

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 08-01

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**CLOSING ARGUMENT**

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COLORADO ETHICS WATCH,

Petitioner,

v.

MICHAEL COFFMAN,

Respondent.

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**I. Introductory Statement**

At the outset of this case, we told you that the evidence would show that Ethics Watch's complaint was frivolous and was brought for the purpose of harassing former Colorado Secretary of State Mike Coffman. Beginning in 2007, Ethics Watch engaged in a scorched earth public relations campaign to destroy Mr. Coffman's reputation and discredit the Secretary of State's office in a "very important election year."<sup>1</sup>

An editorial opinion in *The Denver Post* by Vincent Carroll said it best:

Will anyone take Colorado Ethics Watch seriously again after its smear campaign against Congressman Mike Coffman imploded at a public hearing Friday? For the better part of two years, Ethics Watch has held up Coffman, who was secretary of state during most of that time, as its emblem of political "corruption" -- a term evoking images of envelopes stuffed with cash and favors for sinister cronies. The left-wing group even elevated Coffman to the top of its "First Annual

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<sup>1</sup> In its February 13, 2008 press release and accompanying quotes in *The Denver Post*, Ethics Watch leader Chantell Taylor stated: "How can Coloradans trust Secretary Coffman to manage a fair and accurate election this fall when he has demonstrated a disturbing pattern of disregard for the law?"

Corruption Report,” saying he “leads the list of offenders with his egregious pattern of unethical conduct.” On Friday, this lurid crusade culminated in a hearing before the state’s new Independent Ethics Commission -- and expired in whimpering anticlimax. . . . Ethics Watch didn’t merely fail to prove its accusations against Coffman, it hardly seemed to try.

In hindsight, the only court that Ethics Watch was interested in winning over was the court of public opinion. Indeed, even silence speaks. A review of the evidence presented by Ethics Watch makes it patently clear that they were not seriously concerned about winning over this Commission.

Initially, Ethics Watch listed *eight witnesses* in their Initial Disclosures (Mike Coffman, Dan Kopelman, Sally Symanski, Abby Thomas, Sean Tonner, Mike Ciletti, Bill Hobbs, and Dr. Jerry Kopelman). Despite knowing that other individuals had material and relevant information about this case, Ethics Watch endorsed only four witnesses (Abby Thomas, Sean Tonner, Dr. Kopelman, and Mike Coffman). Ethics Watch obtained subpoenas from the Commission for these witnesses -- yet did not serve a single subpoena on any one of them.

Notwithstanding its ample time to present and prepare its case, Ethics Watch called one witness to testify: Abby Thomas. And as outlined below, Ms. Thomas provided no damaging testimony whatsoever to Mr. Coffman.

Ethics Watch did not endorse Dan Kopelman, the subject of the allegations of the first part of the complaint. Nor did they endorse Mike Ciletti or serve a subpoena on Sean Tonner, the subject of the allegations of the second part of the complaint. Nor did they call anyone from Premier Election Solutions, employees of the Secretary of State’s office, or members of the independent testing board.

Moreover, Ethics Watch produced 39 exhibits for the hearing.<sup>2</sup> Ethics Watch provided no testimony -- or even attempted to provide references to testimony -- for 23 of those.<sup>3</sup>

In other words, despite its very serious allegations of public corruption, Colorado Ethics Watch offered virtually no testimony or other evidence at the hearing.

Ethics Watch makes three claims: (1) Mr. Coffman violated technical personnel rules and procedures, under COLO. REV. STAT. § 24-50-101(3)(d) and 4 CCR § 801, Rule 1-11, for allowing Dan Kopelman to improperly operate an outside business, namely a partisan website; (2) Mr. Coffman committed the crimes of first- or second-degree official misconduct, under COLO. REV. STAT. §§ 18-8-404 and 405; and, (3) Mr. Coffman committed the crime of corrupt conduct in the discharge of a duty under the Election Code, under COLO. REV. STAT. § 1-13-107.

Mr. Coffman has argued, and continues to argue, these are not “other standards of conduct,” as contemplated under Amendment 41.<sup>4</sup> COLO. REV. STAT. §§ 24-18-101 *et. seq.* is entitled “Standards of Conduct” and sets forth the relevant laws over which the Commission has additional subject matter jurisdiction to hear complaints pursuant to Amendment 41. Further, by way of example only, the first claim is based upon a violation of technical personnel rules, not

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<sup>2</sup> On March 12, 2009, Ethics Watch filed 27 supplemental exhibits with the Commission. This desperate attempt to win over the Commission should be rejected. Mr. Coffman responds to this supplemental filing in “Response to Supplemental Exhibits” which is attached as Exhibit A and incorporated herein by reference.

<sup>3</sup> These exhibits should be excluded from consideration by this Commission, to-wit: 3, 9, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 32, 33, 35, 36, 37, 38, and 39. Many of these are classic hearsay exhibits between individuals that Ethics Watch made no attempt to call as witnesses. Exhibit 15, for example, was shown to Ms. Thomas and consisted of an e-mail sent by Dr. Jerry Kopelman to Mr. Coffman. Though listed as a witness in their case, Ethics Watch made no attempt to call Dr. Kopelman to testify. Similarly, the document was not even shown to the intended recipient during its cross-examination of Mr. Coffman. Under these circumstances, this exhibit should be excluded from consideration by the Commission.

<sup>4</sup> We incorporate our other filings, which discuss this issue in extensive detail, by this reference as if they were fully incorporated herein.

ethics laws. Mr. Kopelman's conduct does not create personal liability for Mr. Coffman. The implications of holding otherwise are profound. Indeed, this result would open up the floodgates to this Commission potentially hearing thousands of complaints against all principals and managers of all levels of government for an employee's technical violations of such rules and regulations. Further, as this Commission aptly noted in its Order Denying Motion to Dismiss, "it does not have jurisdiction to enforce criminal statutes." Moreover, the complaint failed to allege, nor did the evidence establish, Mr. Coffman's "private gain" or "personal financial gain" as required by Amendment 41.

