foregoing MOTION FOR DETERMINATION OF EVIDENTIARY STANDARD was sent E-mail Transmission and U.S. Mail to:

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