

Nos. PD-0522-21 PD-0523-21
PD-0524-21 PD-0525-21

**IN THE COURT OF CRIMINAL APPEALS OF TEXAS
AT AUSTIN**

FILED
COURT OF CRIMINAL APPEALS
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DEANA WILLIAMSON, CLERK

EX PARTE ROBBIE GAIL CHARETTE

Nos. 14-19-00855-CR 14-19-00856-CR
14-19-00857-CR 14-19-00858-CR
In the Fourteenth Court of Appeals
Houston, Texas

On Appeal from the 21st District Court
Washington County, Texas
Trial Court Cause Nos.
18345, 18346,
18347, 18348

APPELLANT'S SUPPLEMENTAL BRIEF

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REQUESTED SUPPLEMENTAL BRIEFING

At oral argument, Justice Yeary inquired as to whether there are any other states that require referrals for violations of campaign finance laws prior to prosecution. Eighteen other states require a finding or referral from an administrative agency prior to prosecution. Additionally, one state (Oklahoma) grants its ethics commission the specific authority to prosecute violations. Colorado handles all campaign finance matters through a civil administrative hearing process. Briefly listed below are the states with similar legal frameworks along with reference to the relevant statutory and regulatory sections of each state's law.

I. In Eighteen other states, administrative referral is required prior to prosecution.

1. Alabama

Investigations by the Alabama State Ethics Commission are turned over to either the Attorney General or local prosecutor upon a finding of probable cause.

Alabama Code § 36-25-4(i) provides:

If the commission finds probable cause that a person covered by this chapter has violated it or that the person covered by the Fair Campaign Practices Act has violated that act, the case and the commission's findings shall be forwarded to the district attorney for the jurisdiction in which the alleged acts occurred or to the Attorney General.

(Italics added).

2. Arizona

In Arizona, the “filing officer,” the Secretary of State, or local county election official if a county-wide race, will make a preliminary determination. The filing officer reviews the complaint and provides the subject of the complaint a reasonable opportunity to respond. The officer determines whether there is “reasonable cause to believe” the person violated this article. Arizona Statutes § 16-938 provides:

Enforcement authority; investigation; reasonable cause; notice of violation; appeal

A. *Notwithstanding section 16-1021*, on receipt of a complaint from a third party, a filing officer is the sole public officer who is authorized to initiate an investigation into alleged violations of this article and articles 1, 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 of this chapter, including the alleged failure to register as a committee. A filing officer shall limit an investigation to violations that are within the filing officer’s jurisdiction. If the filing officer declares a conflict of interest, the filing officer may refer the investigation to any other filing officer in this state who agrees to accept the referral.

B. The secretary of state shall establish guidelines in the instructions and procedures manual adopted pursuant to section 16-452 that outline the procedures, timelines and other processes that apply to investigations by all filing officers in this state.

C. *If after providing the subject of an investigation a reasonable opportunity to respond, the filing officer has reasonable cause to believe a person violated this article or article 1, 1.1, 1.2, 1.3, 1.4, 1.5 or 1.6 of this chapter, the filing officer shall refer the matter to the enforcement officer as follows:*

1. For matters investigated by the secretary of state, the secretary of state shall notify the attorney general.
2. For matters investigated by a county filing officer, the county filing officer shall notify the county attorney.

3. For matters investigated by a city or town filing officer, the city or town filing officer shall notify the city or town attorney.

D. Before a reasonable cause determination is made as prescribed in subsection C of this section, a filing officer, an enforcement officer and any other public officer or employee may not order a person to register as a committee and do not have audit or subpoena powers to compel the production of evidence or the attendance of witnesses concerning a potential campaign finance violation. A filing officer may request the voluntary production of evidence or attendance of witnesses in making a reasonable cause determination.

E. Only after receiving a referral from the filing officer, the enforcement officer may:

1. Conduct an investigation using the enforcement officer's subpoena powers, except that the enforcement officer shall not compel a person to file campaign finance reports unless the enforcement officer has determined that the person is a committee.

2. Serve the alleged violator with a notice of violation. The notice shall state with reasonable particularity the nature of the violation, shall specify the penalty imposed and shall require compliance within twenty days after the date of issuance of the notice. The enforcement officer shall impose a presumptive civil penalty equal to the value or amount of money that has been received, spent or promised in violation of this article and articles 1, 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 of this chapter, except that after a finding of special circumstances, the enforcement officer may impose a penalty of up to three times the amount of the presumptive civil penalty, based on the severity, extent or willful nature of the alleged violation. If the notice of violation requires a person to file campaign finance reports, the reports are not required to be filed until the enforcement officer's notice of violation has been upheld after any timely appeal.

3. Keep any nonpublic information gathered by the enforcement officer in the course of the committee status investigation confidential until the final disposition of any appeal of the enforcement order.

F. The enforcement officer has the sole and exclusive authority to initiate any applicable administrative or judicial proceedings to enforce an alleged

violation of this article and articles 1, 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 of this chapter that have been referred by the filing officer.

G. If the alleged violator:

1. Takes corrective action within twenty days after the date of the issuance of the notice of violation by the enforcement officer, the alleged violator is not subject to any penalty.

2. Does not take corrective action within twenty days after the date of issuance of the notice of violation by the enforcement officer, the enforcement officer shall impose the penalty set forth in the notice and shall provide formal notice that the imposition of the penalty may be appealed to the superior court.

H. Within thirty days after receiving the notice of the penalty from the enforcement officer, the alleged violator may file a notice of appeal in the superior court. The alleged violator shall provide a copy of the notice of appeal to the enforcement officer.

I. At the hearing on an appeal filed pursuant to subsection H of this section, the superior court shall conduct a trial de novo and the enforcement officer has the burden of proving any alleged violation by a preponderance of the evidence.