Additionally, Ethics Watch has not specified, nor can this Commission provide, a remedy for Ethics Watch's complaint. This is so, because the technical personnel rules provide no enforcement mechanism, and the Commission has no power to enforce the Criminal Code. Indeed, there is no constitutional or statutory authority for the Commission to do anything as a result of a subsequent hearing. This includes, among other things, the ability to censure Mr. Coffman. Further, Ethics Watch cites no authority that holds that the Commission has any jurisdiction over Mr. Coffman, who is no longer a state elected official.

But even assuming that this Commission has jurisdiction, and Ethics Watch's allegations and claims constitute "other standards of conduct" under Amendment 41, *all of which Mr. Coffman disputes*, Ethics Watch has the burden of proof in this case; Mr. Coffman does not have to prove anything.

Two of the three claims Ethics Watch brought against Mr. Coffman alleged criminal misconduct. Ethics Watch must prove those allegations by clear and convincing evidence. This is a very heavy burden. Indeed, Colorado Jury Instruction 3:2 defines "clear and convincing evidence" as follows:

A fact or proposition has been proved by clear and convincing evidence if, considering all the evidence, you find it to be highly probable and you have no serious or substantial doubt.

It requires evidence so clear, direct, weighty in terms of quality, and convincingly as to cause you to come to a clear conviction of the truth and the precise facts at issue. The clear-and-convincing standard of proof requires that the results shall not be reached by a mere balancing of doubts or probabilities, which causes you to be convinced that the allegations sought to be proven are true.

In other words, for the Commission to find that Mr. Coffman committed the crimes that Ethics Watch alleges, Ethics Watch must prove by clear and convincing evidence that Mr. Coffman did the following:

**(1) First-Degree Official Misconduct (COLO. REV. STAT. § 18-8-404):**

(1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly:

(a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or

(b) Refrains from performing a duty imposed upon him by law; or

(c) Violates any statute or lawfully adopted rule or regulation relating to his office.

(2) First degree official misconduct is a class 2 misdemeanor.

**(2) Second-Degree Official Misconduct (COLO. REV. STAT. § 18-8-405):**

(1) A public servant commits second degree official misconduct if he knowingly, arbitrarily, and capriciously:

(a) Refrains from performing a duty imposed upon him by law; or

(b) Violates any statute or lawfully adopted rule or regulation relating to his office.

(2) Second degree official misconduct is a class 1 petty offense.

**(3) Corrupt Conduct In The Discharge Of A Duty Under The Election Code (COLO.**

**REV. STAT. § 1-13-107):**

Any public officer, election official, or other person upon whom any duty is imposed by this code who violates, neglects, or fails to perform such duty or is guilty of corrupt conduct in the discharge of the same or any notary public or other officer authorized by law to administer oaths who administers any oath knowing it to be false or who knowingly makes a false certificate in regard to a matter connected with any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Ethics Watch wholly fails -- under any burden of proof -- to adduce any evidence to substantiate its allegations of criminal misconduct.

In contrast, Mr. Coffman's defense team presented the only substantial testimony presented at the hearing. Mr. Coffman testified at the hearing voluntarily; he was not subpoenaed to testify by Colorado Ethics Watch. Mr. Coffman did this so he could clear his name and reputation. Moreover, Mr. Hobbs, the career civil servant deputy secretary of state, testified pursuant to a subpoena issued by Mr. Coffman. Mr. Hobbs's testimony corroborated Mr. Coffman's.<sup>5</sup>

Despite Ethics Watch's heavy burden of proof, Ethics Watch wholly fails to offer any evidence of Mr. Coffman's misconduct. In other words, Ethics Watch fails to meet any burden of proof -- let alone the heavy burden of clear and convincing evidence. The reason is simple and demonstrated below: there is no evidence of Mr. Coffman's misconduct.

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<sup>5</sup> Because of limited time, Mr. Coffman offered the testimony of Messrs. Ciletti and Tonner through affidavit. Mr. Coffman used his 3.5 hours of time, and he did not have adequate time to call other witnesses.

## II. The Evidence: Moving Beyond The Ethics Watch Smear Campaign.

Moving beyond Ethics Watch's smear campaign, this is what the evidence established.

### Dan Kopelman: The Evidence.

As Mr. Coffman aptly noted, he would have had absolutely nothing to gain by allowing Mr. Kopelman to operate a partisan website, which advertised selling targeted voter lists, while Mr. Kopelman served as an employee in the Secretary of State's office. Nonetheless, Ethics Watch claimed that:

- "Secretary Coffman personally benefitted from his transgressions. Allowing Mr. Kopelman to continue operating Political Live Wires' website while employed in the Secretary of State's office, and therefore, using state time and resources, presumably helped Secretary Coffman maintain his political network and position himself to pursue his bid for Congress."<sup>6</sup> (Complaint, Para. 33).
- "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 disclosures or authorizations." (Complaint, Para. 34).

#### 1. *Abby Thomas*

Ethics Watch only called Abby Thomas. Ms. Thomas testified that she served as Mr. Coffman's executive assistant from January through May 2007. According to Ms. Thomas, there was nothing unusual about how often Mr. Kopelman and Mr. Coffman would meet (T., p. 16). Ms. Thomas was responsible for handling the scheduling of Mr. Coffman's calendar, and she received hundreds of e-mail requests (T., p. 24). Ms. Thomas was permitted by law to schedule

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<sup>6</sup> Ethics Watch produced no evidence corroborating any of this. In fact, Congressman Tancredo did not even announce he would not be seeking re-election until many months later.

personal, political, or official events on Mr. Coffman's calendar (T., p. 25). Some scheduling information came from Mr. Kopelman, though she did not pay attention to the e-mail address from which the e-mails came (T., p. 17), and Mr. Coffman never told her to keep track of any scheduling information submitted to her from Mr. Kopelman (T., p. 27). Ms. Thomas testified that Mr. Kopelman sent the scheduling information after business hours (T., p. 28).

Exhibit 8 shows the nine unsolicited e-mails she received from "Colorado Events and info [dkopelman@reply.ms00.net]." Only three of the e-mails were marked by Ms. Thomas as "follow-up" and "completed," designating that she reviewed these events with Mr. Coffman (T., pp. 18-19). Ms. Thomas would not schedule anything without obtaining Mr. Coffman's prior approval.

