
State of Colorado
SECRETARY OF STATE
Administrative Hearing Office
1700 Broadway, Suite 550
Denver, CO 80290

Case numbers: 2026 AHO 21 CPF
(in re ED Nos. 2026-30, 2026-32, 2026-33, 2026-34, 2026-38, 2026-46, 2026-52, 2026-53,
2026-58, and 2026-62)

In the Matter of:

ELECTIONS DIVISION OF THE SECRETARY OF STATE
Complainant
v.
VICTOR MARX AND VICTOR MARX FOR GOVERNOR,
Respondents.

INITIAL DECISION

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Campaign finance law in the Colorado Constitution prohibits a candidate for
governor from accepting more than \$1,450 total from any single donor for the primary and
general election. At a hearing September 10-14, 2026, the Division proved that the Victor

Marx campaign accepted 200 prohibited contributions over the limit totaling \$82,713.32 from 110 individual donors. In addition, the campaign accepted prohibited cash contributions in the amount of \$1,045.00 in ten contributions that exceeded the \$100 limit on cash contributions set forth in the Colorado Constitution.

As shown below, the Marx campaign does not dispute any of this. They plead for a reduced fine, or no fine at all, because they did report the prohibited contributions and because of their attempts to refund or reallocate them.

I. The Hearing, Appearances and Exhibits

1. The hearing in this matter took place on September 10, 11 and 14, 2026, via Microsoft Teams, pursuant to FCPA § 1-45-111.7(5) and (6), C.R.S., and § 24-4-105, C.R.S., of the Colorado Administrative Procedure Act. William D. Hauptman, Esq. and Miranda B. Worthington, Esq., of Wheeler Trigg O'Donnell, LLP, Special Assistant Attorneys General, appeared for the Division. Christopher O. Murray, Esq., of First & Fourteenth PLLC, appeared for Respondent Victor Marx and Victor Marx for Governor (together referred to as the Marx Campaign). References to testimony in this Initial Decision identify the witness and the place in the Teams transcript (e.g., Vol. 1, hh:mm:ss) where the testimony appeared.¹

¹ The Teams transcript, in 6 volumes, is not the official record of the proceeding. “The audio recording of the hearing shall be the official record of the proceeding.” GPAR Rule 3.12.5(a), 8 CCR 1505-3.

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2. These exhibits were received in evidence:
 - a. All exhibits in the September 9, 2026 Joint Exhibit List (Exs. 1, 2 and 59 were received over Respondent's objections);
 - b. Ex. AHO-3 (Identical to Ex. 3 but with row numbers);
 - c. Native .xlsx files:
 - i. Exhibit 03, and Exhibits 52 through 58
 - ii. Exhibit N(1);
 - d. Division's Combined bookmarked exhibit file-35,386 pages; and
 - e. Respondents' Combined bookmarked exhibit file-25,758 pages.

3. **Burden of proof.** The Division, as the proponent of an order, bears the burden of proving the violations alleged in the Complaint by a preponderance of the evidence. § 24-4-105(7), C.R.S. Respondents bear the burden of proving any affirmative defense. As the trier of fact, the hearing officer determines the credibility of the witnesses and weighs the evidence. *Charnes v. Lobato*, 743 P.2d 27, 32 (Colo. 1987).

II. The Law Regarding Contribution Limits

4. Two types of prohibited contributions are at issue here. Article XXVIII, § 3(1)(a)(I) of the Colorado Constitution provides that "no candidate committee shall accept from any one person, aggregate contributions for a primary or a general election in excess

of” \$1,450.² Article XXVIII, § 3(10) prohibits a campaign from accepting cash contributions from any person of more than \$100.00 per day.

5. Victor Marx certified his familiarity with these requirements in two candidate affidavits, Exs. 5 and 6, as did his registered agent, Gregory Carlson, himself a candidate for Fremont County Commissioner. Ex. 59.³ (Carlson, Vol. 4, 0:18–6:04).

6. Candidates and committees are required to report all contributions received under C.R.S. § 1-45-108(1)(a) of the Fair Campaign Practices Act (FCPA). Reporting is “an essential means of gathering the data necessary to detect violations of the contribution limitations.” *Buckley v. Valeo*, 424 U.S. 1, 68 (1976); *Campaign Integrity Watchdog*, 2018 CO 7, ¶ 40; *Sampson v. Buescher*, 625 F.3d 1247, 1256 (10th Cir. 2010). Reporting a prohibited contribution does not excuse the violation for accepting a prohibited contribution in the first place.

7. The Marx campaign filed numerous required reports using TRACER (Transparency in Contribution and Expenditure Reporting), the database maintained by the Secretary of State in which candidates disclose contributions and expenditures and file their periodic reports. TRACER is both a reporting tool for political campaigns and a check

² Colo. Const. art. xxviii § 3(1) set \$500 as the contribution limit in 2002, adjusted by the Secretary of State every four years. *Id.*, § 3(13). The current per donor limit of \$1,450, including both the primary and general elections, is established in CPF Rule 10.17.1(b)(1)(A), 8 CCR 1505-6.