(Italics added). Arizona Statute § 16-1021 provides:

In any election for state office, members of the legislature, justices of the supreme court, judges of the court of appeals or statewide initiative or referendum the attorney general may enforce the provisions of this title through civil and criminal actions. In any election for county, city or town office, community college district governing board, judge or a county, city or town initiative or referendum, the appropriate county, city or town attorney may enforce the provisions of this title through civil and criminal actions. In any special district election, the county attorney of any county in which the district or a portion of the district is located or the attorney general may enforce the laws governing such election.

3. Iowa

The Iowa Ethics and Campaign Disclosure Board may refer a case to the Attorney General or County Attorney. Iowa Code § 68B.32B(8) provides:

The purpose of an investigation by the board's staff is to determine whether there is probable cause to believe that there has been a violation of this chapter, chapter 68A, section 8.7, or of rules adopted by the board. To facilitate the conduct of investigations, the board may issue and seek enforcement of subpoenas requiring the attendance and testimony of witnesses and subpoenas requiring the production of books, papers, records, and other real evidence relating to the matter under investigation. *Upon the request of the board*, an appropriate county attorney or the attorney general shall assist the staff of the board in its investigation.

(Italics added).

4. Kansas

The Kansas Governmental Ethics Commission shall notify the attorney general upon finding of a violation. Kansas Statutes § 25-4164 provides:

Actions of commission following hearing. After a hearing of an alleged violation of the campaign finance act the commission shall state its findings of fact. If the commission finds that the respondent has not violated any provisions of the campaign finance act, it shall order the action dismissed, and shall notify the respondent and complainant thereof. *If the commission finds that the respondent has violated any provisions of the campaign finance act, it shall state its findings of fact and submit a report thereon to the attorney general and to the county or district attorney of the appropriate county.*

(Italics added).

5. Kentucky

The Kentucky Registry of Election Finance shall refer to the Attorney General or county attorney upon a finding of probable cause. Kentucky Statutes § 121.140

(5)-(6) provides:

(5) If the registry concludes that there is probable cause to believe that the campaign finance law has been violated knowingly, it shall refer the violation to the Attorney General or the appropriate Commonwealth's or county attorney for prosecution. The Attorney General may request the registry's attorney or the appropriate county or Commonwealth's attorney to prosecute the matter and may request from the registry all evidence collected in its investigation. In the event the Attorney General or the appropriate local prosecutor fails to prosecute in a timely fashion, the registry may petition the Circuit Court to appoint the registry's attorney to prosecute, and upon a motion timely filed, for good cause shown, the court shall enter an order to that effect. Prosecutions involving campaign finance law violations, in which the reports are required to be filed in Frankfort, may be conducted in Franklin Circuit Court or in the Circuit Court for the county in which the contribution or expenditure constituting a campaign finance violation was solicited, made, or accepted. The prosecution of a person who unlawfully solicits, makes, or accepts a contribution or expenditure through the use of the mail may be conducted in the Circuit Court for the county in which the solicitation is mailed, the county in which the contribution is mailed or received, or the county in which the expenditure is mailed.

(6) Any person directly involved or affected by an action of the registry which is final, other than of a determination to refer a violation to the Attorney General or appropriate Commonwealth's or county attorney for prosecution, may seek judicial review of the action within thirty (30) days after the date of the action.

(Italics added).

6. Louisiana

The Louisiana Ethics Administration Program shall refer an investigation that finds a knowing, willful, and fraudulent violation or an intentional criminal violation to the local district attorney. Louisiana Statutes § 18:1511.6 provides:

Procedures for enforcement; criminal

A. When the results of the supervisory committee's investigation indicate that a knowing, willful, and fraudulent violation or an intentional criminal violation of this Chapter has occurred, the supervisory committee shall forward all information concerning the alleged violation to the district attorney of the judicial district in which the alleged violation has occurred who shall review such information and make such investigation and initiate such prosecution as he shall deem necessary; except, if the violation occurred with regard to a campaign for the office of district attorney for the judicial district in which the violation took place, the committee shall forward all information concerning the alleged violation to the attorney general who, for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, shall proceed with such criminal prosecutions as are provided by this Chapter.

B. Only the district attorney or attorney general may initiate criminal actions under the provisions of this Chapter. Initiation of such criminal actions by the district attorney or attorney general shall be on the basis of information forwarded by the supervisory committee to the district attorney or attorney general or on the basis of such other information as may be available to the district attorney or the attorney general. The supervisory committee shall have no authority to initiate prosecution.

C. The supervisory committee shall post on its website the name of each person or entity that is the target of any investigation forwarded to the district attorney or attorney general as provided in Subsection A of this Section. The posting shall indicate the date of such referral and the current status of prosecution. The status of each prosecution shall be updated quarterly for two years or until there is a final disposition of the matter, whichever occurs first.

(Italics added).

7. Maine

The Maine Commission on Governmental Ethics and Election Practices shall investigate violations and refer repeat violations to the Attorney General. 21-A Maine Revised Statutes § 1003 provides:

4. Attorney General. Upon the request of the commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the commission or otherwise assist the commission in the performance of its duties. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

21-A Maine Revised Statutes § 1020-A provides:

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

8. Michigan

In Michigan, the Secretary of State reviews complaints and the Attorney General may prosecute upon referral by the Secretary of State to the Attorney General. Michigan Compiled Laws § 169.215 (5) through (17) provides:

(5) A person may file with the secretary of state a complaint that alleges a violation of this act. Within 5 business days after a complaint that meets the requirements of subsection (6) is filed, the secretary of state shall give notice to the person against whom the complaint is filed. The notice shall include a

copy of the complaint. Within 15 business days after this notice is mailed, the person against whom the complaint was filed may submit a response to the secretary of state. The secretary of state may extend the period for submitting a response an additional 15 business days for good cause. The secretary of state shall provide a copy of a response received to the complainant. Within 10 business days after the response is mailed, the complainant may submit a rebuttal statement to the secretary of state. The secretary of state may extend the period for submitting a rebuttal statement an additional 10 business days for good cause. The secretary of state shall provide a copy of the rebuttal statement to the person against whom the complaint was filed.