## 2. *William Hobbs*

Mr. Hobbs has served as the career, non-partisan deputy secretary of state under four Secretaries of State, including for Mr. Coffman and the current Secretary of State Bernie Buescher, a Democrat (T., pp. 55-58). Prior to this, he served as a career civil servant for the Office of Legislative Legal Services for 16 years, where he was the Director for ten years (T., p. 66). Mr. Hobbs did not consider himself friends with Mr. Coffman and had never donated money to his campaign, been asked to donate money to his campaign, or even worked on his campaign (T., pp. 56-57). As the deputy secretary of state, Mr Hobbs has the full and same authority as the secretary of state (T., pp. 58-60). Mr. Hobbs served as the appointing authority under Mr. Coffman (T., p. 60).<sup>7</sup>

Mr. Hobbs read the complaint filed by Ethics Watch when it was filed and determined that it lacked merit (T., p. 61). Mr. Hobbs was familiar with the statutes and personnel rules. He

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<sup>7</sup> There is a legal question as to whether Mr. Coffman was even the appointing authority under these circumstances as provided by law.

read paragraph 31 of the complaint and understood that the heads of principal departments were responsible and accountable for the actual operation and management of the state personnel system for their respective departments; however, that “doesn’t give rise to any kind of liability, either criminal or ethical or personal or professional liability” to Mr. Coffman (T., pp. 63-64).

Dan Kopelman was a lateral transfer from the State Treasurer’s office in January 2007, and received a temporary pay differential of \$9,000 per year (T., pp. 65-66). On Thursday, May 3, 2007, Mr. Hobbs learned about a website Mr. Kopelman was operating (T., pp. 66-67). Mr. Hobbs immediately contacted Mr. Kopelman and met with him about 5:00 p.m. (T., p. 67). Mr. Hobbs showed Mr. Kopelman the website, and Mr. Kopelman was surprised, mortified, and understood that it was inappropriate (T., p. 68). Mr. Kopelman took down the website immediately (*Id.*). Mr. Kopelman said that he had the website up before he came to work for the Secretary of State’s office, and he had simply not taken it down. He said that he was not actively managing the website and was not either selling voter registration or accessing voter registration data at the Secretary of State’s office.

Mr. Hobbs immediately conducted an investigation and discussed the scope of the investigation with the Attorney General’s office (T., p. 71). Mr. Kopelman immediately cooperated and voluntarily provided data, records, and financial documents to prove his innocence (T., p. 69). Mr. Hobbs reviewed the website and noted that it maintained a list of Lincoln Day dinners or what appeared to be a periodically updated calendar (T., p. 111). The so-called blast e-mails that Mr. Kopelman sent about events did not add anything to what Mr. Hobbs already knew (T., p. 117).

Mr. Hobbs spoke to Mr. Coffman the following day. Mr. Coffman was shocked and very disappointed in Mr. Kopelman (T., p. 72). Mr. Coffman did not interfere or limit the scope of

Mr. Hobbs's investigation (T., p. 73). The results of the investigation showed that Mr. Kopelman did not have access to the Department of State's voter-registration data and did not purchase voter-registration data from the Secretary of State's office while an employee of the Department of State (Exhibit O, T., p. 75). Mr. Hobbs did not believe Mr. Coffman was aware of the website (T., p. 73, 75). The investigation showed that Mr. Kopelman violated two personnel rules, because he engaged in an outside business without gaining permission from the state employer, and the activities of the website were incompatible with his state employment (namely, hosting a partisan website). As a result, Mr. Kopelman: (1) was moved out of the Elections Division; (2) lost his supervisory position and could no longer supervise employees within the Department of State; (3) received a \$9,000 per year reduction in salary; and, (4) was subject to a corrective action, which was added to his permanent personnel record (Exhibit O, T., pp. 75-77).

Mr. Hobbs testified that Mr. Coffman asked the State Auditor to conduct an independent investigation, and Mr. Coffman's office fully cooperated with the investigation (T., p. 82). Mr. Hobbs testified that the State Auditor's report confirmed the findings of the Secretary of State's internal investigation (Exhibit GG, T., p. 83).

Mr. Hobbs was also aware that Ethics Watch asked the Denver District Attorney's Office to investigate their criminal allegations against Mr. Coffman.

As a result of the Kopelman matter, Mr. Coffman launched a change of policy long before the State Auditor's report came out (T., pp. 142-43). Prior to the change in policy, employees were allowed to engage in some partisan activities, but Mr. Coffman wanted a more detailed rule that prohibited incompatible activities (T., pp. 143-44).

3. *Michael Coffman*

Mr. Coffman testified that Mr. Kopelman took a two-week leave of absence from the State Treasurer's office to work on the Secretary of State's campaign (T., p. 154). The campaign was small and everyone had set up an entity so that they could get paid as independent contractors (T., pp. 155-56). Tory Brown, Mr. Coffman's campaign treasurer, signed all of the checks, reimbursement, and otherwise (T., p. 156). Mr. Coffman was not aware whether Mr. Kopelman took paid or unpaid leave while he was working on this campaign, but he stated that the personnel rules required state employees to use paid leave before they could use unpaid leave (T., p. 157).

During the Secretary of State's campaign, Mr. Coffman needed to purchase targeted voter lists. Mr. Kopelman recommended -- and Mr. Coffman agreed -- to purchase them from Tactical Data Solutions, a company out of Grand Junction (T., p. 157-58). The company was not owned by Mr. Kopelman.

Mr. Coffman was not aware that Mr. Kopelman had a business website (T., p. 158)<sup>8</sup> until Mr. Kopelman told him about it on May 3, 2007 (T., pp. 159-60). Mr. Kopelman was crying over the phone and very apologetic when he told Mr. Coffman about it (T., p. 160). Mr. Coffman told him to shut it down, and Mr. Kopelman said that he already had. Mr. Coffman saw the website for the first time the following morning, when he met with Mr. Hobbs (T., pp. 160-61).

