

**Campaign Finance Complaint Cover Sheet**

**RECEIVED**

Submit Original to:  
Colorado Secretary of State  
Campaign Finance  
1700 Broadway, Suite 200  
Denver, CO 80290

JAN 23 2019

*after 4:30pm  
per Mary*

ELECTIONS  
SECRETARY OF STATE

You must specifically identify a violation of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning Campaign and Political Finance and allege specific facts to support a legal and factual basis for the complaint.

\*Denotes required field

**Your Information** - Information about the person or entity filing the complaint (complainant)

\*Full Name: Charles Heatherly

\*Mailing Address: 6984 S. Knolls Way, Centennial, CO 80122

\*Telephone Number:

\*Email Address: charlesaz42@aol.com

**Respondent's Information** - Information about the person or entity alleged to have committed the violation:

\*Full Name: Colorado Rising, a Colorado issue committee & ProgressNow Colorado

\*Mailing Address: 1790 30th St., #280

1536 Wynkoop St., #300

Boulder, CO 80301

Denver, CO 80202

Telephone Number:

Email Address:

**Briefly summarize the allegations made in the attached complaint.**

This case is about secret political spending. The Sergey Brin Family Foundation contributed \$170,000 to ProgressNow Colorado, which used the funds to support Proposition 112. Rather than file as an issue committee, however, ProgressNow Colorado – or its affiliated organization ProgressNow Colorado Education Fund – treated its advocacy as a “contribution” to Colorado Rising, a reporting issue committee.

Colorado Rising later tried to conceal the source of funds to ProgressNow Colorado, by filing multiple, contradictory reports.

This is an example of secret, hidden election money at its worst. The Secretary should recuse herself and retain an independent investigator to look into the matter. That investigation will reveal that ProgressNow Colorado acted as an issue committee, and that both Colorado Rising and ProgressNow Colorado failed to file accurate campaign finance reports.

Both entities should be fined accordingly.

By submitting this form with the attached complaint and any supporting evidence, I hereby certify that I am aware of the procedure outlined in Secretary of State Campaign and Political Finance Rule 18.2.

\*Complainant's Signature:

*Charles J. Heatherly*

Date:

*January 23, 2019*

OFFICE OF THE SECRETARY OF STATE

STATE OF COLORADO

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Charles Heather

v.

COLORADO RISING, a Colorado issue committee

PROGRESSNOW COLORADO, a Colorado nonprofit

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## COMPLAINT

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### Introduction

This case is about secret political spending. The Sergey Brin Family Foundation contributed \$170,000 to ProgressNow Colorado, which used the funds to support Proposition 112. Rather than file as an issue committee, however, ProgressNow Colorado – or its affiliated organization ProgressNow Colorado Education Fund – treated its issue advocacy as a “contribution” to Colorado Rising, a reporting issue committee.

Further, Colorado Rising later tried to conceal the source of funds to ProgressNow Colorado, by filing multiple, contradictory reports. In addition to the Family Foundation, it reported ProgressNow Colorado and ProgressNow Colorado Education Fund as the contributors. It even reported different amounts – first \$170,000, and then \$153,000, which suspiciously is ten percent less than the first-reported contribution, indicating that either ProgressNow Colorado or ProgressNow Colorado Education Fund hired itself out to conceal earmarked donations.

This is an example of secret, hidden election money at its worst. The Secretary should recuse herself and retain an independent investigator to look into the matter. That investigation will reveal that ProgressNow Colorado acted as an issue committee, and that both Colorado Rising and ProgressNow Colorado failed to file accurate campaign finance reports.

## Parties and Jurisdiction

1. Charles Heatherly is a resident of Colorado and registered elector who resides in Denver. His address is 3555 W. Union Ave., Englewood, Colorado 80110.
2. Colorado Rising is an active issue committee. Its physical address is 1790 30<sup>th</sup> Street, #280, Boulder, Colorado 80301. Its mailing address is P.O. Box 18872, Boulder, Colorado 80208.
3. ProgressNow Colorado is a Colorado nonprofit that does not report political activity to the state of Colorado. Its address is 1536 Wynkoop St. #300, Denver, Colorado 80202.
4. ProgressNow Colorado Education Fund is a Colorado nonprofit affiliated with ProgressNow Colorado. It also does not report political activity to state of Colorado. It is affiliated with ProgressNow Colorado, and its address is also 1536 Wynkoop St. #300, Denver, Colorado 80202.
5. Jurisdiction is proper under C.R.S. § 1-45-110(3) and 8 CCR 1505-6, Rule 18.2.1