(6) A complaint filed under subsection (5) shall satisfy all of the following requirements:

(a) Be signed by the complainant.

(b) State the name, address, and telephone number of the complainant.

(c) Include the complainant's certification that, to the best of the complainant's knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence. However, if, after a reasonable inquiry under the circumstances, the complainant is unable to certify that certain factual contentions are supported by evidence, the complainant may certify that, to the best of his or her knowledge, information, or belief, there are grounds to conclude that those specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry.

(7) The secretary of state shall develop a form that satisfies the requirements of subsection (6) and may be used for the filing of complaints.

(8) A person who files a complaint with a false certificate under subsection (6)(c) is responsible for a civil violation of this act. A person may file a complaint under subsection (5) alleging that another person has filed a complaint with a false certificate under subsection (6)(c).

(9) The secretary of state shall investigate the allegations under the rules promulgated under this act. If the violation involves the secretary of state, the immediate family of the secretary of state, or a campaign or committee with which the secretary of state is connected, directly or indirectly, the secretary of state shall refer the matter to the attorney general to determine whether a violation of this act has occurred.

(10) No later than 45 business days after receipt of a rebuttal statement submitted under subsection (5), or if no response or rebuttal is received under subsection (5), the secretary of state shall post on the secretary of state's Internet website whether or not there may be reason to believe that a violation of this act has occurred. When the secretary of state determines whether there may be reason to believe that a violation of this act occurred or did not occur or determines to terminate its proceedings, the secretary of state shall, within 30 days of that determination, post on the secretary of state's Internet website any complaint, response, or rebuttal statement received under subsection (5) regarding that violation or alleged violation and any correspondence that is dispositive of that violation or alleged violation between the secretary of state and the complainant or the person against whom the complaint was filed. If the secretary of state determines that there may be reason to believe that a violation of this act occurred, the secretary of state shall endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the person involved. Unless violated, a conciliation agreement is a complete bar to any further civil or criminal action with respect to matters covered in the conciliation agreement. The secretary of state shall, within 30 days after a conciliation agreement is signed, post that agreement on the secretary of state's Internet website. *If, after 90 business days, the secretary of state is unable to correct or prevent further violation by these informal methods, the secretary of state shall do either of the following:*

(a) Refer the matter to the attorney general for the enforcement of any criminal penalty provided by this act.

(b) Commence a hearing as provided in subsection (11) for enforcement of any civil violation.

(11) The secretary of state may commence a hearing to determine whether a civil violation of this act has occurred. The hearing shall be conducted in accordance with the procedures set forth in chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. If after a hearing the secretary of state determines that a violation of this act has occurred, the secretary of state may issue an order requiring the person to pay a civil fine not more than triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation.

(12) A final decision and order issued by the secretary of state is subject to judicial review as provided by chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306. The secretary of state shall

deposit a civil fine imposed under this section in the general fund. The secretary of state may bring an action in circuit court to recover the amount of a civil fine.

(13) When a report or statement is filed under this act, the secretary of state shall review the report or statement and may investigate an apparent violation of this act under the rules promulgated under this act. If the secretary of state determines that there may be reason to believe a violation of this act has occurred and the procedures prescribed in subsection (10) have been complied with, the secretary of state may refer the matter to the attorney general for the enforcement of a criminal penalty provided by this act, or commence a hearing under subsection (11) to determine whether a civil violation of this act has occurred.

(14) No later than 60 business days after a matter is referred to the attorney general for enforcement of a criminal penalty, the attorney general shall determine whether to proceed with enforcement of that penalty.

(15) Unless otherwise specified in this act, a person who violates a provision of this act is subject to a civil fine of not more than \$1,000.00 for each violation. A civil fine is in addition to, but not limited by, a criminal penalty prescribed by this act.

(16) In addition to any other sanction provided for by this act, the secretary of state may require a person who files a complaint with a false certificate under subsection (6)(c) to do either or both of the following: (a) Pay to the secretary of state some or all of the expenses incurred by the secretary of state as a direct result of the filing of the complaint. (b) Pay to the person against whom the complaint was filed some or all of the expenses, including, but not limited to, reasonable attorney fees incurred by that person in proceedings under this act as a direct result of the filing of the complaint.

(17) Except as otherwise provided in section 57, there is no private right of action, either in law or in equity, under this act. Except as otherwise provided in section 57, the remedies provided in this act are the exclusive means by which this act may be enforced and by which any harm resulting from a violation of this act may be redressed. *The criminal penalties provided by this act may only be enforced by the attorney general and only upon referral by the secretary of state as provided under subsection (10) or (13).*

(Italics added).

9. Minnesota

The Minnesota Campaign Finance and Public Disclosure Board must dispose of a complaint before prosecution by the city or county attorney. Minnesota Statutes § 10A.022 provides:

Subd. 7 Final disposition; prosecution.

A matter that is under the board's jurisdiction pursuant to this section and that may result in a criminal offense *must be finally disposed of by the board before the alleged violation may be prosecuted by a city or county attorney.*

(Italics added).

