

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 22-cv-00247

**GREG LOPEZ,
RODNEY PELTON, and
STEVEN HOUSE,**

Plaintiffs,

v.

JENA GRISWOLD, Colorado Secretary of State, in her official capacity, and
JUDD CHOATE, Director of Elections, Colorado Department of State, in his official
capacity,

Defendants.

COMPLAINT

INTRODUCTION

Much has changed since 2002, when Colorado adopted its current contribution-limits scheme. America has seen three new Presidents. Eminem, Ashanti, and Nelly no longer rule the pop charts. Gasoline no longer costs \$1.14 per gallon. Smartphones were invented and became ubiquitous. But Colorado has clung to already unconstitutionally low candidate-contribution limits.

Plaintiffs Greg Lopez and Rodney Pelton are candidates who need sufficient contributions to mount an effective campaign for office, and Plaintiff Steven House is a citizen who would like to associate with and support candidates of his choosing. Colorado's contribution limits violate their First Amendment rights of speech and association by preventing them from effectively doing so. Equally bad, Colorado punishes Mr. Lopez and Mr. Pelton when they refuse to limit their expenditures, and

thus their speech, by doubling the contribution limits for their opponents. The government's interest in combatting actual or apparent corruption cannot justify such different contribution limits.

Both these regulations violate Plaintiffs' First Amendment rights, and they should be enjoined.

JURISDICTION & VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (2018) because Plaintiffs assert their claims under 42 U.S.C. § 1983 (2018), thus raising federal questions.

2. The Court also has jurisdiction under 28 U.S.C. § 1343(a) (2018) because this action seeks redress for the deprivation of constitutionally protected rights and appropriate relief for the protection of those rights.

3. Venue is proper in this District pursuant to *id.* § 1391(b) because Defendants reside in the District and all events or omissions giving rise to Plaintiffs' claims occurred here.

PARTIES

4. Plaintiff Greg Lopez is a candidate for Governor of Colorado in the 2022 election.

5. Plaintiff Rodney Pelton is a candidate for the Colorado Senate, in Senate District 35, in the 2022 election.

6. Plaintiff Steven House is a citizen and registered voter in Adams County, Colorado. He has a history of campaign contributions in the past and intends to contribute to campaigns for the 2022 election.

7. Defendant Griswold is the Secretary of State for the State of Colorado. Her duties include administering Colorado's campaign finance laws, including Colo. Const.,

art. XXVIII. Defendant Griswold receives, investigates, and administratively prosecutes campaign finance complaints.

8. Defendant Choate is the Director of Elections in the Colorado Department of State. In this capacity he manages the Department's Division of Elections, including overseeing campaign finance complaints and enforcement. When the Secretary of State receives campaign finance complaints, Defendant Choate (or his designee) reviews those complaints for legal and factual sufficiency, and, if found sufficient, conducts further investigation. The Division may refer the complaint to a hearing officer for adjudication.

LEGAL BACKGROUND & OPERATIVE FACTS

The Regulatory Regime

9. In 2002, Colorado added Article XXVIII to its constitution.

10. Among other things, Article XXVIII places limits on the amount a person may contribute to a single political candidate. See Colo. Const. art. XXVIII, § 3(1).

11. For the purposes of its contribution limits, Article XXVIII divides candidates into two tiers. Tier 1 contains candidates for governor,¹ secretary of state, state treasurer, and attorney general. *Id.* § 3(1)(a). Tier 2 contains candidates for state senate, state house of representatives, state board of education, regent of the University of Colorado, and district attorney. *Id.* § 3(1)(b).

12. When first enacted, Article XXVIII limited per-person contributions to Tier 1 candidates to \$500 per election. *Id.* § 3(1)(a). Tier 2 candidates were limited to \$200 per election. *Id.* § 3(1)(b).

¹ In the general election, gubernatorial candidates run jointly with a lieutenant governor nominee. When appropriate, references to candidates for governor in this Complaint include such joint candidacies.

13. Article XXVIII has rules for adjusting the limits upward with inflation. These rules have allowed the base Tier 1 limits to rise to \$625 per election at present. However, the Tier 2 limits remain at \$200 per election.

14. The adjustment operates every four years (starting in the first quarter of 2007) and is “based upon the percentage change over a four year period in the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley, all items, all consumers, or its successor index.” Colo. Const. art XXVIII, § 3(13). On information and belief, the successor index now used by the Department of State is the Denver-Aurora-Lakewood consumer price index, all items, all consumers.