³ Ex. 59 was admitted over counsel’s objection as it is relevant to the knowledge, actions and credibility of the witness.

against accepting prohibited contributions. It is through TRACER that information is made available to the public. (Bouey, Vol. 2, 1:51:35–1:55:50.) The Department of State maintains the system but does not verify the accuracy of what filers enter; the candidate or committee is responsible for accuracy. (Bouey, Vol. 2, 2:05:50–2:08:45.) *Lopez v. Griswold*, No. 22-cv-00247-JLK, 2026 U.S. Dist. LEXIS 64938, at *17 (D. Colo. Mar. 26, 2026) (Kane, J.).

8. A report that shows a prohibited contribution is the functional equivalent of an admission that the campaign accepted it in violation of the Constitution. If the prohibited contribution is returned to the donor within ten days, a campaign will not be liable for the violation. CPF Rule 10.6, 8 CCR 1505-6. Here, a citizen complainant reviewed the TRACER reports filed by the Marx Campaign and identified contributors whose aggregate donations exceeded \$1,450 and filed 144 complaints alleging election law violations. The Division reviewed the TRACER records and confirmed the Marx Campaigns accepted many contributions over the \$1,450 limit. The Division also found cash violations.

III. Administrative investigation of the complaints, opportunity to cure and substantial compliance

9. Respondents pleaded cure and substantial compliance as defenses to the Complaint. Answer, p. 42. Those determinations belong to the Division in the administrative proceeding, not the hearing officer after a hearing officer complaint is filed. Under FCPA § 1-45-111.7(4)(e)(I), C.R.S., “the division shall determine” whether a violation was cured and whether the respondent substantially complied, weighing the three factors in subsection (4)(f): the extent of noncompliance, whether the purpose of the provision

was substantially achieved, and whether the noncompliance was an intentional attempt to mislead. If the Division finds substantial compliance, it moves the deputy secretary to dismiss. § 1-45-111.7(4)(e)(II). If not, the complaint proceeds to investigation and, if warranted, to a hearing officer complaint. § 1-45-111.7(4)(e)(III), (4)(g), (5)(a); *Campaign Integrity Watchdog LLC v. Griswold*, 2025 COA 18, ¶ 9. The cure window closes when the complaint is filed.

10. Because only a motion to dismiss during the administrative process under § 1-45-111.7(4)(e)(II) reaches the deputy secretary, I have examined whether the Division's determination rests on substantial evidence in the record. It does. During the administrative proceeding prior to the filing of the hearing officer complaint, Respondents supplied some, but not all, of the documentation requested in the cure notice. The Division compared what the Campaign supplied against TRACER records, the committee's filings, and detailed contribution searches. It then determined that Respondents had neither cured all violations nor substantially complied. § 111.7(4)(e)(I). The complaints moved to investigation, wherein the Division found excess aggregate and excess cash contributions and filed this complaint. § 111.7(5)(a)(I). The cashed checks, refund records, reattribution call log, and hearing exhibits on which Respondents now rely were supplied to the Division only after the hearing officer complaint was filed. (Gebhardt, Vol. 1, 1:41:59–1:44:29.)

11. The “defenses” of cure and substantial compliance are not available to Respondents at this stage of the proceeding. They are not material issues of fact for decision by a hearing officer. § 24-4-105(14)(a), C.R.S. The Division's determination that

Respondents had not cured all the violations and, separately, had not substantially complied is supported by substantial evidence in the record.

IV. Prohibited Contributions

12. Ex. 3 is the summary of contributions in excess of the \$1,450 per donor limit based on Mr. Carlson's reports, refunds, and reattributions. (Gebhardt, Vol. 2, 5:55–17:47; Carlson, Vol. 3, 32:30–37:23, 1:07:26–1:14:15.) Ex. 3 was negotiated between counsel over the last few days before the hearing. (Hauptman, Vol. 1, 11:43-13:34, 22:47-23:48; Murray, Vol. 1, 27:14-28:56). Ex. 4 accurately summarizes that ten people gave more than \$100 in cash in a single day. (Carlson, Vol. 3, 1:08:16-1:08:34). Both summaries contain data from Respondents' own TRACER filings, the material Respondents supplied during the cure process, and Respondents' hearing exhibits.

13. Contributions from single donors over the \$1,450 limit were accepted over a period of seven months, Ex. 3, Rows 20 and 258, spanning the entire period from the campaign's first months through the closely contested June 30, 2026 Republican primary. A close reading of the Rule 1006 summary in Ex. 3⁴ confirms the Division's number of prohibited contributions in excess of \$1,450 and total contributed amounts per contributor

⁴ Ex. AHO 3 was admitted without objection by the parties. It is identical to Ex. 3 except that it includes the row numbers of the Excel spreadsheet in order to make the Ex. 3 data easier to navigate.

with one downward adjustment.⁵ See, Appendix 1. After the adjustment, I find that Respondents accepted 200 contributions that exceeded the \$1,450 aggregate limit, from 1110 contributors, with a total prohibited contributions of \$82,713.32. (Appendix 1). Each of the Marx Campaign's acceptances from donors over the single donor contribution limit is a violation of Colo. Const. art. XXVIII, § 3(1)(a)(I) as adjusted by CPF Rule 10.17.1(b)(1).