Mr. Coffman testified that he is not a technical person (T., p. 158). Mr. Coffman testified regarding Exhibit 7. This exhibit consisted of three e-mails sent from "Colorado Events and

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<sup>8</sup> Mr. Coffman was aware that Mr. Kopelman had a *campaign website* at some point when Mr. Kopelman was running for County Treasurer, because he showed it to Mr. Coffman (T., p. 158).

info[dkopelman@reply.msOO.net]" to mike.coffman@state.co.us.<sup>9</sup> All of the e-mails were sent outside of official business hours (*Id.*; T., p. 175). Nowhere in the e-mail does it direct the recipient to www.politicallivewires.com. In fact, the only two websites to which the e-mail directs the recipient are: (1) <http://www.campaignsecrets.com/cmd.asp?af-266171>; and, (2) www.LincolnDayDinner.org. There is no evidence that Mr. Kopelman owned or was affiliated with those websites. The three e-mails list events. The e-mail states "to list an event *email* events@PoliticalLiveWires.com" or "to list your LDD event at www.LincolnDayDinner.org and send an email to events@LincolnDayDinner.org." Ethics Watch seems confused over the difference between an e-mail address and an Internet website address. Clearly, events@PoliticalLiveWires.com is an e-mail address, not a website, just as his other e-mail address of dkopelman@technologist.com was an e-mail address, not an Internet website address (*See Exhibit 9*).<sup>10</sup>

Like other elected officials, Mr. Coffman could not control from whom he received e-mails, scheduling information, or requests (T., p. 294). He literally received hundreds of e-mails every day while he was Secretary of State (*Id.*). Mr. Coffman received a large amount of scheduling requests from many different individuals and organizations, partisan and non-partisan (T., pp. 176, 294). Most of these requests were unsolicited (T., p. 295). Mr. Coffman was allowed by law to meet with Ms. Thomas to calendar events, including those of a partisan nature.

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<sup>9</sup> From all of the CORA requests, the record reflects that Mr. Coffman only received three of these e-mails.

<sup>10</sup> The use of such an e-mail address does not mean that a website address is associated therewith. Ethics Watch's case, as evidenced by its cross-examination of Mr. Coffman, appears to rest on the talismanic notion that the e-mail address of events@PoliticalLiveWires.com was a reference to a website. Some e-mail addresses are connected to websites; others are not.

Mr. Coffman did not ask to receive these e-mails sent by Mr. Kopelman, which were sent out as a volunteer activity on the part of Mr. Kopelman (T., p. 176).<sup>11</sup> Nor did Mr. Coffman pay anything to receive them (T., p. 225).<sup>12</sup> Mr. Coffman did not even notice the part of the condensed e-mail, which provides “to list an event email events@PoliticalLiveWires.com” (T., pp. 220-21).<sup>13</sup> Mr. Coffman made no connection between these e-mails and the entity Political Live Wires. Further, Mr. Coffman testified that the event information was not very beneficial, because they were not updated when meetings got cancelled or locations got moved (T., p. 222). Mr. Coffman believed that Mr. Kopelman was sending out this schedule of events as a volunteer, Mr. Kopelman did not use state resources in sending them out, and Mr. Kopelman sent them on his own time (*Id.*). The State Auditor reviewed these e-mails as part of its investigation (T., p. 177).

Mr. Coffman asked the Office of the Attorney General to investigate the issues, but they decided not to do so (T., p. 161). As a result, Mr. Coffman asked the State Auditor to conduct an independent investigation (T., p. 162). Mr. Hobbs, as the appointing authority, also conducted an internal investigation (T., p. 163). Mr. Coffman did not attempt to limit the scope of either Mr. Hobbs or the State Auditor’s investigations (T., pp. 163, 166). Mr. Coffman discussed the internal findings during his testimony and then pointed out that Mr. Kopelman felt the punishment was severe and unfair (T., pp. 169-70).

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<sup>11</sup> The State Auditor made no finding that these e-mails were incompatible as an outside business activity of Mr. Kopelman.

<sup>12</sup> Mr. Coffman testified that he did not recall Ms. Thomas going over the e-mails listed in Exhibit 8 with him (T., pp. 229-31). Based upon Ms. Thomas’s testimony, the universe of e-mails that she could have possibly gone over with him were two to three.

<sup>13</sup> The e-mail had no connection with Mr. Kopelman’s website.

As a result of what happened with Mr. Kopelman, Mr. Coffman launched the creation of a new policy (T., pp. 177-78). The policy was vetted by Mr. Coffman and the Office of Attorney General, and received assistance from, among other groups, Peggy Kerns of the National Conference of State Legislators, the National Association of Secretaries of State, and members of Mr. Coffman's staff (T., pp. 177-83; Exhibits T, U, V, W and X).

Like Mr. Hobbs, Mr. Coffman agreed that the technical violations of the personnel rules by Mr. Kopelman did not constitute personal responsibility for him under the personnel rules or for violations of other state statutes or criminal laws (T., p. 190). There is no such testimony in the record, nor can Ethics Watch cite to any legal precedent for this proposition.

4. *State Auditor's Report*<sup>14</sup>

On May 8, 2007, Mr. Coffman sent a letter formally requesting the State Auditor to conduct an independent audit into the allegations of wrongdoing by Mr. Kopelman (Exhibit M). On May 9, 2007, the State Auditor agreed and stated that the investigation would include allegations regarding: (1) misuse of state assets, including such assets as the state's voter registration lists; and, (2) violations of state laws and personnel rules related to conflict of interest and outside employment (Exhibit O).

The State Auditor left no stone unturned. The auditors reviewed "the private business records, personal and business emails, and other documentation related to the employee's outside business . . . ." (Exhibit CC, p. 3). The Office of the State Auditor staff further reviewed "the personnel and business records, emails and other documentation related to [Mr. Kopelman's] term of employment with the Department of the State" (Exhibit CC, p. 44). The Office of the State Auditor staff further "conducted interviews with the employees and other management and

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<sup>14</sup> Ethics Watch, in an apparent attempt to limit what this Commission would read, only included two pages of the Report in their Exhibit 22.

staff of the Department” (Exhibit CC, p. 44). The Office of the State Auditor even “reviewed the computer access logs for every entry into the master database from January 1, 2007 through May, 2007” (Exhibit CC, p. 51). To provide greater assurance about the adequacy and comprehensiveness of the policies and practices of the Department of State relative to the outside employment of its staff, they even expanded their review (Exhibit CC, p. 44). In other words, they reviewed all of Mr. Kopelman’s e-mails -- personal, business, and governmental. The Report reiterated this fact again: “We reviewed the private business records, personal and business emails, and other documentation related to the employee’s outside business for the period from when the employment began in January 2007 through May 2007” (Exhibit CC, p. 48). These records were even produced by the State in response to a CORA request.