10. Missouri

The Missouri Ethics Commission may refer matters to a special prosecutor, local prosecutor, or in some circumstances the Attorney General, upon a vote of the commission. Missouri Revised Statutes § 105.961 provides:

Special investigator — report — commission review, determination — special prosecutor — hearings — action of commission — formal proceedings — appropriate disciplinary authorities — powers of investigators — fees and expenses — confidentiality, penalty — compensation. —

1. Upon receipt of a complaint as described by section 105.957, the commission shall assign the complaint to a special investigator, who may be a commission employee, who shall investigate and determine the merits of the complaint. Within ten days of such assignment, the special investigator shall review such complaint and disclose, in writing, to the commission any conflict of interest which the special investigator has or might have with respect to the investigation and subject thereof. Within one hundred twenty days of receipt of the complaint from the commission, the special investigator shall submit the special investigator's report to the commission. The commission, after review of such report, shall determine:

- (1) That there is reasonable grounds for belief that a violation has occurred;
or
- (2) That there are no reasonable grounds for belief that a violation exists and the complaint should be dismissed; or
- (3) That additional time is necessary to complete the investigation, and the status and progress of the investigation to date. The commission, in its discretion, may allow the investigation to proceed for additional successive periods of one hundred twenty days each, pending reports regarding the status and progress of the investigation at the end of each such period.

2. When the commission concludes, based on the report from the special investigator, or based on an audit conducted pursuant to section 105.959, that there are reasonable grounds to believe that a violation of any criminal law has occurred, and *if the commission believes that criminal prosecution would be appropriate upon a vote of four members of the commission, the commission shall refer the report to the Missouri office of prosecution services, prosecutors coordinators training council established in section 56.760, which shall submit a panel of five attorneys for recommendation to the court having criminal jurisdiction, for appointment of an attorney to serve as a special prosecutor; except that, the attorney general of Missouri or any assistant attorney general shall not act as such special prosecutor.* The court shall then appoint from such panel a special prosecutor pursuant to section 56.110 who shall have all the powers provided by section 56.130. The court shall allow a reasonable and necessary attorney's fee for the services of the special prosecutor. Such fee shall be assessed as costs if a case is filed, or ordered by the court if no case is filed, and paid together with all other costs in the proceeding by the state, in accordance with rules and regulations promulgated by the state courts administrator, subject to funds appropriated to the office of administration for such purposes. If the commission does not have sufficient funds to pay a special prosecutor, the commission shall refer the case to the prosecutor or prosecutors having criminal jurisdiction. If the prosecutor having criminal jurisdiction is not able to prosecute the case due to a conflict of interest, the court may appoint a special prosecutor, paid from county funds, upon appropriation by the county or the attorney general to investigate and, if appropriate, prosecute the case. The special prosecutor or prosecutor shall commence an action based on the report by the filing of an information or seeking an indictment within sixty days of the date of such prosecutor's appointment, or shall file a written

statement with the commission explaining why criminal charges should not be sought. If the special prosecutor or prosecutor fails to take either action required by this subsection, upon request of the commission, a new special prosecutor, who may be the attorney general, shall be appointed. The report may also be referred to the appropriate disciplinary authority over the person who is the subject of the report.

3. When the commission concludes, based on the report from the special investigator or based on an audit conducted pursuant to section 105.959, that there are reasonable grounds to believe that a violation of any law has occurred which is not a violation of criminal law or that criminal prosecution is not appropriate, the commission shall conduct a hearing which shall be a closed meeting and not open to the public. The hearing shall be conducted pursuant to the procedures provided by sections 536.063 to 536.090 and shall be considered to be a contested case for purposes of such sections. The commission shall determine, in its discretion, whether or not that there is probable cause that a violation has occurred. If the commission determines, by a vote of at least four members of the commission, that probable cause exists that a violation has occurred, the commission may refer its findings and conclusions to the appropriate disciplinary authority over the person who is the subject of the report, as described in subsection 7 of this section. After the commission determines by a vote of at least four members of the commission that probable cause exists that a violation has occurred, and the commission has referred the findings and conclusions to the appropriate disciplinary authority over the person subject of the report, the subject of the report may appeal the determination of the commission to the administrative hearing commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal shall be filed not later than the fourteenth day after the subject of the commission's action receives actual notice of the commission's action.

(Italics added).

11. Montana

The Montana Commissioner of Political Practices conducts an investigation to determine if there appears to be sufficient evidence to justify a civil or criminal

prosecution and refers certain matters to the County Attorney, who may prosecute, or the Commissioner itself may prosecute. Montana Code § 13-37-111 provides:

Investigative powers and duties -- recusal.

(1) Except as provided in this section, the commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

(2) The commissioner may:

(a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

(b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is made during reasonable office hours; and

(c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

(3) If the commissioner determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

(4) The commissioner is recused from participating in any decision in which the commissioner is accused of violating 13-37-108 or any other ethical standard.

(5) (a) If a campaign finance or ethics complaint is filed in the office of the commissioner against the commissioner, a supervisor within the commissioner's office shall within 10 business days forward the complaint to the attorney general, who shall within 45 days appoint a deputy in the case of a finance complaint or a deputy and a hearings officer in the case of an ethics complaint to make a determination in the matter of the complaint. The attorney general shall, to the extent practicable, ensure that there is no conflict of interest in the appointment of the deputy or hearings officer or in the provision of any legal advice to the office of the commissioner.

(b) A deputy appointed pursuant to this subsection must, in addition to complying with the requirements of subsection (6)(b), be an attorney licensed to practice law in Montana who is engaged in the private practice of law and who has liability insurance applicable to the purposes for which the deputy is appointed.

(c) If a complaint is filed against the commissioner, another employee in the office of the commissioner may not provide the commissioner with any information or documents concerning a complaint against the commissioner beyond that information or those documents normally provided to persons in matters before the commissioner.

(6) (a) If the commissioner is recused pursuant to this section, the commissioner shall, except as provided in subsection (5), appoint a deputy, subject to subsection (6)(b).