14. Respondents admitted that Ex. 4 accurately lists the ten instances of donors who gave more than \$100 in cash in a single day. (Gebhardt, Vol. 2, 5:55–10:17; Carlson, Vol. 3, 1:07:26–1:14:15.) I find that these ten prohibited cash contributions occurred between February 25 and June 8, 2026, with total prohibited cash contributions of \$1,045.00, in violation of Colo. Const. art. XXVIII, § 3(10). Ex. 4.

V. Mitigation or Aggravation of the Conduct

15. Rule 23.4.5, 8 CCR 1505-6 permits consideration of the following factors in mitigation or aggravation of the conduct as part of setting a civil penalty.

- (a) Nature and extent of the violation;
- (b) Timing of the violation (including proximity to the election);
- (c) Ability or effort to mitigate the violation;
- (d) Evidence of an intentional act or a pattern or practice of misconduct;
- (e) Extent to which the harm caused by the violation or the value of the violation cannot be reasonably calculated; or
- (f) Other aggravating or mitigating factors may be taken into consideration in reaching a just and equitable outcome.

⁵ The downward adjustment is that three contributions recorded in Row Nos. 416, 419 and 420 of Ex. 3 and the source of those contributions (Reich, John and Barb) will be excluded for reasons explained in a Note to Appendix 1.

A. Respondents' Mitigation Evidence

16. Respondents concede that the campaign accepted contributions over the \$1,450 aggregate limit and cash contributions over the \$100 limit. But Respondents point to evidence of mitigating circumstances.

- a. ***Nature and extent of the violation.*** Over 44,000 contributions have been received through four channels: checks to a post office box, envelopes collected at events, the WinRed platform, and the direct-mail firm HSP Direct. Over-limit contributions are less than one-half of one percent of the campaign's receipts. (Carlson, Vol. 3, 43:21–50:07.) The campaign gained nothing from the excess: it has never been unable to pay its bills, and its single Wells Fargo account has earned less than \$5 in interest. (Carlson, Vol. 3, 1:14:15–1:17:48.)
- b. ***Timing of the violation.*** The reporting calendar accelerated to biweekly and 24-hour major-contributor reports in the run-up to the June 30 primary, each report requiring the full aggregation process, at the same time that complaint notices from the Elections Division of the Colorado Secretary of State were arriving “sometimes every other day.” (Carlson, Vol. 3, 1:07:26–1:14:15; Vol. 3, 1:17:48–1:26:31.)
- c. ***Ability or effort to mitigate the violation.*** Once the May 22 cure notice arrived, Mr. Carlson went to work identifying overages and issuing refunds by WinRed or by check, with June 8, the date indicated in the cure notice, as the target for

compliance. (Carlson, Vol. 3, 53:23–58:38; Exs. 9, 10, 10.B.) The work consumed 50 to 100 hours a week. (Carlson, Vol. 4, 12:02–14:02.) He has since improved the campaign’s processes: he now runs aggregation about every ten days, uses TRACER’s audit feature, and in the September 8 report refunded a \$1,000 overage the day it was received. (Carlson, Vol. 3, 1:47:31–1:51:40; Vol. 4, 47:26–53:07; Ex. 47, pp. 286, 2476.) His reporting errors reflected inexperience with TRACER, not concealment; the TRACER team’s own instructions for posting refunds ran to several pages. (Carlson, Vol. 3, 1:39:07–1:46:25; Exs. NNNN, PPPP.) He accepts that the errors are his fault as registered agent and regrets that the refunds were not faster. (Carlson, Vol. 3, 1:47:31–1:51:40.)

d. ***Evidence of an intentional act or a pattern or practice of misconduct.*** A

campaign bent on evading the limits would not report every overage in filings that invite complaints. Mr. Gebhardt confirmed that the campaign disclosed every excess contribution at issue and that there is no allegation of undisclosed money. (Gebhardt, Vol. 2, 1:15:48–1:21:29.) The campaign has refunded most of the prohibited contributions and attempted to refund all; a handful of checks remain uncashed, and Respondents ask that any refund money still in the account be directed to a charity unaffiliated with Mr. Marx. (Carlson, Vol. 3, 1:46:25–1:47:31; Exs. 23.B, 26.B, KKKK.)

B. Hearing Officer's Findings on Mitigation and Aggravation

17. Weighing the factors in Rule 23.4.5, I find that the Marx Campaign has not proved that mitigating factors merit a reduction in the fines sought by the Division. On the contrary, the Division has proved the aggravating circumstances by a preponderance of the evidence. Based on the findings below, a 100 percent enhancement of the base fine on Claim One is warranted.