15. However, that number is “rounded to the nearest lowest twenty-five dollars.” *Id.*

16. Because of this rounding-down requirement, Tier 1 races are not accurately indexed to inflation: the relevant consumer price index has increased approximately 56% since the second half of 2002 (when Article XVIII was added to the state constitution), but the Tier 1 contribution limit has only increased 25%.

17. Tier 2 races are not accurately indexed to inflation either: the relevant consumer price index has increased approximately 56% since the second half of 2002 (when Article XVIII was added to the state constitution), but the Tier 2 contribution limit has not changed at all.

18. Colorado law allows candidates to accept and spend contributions for both the primary and general election at any time during an election cycle. Colo. Rev. Stat. § 1-45-103.7(3) (2021). This effectively doubles the base contribution limits to \$1250 for Tier 1 candidates and \$400 for Tier 2 candidates.

19. Article XXVIII’s contribution limits double again “for any candidate who has accepted the applicable voluntary spending limit,” so long as the candidate’s opponent

“has not accepted the voluntary spending limit” and “has raised more than ten percent of the applicable voluntary spending limit.” Colo. Const., art. XXVIII, § 4(5).

Plaintiffs’ Activities

20. As a candidate for governor in the 2022 election cycle, Plaintiff Greg Lopez is a candidate in a Tier 1 race.

21. As of his January 18, 2021, report to the Department of State, Plaintiff Lopez’s campaign had accepted maximum donations from five persons.

22. Based on his experience running for the same office in 2018, Plaintiff Lopez anticipates that he will receive and accept additional maximum donations as the campaign progresses.

23. Plaintiff Lopez has identified donors who would contribute to his campaign in amounts exceeding current contribution limits were it lawful to do so. He stands ready to accept such contributions, but refrains from doing so only because of the current contribution limits.

24. One of Plaintiff Lopez’s primary opponents has agreed to limit her campaign expenditures in exchange for being able to accept higher campaign contributions. Because the incumbent governor has already raised more than 10% of the spending limit, Lopez’s primary opponent is now able to accept contributions twice as large as would ordinarily be the case (i.e., up to \$2500 per person).

25. As of her January 18, 2022, report to the Department of State, Plaintiff Lopez’s aforementioned opponent had accepted more than 100 contributions that were greater than what Lopez is allowed to accept.

26. Plaintiff Lopez has refused to agree to expenditure limits, choosing to exercise his right to political expression to its fullest. As a consequence, he has been punished with lower contribution limits.

27. As a candidate for the Colorado Senate, Plaintiff Rodney Pelton is a candidate in a Tier 2 race.

28. As of his January 16, 2022, report to the Department of State, Plaintiff Pelton's campaign had accepted a maximum donation from one person.

29. Based on his experience running for the Colorado House in 2018 and 2020, Plaintiff Pelton anticipates that he will receive and accept additional maximum donations as the campaign progresses.

30. Plaintiff Pelton has identified donors who would contribute to his campaign in amounts exceeding current contribution limits were it lawful to do so. He stands ready to accept such contributions, but refrains from doing so only because of the current contribution limits.

31. Plaintiff Pelton has agreed to Article XXVIII's spending limits, but felt forced into it to keep opponents from getting an upper hand by being able to accept contributions twice as large as he could. Plaintiff Pelton's primary opponent has also accepted the spending limits—the result is that they both are subject to the \$400 limit.

32. Plaintiff Steven House has a history of campaign contributions in the past and intends to contribute to campaigns for the 2022 election.

33. Plaintiff House has previously given maximum donations to both Tier 1 and Tier 2 candidates.

34. Plaintiff House has already contributed the primary-election maximum (\$625) to Plaintiff Lopez.

35. Plaintiff House expects and intends to give full, aggregate-maximum contributions to various Tier 1 and Tier 2 candidates as the 2022 election season progresses.

36. If it were lawful, Plaintiff House would contribute to Tier 1 and Tier 2 candidates in excess of the current contribution limits. Moreover, Plaintiff House would support his preferred candidates without regard to how much they agree to spend; he contributes money with the hope and expectation that it can be fully spent to communicate his candidates' messages.

37. Plaintiffs intend to engage in materially and substantially similar activity in future elections. Absent relief, they will similarly be limited by Colorado's contribution limits.

**COUNT ONE:
UNCONSTITUTIONALLY LOW CONTRIBUTION LIMITS
U.S. CONST. AMENDS. I, XIV; 42 U.S.C. § 1983**

38. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37.