(b) The deputy: (i) may not be an employee of the office of the commissioner; (ii) must have the same qualifications as specified for the commissioner in 13-37-107;

(iii) with respect to only the specific matter from which the commissioner is recused, has the same authority, duties, and responsibilities as the commissioner would have absent the recusal; and

(iv) may not exercise any powers of the office that are not specifically related to the matter for which the deputy is appointed.

(7) (a) Except as provided in subsection (7)(b), the appointment of the deputy is effectuated by a contract between the commissioner and the deputy. A contract executed pursuant to this subsection (7) must specify the deputy's term of appointment, which must be temporary, the matter assigned to the

deputy, the date on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment, powers, or duties.

(b) If a deputy is appointed pursuant to subsection (5), the appointment of the deputy is effectuated by a contract between the supervisor who forwarded the complaint to the attorney general and the deputy or the deputy and the hearings officer, but the contract is construed to be with the office of the commissioner.

Section 13-37-124 provides:

Consultation and cooperation with county attorney. (1) *Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapter 35 of this title or this chapter, the commissioner shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation.* If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after receiving notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive the right to prosecute, and the waiver authorizes the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of chapter 35 of this title or this chapter.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner, except those paid to or imposed by a justice's court, must be deposited in the state general fund.

(Italics added).

12. Nevada

The Nevada's Secretary of State may prosecute or refer to its Attorney General for prosecution. Nevada Revised Statutes § 294A.410 provides:

Enforcement of chapter: Reporting of alleged violations; institution of court proceedings; notice of alleged violation; investigation; order compelling compliance with subpoena.

1. If it appears that the provisions of this chapter have been violated, *the Secretary of State may:*

(a) Conduct an investigation concerning the alleged violation and cause the appropriate proceedings to be instituted and prosecuted in the First Judicial District Court; or

(b) Refer the alleged violation to the Attorney General. The Attorney General shall investigate the alleged violation and institute and prosecute the appropriate proceedings in the First Judicial District Court without delay.

2. A person who believes that any provision of this chapter has been violated may notify the Secretary of State, in writing, of the alleged violation. The notice must be signed by the person alleging the violation and include:

(a) The full name and address of the person alleging the violation;

(b) A clear and concise statement of facts sufficient to establish that the alleged violation occurred;

(c) Any evidence substantiating the alleged violation;

(d) A certification by the person alleging the violation that the facts alleged in the notice are true to the best knowledge and belief of that person; and

(e) Any other information in support of the alleged violation.

3. As soon as practicable after receiving a notice of an alleged violation pursuant to subsection 2, the Secretary of State shall provide a copy of the notice and any accompanying information to the person, if any, alleged in the notice to have committed the violation. Any response submitted to the notice must be accompanied by a short statement of the grounds, if any, for objecting to the alleged violation and include any evidence substantiating the objection.

4. If the Secretary of State determines, based on a notice of an alleged violation received pursuant to subsection 2, that reasonable suspicion exists that a violation of this chapter has occurred, the Secretary of State may conduct an investigation of the alleged violation.

5. If a notice of an alleged violation is received pursuant to subsection 2 not later than 180 days after the general election or special election for the office or ballot question to which the notice pertains, the Secretary of State, when conducting an investigation of the alleged violation pursuant to subsection 4, may subpoena witnesses and require the production by subpoena of any books, papers, correspondence, memoranda, agreements or other documents or records that the Secretary of State or a designated officer or employee of the Secretary of State determines are relevant or material to the investigation and are in the possession of:

- (a) Any person alleged in the notice to have committed the violation; or
- (b) If the notice does not include the name of a person alleged to have committed the violation, any person who the Secretary of State or a designated officer or employee of the Secretary of State has reasonable cause to believe produced or disseminated the materials that are the subject of the notice.

6. If a person fails to testify or produce any documents or records in accordance with a subpoena issued pursuant to subsection 5, the Secretary of State or designated officer or employee may apply to the court for an order compelling compliance. A request for an order of compliance may be addressed to:

- (a) The district court in and for the county where service may be obtained on the person refusing to testify or produce the documents or records, if the person is subject to service of process in this State; or
- (b) A court of another state having jurisdiction over the person refusing to testify or produce the documents or records, if the person is not subject to service of process in this State.

(Italics added). Nevada Revised Statutes § 294A.420 provides:

Enforcement of chapter: Institution of court proceedings; civil penalty; limitation and waiver of civil penalty; remedies and penalties are cumulative.

1. If the Secretary of State receives information that a candidate, person, organization, committee, political party or nonprofit corporation that is subject to the provisions of 294A.150, 294A.200, 294A.210, 294A.220, 294A.230, 294A.250, 294A.270, 294A.280 or 294A.286 has not filed a report or form for registration pursuant to the applicable provisions of those sections, the Secretary of State may, after giving notice to that candidate, person, organization, committee, political party or nonprofit corporation, cause the appropriate proceedings to be instituted in the First Judicial District Court.

2. Except as otherwise provided in this section, a candidate, person, organization, committee, political party or nonprofit corporation that violates an applicable provision of this chapter is subject to a civil penalty of not more than \$10,000 for each violation and payment of court costs and attorney's fees. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the Secretary of State in the First Judicial District Court and deposited by the Secretary of State for credit to the State General Fund in the bank designated by the State Treasurer.

3. If a civil penalty is imposed because a candidate, person, organization, committee, political party or nonprofit corporation has reported its contributions, campaign expenses, independent expenditures or other expenditures after the date the report is due, except as otherwise provided in this subsection, the amount of the civil penalty is:

(a) If the report is not more than 7 days late, \$25 for each day the report is late.

(b) If the report is more than 7 days late but not more than 15 days late, \$50 for each day the report is late.