18. ***Nature and extent of the violation.*** The scale of the violations are without precedent. Mr. Gebhardt has seen at most no more than fifteen prohibited contributions by any one campaign in a cycle, with a total overage in the range of \$3,000 to \$5,000. Here, there were 210 prohibited contributions totaling more than \$83,000. (Gebhardt, Vol. 2, 54:09–54:34.) Mr. Bouey, who has run the TRACER compliance program for seventeen years, called the volume an “anomaly” for his team. (Bouey, Vol. 2, 2:31:17–2:39:08.) The prohibited contributions were not confined to small overages by repeat donors: Respondents deposited single checks of \$2,000 from Mary Beddo, \$5,000 from Donna Casey and \$2,000 from John Todd, each of which exceeded the limit on its face. (Gebhardt, Vol. 2, 18:01–22:29; Bouey, Vol. 2, 2:24:00–2:31:17.) The receipt of prohibited contributions was intentional. Mr. Carlson never instructed HSP Direct (one of four channels through which the campaign received contributions) to refuse checks over \$1,450, allowing it to accept prohibited contributions because the campaign would refund the overage. (Carlson, Vol. 4, 21:44–25:55.)

19. ***Timing of the violation.*** The prohibited contributions were accepted from November 23, 2025 through July 10, 2026, spanning the entire run-up to a Republican

primary that Mr. Carlson described as extremely close. (Carlson, Vol. 3, 1:26:31–1:28:13.)

Respondents kept the money through the primary: Ms. Casey did not negotiate her refund check until July 7, and Ms. Aman’s June 8 check did not post until July 13. Ex. AHO 3, row 31. (Carlson, Vol. 4, 18:44–21:44.) More troubling, Respondents continued to accept prohibited contributions after the complaints began on May 8 and after the Division’s May 12 and May 22 notices. (Gebhardt, Vol. 2, 18:01–29:56; Carlson, Vol. 4, 25:56–30:24.)

Respondents accepted prohibited contributions from Debra Combs on May 14 and June 16, Ex. AHO 3, Rows 94-95, from John Todd on May 21, Ex. AHO 3, Row 462, and from Lynne Harrison on May 26, June 2, June 18, July 3 and July 7. *Id.*; Ex. AHO 3, Rows 222-226.

20. ***Ability or effort to mitigate.*** Respondents had the ability to comply but did not use it. TRACER generates an audit warning whenever an entry pushes a contributor over the constitutional limit, individually or in the aggregate, and asks the filer whether to proceed; the Beddo, Casey and Todd checks were included in the Marx Campaign’s reports because the Marx Campaign disregarded those warnings. (Bouey, Vol. 2, 1:58:52–2:05:50; 2:21:00–2:31:17; Gebhardt, Vol. 2, 1:26:52–1:27:55.) Mr. Carlson admitted he was unaware of the audit feature when he filed his first reports and his first two complaint responses. (Carlson, Vol. 3, 1:47:31–1:51:40.) He also stated that prior to receiving the notices from the Division he did not know that CPF Rule 10.6 gave a committee ten days to return an excess contribution. (Carlson, Vol. 3, 48:10–50:07.) The consequence was that no refund of any kind was attempted until June 8, 2026, more than six months after the first prohibited contribution. (Gebhardt, Vol. 2, 1:31:12–1:35:57.) Comparing each contribution date with the posted date of the refund in Ex. 3 shows that many contributions sat in the

campaign's account for months. Ms. Harrison exceeded the limit on March 13 and received her first refund on July 15. Ex. AHO 3, row 220. (Carlson, Vol. 3, 32:30–37:23.) Mr. Todd's \$550 was returned on July 27, more than two months after his \$2,000 check. Ex. AHO 3, row 462. (Carlson, Vol. 4, 25:56–30:24.) The cash overages, identified to Respondents on June 11, were put "on the back burner" and not refunded until August 17. (Carlson, Vol. 3, 1:07:26–1:14:15; Vol. 4, 45:32–47:26.) Some refunds have still not reached the donors: Respondents' own exhibits show \$4,258.64 in refunds not yet posted, Ex. 3, p. 14, and Mr. Carlson acknowledged that a handful of checks remain outstanding. (Gebhardt, Vol. 2, 50:46–54:34; Carlson, Vol. 3, 1:46:25–1:47:31.) That is why both sides ask for an order directing that money still in the account be paid to an unaffiliated charity. (Gebhardt, Vol. 2, 1:01:26–1:01:47; Carlson, Vol. 3, 1:46:25–1:47:31.)

21. The reattribution effort fared no better. CPF Rule 10.4.6 permits an excess contribution to be apportioned to a joint account holder only if the contribution came from a joint account, the contributor was not originally specified, and the committee notified each account holder of the reattribution. The Division asked for exactly those three things. (Gebhardt, Vol. 1, 1:15:05–1:15:41; Vol. 1, 1:27:46–1:29:19.) What Respondents supplied instead were some refund-check images, some platform screenshots, and a call log. (Gebhardt, Vol. 1, 1:28:43–1:29:19.) The log, Ex. N(1) and Ex. 51.A, is a pair of Google spreadsheets kept by a college intern and a donor-development staffer who were given a few days in early June to work through the list. (Branch, Vol. 5, 9:27–13:03; Carlson, Vol. 4, 54:57–1:01:53.) The notes in the Google docs show how far the exercise strayed from the three items of proof requested by the Division:

“Called Bill and he said to call tomorrow. . . .”
“called and left voicemail. . . .”
“will ask 18 year old daughter to make a donation. . . .”
“. . . wife doesn't support Victor :(”
“3 Members of her family still waiting on T-Shirts after giving the maximum donations”
“. . . She said that she will ask her husband if reallocating the overage to him is acceptable”
“Transfer overage to her husband”
“Doesn't have a husband anymore; will ask daughter to make a donation”
“His wife hung up on me”
“. . . will have either his business or his friend give the money”
“. . . spouse is dead, so she'll have someone else give that money”
“Transferred [sic] funds onto his wife”
“. . . . hung up during call assist”
“. . . . will ask daughter to donate; Also has questions on Victor's past”
“. . . .hung up on me 3 Different Occasions [sic]”
“. . . . Does not have an email, but said that her friend Dave or her nephew will give the \$550”

Source of comments: Ex. N(1).