39. The First Amendment protects both political association and political expression. The Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *McCutcheon v. FEC*, 572 U.S. 185, 191–92 (2014) (plurality opinion). Furthermore, "the right of association is a basic constitutional freedom that is closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." *FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197, 206–07 (1982) (internal quotes omitted).

40. Laws that limit the amount of money a person may give to a candidate intrude upon both of those First Amendment interests and infringe on the rights of contributors, candidates, and advocacy groups.

41. The U.S. Supreme Court has previously held that government-imposed limits on political contributions must be closely drawn to match a sufficiently important interest.

42. Under current caselaw, the only governmental interest that can justify limiting political contributions is an interest in preventing quid pro quo corruption or the appearance thereof.

43. Colorado's limits are too restrictive from a constitutional perspective: they work more harm to protected First Amendment interests than any anticorruption objective can justify.

44. In enacting Article XXVIII, lawmakers mentioned corruption only in passing. They relied primarily on interests in leveling influence over elections and the total amount spent in elections—interests the Supreme Court has specifically forbidden.

45. Even if Colorado had raised an accepted, sufficiently important interest, its contribution-limit scheme is not closely drawn.

46. Indeed, Colorado's contribution limits raise all the danger signs triggering special constitutional scrutiny of the scheme's tailoring.

47. Colorado's limits are lower than any the Supreme Court has previously upheld.

48. Colorado's limits are also lower than comparable limits in other states. They are lower than almost all other states for Tier 1 or comparable candidates, and no state in the country has lower contribution limits for Tier 2 or comparable candidates than Colorado does.

49. And because the inflation adjuster at Article XXVIII is ineffective, those limits will continue to get smaller and smaller—both in absolute terms and in comparison to those of other states.

50. Finally, Colorado does not have any special history of quid pro quo corruption that would give any special justification for especially low limits.

51. Colorado's scheme cannot survive the considerations imposed when those danger signs trigger scrutiny. Colorado's contribution limits are so low that they impede the ability of candidates to amass the resources necessary for effective advocacy.

52. Challengers such as Plaintiff Lopez already face higher costs to overcome the name-recognition and other advantages of incumbency.

53. Also, the cost of elections is increasing faster than the rate of inflation and much faster than the contribution limits.

54. Colorado's treatment of volunteer services aggravates these problems because volunteers' expenses in supporting a campaign count against the volunteer's contribution limit.

55. By enforcing Colo. Const. art. XXVIII, §§ 3 and 4, Defendants, under color of law, deprive Plaintiffs of their freedom of speech and association under the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of § 1983, and are therefore entitled to declaratory and injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988 (2018).

**COUNT TWO:
DIFFERENTIAL CONTRIBUTION LIMITS
U.S. CONST. AMENDS. I, XIV; 42 U.S.C. § 1983**

56. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37.

57. By doubling an opponent's contribution limits when a candidate refuses to abide by expenditure limits, Colorado unconstitutionally punishes candidates that choose to exercise their First Amendment rights fully, and the donors who would support them.

58. There is no justification for this differential other than a mere desire to limit money spent on politics—i.e., to limit the exercise of First Amendment rights.

59. The Supreme Court has “never upheld the constitutionality of a law that imposes different contribution limits for candidates competing against each other.” *Davis v. FEC*, 554 U.S. 724, 738 (2008).

60. The differential contribution limits require candidates to choose between the First Amendment right to engage in unfettered political speech and subjection to discriminatory fundraising limitations.

61. Furthermore, the differential contribution limits treat similarly situated candidates differently without any compelling interest.

62. Consequently, by enforcing Colo. Const. art. XXVIII, § 4, Defendants, under color of law, deprive Plaintiffs of the First Amendment’s protection for free speech and association. Plaintiffs are thus damaged in violation of § 1983, and are therefore entitled to declaratory and injunctive relief against continued enforcement and maintenance of Defendants’ unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

- a. a declaration that the contribution limits imposed by Colo. Const. art. XXVIII, § 3(1) and (13) are unconstitutional;
- b. a declaration that the differential contribution limits created by Colo. Const. art. XXVIII, § 4(5) are unconstitutional;
- c. an order permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them

from enforcing the contribution limits in Colo. Const. art. XXVIII, §§ 3(1), 3(13), and 4(5);

d. reasonable attorneys' fees and costs (including expert fees) under 42 U.S.C. § 1988; and

e. such other relief as the Court finds just and proper.

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