(c) If the report is more than 15 days late, \$100 for each day the report is late. A civil penalty imposed pursuant to this subsection against a public officer who by law is not entitled to receive compensation for his or her office or a candidate for such an office must not exceed a total of \$100 if the public officer or candidate received no contributions and made no expenditures during the relevant reporting periods.

4. For good cause shown, the Secretary of State may waive a civil penalty that would otherwise be imposed pursuant to this section.

5. When considering whether to waive, pursuant to subsection 4, a civil penalty that would otherwise be imposed pursuant to subsection 3, the Secretary of State may consider, without limitation:

(a) The seriousness of the violation, including, without limitation, the nature, circumstances and extent of the violation;

(b) Any history of violations committed by the candidate, person, organization, committee, political party or nonprofit corporation against whom the civil penalty would otherwise be imposed;

(c) Any mitigating factor, including, without limitation, whether the candidate, person, organization, committee, political party or nonprofit corporation against whom the civil penalty would otherwise be imposed reported the violation, corrected the violation in a timely manner, attempted

- to correct the violation or cooperated with the Secretary of State in resolving the situation that led to the violation;
- (d) Whether the violation was inadvertent;
 - (e) Any knowledge or experience the candidate, person, organization, committee, political party or nonprofit corporation has with the provisions of this chapter; and
 - (f) Any other factor that the Secretary of State deems to be relevant.

6. If the Secretary of State waives a civil penalty pursuant to subsection 4, the Secretary of State shall:

- (a) Create a record which sets forth that the civil penalty has been waived and describes the circumstances that constitute the good cause shown; and
- (b) Ensure that the record created pursuant to paragraph (a) is available for review by the general public.

7. The remedies and penalties provided by this chapter are cumulative, do not abrogate and are in addition to any other remedies and penalties that may exist at law or in equity, including, without limitation, any criminal penalty that may be imposed pursuant to this chapter or NRS 199.120, 199.145 or 239.330.

13. New York

The New York State Board of Elections investigates and may refer election matters to the Attorney General or District Attorney for criminal prosecution. New York Election Law § 3-100 provides:

1. (a) There shall be a unit known as the division of election law enforcement established within the state board of elections. The head of such unit shall be the chief enforcement counsel.

(b) The state board of elections shall have jurisdiction of, and be responsible for, the execution and enforcement of the provisions of article fourteen of this chapter and other statutes governing campaigns, elections and related procedures; provided however that the chief enforcement counsel shall have sole authority within the state board of elections to investigate on his or her own initiative or upon complaint alleged violations of such statutes and all complaints alleging violations shall be forwarded to the division of election law enforcement.

2. (a) Whenever a local board of elections shall determine, on its own initiative or upon complaint, or otherwise, that there is substantial reason to believe a violation of this chapter or any code or regulation promulgated thereunder has been committed by a candidate or political committee or other person or entity that files statements required by article fourteen of this chapter solely with such local board, it shall expeditiously make an investigation which shall also include investigation of reports and statements made or failed to be made by the complainant and any political committee supporting his candidacy if the complainant is a candidate or, if the complaint was made by an officer or member of a political committee, of reports and statements made or failed to be made by such political committee and any candidates supported by it. The local board shall report the results of its investigation to the division of election law enforcement chief enforcement counsel within ninety days of the start of such investigation. The chief enforcement counsel may direct the local board of elections at any time to suspend its investigation so that the division of election law enforcement can investigate the matter.

(b) The chief enforcement counsel may request, and shall receive, the assistance of the state police in any investigation it shall conduct.

3. Upon receipt of a complaint and supporting information alleging any violation of this chapter, or upon his or her own initiative, the chief enforcement counsel shall determine if an investigation should be undertaken. The chief enforcement counsel shall, if necessary, obtain additional information from the complainant or from other sources to assist such counsel in making this determination. Such analysis shall include the following: first, whether the allegations, if true, would constitute a violation of this chapter and, second, whether the allegations are supported by credible evidence. The chief enforcement counsel may at any time ask that the board authorize him or her to exercise the powers which the board is otherwise authorized to exercise pursuant to subdivisions five and six of section 3-102 of this title. The board shall vote on whether to grant or refuse to grant such authority no later than twenty days after the chief enforcement counsel makes such request. For purposes of considering and voting on such request, the chief enforcement counsel shall be entitled to participate in all matters related thereto and shall vote on the board's granting or refusal to grant such request only when there is a tie. Should the board not vote on such request within twenty days of its submission, or grant the chief enforcement counsel's request, the chief enforcement counsel shall be so empowered to act pursuant to subdivisions five and six of section 3-102 of this title.

4. If the chief enforcement counsel determines that the allegations, if true, would not constitute a violation of this chapter or that the allegations are not supported by credible evidence, he or she shall issue a letter forthwith to the complainant dismissing the complaint and notice to the board.

5. (a) If, an individual has failed to cure pursuant to section 3-104-a of this title, or the chief enforcement counsel determines that substantial reason exists to believe that a person, acting as or on behalf of a candidate or political committee under circumstances evincing an intent to violate such law that does not otherwise warrant criminal prosecution, or has unlawfully violated any provision of this chapter, the board shall assign a hearing officer, randomly from a list of prospective hearing officers each of whom shall have been approved by a majority vote of the board. The chief enforcement counsel shall provide a written report to such hearing officer as to: (1) whether substantial reason exists to believe a violation of this chapter has occurred and, if so, the nature of the violation and any applicable penalty, based on the nature of the violation; (2) whether the matter should be resolved extra-judicially; and (3) whether a special proceeding should be commenced in the supreme court to recover a civil penalty. The hearing officer shall make findings of fact and conclusions of law based on a preponderance of the evidence as to whether a violation has been established and, if so, who is guilty of such violation on notice to and with an opportunity for the individual or entity accused of any violations to be heard. However, if the hearing officer finds that on balance, the equities favor a dismissal of the complaint, the hearing officer shall dismiss the charges. In determining whether the equities favor a dismissal, the hearing officer shall consider the following factors: (1) whether the complaint alleges a de minimis violation of article fourteen of this chapter; (2) whether the subject of the complaint has made a good faith effort to correct the violation; and (3) whether the subject of the complaint has a history of similar violations. For purposes of making any such findings under this subdivision, proceedings before the hearing officer shall be governed by article three of the state administrative procedure act. The chief enforcement counsel shall adopt the report of the hearing officer and may, in his or her discretion, commence a special proceeding in the supreme court pursuant to sections 16-100 , 16-114 and 16-116 of this chapter should the findings of fact and conclusions of law support the commencement of such proceeding or enter into an agreement to settle such matter with the subject of the complaint. In the event the chief enforcement counsel commences a special proceeding, the court shall afford the subject of the complaint an opportunity to be heard and shall be empowered to accept, reject or modify the findings of fact and