22. Mr. Carlson conceded a) that the campaign never asked any couple for proof of a joint account, b) that the “joint nature” of the accounts was “determined over the phone” by callers who spoke only to the original donor, and c) that no notice went to the spouse because the callers did not have the spouse’s contact information. (Carlson, Vol. 4, 53:07–54:57; Branch, Vol. 5, 48:49–51:47.) The entries for William Airy and Thomas Alley, prepared by the supervisor as examples of “success with a call” record a voicemail and an email but no follow-up. (Branch, Vol. 5, 28:17–36:47.) Mr. Carlson agreed that compliance with a), b), and c) would have been easy to note in the caller log. But it was not done, and no emails suggesting compliance were offered in evidence. (Carlson, Vol. 4, 1:06:33–

1:08:20.) In support of its claimed reattributions of \$21,539.27, Ex. AHO 3, Row 494, Respondents therefore provided a) no documentation that the contribution came from a joint account, b) no documentation that the contributor was not specified, and c) no documentation that both spouses were notified. (Gebhardt, Vol. 2, 54:40–56:43.)

23. *Intentional act or pattern or practice.* The record shows a pattern of knowing indifference to constitutional prohibitions. The campaign placed its compliance in the hands of a registered agent who had handled only a state house race, had never issued a refund, and had three jobs: teaching math at Pueblo Community College, running for Fremont County Commissioner, and serving as the registered agent, a paid position, for the Marx Campaign. (Carlson, Vol. 3, 20:39–23:34; Vol. 4, 12:02–13:08.) No guardrails were put in place before the complaints arrived: no instruction was given to the mail house to refuse large checks; no routine aggregation was performed to catch over-limit donors; and no attention was given to TRACER’s audit flags. (Bouey, Vol. 3, 10:51–11:38; Carlson, Vol. 3, 27:57–31:15, and; Vol. 4, 21:44–25:55.) Mr. Carlson knew the limit perfectly well. He managed his personal contributions to the Campaign—\$163 on September 30, 2025 (Ex. A, p. 3) and \$1,287 on October 20, 2025 (Ex. B, p. 160)—to land exactly at \$1,450. (Carlson, Vol. 4, 10:18–12:02.) Candidate Victor Marx, who twice certified familiarity with the FCPA (Exs. 5 and 6), told the public in July that “we didn’t even know” the limit, that “we refunded everybody,” and that the complaints were “a nothing burger.” Ex 2, p. 32, l. 6– p. 33, l. 6. ⁶

⁶ Exs. 1 and 2 were admitted over Respondents’ relevance and hearsay objections. Under GPAR Rule 3.12, 8 CCR 1505-3, and CRE 801(d)(2): the statements are those of a party, made publicly and voluntarily, on the precise subject of this proceeding, and they possess

None of those statements were accurate. The campaign was on notice from May 8 and kept accepting prohibited contributions through July.

24. ***Harm to the electorate and election officials.*** Amendment 27 rests on timely, accurate disclosure. What Respondents produced was a mass of reporting that neither the public nor the Division could rely on as compliant, accurate, and complete. Seven periodic reports were due between January 15 and August 3; Respondents filed those seven and then filed twenty one amendments. Appendix 2. The January 15, May 4 and June 1 reports were each amended three times, the May 18 and June 15 reports were amended five times each; indeed, the June 15 report was amended twice in a single day. Five reports were amended again on September 4 and 5, less than a week before the hearing. (Appendix 2; Carlson, Vol. 4, 30:24–35:25.) The Division twice took the extraordinary step of “unfiling” a report so that it could be rebuilt from scratch—the only time in Mr. Bouey’s seventeen years overseeing compliance that a committee has been allowed to do so more than once. (Bouey, Vol. 2, 2:08:45–2:15:19.) Respondents were still amending prior-period reports on the eve of the hearing, filing amendments on amendments across thousands of pages that Mr. Bouey described as hard to digest. (Bouey, Vol. 2, 2:39:10–2:41:48.)

25. The reports were not merely confusing; in places they were wrong. Mr. Carlson, asking that the complaint be dismissed, declared under penalty of perjury on June

the probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

8 that Robert Hammond’s \$135.33 overage had been refunded (Ex. 10.B, pp. 1, 4, 7); the check was not in fact refunded until July 27. (Ex. UU; Carlson, Vol. 4, 38:32–45:32.) A report filed the Saturday before the hearing reports a refund to Ira Pennington on May 18, whereas the check is dated July 16, a discrepancy Mr. Carlson could not explain. (Carlson, Vol. 4, 35:25–38:32.) Ex. 3 is riddled with entries in which the refunds Respondents reported to TRACER do not match the refunds shown in their own exhibits. (Gebhardt, Vol. 2, 22:29–29:56.) Straightening this out consumed hundreds of hours of Mr. Carlson’s time, and more than 300 hours of the Division’s. (Carlson, Vol. 4, 12:02–14:02; Gebhardt, Vol. 1, 1:07:29–1:09:00.) It is still not straightened out.