The report concluded that “we found no evidence that the business benefitted financially from the individual’s employment with the Colorado Department of State” (Exhibit CC, p. 48; *see also* pp. 3-4). There was no evidence that Mr. Kopelman or any other unauthorized user had ever accessed the master database from January 1, 2007 to May 2007 (Exhibit CC, p. 51). The State Auditor agreed with the Secretary of State’s internal investigation that Mr. Kopelman’s engaged in outside employment/business ownership without advance written approval from the appointing authority, and that this was incompatible with his state job (Exhibit CC, p. 44). The report stated that “all appointing authorities, managers and supervisors are accountable for compliance with these rules and state and federal law,” and the Secretary of State “shares responsibility” for these violations (Exhibit CC, p. 45).<sup>15</sup> The Report made no finding that Mr. Coffman knew about either Mr. Kopelman’s partisan activities, including his website.

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<sup>15</sup> Neither the Report, nor Colorado law, provides that this means that either Mr. Hobbs or Mr. Coffman are, therefore, personally accountable under the personnel rules, statutes, or other ethics laws. Mr. Hobbs testified otherwise. Indeed, there are many instances where technical

5. *The Denver District Attorney's Investigation*

On June 15, 2007, Ethics Watch hand-delivered a 4-page complaint to Denver District Attorney Mitch Morrissey, a Democrat, requesting a criminal investigation to determine whether Mr. Kopelman violated laws and whether Mr. Coffman was a “complicitor, conspirator, or an accessory to Mr. Kopelman’s action -- or if he committed other crimes” (Exhibit FF). Ethics Watch attached a plethora of exhibits to the letter, many of which appeared to be attached to the complaint it filed before this Commission.

On December 12, 2007, Joseph Morales of the Denver District Attorney’s Office sent a letter to Ms. Taylor, advising her that he had reviewed the complaint Ethics Watch filed and that the office was declining to prosecute the case against Mr. Coffman (Exhibit HH).

**Phase Line: The Evidence.**

Colorado Ethics Watch also claims that Mr. Coffman violated criminal laws when it certified Premier Election Solution.<sup>16</sup> The complaint asserted:

- “Mr. Coffman engaged a panel of voting testing experts to advise him in connection with the retesting procedure” (Exhibit A, Para. 21);
- “Going against the experts’ recommendations, Mr. Coffman certified the voting systems manufactured by one vendor -- Premier” (*Id.*, Para. 26);

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personnel rules for incompatible outside employment are violated (*see, e.g.*, Mr. Hobbs’s direct examination and Exhibit H).

<sup>16</sup> Ethics Watch is now attempting to spin this argument and say that this was not about the certification process, but rather an alleged perceived conflict of interest. Ethics Watch’s Complaint provides otherwise and this is a clear attempt to shift the Commissioner’s attention from the uncontroverted facts in this case.

- “Upon information and belief, Mr. Coffman and/or his allies, personally benefitted from Mr. Coffman’s failure to perform the duties of his office” (*Id.*, Para. 29); and
- “By authorizing the certification of Premier’s voting system against the recommendations of the expert panel when a known conflict existed between Mr. Coffman and Premier’s lobbying firm, Mr. Coffman appears to have engaged in ‘corrupt conduct in the discharge’ of his duties under the Election Code” (*Id.*, Para. 44).

Ironically, in response to *The Denver Post* editorial, Ethics Watch wrote a letter to the editor, on Friday, March 13, 2009, accusing Mr. Carroll of judging its case against Mr. Coffman without “knowing many, if any, of the facts or the procedure.” A subsequent editorial opinion written by Mr. Carroll on Saturday, March 14, 2009, made it clear that Mr. Carroll had read the complaint and watched the lawyers present their case. Mr. Carroll questioned why Ethics Watch did not call the experts on the independent testing board. Ethics Watch responded that “the decision to certify was not an issue in the case.” Mr. Carroll responded in *The Denver Post*:

Take note, state commissioners, Ethics Watch has just backed off one of its most serious charges against Coffman. To wit: “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.’” The next paragraph of the complaint urges the commission to ‘investigate and make finding regarding Secretary Coffman’s retention of Phase Line [a lobbying firm] and certification of the electronic voting machines. . . .’

So the decision to certify *was* an issue. Ethics Watch not only neglected to prove its case, it seems to have forgotten what its case was actually about.

(Emphasis in original).

The uncontroverted evidence adduced at the hearing clearly shows that Ethics Watch's complaint is frivolous.

*1. Bill Hobbs*

Mr. Hobbs testified that after Secretary of State Gigi Dennis certified all of the electronic voting equipment in 2006, a group of plaintiffs brought a lawsuit in 2006 challenging the use of electronic voting systems by stating that the touch screen systems were unreliable and could not be used in the 2006 elections (T., p. 85). Judge Manazares found in favor of the plaintiffs on three of their eight claims and found that Secretary of State Dennis had not promulgated a sufficiently detailed rule on security; therefore, the court ordered the Secretary of State to retest the voting equipment under a new rule.

Given the litigious nature of the case, Mr. Hobbs expected a lawsuit would come about as a result of the final decisions by the Secretary of State after the process was completed (T., p. 90). Mr. Coffman wanted to develop a process that would withstand judicial scrutiny, be airtight, and preclude any outside influences (T., pp. 90-91). The Secretary of State's office was criticized for making the process too airtight (T., p. 91).

Mr. Coffman promulgated a very detailed, nearly 50-page, rule in the Winter of 2007, convened a panel of technical experts, and began the process of retesting all of the voting equipment at the end of March and beginning of April 2007 (T., p. 86). Mr. Coffman formed an independent testing board of five people with testing experience in a variety of fields relating to either information technology or voting equipment. They developed a testing plan, with an extremely detailed documentation process (T., p. 87). The testing board conducted several thousand tests and produced thousands of pages of documentation (T., pp. 87, 90). Mr. Coffman issued a letter to all four of the vendors to comply with the information requests from the testing

board, because they were not fully complying with information requests (T., p. 89; Exhibit RR). Neither Mr. Coffman nor Mr. Hobbs reviewed the test results during the testing process (T., pp. 91-92). The Secretary of State's Office posted a great deal of information on its website, which is still available (T., p. 92; *see also* Exhibits NN, OO, PP, and QQ).