## General Allegations

6. On October 22, 2018, the Sergey Brin Family Foundation contributed \$170,000 to ProgressNow Colorado.
7. On October 23, 2018, Colorado Rising filed a 24-hour major donor contribution report, reporting the \$170,000 in-kind contribution from the Sergey Brin Family Foundation. It described this contribution as “in-kind toward digital media w/ProgressNow.” (**Exhibit A**).
8. Upon information and belief, the report erroneously referred to ProgressNow, which is located in Washington, D.C., when in fact the report should have referred to ProgressNow Colorado, which is located in Denver, Colorado and which was referenced in other reports and media stories.
9. Colorado Rising received the information about the contributor from either the Sergey Brin Family Foundation directly, or from ProgressNow Colorado.
10. The Sergey Brin Family Foundation gave money to ProgressNow Colorado, specifically intending that the funds be used to support Colorado Rising’s effort to pass Proposition 112.

11. On October 28, 2018, Colorado Rising filed a Contribution and Expenditure report for the period of October 11, 2018 through October 24, 2018. That report also listed the Sergey Brin Family Foundation as a contributor to Colorado Rising, in the form of “inkind toward digital media w ProgressNow.” This one contribution formed nearly half of Colorado Rising’s \$368,000 in contributions for that period. (**Exhibit B**) (Of the report’s 129 pages, **Exhibit B** contains only first two summary pages and the page listing the contribution).

12. Twenty minutes after this Contribution and Expenditure Report, Colorado Rising filed an amended Contribution and Expenditure Report. This report again listed the Sergey Brin Family Foundation as a contributor, in the form of “inkind toward digital media w ProgressNow.” (**Exhibit C**) (Of the report’s 129 pages, **Exhibit C** contains only first two summary pages and the page listing the contribution)

13. The next day, on October 29, 2018, Colorado Rising sought to hide the Sergey Brin Family Foundation’s involvement. At 2:46 p.m. that day, it filed a new, amended Major Contributor Report, listing ProgressNow as the contributor, in the amount of \$170,000. (**Exhibit D**).

14. Although Colorado Rising listed “ProgressNow” as the contributor in its Major Contributor Report filed on October 29, 2018, upon information and belief it referred to “ProgressNow Colorado,” because ProgressNow Colorado, and not ProgressNow, is located at 1536 Wynkoop St. #300 Denver, Colorado 80202.

15. The amended Major Contributor Report filed on October 29, 2018 was an attempt to conceal the Sergey Brin Family Foundation’s support for Proposition 112.

16. The October 29, 2018 Major Contributor Report sought to hide the Sergey Brin Family Foundation contribution by, in effect, retroactively claiming that The Sergey Brin Family Foundation gave money to ProgressNow Colorado without the intent to help Colorado Rising.

17. Four minutes later, at 2:50 p.m., Colorado Rising filed another amended Contribution and Expenditure Report. This third Contribution and Expenditure Report reported the ProgressNow as a \$170,000 contributor, again described as “inkind toward digital media w ProgressNow.” (**Exhibit E**). (Of the report’s 129 pages, **Exhibit E** contains only first two summary pages and the pages listing the contribution).

18. The next day, on October 30, 2018 at 9:23 a.m., Colorado Rising filed a third Major Donor Report (its second amended Major Donor Report), identifying a different amount. This time, Colorado Rising reported the donor as ProgressNow, but it reported a different amount -- \$153,000, instead of \$170,000. (**Exhibit F**).

19. Twelve hours later, at 9:24 p.m. on October 30, Colorado Rising filed yet a fourth Contribution and Expenditure Report (and a third amended Contribution and Expenditure Report). This report repeated the previous Contribution and Expenditure Report by ProgressNow as a donor, but it also listed the contribution amount as \$153,000. (**Exhibit G**). (Of the report's 129 pages, **Exhibit G** contains only first two summary pages and the pages listing the contribution).