conclusions of law made by the hearing officer. If the board fails to produce a list of eligible hearing officers, the chief enforcement counsel may commence a special proceeding as provided herein in accordance with recommendations made in his or her report.

(b) If the chief enforcement counsel determines that reasonable cause exists to believe a violation warranting criminal prosecution has taken place, the chief enforcement counsel shall present such findings to the board. Within thirty days of such submission, the board shall vote on whether to accept or reject such findings. For purposes of voting on acceptance or rejection of findings by the chief enforcement counsel, the chief enforcement counsel shall be entitled to participate in all matters related to the review of his or her report and shall vote on its acceptance or rejection only when there is a tie. Should the board fail to vote to either accept or reject the findings within thirty days of submission of such findings, or should the board accept the findings by the chief enforcement counsel that there is reasonable cause to believe that a violation warranting criminal prosecution has taken place, the chief enforcement counsel shall, forthwith, and in any event no later than seven calendar days of such failure to accept or reject the findings by the board, refer such matter to the attorney general or district attorney with jurisdiction over such matter to commence a criminal action as such term is defined in the criminal procedure law.

6. Upon notification that a special proceeding has been commenced by a party other than the state board of elections, pursuant to section 16-114 of this chapter, the chief enforcement counsel shall investigate the alleged violations unless otherwise directed by the court.

7. The chief enforcement counsel shall prepare a report to be included in the annual report of the board to the governor, the state board of elections and legislature, summarizing the activities of the unit during the previous year.

8. The state board of elections may promulgate rules and regulations consistent with law to effectuate the provisions of this section.

(Italics added).

14. North Carolina

In North Carolina, all complaints go to the State Board of Elections. The Board makes a determination for criminal referral to the State Ethics Commission, who may then refer matters to the District Attorney. North Carolina General Statutes § 163-278.27 provides:

Criminal penalties; duty to report and prosecute.

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D, 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations as stated in G.S. 15-1 shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(b) A violation of G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony.

(c) A person or individual who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a) and the unlawful contributions total more than ten thousand dollars (\$10,000) per election is guilty of a Class I felony.

(c1) The Board shall refer apparent violations under this section to the State Ethics Commission. The State Ethics Commission shall investigate and make confidential recommendations to the Board regarding the appropriateness of a criminal referral for those alleged violations, as provided in G.S. 138A-13.5. The Board shall not take action under subsection (b) of this section for 90 days after the referral to the State Ethics Commission.

(d) Following receipt and consideration of the confidential recommendation from the State Ethics Commission as provided in subsection (a3) of this

section, if the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details and a copy of the recommendation issued by the State Ethics Commission, to the following prosecuting authorities: (1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides; (2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located; (3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and (4) In the case of a person or any group of individuals: report to the district attorney or district attorneys of the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(e) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(f) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge.

(Italics added).

15. Ohio

In Ohio, no prosecution for violation may commence until proceedings with Ohio Election Commission are complete. Ohio Revised Code § 3517.153 provides:

(A) Upon the filing of a complaint with the Ohio elections commission, which shall be made by affidavit of any person, on personal knowledge, and subject to the penalties for perjury, or upon the filing of a complaint made by the secretary of state or an official at the board of elections, setting forth a failure to comply with or a violation of any provision in sections 3517.08 to 3517.13, 3517.20 to 3517.22, 3599.03, or 3599.031 of the Revised Code, the commission shall proceed in accordance with sections 3517.154 to 3517.157 of the Revised Code.

(B) The commission shall prescribe the form for complaints made under division (A) of this section. The secretary of state and boards of elections shall furnish the information that the commission requests. The commission or a member of the commission may administer oaths, and the commission may issue subpoenas to any person in the state compelling the attendance of witnesses and the production of relevant papers, books, accounts, and reports. Section 101.42 of the Revised Code governs the issuance of subpoenas insofar as applicable. Upon the refusal of any person to obey a subpoena or to be sworn or to answer as a witness, the commission may apply to the court of common pleas of Franklin county under section 2705.03 of the Revised Code. The court shall hold proceedings in accordance with Chapter 2705. of the Revised Code.

(C) No prosecution shall commence for a violation of a provision in sections 3517.08 to 3517.13, 3517.17, 3517.18, 3517.20 to 3517.22, 3599.03 or 3599.031 of the Revised Code unless a complaint has been filed with the commission under this section and all proceedings of the commission or a panel of the commission, as appropriate, under sections 3517.154 to 3517.157 of the Revised Code are completed.

(D) The commission may recommend legislation and render advisory opinions concerning sections 3517.08, 3517.082, 3517.092, 3517.102, 3517.105, 3517.1014, 3517.13, 3517.20 to 3517.22, 3599.03, and 3599.031 of the Revised Code for persons over whose acts it has or may have jurisdiction. When the commission renders an advisory opinion relating to a specific set of circumstances involving any of those sections stating that there is no violation of a provision in those sections, the person to whom the opinion is directed or a person who is similarly situated may reasonably rely on the opinion and is immune from criminal prosecution and a civil action, including, without limitation, a civil action for removal from public office or employment, based on facts and circumstances covered by the opinion.