None of the vendors, including Premier, received any favors or had any special access to Mr. Coffman (T., p. 96). On September 28, 2007, Mr. Hobbs received an e-mail, which was forwarded to him. The original sender was Mike Ciletti (T., p. 94; Exhibit TT). Mr. Ciletti requested an opportunity to have a public discussion about the retesting process (T., p. 94; Exhibit TT). Mr. Hobbs sent Mr. Ciletti an e-mail declining this request. Mr. Hobbs noted that because of the potential for litigation, the Secretary of State's office was trying to avoid public discussion that might be viewed as influencing the testing process (T., pp. 94-95). Mr. Ciletti wrote that he understood and did not want to do anything that would create problems (T., p. 95; Exhibit TT). The record also shows that Mr. Hobbs completed a garden-variety statewide survey that he received from Mr. Ciletti (T., p. 96-98; Exhibit UU). Mr. Coffman questioned whether they needed to respond at all, because it would divert their energies. Mr. Hobbs noted that there was no reason why they could not respond to the general request, as they received these types of requests for information routinely (T., p. 97).

Once the testing board completed its initial phase of the tests, it provided its detailed findings to Mr. Coffman; this included approximately 50 binders per vendor (T., pp. 98-99). Mr. Coffman immediately convened a number of meetings with Mr. Hobbs, members of the testing board, and about three attorneys from the Attorney General's office (T., pp. 99-100). According to Mr. Hobbs, "it was very important to us that the [Attorney General] advised us on the process to follow and the standard that the Secretary had to apply. We wanted to make sure it was a

defensible process.” (T., pp. 99-100). The testing board applied a “strict compliance standard”; in other words, every test they administered was either a pass or fail (T., p. 100). By contrast, the Election Code required the Colorado Secretary of State to apply a more relaxed standard of “substantial compliance.”

On December 17, 2007, Mr. Coffman released his initial decisions regarding the four vendors. Mr. Hobbs agreed with Mr. Coffman’s decisions (T, pp. 105-06). Mr. Coffman decided to *conditionally certify* all four systems of Premier Election Solutions. Mr. Coffman also *conditionally certified* all but one of the Sequoia’s components or software that it tested. Only the DRE failed. In other words, he similarly *conditionally certified* three of the four components. Mr. Coffman also conditionally certified two of the four components of Hart. Only ES&S was initially completely decertified. “All of the certifications were with a substantial list of conditions” (T., p. 102). Mr. Hobbs further testified that all of the vendors (including Premier), and county clerks believed that the conditions were too burdensome (T., pp. 103-04).

Mr. Coffman immediately initiated discussions with legislators on potential legislation to give him the flexibility to get the vendors fully certified (T., pp. 104-05). Ultimately, all of the vendors were fully certified.

Mr. Hobbs testified that throughout the entire process, the only disagreement between the Secretary of State and the testing board involved vendor Hart’s optical scanner (T., p. 107). The Secretary of State’s office was never sued. There was no hint of favoritism (T., p. 107).

## 2. *Mike Coffman*

Mr. Coffman’s testimony was corroborated by Mr. Hobbs. In addition to creating the independent testing board, Mr. Coffman insisted on having a third-party auditor examine all of the testing to make sure it was appropriate (T., p. 192). Mr. Coffman explained in detail the

concept of strict compliance used by the testing board (T., pp. 192-94). Mr. Coffman's only involvement in the first phase of the process (the testing phase) was to contact each vendor to advise them of what their specific deficiencies were for submitting information and equipment (T., p. 194; Exhibit RR). Every vendor was behind schedule; therefore, each of them received a letter (T., p. 195).

Mr. Coffman worked very closely with the Office of the Attorney General to prevent outside influences (*Id.*). Mr. Coffman received criticism for excluding interested parties from the process (T., p. 196).

The second phase of the bifurcated process began in early December 2007, when the testing was finished (T., p. 197). Mr. Coffman began meeting with Mr. Hobbs, Ms. Ponder, representatives of the testing board, the testing manager, and representatives from the Office of the Attorney General (T., pp. 197-98). The meetings were private and not open to either the public, vendors, or the county clerks.

Mr. Coffman relied heavily on the Office of the Attorney General in applying the substantial-compliance test (T., p. 198). As to "every decision, there was consensus" (T., p. 198). In other words, there were no differences among anyone in the room; they all agreed as to the decisions that came out in the first round (T., p. 199). Exhibits YY and ZZ are the initial decisions and letters that were sent to the vendors (*Id.*; Exhibits YY and ZZ). Mr. Coffman testified that nothing just passed; everything passed with conditions for use, if it did pass (T., p. 199). There were a lot of complaints that there were so many conditions placed on the use of the equipment that it was tantamount itself to decertification (T., p. 200). Premier was unhappy about the conditions placed on their equipment.

With the exception of the Hart optical scanner, the testing board and Mr. Coffman agreed as to all of his decisions (T., p. 201). The Office of the Attorney General also agreed with Mr. Coffman's decisions (T., p. 305).

Prior to announcing the decision, Mr. Coffman set up a number of additional processes. Half-day meetings were immediately held with each vendor and the county clerks to review the decision and provide the ability to challenge the decision (T., pp. 200-01). Mr. Coffman assembled a legislative group to convene and discuss the policy options of what to do next with decertified equipment (T., p. 200). As a result of these discussions, House Bill 1155 gave him an extension in terms of working on modifying the process so that they could legally certify all of the vendors (T., pp. 202, 207). For example, it gave the Secretary of State's office the ability to do modifications to the equipment and examine local security procedures (T., p. 202). Mr. Coffman even received accolades from his former Democratic opponent for the Secretary of State's office, Ken Gordon (Exhibit CC).

Mr. Coffman testified that he never discussed Premier or the certification process with either Mr. Tonner or Mr. Ciletti (T., pp. 209-10). They never talked about it directly, nor did he receive e-mails from either of them about it (T., pp. 210-11). Neither Mr. Coffman nor Phase Line violated any disclosure laws or reporting requirements (T., p. 291). Mr. Coffman was not even aware of the nature of their contract with Premier during the certification process (T., p. 303).