26. ***Mitigating factors.*** Respondents get credit for two things. Every prohibited contribution was disclosed in the campaign’s own reports; there is no allegation of hidden money. (Gebhardt, Vol. 2, 1:16:46–1:16:56.) And Mr. Carlson, once he understood the problem, worked hard and, by the September 8 report, was refunding an overage the same day it arrived. (Carlson, Vol. 4, 47:26–53:07; Ex. 47, pp. 286, 2476.) But this only emphasizes that timely compliance was always within reach. This was a first-time campaign that got “out over [its] skis,” with the registered agent “learn[ing] on the job.” (Vol. 6 at 30:43–46:01.) But this is the description of a significant problem that the campaign did not fix. The person charged with compliance did not know what he was doing, and no one above him made sure that he did. Why an experienced professional was not hired when the Marx Campaign carried a balance of “hundreds of thousands of dollars” in its bank account, (Carlson, Vol. 3, 1:14:15–1:17:48.), was not explained by Respondents. A statewide campaign that collects tens of thousands of contributions

through four channels must have the capacity and know how to obey the contribution limits before it starts collecting money, not after 144 complaints have been filed.

27. **Conclusion.** The volume and duration of the violations, their continuation after notice, the knowing deposit of facially excessive checks, the disregard of TRACER’s warnings, the months-long retention of prohibited funds, the failure to document a single reattribution as the rule requires, and the mass of mistaken and amended reports are each aggravating factors. Together they far outweigh Respondents’ disclosure and late-occurring work.

VI. Civil penalties and unrefunded prohibited Contributions

28. On Claim One, I find that the Marx Campaign—Victor Marx and Victor Marx for Governor—accepted 200 contributions in excess of the \$1,450 aggregate contribution limit applicable to a candidate committee for Governor, from 110 contributors, between November 23, 2025 and July 10, 2026, with a total overage of \$82,713.32. None of the prohibited contributions were returned within the ten day window permitted by CPF Rule 10.6. Each acceptance was a separate violation of Colo. Const. art. XXVIII, § 3(1)(a)(I), as adjusted by CPF Rule 10.17.1(b)(1), 8 CCR 1505-6.⁷ The base fine that is sought by the Division for accepting prohibited violations in excess of the donor limit is \$100 per violation plus 10% of the prohibited activity (8 CCR 1505-6, Rule 23.4.3(c)(1)). The Division asked for

⁷ The Division did not prove the three additional acceptances (Ex. 3, Row Nos. 416, 419 and 420) or the additional \$780.75 of overage attributed to “Reich, John and Barb,” and no violation is found as to them.

a 75% increase in the base fine. Weighing all of the evidence against the aggravating and mitigating factors in Rule 23.4.5, I find that the factors set forth above merit a 100% increase in the base penalty.

29. On Claim Two, I find that the Marx Campaign accepted ten contributions in currency exceeding \$100, from ten contributors, between February 25 and June 8, 2026, with a total overage of \$1,045.00, and that each acceptance was a separate violation of Colo. Const. art. XXVIII, § 3(10). The base fine sought by the Division is, again under Rule 23.4.3(c)(1), \$100 for each instance plus 10% of the prohibited activity. The Division does not seek, and I do not impose, an enhancement on Claim Two.

30. The Division seeks fines under 8 CCR 1505-6, Rule 23.4.3(c)(1). That rule provides for a fine of “**at least** \$100 and 10 percent of the prohibited activity.” The Division has not adequately explained why the minimum fine sought in the Complaint and at the hearing is not the fine prescribed in Amendment 27 adopted in the 2002 plebiscite and enshrined in the Colorado Constitution, art. xxviii, §10(1):

“Any person who violates any provision of this article relating to contribution . . . limits *shall be subject to a civil penalty of at least double and up to five times the amount . . . received . . . in violation* of the applicable provision of this article. Candidates shall be personally liable for penalties imposed upon the candidate’s committee.”

31. The Division’s post hearing brief argues that a hearing officer is free to disregard the provision. Compl. Post-hearing Brief, p. 4 (“[T]he civil penalties set forth in article XXVIII, section 10(1) are merely permissive, not mandatory.”) The Division’s argument truncates § 10(1) and reads the five words that a violator will be “subject to a

civil penalty” in isolation from the rest of the sentence—which clearly establishes a minimum fine “of at least double” and a maximum fine “up to five times the amount” of the prohibited activity.⁸

32. The Division and Respondents’ briefs both state that *Patterson Recall Comm’n, Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009) is “controlling authority from the Court of Appeals authoriz[ing] the imposition of civil penalties under Rule 23.4.3(c)(1) rather than Article XXVIII §10(1).”⁹ That is emphatically not the case. *Patterson* concerns