(Italics added).

16. Rhode Island

In Rhode Island, the Board of Electors investigates and may refer matters to Rhode Island's Attorney General for prosecution. Rhode Island General Laws § 17-25-5 provides:

Duties and powers of the board of elections.

(7) (i) Conduct confidential investigations and/or closed hearings in accordance with this title relative to alleged violations of this chapter either on its own initiative or upon receipt of a verified written complaint, which complaint shall, under pain and penalty of perjury, be based upon actual knowledge and not merely on information and belief. *Upon completion of its investigation and/or hearings, if the board has reason to believe that a violation of this chapter has occurred or that a complainant has willfully sworn or affirmed falsely, the chairperson of the board of elections is authorized to and shall issue to the person found to be in violation of this chapter a summons pursuant to § 12-7-11 to appear before the division of the district court where the person resides and shall be prosecuted by the attorney general.* Any action taken by the board as a result of a written verified complaint shall, whenever possible, be completed no later than five (5) business days after its receipt, and if no violation is found to exist, all records and papers shall be kept confidential unless further legal proceedings are instituted.

(Italics added). The regulations pursuant to this section provide:

TITLE 410 - BOARD OF ELECTIONS CHAPTER 20 - ELECTIONS
SUBCHAPTER 00 - N/A PART 8 – Investigations

8.2.10 Board Review at Conclusion of Investigation

After receipt of the response or when the response time period has expired, the Board shall conduct such review and hearing, as it deems appropriate under all the circumstances involved in the particular matter which may include:

1. Finding that no violation has occurred or that the Board has no reason to believe that a violation has occurred;
2. Finding that the subject of the investigation has agreed that one or more violations have occurred of specific sections of the General Laws and/or applicable regulations and issuing a remedial order accordingly;
3. Returning the matter to the Board Executive Director, staff or counsel for additional investigation;
4. Finding that there is reason to believe that a violation or violations of specific sections of the General Laws and/or applicable regulations may have occurred and ordering that an adjudicatory proceeding be held in order to determine whether or not such violations have in fact occurred;
5. *Finding that that there is reason to believe that a violation or violations of specific sections of the General Laws and/or applicable regulations may have occurred, and referring the matter to the Attorney General for possible enforcement action.*

(Italics added).

17. South Carolina

The South Carolina State Ethics Commission investigates complaints and may refer violations to South Carolina's Attorney General. South Carolina Code § 8-13-320 provides:

The State Ethics Commission has these duties and powers:

...

(k) No later than sixty days after the conclusion of a hearing to determine whether a violation of the chapter has occurred, the commission panel must set forth its determination in a written decision with findings of fact and conclusions of law. *The commission panel, where appropriate, shall recommend disciplinary or administrative action, or in the case of an alleged criminal violation, refer the matter to the Attorney General for appropriate action.* The Attorney General may seek injunctive relief or may take other appropriate action as necessary. In the case of a public employee, the

commission panel shall file a report to the administrative department executive responsible for the activities of the employee. If the complaint is filed against an administrative department executive, the commission panel shall refer the case to the Governor.

(Italics added).

18. Wisconsin

And finally, the Wisconsin Ethics Commission first determines probable cause and then refers violations to the District Attorney. Wisconsin Statutes § 11.1401 provides:

*Criminal penalties; prosecution. (2) Except as otherwise provided in ss. 19.49 (2) (b) 13. and 14. and (h) and 19.554, and *only after the commission has determined probable cause, all prosecutions under this section shall be conducted by the district attorney for the county where the defendant resides or, if the defendant is a nonresident, by the district attorney for the county where the violation is alleged to have occurred.* For purposes of this subsection, a person other than an individual resides within a county if the person's principal place of operation is located within that county.*

(Italics added).

II. Oklahoma's administrative agency is granted power to prosecute violations.

The Oklahoma Ethics Commission itself has enforcement and prosecutorial authority. Oklahoma Constitution Article XXIX-4 provides:

Investigation - Decision - Subpoena Power.

A. The Ethics Commission shall investigate and, when it deems appropriate, prosecute in the District Court of the County where the violation occurred violations of its rules governing ethical conduct of campaigns, state officers, and state employees. Where uncertainty exists, as to the County in which the violation occurred, the Commission may prosecute in any County

in which the evidence indicates the violation might have been committed. The Court may assess penalties for violation of ethical standards established by the Commission as provided in the Commission's rules. The Commission may settle investigations and accept payment of fines without Court order. Fines paid shall be deposited in the general revenue fund of the State.

B. The Commission shall also enforce other ethics laws as prescribed by law.

C. For purposes of its investigations, the Ethics Commission shall have subpoena power.

(Italics added).

III. Colorado law provides only for civil penalties.

Colorado's Secretary of State can initiate or receive complaints. Complaints are referred to an administrative law judge. Colo. Const. Art. XXVIII, Sec. 9 – 10; Colo. Stat. § 1-45-111.5 & 111.7. Penalties are civil only.

Conclusion

Texas is one of many states that require administrative agency review prior to criminal prosecution for campaign finance related offenses. For the reasons set forth in Appellant's opening brief as well as at oral argument and herein, the decision of the Court of Appeals should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on July 8, 2022, a true and correct copy of this document was transmitted via electronic filing service to the Attorney Pro Tem (travis.koehn@austincounty.gov; brandy.robinson@austincounty.gov) and the State Prosecuting Attorney (information@spa.tex.gov).

/s/ Lewis Thomas
Lewis Thomas

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