### 3. *Mike Ciletti*

Mr. Coffman offered the testimony of Mr. Ciletti through an affidavit (Exhibit J). Ethics Watch did not list him as a witness. His testimony was uncontroverted.

From August 2003 to December 2008, Mr. Ciletti worked for Phase Line Strategies, LLC (“Phase Line”). On or about August 20, 2007, Phase Line entered into a Consulting Services Agreement (the “Agreement”) with Premier Elections Solutions (“Premier”). Phase Line was hired to provide various consulting services to Premier. This included providing state and county lobbying services to Premier, assisting Premier with outreach efforts to third-party groups and community leaders, and providing strategic advice for handling local media strategies to effectively communicate talking points. With regard to the Colorado Secretary of State’s office, his role was simply to understand how the certification process worked and to counsel Premier accordingly. Therefore, he would attend public meetings and digest open public records regarding the same.

Mr. Ciletti was the only consultant affiliated with Phase Line that provided services to Premier under the Agreement. Sean Tonner was not involved in servicing any aspect of the Agreement. Mr. Ciletti never discussed any issue concerning Premier with Mr. Coffman.

Phase Line was very public at all times regarding its representations of Premier. By way of example only, Phase Line timely filed public-disclosure reports with the Colorado Secretary of State, evidencing the fact that it was retained to represent Premier. Phase Line carefully followed all lobbying laws and regulations. The disclosure statements further evidenced that no expenditures were made for or on behalf of Mr. Coffman or members of his administration.

On September 28, 2007, Mr. Ciletti wrote Jacque Ponder of the Colorado Secretary of State’s office to find out if there would be a willingness, on behalf of the Secretary of State, to participate in a public forum or conference call with the vendors and clerks. The e-mail indicated that Premier wanted an opportunity to talk about the issues, and that we had no objection to having this discussion in the public. In fact, it noted that concerned activists could

participate and this could lead to fruitful open discussions. *See* Ex. A to Mr. Ciletti's Affidavit. Jacque Ponder referred the inquiry to Bill Hobbs, who denied this request. On October 2, 2007, Mr. Hobbs advised Mr. Ciletti that, prior to the Secretary of State's certification decision, they were going to avoid meetings and discussions that might appear to compromise the process. However, Mr. Hobbs added that public discussions about the issues involved in certification may be very constructive upon the completion of the current process. On October 2, 2007, Mr. Ciletti wrote back that he understood and the last thing they were looking for was to compromise the certification process. Mr. Ciletti further stated that "I will advise my client to wait for the process to conclude before engaging your office on issues outside of the specific steps/procedures associated with the approval process."

Phase Line never sought, nor received, any favors from either Mr. Coffman or the Colorado Secretary of State's office. In fact, neither Mr. Ciletti nor anyone from Phase Line ever discussed their representation of Premier with Mr. Coffman nor lobbied him regarding the certification process.

Premier and Phase Line followed the certification process and never violated any of the procedures or rules set up by the Colorado Secretary of State's office.

#### 4. *Sean Tonner*

Mr. Coffman offered the testimony of Mr. Tonner through an affidavit (Exhibit I). Ethics Watch did list him as a witness, but never called him to testify. His testimony was uncontroverted.

Mr. Tonner is the president of Phase Line. Over the years, Phase Line has worked with other election-machine vendors. Based upon this representation, Phase Line was approached by

Premier, in approximately July 2007. On August 20, 2007, Phase Line entered into a Consulting Services Agreement (the "Agreement") with Premier.

Pursuant to the Agreement, Phase Line was to provide state and county lobbying services and assist Premier with outreach efforts to third-party groups and community leaders as part of its strategy and accuracy, along with providing strategic advice for handling local media strategies to effectively communicate talking points. Mr. Ciletti was the Personnel Consultant hired under the Agreement. Mr. Tonner was not personally involved in servicing any aspect of the Agreement. At the time we entered into this contract, United States Representative Tom Tancredo represented the 6th Congressional District. Mr. Tonner's understanding was that Congressman Tancredo would run for re-election at that time.

On or about October 29, 2007, Congressman Tancredo announced that he would not seek re-election to the United States House of Representatives. Thereafter, Mr. Coffman notified Mr. Tonner that he intended to run for Mr. Tancredo's seat and asked Mr. Tonner to assist him. In 2005, Mr. Tonner advised Mr. Coffman that if he ever ran for this congressional seat, he would help him get elected. Mr. Coffman and Mr. Tonner had a relationship going back to 1999, when Mr. Tonner served as deputy chief of staff in Governor Owens's administration and Mr. Coffman was the Colorado State Treasurer. Knowing that there would be a contested primary election, Mr. Coffman wanted his intentions about running for this open seat known immediately, and Mr. Tonner agreed to work on a press release for him. Mr. Coffman had not even assembled a campaign team or press secretary at that time, and Mr. Tonner advised him that he would not be his campaign manager. However, Mr. Tonner agreed to be an advisor to his campaign.

Mr. Tonner never discussed any issue concerning Premier with Mr. Coffman. Phase Line was very public at all times regarding its representations of Premier. Phase Line timely filed

public-disclosure reports with the Colorado Secretary of State, evidencing the fact that it was retained to represent Premier. Phase Line has carefully followed all lobbying laws and regulations. The disclosure statements further evidenced that no expenditures were made for or on behalf of Mr. Coffman or members of his administration. Phase Line never sought, nor received, any special favors from either Mr. Coffman or the Colorado Secretary of State's office.

### **III. Conclusion**

As the evidence demonstrates, Colorado Ethics Watch wholly fails to prove -- under any burden of proof, let alone the required standard of clear and convincing evidence -- that Mr. Coffman violated any ethical standard. Despite its serious allegations and claims of public corruption, Ethics Watch offers not one scintilla of evidence of Mr. Coffman's guilt. Mr. Coffman, in contrast, presented virtually all of the substantive evidence -- including volunteering to testify on his own. Even though Mr. Coffman was required to prove nothing, he presented his own uncontroverted evidence that he acted completely appropriately.


Ethics Watch's complaint -- the first before this Commission -- is a pure partisan attack and is disgraceful. A finding of personal guilt against Mr. Coffman based upon such flimsy allegations of violations of technical personnel rules would "open the floodgates" to future complaints that allege that a public official commits an ethical violation, based upon every subordinates technical violations of rules that have nothing to do with "other standards of conduct," as contemplated by Amendment 41.