20. As a summary, the multiple, contradictory reports are:

a. A Major Donor Report, filed October 23, 2018, reporting a \$170,000 in-kind contribution from The Sergey Brin Family Foundation. (**Exhibit A**)

b. A Contribution and Expenditure Report, filed October 28, 2018, reporting a \$170,000 in-kind contribution from The Sergey Brin Family Foundation. (**Exhibit B**).

c. A second Contribution and Expenditure Report, filed October 28, 2018, reporting a \$170,000 in-kind contribution from The Sergey Brin Family Foundation. (**Exhibit C**).

d. A second Major Donor Report, filed October 29, 2018, reporting a \$170,000 in-kind contribution from ProgressNow. (**Exhibit D**)

e. A third Contribution and Expenditure Report, filed October 29, 2018, reporting a \$170,000 in-kind contribution from ProgressNow. (**Exhibit E**).

f. A third Major Donor Report, filed October 29, 2018, reporting a \$153,000 in-kind contribution from ProgressNow. (**Exhibit F**).

g. A fourth Contribution and Expenditure Report, filed October 30, 2018, reporting a \$153,000 in-kind contribution from ProgressNow. (**Exhibit G**).

21. Upon information and belief, all reports stating to ProgressNow were in error. In fact, the reports meant to list ProgressNow Colorado, because they listed the address of ProgressNow Colorado, and not the address of ProgressNow.

22. On October 30, 2018, Democratic elections attorney Martha Tierney, on behalf of Colorado Rising, provided a new, and third version of who contributed the \$170,000. She sent a letter to the Secretary of State's office, claiming that the in-kind contribution actually came from ProgressNow Education Fund. (**Exhibit H**).

23. None of the reports have been amended to list ProgressNow Education Fund as a donor.

24. Tierney's letter was an attempt to protect the Foundation. Tierney's letter recognized that the Sergey Brin Family Foundation made a contribution, but she attempted to re-characterize the contribution so that Colorado Rising would "prevent any adverse impacts to the Foundation."

25. This effort by Colorado Rising, to protect the Sergey Brin Family Foundation, was an effort to conceal the source of \$170,000 by a valued contributor.

26. Later, as reported on November 1, 2018, the executive director of ProgressNow Colorado (Ian Silverlii) contradicted Colorado Rising and Tierney's letter, stating that the Sergey Brin Family Foundation contributed to ProgressNow Colorado. He directly refuted Tierney's characterization, which claimed the contribution came from ProgressNow Colorado Education Fund. [Exhibit I].

27. Tierney's letter also stated that the contribution was \$153,000 not \$170,000.

28. It is common for nonprofit organizations to accept contributions earmarked for a specific purpose, yet deduct an administrative or "pass through" fee of 10%.

29. The contribution of \$153,000 is exactly \$170,000, less ten percent.

30. Upon information and belief, this pattern demonstrates that the Sergey Brin Family Foundation contributed \$170,000 to ProgressNow Colorado in order to support Proposition 112, and that ProgressNow Colorado deducted ten percent, in order to conceal the earmarked contribution.

31. The letter from Tierney also asked that the Secretary of State retroactively alter previously-filed reports.

32. On November 14, 2018, The Secretary, in fact, retroactively amended previously filed reports, by adding the comment "Contributor reported in error. See communication dated October 30, 2018." (Exhibit J). This information did not originally appear in any report filed by Colorado Rising.

33. Finally, the letter from Tierney stated that it could "serve as the explanation for the mistaken reporting of the Foundation." But the letter provided no explanation for the initial reporting, and subsequent concealment, of the contribution from the Sergey Brin Family Foundation.

34. Rather than an explanation, the letter simply asked the Secretary to retroactively change reports.

35. By falsely characterizing the letter as an "explanation", Colorado Rising made yet another attempt to hide the source of its contribution.

**First Claim**  
**(Failure to file accurate reports)**

36. Complainant incorporates all previous allegations
37. Under Colo. Const. Art. XXVIII, § (2)(5)(a)(I) and (II), "Contribution" means:
  - a. The payment, loan, pledge, gift, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, small donor committee, or political party; or
  - b. Any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party.
38. The Sergey Brin Family Foundation made a payment to ProgressNow Colorado, for the benefit of Colorado Rising.
39. Under C.R.S. § 1-45-108(2.5), Colorado Rising was required to report the Sergey Brin Family Foundation as a major contributor.
40. Instead, On October 29, 2018, Colorado Rising falsely reported ProgressNow Colorado as the contributor.
41. Later, on October 30, 2018, Colorado rising falsely reported ProgressNow Colorado Education Fund as the contributor.
42. Colorado Rising should be fined for its falsification of campaign finance reports.

**Second Claim**  
**(Failure to file and report as an issue committee)**

43. Complainant incorporates all previous allegations.
44. Under Colo. Const. Art. XXVIII, § 2(10)(a)(I), an organization must file as an issue committee if it has a major purpose to support or oppose a ballot issue.
45. Alternatively, under Colo. Const. Art. XXVIII, § 2(10)(a)(I), an organization must file as an issue committee if it receives or spends more than \$200 to support or oppose a ballot initiative.