⁸ The three cases on which the Division relies do not address the issues in the Order for Post-hearing Briefs. Not one of them involves a constitutional provision, a campaign finance law, or a rule that purports to replace the penalty fixed by a superior source of law. In none of these cases, *City of Rochester v. Corpening*, 153 N.H. 571, 907 A.2d 383 (2006), *District of Columbia v. Miss Dallas Trucking, LLC*, 240 A.3d 355 (D.C. 2020), or *United States v. Goltz*, 187 F. Supp. 2d 1168 (D.S.D. 2002), was there a mandatory minimum fine at issue. *Each of these cases asked only whether a court could decline to impose a penalty at all under a statute that fixed a ceiling but no floor.* None asked the question presented here, which is whether an agency may, by rule, substitute a penalty of ten percent for a constitutional penalty of “at least double” the amount received. Article XXVIII, § 10(1) does fix a floor, which is precisely the feature whose absence drove the result in *Miss Dallas Trucking*. Whatever light these decisions shed on the words “shall be subject to” in a New Hampshire zoning statute, a District of Columbia pollution statute, or a federal criminal train wrecking statute, they say nothing about whether the Secretary’s rulemaking authority under Article XXVIII, § 9(1)(b) extends to ignoring a penalty the people of Colorado wrote into their constitution. On that question, the controlling authority is in Colorado cases—*Colorado Ethics Watch v. Gessler*, 2013 COA 172M, ¶¶ 52–55; *Campaign Integrity Watchdog v. Alliance for a Safe & Independent Woodmen Hills*, 2018 CO 7, ¶¶ 28–29; *Hanlen v. Gessler*, 2014 CO 24, ¶ 35; and *Unite for Colorado v. Colorado Department of State*, 2026 CO 56, ¶ 22—and the Division’s brief does not mention a single one of those decisions.

⁹ See Resp. Post-hearing Brief re Civil Penalties, p. 4, and Complainant’s Response (to Resp. Post-hearing Brief re Civil Penalties), p. 1.

itself not at all with the penalty in § 10(1) *for receiving prohibited contributions*), but entirely with the penalty under § 10(2) *for reporting violations*.¹⁰

33. Respondent’s post hearing brief asserts that a fine assessed under § 10(1) would violate the excessive fines clause of the 8th Amendment to the United States Constitution.¹¹ Administrative agencies lack jurisdiction to rule on facial challenges to the constitutionality of a statute. *Cerbo v. Protect Colo. Jobs, Inc.*, 240 P.3d 495, 504 (Colo. App. 2010). Under these circumstances, the penalty was framed by Division counsel at the much lower level of Rule 23.4.3(c)(1), see Div. Prehearing Statement, p. 21, and it was tried on that basis.

34. **Civil Penalties.** While Count One of the Complaint claims the Division “is entitled to relief under article XXVIII of the Colorado Constitution,” ¶ 56, neither Count Two nor the Prayer mention § 10(1) with its “double...to five times” fine. Moreover, since the Division framed the penalties it sought under the Rule rather than the Constitution, it deprived Respondents of the opportunity to develop the facts at hearing for any as-applied

¹⁰ The ALJ in *Patterson* “found the Committee had violated § 1-45-108 by failing to fully disclose all the Committee's contributions and expenditures in its reports and failing to establish a bank account required under *section 3(9)* of the Amendment.” 209 P.3d at 1216.

¹¹ See Resp. Post-hearing Brief re Civil Penalties, p. 2.

constitutional challenge to fines imposed under § 10(1).¹² I will therefore only calculate and impose fines *in this case and under these circumstances* using Rule 23.4.3(c)(1).

35. The Marx Campaign committed 200 violations of the contribution limits in Colo. Const. art. xxviii § (3)(1)(a)(I) and 10 violations of the cash contribution limits § 3(10), totaling \$83,758.32 in contributions received in excess of those limits. For the violations set forth in the body of this Initial Decision, I impose a total fine on Respondents Victor Marx and Victor Marx for Governor of \$57,647.16, as set forth in the table below.

Base Penalty-Claim One	200 X \$100	\$20,000.00
10% of Prohibited Activity-Claim One	10% X \$82,713.32	\$8,271.33
Total Base Penalty-Claim One		\$28,271.33
100% additional fine for aggravating conduct		\$28,271.33
Total Penalty-Claim One		\$56,542.66
Base Penalty-Claim Two	10 X \$100	\$1,000.00
10% of Prohibited Activity-Claim Two	10% X \$1,045	\$104.50
Total Penalty-Claim Two		\$1,104.50
Total fines, both claims		\$57,647.16

36. **Order on the disposition of unrefunded prohibited contributions.** The parties have requested that the prohibited contributions not yet successfully refunded should be allocated to a charity, pursuant to CPF Rule 23.4.4. For the purposes of this order, "Unrefunded Prohibited Contribution" means any portion of a contribution received by the Campaign on or before September 14, 2026, that exceeded the contribution limits in

¹² See, *Williams v. Indus. Claim Appeals Off.*, 128 P.3d 335, 339 (Colo. App. 2006) (refusing to consider as-applied challenge not raised during administrative proceedings), rev'd on other grounds sub nom. *Williams v. Kunau*, 147 P.3d 33 (Colo. 2006).