This Commission must rule in Mr. Coffman's favor, not only because its complaint lacks jurisdiction under Amendment 41, but because Colorado Ethics Watch's complaint lacks merit. This Commission must put an end to Colorado Ethics Watch's recklessly and dangerously

partisan charade. Mr. Coffman deserves to have his good name restored and not clouded by such specious allegations.

Respectfully submitted this 16th day of March, 2009.

GREENBERG TRAURIG, LLP

  
/s/ Douglas J. Friednash  
Douglas J. Friednash, #18128  
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**ATTORNEYS FOR PLAINTIFF  
MICHAEL COFFMAN**

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 08-01

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**RESPONSE TO SUPPLEMENTAL EXHIBITS**

**Exhibit A**

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On February 13, 2009, the Parties filed their respective Final Prehearing Statements. The Statements listed the Parties' respective witnesses and exhibits. Subsequently, the Parties submitted their final exhibit lists. While Ethics Watch had the opportunity to supplement the list, they chose not to and even instructed the undersigned counsel in an e-mail that they had their final exhibit list.

On March 9, 2008, counsel for the Commission sent a letter clarifying a statement made by Chairman Lasha at the conclusion of the hearing. Specifically, the letter states that "[t]he Independent Ethics Commission ("IEC") will accept additional documents until the close of business on March 12, 2009. This is intended to be for documents that are necessary for clarification of any information presented at hearing. It is not intended for rehashing matters or for cumulative information. As such, please carefully weigh the need to provide additional documents. Please work between the parties to agree to these materials, if any."

On March 12, 2009, six days after the close of testimony in this case, Ethics Watch filed 27 new exhibits with the Commission. The exhibits are voluminous and amount to about a three-inch stack of documents. Ethics Watch did not work with the undersigned counsel in an attempt to seek agreement as to these exhibits. In fact, Ethics Watch never even notified the undersigned counsel about these exhibits prior to filing the exhibits with the Commission. The inclusion of these exhibits would deprive Mr. Coffman of a meaningful opportunity to defend this case. He is not able to confront witnesses about the exhibits, he cannot offer evidence about these exhibits, nor can he cross examine individuals with information regarding these exhibits.

Mr. Coffman, therefore, respectfully moves the Commission to exclude Ethics Watch's 27 new exhibits, which are listed below with a very brief summary of why the Commission should exclude the exhibits.

**The Exhibits**

**Exs. 40 and 41:** These two exhibits, without proper testimony and foundation, are misleading and require additional testimony to clarify from Mr. Hobbs. During a break at the proceedings on March 6, 2009, and prior to the completion of the testimony, Ethics Watch showed Exhibit 40 to the undersigned counsel, who advised them that they would not object to entering Exhibit 40 into evidence *at the hearing so that the witnesses could explain the document*. Ethics Watch never moved for entry, and now they apparently want to use this in a misleading attempt to show

that Mr. Kopelman's salary remained the same, which is not true. Additional testimony would show that this only reflects that the temporary pay differential of \$9,000 did not become permanent, which means Mr. Kopelman did, in fact, receive a \$9,000 pay decrease as a result of his actions.

**Exs. 42 and 45:** This information is already in the record, so it is cumulative. The information is also irrelevant and immaterial to any issue being considered by the Commission. Ethics Watch could have questioned Mr. Coffman about the information in these exhibits, but they chose not to.

**Exs. 44, 45, 46, and 47:** These are CORA-related letters, and there are a plethora of such letters in this matter. Ethics Watch is now attempting to selectively include a few of these documents in the record to create an incomplete and misleading picture of the entire evidence. Ethics Watch refused to allow the undersigned counsel to question them as witnesses, but they now want this evidence to "sneak in." The exhibits are irrelevant, immaterial, confuses the issue, and raises new issues not previously addressed.

**Ex. 48:** This article, "Coffman fights invisible foe," was never disclosed and is irrelevant and immaterial to the hearing.

**Exs. 49 and 50:** Ethics Watch created these documents, they were never disclosed, they raise new issues not previously addressed, and prevent Mr. Coffman from exercising his right of cross examination.

**Ex. 51:** This exhibit consist of a number of items taken from Ethics Watch's website. They were never disclosed and are irrelevant, a waste of time, confusing as to the issues, and cumulative. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 52:** Ethics Watch's press release related to the Denver District Attorney was never disclosed, raises a new issue, and is irrelevant to this proceeding. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 53:** Ethics Watch's press story related to the Memorial Donation to the tax group was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 54:** Ethics Watch's press release on the IRS investigation was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 55:** Ethics Watch's response to the IEC court application for secrecy was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 56:** Ethics Watch's publication "EYE on IEC" was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 57:** Ethics Watch's news release was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 58:** Ethics Watch's letter to Senator Tapia was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 59:** Ethics Watch's press release was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 60:** Ethics Watch's letter to the Colorado legislative leadership was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 61:** Ethics Watch's press release related to its certification as a CLE sponsor was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 62:** Ethics Watch's article was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 63:** Ethics Watch's press release related to Mr. Balmer was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 64:** Ethics Watch's press release was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 65:** This article from Channel 7 was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 66:** Ethics Watch's statement on Governor Bill Ritter was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination.

**Exhibit 67:** This part of the State Auditor's performance audit was never disclosed, raises a new issue, and is irrelevant to the proceedings. If this exhibit is allowed, Mr. Coffman should be allowed to call Ethics Watch principals as witnesses for purposes of cross examination. Additionally, Mr. Coffman is entitled to call and cross-examine witnesses and evidence regarding the same.

Mr. Coffman respectfully moves the Commission to exclude Ethics Watch's 27 new exhibits. There is no excuse for Ethics Watch's failure to include these exhibits in their final exhibit list. The additional documents are irrelevant, immaterial, misleading, cumulative, and a further waste of this Commission's time and energy. Clearly, Ethics Watch believed that they could attempt to clean up their image and improperly change the record through this unconventional document dump, while simultaneously depriving Mr. Coffman the ability to confront, cross-examine, and otherwise scrutinize the allegations contained therein.