46. By its own admission, ProgressNow Colorado received and spent at least \$153,000 to support Proposition 112 on October 22, 2018.
47. More likely, based on original reports by Colorado Rising, ProgressNow Colorado received and spent \$170,000 to support Proposition 112.
48. Whether the amount was \$153,000 or \$170,000, by spending that amount ProgressNow Colorado had a major purpose of supporting Proposition 112.
49. ProgressNow Colorado acted as an issue committee.
50. Under C.R.S. § 1-45-108(3.3), ProgressNow Colorado was required to register and report as an issue committee 10 days after receiving or spending funds.
51. ProgressNow Colorado was required to register and file as an issue committee no later than November 1, 2018.
52. ProgressNow Colorado has never registered as an issue committee.
53. ProgressNow Colorado violated Colorado law by failing to register and report as an issue committee.
54. As require by C.R.S. §§ 1-45-108(1)(a)(I) and 108(2)(a), on October 29, 2018, ProgressNow Colorado was required to file a Contribution and Expenditure Report listing the contributions for the period of October 11, 2018 through October 24, 2018. This report was required to list the \$170,000 contribution from the Sergey Brin Family Foundation on October 22, 2018.
55. In violation of Colorado law, ProgressNow Colorado did not file a Contribution and Expenditure Report on October 29, 2018.
56. ProgressNow Colorado should be required to register and report as an issue committee.
57. ProgressNow Colorado should be fined for failure to register and file its necessary reports.

**Third Claim**  
**(Investigation under Rule 18.2.8)**

58. Complainant incorporates all previous allegations.
59. The Secretary has promulgated 8 CCR. 1505-6, Rule 18.2.8, which states:



The elections division **must** investigate each unresolved or uncured complaint to determine whether to file a complaint with the hearing officer described in Rule 18.2.9(b).

60. The failure to report by both Colorado Rising and ProgressNow Colorado remain uncured.

61. There must be a full, fair, and transparent investigation. In order to accomplish that:

- a. The Secretary must recuse herself and her office from this investigation. ProgressNow Colorado strongly supported the Secretary in her election efforts, and any effort by the Secretary to investigate her political allies will be suspect due to inherent conflicts of interest.
- b. An investigation must review financial documents to confirm whether the Sergey Brin Family Foundation contributed to ProgressNow Colorado, as listed on one Colorado Rising report and admitted by Ian Silverii, former ProgressNow Executive Director, or ProgressNow Education Fund, as claimed by Colorado Rising's attorney, Martha Tierney. Likewise, the investigation should review spending receipts to determine whether the receiving committee spent \$170,000 on digital media, or \$153,000.
- c. The investigator should look at all written communications involving the contribution from the Sergey Brin Family Foundation, including emails, internal memoranda, notes, and accounting entries, in order to determine the intent of the contribution. The investigation should include communications:
  - (1) That solicited the contribution, including any presentations;
  - (2) That were made after the contribution on October 22, 2018;
  - (3) That came from the Foundation, including communications directing how the contribution should be used;
  - (4) That referred or responded to the Major Contributor reports of October 23, 2018 and October 29, 2018;
  - (5) That discussed revisions to the campaign finance report;
  - (6) That determine how Colorado Rising learned of the source of the contribution; and

- (7) That answer why the contribution was listed as coming from three separate donors: the Sergey Brin Family Foundation, ProgressNow Colorado, and the ProgressNow Colorado Education Fund.
- d. The investigator should interview, under oath, officials or employees who actually have personal knowledge, from:
- (1) The Sergey Brin Family Foundation;
  - (2) Colorado Rising;
  - (3) ProgressNow Colorado. In particular, the investigator should interview Ian Silverii, to determine the scope of knowledge and why he stated “there was a huge misunderstanding on the part of Colorado Rising that led to an erroneous campaign finance filing with the Secretary of State’s office;” and
  - (4) The ProgressNow Colorado Education Fund.

The topics should include those listed in item 3(a) through 2(g) above.

#### **Prayer for Relief**

The Complainant respectfully requests:

1. An investigation, as described in the Third Claim;
2. A hearing to assess evidence gained during the investigation;
3. An order that ProgressNow Colorado register and report as an issue committee; and
4. Fines assessed against both Colorado Rising and ProgressNow Colorado for failure to file accurate reports

Respectfully submitted this 23<sup>rd</sup> day of January, 2019.

By:  \_\_\_\_\_

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