Colo. Const. art. xxviii § (3)(1)(a)(I) or in § 3(10) and has not actually been returned to the contributor as of 5:00 p.m. on October 15, 2026. A prohibited contribution has not actually been returned if, as of that time: (a) no refund has been issued; (b) a refund check has been issued but has not been paid from the committee's account; (c) a refund check was voided, returned, lost, or undeliverable and no replacement has been paid from the committee's account; or (d) an electronic refund failed, was reversed, or has not settled.

37. *Refunds through October 15, 2026.* Nothing in this Order prevents Respondents from completing the refund of any prohibited contribution to the contributor on or before October 15, 2026, including by reissuing a refund check.

38. *Payment to charity.* On or before October 26, 2026, Respondents shall pay the total amount of all Unrefunded Prohibited Contributions to one or more charitable organizations that (a) are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code; (b) are organized under Colorado law or maintain their principal operations in Colorado; and (c) are not founded, governed, controlled, or employed by, and do not employ or compensate, Victor Marx, any member of his immediate family, the candidate committee, or any officer, registered agent, employee, or paid consultant of the committee.

39. Respondents shall send written notice to each affected contributor, at the contributor's last known address or email address, that the refund check has been cancelled and that the funds have been donated to charity pursuant to this Order.

40. *Certification.* On or before November 2, 2026, Respondents shall file with the Elections Division a certification signed by the committee's registered agent under penalty of perjury that states: (a) for each Unrefunded Prohibited Contribution, the contributor's name, the corresponding row number in AHO Exhibit 3 or Division Exhibit 4, the amount, and the reason the contribution had not been returned as of October 15, 2026; (b) the name, address, federal tax identification number and phone number of the recipient charitable organization and the date and amount of each payment; and (c) that each recipient charity satisfies paragraph 38. If there were no Unrefunded Prohibited Contributions as of October 15, 2026, the certification shall so state and shall attach bank records showing that each refund was paid from the committee's account.

41. The hearing in this matter was conducted in accordance with section 24-4-105 and section 1-45-111.7 6(a) and (b) of the Colorado Revised Statutes.

42. Pursuant to § 1-45-111.7(6)(a), C.R.S., this initial determination is subject to review by the Deputy Secretary of State for issuance of a final agency decision.

DECIDED AND ORDERED October 2, 2026.



Macon Cowles, Hearing Officer

To challenge the AHO's Initial Decision, a party must file a Designation of the Record and Exceptions with the Deputy Secretary pursuant to the procedures outlined in subsections 24-4-105(14), (15), and (16), C.R.S. and; Rule 6 of the Colorado Rules of Civil Procedure. All filings and other related documents must (1) be in writing, (2) filed electronically with the Deputy Secretary at OACAppeals@ColoradoSoS.gov, and (3) served upon the opposing party at the email addresses provided in the Certificate of Service of the Initial Decision. The Deputy Secretary may also initiate review of the Initial Decision upon his own motion pursuant to section 24-4-105(14)(a)(II), C.R.S.

A. Designation of the Record

1. Any party who seeks to reverse or modify the Initial Decision must file a Designation of Record within twenty (20) days from the date of this Initial Decision and designate relevant transcript(s), or parts thereof, of the proceedings before the AHO in such Record. Section 24-4-105(15)(a), C.R.S. and Rule 3.14.3(a), 8 CCR 1505-3.

2. Any other party, including the Deputy Secretary, may file a Supplemental Designation of Record within ten (10) days after service of the Designation of Record and must specify all or part of the Record to be additionally included in the appeal. Section 24-4-105(15)(a), C.R.S.

3. A party ordering transcript(s) is responsible for ordering and filing such transcripts with the Deputy Secretary. It is recommended that a party contact the AHO and a certified court reporter for information on how to order a transcript.

B. Exceptions

1. **Exceptions.** A party filing Exceptions must file within thirty (30) days after the date of this Initial Decision; an extension of time may be granted for good cause. Section 24-4-105(14)(a)(II), C.R.S.

2. **Response.** A party may file a Response within fourteen (14) days from the date of the other party's Exceptions filing.

3. **Reply.** A party may file a Reply within seven (7) days from the date of the other party's Response filing.

4. **Proposed Order and/or Request for Oral Argument.** Any party may file a Proposed Order and/or Request for Oral Argument together with the party's Exceptions, Response, or Reply. Oral Argument must be confined to the arguments and evidence presented during the hearing or in the exceptions and responses thereto, and will be time-limited.

The ultimate Final Agency Order is subject to judicial review under section 24-4-106, C.R.S. However, if a party fails to timely appeal the Initial Decision through Exceptions, such failure operates as a matter of law as a waiver of the right to judicial review of the Final Agency Order except to the extent it differs from the Initial Decision. See § 24-4- 105(14)(c), C.R.S.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one true copy of this Initial Decision and Appendices 1 and 2 were sent via email on October 2, 2026 to the following:

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Pursuant to GPAR Rule 3.14.4, 8 CCR 1505-3

N.B Porte

Nathan Borochoff-Porte, Administrative Court Clerk